
44.93

START

FIRST

SIDE

16.H. Pte SMITH E.J.

O. H. M. S.

M. F. B. 270

F-40280 Private E.J. Smith. 16 H
Nth N.S.Highrs
att. 9 Cdn Inf Vde.

"G"

Army Form A.3.

Correspondence to be PINNED here.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this seventh day of April, 1942.

Whereas it appears to me, the undersigned, an officer in Command of 9 Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[I am unable to appoint :—

*(1.) Three Officers to form the Court.)

*(2.) A Field Officer as President.)

for the following reasons, namely :—]

* Omit if not applicable.

PROCEEDINGS REVIEWED

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	S.E. Lewis	Nth.N.S.Highrs.

Members.

Rank.	Name.	Regiment.
Capt.	D. C. Henderson	H.L.I. of C.
Lieut.	J. W. Lander	S.D. & G.Highrs.
Judge Advocate	Capt. R. A. Ritchie	H.Q. 3 Cdn Div

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed E.W. Haedenty Brigadier
Commanding *Convening Officer.*
Cmdg. 9 Cdn Inf Bde.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
F-40280 Pte SMITH, E. J. H.Q. 9 Cdn Inf Bde	(1) Sec 15 (1) A.A. Absence without leave	GUILTY	GUILTY 120 DAYS DETENTION DATED 8 DAY OF April 1942	Confirmed E.W.H.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) E.W. Haldenby Brig. (Signed) [illegible] Major
Commanding 9 C.I.B. *Confirming Officer (e)* *President*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 8th day of April, 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) The Judge-Advocate
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 8th day of April 19 42.

[illegible] D.A.A.G. [illegible] Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 782 M.M.L. 1929

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this~~ ~~day of~~ ~~19~~

~~President of the Court Martial.~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~ E.W.H.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 16 day of April 1942

E.W. Haldenby Brig
Confirming Officer.

Promulgated and extracts taken in the case of F-40280 Pte. Smith, E.J.

(a) (Dated) 16 Apr 42 (Signed) [illegible] (E.W. Haldenby) Brigadier Commanding 9th Can Inf Bde

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

Rec. No. 38092-1216 Thos. Lee, W. & Co., Ltd. Ogs. 748-2

MEDICAL OFFICERS CERTIFICATE
K.R. (Can) Para 557 -

I certify that I have this day examined No. F40280
Pte Smith E.J. 7 Cdn Inf Reinf Unit.
and in my opinion, he is fit ~~or unfit~~ to undergo trial by Court Martial.

Leipzic Barracks
Date 7 Dec 44

Capt.
Medical Officer



If a calling-out of the whole Army Reserve is ordered every soldier on pass must return immediately to his unit without waiting for instructions.

No.

PASS

Regiment HQ 9 Gn Inf Bde

Army Form B203
(In pads of 100)

No. [illegible] (Rank) Pte (Name) Smith E J

permission to be absent from his quarters from

[illegible] 1 JAN 42

the purpose of proceeding to ALDERSHOT

(Station) on Tel Fld

[illegible] Dn

Surgery Room

Lt Col Cmdg

Commanding

O.C. Sig. Coy.

A.T.O.

CROWN COPYRIGHT RESERVED

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a FIELD GENERAL Court-Martial held at IN THE FIELD.

on the 18 day of APRIL 1942 by order of

BRIGADIER E. W. HALDENSTET

Commanding 9 CANADIAN INFANTRY BRIGADE

dated the 7 day of APRIL 1942

President.

MAJOR S.E. LEWIS

Members.

CAPT. D.C. HENDERSON H.L.I. of C.

LIEUT. J.W. LAMBERT S.D. & G. Highrs.

CAPT. R.A. FLEMING RCA, Judge Advocate.

Trial of* F-40280 PTE SMITH E.J.
NTH N.S. HIGHRS
ATT 9 CDN INF BDE

The order convening the Court, the charge-sheet and the summary ~~(or abstract)~~ of evidence are laid before the Court.

~~The Court satisfy themselves that [redacted] is not available to serve owing to~~

~~awaiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† CAPT. W.H. PARKER

~~Counsel~~‡ or defending officer† CAPT EDWARDS

At 1600 o'clock the Trial commences.

The order convening the Court is read, and is marked "J", signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.*

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q4274. W1,W1450/78. 21,500 pds. 5/42. E. & S., Ltd. G42/1/1. Forms A 9/10.

B

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn.

Charge-Sheet.

Instruction. *If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.*

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [illegible] charge against you, which you have heard read? *Question to the accused.*

GUILTY *Answer.*

~~Are you guilty or not guilty of the second charge against you, which you have heard read?~~ *Answer.*

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~ *Answer.*

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~ *Answer.*

The accused having pleaded Guilty to the charge, the provisions of Rule of Procedure 35 (B) are here complied with.

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

B2

CHARGE SHEET

The accused No F-40260 Pte. Smith, E.J. Nth.N.S.Highrs. att'd H.Q. 9th Cdn Inf Bde, a soldier of the Cdn Army o/s, w.o.e.s. is charged with:

ABSENCE WITHOUT LEAVE

1st Charge
Sec 15(1)
Army Act

In that he, in the Field, was absent from 2359 hrs, 1 Jan 42 until he surrendered himself to the civilian police at MIDHURST at 1625 hrs on 11 Mar 42 (Total absence 68 days 16 hrs 25 mins)

(E.W. Haldenby) Brig.
Comdg. 9th Cdn Inf Bde

In the Field
6 Apr 42

To be tried by Field General Court Martial.

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

~~*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]~~

The accused F/HQ/810 PTE E J SMITH NIMNS HIGHRS ATT 4 CDN INF BDE is found guilty of his charge as laid

†The summary (or abstract) of evidence is read, marked "I" signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment ?

Answer. The accused in mitigation of punishment says :—

~~[or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]~~

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

Yes Sir I wish to give evidence myself under oath.

Answer

Evidence as to character

F 40220 Pte Smith D.J. having been duly sworn states

I enlisted at Aldershot H.S. on the 20 March 1940 and in the time that elapsed ~~since~~ between then & H.M.S. Kipling I had two cases of absence without leave against me. And in Feb 1941 my own wife put me in to the hospital for three months which put me in debt to the tune of £109 odd and investigation resulted in her allowance being taken away from her and being put in care of the Parish Rest. She had two children at this time. Before sailing for overseas I made arrangements for one of my children to go to Hospital for an Eye operation my wife disregarded these arrangements, ~~and~~ Recently I have had letters from my mother in Canada stating ~~that~~ that my children had been taken away from my wife and put them in the Orphanage for neglect and false

DD,

I have had a letter from my wife stating she is in court for being married again since I came overseas. Like all that again st me I was depressed and went off. I have not drawn a pay since I came to HMS Kyles - at least I have drawn five ten shilling notes since ~~Nov~~ February 1941. This was because I was paying the debt in which my wife had involved me. I am 22 years old and have been married since September 1937. One of my children will 4 years two months and the other is three years old. I have an assignment of £2 a month which goes to Falkirk South at present. I have received pay as between since I came over here. I was at Aldershot during my absence and was staying with a married couple there. I was painting their house inside & the white I was there & they gave me my keep in exchange

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

~~The Court is closed for the consideration of the finding.~~

~~The Court find that the accused~~

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out. Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

CAPT PARKES. is duly sworn.

Question by the President. Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* YES.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked I signed by the President, and annexed to the proceedings.

Question by the President. Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* YES.

Question. Have you compared the contents of the above statement with the regimental books? *Answer.* YES.

Question. Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

Answer. YES.

Cross-examined by the accused.

[*Instructions.*—If by reason of the nature of the service of the accused in a determined unit, or otherwise, the Court is of the opinion that it is desirable that any exceptional punishment (in addition to that to be awarded by the Court) be proposed, the attention of the Court is to the fact, and the Court must enquire into the nature and amount of that additional punishment.]

Question to the accused. Do you wish to address the Court? *Answer.*

The Court is closed for the consideration of the sentence.

Summary of evidence in the case of No F-40280
Private SMITH, E.J. Unit H.Q. 9th Cdn Inf Bde

By direction of the Commanding Officer the summary of evidence is taken on oath.

1st witness for the prosecution

Lieut. V.K. Harshaw, 9th Cdn Inf Bde Def Pl
(having been duly sworn) states:-

At In the Field (Place) On 2 Jan 42 (date) on which offence occurred (here follows the evidence of the witness)

I am Lieut. V.K. Harshaw, O.C. 9th Cdn Inf Bde Def Pl acting Camp Commandant, H.Q. 9th Cdn Inf Bde.

On the 2 Jan 42, Father D.A. Kerr reported to me that his batman, Pte. Smith, E.J., had not returned from being on pass. Said pass expired at 2359 hrs, 1 Jan 42, which pass I here produce as exhibit "B".

I myself made a search and Pte. Smith E.J. was not in his quarters. I have not seen Pte. Smith, E.J. at any of the places of parade where he should have been since then. I produce now the evidence as given by Sgt Sharpe, West Sussex Constabulary, to show that Pte. Smith, E.J. surrendered to the civil police at MIDHURST at 1625 hrs 11 Mar 42, as received by me as Camp Commandant, H.Q. 9th Cdn Inf Bde, shown as exhibit "C"

I have also ascertained that Pte. Smith E.J. hasnot attended a pay parade since Dec 22, 41 and produce a signed and sworn statement to that effect as exhibit "D".

The accused declines to cross-examine this witness.

V.K. Harshaw, Lieut
(Signature of witness)

2nd witness for the prosecution

No F50060 Cpl. I. Bell Unit H.Q. 9th Cdn Inf Bde
(having been duly sworn) states:-

I, F-50060 Cpl.I. Bell, Orderly Room Clerk, was present on the morning of the 23 Mar 42 at 1055 hrs to take down evidence in the office of the Staff Captain 9 Cdn Inf Bde, when I heard him caution F-40280 Pte. E.J. Smith with the words "you may make a statement if you so wish but if you make a statement it may be used as evidence against you".

I took down the statement in shorthand as given by Pte. E.J. Smith and from my notes I copied it out. Capt. Parker then pointed out to Pte. E.J. Smith that he did not have to sign it as any statement made would be entirely voluntarily on his part. Pte. Smith then signed the statement, writing in his own hand writing, "I am signing this voluntarily". I witnessed the signature and I produce his statement now, Exhibit "A".

The accused declines to cross-examine this witness.

I. Bell
(Signature of witness)

Certified that Rule of Procedure 4(c) (d) (e) and (g) have been complied with
Taken down by me in the presence and hearing of the accused this 23rd day of March 19 42 at In the Field

(Signature of Officer taking Summary)

'C'

Police Station,
Midhurst. 7th April, 1942

Pte. Edward John SMITH.
F.40200, North Nova Scotia Reg't.

Sir,

I beg to report that at 16.25 hrs. on Wednesday, 11th March, 1942, I was on duty at Midhurst Police Station, when the above named soldier surrendered to me, stating that he had something which had been worrying him, and he felt that he must give himself up. I asked him what it was, and he replied, "About 10 days ago I broke open a meter at his resid and took £1/- from it. He gave the address of the house as 99, Roberts Road, Aldershot, and occupied by a Mrs. Girling.

I telephoned to Aldershot Police, after which he was detained at Midhurst Police Station until 0855 on the following day when he was taken into custody by the Aldershot Police.

Signed: J. Hart
Sergeant 19.
West Sussex Constabulary.

Witness to Signature
W Hawkins Pmstr

Pte Edward J Smith

HEADQUARTERS
9th CANADIAN INFANTRY BRIGADE

D

23 Mar 42

S.C.
9th Cdn InfBde

F_40280 Pte. Smith, E.J.

1. This is to certify that the marginally named soldier has not appeared on pay parade since Dec 22 when he received the sum of 10 shillings. This man's account has been in a debit since his pay book was opened 1 Aug 41.

(G.L. Morris) Capt.
Paymaster
9th Cdn Inf Bde Details

IB

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. F40260 Rank Pte. Name Smith, E.J. of H.Q. 9 C.I.B. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		Nil		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 5. day of April 42

W.M. Watson Capt
OC 9 Con Fd Bde

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

		Date of Promotion.
In the rank of	years,	
In the rank of	years	
In the rank of	years,	

Instructions.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be omitted from such courses as are available and the paragraphs renumbered accordingly.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
F40280	Pte.	Smith, E.J.	H.Q. 9th Cdn Inf Bde

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, preference being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	*~~During the present~~ Since Enlistment.	*Since Enlistment.
For	A.W.L.	times Two Three times
For		times times
For		times times
For		times times
For		times times

Number of instances of gallantry or distinguished conduct, N.A.

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

~~The accused was convicted by civil power on the following occasions, which are stated in the~~ ~~above statement of the conduct sheets:~~

3. The accused is not under sentence at the present time, *or* ~~The accused is under the following sentence:~~

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 27 days in military custody, making a total of 27 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 22

6. The date of his ~~enlistment~~ attestation specified in his ~~enlistment~~ attestation paper is 20 Mar 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 yrs 9 days

8. The accused is entitled to deferred pay or gratuity in respect of Nil service.

9. The accused is entitled to reckon Two YEARS 6 service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award ~~except as follows~~.

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N.A.

12. (*In the case of an officer.*) The accused holds in the army the rank of N.A. dated N.A. and in his regiment (*or corps or department*) the rank of N.A. dated N.A.

[1*****] W.L.[illegible] 75,000 12/40 A.& E.W.Ltd. Gp.678

HEADQUARTERS
9th CANADIAN INFANTRY BRIGADE

D

23 Mar 42

S.C.
9th Cdn InfBde

F-40280 Pte. Smith, E.J.

1. This is to certify that the marginally named soldier has not appeared on pay parade since Dec 22 when he received the sum of 10 shillings. This man's account has been in a debit since his pay book was opened 1 Aug 41.

IB

(G.L. Morris) Capt.
Paymaster
9th Cdn Inf Bde Details

HEADQUARTERS
9th CANADIAN INFANTRY BRIGADE

23 Mar 42

S.C.
9th Cdn InfBde

F-40280 Pte. Smith, E.J.

1. This is to certify that the marginally named soldier has not appeared on pay parade since Dec 22 when he received the sum of 10 shillings. This man's account has been in a debit since his pay book was opened 1 Aug 41.

IB

(G.L. Morris) Capt.
Paymaster
9th Cdn Inf Bde Details

MEDICAL OFFICER'S CERTIFICATE

I certify that No F40280 Pte SMITH EJ 9 C I B Regiment,

is* fit to undergo trial by Court-Martial.

8th April, 1942

B J Anderson Capt
Signature of the Medical Officer.

*Insert "fit" or "unfit."

(a) Here insert name of:—
(i) Officer who investigated the charges.
(ii) Company, etc., Commander who made preliminary enquiry into the case.
(iii) Officer who took down the Summary of Evidence (R.P. 19 (B) (iii)).

(b) To be filled in if there has been a Court of Enquiry respecting any matters connected with the charges; otherwise to be struck out (R.P. 19 (B) (iii)).

A

The statement made by F-40280 Pte. Edward John Smith

I, having been duly cautioned and understanding that this may be used as evidence against me I wish to state that I was absent from duty from 2359 hours on the 1st Jan 42 until 1100 hours on the ~~1~~ Mar 42 and that I am to blame.

E. J. S.

E. J. S.

Pte Edward J Smith

I am signing this Voluntarily

No. 40288 Name Smith E.J. Sqn. Battly. or Company A Corps Date of enlistment 20-3-40. G.C. Service or Proficiency Pay

Date of last entry in Company Conduct Sheet 29-10-40 No. and date of last drunk Period not reckoning towards freedom from extra line Sheet No 2 Signature O.C. Company, etc. W. Cobbett Major Character

Army Form B 122

Place	Date of offence	Rank	Code of Description	Offence	Names of Witnesses	Punishment awarded	Date of award or date beginning with Mid	By whom awarded	Remarks
Alexandria	25-10-40	Pte.		(1) Whilst on a piquet attempting to escape Camp with the intention of absenting himself from same. (2) Absent A.W.L. from 0300 hrs 3-5-40 until 0130 hrs 13-5-40 (3) A.W.L. from 13-3-40 until 2200 hrs 20-5-40	Cpl Mossop Pte Penney Cpl Smith	14 days Detention	24-5-40	Maj Dyke 2/Lt	14 days Pay.
Alexandria	29-10-40			A.W.L. from 2359 hrs 29-10-40 until 0100 hrs 31-10-40	Cpl Mackenzie	7 days C.B.	1-11-40	R.S.M.	
Abbassia	16-2-41			Absent without leave from 0600 16-2-41 to 0030 hrs 2-3-41	Cpl Bothwell	28 days Detention	7-6-41	Major	

Certified Correct (Major)

CC-8 (Cam #2)

PTE SMITH E J

See H-16 for 1st Case

F-40280 Pte SMITH, Edward John
North Nova Scotia Highlanders
7 Cdn Infantry Reinforcement Unit

Correspondence to be PINNED here.

Army Form A.3. CC-8

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this twenty-ninth day of March, '19 43

Whereas it appears to me, the undersigned, an officer in Command of "D" Group, Canadian Reinforcement Units, Canadian Army Overseas, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~and that it is not practicable to delay the trial for reference to a superior qualified officer;~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers ~~named in the margin~~ appointed or detailed hereunder.

* Omit if not applicable

~~I am unable to appoint~~
~~(a Three Officers to form the Court;)~~
~~(a A field Officer as President;~~
~~(a Three Officers having more than one year's service.)~~
~~for the following reasons, namely:—~~

President.

Rank.	Name.	Regiment.
Lt. Col.	D.L. Redman	Calg Highrs

Members.

Rank.	Name.	Regiment.
A Major	from	5 Cdn Gen Pioneer Coy
A Captain	from	5 Cdn Gen Pioneer Coy

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

Signed C. Wm Basher Colonel
Commanding "D" Group, Cdn Rft Units
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
F-40280 Private SMITH, Edward John Nth N.S.Highrs 7 C.I.B.U.	First Charge A.A. Sec 15 (1) See Charge Sheet attached.	Guilty	Guilty Sentence To undergo detention for a period of Eight(8) months 30th Mar 1943	I confirm the finding and sentence of the Court G Kitchener Barker Col Commander "D" Group (Cdn. Reinforcement Units) C.A.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) G Kitchener Barker Colonel (Signed) [illegible]
Commanding "D" Group, C.R.U.
Convening Officer (*c*) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 30th day of March 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. ~~The witnesses~~
3. ~~The interpreter~~
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 30th day of March 1943

[illegible]
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1926 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*I direct that the soldier named in the margin be [illegible] to prison until further orders.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or having such authority, recommends suspension.

Signed this 31 Mar day of Mar. 1943

G Kitchener Barker Col
Commander
Confirming Officer "D" Group
(Cdn. Reinforcement Units) C.A.

Promulgated and extracts taken in the case of F 40280 Pte Smith Edward John Nth N.S. Highrs 7 CIBU

(*a*) (Dated) 31 March 43 (Signed) [illegible] 130 HB 4/1 Apr 43
CAPT ADJT
7 CDN INF REINF UNIT

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused, No. F402880 Private Edward John SMITH, North Nova Scotia Highlanders, on the strength of 7 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army (Overseas), is charged with:

FIRST CHARGE
SEC 15 (1)
ARMY ACT

When on Active Service, absenting himself without leave,

in that he,

at Aldershot, Hants, absented himself without leave from 0810 hours 2 Jan 43 till he surrendered himself to the Regimental Police at Leipzig Barracks, Ewshott, Hants at 2025 hours 24 Mar 43.

Total absence - 81 days, 11 hours, 55 minutes.

J. M. Calkin Col.

(J.M. Calkin) Colonel
Commander
7 Cdn. Inf. Reinf. Unit

In the Field,
27th day of March,
1943.

To be tried by Field General Court Martial.

G. Hedley Basher

(G. Hedley Basher) Colonel
Commander
"D" Group, Cdn Rft Units

In the Field
29 March 43

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT Guilmont Camp Base
ON THE 30 DAY OF March 1943

The accused F. Hor Bo Cle Smith E.J. ....Unit. 7 C 2 RU

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P.22&23.

The accused is brought before the Court.
The Medical Certificate is laid before the President, and
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the president or any member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President Lt Col Robinson .....Unit. Base Hqrs.....
Members Myn Powell .....Unit. 5 CGPC.....
Capt White .....Unit. 5 CGPC.....

The officers under instruction are duly sworn:-

.....Unit.....
.....Unit.....
Prosecutor Lt E Denton .....Unit. 7 C 2 RU
Defending officer Lt He McNeill ....Unit. 7 C 2 RU

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
The Prosecutor is ~~sworn and~~ produces ~~MFM 5~~ AFB 296 and MFM 6.
The Court complies with R.P. 46(B)

Pursuant to R.P. 37 THE ACCUSED:-

(a) ~~makes a statement in mitigation of punishment.~~
(b) calls witnesses as to character.
(c) ~~calls witnesses in mitigation of punishment.~~
(d) addresses the Court by his Defending Officer.

The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE, and ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER

Plea in mitigation is attached

CANADIAN LEGION

WAR SERVICES

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F40820 Smith E. J.

Enlisted start of war, discharged soon after on medical grounds. Re-enlisted Mar 1940 at Aldershot, N.S. While there, letters came to him re wife's improper conduct. ~~Could not~~ In Feb 1941, he went home to investigate - contacted V.D. Eq. from his wife. He was referred to his M.O.; she, the wife was then tested & found to be suffering from V.D. Separation allowance was taken from her & placed in the hands of his family physician.

He got placed in a draft to the R.C.N.S. HQ proceeding O.S. with them in July 1941.

He had been receiving letters from his wife begging ~~and~~ that her contact with other men.

PLEASE USE BOTH SIDES

Shaver sent photographs of her intimate relations with [illegible]
Eventually the children were taken from her and given to [illegible]
the relatives and grown to [illegible]
look after.

Dr Reynolds Smith received a letter from his wife stating that she had had a child by another man. She sent [illegible]
and enclosed letters from her mother and sisters.

The writer of the letters [illegible]
in a letter from her mother pleaded that one of them [illegible]
[illegible]

The result of all these troubles is that his nerves are on edge, so that it is impossible [illegible]
for him to keep his mind [illegible]
[illegible]. He is quite bitter

CANADIAN LEGION

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about the raw deal he is getting at home. He is very worried about the children, despite 3 letters sent to children's Aid Society, he has no information from them.

Respectfully submit that the foregoing story should justify a plea of mitigation in the main sentence.

J. H. W. Neil Lieut.

PLEASE USE BOTH SIDES

SUMMARY OF EVIDENCE

In the case of No F 40280 Private Edward, John, SMITH, of the North Nova Scotia Highlanders, on the strength of 7 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army (Overseas).

By direction of the Commanding Officer, this summary of Evidence was taken under oath.

FIRST WITNESS FOR THE PROSECUTION. Lieut. L.E. Donkin, Cape Breton Highlanders, on strength of 7 Canadian Infantry Reinforcement Unit having been duly sworn states:

" I am Lieut. L.E. Donkin, Cape Breton Highlanders, on strength of 7 Canadian Infantry Reinforcement Unit. I hereby produce A.F.B. 115, Record of the Declaration of a Court of Inquiry on the Illegal Absence of F 40280 Private Edward, John, SMITH, the accused whom I now recognize.

The accused declines to cross examine this witness.

L.E. Donkin Lieut.
(L.E. Donkin)

SECOND WITNESS FOR THE PROSECUTION. F 40168 A/Cpl. Jollimore, E.R., West Nova Scotia Regiment, on strength of 7 Canadian Infantry Reinforcement Unit having been duly sworn states:

" I am F 40168 A/Cpl. Jollimore, E.R., West Nova Scotia Regiment, on strength of 7 Canadian Infantry Reinforcement Unit. I was on duty on 24th March 1943 from 1600 hours to 2359 hours in the Guard Room of 7 Canadian Infantry Reinforcement Unit. At 2025 hours F 40280 Private Edward, John, SMITH, whom I now recognize surrendered himself to me in the Guard Room, stating that he went absent without leave in January. I then placed him under close arrest and notified same to his company.

E.R. Jollimore A/Cpl
(F 40168 E.R. Jollimore)

The accused declines to cross examine this witness.

The accused having been duly cautioned in accordance with Rule of Procedure 4 (E), reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence and hearing of the accused at Leipzic Barracks, Ewshott, Hants, on the 27th day of March 1943, and that Rules of Procedure 4 (C), (D), (E), (F), and (G) have been duly complied with.

L.E. Donkin Lieut.
(Officer taking the summary)

In the Field
27th day of March
1943.

(1) I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at Leipzic Barracks, Ewshott, Hants, preliminary to my court-martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court Martial.

Dated at Ewshott, Hants,
this 28 day of
March 1943.

Pte E.J. Smith
.....

(2) I hereby acknowledge that I have been served with a true copy of an additional Summary of Evidence taken at Leipzic barracks, Ewshott, Hants, preliminary to my Court Martial.

Dated at Ewshott, Hants,
this 28 day of
March. 1943.

(3) I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of A/CAPT. C.F. O'NEILL N.F.S. HIGHRS.
if he is available.

Pte E.J. Smith
.....

Dated at Ewshott, Hants,
this 28 day of
March 1943.

7 CANADIAN INFANTRY REINFORCEMENT UNIT

5 Apr 43

Commander,
"D" Group,
Cdn. Rft. Units.

HEADQUARTERS "D" GROUP
6 APR 1943
CANADIAN R. INFORCEMENT UNITS

IN REPLY PLEASE QUOTE
D.G.H.Q:- 5-4-CM/CIRU/7

F40280 PTE. SMITH, E.J.

Soldier under sentence. Case History of Domestic Difficulty.

The m/n soldier, a married man, with two children, boys, 4 yrs. and 3 yrs. of age. Married life until June 1940, was very happy.

The m/n soldier enlisted, for the second time, in March 1940, and in June 1940 was transferred from Amherst to Aldershot, N.S. After his transfer to Aldershot soldier was advised by Parish Priest that he should come home, and check his wife's conduct. Home on leave, and as a result contracted V.D. Before being sent to Hospital, went home (AWL) and as a result of interviews with pharmacist and doctor, was told that his wife was infected. On the m/n soldier's admission to Hospital, the Military Medical Authorities reported the wife who was compelled to undergo medical treatment.

In Feb. 41 the m/n soldier's assigned pay and allowances were paid to Parish Priest, who administered them for the wife and children. After the m/n soldier's arrival Overseas in June 1941, he was advised by the Parish Priest, and his Mother, that the children were neglected. The R.C.M.P. and Children's Aid Society made investigations, on their own initiative, which resulted in reports to the D.A.B. in consequence of which the children were placed in care of the Children's Aid Society, and all pay and allowances were stopped to the soldier's wife. The assigned pay and dependents allowances are now paid to the Children's Aid Society.

A letter from the m/n soldier's mother dated Mar. 43 advised him that the younger of the children had been adopted out. No word of any such action was ever given to the soldier. He is unaware of the child's location. The soldier is in decided disagreement with this action, and very upset. His last A.W.L. offence, was attempt to get back to Canada to attend to this matter.

The m/n soldier's wife has been a continual source of worry and annoyance to soldier by her letters in which she boasts of her present conduct and abuses the soldier.

A child was born to the m/n soldier's wife on or about Sept. 5, 1942, which child was illegitimate.

The m/n soldier is Roman Catholic. He has attempted to get his difficulties settled through Catholic Padres. The attempts have been futile. The m/n soldier wants to begin divorce proceedings--which is contrary to laws of the Catholic Church.

The m/n soldier has asked that I give these matters my consideration in an effort to effect settlement. The m/n soldier was paraded to the Roman Catholic Chaplain where he stated his difficulty, and his decision to attempt divorce proceedings, and that he had sought the assistance of a Protestant Chaplain.

As far as pay records are available and complete, the m/n soldier's story has been checked and verified.

The m/n soldier's Conduct Sheet has a large number of A.W.L. offences. The decision to go A.W.L. has undoubtedly been influenced by the difficult domestic situation.

If the m/n soldier is given some assurance that his unsatisfactory domestic situation is in the process of settlement, my impression is that he is quite capable of giving useful service to his country as a soldier.

Respectfully submitted,

H/Capt.
(J.P.A. Browne, M.C.)
Protestant Chaplain,
7 Cdn. Inf. Reinf. Unit.

For your information please.

JPB/LM

COL.
COMMANDER 7 CDN INF
REINFORCEMENT UNIT

Headquarters
"D" Group
Canadian Reinforcement Units

DGHQ 5-4-CM/CIRU/7

31 Mar 43

Commanding Officer
7 C.I.R.U.

F.G.C.M.
F-40280 Pte. Smith, E.J.
Nth. N.S. Highrs. - 7 CIRU

1. The domestic problems of this soldier must be thoroughly investigated and a report forwarded to this office as to the result - so that such report can be sent on to Higher Authority for their information, and guidance when this case comes up for review.

GHB:NCE

(G. Hedley Basher) Colonel
Commander
"D" Group, Cdn Rft Units.

Ex. "A" P.D

Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at 3CIRU on the 27th day of January 1943, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. F.40280 Private Smith, E.J. (Ntn.N.S.Highrs)

DECLARATION.

The Court declare that F40280 Pte Smith, E.J. illegally absented himself without leave at 3CDIRU on the 2nd day of January, 1943; that he is still so absent, and that on the 26th day of January 1943, he was deficient, and that he is still deficient of the following articles:-

Article	No.	Vocabulary			75%		
Anklets, web, prs	1	0	3	8½	0	2	7½
Battle dress, blouse	1	1	7	8	1	0	9
Battle dress, trousers prs.	1	1	7	11	1	0	11½
Bonnets, Tam-O-Shanter	1	0	4	2	0	3	1½
Badges, cap (NNSH)	1	0	0	4½	0	0	4½
Greatcoats,	1	3	17	0½	2	17	9
Combs, hair	1	0	0	2	0	0	2
Dressing, first field	1	0	1	1	0	1	1
Jackets, sweater	1	0	6	9	0	5	1
Socks, prs.	2	0	3	4	0	2	6
Vests, gym	1	0	1	6	0	1	1½
Eyeshields, A.G.	2	0	0	9	0	0	7
TOTAL		£ 7	14	2½	£ 5	16	11½

Names of President and Members

PRESIDENT Captain A.J. Davis (NNSH) 3CDIRU
MEMBERS Lieut. A.R. Lalonde(R de Chaud)3CDIRU
Lieut. A.F. MacAskill (SD&G.H) 3CDIRU

K. Thaycap Colonel,
for Officer Commanding.
8 Cdn. Inf. Reinf. Unit.
Canadian Army (Overseas)

Signature of Commanding Officer

CERTIFIED TRUE COPY.

K. Thaycap Adjutant,
8 Cdn. Inf. Reinf. Unit.
Canadian Army (Overseas)

Signature of Officer having custody of the Original Record

(19811) WL34219/1822 75,000 10/39 A.& E.W.Ltd. Gp.698
(19441) WL40782/750 225,000 1/40
Forms/B115/50

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
F.40280	Private	SMITH, E. J.	North Nova Scotia High'rs.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 617, K.R., 1940.

* The number here stated should correspond with the number in column 9 of the conduct sheets, permission being given to the most senior officer in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For A.A. Sec. 15(1)	1 times.	2 times.
For	times.	times.
For	times.	times.
For	times.	times.
For	times.	times.

~~Number of instances of gallantry or distinguished conduct,~~ —

or

There are no entries in the conduct sheets of the accused.

2. ~~The accused has not been previously convicted, or~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, or ~~The accused at the present time is under sentence for~~ ..... beginning on the ..... day of .....

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 6 days in military custody, making a total of 6 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 23

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 20 Mar 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 yrs 117 dys

8. The accused is entitled to deferred pay or gratuity in respect of 2 yrs 117 dys service

9. The accused is entitled to reckon 2 yrs 117 days service for the purpose of determining his seniority, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award ~~or is in possession of or entitled to wear any military decoration or reward~~ ;—

~~11. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the substantive rank of .....~~

12. (*In the case of an officer.*) ~~The accused~~ holds in the army the rank of ..... dated .....

~~and in his regiment (or corps or department) the rank of ..... dated .....~~

(A.1.6250) Wt.11/6892/184 125,000 8/41 A.A.E.W.Ltd Gp.698

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. 40280 Rank Private Name SMITH, E. J. of N.S.H. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted
F.G.C.M.	7 Apr. 42	A.A. Sec. 15(1): A.W.L. from 0001 hrs. 2 Jan 42 to 1625 hrs. 11 Mar 42 (68 days 16 hrs. 24 min.)	120 days detention.	40 days.
Civil Court	28 Sept 42	Civil offence, stealing.	3 months imprisonment	

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 30 day of March 43

A. MacDougall Lieut

Officer having custody of original documents
Records Officer 7 C. I. R. U.

Conviction.—If any matter in any of the above columns cannot be stated from the regimental books the particulars must be given and the fact that the information may be obtained from such number as are available stated. Where the result of the case by civil power is not recorded the information should be obtained.

In the rank of ..... Date of Promotion .....

In the rank of ..... years .....

In the rank of ..... years .....

No. F 40280 Name Smith, E. J. | Sqn., Battery, or Company | Corps N. N. S. Highrs | Date of enlistment 20 MAR 40 | G.C. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc.

M.F.M. 6
A.F.B. 122
175M—7-41 (1515-28)
H.Q. 1772-59-1602

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Aldershot, N2.	7.6.41	Pte.		A.A Sec. 15(1) A.W.L. 0400 hrs. 16.5.41 to 0080 hrs. 2.8.41		28 days detention			Forf. 14 days R.P.C. (Case arrest)
Field		Pte.		A.A 15(1) A.W.L. from exercises 2 Jan. 42 to 1628 hrs. 11 Mar 42 (68 days, 16 hrs. 28 min)		120 days detention	7 Apr. 42	F.G.C.M.	Released 26 June 42. Remission 40 days
Field	28.9.42	Pte.		Civil offence - stealing		3 months imprisonment	28 Sep. 42	Civil Court	Discharged from prison 29 Nov 42
Field	2 Dec 42	Pte.		A.A 15(1) A.W.L. 26 days 2 hrs. (min.)		14 days C.B.	2 Dec. 42		Forf. 27 days' pay R.P.C.

L. McLaughlan Lieut
Officer having custody of original documents
Records Officer 1 C.I.R.U.

(P.T.O.)

COUNTER NUMBER 583128

HOUR 14 15

OPERATOR'S INITIALS JW

RELIEVING OPERATOR E. M.

3 m-73

The Smith Co

RECORDED AT CMHQ IN AB 160 5-M-73

FIELD GENERAL COURT-MARTIAL

CPA86 (To lieu of AFW 40/P.M.S./168 (4036)
4/38B

Convened by Order of Brigadier G S N Gostling, ED Comd 2 CBRG dated 12 Apr 45.

ACCUSED.

(Give the R of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number	(a) Permt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F-58068	Pte		EDWARD LAUGHTON.	SMITH	No 4 Sect of C 12 CBR Bn

PROCEEDINGS REVIEWED
W.M.D. McKeough Capt.
4 Jul 45
REVIEWING OFFICER, JAG BRANCH, CMHQ.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 13 Apr 45, 14 Apr 45, 16 Apr 45.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 31/107

A1. The President, Members, ~~waiting Member~~, JA, if any, ~~and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnns RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1120 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ~~Major R.M. ECCLESTONE, Judge Advocate~~ M19428 S/SJT EMERY, C.W. interpreter? Ans NO

The Interpreter is sworn.(1) Do you object to M19428 S/SJT EMERY, C.W. as shorthand writer? Ans NO

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, ~~and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	D. McKENZIE	Essex Scot R-G List 3 Cdn MTO
Member	CAPT	F.A. BAILLARGEON	1 CDN DISC CENTRE.
Member	CAPT	E.B. VANDINE	1 CDN DISC CENTRE.
Judge-Advocate	LT	R.M. ECCLESTONE	JAG HQ 2 CBRG
Prosecutor	MAJOR	R.F. WILSON	1 CDN DISC CENTRE
Defending Offr	MAJOR	R.S. OSLER	ATT HQ 2 CBRG.

Questions by President: Is the Prosecutor a lawyer? Ans YES Is the Defending Offr a lawyer? Ans YES (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused F-58068 Pte SMITH E L before arraignment makes(s) (no) (of plea

(1.

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 2

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2CBRG WAT P.M.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. *If pleas to all charges are GUILTY, see Record Form B below.*

II. *If pleas to all charges are NOT GUILTY, see Record Form D on p 3.*

III. *If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,*

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (RP 37(A).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), on which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement? (Yes/No)

(1. *RP 27(3).* 2. *RP 27(2) fn 6.* 3. *RP 35(B) fn 5 para 1 MML p 54 para 47.* 4. *See para L1 of Record Form E.*
5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty to charge(s). The accused is (are) so informed, and he (they) (change(s) his (their) plea(s) to charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records findings(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 25(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ___, initialled and read aloud by the President (standing as Court). Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) (Paras D1 to D8 inclusive of Record Form D on p 3. *RP 37(D).*)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea of Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

As to the charges on which accused pleaded NOT GUILTY the trial is continued [illegible] paras D1 to D8 [illegible] Record Form D on p 3 before proceeding with C [illegible]

The charges on which accused pleaded GUILTY and [illegible] B5 of Record Form B above.(1) [illegible] trial is continued [illegible] such [illegible] the Summary of Evidence and [illegible] Court will [illegible] accused by complying with para [illegible] If any plea is changed to Not Guilty, try such charge(s) [illegible] making an [illegible] charged to a separate sheet.)

The proceedings having been found Guilty on one or more [illegible] concluded by using [illegible]

PRESIDENT OR JA WILL INITIAL ALL [illegible] AND ALTER[illegible]IONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 35(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without assthy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc. offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (ii); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s),(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)
(1. *RP 37(B).* 2. *RP 3,(2) fn 6.* 3. *LP 35(B) fn 5 para 3, MMAL p 54 para 47.* 4. *See para E3 of Record Form E.*
5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

MEDICAL OFFICER'S CERTIFICATE

(KR(Can) Para 557)
(CI(HQ) CL 173)

I certify that I have this day examined F-58068 Pte
(No.)
Edward Lauton SMITH and in my opinion he is
(Rank) (Name)

fit to undergo trial by Court-Martial.
~~unfit~~

Station In the Field

Date. 13 APR 45

(Medical Officer)
(unit) NO. 3 CAMC

MEDICAL OFFICER'S CERTIFICATE

(AA(Gen) Form 537)
(CMBR CL 173)

I certify that I have this day examined F 58068 (No.)

Pte (Rank) Smith E. L. (Name) and in my opinion he is

fit to undergo trial by Courtmartial.

Station Field

Date 14 Apr 45

[signature] (Sgd)

(Unit) 2 C.S.R.G.

MEDICAL OFFICER'S CERTIFICATE

(NM(Can) Form 567)
(CMH, AL 173)

I certify that I have this day examined F-J-80 68
(No.)

Dvr (Rank) Smith E. L. (Name) and in my opinion he is

fit to undergo trial by Court-Martial.

Station Sull

Date. 16 Oct 45

Medical Officer
Major, RCAMC
DADMS, 1 Cdn Base Sub-Area

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F-58068	Pte		Edward Laughton	SMITH	AASH of C 11 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 10 Apr 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~ (10)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	D MacKenzie		Essex Scot M-G List 3 Cdn NDTD

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	F A BATLINGEON		Gen List att 1 Cdn Disciplinary Centre
Capt	E B VAN DINE		RCASC att 1 Cdn Disciplinary Centre

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
Lt	A M ECCLESTONE		att ADJA 2 Cdn Base Rft Gp

On Active Service in the Fd

in BELGIUM (Country.)

(Signed personally. RP 105 fn 2.)
(G E F Costling)

Brigadier (Rank.)

Dat: 12 Apr 45

Commanding 2 Cdn Base Rft Gp
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A (PAM (To Item of AFA 2) 40/P & S/1941 (6142))

On behalf of the JAG Cdn Army Overseas, I approve the appointment of Lt A M ECCLESTONE as Judge-Advocate the said Lt ECCLESTONE having legal qualifications. Colonel.
(H E Griffin) DJA

CHARGE SHEET

The accused, F-58068 Pte EDWARD LAUGHTON SMITH, A & SH of C, on strength 11 Cdn Base Rft Bn, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
AA Sec 41

WHEN ON ACTIVE SERVICE - COMMITTING A CIVIL OFFENCE THAT IS TO SAY, MANSLAUGHTER

in that he

In the Field, on 23 Dec 44, unlawfully killed NB-469980 Pte McCREESH J, Duke of Wellington Regt, British Army.

(R G Young) Lt-col
Comd 11 CBR Bn

In the Field
12 APR 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(G S N Gostling) Brig
Comd
2 Cdn Base Rft Gp

In the Field
12 APR 45

Approved on behalf of the JAG [illegible] Army Overseas

[illegible]
DJA
HQ 2 CBRG

In the Field
12 Apr 45

D.2 0

OPENING ADDRESS BY THE PROSECUTION

The facts are quite straight-forward in this case and I do not believe it is necessary to review them now. Practically all of the facts can be obtained from the first witness for the prosecution, and I believe that will suffice. There is one word to be said regarding witness Capt BOURGET who is the sixth witness in the Summary This witness is not available now and his evidence is pretty will covered for the case of the prosecution by other witnesses. Unless the defence wishes I do not intend to call him nor can I locate him. I believe he is out of the country. Before we commence the trial this afternoon, I would like the defence to indicate whether he wishes ~~xx~~ this witness for cross-examination.

REPLY BY THE DEFENCE

No, I do not need the witness for the purposes of cross-examination.

Question by The DC to the PO

I believe there is one witness, Cfn ROBINSON, still not available.

Answer to the DC by the PO

All the witnesses for the prosecution are here now.

Court is reassembled at 1415 hrs.

FIRST WITNESS - for the prosecution - duly sworn
D-109504 Pte KING A J

Q.1 Do you recognize the accused Person Pte SMITH here today?

A.1 Yes sir.

Q.2 Do you remember seeing him on a night in Dec when an incident occurred involving him.

A.2 Yes.

Q.3 What night was that?

A.3 Night of 23 Dec 44.

Q.4 Will you tell the court what you know about that and when you first entered the picture?

A.4 That night about 2200 hrs we went outside a cafe were we met two girls.

Q.5 Had you known SMITH before this time?

A.5 I had met him two days previous.

Q.6 How did you come to meet him on this night?

A.6 We were together in a party at the Beaver Club?

Q.7 Where had you met him at the Beaver Club that time?

A.7 I met him on 22 Dec 44 through "Stuff" BARNES in the Beaver Club.

Q.8 When did you first see him on 23 Dec?

A.8 About noon.

Q.9 What did you do at noon hour when you met SMITH?

A.9 I was asked by "Stuff" and SMITH to have lunch with them.

Q.10 At the Beaver Club?

A.10 Yes.

Q.11 What did you do during noon hour?

A.11 We had dinner at the Beaver Club, after we went back to have a shave at a barber's shop.

Q.12 When did you see him next?

A.12 In the evening about 5:30, I am not quite sure of the time.

Q.13 What did you do then?

A.13 I was playing at the Beaver Club with the band, just having a jam session with the boys of the band. I was asked to join a party at the Beaver Club so I joined them and was drinking with them.

Q.14 When did you next see SMITH?

A.14 I was with him at the table in the Beaver Club.

Q.15 What happened from the time you met him at the table to the time the incident occurred outside?

Q.30 Was there anyone else accompanying SMITH other than the girl at the time?

A.30 I did not see anyone.

Q.31 Then what happened when SMITH and the girl left you?

A.31 We were walking slowly up the passageway, SMITH and the girl ahead of us. I heard an argument, I do not know what it was.

Q.32 Then what happened?

A.32 I heard a noise up ahead of me.

Q.33 What kind of a noise?

A.33 Just like someone scraping his foot along the pavement.

Q.34 Then what happened?

A.34 About two or three minutes later I walked up to the point where I saw a man lying on the ground.

Q.35 How far away from SMITH and the girl were you, say, could it be any greater distance than the width of this room?

Prosecutor and Defending Officer agree to the distance as approximately 30 ft.

A.35 Approximately sire, I cannot be sure owing to the darkness.

Q.36 Immediately after you heard the scuffling did you proceed there?

A.36 Not immediately.

Q.37 What did you do?

A.37 After I went up to see what was going on. I thought SMITH was having a fight with his girl.

Q.38 What did you do?

A.38 After two or three minutes I went up.

Q.39 What did you see?

A.39 A soldier lying on the ground.

Q.40 Did you know what soldier he was?

A.40 No sir.

Q.41 Was SMITH there at this time?

A.41 Yes.

Q.42 How close were you?

A.42 We were at the point where the man was lying on the ground.

Q.43 Whom do you mean by we?

A.43 The girl, SMITH, ROBINSON, an officer and myself.

Q.44 Do you know who the officer was?

A.44 No sir.

Q.45 Would you know him again?

A.45 No sir, I had never seen him before.

A.61 We were all drinking quite a bit this night but no-one seem to be drunk.

Cross-Examination by the Defending Officer

Q.62 How dark was it when you went out into the archway.

A.62 Very dark.

Q.63 Approximately how far could you make out a person and what he was doing?

A.63 You had to be very close.

Q.64 Can you give a figure in feet or yards?

A.64 About 12 feet.

(Defending Officer and Prosecutor agree on the distance).

Q.65 Did you actually see any fight in the alley way?

A.65 No sir.

Q.66 In the entrance to the Beaver Club was the door or doors usually kept open or shut?

A.66 Shut.

Q.67 You have to open the door?

A.67 Yes.

Q.68 Is there a doorman there?

A.68 Yes.

Q.69 Was he on duty when you came out?

A.69 I do not remember sir.

Q.70 You said you heard some gun shots?

A.70 Yes.

Q.71 When did you hear them in relation to the argument and scuffling.

A.71 Just about the time I heard the scuffling I heard some shots.

Q.72 What kind of a district is it down there - good residential area, factory area, slums area or what?

A.72 I would say slums area sir.

Q.73 Do they have many fights down there do you know?

A.73 At that time I did not know but I do know now there have been quite a few fights. I did not know the place at that time.

Questioned by the President

Q.74 Did I understand you to say you were playing with the band?

A.74 I was only sitting in with them not an actual member of the band.

Q.75 Is the Beaver Club run by the army or a private club?

A.75 It is not run by the army.

Witness Withdraws.

In the opinion of the Court and Judge Advocate it is not necessary to comply with RP 93(b) ~~not complied with~~.

Court is reassembled at 1415 hrs.

FIRST WITNESS - for the prosecution - duly sworn
D-109504 Pte KING A J

Q.1 Do you recognize the accused Person Pte SMITH here today?

A.1 Yes sir.

Q.2 Do you remember seeing him on a night in Dec when an incident occurred involving him.

A.2 Yes.

Q.3 What night was that?

A.3 Night of 23 Dec 44.

Q.4 Will you tell the court what you know about that and when you first entered the picture?

A.4 That night about 2200 hrs we went outside a cafe were we met two girls.

Q.5 Had you known SMITH before this time?

A.5 I had met him two days previous.

Q.6 How did you come to meet him on this night?

A.6 We were together in a party at the Beaver Club?

Q.7 Where had you met him at the Beaver Club that time?

A.7 I met him on 22 Dec 44 through "stuff" BARNES in the Beaver Club.

Q.8 When did you first see him on 23 Dec?

A.8 About noon.

Q.9 What did you do at noon hour when you met SMITH?

A.9 I was asked by "Stuff" and SMITH to have lunch with them.

Q.10 At the Beaver Club?

A.10 Yes.

Q.11 What did you do during noon hour?

A.11 We had dinner at the Beaver Club, after we went back to have a shave at a barber's shop.

Q.12 When did you see him next?

A.12 In the evening about 5:30, I am not quite sure of the time.

Q.13 What did you do then?

A.13 I was playing at the Beaver Club with the band, just having a jam session with the boys of the band. I was asked to join a party at the Beaver Club so I joined them and was drinking with them.

Q.14 When did you next see SMITH?

A.14 I was with him at the table in the Beaver Club.

Q.15 What happened from the time you met him at the table to the time the incident occurred outside?

A.15 We were drinking and there were two or three bottles on the table and I had not seen any of the other fellows before. They also bought some bottles and after we drank we were there for some time then someone suggested going out to eat or something I am not quite sure what for.

Q.16 About what time was this?

A.16 About 2130 or 2200 hrs.

Q.17 Did you go out to eat?

A.17 I went out but didn't eat, there was four or five of us together.

Q.18 Who all went out at that time?

A.18 Two other Canadian soldiers, SMITH and ROBINSON.

Q.19 What is this ROBINSON known as to you?

A.19 "Lucky".

Q.20 What happened when you started to leave the cafe?

A.20 SMITH met a girl at the door but I do not know her.

Q.21 Was she in the Cafe?

A.21 No.

Q.22 Where had he met her?

A.22 At the door outside.

Q.23 I have a sketch of the area around the Beaver Club which you have spoken of and known as exhibit "A" to the Court (Sketch submitted to the Court, Marked exhibit "A" and to proved and identified by CSM GIBBS) Is the building marked Beaver Club roughly in its proper position?

A.23 Yes it is.

Q.24 I show you the Tavern Windsor. Do you see where it is marked "Passage"?

A.24 Yes.

Q.25 You say you left the Beaver Club. Will you tell the court what happened when you came out of the Beaver Club?

A.25 There were two girls at the door, one of them asked for SMITH. He was talking to one of these girls and they walked WEST up KLEINSTATIA STRAAT.

Q.26 That was Pte SMITH and only one of the girls?

A.26 Only one of the girls.

Q.27 Did you follow them along KLEINSTATIA Straat towards the Passage?

A.27 Yes.

Q.28 What did you see or hear?

A.28 As I was walking to the Passage SMITH and his girl seemed to have been arguing.

Q.29 How do you know?

A.29 He was speaking in a very high voice but I couldn't understand the words they were using

Q.30 Was there anyone else accompanying SMITH other than the girl at the time?

A.30 I did not see anyone.

Q.31 Then what happened when SMITH and the girl left you?

A.31 We were walking slowly up the passageway, SMITH and the girl ahead of us. I heard an argument, I do not know what it was.

Q.32 Then what happened?

A.32 I heard a noise up ahead of me.

Q.33 What kind of a noise?

A.33 Just like someone scraping his foot along the pavement.

Q.34 Then what happened?

A.34 About two or three minutes later I walked up to the point where I saw a man lying on the ground.

Q.35 How far away from SMITH and the girl were you, say, could it be any greater distance than the width of this room?

Prosecutor and Defending Officer agree to the distance as approximately 30 ft.

A.35 Approximately sire, I cannot be sure owing to the darkness.

Q.36 Immediately after you heard the scuffling did you proceed there?

A.36 Not immediately.

Q.37 What did you do?

A.37 After I went up to see what was going on. I thought SMITH was having a fight with his girl.

Q.38 What did you do?

A.38 After two or three minutes I went up.

Q.39 What did you see?

A.39 A soldier lying on the ground.

Q.40 Did you know what soldier he was?

A.40 No sir.

Q.41 Was SMITH there at this time?

A.41 Yes.

Q.42 How close were you?

A.42 We were at the point where the man was lying on the ground.

Q.43 Whom do you mean by we?

A.43 The girl, SMITH, ROBINSON, an officer and myself.

Q.44 Do you know who the officer was?

A.44 No sir.

Q.45 Would you know him again?

A.45 No sir, I had never seen him before.

Q.46 What was said at this time?

A.46 I believe SMITH said "who hit my chum".

Q.47 And what else was said?

A.47 The officer said "we'll take this man into the cafe and get an ambulance.

Q.48 Was that done?

A.48 The man was taken into the cafe, there were three or four of us carried him.

Q.49 Did you notice anything about the condition of the soldier lying on the road?

A.49 No sir I thought he was drunk or had been hit by a fist in a fight.

Q.50 Did you see SMITH after that?

A.50 I saw him in the Beaver Club.

Q.51 When?

A.51 About 30 minutes after the accident.

Q.52 Did you see anyone else around the scene of this incident other than the girl, the officer, SMITH and ROBINSON?

A.52 No sir I do not know about the other two fellows.

Q.53 Was there anyone else there then?

A.53 As far as I can remember that is all.

Q.54 Did you heard the sound of any shots that night?

A.54 I do remember hearing some shots.

Q.55 Know where they came from?

A.55 No sir but I know there was some as there was quite a lot of it going on at that time in Ghent.

Q.56 In what direction?

A.56 Not in direction that the accident happened.

Q.57 Could you tell us anything about the temperment of the accused that night at the time this occured.

A.57 I do not know much about him and paid very little attention to him.

Q.58 What would you say about him this night, leaving with his girl friend and proceeding up this passage?

A.58 They seemed to be arguing, that is all, but I cannot tell was they were saying.

Q.59 Do you know the name of the girl that was with SMITH?

A.59 I know her name now but did not know it that night.

Q.60 Would you be able to identify the girl again?

A.60 No sir, I had never seen her before.

Q.61 What do you say about the conditions as to drink of the personnel on this party and SMITH in particular?

A.61 We were all drinking quite a bit this night but no-one seem to be drunk.

Cross-Examination by the Defending Officer

Q.62 How dark was it when you went out into the archway.

A.62 Very dark.

Q.63 Approximately how far could you make out a person and what he was doing?

A.63 You had to be very close.

Q.64 Can you give a figure in feet or yards?

A.64 About 12 feet.

(Defending Officer and Prosecutor agree on the distance).

Q.65 Did you actually see any fight in the alley way?

A.65 No sir.

Q.66 In the entrance to the Beaver Club was the door or doors usually kept open or shut?

A.66 Shut.

Q.67 You have to open the door?

A.67 Yes.

Q.68 Is there a doorman there?

A.68 Yes.

Q.69 Was he on duty when you came out?

A.69 I do not remember sir.

Q.70 You said you heard some gun shots?

A.70 Yes.

Q.71 When did you hear them in relation to the argument and scuffling.

A.71 Just about the time I heard the scuffling I heard some shots.

Q.72 What kind of a district is it down there - good residential area, factory area, slums area or what?

A.72 I would say slums area sir.

Q.73 Do they have many fights down there do you know?

A.73 At that time I did not know but I do know now there have been quite a few fights. I did not know the place at that time.

Questioned by the President

Q.74 Did I understand you to say you were playing with the band?

A.74 I was only sitting in with them not an actual member of the band.

Q.75 Is the Beaver Club run by the army or a private club?

A.75 It is not run by the army.

Witness Withdraws.

In the opinion of the Court and Judge Advocate it is not necessary to comply with RP 83(b) ~~not complied with~~.

SECOND WITNESS - for the Prosecution - duly sworn
D-77695 Sfn ROBINSON W M - 12 Bn 2 CBRG

Q. 76 What unit are you with?

A.76 RCEME.

Q.77 Do you know the accused here today?

A.77 Yes sir.

Q.78 How long have you known him?

A.78 A year in Montreal before I came overseas.

Q.79 Have you ever seen him here in Ghent?

A.79 Yes sir.

Q.80 Did you see him in the month of Dec when he was involved in some incident here?

A.80 Yes.

Q.81 Do you know what day that was?

A.81 New year's Eve sir. Sorry sir, Christmas Even.

Q.82 Were you with Pte KING on that night as well?

A.82 Yes.

Q.83 And were you with Staff BARNES on that night as well?

A.83 He had left before the incident happened.

Q.84 Where were you on the night this incident occurred?

A.84 At the Beaver Club sir.

Q.85 Who were you with?

A.85 My girl friend.

Q.86 What time did you see SMITH there that night?

A.86 About 2000 hrs.

Q.87 Who was he with?

A.87 With a couple of his friends, I do not know who they are.

Q.88 What did they do when they went in there?

A.88 They sat at a table by themselves and had a few drinks.

Q.89 Then what happened?

A.89 The doorman came in and spoke to the waiter who in turn went over and said something to SMITH motioning towards the door at the same time. SMITH came over to where I was and I asked him where he was going to which he said someone wanted to see him outside so we went along with SMITH.

Q.90 You and who else?

A.90 Pte KING.

Q.91 Did your girl friend go with you?

A.91 No sir.

Q.92 The three of you left the Beaver Club after SMITH got this message?

A.92 Yes.

Q.93 What happened then?

A.93 The girl who was with his girl friend told SMITH that his girl friend wanted to see him up at the corner.

Q.94 Then what happened?

A.94 SMITH told us to wait there and left to speak with his girl friend.

Q.95 You say that he left to go up to the corner. I show you Exhibit "A", There is Brabantdam Straat, No 2 Tram lines, No 1 Tram, there is the Beaver Club, now, did SMITH leave in the direction of the passage or the other way?

A.95 He left us here with the girl (indicating the street in front of the Beaver Club) and went away from the passage.

Q.96 That would be in an Easterly direction?

A.96 Yes sir.

Q.97 Then what did you see from then on?

A.97 I did not over-hear what they were talking about but after a while SMITH ~~xxxx~~ got angry and pushed the girl away from him and I went up and got hold of her while he got away.

Q.98 You went along the short street and held SMITH's girl friend?

A.98 He walked away and asked to keep her away from him.

Q.99 Why did he say that?

A.99 I do not know.

Q.100 What did you do?

A.100 I hung on to her then after he got away she broke away from me and ran after SMITH who was almost at the cafe next door to the Beaver Club.

Q.101 What happend at that time?

A.101 She went after him.

Q.102 What way was he going?

A.102 In the direction of the passage.

Q.103 Did SMITH's girl friend catch up with him there?

A.103 I am not quite sure. KING asked him what was the matter.

Q.104 What did you do?

A.104 I was trying to explain to him but he seemed very angry about something I did not understand.

Q.105 Who was he angry at?

A.105 The girl.

Q.106 What did you do?

A.106 I took hold of her again.

Q.107 How did you go up there, walk or run?

A.107 I had had a little too much to drink to run sir.

Q.108 Where you ahead of the other group?

A.108 Ahead with KING.

Q.109 Were you the first one to arrive where SMITH was?

A.109 Yes.

Q.110 When you arrived there what happened?

A.110 I caught up to them at the end of the archway at the end of the passage. (Witness indicates the archway coming from KLEINSTATIA STRAAT towards the passage).

Q.111 You caught up to him roughly at that corner?

A.111 Roughly sir yes.

Q.112 Then what happened?

A.112 I got to the top of the stairs and the girl came down on top of me knocking me down - I don't know what happened.

Q.113 Did you get up?

A.113 Yes.

Q.114 What did you do?

A.114 Went to get my friend SMITH. I couldn't see where he was as it was very dark in the passage.

Q.115 In what direction did you go?

A.115 In the arch-way.

Q.116 Where did SMITH's girl friend go at this time?

A.116 I do not know.

Q.117 What did you do?

A.117 I went over to SMITH and he was explaining that there was trouble there and after two fellows walkked ~~passed him, I don't remember.~~

Q.118 SMITH told you to get 2 fellows. Did you see anybody pass you.

A.118 I did not see them.

Q.119 What happened - what did you see or hear?

A.119 I heard something like someone had got hit.

Q.120 What time did this occur in relation to the events you have just told us about?

A.120 Just after I got up sir.

Q.121 That was just after SMITH met you at the corner of the passage then?

A.121 Yes sir.

Q.122 You told us SMITH told you to catch two fellows - did you see any other two fellows around at all?

A.122 Not after I was on my feet. I do not remember where Pte KING was.

Q.123 When you reached the position were SMITH was what did you see there?

A.123 I saw a fellow laid out on the ground.

Q.124 Was there anyone else around there then?

A.124 Yes an officer.

Q.125 Anyone else?

A.125 KING came up after I saw the officer and the officer said to help get the fellow in the cafe.

Q.126 Was SMITH around then?

A.126 Yes sir.

Q.127 Did you see any other soldiers around there other than the soldiers you have mentioned and the fellow on the pavement?

A.127 No sir.

Q.128 Were you the first at the scene of the incident?

A.128 Yes, after SMITH.

Q.129 Do you see the "X" marked on this sketch? Is that roughly the position were SMITH was standing and the soldier lying on the pavement?

A.129 Yes sir.

Q.130 Will you put an "X" where you saw the body?

A.130 Witness does so - marked on exhibit "A".

Q.131 Where was SMITH standing in relation to the body? How far away?

A.131 About 12 feet.

Q.132 Why did you run after SMITH and his girl friend when you saw this going on?

A.132 It was afterwards SMITH was angry I do not know what from. I went up to more or less get him away from the girl friend.

Q.133 What makes you say that?

A.133 I am a friend of SMITH's and I know him.

Q.134 What do you mean by that?

A.134 He is usually quiet unless someone bothers him. He was tired of the girl and he told her to leave him alone.

Q.135 Where did he tell her?

A.135 Several times she has gone to the Beaver Club door and sent the doorman in for SMITH. One or two times he told her not to bother him and when she continued to come he told her not to bother him.

Q.136 What happened after you got to where the body was on the street - what did SMITH do next?

A.136 SMITH started walking in the direction he said the two fellows had gone.

Q.137 What direction was that?

A.137 SOUTH.

Q.138 Where did he go?

A.138 About 3 yards this side of the passage, didn't see anyone so he came back.

Q.139 Did he say anything to you?

A.139 He said to the officer that someone hit his chum.

Q.140 Did you know whether he had seen this soldier before?

A.140 I do not know.

Q.141 Had you seen him before?

A.141 No sir.

Q.142 Do you know whether SMITH was carrying a weapon that night?

A.142 Yes.

Q.143 What makes you say that?

A.143 He was carrying it in his belt.

Q.144 Did you see him fire the weapon?

A.144 This night he fired in the air. It is the only time I saw him put his hand on it.

Q.145 When did he fire it in the air?

A.145 This night.

Q.146 What time?

A.146 After we put the fellow in the cafe.

Q.147 You said an officer was there on the scene at the time - what did this officer do?

A.147 He was instructing us what to do with the fellow on the ground and carry him in the cafe.

Q.148 Did he assist in that?

A.148 Yes sir. After we had him in the cafe he was mentioning about getting an ambulance.

Q.149 Do you know whether or not this officer is the same officer who may have given the injured man morphine that night?

A.149 Not during the time that I was there and he told us to get an ambulance.

Q.150 How long did SMITH, KING and you stay there?

A.150 We left almost immediately after.

Q.151 When did you next see SMITH?

A.151 After we left the cafe and he was calling someone by the name of MIKE.

Q.152 Who was it?

A.152 A sgt in a jeep who also had a few drinks and SMITH told him he was in no condition to drive a jeep.

Q.153 Had he been on the party with you that night?

A.153 No sir.

Q.154 Did you see SMITH later on at the Beaver Club that night?

A.154 The next time I saw him was at the Pro Corps .

Q.155 Will you think over when you next saw SMITH after you got back to the Beaver Club that night?

A.155 At that time the club is closed. I saw him one after that upstairs.

Q.156 Was this at the Beaver Club after this occured?

A.156 Yes.

Q.157 What where you doing in the Beaver Club at that time?

A.157 I was staying with the girl friend.

Q.158 You saw SMITH upstairs?

A.158 Yes.

Q.159 What did SMITH say to you at that time?

A.159 He said he gave the fellow a beauty which is an expression for fighting.

Q.160 Did you have any opportunity to observe SMITH at the time?

A.160 No sir except to notice that his knuckles were skinned.

Q.161 Which knuckles?

A.162 I do not remember which hand it was.

Q.163 When did you next see SMITH that night?

A.163 When the police had him sir.

Q.164 Are you still a good friend of SMITH's?

A.164 Yes sir, I always have been.

Q.165 If you have told us that you were the first one at the scene of this affair after you heard what sounded like a blow being struck did you see anyone else at the scene other than those mentioned?

A.165 No sir.

Cross-examined by the Defence

Q.166 Was it dark that night?

A.166 Yes sir

Q.167 Dark in the archway?

A.167 Yes.

Q.168 How far away could you make out a person?

A.168 About three or four feet.

Q.169 You said that after you left the cafe were you took the man who was hit you say you did not see SMITH that night until at the police HQ and then after you say you saw him at the Beave Club. Where at the Beave Club?

A.169 Upstairs on the top floor?

Q.170 In which room?

A.170 Room 5.

Q.171 Would you describe the whole circumstances of this?

A.171 Mrs FRANKLIN called me up for a cup of tea and something to eat, so we went up.

Q.172 By "we" you mean the girl friend and you?

A.172 No, I went up myself.

Q.173 Then what?

A.173 We had a cup of tea.

Q.174 Who's we?

A.174 SMITH and myself. SMITH was already up there.

Q.175 Anybody else present?

A.175 Mrs FRANKLIN, her husband and son, that was all.

Q.176 Were they there during the time you had the conversation with SMITH?

A.176 They were not close enough to understand what we were speaking about.

Q.177 They were in the same room?

A.177 Yes.

Q.178 Is the room so big that you could be in one part and they in another and say something which they could not understand?

A.178 No sir, it is a very small room.

Q.179 Were there any other soldiers in this room were you had this tea or coffee?

A.179 Pte KING.

Q.180 No others?

A.180 I do not remember.

Q.181 When you left the Beaver Club you say that you went and held a girl. How did you hold her?

A.181 I grabbed her by the arm and held her to keep her away from SMITH.

Q.182 Why did he do this?

A.182 He was angry and wanted to get away from her.

Q.183 This shot that you say was fired, you say it was fired after the man was carried into the cafe. How close where you when the shot was fired?

A.183 Right beside him.

Q.184 Within two or three feet?

A.184 Less than that.

Q.185 Did you actually see SMITH fire that shot?

A.185 I was not watching but I am pretty sure it was him. KING also fired in the air as well. There were two shots. I saw KING fire but did not see SMITH. KING fired the second shot.

Q.186 What makes you think KING did not fire the first shot?

A.186 He was right in front of me and I was facing him.

Q.187 The second shot cam from in front of you and you saw KING fire. Which side did it come from?

A.187 The right hand side.

Q.188 How close?

A.188 About three feet.

Q.189 And yet you actually didn't see who fired it?

A.189 No sir.

Q.190 You say it came from the right side?

A.190 SMITH was on the right side.

Q.191 I put it to you that at night if a shot is fired on the flank there is a flash. From that flash you would be able to tell how close it was and it would outline a person for a minute, particularly the person who fired it.

A.191 It came from his direction and there was nonne else at the corner except SMITH.

Q.192 You saw him, at which corner do you mean?

A.192 This corner here (indicating the end of the archway).

Q.193 How do you know there was no body else there?

A.193 We were almost occupying the whole area.

Q.194 And yet you could not see anyone?

A.194 There is a white flag there and we were outlined against it.

Q.195 Was SMITH walking up your side or standing up your side when he fired the shot?

A.195 He was standing there. We were all jumping around at the time.

Q.196 In the passage when you first arrived there just after you heard the argument SMITH has spoken to you and just as he was speaking to you did you see his girl friend?

A.196 I do not remember seeing her.

Q.197 After she fell over you, you spoke to SMITH?

A.197 Yes sir.

Re-Examined by the Prosecutor

Q.197 This question of how close you were to SMITH when this incident was going on, my friend has brought it up again. You have said that if you were more than 3 feet from someone you couldn't see what was going on. Do you mean you couldn't distinguish the person or that you couldn't see what was doing?

A.198 Yes, I saw the dark form .

Q.199 As you were going up to the area were this affair occured did you hear SMITH speaking to anyone?

A.199 Before I got to SMITH he was telling his girl friend something and that is the only person I know he was speaking to at that time.

Q.200 I want you to think that over again. After you got up there having been bumped down SMITH's girl friend and before you got to SMITH did you hear SMITH say anything to anyone?

A.200 Not that I know of sir I wouldn't hear it.

Q.201 You have told us that one time after SMITH's girl friend bumped into you you heard what sounded like a blow.

A.201 I got right up and SMITH said something about them "looking for trouble".

Q.202 Can you remember what the exact words were - can you give us the effect of these words?

A.202 He said "the guy was looking for trouble".

Q.203 Did he say anything else to you?

A.203 He said to catch the other two fellows.

Questioned by the Judge Advocate

Q.204 Did you help carry the man lying on the ground into the cafe?

A.204 Yes sir.

Q.205 Was it light in the cafe?

A.205 Yes they had the lights on.

Q.206 Did you get a good look at the man?

A.206 No I didn't as his face was turned away from me.

Q.207 What type of clothes was he wearing?

A.207 English type battle dress with a great coat.

Q.208 Any hat?

A.208 No hat.

Q.209 Any flashes on his shoulder?

A.209 He had flashes with a red background but I did not see what was inscribed on them.

Q.210 How big was the man?

A.210 About my height - 5 ft 5 in.

Q.211 How much did he weight?

A.211 I do not know.

Questioned by the President

Q.212 Did you hear the sound of the blow before the girl bumped into you or after?

A.212 After.

Questioned by the Court

Q.213 What did SMITH say to you when he came over to your table?

A.213 He said someone wished to see him outside and to go with him so we went outside.

Q.214 Didn't you think that was rather strange?

A.214 No sir any time SMITH asked me to go with him I went especially if he had been drinking.

Q.215 Why?

A.215 He is a friend of mine and I try to keep him out of trouble.

Q.216 Any reason to believe he was going to get into trouble?

A.216 Not at that time.

Questioned by the President

Q.217 How long after hearing the sound of the blow to the time you saw the body lying on the ground?

A.217 About a minute and half.

Short discussion ensues with regard to lapsing. Time is clocked and witness states that it does seem to be an awful long time.

Q.218 On re-examination you state that SMITH said "get the other two men", or words to that effect. Did you see or hear any signs of these two?

A.218 Between the drink and fall I had I do not think I would have noticed them.

Questioned by the Court

Q.219 You answered to a question put by the president that time you heard the blow and the body lying on the pavement to be 1½ mins.

A.219 Yes sir.

Q.220 That is a long time isn't it?

A.220 I did not have a watch and just took a rough guess.

Q.221 Just try to think what you did from the time you heard the blow to the time you say the body.

A.221 I suppose it would be less than half the time.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with RP 83(b).

Witness withdraws.

Court is adjourned at 1535 hours.

Court is re-assembled at 1550 hrs.

THIRD WITNESS - for the prosecution - duly sworn
C-42000 CSM GIBBS L A
1 SIS - First Cdn Army

Q.222 Are you CSM GIBBS of the SIS, Ghent?

A.222 Yes.

Q.223 Do you recognise the accused?

A.223 Yes.

Q.224 Did you have occasion to attend on him regarding a certain incident which involved him?

A.224 Yes.

Q.225 Will you tell the court what took place.

A.225 I first saw the accused on the 26 Dec 44 on an identification parade at HQ 9 CBR Bn. He was in the parade with six other men and the parade was viewed by two civilians separately. One of them is Cecilia RAES and the other was Anna JANSEN, who was at that time from ANTWERP. The accused was identified by Anna JANSEN. I next saw the accused on 27 Dec 44 in the guard room of 9 CBR Bn. I interviewed him alone in a room there. I informed him that I was from the SIS and that I was investigating the death of Pte McCREESH of the Duke of Wellington Regt. I then cautioned him that he need not say anything unless he wished to do so but anything he did say would be taken down in writing and could be used as evidence. I explained this caution to him and he stated that he fully understood it. I then informed him that I had reason to believe that he had assaulted Pte McCREESH on the night of 23 Dec and as a result of the assault McCREESH had died. I asked him if he wished to make a statement surrounding the circumstances of the assault. He said that he wished to make a statement and I took the statement down in writing.

Q.226 Is this the statement?

A.226 Yes sir.

Q.227

If the defence has no objection I would like this statement to be included in the proceedings.

Defence objects.

Q.227 What do you say about the taking of the statement in regards to it beeing voluntary.

A.227 Entirely voluntary sir.

Q.228 Was this made in response to questions by you ~~xxx~~ or did the accused tell his story and you took it down?

A.228 He told his story. I informed the man that the soldier had died and he was very much surprised.

Q.229 Is this SMITH's signature under the caution?

A.229 yes.

Q.230 Are these his initials?

A.230 Yes.

Q.231 Are these his initials on the second and third pages?

A.231 Yes.

Q.232 Were there any inducements made to the accused person at this time?

A.232 No sir.

Q.233 Were there any threats or promises made?

A.233 No sir.

Q.234 Was your identity made clearing known to the accused?

A.234 Yes, I am quite sure.

Q.235 What do you say about the man?

A.235 He was about the frankest man I have every interviewed.

Q.236 Was this told of his own free will?

A.236 Yes sir.

Q.237 Did you at any time tell him that it might be better for him if he told the truth?

A.237 I only told him that he was cautioned and he was quite upset when I told him the man had died and I said not to take it too hard.

Cross-Examined by the Defence

Q.238 Did you have any other conversation withhim at all other than that which you have told the court?

A.238 I probably asked him a few questions to clear up a point.

Q.239 Before the taking of the thing did you tell him whether or not you had seen the other witnesses?

A.239 I asked him if he knew and understood the purpose of the identification parade?

Q.240 Did you tell him you had seen any other witnesses beside the two girls?

A.240 No sir.

Q.241 When he seemed upset you told him not to take it too much to heart. Did you say anything else at that time?

A.241 Not that I recall sir.

Q.242 Did you say to him it is none of my business but it is better for you to make a statement or words to that effect?

A.242 No sir.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with RF 83(b).

Witness withdraws.

The Defending Officer elects to call the accused to give evidence as to admissibility of statement produced by the Prosecution and mentioned in the evidence of CSM GIBBS.

The accused F-58068 Pte Edward Laughton SMITH, A&SH of C, duly sworn is examined by the Defending Officer.

Q.243 Will you state the circumstances surrounding the taking of the statement?

A.244 I was at the 9 CBR Bn guard room and I was called out by the CSM who was a sgt at the time and I was taken into another room and he told me he was from SIS to investigate a case of a soldier who had been killed. He asked me at that time to state all that I had done during the day of 23 Dec and also the evening. I told him as it was near Christmas I was having a little celebration. He told me that he had been and seen Pte BARNES and Lucky ROBINSON and Pte KING and that he had also seen Cecilian RAES and her sister-in-law. He told me not to worry that it was a casualty and that it would be better if I told everthing I did on that day and evening on my behalf which I did.

Cross-Examination by the Prosecution

Q.245 When he told you on the day of the 23 Dec did he tell you what he had come to see you about that day?

A.245 Yes about a soldier who had been killed.

Q.246 Did he tell you prior it wasn't necessary to make a statement and anything you said would be taken down in writing?

A.246 Yes.

Q.247 Firstly he told you he had seen the other witness and secondly that he told you to tell all you did on the 23 Dec. Was that the sum total of what went on?

A.247 That was all.

Q.248 Did you make this statement on your own free will?

A.248 Yes sir.

Q.249 Did you sign just below that caution?

A.249 Yes and I signed each page.

Q.250 Did you know what you were signing?

A.250 Yes sir, I read it over.

Q.251 Where there any threats made?

A.251 No threats but he was trying to let me know that it would help me by giving evidence.

Q.252 You heard him say that he didn(t day that?

A.252 Yes.

Q.253 Did he caution you before you said that?

A.253 Yes.

Q.254 When did he tell you it would be better for you to tell him everything you did on the 23 Dec?

A.254 After he introduced himself and said he had seen the others and got statements from them. He said it would be better if I made a statement according to the other statments from the other witness so I stated everything I had done. Impression I got was that if I didn't say anything then the other statements made referred everything back to me.

Q.255 I suppose he had discussed with you about the identification parade?

A.255 I do not recall it. He didn't mentioned that this was an identification parade.

Q.256 From what CSM GIBBS said you were quite prepared to make this statment?

A.256 I actually didn't know the man was killed or even that any man had been killed. He only said I should make a statement of what I did all day on the 23 Dec.

Q.257 After he made his identity known to you just exactly what happened?

A.257 He sat down and said "I am Sgt GIBBS investigating a case of a man who was killed". He mentioned BARTEN and he told me that it would be better towards helping me if I made a statement of what I did on the 23 Dec. He didn't threaten me in any way.

Q.258 That is all that was said?

A.258 All that I can recall.

Q.259 Then what happened?

A.259 I started to tell him all that I could recall. After he had taken it down he asked me to sign in certain places.

Q.260 The reason why you made a statement is because he said to you it would be better towards helping you if you told what happend on 23 Dec.

A.260 Yes.

Q.261 Is that the only reason?

A.261 Yes.

Q.262 That is the only reason why you talked at all?

A.262 Only reason why I made a statement of what I did on the 23 Dec.

Q.263 That statement of his you say was made to you after you had been warned anything you said would be taken down and used against you?

A.263 Yes.

In the opinion of the court and the Judge Advocate it is necessary to comply with RP 63(b).

The accused resumes his seat.

C-42000 CSM GIBBS L A - Third Witness for the Prosecution, is recalled, and having been previously sworn is examined by the Prosecutor:

Q.264 Regarding this statement, it has been given here in evidence that you made this statement to the accused person and here are the exact words. These are words you are supposed to have said to him after you cautioned him but before he made the statement to you. These words are "It would be better towards helping you if you made a statement of everything you did on the 23rd". Did you or did you not make that statement to the accused person?

A.264 No sir.

Q.265 He has also said that you had seen BARNES; KING; ROBINSON; CECILIA RAES and ANNA JANSEN. What do you say about that?

A.265 Without a doubt I told him I had seen the two women. It is possible I told him I had seen the two men as I think I had at that time.

Questioned by the Court

Q.266 In your original evidence you said you gave the caution and explained it to him. What do you mean by that?

A.266 The caution, perhaps, when you read it out of the section may not be understood but I explained to him that he did not have to tell me anything unless he wanted to but any statement he made could be used as evidence.

Q.267 How long have you been in the RCMP?

A.267 Ten years.

Q.268 You have delivered cautions as a Royal Canadian Mounted Policeman?

A.268 Yes.

Q.269 The same one?

A.269 Not the same one.

Questioned by the President

Q.270 Would you give this additional explanation of the warning on your own accord or because it may not seem clear to the accused?

A.270 I made it on my own accord.

~~A. ——— In the Opinion of the Court and the Judge Advocate it is not necessary to comply with RD 83(2).~~

~~Witness withdrawn~~

Judge Advocate Addresses the Court

The issue here is as to the admissibility of a statement taken by CSM GIBBS from the accused. It is admitted by the accused that he made the statement. The Court must determine whether that is a voluntary statement or whether the statement was made from the result of some threat, promise or inducement. It is x simply a matter for the court to determine from hearing the facts as to whether the accused gave evidence as a result of any inducement by CSM GIBBS. For this purpose a confession is deemed not to be free and voluntary if it appears to have been caused by any inducement, threat, or promise proceeding from a magistrate or other person in authority or concerned in the charge (e g the prosecutor or the person having the custody of the accused), and having reference to the charge against the accused person, whether addressed to him directly or brought to his knowledge indirectly; and, if, in the opinion of the court, the inducement, threat, or promise gave the accused person reasonable grounds for supposing that by making a confession he would gain some advantage, or avoid some evil in reference to the proceedings against him. If the court finds that to be so, then the statement should

not be admitted. As I have said, the prosecution must prove that the accused made it voluntary. That is all I have to say.

The Court is closed to consider the admissibility of the statement at 1625 hours.

The Court is re-assembled at 1635 hours.

The President announces that the submission of the defence is dis-allowed and the Court find that the statement is admissible.

Prosecuting Officer

The court have declared this admissible so may this be admitted in the proceedings as Exhibit "B" (Statement taken by CSM GIBBS).

The statement (marked Exhibit "B") is read over to the Court by CSM GIBBS.

Q.271 You have said that two civilians identified the accused person at an identification parade held in 9 Bn. What day was that?

A.271 It was the 26 Dec. Only one of the witnesses identified him.

Q.272 Do you know which one?

A.272 Anna JANSEN.

Q.273 Did you see the civilians attending at the parade and looking over personnel on that parade?

A.273 Yes sir I was present. They viewed the parade separately.

Q.274 What type of identification did the person give there who did identify the accused person?

A.274 She stepped up and pointed her finger at him.

Q.275 You saw this done did you?

A.275 Yes sir.

Q.276 Where is the civilian Anna JANSEN who identified the accused person?

A.276 She is now dead sir.

Q.277 You saw this done at the time of the parade?

A.277 Yes sir.

Q.278 Did you see what the civilian Cecilia RAES did on that parade?

A.278 Yes sir.

Q.279 Did she examine the parade in the same manner as Anna JANSEN?

A.279 Not in the same manner, she was very nervous and although she looked around she would make no attempt to identify anybody.

Q.280 I neglected to prove this sketch known to the Court as Exhibit "A", Who made it and why?

A.280 I made it.

Q.281 On whose instructions?

A.281 Yours sir.

Q.282 This is a sketch of three or four streets of the city of GHENT showing the Tavern WINDSOR. Are these correct in directions but not distances?

A.282 Yes.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with RP 83(b).

Witness withdraws.

Prosecutor addresses the Court

I would like permission to recall CSM GIBBS. It is in relation as to what the civilian Anna JANSEN did on this parade. Anna JANSEN also made some statement at that time when she pointed out the accused person and identified him. I believe it is admissible. It is of course a statement made by a deceased person but also in the presence of the accused.

President Replies

I do not consider it necessary.

FOURTH WITNESS - for the Prosecution - duly sworn
Major J E NICHOL
2 Cdn Gen Hosp, RCAMC.

Q.283 Are you the OIC No 3 Service Surgery at 2 Cdn General Hospital?

A.283 Yes.

Q.284 Do you remember seeing an English soldier by the name of McCREESH, at the hospital late in the month of December?

A.284 I do.

Q.285 Did you examine him as to what his injuries were?

A.285 I did.

Q.286 What did you find on examination?

A.286 He was deeply unconscious with a contusion of the occupital region. He was also bleeding from both ears and was certain to die and no operating procedure was indicated.

Q.287 Did you see his body after he had passed away?

A.287 I did not.

Q.288 When you say no operating procedure was indicated what do you mean by that?

A.288 That the man would die in a matter of fors and nothing could be done for him. In other words he was brought in in a dying condition.

Q.289 What do you know of his identity?

A.289 I had his chart with the name written on it and from the hospital records. I did notice that the flashes on his shoulders were Duke of Wellington Regt.

Questioned by the Defence

Q.290 When you saw him was he in bed?

A.290 On a stretcher and was brought directly to the operating room fully dressed.

Questioned by the Court

Q.291 Would you say what caused this injury to his head?

A.291 One of two things, by a blow from a blunt instrument or from a heavy fall.

Q.292 What do you mean by a heavy fall?

A.292 He had a severe fracture of the skull and a light blow would not cause that damage.

Q.293 Did you notice any other abrasions?

A.293 Not at that time.

Q.294 Any other bruises?

A.294 Not that would have any consequence.

Q.295 Where were these bruises?

A.295 Around the head.

Q.296 Is it fair to say that by a heavy fall that the man was unconscious when he fell or driven down or falling some distance?

A.296 The nature must have been a heavy blow or falling to the ground.

Questioned by the Judge Advocate

Q.297 That is striking him on the head?

A.297 That is right.

Q.298 Say he was struck on the chin or mouth with sufficient force to drive him down. Would that show some mark?

A.298 I would expect to see some marks around the mouth.

Questioned by the Court

Q.299 Did you see any such marks?

A.299 I did not see such marks.

Q.300 Would you indicate to me were the injury was?

A.300 Just at the back of the head almost in the centre.

Q.301 If a sufficient blow on the end of the chin or mouth so that he became unconscious before he fell couldn't that fall do this damage?

A.301 I am afraid I cannot answer that questions.

Q.302 Is it possible to knock a man unconscious while he is still standing up and then if that man were knocked so unconscious such injuries may be caused when he fell backwards?

A.302 It depends on what sort of a surface he fell on.

Q.303 Supposing it were a cobble stone road curb?

A.303 That is a possibility.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with RP 83(b).

Witness withdraws.

FIFTH WITNESS - for the prosecution - duly sworn
B-3512 S/Sgt SMITH J?
2 Cdn Gen Hospital, RCAMC.

Q.304 Were you the wardmaster on duty at 2 Cdn Gen Hosp on 23 Dec?

A.304 Yes sir.

Q.305 Do you know about the admission of a patient who had been admitted that night?

A.305 I knew about it the following morning sir.

Q. 306 How did you come to have knowledge of this?

A.306 I came on duty at 0800 hrs in ward 'H' and found a new patient there. The patient was Pte McCREESH, Duke of Wellington Regt.

Q.307 How did you know that?

A.307 From the badges on his battle dress.

Q.308 Did you see his identity discs?

A.308 Yes I took one of the discs off his neck. I remember the number quite well it was 469980. The other tag was left on the body.

Q.309 I believe you took the tag to the padre?

A.309 Yes sir.

Q.310 What did you do then?

A.310 I found a bed for him and found his body still warm. My job was to fix him up for an autopsy.

Q.311 To fix him up for an autopsy and burial?

A.311 Yes sir.

Q.312 Was an autopsy performed?

A.312 Yes.

Q.313 Could you say whether or not at 0800 hrs in the morning that Pte McCREESH was dead or not?

A.313 Yes sir He was dead. It was approximately at 0800 hrs I got the call first thing I came on duty. My orders are to start at 0800 hrs.

Questioned by the Court

Q.314 Did you, as a result of your own examination or knowledge of McCREESH know that he was dead?

A.314 I took my orders from the MO or NS in charge of the ward.

Q.315 You took identity discs off this man for burial?
A.315 Yes.
Q.316 Were did they hold this autopsy?

A.316 At the outpatients department.

Q.317 I suppose you never take any live people there for an autopsy?

A.317 No sir.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with RP 83(b).

Witness withdraws.

Court is adjourned at 1720 hours.

Court re-assembles at 1000 hours 14 Apr 45.

SIXTH WITNESS - for the prosecution - duly sworn
A-103180 L/Cpl HANLEY W F
Ghent Det 2 L of C Pro Coy

Q.318 Are you a member of 2 L of C Pro Coy in Ghent?

A.318 Yes.

Q.319 Do you remember the night of 23 Dec?

A.319 Yes.

Q.320 Do you remember throughout the course of the evening a soldier was injuried in an area and you were called to the scene of the incident?

A.320 Yes.

Q.321 Tell the court what went on and what part you took.

A.321 On the 23 Dec at approximately 2245 hrs I was on duty at Detchment HQ and I had occasion to guide an ambulance to the Tavern WINDSOR which is situated in the lane known as the Passage which runs off Lower Brabantendam Street.

Q.322 I show you a sketch which is known as Exhibit "A". As that the location of the Tavern WINDSOR that you speak of?

A.322 Yes.

Q.323 Will you go on and tell what happened then?

A.323 I stayed at the ambulance and a soldier was brought out on a stretcher and placed in the ambulance. I got in the ambulance and accompanied him to the hospital - 2 Cdn General Hospital were the soldier was identified by his tags as Pte McCREESH of the Duke of Wellington Regt, a soldier of the British Army. I noticed that this man was bleeding from the back of the head through a bandage which was on it. At approximately 2300 hrs I left the man at the hospital and returned to Detachment HQ.

Cross-Examined by the Defending Officer

Q.324 Did you stay by the ambulance while the man was carried out?

A.324 Yes.

Q.325 You did not go into the Tavern?

A.325 No sir.

Q.326 You said the soldier was identified by his tags?

A.326 Yes.

Q.327 Did you look at them or did someone else?

A.327 I looked myself.

Q.328 What happened at the hospital?

A.328 The Medical Officer came down and examined him.

Q.329 That is all that you saw?

A.329 Yes sir.

Q.330 What sort of neighborhood is this Tavern WINDSOR in?

A.330 Just middling.

Q.331 Is it a rough district?

A.331 Yes, it is rought at times the same as other districts.

Q.332 Have many reports of fights there?

A.332 In that district yes.

Q.333 Does that mean that that district is a little worse than others?

A.333 It is no worse than some of theother districts.

Q.334 Is it much the same as the whole town or city of Ghent?

A.334 There are certain parts around the cafes.

Q.335 In this district were the Tavern WINDSOR is there are a lot of cafes?

A.335 Yes.

Q.336 Where you find a lot of cafes there is a lot of trouble?

A.336 Yes.

Q.337 So that in that district you find a lot of trouble?

A.337 Yes.

Q.338 At what point did you look at the identity discs of theman in the ambulance?

A.338 At the hospital sir.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with RP 83(b).

Witness withdraws.

SEVENTH WITNESS - for the prosecution - duly sworn
Tertilla (Cecilia) HAES,
Nieuevstraat 3,
Mariakerke, GHENT

Q.339 Do you know the accused soldier over here on your left, sorry right?

A.339 Yes.

Q.340 What is his name?

A.340 Johnny SMITH.

Q.341 Have you ever seen him on occasions before?

A.341 Yes.

Q.342 Have you been out with him on occasions?

A.342 Yes.

Q.343 Do you remember a night in the month of December when you were in the area of the Beaver Club and the accused person was there?

A.343 Yes.

Q.344 What night was that?

A.344 A saturday night.

Q.345 What happened on the night that you speak of?

A.345 I asked to see Johnny and he came out and two black fellows called LUCKY and STUFF came with him. They came out together. I went to Johnny and he got mad at me?

Q.346 Do you know why?

A.346 Maybe because I came too early.

Q.347 Then what happened?

A.347 I came to Johnny and talked to him and he pushed me away.

Q.348 Why did he put you away?

A.348 Like that (indicating a pushing motion with her hands)

Q.349 Then what happened after Johnny pushed you away?

A.349 The black boy came to Johnny and took me away from him.

Q.350 Which black boy?

A.350 LUCKY.

Q.351 And what did he do or how did he take Johnny away from you?

A.351 He talked to Johhny and Johnny came away. After Johnny came in the street Another Canadian came.

Q.352 You were still following Johnny?

A.352 Yes.

Q.353 Was there anyone else with you?

A.353 My sister-in-law.

Q.354 What is her name?

A.354 Anna JANSEN.

Q.355 Then were did you go?

A.355 After Johnny.

Q.356 Which direction did you go in? I show you a sketch known as Exhibit "A". After LUCKY spoke to Johnny and he left you which way did Johnny go?

A.356 The witness indicates WEST in the direction of the passage.

Q.357 You said you and Anna JANSEN followed him?

A.357 Yes.

Q.358 How far behind Johnny were you and Anna JANSEN?

A.358 About two metres.

Q.359 Was Anna JANSEN with you following Johnny at that time?

A.359 Yes.

Q.360 What did you see Johnny do next?

A.360 I say him go in the street and Johnny asked another soldier passing by if he was a Canadian.

Q.361 Who did he ask that?

A.361 A soldier who said "yes".

Q.362 Did he meet another soldier? You have told me that Johnny asked a soldier "are you a Canadian" what did the soldier answer?

A.362 Yes I am Canadian.

Q.363 What did Johnny say?

A.363 He said OK go.

Q.364 Then what did Johnny say?

A.364 After another soldier come and Johnny asked his the same, the soldier replied No I am English.

Q.365 What did Johnny say to the second soldier?

A.365 He asked him if he was Canadian, the soldier said no English.

Q.366 How far away from Johnny were you?

A.366 Close.

Q.367 Could you see the English soldier to whom Johnny was talking?

A.367 Yes.

Q.368 Was Anne JANSEN there with you?

A.368 Yes.

Q.369 Did you see the other coloured boys there at that time?

A.369 Yes, there were all together.

Q.370 What did you see Johnny do or hear him say next?

A.370 He said nothing after that. He hit the Englishman.

Q.371 What did you see him do?

A.371 Witness demonstrates a blow being struck by raising here hand.

Q.372 Did you see what happened after Johnny hit the Englishman?

A.372 He fell on the floor the English soldier.

Q.373 Could you see whether he fell forward or backward?

A.373 I do not know.

Q.374 Was there any other English soldier there at that time?

A.374 I have not seen any.

Q.375 Was there anyone else other than the soldiers that you have told us about and SMITH there?

A.375 No.

Q.376 Do you know where the first soldier that SMITH spoke to went?

A.376 No.

Q.377 Referring to the Exhibit "A" which direction did the Canadian soldier go passed?

A.377 Witness indicates SOUTH through the passage.

Q.378 Could you indicate where on the diagram that you saw this happen?

A.379 Witness indicates WEST on KLEINSTATIA STRAAT and Johnny came from KLEINSTATIA STRAAT.

Q.380 Where did Johnny strike the Englishman?

A.380 I don't remember on which side of the street but here in the street (indicates the same NORTH and SOUTH area but not sure which side of the street).

Q.381 Do you know what happened after the English soldier fell?

A.381 Yes Johnny came away and my sister-in-law and I went away to.

Q.382 Where did you go?

A.382 With Johnny and the two black boys and we stayed together. I stayed with Johnny and my sister-in-law. Johnny fired a gun and I said don't do that. Then I heard a shot. I cannot saw whether Johnny or one of the black boys did it.

Q.383 Where did Johnny go after that?

A.383 I don't know because when I heard a shot I went away.

Q.384 And were did you go?

A.384 I go to sleep in a cafe down the street.

Q.385 Do you know what happened to your sister-in-law Anne JANSEN?

A.385 No.

Q.386 Were is Anne JANSEN now by the way?

A.386 She was killed.

Q.387 Do you know what happened to the English soldier that you have said was involved in this affair with SMITH?

A.387 No.

Q.388 You didn't see anyone remove his body or take him away anywhere?

A.388 No.

Q.389 Do you remember going to an identification parade at 9 Bn 2 CBWG?

A.389 Yes

Q.390 Who went there with you?

A.390 My sister-in-law.

Q.391 What did your sister-in-law do at that parade?

A.391 I don't know.

Q.392 Were you also taken on this parade to identify a soldier?

A.392 I do not understand your question.

Q.393 Did you recognise anyone you knew?

A.393 Yes.

Q.394 Who did you recognise on that parade?

A.394 Johnny SMITH.

Q.395 Did you say so at that time?

A.395 No.

Q.396 Why didn't you say?

A.396 Because I was a little afraid;

Q.397 Afraid of whom?

A.397 Johnny.

Cross-examined by the Defence

Q.398 When you were walking along the road towards the passage how many mend did you see coming towards you?

A.398 Just one other.

Q.399 When you saw SMITH rais his fist how many other people fought also?

A.399 Nobody else.

Q.400 Do you recognise that statement (showing original statement in Flemish)

A.400 Yes.

Q.401 Is that your signature?

A.401 Yes.

Q.402 I draw your attention to this sentence (Interpreter reads original Flemish statement to the witness. Sentence underlined in red pencil). Is that true?

A.402 It is true but I did not say that 2 black boys, just Johnny fight, they stayed together.

Q.403 You now state that the sentence just read to you in Flemish is not true?

A.403 It is like that, we stayed together, my sister-in-law, the two black boys and Johnny. Only Johnny hit the Englishman not the two black boys.

Q.404 Why did you not correct that statement before you signed it?

A.404 It is OK like that.

Q.405 Is that statement true or not true?

A.405 Yes it is true.

Q.406 Is your whole statement as written on that piece of paper true?

A.406 Yes.

Q.407 Is the sentence underlined in red true?

A.407 Johnny stayed with the two coloured together, Only Johnny fight.

Questioned by the President

Q.408 Johnny and two comrades attacked this soldier with their fists?

A.408 Only Johnny fight.

Defence continues his cross-examination

Q.409 You stated earlier that you could not remember on which side of the passage this took place?.

A.409 I remember the street but not which side.

Q.410 During the fight would you describe exactly what you saw SMITH do?

A.410 He indicated a blow and I grabbed hold of his arm and at the same time I heard a shot but whether two black boys stayed with Johnny I don't know.

Q.411 After SMITH raised his fist with the Englishman close to his describe exactly what followed?

A.411 I heard a soldier falling on the ground.

Q.412 You did not see what hit him.

A.412 I saw Johnny strike the English soldier.

Q.413 Where did you see him hit the English soldier?

A.413 On the chin.

Q.414 Where were you standing in relation to SMITH at that time?

A.414 We were all together.

Q.415 Was SMITH in front of you or behind you?

A.415 I don't remember exactly.

Q.416 You do not remember were SMITH was standing in relation to you but can you say whether the man who was hit fell to your left or to your right?

A.416 No.

Q.417 With which hand did SMITH hit the man?

A.417 I don't know.

Re-examination by the Prosecution

Q.418 You were asked where you were standing when SMITH struck the English soldier. How long did this whole affair take from the time you left the Beaver Club up to the spot were the English soldier was struck?

A.418 Maybe ten minutes.

Q.419 Did you leave the Beaver Club and go out to the passage and go right to this spot?

A.419 Before I talk with Johnny then I go.

Q.420 Did you know whether this fellow was English or just from what he said?

A.420 From what he said.

Q.421 Did this soldier strike at Johnny?

A.421 They were fighting together.

Q.422 How long were they fighting before the English soldier fell down?

A.422 A minute.

Q.423 Could you see the fight?

A.423 Yes.

Q.424 Did you see the English soldier strike at Johnny?

A.424 They were fighting together.

Q.425 Did the coloured soldiers join in that fight?

A.425 No they stayed together.

Q.426 Did you see who struck the first blow, the Englishman or Johnny?

A.426 I do not know.

Questioned by the President

Q.427 You said that the English soldier said I am English. Did you hear the English soldier say anything else to Johnny?

A.427 No.

Q.428 Do you recall bumping into the coloured soldier LUCKY; and knocking him to the ground?

A.428 I do not remember.

Q.429 Do you remember bumping to any soldier?

A.429 No.

Questioned by the Court

Q.430 Did this English soldier that Johnny hit molest you in any way?

A.430 No.

Q.431 What is the first thing you saw happen after the Englishman said I am English?

A.431 I saw a fight.

Q.432 Do you remember that you have said you met Johnny outside the Beaver Club when he came out?

A.432 Yes.

Q.433 Do you remember also that you said ROBINSON and BARNES were there?

A.433 Yes.

Q.434 You have also told us that Johnny took a hold of you by the arm?

A.434 He put me away.

Q.435 What did he do?

A.435 A black boy came and said don't do that.

Q.436 What did Johnny do?

A.436 He go and I went after him.

Q.437 Did Johnny just take his hands and push you away that is all?

A.437 Yes.

Q.438 Was ROBINSON there at the time?

A.438 Yes.

Q.439 Did you have anything to do with ROBINSON at all?

A.439 No.

Q.440 Did your body come in contact with him?

A.440 No.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with RP 83(B).

Witness withdraws.

President closes the Court at 1120 hours.

Court is reassembled at 1130 hours.

Court is adjourned at 1135 hours.

Court is re-assembled at 1345 hours.

EIGHTH WITNESS - for the prosecution - duly sworn
Major A J BLANCHARD
2 Cdn Gen Hospital
RCAMC

Q.441 You are the Pathologist for what hospital?

A.441 20 Cdn Gen Hospital.

Q.442 On or about the 26 Dec did you perform an authopsy on a man with severe head injuries?

A.442 I did.

Q.443 What did you find regarding the injuries to Pte McCREESH?

A.443 I found first of all evidence of an injury to the man's head. There was a small laceration to his skull at the back of the head on the right side with swelling and some haemorrage. There were two fractures of the skull - one in the bone at the back of the head and also one at the base of the skull. There was a marked haemorrhage of the skull between the membranes. There was also evidence of what is know as contre-coup softening injury around the front due to violence.

Q.444 Did you notice any markings or disfigurations in the frontal area of his face?

A.444 No I didn't.

Q.445 Are you able to say from your investigation and finding the cause of the injury?

A.445 Some of form of violence applied to the back of the man's head could have been a blow with some ~~xxxxx~~ sort of heavy instrument or due to falling down and striking his head against some hard object, it is impossible to say which.

Cross-examined by the Defending Officer

Q.446 How did you know what the man's name and number were?

A.446 His identity tags were on and each body for autopsy is tagged.

Q.447 Did you read the name and number on the disc?

A.447 Yes I did.

Questioned by the Judge Advocate

Q.448 Could this blow or damage to the back of the head be caused by a man's fist?

A.448 Under the damage in this situation no.

Q.449 As far as his face is concerned you saw nothing?

A.449 No.

Q.450 If a man is struck on the chin with a blow to knock him down would you expect to see any disfiguration?

A.450 Not necessarily, particularly with a blow on the chin.

Q.451 This blow on the back of the skull by a blunt instrument or falling, did you think that could have been a revolver barrel?

A.451 I had no idea of the means, just any sort of object.

Q.452 Was death the natural result of the damage?

A.452 Yes.

Q.453 Was it possible that if speedier action had been taken the man could have been saved?

A.453 Not in my opinion.

Questioned by the Court

Q.454 On the 25 Dec where you employed by or attached to 2 Cdn Gen Hosp?

A.454 I was attached.

In the opinion of the Court and the Judge advocate it is not necessary to comply with RP 83(b)
Witness withdrew.

PROSECUTOR ADDRESSES THE COURT

That is as far as I can go without the witness Capt BOURGET and since it is felt now that I should call him and you have planned to view the scene of this incident I would ask the court to view the scene of the incident and decide to re-assemble when you see fit. I should say, too, that Capt BOURGET has not been heard of yet but I do know a signal went out for him and in the course of events he should be here. If not, I believe we should go on and complete the case in his absence.

PRESIDENT

It is the desire of the Court to view this scene of the death and the Court will proceed there following which it will adjourn until 1000 hours Monday, 16 Apr 45.

JUDGE ADVOCATE ADDRESSES THE ACCUSED

I must advise you that the Court is going to see the scene of the incident as agreed upon between the Prosecutor and Defending Officer. You are not compelled at any time to give any evidence unless you wish to do so. Therefore it is not necessary for you to point out anything or explain anthing to any person.

Court is adjourned at 1515 hours 14 Mar 45.

Court re-assembles at 1000 hours 16 Mar 45.

PRESIDENT

At 1430 hours 14 Apr 45 the Court viewed the area of the incident the area being agrred upon between the Prosecuting and Defending Officers. Notice was taken by the Court of the following facts:

(a) the passage is 13 feet wide and along each side of the Passage way there are a number of small cafes and shops, chiefly the former. The passage is covered by a glass roof.

(b) The distance from the Tavern WINDSON to the BEAVER CLUB is approximately 40 yds.

(c) KLEINSTATIA STRAAT also contains a number of cafes but is a regular street open to the sky and is approximately 25 feet wide including a narrow side walk on either side.

(d) The distance from the Tavern WINDSOR to the corner of KLEINSTATIA STRAAT and the Passage is approximately 10 yds and the distance from the same corner to the BEAVER CLUB is approximately 30 yds making a total of distance from the Tavern WINDSOR to the BEAVER CLUB 40 yds.

(e) The floor of the passage consists of smooth light-grey tile while KLEINSTATIA STRAAT consists of cobble stones.

(f) Entering the NORTH part of the Passage from KLEINSTATIA STRAAT there are two steps, the passage being higher than the street.

Those present at the viewing of the scene were - all three members of the Court; the Judge Advocate; the Prosecutor; the Defending Officer; the accused and provost escort and the Court Reporter.

NINTH WITNESS - for the prosecution - duly sworn
Capt M BOURGET
R de Mais

Q.455 What unit are you with?

A.455 The I am attached now to the R de Mais.

Q.456 Do you remember a night of 23 Dec when you were in the city of Ghent here?

A.456 I do sir.

Q.457 Do you remember an incident occuring just as you came upon one of the streets?

A.457 I do.

Q.458 Will you tell the Court what you say and what you know about it?

A.458 Around 2245 hrs on the 23 Dec 44 I was walking down BRABANTANDAN STRAAT and was walking back to camp and passing by along an alley I heard a noise which seemed to me like a gun shot so I stopped and went over to the alley. As I was walking towards a group of men I saw at the back of the alley a girl.

Q.459 Do you know who the girl was?

A.459 I cannot remember although I spoke to her.

Q.460 Is she the same girl here this morning?

A.460 I cannot be sure.

Q.461 Do you recognise the soldier sitting beside the Defending Officer now.

A.461 I cannot say I recognise this fellow now sir.

Q.462 How many people were in the vicinity were you met this girl on the night which you speak of?

A.462 I met this girl about 75 yds from the place were four soldiers were standing up.

Q.463 Could you describe who these four soldiers were or anything particular about them?

A.463 I am sure one was a negro.

Q.464 Are you able to tell who the others were?

A.464 No I cannot, there were three other soldiers.

Q.465 Will you continue telling what happened after you arrived at this spot?

A.465 After I spoke to the girl I took here into a cafe which is on the right of the alley.

Q.466 I show you a sketch know as Exhibit "A". Do you recognise that diagram?

A.466 I certainly do. I was walking down here and heard some shots. (Witness indicates end of Passage and Brabantandam Straat and moving SOUTH along the passage). I met the girl at the entrance to the passage and took here into a cafe on the WEST side of the passage.

Q.467 Then what did you do?

A.467 I moved along the wall and saw four soldiers standing up (Witness indicates "X" on diagram). After walking I saw another man lying on the ground.

Q.468 Then what happened?

A.468 I approached this fellow lying down.

Q.469 What condiction was he in?

A.469 It was very dark and I heard him moaning so with the help of the four soldiers I took him into the cafe (witness indicates cafe on EAST side of the passage in front of the spot marked "X"). I then examined the wounded man, looked at him and gave him morphine and then I went out and I ran SOUTH along the passage to Brabantandam to get the provost and when I got back I found the wounded man there but the other four soldiers had gone. After that I ran out but did not see anything.

Q.470 Was that the last you saw of the four soldiers?

A.470 That is the last sir.

Q.471 Are you able to help in anyway with the identity of the soldier lying on the ground and the man you took in the cafe?

A.471 He was wearing an English battle dress.

Q.472 Any flashes on it?

A.472 I looked on his tunic for identity discs. They were found later in his pocket. Excuse me a moment sir, I made a mistake in my statement with reference to giving the man morphine (A.469). I gave morphine to this fellow after I can back with the provost and at the same time one stretcher bearer came in this cafe with me. That is where I gave the morphine, not before.

Cross-examined by the Defending Officer

Q.473 Referring again to Exhibit "A", will you take this pencil and mark on it as clearly as you can the position of the man who was on the ground?

A.473 Where he was lying?

Q.474 Where he was in the passage - at the end? along the side? or where?

A.474 Around the "X" already marked on the exhibit.

Questioned by the Judge Advocate

Will you tell us the size of the man you helped move into the cafe?

A.475 In the passage it was pretty dark so I did not see much, but as three of these men heldped me take this wounded fellow into the cafe I can remember that one fellow had no beret on and had dark curly hair.

Q.476 You are referring to one of the men who helped you carry him in?

A.476 Yes.

Q.477 What else do you remember about him?

A.477 He was nicely built with square shoulders - I cannot say that I would recognise his face.

Q.478 Was he coloured or white?

A.478 One was coloured I remember that and this fellow was a white fellow. The first one I mentioned was white and I noticed this negro in the cafe.

Q.479 Now the wounded man - can you describe him?

A.479 Not very much but I remember he had a very thin face.

Q.480 How big was he?

A.480 I cannot remember very well, he was rather tall and big.

Q.481 Can you give us his height and size?

A.481 I cannot.

Q.482 What do you mean by tall and big?

A.482 About the same as I.

Questioned by the President

Q.483 Did I understand you to say that when you returned with the provost all the soldiers had left the cafe and only the wounded man was there?

A.483 Yes sir, only two civilians who were in the cafe at the time.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with RP 83(b).

Witness withdraws.

SUBMISSION BY DEFENCE

I would like to submit at this time that no Prima Facie case has been made out because the identity of the man whom SMITH is alleged to have hit has not been shown to coincide with the man who subsequently died in the hospital. The evidence so far is very contradictory in important parts. For these two reasons I submit that no Prima Facie case has been established.

REPLY BY THE PROSECUTION TO SUBMISSION MADE BY DEFENCE

I would like to reply on the first point raised by the Defending Officer. Under circumstances such as these it is very difficult to establish definite identity on the moment the incident occurs but I do submit in this case there can be no doubt whatever about the identity of the man who has been killed. The Prosecution has established first of all that a soldier was struck in the area we know as the Passage, that his body was on the floor of that Passage and that SMITH and the coloured fellows were there. Then the next thing the prosecution established is that the body was subsequently carried into the Tavern WINDSOR and Capt BOURGET corroborates that and from the Tavern WINDSOR we find Capt BOURGET, again, administering morphine in there and then we have him going to get the provost and an ambulance being led to the hospital by L/Cpl HANLEY. At the hospital we have Major NICHOL attending on the dying person and then we have the evidence of S/Sgt SMITH WHO prepared the body for burial and identifies him again by the identification tags. Now I say that the chain of circumstances has certainly proved in every respect the identity. There are such other words of dexcription from witnesses, in that, one first identifies him as an English soldier and another identifies the flashes as being from the Duke of Wellington Regiment, so that, on that account, the motion of the Defending Officer of no Prima Facie case for the lack of identification of the deceased person must be dismissed. On the second point, that of conflicting evidence, I take it he means regarding the circumstances here. Regarding this may I suggest that there has been conflicting evidence here. In charge such as this there usually is but the Court can form its own opinion. That being so, there are no grounds for dismissal but there are grounds if you feel that way for discounting some of the witnesses you have heard. I say that because I feel that after having attended the scene of this incident any person as close to this, in an area so confined, possible saw more that has been told. I submit that there are no grounds for dismissal on either of the points raised by the Defending Officer.

JUDGE ADVOCATE ADDRESSES THE COURT ON THE SUBMISSION OF DEFENCE

In considering a submission by a defending officer at the close of the case for the prosecution that a Prima Facie case has not been established against the accused, the court should disallow the submission if there is evidence which unconstradicted would justify a finding of guilty, that is more than a scentilla of evidence which supports the charge and which the court at this stage are not prepared to disbelieve. The Court at this stage need not consider or decide the credibility of witnesses or whether the prosecution has established its case beyond a reasonable doubt.

JUDGE ADVOCATE ADDRESSES THE ACCUSED

Do you understand that at this stage you are proceeding with your defence and you may or may not make a statement. If you wish to do so you can give it in either of two ways:

(a) Evidence on oath which makes you subject to cross examination by the prosecution, or

(b) Evidence not on oath in which case you are not subject to cross-examination.

Regardless of whether you give evidence on oath, or not on oath, or make a statement not on oath or say nothing you may still call witnesses in your defence.

Q.483 Is the accused aware of his rights in this matter?

A.483 (Defending Offr) - Yes.

FIRST WITNESS - for the Defence - previously sworn
7-58702 Pte SMITH E L
A&SH of C - 11 CBH Bn

Q.484 Would you tell your story of this incident which occurred before Christmas?

A.484 I started off by having a little party which started at 1800 hours in the evening. At that time there were just three of us, myself and two other fellows. We got a bottle of cognac and consumed that and we bought another bottle and I met two friends of mine from my own outfit who joined the party. We just drank that bottle and bought a few more bottles which we drank in the BEAVER CLUB. About 9:30 I saw this girl Cecilia RABS come into the cafe and I knew her. As I did not want to cause a disturbance I decided to go outside with her. She had her sister-in-law with her who insisted that I find her boy friend by the name of Paul, a fellow whom I knew. I told her I didn't know were he was but she said I did. I said I would try to find him so - but Cecilia RABS was under the influence of liquor at that time and insisted I go with her. I called KING and ROBINSON to clarify that I would come at 10 o'clock but she wouldn't go away so I walked away towards the passage then she followed me towards the passage and we went right into the passage when along came an English fellow. This English fellow, as Cecilia RABS was turning away to go, bumped into her but as she didn't make anything out of it I thought it was just an ordinary accident. I told him he had better apologise which he didn't. There was a major coming by and told us we had better stop arguing as tomorrow was Christmas. He passed on and I wasn't going to let an Englishman get away without apologizing and told him if he didn't apologize we would have to have it out. The Englishman never said anything but just struck at me. I saw his blow coming but I blocked it and hit him once. He went down but he didn't get up. ROBINSON and KING were standing there with the two girls. ROBINSON bent down and I turned away back towards the BEAVER CLUB and I met two other fellows there from my regiment, a Sgt and A L/Cpl and we continued the party. That is all I remember until I was picked up the next morning.

Q.485 Did you see anybody else in the passage when Cecilia was bumped into?

A.485 Not that I recall sir.

Q.486 Did you hear any pistol shot fired at that time?

A.486 Yes.

Q.487 Did you fire any?

A.487 Not at that time.

Q.488 When did you fire?

A.488 I had fired a shot earlier in the evening when I shot the top off a bottle of cognac.

Q.489 Did you hear any shots fired just about the time of the fight?

A.489 There was a shot immediately behind me.

Q.490 Who was in that area?

A.490 There were two chaps from my outfit and the Sgt and L/Cpl.

Q.491 Anyone else?

A.491 The two girls. There were people coming in and out of the passage at that time.

Q.492 Do you know where Cecilia was when the fight took place?

A.492 To my right rear.

Q.493 Could you see what she did?

A.493 I never took any notice of her as I paid more attention to the fellow in front of me.

Q.494 Did you see ROBINSON after the fight?

A.494 I do not remember except when I was picked up.

Q.495 That would be the following morning?

A.495 Yes, he didn't rejoin the party at the BEAVER CLUB that I remember.

Q.496 After you hit the man did you suffer any damage to yourself?

A.496 My right knuckles were skinned.

Q.497 Do you know where you hit him?

A.497 On the side of the jaw.

Q.498 How much ammunition did you have for your pistol that evening?

A.498 Six rounds.

Q.499 Have you still got the pistol and ammunition?

A.499 No they were taken away from me.

Q.500 How much ammunition did they take from you?

A.500 One fired round and five live rounds.

Q.501 How much of an interval was there between the time the Englishman swung at you and your blow at him?

A.501 I just blocked his blow and hit him.

Q.502 It was an immediate return?

A.502 Yes.

Cross-examination by the Prosecution

Q.503 Do you remember going back to the BEAVER CLUB after this affair was over?

A.503 Yes sir.

Q.504 Where you upstairs with some civilian friends in the BEAVER CLUB?

A.504 To be truthful I do not remember going back.

Q.505 You would not remember seeing ROBINSON there or any discussion?

A.505 No sir.

Q.506 You cannot remember saying to ROBINSON that "I gave him a real beauty".

A.506 No sir.

Q.507 When you said to this fellow, "well chum if you won't want to apologise I guess we'll have to have it out here", what was in your mind then?

A.507 Just if he didn't apologise we would just have to have a scrap.

Q.508 That was your idea?

A.508 Yes sir.

Q.509 Do you remember stopping anybody in that passage way or in the KLEINSTATIA STRAAT that night inquiring whether they were English or Canadian?

A.509 The major told us to stop arguing and I asked him if he was English or Canadian and he said xxxx Canadian and I said I would take your advice first before I would an Englishman to stop the argument. That is what Cecilia means in her evidence.

Q.510 The witness, Cecilia RAES says that you spoke to the soldier asking if you are Canadian and he said yes then you told him he could go on, and then there was another soldier come along and then the fight started. Do you remember anything like that?

A.510 No sir.

Q.511 Had you seen the English soldier that you struck before this evening?

A.511 Never sir.

Q.512 He was just passing at the moment and you saw him bump into Cecilia RAES?

A.512 Yes.

Q.513 That was the whole reason why you attacked?

A.513 Yes sir.

Q.514 After the injured man was taken into the Tavern WINDSOR you and all your comrades left that Tavern did you?

A.514 I do not remember being there at that time?

Q.515 You didn't stay to see what happened to the injured man?

A.515 There were two provost there who were investigating the jeep to find out who owned the jeep.

Q.516 You didn't go up into the passage to find out what happened to the injured man?

A.516 I didn't know that he was injured in that way?

Q.517 What do you mean?

A.517 I didn't know he was injured in any way such as I do now.

Questioned by the Judge Advocate

Q.518 How long after the soldier bumped into your girl when this fight started.

A.518 About 2 minutes from the time the Major came up - 1½ to 2 minutes.

Q.519 You state that this chap struck at you first?

A.519 Yes sir.

Q.520 Did he strike you?

A.520 No I blocked his blow.

Q.521 What size was this man?

A.521 About 5ft 7in tall and would weigh about 150 lbs.

Q.522 Did the other soldier that you were with have anything to do with this at all?

A.522 Not that I recall.

Q.523 Do you recall whether the coloured soldier joined in the fight in any way?

A.523 No.

Q.524 Do you know whether they where present when the fight took place?

A.524 Yes, there were all around.

Q.525 Could they see what was going on?

A.525 Yes they could.

Questioned by the President

Q.526 Did the English soldier bump in Cecilia Raes or did Cecilia Raes bump into the English soldier?

A.526 She was just turning to go and the English soldier bumped into her.

Q.527 Did he knock her over?

A.527 No.

Q.528 When you asked him to apologise what was his reply.

A.528 His exact words were "I'll not apologise to no Belgian bag".

Q.529 Was it dark in the passage?

A.529 Yes.

Q.530 How did you know the officer was a major?

A.530 I could see his crowns as there was a certain amount of light coming from the windows of the cafes.

Q.531 Were you having an argument with Cecilia Raes just prior to the English soldier bumping into her?

A.531 Yes sir.

Q.532 With the result that she stepped back?

A.532 No, she was just going to leave with her sister-in-law when the English soldier came there. I don't think she heard me ask for an apology.

Q.533 If she didn't hear you then it is possible that he didn't hear you.

A.533 She was standing in front of me and she was walking away from me.

Q.534 These words that you say the English soldier said about not apologising to no Belgian bag - were they the only words he said?

XXXXX

A.534 They were the only words he said. When the major came along and after he left I insisted on an apology. He never siad anything but just struck out at me.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with RP 83(b)

The accused resumes his seat.

SUMMING UP BY THE PROSECUTION

Mr President and Gentlemen:

My words will be very brief. The stories told by the witnesses here have been very straightforward. While there is some conflict on some minor points I am sure the stories told by all witnesses for the prosecution and the accused person himself have put together a very complete story of what happened this night in question. The prosecution have called before the court the two coloured witnesses KING and ROBINSON and the civilian witness Cecilia RAES who together told all of the circumstances surrounding this incident. The prosecution then called CSM GIBBS who had taken the statement from the accused person and it was established that the statement was voluntary and admitted in evidence. The accused admits striking a soldier in the Passage in the night in question. I submit that the prosecution have satisfied you who that soldier was that was struck and what subsequently happened to him. The events leading up to this assault do indicate that the accused person that night was at least quarrelsome and the evidence of having met some other soldier that night and having words with him in the Passage is clear and corroborated by more than one person and we have hisown statement of an English soldier bumping into Cecilia RAES and this soldier not apologizing to the girl when requested to do so and SMITH said they would have to "fight it out". The English soldier struck at SMITH. He did not land the blow and the accused struck the English soldier on the side of the jaw as he puts it. These briefly are the facts. I do not propose to say more on the facts as that is sufficient and I know you will take the law from the ADJA. For the purpose of a plying law to these facts I do wish to say one word on killings as a result of quarreling which is mentioned on pp 868 and 869 of Archbold and that question of provocation. I suggest there is no defence on this ground and you will of course consider that in your finding, "If parties, in their passion, fought immediately, or even if, immediately upon the quarrel, they went out and fought in a field (for this is deemed a continued act of passion) the killing in such a case would be manslaughter only, whether the party killing struck the first blow or not" (Archbold p 869). I say that the facts heard have a very close bearing to that quotation in law and that they should be considered in length. The story of the accused person only is that the English soldier struck at him. No other witness has even suggested that but if you are inclined to believe the accused's story I point that out to you for what it may be worth. Just a word on the question of identity I do not know how identification can be tied in any better than it is in this case. There are two ways in which identification could be established in such a case as this, one, at the scene of the incident, the other by tracing down the circumstances right to the death and the prosecution here have done the latter, not only positivily but completely. That is all I have Mr President.

SUMMING UP BY THE DEFENCE

There is just one thing I would like to point out at first. At the beginning one witness was time for 1½ minutes and the Court just sat there. That seems to everyone, particularly the witness, a great length of time. 1½ minutes of action may seem to pass in a flash, whereas the same length of time spent waiting seems an age. This point was material to the evidence of ROBINSON. Cecilia RAES' evidence is contradicting and she did not recollect things which would be expected in view of other evidence which she gave. For example, she did not remember bumping into ROBINSON and knocking him over nor being bumped by the Englishman, nor which side of the Passage the fight occured, nore where she was standing, nor with what hand SMITH hit the man. All these things to put it mildly impeach her credibility. I do not mean to say she was lying but her memory is very poor. On the question of identity, a man was struck, he fell down and was carried into a cafe. There is evidence to show that HANLEY stayed with a man whom he identified by the tags and that this man was carried to an ambulance, but there is no evidence to the effect that the man taken to the ambulance was the same man who was taken to the cafe. There was evidence that the district is a pretty low one, both from the view by the Court and the and the evidence of other witnesses that fights are not infrequent there. It is possible that the man taken to the ambulance was not the one in the cafe. Secondly in that respect, that day of the year is just about the shortest and at approximately 2130 hrs it was pretty dark and again at that particular time as has been stated in evidence, arms were being carried owing to the threat of German parastroops. Under these circumstances - a bad area, the general carrying of arms and the time of day - darkness - I suggest that a reasonable man in his own self protection would be inclined to hit first and ask questions afterwards if he was assaulted. In the dark SMITH saw a man attempt to hit him and the natural re-action I suggest is a parry and return. There is not much more to do in a case like that an in particular he is not going to calmly stand by while another man does not apologize after he has bumped into and insulted his girl. As to the credibility of SMITH, in his statement that the man who died struck at him first - as far as that goes no one else saw a fight at all. Cecilia RAES says she saw SMITH hit a man, but I have already mentioned the questions of her credibility. I shall not mention the law involved as the Judge Advocate will do so.

THE JUDGE ADVOCATE SUMS UP

It is my duty as Judge Advocate to advise the Court on the law and sum up the evidence. If I have at any time expressed any personal opinion as to the facts of this case or should I at any time express any opinion of the facts it should be entirely disregarded. The Court and the Court alone is the sole judge of the facts.

The accused - Pte SMITH - is charged with manslaughter. Manslughter is defined in Archbold as follows:

"Manslaughter is the unlawful and felonious killing of another without any malice expressed or implied".

The Court in this case will have to determine many facts and in doing so the Court will have to judge for itself the credibility of witnesses. I wish briefly to review the evidence before the Court.

The witness KING recalled the evening of 23 Dec 44. He was with the accused at the BEAVER CLUB, which is not run by the army. They had been drinking - there were other soldiers there - one of whom was the second witness ROBINSON.

Two girls come and one sent a message in for SMITH. SMITH went out accompanied by KING and ROBINSON. KING testified it was dark and he did not accompany the accused whom he stated walked up to the "Passage", accompanied by his girl. SMITH and his girl friend were arguing. He heard a noise as if someone was starting to run. He did not approach immediately, but went after a pause, and saw a man lying on the ground. There was Pte ROBINSON, the girl, SMITH and an officer. SMITH said "Who hit my chum?".

The injured man was assisted into the cafe and the officer left. He saw SMITH 30 minutes later at the BEAVER CLUB.

There were some shots heard by the witness the night, and he stated they were not where the incident occurred.

The second witness ROBINSON stated he went with SMITH when the girls arrived, and was present when SMITH left to see the girls outside the BEAVER CLUB. He was in the BEAVER CLUB with SMITH and said they went out about 2000 hrs. He was trying to hold SMITH's girl until SMITH got away, but she broke away and went after SMITH. He heard the girl arguing with SMITH, he followed to get hold of the girl again. He was ahead of KING and first to arrive at the spot where SMITH was, when the girl bumped into him knocking him down.

SMITH said "there was some trouble and to catch two fellows". He did not remember seeing anyone although he says someone might have got past him without him seeing them. He heard a sound which he describes as similar to someone getting hit, he heard the sound just as he got up at the corner of the Passage. He saw a man on the ground, saw an officer there and SMITH and later KING came. SMITH went in the direction the two men had gone. Told the officer someone had hit his chum and told ROBINSON the "fellow was looking for trouble and to catch the other two".

SMITH had a weapon. Fired it into the air but he did not actually see him do it, this was after the fellow was put into the cafe. He left after the officer left.

He next saw SMITH in a room at the BEAVER CLUB the same night and SMITH told him he gave the "fellow a beauty and skinned his knuckles".

CSM GIBBS introduced the statement taken from the accused on the 27 Dec. He was also present at the identification parade when Anna JANSEN, since deceased, identified SMITH although there is no evidence before the Court as to the reason SMITH was identified.

Major NICHOLS? RCAMC, who examined the body, the name he only knows from the records, says the injury could have been caused by a blow from a blunt instrument or a fall. He noticed no marks on the face.

S/Sgt SMITH, Wardmaster, referred to 4619980 Pte McCREESH. He states that at approximately 0800 hrs 24 Dec the man was dead. He prepared the body for an autopsy.

L/Cpl HANLEY states he was at the Tavern WINDSOR at 2245 hrs 23 Dec 44. He did not enter the Tavern but stayed with the ambulance. A soldier was brought out on a stretcher and he accompanied him to the hospital. By means of the identity discs he definitely identified the soldier as Pte MCCREESH. He said the man was bleeding from the back of the head. He left the injured man at 2300 hrs at the hospital. There are lots of cafes and many fights in this district.

The witness Cecilia RAES knows the accused as "JOHNNY". She does not recall the incident other than it was a Saturday night. With her sister-in-law she went to the BEAVER CLUB and Johnny came out. Johnny pushed her away and she went after him. SMITH said to a soldier "are you Canadian" to which he replied "yes" and he passed on. Another soldier came and SMITH asked him the same question to which the soldier replied "no English". She says "they fight" and she saw Johnny hit the soldier on the chin. The othersoldier fell down. She does not know who struck the first blow. The coloured soldiers ROBINSON and KING were there as well as herself. She states she did not bump into anyone. She and her sister-in-law went away with SMITH.

She recognised SMITH on the identification parade but was afraid to identify him. In reference to her statement in the summary where she stated the "the coloured boys and SMITH fought", she states in evidence upon cross-examination that only SMITH fought.

Major BLANCHARD, the pathologist, who performed the autopsy gave evidence as to severe injuries to the head, lacerations of the scalp. There were two fractures of the skull but no markings or disfigurements of thefsce. Violence applied to the back of the head, a fall or blow of a heavy instrument could have been the cause. Saw the identity tags on the body as being Pte McCREESH. Death resulted from the damage to the skull and nother could have been done to save the man.

Capt BOURGET heard a shot on the "Passage" at 2245 hrs 23 Dec. He met a girl about 75 yds from a group of soldiers and took her into a cafe. He was unable to recognise the accused. Four soldiers as well as one on the ground were seen by him as he approached after taking the girl into the cafe. One of them was a negro and another was very well built. He assisted in taking the injured man into the cafe then he went for an ambulance. When he returned he administered morphine but noticed that the other soldiers had left.

I do not think it is necessary to review the evidence from the accused.

As I have said, manslaughter is the unlawful and felonious killing of another without any malice either expressed or implied. The killing must be unlawful and not excusable or justifiable. It may be by poisoning, striking, starving, drowning, etc. It may be taken as law generally that in all cases where killing, though not with malice, is nevertheless incapable of justification or excuse, it is manslaughter. From the facts here there is a killing due to a fight. Killing by fighting may be either, first, murder, secondly manslaughter, thirdly homicide se defendo. The accused is not charged with murder and therefore murder need not enter into the deliberation of the Court. Homicide se defendo means killing in self defend. The question therefore is it manslaughter or self defence? With regard to self defence, if a man attacks me I am

entitled to defend myself and the difficulty arises in drawing theline between mere self defence and fighting. The test is this, a man defending himself doesn't want to fight and defends himself solely to avoid fighting. Then supposing a man attacks me and I defend myself not intending or desiring to fight but fighting in one sense to defend myself and I knock him down and thereby unintentionally kill him, that killing is accidental. No provocation whatever can render homicide justifiable or even excusable but provocation may reduce the offence to manslaughter. We must consider however the fact that the accused is in a foreign country and therefore the Court should take judicial notice of where the incident occurred, the time of year and the fact that there was a paratroop scare and everyone was carrying weapons.

Thelaw I have quoted to you is theEnglish law on manslaughter. If the Court finds as a fact that the deceased struck the accused first, then the Court must consider whether under all the circumstances the accused used more force than was necessary to defend himself, andin doing this the court may take into consideration, the time, the place and that there was a paratroop scare.

If the Court should find as a matter of fact that ROBINSON and KING were accomplices, than their evidence mut be considered with cuation and the Court must be satisfied that their evidence is corroborated by some material fact or facts or evidence of other witnesses. The uncorroborated evidence is admissible in law but it is dangerous to convict upon it unless the court is satisfied that there is corroboration. This direction as to accomplices will only apply if the Court finds they were in fact parties to the assault or assisted in any way the comaission of the assault. The defence raised the question of identity. If the court find as a fact that the body taken to the hospital is not the same person as the accused is alleged to have struck, or if they can not find as a matter of fact that the body taken to the hospital was the man struck in the street, the accused should be acquitted. The prosecution must prove that the person alleged in the particulars of the charge was the person struck, and that he died as a result of the injuries received. The Court too must satisfy themselves that he did not die as a result of negligent treatment, but as a direct result of injuries caused by the accused.

In English law, the Court at the outset of their deliberations must remember that the accused person is presumed innocent until proven guilty and that the burden of proof is on the prosecution to prove to the Court the guilt beyond all reasonable doubt. Unless, therefore, the guilt of the accused has been established beyond a reasonable doubt he must be acuqitted. By a reasonable doubt I do not mean some figment of the imagination, but some real honest doubt based on the evidence before the Court. That is all I wish to say unless the President, Defending or Prosecuting Officers wish me to direct the Court upon some matter which I may have overlooked.

Mr President, are there any further matters upon which you wish me to direct the Court?

No.

Mr Prosecuting Officer, are there any further matters upon which you wish me to address the Court?

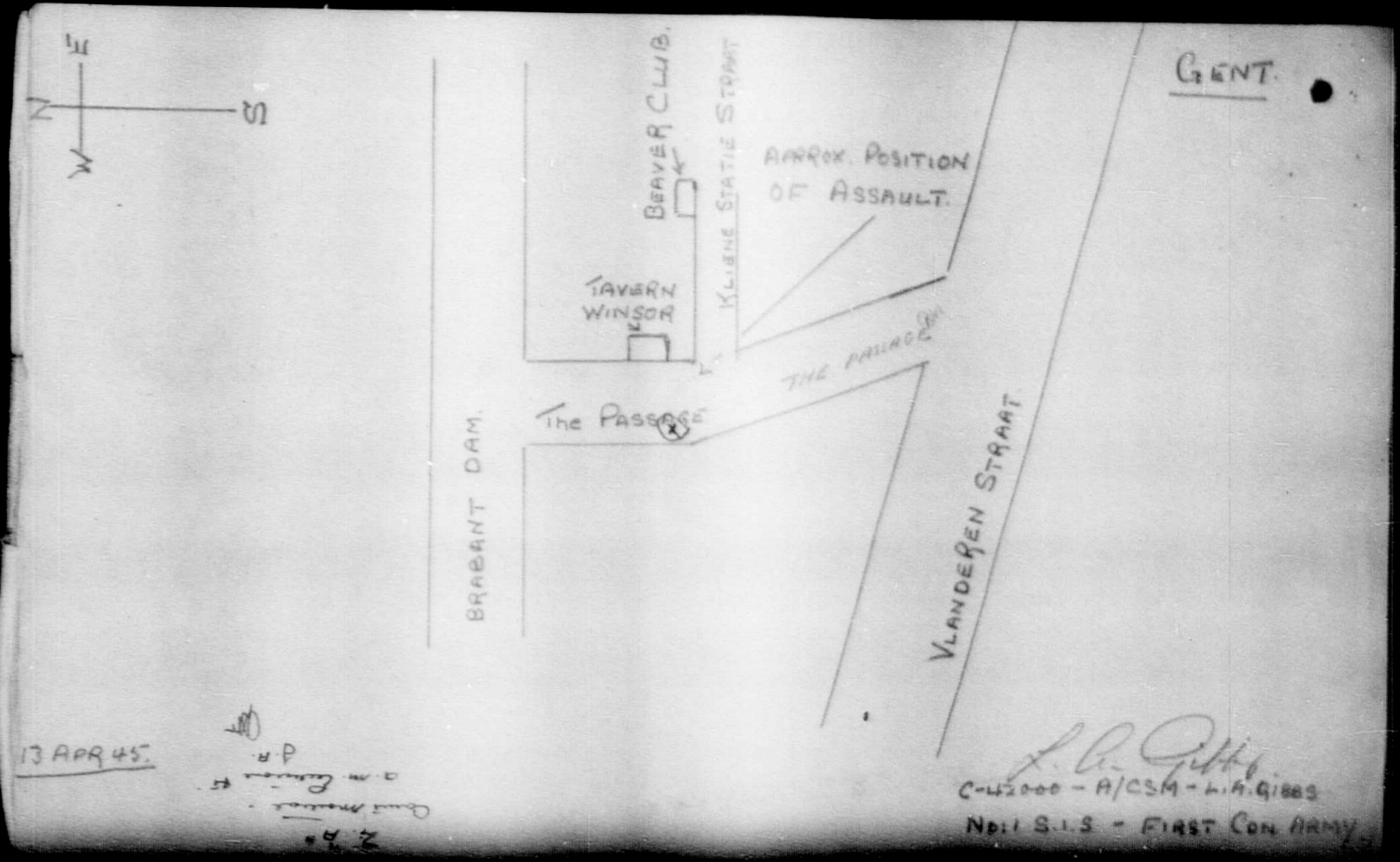
Yes, read all sec 4 on p 871 of Archbold. (Read to Court).

Mr Defending Officer, are there any further matters upon which you wish me to direct the Court?

No.

PLEA OF MITIGATION BY THE DEFENCE

I shall give the particulars of the accused to begin with. The accused states he is 23 years old, enlisted on 30 Jan 44, arrived in England on Apr 44 and came to France on 1 Aug 44. He is married and has no children. He was arrested on 25 Dec 44 which up-to-date makes a total of 112 days of which 3 to 4 weeks were spent in hospital and about 5 other days not in arrest. In respect to this offence SMITH was arrested but at the time did not know that he had committed any offence for which he might be charged. This is shown by GIBBS' evidence that SMITH was the frankest man he has ever heard. If a man has a guilty conscience in that respect his first thought is to slip out of it and he wouldn't be as frank as that. Now in this Passage 12 - 13 feet wide two people do not usually collide by accident, so that any ordinary man seeing another bump into his girl would normally expect an apology to be pretty quickly forthcoming. If it wasn't it is quite reasonable for him to ask for it. In the very worst light this case amounts to a street brawl with fists, not weapons, even though SMITH was armed at the time. The reason I bring that out is because using your fist you do not expect to do any more damage than a black eye, certainly not kill a man. Legally, of course, when death does occur a charge of manslaughter will probably be laid. In such cases the sentence is usually light because the Courts realize the offence arose out of an accident, and not out of any illwill or intent to do any damage on the part of the accused. In civilian cases, I have not military precedents, the sentences imposed vary from a few days in prison to several years, but the longer terms are imposed in cases where there was at least gross negligence. In cases where the act committed is most unlikely to lead to any damage at all, and in fact, damage occurred due to an accident, the sentence is usually light for that reason. The question of self protection - the circumstances I have previously mention - are enough to lessen the degree of blame or culpability. For these reasons I suggest that a very light sentence would be a propriate in this case.



13 APR 45.

C-42000 - A/CSM - L.A. Gibbs
NDII S.I.S - FIRST CDN ARMY.

Statement of F-58068 - Pte - SMITH, E.L.
Cpl - Sutherland Highs of Canada - 4th Div.

I have been cautioned by Sgt Gitto of the Special Investigation Section, that I am not obliged to say anything unless I wish to do so, but anything I do say will be taken down in writing & may be used as evidence. I fully understand the meaning of this caution.

Edward L Smith

I joined the Canadian Army in Halifax N.S. in January 1944. I joined the artillery, & came overseas about six or seven months ago. I came to France about five months ago, but did not come with the artillery, but with the Canadian Fusiliers. I was in C.B.R.G. for about two weeks & then went to B.H.Q. of the A & S. Highs. I stayed with them, until Nov 8th, & then came on leave to Ghent for forty eight hours. I did not return to my unit.

When I came to Ghent I had about nine hundred Dutch Guilders. During the time I was in Ghent spent a lot of time at the Lees Central & different cafes, one of them the Beer Club.

Last Saturday night 23 Dec 44, I had a date with my girl friend Emile Daes, who lives

her Sister-in-law Annie. I got up & went outside with the two girls. Cecile is very jealous, & she accused me of paying attention to other girls in the Cafe. I called King, Barnes & 'Lucky' out to prove that this was not true. I think Leeman & his friend came out too.

I took Cecile away from the cafe down towards the 'Passage' entrance, & I asked her why she had come looking for me. She said Annie wanted to find her boy friend 'Paul' another Canadian. Cecile wanted me to go with her, but I refused saying I would come to see her at a quarter to ten as I had arranged before. My companions said they wanted see that I came. Annie refused to leave until she had found 'Paul'.

I took the girls towards the 'Passage'; & as they turned away to leave a Soldier bumped into them. He said something, I don't remember what it was, & I told him he had better apologize. He refused, & we got into an argument. A major came along, & he suggested we stop the argument as the next day was Christmas. The officer passed on. I grabbed the Soldier, & told him if he wanted to fight we would have

with her mother in a cafe on corner of the 'Passage' - one of the main streets of Ghent. I had seen her earlier in the day, - had asked her to meet me at 10.00 P.M. I told her I would pick her up at her home.

At about 6.00 P.M. I went out with Al King, 'Lucky', & 'Stuff' Baines. These are all coloured men, - they are all in the Canadian Army. We bought a bottle of Cognac at the 'E.K. Cafe'. We then returned to the Beaver Club, - we drank the Cognac. I also met two of my friends from my regiment, Pte. John Lees, from - another man I don't know by name. They were with us all evening. After we had finished this bottle Lesman - his friend went out - returned with two more bottle of Cognac. We drank this between the five of us. Somebody else got another bottle, where from I don't know. I also met in the Beaver Club that night two other men from my regiment Sgt. Mike Flynn - a Lt/Col. Young is his first name. I had a few drinks with them.

I was sat sitting back in one of the corners of the Beaver Club with Baines, King - 'Lucky' - a girl that Baines goes with, at about 9.30 P.M., when I saw Eulia come in the doorway of the club accompanied by

it out right there. He was alone, I can't remember anybody being with him. He took a dashing at me. I stopped his blow, & then I struck him with my fist in the mouth. In doing so I took the skin off of the knuckles of my right hand. He fell to the ground, & did not get up again.

The girls ran away when the fight started. My companions were standing right behind me. 'Lucky' said 'Come on, he is finished. He can't fight any more'. Mike Flynn had come up at this time, & he bent down & looked at the man, & said 'Well he is out', & then returned to his 'jeep' where 'Tommy' was waiting for him. Two Provost men came along at this time, & inquired about the 'jeep'. Mike & Tommy left, & the rest of us went back into the Beaver Club.

Later that night I went to bed in the Beaver Club, & early in the morning I was awakened by the Provost, who arrested me for being A.W.L.

Immediately after the fight a shot was fired. It was not fired by me, it seemed to come from the passage. It sounded like a .38. I was carrying .38 calibre in the belt of

my trousers. I had fired a shot from this rifle in the evening, shooting the neck off the fourth bottle of Cognac we had. This happened in the street near the Beard Club. I only had six rounds of ammunition. I bought this weapon in the Beard Club, from a Canadian Soldier called the same evening for six hundred francs.

This Statement has been read out to me it is true. I have nothing more to say.

Edward LeSmith

Taken down by C-42006 Sgt L. McGibbs No: 1 S.I.S. First Echelon Army.

27 Dec 44

SUMMARY OF EVIDENCE

In the case of F58068 Pte SMITH, E.L., Argyle & Sutherland Highlanders of Canada, on strength 11 Bn, 2 Cdn Base Rft Gp, a soldier of the Canadian Active Service Forces, serving overseas, charged with:-

(1) Manslaughter - AA Sec 41

By direction of the Commanding Officer the evidence is taken on oath.

FIRST WITNESS

Major A.J.Blanchard, RCAMC, 2 Cdn Gen Hosp, Pathologist:

A written statement of this witness' evidence purporting to be signed by him has been read to the accused, marked Exhibit "A" and attached hereto.

I certify that having regard to the exigencies of the service the attendance of this witness cannot in my opinion be readily procured.

G.E.Collins, Lt
Offr detailed to take the
Summary of Evidence

The accused does not require the presence of this witness for cross examination.

SECOND WITNESS

D109504 Pte KING, A.J., Canadian Army Shows, musician (Army), a soldier of the Cdn Army Overseas, having been duly sworn states:-

On the 23 December 1944 I was in the Beaver Club, Ghent, around 1230 hours. I saw the accused, whom I recognize and now know to be Eddie Smith. I had met Smith a few days previous through another coloured soldier named "Stuff" Barnes. I spent the noon hour with Smith. In the evening Smith bought a bottle of cognac. We drank a bit of the cognac outside and then went to the Beaver Club. Later in the evening someone brought another two bottles of cognac into the club. We drank for a while in the club and around 10 o'clock we left. At the time we left, "Lucky" Robinson was in the party along with Smitty and myself and two Canadian soldiers. Two girls were waiting for Smitty at the door. Smith and one of the girls walked away from us for a short distance. I could hear what sounded like an argument between Smitty and his girl. It was dark and I could not see the two of them up in front of us. I was not paying any attention to what was going on up front. When I walked up to where the argument had been going on I saw Smitty and an officer standing over a man who was lying on the ground. Smitty was saying "Who hit my chum ?" and the officer said something about bringing the injured man into a cafe nearby and call an ambulance. I helped carry the man who was hurt into the cafe. Then I walked away with Lucky. I forget whether one of the girls was with us or not. I do know that Smitty did not come with us.

(Continued on Page 2)

SECOND WITNESS (Continued from Page 1)

I saw Smith later on in the Beaver Club upstairs. There was a bit of a party going on. Quite a few soldiers were drinking. I had no conversation with Smitty at the party nor did I see him again until about a month ago when I saw him in the hands of the Provost in a jeep.

Questioned by Officer taking the Summary:

Q.1. With reference to the argument you heard in the dark between Smith and his girl friend, did you hear the sound of a scuffle of any sort ?

A.1. I could hear a slight movement up ahead in the dark, a shuffling of feet.

Q.2. Did you hear the sound of any gun shots ?

A.2. Yes - it sounded like two or three shots

Q.3. At what time did you hear the shots ?

A.3. During the time Smitty was arguing but they did not sound as if they came from that direction. I cant say what direction.

Q.4. Did you hear any such sounds as a thud or blows being struck ?

A.4. Not that I can recall. I do remember hearing a sort of scuffle.

(A.J.King)

The accused declines to cross examine the witness

RP 83(b) has been complied with

THIRD WITNESS

C42000 Sgt L.A.GIBBS, 1 S.I.S., First Cdn Army, a soldier of the Canadian Army Overseas, having been duly sworn states:-

On the 26th December 1944 I proceeded to HQ 9 Bn 2 Cdn Base Rft Gp where an identification parade was held. About 10 men were on this parade including the accused. Major P.R.R. Williamson, second in command of 9 Bn was present. I was accompanied by witnesses Tertilla (sometimes known as Cecilia) Raes and Anna Jansen. The parade was viewed by the witnesses separately. Raes viewed the parade first but failed to identify anybody as being the party who attacked McCreesh on the 23rd December 1944. Jansen viewed the parade next and identified the accused as being the one who attacked McCreesh on the night in question. In my capacity as SIS investigator of this case I discovered that Raes had recognized Smith(the accused) but was too afraid to identify him.

(Continued on Page 3)

THIRD WITNESS(Continued from Page 2)

On the 27th December 1944 I interviewed the accused in the guard room of 9 Bn. He was properly cautioned in the following manner: "You are not obliged to say anything unless you wish to do so but anything you do say will be taken down in writing and may be given in evidence." This caution was explained to the accused who said that he understood it. It was written down by me in the presence of the accused and was signed by him. I had already informed the accused who I was and informed him that I was investigating the death of 4619980 Pte McCreesh, J. Duke of Wellington Regt, which occurred on the night of 25 December 1944, and I had reason to believe that he could give me information concerning this man's death. The accused volunteered to make a statement which I took down in writing, and which I read over to him and which he signed. I produce his statement.

Statement is attached hereto and marked Exhibit "B"

(L.A.Gibbs)

Accused declines to cross examine this witness

RP 83(b) has been complied with

FOURTH WITNESS

Tertilla (Cecilia) Raes, Nieuevstraat 3, Mariakerke, Ghent:

A written statement of this witness' evidence purporting to be signed by her has been read to the accused and is included in this summary of evidence and marked Exhibit "C" A copy of the certified true translation of this witness' statement contained in Exhibit "D" noted in Exhibit "E" is appended therewith and signed by the interpreter G.Vanden Abeele, attached Ghent det 2 Cdn L of C Provost.

I certify that having regard to the loss of time involved the attendance of Tertilla (Cecilia) Raes as a witness is not readily procurable.

G.E.Collins, Lt
Offr detailed to take the
Summary of Evidence

The accused does not require the presence of this witness for cross examination.

FIFTH WITNESS

D77695 Cfn Robinson, W.M., 12 Bn 2 Cdn Base Rft Cp

A written statement of this witness' evidence, purporting to be signed by him has been read to the accused and appended hereto as Exhibit "F".

I certify that in my opinion, having regard to the loss of time involved, the attendence of this witness is not readily procurable.

G.E.Collins, Lt
Offr detailed to take the
Summary of Evidence

The accused does not demand the presence of this witness for purposes of cross examination.

SIXTH WITNESS

Capt Marcel BOURGET, Regt de Maisonneuve, 11 Bn 2 CBRG

A written statement of this witness' evidence purporting to be signed by him has been read to the accused, marked Exhibit "F" and attached hereto.

I certify that having regard to the exigencies of the service the attendance of this witness cannot in my opinion be readily procured.

G.E.Collins, Lt
Offr detailed to take the
Summary of Evidence

Accused does not require this witness for cross examination.

SEVENTH WITNESS

B3512 S/Sgt SMITH, J., RCAMC, Wardmaster 2 Cdn Gen Hosp:

A written statement of this witness' evidence purporting to be signed by him has been read to the accused, marked Exhibit "G" and attached hereto.

I certify that owing to the loss of time involved the attendance of this witness cannot in my opinion be readily procured.

G.E.Collins, Lt
Offr detailed to take the
Summary of Evidence

Accused does not require this witness for cross examination

EIGHT WITNESS

Major J.E.NICHOL, RCAMC, Offr IC # 3 Service Surgery, 2 Cdn Gen Hosp:

A written statement of this witness' evidence purporting to be signed by him has been read to the accused, marked Exhibit "H" and attached hereto.

I certify that owing to the loss of time involved the attendance of this witness cannot in my opinion be readily procured.

G.E.Collins, Lt
Offr detailed to take the
Summary of Evidence

Accused does not require this witness for cross examination.

The accused is cautioned:- "Do you wish to make any statement or to give evidence on oath ? You are not obliged to say anything or give evidence, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence."

Accused declines to make a statement and reserved his defense.

I CERTIFY THAT THE FOREGOING SUMMARY OF EVIDENCE CONSISTING OF FIVE (5) PAGES WAS TAKEN DOWN BY ME IN THE PRESENCE AND HEARING OF THE ACCUSED AND THAT RULES OF PROCEDURE (C)(D)(E)(F) AND (G) HAVE BEEN COMPLIED WITH.

(G.E.Collins) Lt
Offr detailed to take the
Summary of Evidence

In the Field
28 Mar 45

Gent, den 26 December 1944.

RAES Tertilla-Titeline,
~~Brabantdam, 18, Gent,~~
geboren te Gent.
huidig adres : Nieuwstreet, 3, Mariakerke.

verklaart als volgt :

Ik ken een Canadeesch soldaat zyn naam is Johnny ongeveer 4 weken. Ik het deze soldaat van den namiddag gezeyn in the Seminare gelegen ên the Heop; maar ik was te verlegen voor hem te herkennen. Gedurende den tyd dat ik Johnny gekend hebt, was gy gedurende me 2 ander canadeesch soldaten; een van aldaar dragen den naam Stuff, den anderen Stuff broeder. Johnny kwam dekwels binnen in de cafe waar ik werk (Cafe Splendid).

Verleden Saterdag avond 23-12-1944 ongeveer 8.30, Johnny kwam binnen in den cafe en vroeg aan my voor hem te ontmoeten aan de door van de Beaver club op 9.45 P.M.; hy ed thans voor gegaan. Op 9.45 P.M. myn schoonzuster en ik zyn naar den door Beaver-club gegaan, hy was daar niet, wy hebben op den door geklopt en zy hebben geantwoord dat Johnny daar niet was, ik heb gezegd laat hem buitem. Johnny es thans buitem gekomen met zyn twee comraden met aldaar revolvers in aldaar handen. Johnny spraak een soldaat aan, en vroeg heb of dat gy een Canadeesch was; dienen soldaat heeft geantwoord "ja", hy heeft hem laten gaan. Korts daar achter twee ander soldaten kwam af. Johnny vroeg of dat zy Canadeesch waren, ze hebben geantwoord wy zyn Englishe. Johnny en zyn twee comraden hebben thans de English angevallen met aldaar vuisten. Johnny heeft thans eenen Englishman uitgeslagen en op den grond gesmeten. Johnny heeft thans achter uit gestapt en heeft een revolver uitgetrokken. Ik heb thans aan zyaen arm getrukken en gezegd "doe dat niet". Johnny heeft geantwoord "shut up" Ik heb thans een schot gehoord gekomen van den groep soldaten, maar ik weet niet wein dat gedaan heeft, elk ben thans weggeloopen, waar dat myn schoonsuster was weet ik niet. Wanner ik weg loopt twee ander soldaten kwamen by my, brachten zy my in een cafe waar ik een glas bier gedrunkt heb. Die soldaten laten staan ben ik naar den cafe Druiftak gegaan in de Kleine Statiestraat waar geslapen hebt.

Ik kan niet seggen wat dat ter met de twee Englishman gebeurd is maar den volgenden dag hebben zy my gezegd dat gy dood was. Ik heb Stuff en zyn broeder den volgenden morgen in den cafe Splendid zy zyn tegen my dat Johnny in het prison zat. Dat was de laatste te keer dat ik aldaar geayn hebt.

Terille Raes.

RAES TERTILLA, TITALINA: 26-12-44
ADRESS - BRABANTAM. 7 P
Utrecht.

Bonnie Kent

States as follows.

I have known a Canadian soldier by the name of Johnny since 2 weeks. I saw this soldier this afternoon on the Rep. but I was to afraid to identified him. During the time I have known Johnny, he always was accompanied by two other Canadian soldiers one of them name was Stuff the other one Stuffs brother. Johnny often came into the cafe where I work (Cafe Splendid).

Last Saterday evening on the 23-12-44 at approx. 9.30 P.M. Johnny came into the cafe and asked me to meet him before the door of the Beaver Club at 9.45 P.M. he then left the cafe. At 9.45 my sister-in-law and I went to the Beaver Club, he was not there, we knocked on the door and they answered that Johnny wasn't here, I answered let him out. Johnny then came out with his two comrades holding their revolvers in their hands. Johnny then ~~ask~~ stopped a soldier asking him if he was a Canadian the soldier said "yes", so he let him go. Shortly after two other soldiers came up Johnny asking them if they were Canadians they answered "no we are English". Johnny and his two comrades then attacked the English with by the use of their fists.

Johnny then knocked out an Englishman knocking him on the ground. Johnny then backed up and pulled his revolver. I pulled his arm saying to him "don't do that," Johnny answered "shut up". I then heard a shot coming from the group, but I do not know who did it. I then ran away, when my sister-in-law was I do not no. When I ran away two other soldiers caught up with me, bringing me in a cafe where I drank a glass of beer. I left these soldiers in the cafe, and went over to the Cafe Oniftak, on the Kleine Statie straat where I slept over night. I cannot say what happened with the two Englisch soldiers. The following day I heard that the Englishman was dead. I saw Stuff and his brother the following morning in the Cafe Splendid they told me that Johnny was in prison that was the last time I saw them.

Teville Rais.

Translated from Flemish to English
by Gustaf Wandels.

Statement:

Raes Tortilla (Cecilia)
Nieuwstraat, 3, Maria Hoorke, Sharpsteen through
an interpreter, one M-60043 Pte Rabbstraat]:
att 2 L of C Cdn Provost:

I have nothing to add to the statement
which I gave to the police on 26th December
last (statement is produced duly signed
by witness and that date attached hereto marked
Exhibit D). I attended as a witness on the
identification parade held at 9 Bn 2 CBAS
on 26 December 1944. I saw Smith on the
parade that day but I was afraid to identify
him. I told Sgt Gibb of the SIS later that
I was afraid to point him out.

Tortille Raes.

Statement of 077693 - Cfn - ROBINSON, W.M.S. BJC
64 Coy - 12 Bn - 2 C.B.R.G.

I have known Bobby Smith for a long time. I knew him in Montreal for about a year, then I met him again here in Ghent about three weeks ago. I did know he was A.W.L. until four or five days ago. I go to a cafe called the Beaver Club almost every night, & I have seen Smith there quite a lot. I also know his girl friend Cecile, she is a Belgian girl.

I met Smith last Saturday night in the Beaver Club. He came in with Charlie Bates, a colour man, & two or three white men who I do not know. They went to a table in the corner & started drinking. Some girls went with them but too. I remained with my girl friend. They were drinking for quite a while, & then sometime after nine o'clock, the doorman came in, & told one of the waiters that somebody wanted to see Smith.

Smith came over to me & asked me to come with him. He said somebody wanted to see him outside. I went with him & another coloured man named Al King came

along too. When we got outside we found Leila & another Girl waiting. Smith told us to wait by the Board Club about with the other Girl while he went down the Street a bit to talk to Leila. He talked to her for a little while, & then started to cuss & swear at her, & pushed her away.

We, that is King, the other Girl & myself, moved towards them, as I thought he wanted us. He held Leila, & Smith went down towards the 'Passage'. She broke away from us, & caught up with Smith. Smith called to us to come with him, & we caught up to him just in the doorway of the 'Passage'.

At this time I heard Smith say to somebody 'What is the matter with you?' Then I heard somebody scream a Shout. I heard a noise like somebody being struck in the face. Just as I got in the 'Passage' Leila came flying out to us. She fell against us with such force that I fell down. I pushed her away, & went over to Smith. When I got to him I asked him what was the matter. He said 'This Jag was looking

God damn it' — he said stop the other two
Guys, but I didn't know what he meant.
At this time I noticed a Soldier lying
on the ground at Smith's feet. Smith
made a reach in the direction we had just
Come from. He was at this time pulling
his revolver from his belt.

At this time Cecilia's mother arrived,
— she was looking for her. Smith returned
to the passage — on the way fired a
shot in the air. An officer arrived — was
examining the Soldier who was lying on the
ground. Smith said to him Somebody has
hit my chum. The officer asked us to give
him a hand, — King — I helped him move
the man into a cafe.

King said to me 'Let's get — get Smitty'
— we left the cafe — found Smith on the
way to the Beard Club. He was getting for
Somebody by the name of 'Mike'. He went
to a 'jeep', — it was headed a Sgt by the
name of 'Mike' was. Two Provost men came
up then, — asked whose jeep it was. The
then left as then returned to the Beard Club.
I sent Dave Smith when he was being arrested
by the Provost early next morning in the

Beard Club

Later that night in the Beard Club Smith told me he had hit the man a real beauty. I then noticed that the knuckles on his right hand were skinned.

This statement has been read unto me, & it is the truth.

Jas. W. Robinson

Taken down by C-42000 Sgt L. A. Gatto
101 S.I.S. First Ech Corps
27 Dec 44.

23 Dec 44

I am Capt Marcel Bourget of 11 Batt. 2 CBRC, around 1045 hrs I was walking back to camp on the sidewalk on street, as I was passing by a large alley on the left side of the street, I heard shots which seemed to be fired from a pistol; I stopped and started to walk toward the place of the ~~accident~~. As I was advancing toward the fellows I met a girl who saw the accident. I took her in a small café and she was told to wait there. I, then move towards the scene and saw four fellows discussing and one lying on the alley, I looked at him and saw he was hurted. So I asked the fellows to take him to a cafe in front of the place where he was lying.

Having done that, I examined the wounded fellow I thought he was ~~dead~~ badly hit and gave him morphine. I told the four fellows to stay there and I run towards the provost place to get some first aid and ambulance and come back to the place where the incident occured ~~of the shooting~~ with two provost s. ~~They took him to the hospital~~ But when we arrived there, the four fellows were gone having left the wounded fellow behind. They took him to hospital and I reported to the provost section.

Marcel Bourget Capt
Regt de Maisonneuve

Bourget SOS to
10 Bn 29 Dec 44;
10 Bn then SOS - to
where is not known -

Statement

B-3512 S/Sgt Smith J., RCAMC, Wardmaster, 2 Cdn Gen Hosp: states:

I was on duty as wardmaster on the morning of 24 Dec 44. I was called to Ward "H" shortly after 0800 hours that morning. #4619980 Pte. McCreash J., Duke of Wellington Regt., (Br. Army) had died a few minutes previous and I reported to the Ward to prepare him for burial. I did prepare the body and took it to the morgue. I was in a position to identify the body as that of Pte McCreash by means of the identification discs hanging around his neck. I removed one disc for record purposes giving it to the Chaplain with the personal belongings of the deceased.

J. Smith Sgt.

Major J. E. Nichol, RCAMC, officer i/c
Medical Surgery & Medicine Service, 2 Cdn General Hosp.
states:

#4619980 Pte McCreesh J., Duke of Wellington Regt. (British Army) was admitted to 2 Cdn Gen Hosp about 2300 hrs on 23 Dec 44 in a deeply unconscious condition. I saw the injured man. There was a contusion in the occipital region. X-Ray showed a fracture of the occipital bone. He failed to regain consciousness and died about 0800 hrs 24 Dec 44. No operative procedure was done. He was attended by Capt. V. Hall, one of my surgeons who is now in Canada. I did not view the body after death.

J. E. Nichol
Maj

Statement

R 103 180 L/Cpl Harley W.F. - Sheet 1 Dated - 2 Lof C Cdn Provost Coy states:

At approximately 2245 hrs. 23 Dec 44 I was on duty at Det HQ 2 Cdn L of C Prov Coy and had occasion at that time to guide an ambulance to the Tavern Windsor in the lane known as the "passage" which runs off lower Bradon dam Street Sheet. I preceded the ambulance in a jeep to the cafe. An injured man was carried into the ambulance. I accompanied the man whom I identified from his identification tags as No: 14469980 Pte McCreesh J., a British soldier, from the Dukes of Wellington Regt. His head was bleeding through a temporary bandage at the back behind his ears. I sat with him in the ambulance and we were taken to 2 Cdn General Hospital. He was admitted at approximately 2300 hrs. I left him at the hospital and returned to my detachment.

W. F. Harley.

A-4.

26-12-44

Summary of autopsy findings (McCREESH) ~~on Sgt~~ in the case of D461995. McCreesh

died. 24-12-44. autopsy done 26-12-44 55 hrs. after death

The relevant findings were largely confined to the head. There was a small superficial laceration of the scalp in the occipital region just to the right of the mid line. It was about 1.2 cm long and was confined to the superficial layers of the skin. There was extensive oedema and haemorrhage into the soft tissues of the scalp most marked in the left occipital region but also present on the right side.

There were 2 fractures of the skull; one about 10 cm. long was located in the right half of the occipital bone beginning at a point about 1 cm lateral to the internal occipital protuberance and running forward to end in the right jugular foramen. The second fracture involved the anterior surface of the petrous portion of the right temporal bone. There was marked haemorrhage into the subdural space with large clots over the cerebrum and in the anterior fossae. There was slight diffuse subarachnoid haemorrhage.

There was extensive contre-coup softening with petechial haemorrhage into the tips + superior surfaces of both frontal and temporal lobes.

There was haemorrhage into the sphenoidal air sinus and the ethmoid air cells and the right middle ear. The right ear drum was perforated & blood was coming from the ear canal.

The lungs showed pronounced congestive oedema. The remaining organs were normal.

The cause of death in this case was fractures of the skull with subdural haemorrhage and contre-coup injury of the brain. The violence was applied to the right occipital area and could have been the result of a blow with a heavy blunt instrument or from a fall with violent impact of the head against some solid object.

A. Blanchard Major
Pathologist

(A.J. BLANCHARD) Maj: RCAMC.
Pathologist
for pathologist # 2 C.M.H.

RM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

ent to accused : Do you wish to apply for an adjournment on the ground that any of the rules
edure before trial have not been complied with, and that you have been prejudiced thereby, or on
at you have not had sufficient opportunity to prepare your defence ? Ans YES : UNTIL 1400 HRS
If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.) 13 APR 44
REQUEST GRANTED.

Prosecutor makes (an) (his) opening address.(1)
RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

idence for the Prosecution is taken.(1)
39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

ecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not
ie case against the accused on the FIRST charge(s).(2) The Court
s the submission.(2) The Court is re-opened, and the President announces that the submission
FIRST charge(s), ~~and allowed on the~~
ordingly, the trial will proceed ~~on the former, but the accused is~~ (are) found Not Guilty on ~~it~~ them.

ainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded
P 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted
cond alternative in para D8.)
ceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence
rrelevance. (RP 60(C), 114, 115.)

accused : You will now proceed with your defence.(1) You may, if you wish, give evidence
the facts or your character or both, in which case you will be subject to cross-examination.(2)
make a statement without being sworn, and you will not be subject to cross-examination.(3)
h could have been made on oath will not carry with the Court the same weight as sworn testimony.(4)
sses in your defence and as to character, whether you give evidence or make a statement or do

accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
YESS ON OATH. Do you intend to call witnesses on your behalf ?
..... Are they witnesses as to character only ? Ans N/A
RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

sequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his
r should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1
d Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

Court is closed to consider the finding(s).(1) The finding(s) of the Court is (~~are~~) recorded in Part I
le.(2) The Court is re-opened.
RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

President ~~announces the finding(s), if any, of Not Guilty, and~~ states to the accused that the finding(s)
the FIRST charge(s), being subject to confirmation, will be promulgated later.(1)
~~President announces that the accused is found Not Guilty on all charges and is to be released forthwith.~~
~~proceedings are accordingly terminated. Part I of the Schedule is dated and signed.~~(2)
AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there
s of Guilty outstanding and dealt with under Record Form B or C.)

accused having been found Guilty on one or more of the charges, the proceedings are concluded by using
E below.

D FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

sident to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1.
and witnesses are sworn. Evidence recorded per Notes.)

~~Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and outlined sheet of Conduct Sheet(s), purporting to refer to the accused, which he submits to the Defending Offr for~~
~~and then to the Court for admission in evidence. The Court is satisfied that these documents refer~~
~~because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport~~
~~soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and~~
and Ex respectively.(2)
MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1

sident to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in
punishment ?(1) Ans YES, THROUGH MY DEFENDING OFFICER.(2)
RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove
anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

President states that the Court is closed to consider the sentence, and that the sentence to be awarded
t, being subject to confirmation, will not be announced, but will be promulgated later, and the
in open court are accordingly terminated.(1)
AA 54(6), RP 120(A).)

Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which
signed by him and the JA, if any.(2)
When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments
own in AA 81, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty.
As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas AO 309, 2323,
p 82, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused
under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 564. 2. RP 50. As to release from arrest by
ening Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F-58068 Pte EDWARD LAUGHTON SMITH AASH of 2 - 13 CBR Bn

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, special findings, etc.)
1st AA SEC 41	NOT GUILTY / GUILTY	Except that death ... approximately 0200 ... from injuries receiv... 44.	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn ... special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for N/A beginning on (date) N/A
(I. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF 8355 a...

Time in confinement awaiting present trial—a total of 111 days, of which 21 days were spent ...
(I. See RP 46(A) fn 2. Information should be found on MF 8355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:
To suffer penal servitude for the term of seven (7) years and to be discharged with ignominy from His Majesty's service.

(Sgd) D M Cameron Lt 16 April 45 (Sgd) Donald Mackenzie
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

I RESERVE THE FINDING AND SENTENCE FOR CONFIRMATION BY SUPERIOR AUTHORITY.

Date 8 MAY 45 (Sgd) J.M. Chapple Commanding 2 CDN BASE RET DT

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the finding but commute the sentence so that it shall read "To be imprisoned for two years without hard labor" and I confirm the sentence as so commuted.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~
(I. AA 57A. Delete if not used.)

Date 7 JUNE 45 (Sgd) H D G Crerar
(H D G Crerar) General
Commanding GOC in C First Cdn Army
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date. Signature of Offr.

F58068 PTE EDWARD LAUGHTON SMITH 19 JUNE 45 Comdg, 1 Cdn E... plan... Detn...

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

I certify that there are no irregularities or irregularities to justify withholding confirmation of these proceedings.
DJAG Can Sec CMJ Pub 2 Appendix F 4 Addendum 2 Letter

Plea	Finding
Not Guilty	Guilty except that death occurred at approx 0800 hrs 24 Dec 44 from injuries received on 23 Dec 44.

Cetified true extract from entry in AB 160 Vol 31, p.107

W.H. Waugh

(W.H. Waugh) Major
DJA Rev
Cdn Sec 1 Ech
HQ 21 Army Gp

29 June 45

5M-73

FIELD GENERAL COURT-MARTIAL

CPA86 (In lieu of AFA8) 40/P & S/1608 (40/10)

4/38B

Convened by Order of Brigadier G S N Gostling, ED Comd 2 CBRG dated 12 Apr 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F-58068	Pte		Edward Laughton	SMITH	ASSH of C 11 CBR Bn

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) BELGIUM on (*date(s)*) (13 Apr 45 (14 Apr 45 (16 Apr 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 31107-

A1. The President, Members, ~~waiting Member~~ "DM" JA, if any, ~~and Offrs under instr if any~~ "DM" assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet "DM" attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) "DM" amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) "DM" brought before the Court. At 1100 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) "DM" fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused has had no (a reasonable) time to prepare his defence, and that accused (is) (is not) wishes (not) to be tried by court-martial instead of being dealt with summarily by the CO.~~ "DM"

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to Mr Gustaaf WANDELS as interpreter? Ans No

The Interpreter is sworn.(1) Do you object to H-19428 S/Sgt EDEK V J as shorthand writer? Ans No

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(8). If objection, see procedure AA 51, RP 23, 71, 76, MML p 742.)

A7. The President, Members, JA, if any, ~~and Offrs under instr, if any~~ "DM" are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	D MacKENZIE	Essex Scot E-9 List 3 Cdn MSTD
Member	Capt	FA BAILLARGEON	1 Cdn Disciplinary Centre
Member	Capt	E B VAN DINE	1 Cdn Disciplinary Centre
Judge-Advocate	Lt	A M ROCLESTONE	HQ 2 CBRG
Prosecutor	Major	R F WILLSON	1 Cdn Disciplinary Centre
Defending Offr	Major	P S OSLER	Att HQ 2 CBRG

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused F-58068 Pte SMITH E L "DM" before arraignment make(s) (no) "DM" plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 27), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is "DM" arraigned (separately) on all charges in the charge sheet.(1) The accused does "DM" not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court "DM" considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

- (*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)
- (*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*ii*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans _____ (5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E.
5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on _____ charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on _____ charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex _____, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*ii*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by comparing with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

MEDICAL OFFICERS CERTIFICATE

(KR(Com) Para 557)
(CMHQ GL 173)

I certify that I have this day examined F-58068 Pte.
(Rank) Edward Lauton SMITH (Name) (No.)
and in my opinion he is

fit to undergo trial by Court-Martial.

Station In the Field

Date. 13 Apr 45

"F J MILNER" Major (Rank)
Medical Officer, RCAMC
(Unit) HQ 2 CBRD

MEDICAL OFFICERS CERTIFICATE

(KR(Com) Para 597)
(CMHQ OL 173)

I certify that I have this day examined F-58068 (No.)

Pte (Rank) Smith, E.L. (Name) and in my opinion he is

fit to undergo trial by Court-Martial.

Station Field

Date. 14 Apr 45

"F BERNSTEIN" Major (Sgd)
Medical Officer
(unit) 2 CBRD

MEDICAL OFFICERS CERTIFICATE

(KR(Com) Para 527)
(CWR2 Cl. 173)

I certify that I have this day examined F-58068 (No.)

Pte (Rank) Smith, E.L. (Name) and in my opinion he is

fit ~~unfit~~ to undergo trial by Court-Martial.

Station Field

Date. 16 Apr 45

"F J MILNER" Major (Dpt)
Medical Officer, RCAMC
(Unit) DADMS 2 Cdn Base Rft Gp

"DM"

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(8).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F-58068	Pte		Edward Laughton	SMITH	A&SH of C 11 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 12 Apr 45 endorsed by me, (~~or by an offr of my staff for me~~), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

"G S N G"

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	D MacKENZIE		Essex Scot X-9 List 3 Cdn ReTD

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	F A BAILLERGEON		Gen List att 1 Cdn Disciplinary Centre
Capt	E B VAN DINE		RCASC att 1 Cdn Disciplinary Centre

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
Lt	A M ECCLESTONE		att ADJA 2 Cdn Base Rft Gp

On Active Service in the Fd

in BELGIUM (*Country.*)

"G S N GOSTLING" (*Signed personally. RP 105 fn 2.*)
(G S N Gostling)
Commanding 2 Cdn Base Rft Gp
Convening Officer.

Brigadier (*Rank.*)

Dat 12 Apr 45

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (*PAM 5E (In lieu of AFA 3); 50/P&S/1497 (E) (2)*)

(See overleaf for oaths and notes for use on trial.)

On behalf of the JAG Cdn Army Overseas, I approve the appointment of Lt A M ECCLESTONE as Judge-Advocate the said Lt ECCLESTONE having legal qualifications.

"H S GRIFFIN"
(H S Griffin) Capt

"DM"

C H A R G E S H E E T

The accused, F-58068 Pte Edward Laughton SMITH, A&SH of C, on strength of 11 Cdn Base Rft Bn, a soldier of the Canadian Army Overseas, is charged with

FIRST CHARGE
AA Sec 41

WHEN ON ACTIVE SERVICE - COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, MANSLAUGHTER

in that he

in the Field, on 23 Dec 44, unlawfully killed NB-469980 Pte McCREESH J, Duke of Wellington Regt, British Army.

"R G YOUNG"
(R G Young) Lt-Col
Comd 11 CBR Bn

In the Field
12 Apr 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

"G S N GOSTLING"
(G S N Gostling) Brig
Comd
2 Cdn Base Rft Gp

In the Field
12 Apr 45

Approved on behalf of the JAG Cdn Army Overseas

"H H GRIFFIN"
(H H Griffin) Capt
ADJA 2 CBRG

In the Field
12 Apr 45

OPENING ADDRESS BY THE PROSECUTION

The facts are quite straight-forward in this case and I do not believe it is necessary to review them now. Practically all of the facts can be obtained from the first witness for the prosecution, and I believe that will suffice. There is one word to be said regarding witness Capt BOURGET who is the sixth witness in the Summary This witness is not available now and his evidence is pretty will covered for the case of the prosecution by other witnesses. Unless the defence wishes I do not intend to call him nor can I locate him. I believe he is out of the country. Before we commence the trial this afternoon, I would like the defence to indicate whether he wishes me this witness for cross-examination.

REPLY BY THE DEFENCE

No, I do not need the witness for the purposes of cross-examination.

Question by The DO to the PO

I believe there is one witness, Cfn ROBINSON, still not available.

Answer to the DO by the PO

All the witnesses for the prosecution are here now.

Court is reassembled at 1415 hrs.

FIRST WITNESS - for the prosecution - duly sworn
D-109504 Pte KING A J

Q.1 Do you recognize the accused Person Pte SMITH here today?

A.1 Yes sir.

Q.2 Do you remember seeing him on a night in Dec when an incident occurred involving him.

A.2 Yes.

Q.3 What night was that?

A.3 Night of 23 Dec 44.

Q.4 Will you tell the court what you know about that and when you first entered the picture?

A.4 That night about 2200 hrs we went outside a cafe were we met two girls.

Q.5 Had you known SMITH before this time?

A.5 I had met him two days previous.

Q.6 How did you come to meet him on this night?

A.6 We were together in a party at the Beaver Club?

Q.7 Where had you met him at the Beaver Club that time?

A.7 I met him on 22 Dec 44 through "stuff" BARNES in the Beaver Club.

Q.8 When did you first see him on 23 Dec?

A.8 About noon.

Q.9 What did you do at noon hour when you met SMITH?

A.9 I was asked by "Stuff" and SMITH to have lunch with them.

Q.10 At the Beaver Club?

A.10 Yes.

Q.11 What did you do during noon hour?

A.11 We had dinner at the Beaver Club, after we went back to have a shave at a barber's shop.

Q.12 When did you see him next?

A.12 In the evening about 5:30, I am not quite sure of the time.

Q.13 What did you do then?

A.13 I was playing at the Beaver Club with the band, just having a jam session with the boys of the band. I was asked to join a party at the Beaver Club so I joined them and was drinking with them.

P

Q.14 When did you next see SMITH?

A.14 I was with him at the table in the Beaver Club.

Q.15 What happened from the time you met him at the table to the time the incident occurred outside?

A.15 We were drinking and there were two or three bottles on the table and I had not seen any of the other fellows before. They also bought some bottles and after we drank we were there for some time then someone suggested going out to eat or something I am not quite sure what for.

Q.16 About what time was this?

A.16 About 2130 or 2200 hrs.

Q.17 Did you go out to eat?

A.17 I went out but didn't eat, there was four or five of us together.

Q.18 Who all went out at that time?

A.18 Two other Canadian soldiers, SMITH and ROBINSON.

Q.19 What is this ROBINSON known as to you?

A.19 "Lucky".

Q.20 What happened when you started to leave the cafe?

A.20 SMITH met a girl at the door but I do not know her.

Q.21 Was she in the Cafe?

A.21 No.

Q.22 Where had he met her?

A.22 At the door outside.

Q.23 I have a sketch of the area around the Beaver Club which you have spoken of and known as exhibit "A" to the Court (Sketch submitted to the Court, Marked exhibit "A" and to proved and identified by CSM GIBBS) Is the building marked Beaver Club roughly in its proper position?

A.23 Yes it is.

Q.24 I show you the Tavern Windsor. Do you see where it is marked "Passage"?

A.24 Yes.

Q.25 You say you left the Beaver Club. Will you tell the court what happened when you came out of the Beaver Club?

A.25 There were two girls at the door, one of them asked for SMITH. He was talking to one of these girls and they walked WEST up KLEINSTATIA STRAAT.

Q.26 That was Pte SMITH and only one of the girls?

A.26 Only one of the girls.

Q.27 Did you follow them along KLEINSTATIA Straat towards the Passage?

A.27 Yes.

Q.28 What did you see or hear?

A.28 As I was walking to the Passage SMITH and his girl seemed to have been arguing.

Q.29 How do you know?

A.29 He was speaking in a very high voice but I couldn't understand the words they were using

Q.30 Was there anyone else accompanying SMITH other than the girl at the time?

A.30 I did not see anyone.

Q.31 Then what happened when SMITH and the girl left you?

A.31 We were walking slowly up the passageway, SMITH and the girl ahead of us. I heard an argument, I do not know what it was.

Q.32 Then what happened?

A.32 I heard a noise up ahead of me.

Q.33 What kind of a noise?

A.33 Just like someone scraping his foot along the pavement.

Q.34 Then what happened?

A.34 About two or three minutes later I walked up to the point where I saw a man lying on the ground.

Q.35 How far away from SMITH and the girl were you, say, could it be any greater distance than the width of this room?

Prosecutor and Defending Officer agree to the distance as approximately 30 ft.

A.35 Approximately sire, I cannot be sure owing to the darkness.

Q.36 Immediately after you heard the scuffling did you proceed there?

A.36 Not immediately.

Q.37 What did you do?

A.37 After I went up to see what was going on. I thought SMITH was having a fight with his girl.

Q.38 What did you do?

A.38 After two or three minutes I went up.

Q.39 What did you see?

A.39 A soldier lying on the ground.

Q.40 Did you know what soldier he was?

A.40 No sir.

Q.41 Was SMITH there at this time?

A.41 Yes.

Q.42 How close were you?

A.42 We were at the point where the man was lying on the ground.

Q.43 When do you mean by we?

A.43 The girl, SMITH, ROBINSON, an officer and myself.

Q.44 Do you know who the officer was?

A.44 No sir.

Q.45 Would you know him again?

A.45 No sir, I had never seen him before.

Q.46 What was said at this time?

A.46 I believe SMITH said "who hit my chum".

Q.47 And what else was said?

A.47 The officer said "we'll take this man into the cafe and get an ambulance.

Q.48 Was that done?

A.48 The man was taken into the cafe, there were three or four of us carried him.

Q.49 Did you notice anything about the condition of the soldier lying on the road?

A.49 No sir I thought he was drunk or had been hit by a fist in a fight.

Q.50 Did you see SMITH after that?

A.50 I saw him in the Beaver Club.

Q.51 When?

A.51 About 30 minutes after the accident.

Q.52 Did you see anyone else around the scene of this incident other than the girl, the officer, SMITH and ROBINSON?

A.52 No sir I do not know about the other two fellows.

Q.53 Was there anyone else there then?

A.53 As far as I can remember that is all.

Q.54 Did you heard the sound of any shots that night?

A.54 I do remember hearing some shots.

Q.55 Know where they came from?

A.55 No sir but I know there was some as there was quite a lot of it going on at that time in Ghent.

Q.56 In what direction?

A.56 Not in direction that the accident happened.

Q.57 Could you tell us anything about the temperament of the accused that night at the time this occured.

A.57 I do not know much about him and paid very little attention to him.

Q.58 What would you say about him this night, leaving with his girl friend and proceeding up this passage?

A.58 They seemed to be arguing, that is all, but I cannot tell was they were saying.

Q.59 Do you know the name of the girl that was with SMITH?

A.59 I know her name now but did not know it that night.

Q.60 Would you be able to identify the girl again?

A.60 No sir, I had never seen her before.

Q.61 What do you say about the conditions as to drink of the personnel on this party and SMITH in particular?

A.61 We were all drinking quite a bit this night but no-one seemed to be drunk.

Cross-Examination by the Defending Officer

Q.62 How dark was it when you went out into the archway.

A.62 Very dark.

Q.63 Approximately how far could you make out a person and what he was doing?

A.63 You had to be very close.

Q.64 Can you give a figure in feet or yards?

A.64 About 12 feet.

(Defending Officer and Prosecutor agree on the distance).

Q.65 Did you actually see any fight in the alley way?

A.65 No sir.

Q.66 In the entrance to the Beaver Club was the door or doors usually kept open or shut?

A.66 Shut.

Q.67 You have to open the door?

A.67 Yes.

Q.68 Is there a doorman there?

A.68 Yes.

Q.69 Was he on duty when you came out?

A.69 I do not remember sir.

Q.70 You said you heard some gun shots?

A.70 Yes.

Q.71 When did you hear them in relation to the argument and scuffling.

A.71 Just about the time I heard the scuffling I heard some shots.

Q.72 What kind of a district is it down there - good residential area, factory area, slums area or what?

A.72 I would say slums area sir.

Q.73 Do they have many fights down there do you know?

A.73 At that time I did not know but I do know now there have been quite a few fights. I did not know the place at that time.

Questioned by the President

Q.74 Did I understand you to say you were playing with the band?

A.74 I was only sitting in with them not an actual member of the band.

Q.75 Is the Beaver Club run by the army or a private club?

A.75 It is not run by the army.

Witness Withdraws.

In the opinion of the Court and Judge Advocate it is not necessary to comply with RR 83(b) and complied with.

SECOND WITNESS - for the Prosecution - duly sworn
D-77695 Sfn ROBINSON W M - 12 Bn 2 CBRG

Q. 76 What unit are you with?

A.76 RCEME.

Q.77 Do you know the accused here today?

A.77 Yes sir.

Q.78 How long have you known him?

A.78 A year in Montreal before I came overseas.

Q.79 Have you ever seen him here in Ghent?

A.79 Yes sir.

Q.80 Did you see him in the month of Dec when he was involved in some incident here?

A.80 Yes.

Q.81 Do you know what day that was?

A.81 New year's Eve sir. Sorry sir, Christmas Even.

Q.82 Were you with Pte KING on that night as well?

A.82 Yes.

Q.83 And were you with Staff BARNES on that night as well?

A.83 He had left before the incident happened.

Q.84 Where were you on the night this incident occurred?

A.84 At the Beaver Club sir.

Q.85 Who were you with?

A.85 My girl friend.

Q.86 What time did you see SMITH there that night?

A.86 About 2000 hrs.

Q.87 Who was he with?

A.87 With a couple of his friends, I do not know who they are.

Q.88 What did they do when they went in there?

A.88 They sat at a table by themselves and had a few drinks.

Q.89 Then what happened?

A.89 The doorman came in and spoke to the waiter who in turn went over and said something to SMITH motioning towards the door at the same time. SMITH came over to where I was and I asked him where he was going to which he said someone wanted to see him outside so we went along with SMITH.

Q.90 You and who else?

A.90 Pte KING.

Q.91 Did your girl friend go with you?

A.91 No sir.

Q.92 The three of you left the Beaver Club after SMITH got this message?

A.92 Yes.

Q.93 What happened then?

A.93 The girl who was with his girl friend told SMITH that his girl friend wanted to see him up at the corner.

Q.94 Then what happened?

A.94 SMITH told us to wait there and left to speak with his girl friend.

Q.95 You say that he left to go up to the corner. I show you Exhibit "A", There is Brabantadan Street, No 2 Tram lines, No 1 Tram, there is the Beaver Club, now, did SMITH leave in the direction of the passage or the other way?

A.95 He left us here with the girl (indicating the street in front of the Beaver Club) and went away from the passage.

Q.96 That would be in an Easterly direction?

A.96 Yes sir.

Q.97 Then what did you see from then on?

A.97 I did not over-hear what they were talking about but after a while SMITH ~~xxxx~~ got angry and pushed the girl away from him and I went up and got hold of her while he got away.

Q.98 You went along the short street and held SMITH's girl friend?

A.98 He walked away and asked to keep her away from him.

Q.99 Why did he say that?

A.99 I do not know.

Q.100 What did you do?

A.100 I hung on to her then after he got away she broke away from me and ran after SMITH who was almost at the cafe next door to the Beaver Club.

Q.101 What happend at that time?

A.101 She went after him.

Q.102 What way was he going?

A.102 In the direction of the passage.

Q.103 Did SMITH's girl friend catch up with him there?

A.103 I am not quite sure. KING asked him what was the matter.

Q.104 What did you do?

A.104 I was trying to explain to him but he seemed very angry about something I did not understand.

Q.105 Who was he angry at?

A.105 The girl.

Q.106 What did you do?

A.106 I took hold of her again.

Q.107 How did you go up there, walk or run?

A.107 I had had a little too much to drink to run sir.

Q.108 Where you ahead of the other group?

A.108 Ahead with KING.

Q.109 Were you the first one to arrive where SMITH was?

A.109 Yes.

Q.110 When you arrived there what happened?

A.110 I caught up to them at the end of the archway at the end of the passage. (Witness indicates the archway coming from KLEINSTATIA STRAAT towards the passage).

Q.111 You caught up to him roughly at that corner?

A.111 Roughly sir yes.

Q.112 Then what happened?

A.112 I got to the top of the stairs and the girl came down on top of me knocking me down - I don't know what happened.

Q.113 Did you get up?

A.113 Yes.

Q.114 What did you do?

A.114 Went to get my friend SMITH. I couldn't see where he was as it was very dark in the passage.

Q.115 In what direction did you go?

A.115 In the arch-way.

Q.116 Where did SMITH's girl friend go at this time?

A.116 I do not know.

Q.117 What did you do?

A.117 I went over to SMITH and he was explaining that there was trouble there and after two fellows walked passed him, I don't remember.

Q.118 SMITH told you to get 2 fellows. Did you see anybody pass you.

A.118 I did not see them.

Q.119 What happened - what did you see or hear?

A.119 I heard something like someone had got hit.

Q.120 What time did this occur in relation to the events you have just told us about?

A.120 Just after I got up sir.

Q.121 That was just after SMITH set you at the corner of the passage then?

A.121 Yes sir.

Q.122 You told us SMITH told you to catch two fellows - did you see any other two fellows around at all?

A.122 Not after I was on my feet. I do not remember where Pte KING was.

Q.123 When you reached the position were SMITH was what did you see there?

A.123 I saw a fellow laid out on the ground.

Q.124 Was there anyone else around there then?

A.124 Yes an officer.

Q.125 Anyone else?

A.125 KING came up after I saw the officer and the officer said to help get the fellow in the cafe.

Q.126 Was SMITH around then?

A.126 Yes sir.

Q.127 Did you see any other soldiers around there other than the soldiers you have mentioned and the fellow on the pavement?

A.127 No sir.

Q.128 Were you the first at the scene of the incident?

A.128 Yes, after SMITH.

Q.129 Do you see the "X" marked on this sketch? Is that roughly the position were SMITH was standing and the soldier lying on the pavement?

A.129 Yes sir.

Q.130 Will you put an "X" where you saw the body?

A.130 Witness does so - marked on exhibit "A".

Q.131 Where was SMITH standing in relation to the body? How far away?

A.131 About 12 feet.

Q.132 Why did you run after SMITH and his girl friend when you saw this going on?

A.132 It was afterwards SMITH was angry I do not know what from. I went up to more or less get him away from the girl friend.

Q.133 What makes you say that?

A.133 I am a friend of SMITH's and I know him.

Q.134 What do you mean by that?

A.134 He is usually quiet unless someone bothers him. He was tired of the girl and he told her to leave him alone.

Q.135 Where did he tell her?

A.135 Several times she has gone to the Beaver Club door and sent the doorman in for SMITH. One or two times he told her himself not to bother him and when she continued to come he told her not to bother him.

Q.136 What happened after you got to where the body was on the street - what did SMITH do next?

A.136 SMITH started walking in the direction he said the two fellows had gone.

Q.137 What direction was that?

A.137 SOUTH.

Q.138 Where did he go?

A.138 About 3 yards this side of the passage, didn't see anyone so he came back.

Q.139 Did he say anything to you?

A.139 He said to the officer that someone hit his chum.

Q.140 Did you know whether he had seen this soldier before?

A.140 I do not know.

Q.141 Had you seen him before?

A.141 No sir.

Q.142 Do you know whether SMITH was carrying a weapon that night?

A.142 Yes.

Q.143 What makes you say that?

A.143 He was carrying it in his belt.

Q.144 Did you see him fire the weapon?

A.144 This night he fired in the air. It is the only time I saw him put his hand on it.

Q.145 When did he fire it in the air?

A.145 This night.

Q.146 What time?

A.146 After we put the fellow in the cafe.

Q.147 You said an officer was there on the scene at the time - what did this officer do?

A.147 He was instructing us what to do with the fellow on the ground and carry him in the cafe.

Q.148 Did he assist in that?

A.148 Yes sir. After we had him in the cafe he was mentioning about getting an ambulance.

Q.149 Do you know whether or not this officer is the same officer who may have given the injured man morphine that night?

A.149 Not during the time that I was there and he told us to get an ambulance.

Q.150 How long did SMITH, KING and you stay there?

A.150 We left almost immediately after.

Q.151 When did you next see SMITH?

A.151 After we left the cafe and he was calling someone by the name of MIKE.

Q.152 Who was it?

A.152 A sgt in a jeep who also had a few drinks and SMITH told him he was in no condition to drive a jeep.

Q.153 Had he been on the party with you that night?

A.153 No sir.

Q.154 Did you see SMITH later on at the Beaver Club that night?

A.154 The next time I saw him was at the Pro Corps .

Q.155 Will you think over when you next saw SMITH after you got back to the Beaver Club that night?

A.155 At that time the club is closed. I saw him one after that upstairs.

Q.156 Was this at the Beaver Club after this occoured?

A.156 Yes.

Q.157 What where you doing in the Beaver Club at that time?

A.157 I was staying with the girl friend.

Q.158 You saw SMITH upstairs?

A.158 Yes.

Q.159 What did SMITH say to you at that time?

A.159 He said he gave the fellow a beauty which is an expression for fighting.

Q.160 Did you have any opportunity to observe SMITH at the time?

A.160 No sir except to notice that his knuckles were skinned.

Q.161 Which knuckles?

A.162 I do not remember which hand it was.

Q.163 When did you next see SMITH that night?

A.163 When the police had him sir.

Q.164 Are you still a good friend of SMITH's?

A.164 Yes sir, I always have been.

Q.165 If you have told us that you were the first one at the scene of this affair after you heard what sounded like a blow being struck did you see anyone else at the scene other than those mentioned?

A.165 No sir.

Cross-examined by the Defence

Q.166 Was it dark that night?

A.166 Yes sir

Q.167 Dark in the archway?

A.167 Yes.

Q.168 How far away could you make out a person?

A.168 About three or four feet.

Q.169 You said that after you left the cafe were you took the man who was hit you say you did not see SMITH that night until at the police HQ and then after you say you saw him at the Beave Club. Where at the Beave Club?

A.169 Upstairs on the top floor?

Q.170 In which room?

A.170 Room 5.

Q.171 Would you describe the whole circumstances of this?

A.171 Mrs FRANKLIN called me up for a cup of tea and something to eat, so we went up.

Q.172 By "we" you mean the girl friend and you?

A.172 No, I went up myself.

Q.173 Then what?

A.173 We had a cup of tea.

Q.174 Who's we?

A.174 SMITH and myself. SMITH was already up there.

Q.175 Anybody else present?

A.175 Mrs FRANKLIN, her husband and son, that was all.

Q.176 Were they there during the time you had the conversation with SMITH?

A.176 They were not close enough to understand what we were speaking about.

Q.177 They were in the same room?

A.177 Yes.

Q.178 Is the room so big that you could be in one part and they in another and say something which they could not understand?

A.178 No sir, it is a very small room?

Q.179 Were there any other soldiers in this room were you had this tea or coffee?

A.179 Pte KING.

Q.180 No others?

A.180 I do not remember.

Q.181 When you left the Beaver Club you say that you went and held a girl. How did you hold her?

A.181 I grabbed her by the arm and held her to keep her away from SMITH.

Q.182 Why did he do this?

A.182 He was angry and wanted to get away from her.

Q.183 This shot that you say was fired, you say it was fired after the man was carried into the cafe. How close where you when the shot was fired?

A.183 Right beside him.

Q.184 Within two or three feet?

A.184 Less than that.

Q.185 Did you actually see SMITH fire that shot?

A.185 I was not watching but I am pretty sure it was him. KING also fired in the air as well. There were two shots. I saw KING fire but did not see SMITH. KING fired the second shot.

Q.186 What makes you think KING did not fire the first shot?

A.186 He was right in front of me and I was facing him.

Q.187 The second shot came from in front of you and you saw KING fire. Which side did it come from?

A.187 The right hand side.

Q.188 How close?

A.188 About three feet.

Q.189 And yet you actually didn't see who fired it?

A.189 No sir.

Q.190 You say it came from the right side?

A.190 SMITH was on the right side.

Q.191 I put it to you that at night if a shot is fired on the flank there is a flash. From that flash you would be able to tell how close it was and it would outline a person for a minute, particularly the person who fired it.

A.191 It came from his direction and there was noone else at the corner except SMITH.

Q.192 You saw him, at which corner do you mean?

A.192 This corner here (indicating the end of the archway).

Q.193 How do you know there was no body else there?

A.193 We were almost occupying the whole area.

Q.194 And yet you could not see anyone?

A.194 There is a white flag there and we were outlined against it.

Q.195 Was SMITH walking up your side or standing up your side when he fired the shot?

A.195 He was standing there. We were all jumping around at the time.

Q.196 In the passage when you first arrived there just after you heard the argument SMITH has spoken to you and just as he was speaking to you did you see his girl friend?

A.196 I do not remember seeing her.

Q.197 After she fell over you, you spoke to SMITH?

A.197 Yes sir.

Re-Examined by the Prosecutor

Q.197 This question of how close you were to SMITH when this incident was going on, my friend has brought it up again. You have said that if you were more than 3 feet from someone you couldn't see what was going on. Do you mean you couldn't distinguish the person or that you couldn't see what was doing?

A.198 Yes, I saw the dark form .

Q.199 As you were going up to the area were this affair occured did you hear SMITH speaking to anyone?

A.199 Before I got to SMITH he was telling his girl friend something and that is the only person I know he was speaking to at that time.

Q.200 I want you to think that over again. After you got up there having been bumped down SMITH's girl friend and before you got to SMITH did you hear SMITH say anything to anyone?

A.200 Not that I know of sir I wouldn't hear it.

Q.201 You have told us that one time after SMITH's girl friend bumped into you you heard what sounded like a blow.

A.201 I got right up and SMITH said something about them "looking for trouble".

Q.202 Can you remember what the exact words were - can you give us the effect of these words?

A.202 He said "the guy was looking for trouble".

Q.203 Did he say anything else to you?

A.203 He said to catch the other two fellows.

Questioned by the Judge Advocate

Q.204 Did you help carry the man lying on the ground into the cafe?

A.204 Yes sir.

Q.205 Was it light in the cafe?

A.205 Yes they had the lights on.

Q.206 Did you get a good look at the man?

A.206 No I didn't as his face was turned away from me.

Q.207 What type of clothes was he wearing?

A.207 English type battle dress with a great coat.

Q.208 Any hat?

A.208 No hat.

Q.209 Any flashes on his shoulder?

A.209 He had flashes with a red background but I did not see what was incribed on them.

Q.210 How big was the man?

A.210 About my height - 5 ft 5 in.

Q.211 How much did he weight?

A.211 I do not know.

Questioned by the President

Q.212 Did you hear the sound of the blow before the girl bumped into you or after?

A.212 After.

Questioned by the Court

Q.213 What did SMITH say to you when he came over to your table?

A.213 He said someone wished to see him outside and to go with him as we went outside.

Q.214 Didn't you think that was rather strange?

A.214 No sir any time SMITH asked me to go with him I went especially if he had been drinking.

Q.215 Why?

A.215 He is a friend of mine and I try to keep him out of trouble.

Q.216 Any reason to believe he was going to get into trouble?

A.216 Not at that time.

Questioned by the President

Q.217 How long after hearing the sound of the blow to the time you saw the body lying on the ground?

A.217 About a minute and half.

Short discussion ensues with regard to timing. Time is clocked and witness states that it does seem to be an awful long time.

Q.218 On re-examination you state that SMITH said "get the other two men", or words to that effect. Did you see or hear any signs of these two?

A.218 Between the drink and fall I had I do not think I would have noticed them.

Questioned by the Court

Q.219 You answered to a question put by the president that time you heard the blow and the body lying on the pavement to be 1½ mins.

A.219 Yes sir.

Q.220 That is a long time isn't it?

A.220 I did not have a watch and just took a rough guess.

Q.221 Just try to think what you did from the time you heard the blow to the time you say the body.

A.221 I suppose it would be less than half the time.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with RP 83(b).

Witness withdrawn.

Court is adjourned at 1535 hours.

Court is re-assembled at 1550 hrs.

THIRD WITNESS - for the prosecution - duly sworn
C-42000 CSM GIBBS L A
1 SIS - First Cdn Army

Q.222 Are you CSM GIBBS of the SIS, Ghent?

A.222 Yes.

Q.223 Do you recognise the accused?

A.223 Yes.

Q.224 Did you have occasion to attend on him regarding a certain incident which involved him?

A.224 Yes.

Q.225 Will you tell the court what took place.

A.225 I first saw the accused on the 26 Dec 44 on an identification parade at HQ 9 CBR Bn. He was in the parade with six other men and the parade was viewed by two civilians separately. One of them is Cecilia BARS and the other was Anna JANSEN, who was at that time from ANTWERP. The accused was identified by Anna JANSEN. I next saw the accused on 27 Dec 44 in the guard room of 9 CBR Bn. I interviewed him alone in a room there. I informed him that I was from the SIS and that I was investigating the death of Pte McCREEDY of the Duke of Wellington Regt. I then cautioned him that he need not say anything unless he wished to do so but anything he did say would be taken down in writing and could be used as evidence. I explained this caution to him and he stated that he fully understood it. I then informed him that I had reason to believe that he had assaulted Pte McCREEDY on the night of 23 Dec and as a result of the assault McCREEDY had died. I asked him if he wished to make a statement surrounding the circumstances of the assault. He said that he wished to make a statement and I took the statement down in writing.

Q.226 Is this the statement?

A.226 Yes sir.

Q.227

If the defence has no objection I would like this statement to be included in the proceedings.

Defence objects.

Q.227 What do you say about the taking of the statement in regards to it being voluntary.

A.227 Entirely voluntary sir.

Q.228 Was this made in response to questions by you xxx or did the accused tell his story and you took it down?

A.228 He told his story. I informed the man that the soldier had died and he was very much surprised.

Q.229 Is this SMITH's signature under the caution?

A.229 yes.

Q.230 Are these his initials?

A.230 Yes.

Q.231 Are these his initials on the second and third pages?

A.231 Yes.

Q.232 Were there any inducements made to the accused person at this time?

A.232 No sir.

Q.233 Were there any threats or promises made?

A.233 No sir.

Q.234 Was your identity made clearing known to the accused?

A.234 Yes, I am quite sure.

Q.235 What do you say about the man?

A.235 He was about the frankest man I have every interviewed.

Q.236 Was this told of his own free will?

A.236 Yes sir.

Q.237 Did you at any time tell him that it might be better for him if he told the truth?

A.237 I only told him that he was cautioned and he was quite upset when I told him the man had died and I said not to take it too hard.

Cross-examined by the Defence

Q.238 Did you have any other conversation withhim at all other than that which you have told the court?

A.238 I probably asked him a few questions to clear up a point.

Q.239 Before the taking of the thing did you tell him whether or not you had seen the other witnesses?

A.239 I asked him if he knew and understood the purpose of the identification parade?

Q.240 Did you tell him you had seen any other witnesses beside the two girls?

A.240 No sir.

Q.241 When he seemed upset you told him not to take it too much to heart. Did you say anything else at that time?

A.241 Not that I recall sir.

Q.242 Did you say to him it is none of my business but it is better for you to make a statement or words to that effect?

A.242 No sir.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with RP 83(b).

Witness withdraws.

The Defending Officer elects to call the accused to give evidence as to admissibility of statement produced by the Prosecution and mentioned in the evidence of CSM GIBBS.

The accused F-56068 Pte Edward Laughton SMITH, AASH of C, duly sworn is examined by the Defending Officer.

Q.243 Will you state the circumstances surrounding the taking of the statement?

A.244 I was at the 9 CHR Bn guard room and I was called out by the CSM who was a sgt at the time and I was taken into another room and he told me he was from SIB to investigate a case of a soldier who had been killed. He asked me at that time to state all that I had done during the day of 23 Dec and also the evening. I told him as it was near Christmas I was having a little celebration. He told me that he had been and seen Pte BARNES and Lucky ROBINSON and Pte KING and that he had also seen Cecilian BAKES and her sister-in-law. He told me not to worry that it was a casualty and that it would be better if I told everthing I did on that day and evening on my behalf which I did.

Cross-Examination by the Prosecution

Q.245 When he told you on the day of the 23 Dec did he tell you what he had come to see you about that day?

A.245 Yes about a soldier who had been killed.

Q.246 Did he tell you prior it wasn't necessary to make a statement and anything you said would be taken down in writing?

A.246 Yes.

Q.247 Firstly he told you he had seen the other witness and secondly that he told you to tell all you did on the 23 Dec. Was that the sum total of what went on?

A.247 That was all.

Q.248 Did you make this statement on your own free will?

A.248 Yes sir.

Q.249 Did you sign just below that caution?

A.249 Yes and I signed each page.

Q.250 Did you know what you were signing?

A.250 Yes sir, I read it over.

Q.251 Where there any threats made?

A.251 No threats but he was trying to let us know that it would help me by giving evidence.

Q.252 You heard him say that he didn(t day that?

A.252 Yes.

Q.253 Did he caution you before you said that?

A.253 Yes.

Q.254 When did he tell you it would be better for you to tell him everything you did on the 23 Dec?

A.254 After he introduced himself and said he had seen the others and got statements from them. He said it would be better if I made a statement according to the other statments from the other witness so I stated everything I had done. Impression I got was that if I didn't say anything then the other statements made referred everything back to me.

Q.255 I suppose he had discussed with you about the identification parade?

A.255 I do not recall it. He didn't mentioned that this was an identification parade.

Q.256 From what CSM GIBBS said you were quite prepared to make this statment?

A.256 I actually didn't know the man was killed or even that any man had been killed. He only said I should make a statement of what I did all day on the 23 Dec.

Q.257 After he made his identity known to you just exactly what happened?

A.257 He sat down and said "I am Sgt GIBBS investigating a case of a man who was killed". He mentioned BARNES and he told me that it would be better towards helping me if I made a statement of what I did on the 23 Dec. He didn't threaten me in any way.

Q.258 That is all that was said?

A.258 All that I can recall.

Q.259 Then what happened?

A.259 I started to tell him all that I could recall. After he had taken it down he asked me to sign in certain places.

Q.260 The reason why you made a statement is because he said to you it would be better towards helping you if you told what happend on 23 Dec.

A.260 Yes.

Q.261 Is that the only reason?

A.261 Yes.

Q.262 That is the only reason why you talked at all?

A.262 Only reason why I made a statement of what I did on the 23 Dec.

Q.263 That statement of his you say was made to you after you had been warned anything you said would be taken down and used against you?

A.263 Yes.

In the opinion of the court and the Judge Advocate it is necessary to comply with RP 83(b).

The accused resumes his seat.

C-42000 CSM GIBBS L A - Third Witness for the Prosecution, is recalled, and having been previously sworn is examined by the Prosecutor:

Q.264 Regarding this statement, it has been given here in evidence that you made this statement to the accused person and here are the exact words. These are words you are supposed to have said to him after you cautioned him but before he made the statement to you. These words are "It would be better towards helping you if you made a statement of everything you did on the 23rd". Did you or did you not make that statement to the accused person?

A.264 No sir.

Q.265 He has also said that you had seen BARNES: KING: ROBINSON: CECILIA RAES and ANNA JANSEN. What do you say about that?

A.265 Without a doubt I told him I had seen the two women. It is possible I told him I had seen the two men as I think I had at that time.

Questioned by the Court

Q.266 In your original evidence you said you gave the caution and explained it to him. What do you mean by that?

A.266 The caution, perhaps, when you read it out of the section may not be understood but I explained to him that he did not have to tell me anything unless he wanted to but any statement he made could be used as evidence.

Q.267 How long have you been in the RCMP?

A.267 Ten years.

Q.268 You have delivered cautions as a Royal Canadian Mounted Policeman?

A.268 Yes.

Q.269 The same one?

A.269 Not the same one.

Questioned by the President

Q.270 Would you give this additional explanation of the warning on your own accord or because it may not seem clear to the accused?

A.270 I made it on my own accord.

~~In the Opinion of the Court and the Judge Advocate it is not necessary to comply with RP 69(f).~~

~~Witness withdraws.~~

Judge Advocate Addresses the Court:

The issue here is as to the admissibility of a statement taken by CSM GIBBS from the accused. It is admitted by the accused that he made the statement. The Court must determine whether that is a voluntary statement or whether the statement was made from the result of some threat, promise or inducement. It is a simply a matter for the court to determine from hearing the facts as to whether the accused gave evidence as a result of any inducement by CSM GIBBS. For this purpose a confession is deemed not to be free and voluntary if it appears to have been caused by any inducement, threat, or promise proceeding from a magistrate or other person in authority or concerned in the charge (e g the prosecutor or the person having the custody of the accused), and having reference to the charge against the accused person, whether addressed to him directly or brought to his knowledge indirectly; and, if, in the opinion of the court, the inducement, threat, or promise gave the accused person reasonable grounds for supposing that by making a confession he would gain some advantage, or avoid some evil in reference to the proceedings against him. If the court finds that to be so, then the statement should

not be admitted. As I have said, the prosecution must prove that the accused made it voluntary. That is all I have to say.

The Court is closed to consider the admissibility of the statement at 1625 hours.

The Court is re-assembled at 1635 hours.

The President announces that the submission of the defence is dis-allowed and the Court find that the statement is admissible.

- Prosecuting Officer

The court have declared this admissible so may this be admitted in the proceedings as Exhibit "B" (Statement taken by CSM GIBBS).

The statement (marked Exhibit "B") is read over to the Court by CSM GIBBS.

Q.271 You have said that two civilians identified the accused person at an identification parade held in 9 Bn. What day was that?

A.271 It was the 26 Dec. Only one of the witnesses identified him.

Q.272 Do you know which one?

A.272 Anna JANSEN.

Q.273 Did you see the civilians attending at the parade and looking over personnel on that parade?

A.273 Yes sir I was present. They viewed the parade seperately.

Q.274 What type of identification did the person give there who did identify the accused person?

A.274 She stepped up and pointed her finger at him.

Q.275 You saw this done did you?

A.275 Yes sir.

Q.276 Where is the civilian Anna JANSEN who identified the accused person?

A.276 She is now dead sir.

Q.277 You saw this done at the time of the parade?

A.277 Yes sir.

Q.278 Did you see what the civilian Cecilia RABB did on that parade?

A.278 Yes sir.

Q.279 Did she examine the parade in the same manner as Anna JANSEN?

A.279 Not in the same manner, she was very nervous and although she looked around she would make no attempt to identify anybody.

Q.280 I neglected to prove this sketch known to the Court as Exhibit "A". Who made it and why?

A.280 I made it.

Q.281 On whose instructions?

A.281 Yours sir.

Q.282 This is a sketch of three or four streets of the city of [redacted] showing the Tavern KINROSS. Are these correct in directions but not distances?

A.282 Yes.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with RP 83(b).

Witness withdraws.

Prosecutor addresses the Court

I would like permission to recall CSM GIBBS. It is in relation as to what the civilian Anna JANSEN did on this parade. Anna JANSEN also made some statement at that time when she pointed out the accused person and identified him. I believe it is admissible. It is of course a statement made by a deceased person but also in the presence of the accused.

President Replies

I do not consider it necessary.

FOURTH WITNESS - for the Prosecution - duly sworn
Major J E NICHOL
2 Cdn Gen Hosp, RCAMC.

Q.283 Are you the OIC No 3 Service Surgery at 2 Cdn General Hospital?

A.283 Yes.

Q.284 Do you remember seeing an English soldier by the name of McGREGOR at the hospital late in the month of December?

A.284 I do.

Q.285 Did you examine him as to what his injuries were?

A.285 I did.

Q.286 What did you find on examination?

A.286 He was deeply unconscious with a contusion of the occupital region. He was also bleeding from both ears and was certain to die and no operating procedure was indicated.

Q.287 Did you see his body after xxx he had passed away?

A.287 I did not.

Q.288 When you say no operating procedure was indicated what do you mean by that?

A.288 That the man would die in a matter of fors and nothing could be done for him. In other words he was brought in in a dying condition.

Q.289 What do you know of his identity?

A.289 I had his chart with the name written on it and from the hospital records. I did notice that the flashes on his shoulders were Duke of Wellington Regt.

Questioned by the Defence

Q290 When you saw him was he in bed?

A.290 On a stretcher and was brought directly to the operating room fully dressed.

Questioned by the Court

Q.291 Would you say what caused this injury to his head?

A.291 One of two things, by a blow from a blunt instrument or from a heavy fall.

Q.292 What do you mean by a heavy fall?

A.292 He had a severe fracture of the skull and a light blow would not cause that damage.

Q.293 Did you notice any other abrasions?

A.293 Not at that time.

Q.294 Any other bruises?

A.294 Not that would have any consequence.

Q.295 Where were these bruises?

A.295 Around the head.

Q.296 Is it fair to say that by a heavy fall that the man was unconscious when he fell or driven down or falling some distance?

A.296 The nature must have been a heavy blow or falling to the ground.

Questioned by the Judge Advocate

Q.297 That is striking him on the head?

A.297 That is right.

Q.298 Say he was struck on the chin or mouth with sufficient force to drive him down. Would that show some mark?

A.298 I would expect to see some marks around the mouth.

Questioned by the Court

Q.299 Did you see any such marks?

A.299 I did not see such marks.

Q.300 Would you indicate to me were the injury was?

A.300 Just at the back of the head almost in the centre.

Q.301 If a sufficient blow on the end of the chin or mouth so that he became unconscious before he fell couldn't that fall do this damage?

A.301 I am afraid I cannot answer that questions.

Q.302 Is it possible to knock a man unconscious while he is still standing up and then if that man were knocked so unconscious such injuries may be caused when he fell backwards?

A.302 It depends on what sort of a surface he fell on.

Q.303 Supposing it were a cobble stone road curb?

A.303 That is a possibility.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with RP 83(b).

Witness withdrews.

[redacted] - for the prosecution - duly sworn
[redacted] S/Sgt SMITH JT
2 Cdn Gen Hospital, RCAMC.

Q.304 Were you the wardmaster on duty at 2 Cdn Gen Hosp on 23 Dec?

A.304 Yes sir.

Q.305 Do you know about the admission of a patient who had been admitted that night?

A.305 I knew about it the following morning sir.

Q. 306 How did you come to have knowledge of this?

A.306 I came on duty at 0800 hrs in ward 'H' and found a new patient there. The patient was Pte McCREESH, Duke of Wellington Regt.

Q.307 How did you know that?

A.307 From the badges on his battle dress.

Q.308 Did you see his identity discs?

A.308 Yes I took one of the discs off his neck. I remember the number quite well it was 469980. The other tag was left on the body.

Q.309 I believe you took the tag to the padre?

A.309 Yes sir.

Q.310 What did you do then?

A.310 I found a bed for him and found his body still warm. My job was to fix him up for an autopsy.

Q.311 To fix him up for an autopsy and burial?

A.311 Yes sir.

Q.312 Was an autopsy performed?

A.312 Yes.

Q.313 Could you say whether or not at 0800 hrs in the morning that Pte McCREESH was dead or not?

A.313 Yes sir He was dead. It was approximately at 0800 hrs I got the call first thing I came on duty. My orders are to start at 0800 hrs.

Questioned by the Court

Q.314 Did you, as a result of your own examination or knowledge of McCREESH know that he was dead?

A.314 I took my orders from the MO or NS in charge of the ward.

Q.315 You took identity discs off this man for burial?
A.315 Yes.
Q.316 Were did they hold this autopsy?

A.316 At the outpatients department.

Q.317 I suppose you never take any live people there for an autopsy?

A.317 No sir.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with RP 83(b).

Witness withdraws.

Court is adjourned at 1720 hours.

Court re-assembles at 1000 hours 14 Apr 45.

ALIAS WITNESS - for the prosecution - duly sworn
A-10/3180 L/Cpl HANLEY N F
Ghent Det 2 L of C Pro Coy

Q.318 Are you a member of 2 L of C Pro Coy in Ghent?

A.318 Yes.

Q.319 Do you remember the night of 23 Dec?

A.319 Yes.

Q.320 Do you remember throughout the course of the evening a soldier was injuried in an area and you were called to the scene of the incident?

A.320 Yes.

Q.321 Tell the court what went on and what part you took.

A.321 On the 23 Dec at approximately 2245 hrs I was on duty at Detchment HQ and I had occasion to guide an ambulance to the Tavern WINDSOR which is situated in the lane known as the Passage which runs off Lower Brabantendam Struat.

Q.322 I show you a sketch which is known as Exhibit "A". As that the location of the Tavern WINDSOR that you speak of?

A.322 Yes.

Q.323 Will you go on and tell what happened then?

A.323 I stayed at the ambulance and a soldier was brought out on a stretcher and placed in the ambulance. I got in the ambulance and accompanied him to the hospital - 2 Cdn General Hospital were the soldier was identified by his tags as Pte McCREESH of the Duke of Wellington Regt, a soldier of the British Army. I noticed that this man was bleeding from the back of the head through a bandage which was on it. At approximately 2300 hrs I left the man at the hospital and returned to Detachment HQ.

Cross-Examined by the Defending Officer

Q.324 Did you stay by the ambulance while the man was carried out?

A.324 Yes.

Q.325 You did not go into the Tavern?

A.325 No sir.

Q.326 You said the soldier was identified by his tags?

A.326 Yes.

Q.327 Did you look at them or did someone else?

A.327 I looked myself.

Q.328 What happened at the hospital?

A.328 The Medical Officer came down and examined him.

Q.329 That is all that you saw?

A.329 Yes sir.

Q.330 What sort of neighborhood is this Tavern WINDSOR in?

A.330 Just middling.

Q.331 Is it a rough district?

A.331 Yes, it is rought at times the same as other districts.

Q.332 Have many reports of fights there?

A.332 In that district yes.

Q.333 Does that mean that that district is a little worse than others?

A.333 It is no worse than some of theother districts.

Q.334 Is it much the same as the whole town or city of Ghent?

A.334 There are certain parts around the cafes.

Q.335 In this district were the Tavern WINDSOR is there are a lot of cafes?

A.335 Yes.

Q.336 Where you find a lot of cafes there is a lot of trouble?

A.336 Yes.

Q.337 So that in that district you find a lot of trouble?

A.337 Yes.

Q.338 At what point did you look at the identity discs of theman in the ambulance?

A.338 At the hospital sir.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with RP 83(b).

Witness withdraws.

SEVENTH WITNESS - for the prosecution - duly sworn
Bertilla (Cecilia) RAES,
Nieuwstraat 3,
Mariakerke, GHENT

Q.339 Do you know the accused soldier over here on your left, sorry right?

A.339 Yes.

Q.340 What is his name?

A.340 Johnny SMITH.

Q.341 Have you ever seen him on occasions before?

A.341 Yes.

Q.342 Have you been out with him on occasions?

A.342 Yes.

Q.343 Do you remember a night in the month of December when you were in the area of the Beaver Club and the accused person was there?

A.343 Yes.

Q.344 What night was that?

A.344 A saturday night.

Q.345 What happened on the night that you speak of?

A.345 I asked to see Johnny and he came out and two black fellows called LUCKY and STUFF came with him. They came out together. I went to Johnny and he got mad at me?

Q.346 Do you know why?

A.346 Maybe because I came too early.

Q.347 Then what happened?

A.347 I came to Johnny and talked to him and he pushed me away.

Q.348 Why did he put you away?

A.348 Like that (indicating a pushing motion with her hands)

Q.349 Then what happened after Johnny pushed you away?

A.349 The black boy came to Johnny and took me away from him.

Q.350 Which black boy?

A.350 LUCKY.

Q.351 And what did he do or how did he take Johnny away from you?

A.351 He talked to Johnny and Johnny came away. After Johnny came in the street Another Canadian came.

Q.352 You were still following Johnny?

A.352 Yes.

Q.353 Was there anyone else with you?

A.353 My sister-in-law.

Q.354 What is her name?

A.354 Anna JANSEN.

Q.355 Then were did you go?

A.355 After Johnny.

Q.356 Which direction did you go in? I show you a sketch known as Exhibit "A". After LUCKY spoke to Johnny and he left you which way did Johnny go?

A.356 The witness indicates WEST in the direction of the passage.

Q.357 You said you and Anna JANSEN followed him?

A.357 Yes.

Q.358 How far behind Johnny were you and Anna JANSEN?

A.358 About two metres.

Q.359 Was Anna JANSEN with you following Johnny at that time?

A.359 Yes.

Q.360 What did you see Johnny do next?

A.360 I say him go in the street and Johnny asked another soldier passing by if he was a Canadian.

Q.361 Who did he ask that?

A.361 A soldier who said "yes".

Q.362 Did he meet another soldier? You have told me that Johnny asked a soldier "are you a Canadian" what did the soldier answer?

A.362 Yes I am Canadian.

Q.363 What did Johnny say?

A.363 He said OK go.

Q.364 Then what did Johnny say?

A.364 After another soldier came and Johnny asked him the same, the soldier replied No I am English.

Q.365 What did Johnny say to the second soldier?

A.365 He asked him if he was Canadian, the soldier said No English.

Q.366 How far away from Johnny were you?

A.366 Close.

Q.367 Could you see the English soldier to whom Johnny was talking?

A.367 Yes.

Q.368 Was Anne JANSEN there with you?

A.368 Yes.

Q.369 Did you see the other coloured boys there at that time?

A.369 Yes, there were all together.

Q.370 What did you see Johnny do or hear him say next?

A.370 He said nothing after that. He hit the Englishman.

Q.371 What did you see him do?

A.371 Witness demonstrates a blow being struck by raising here hand.

Q.372 Did you see what happened after Johnny hit the Englishman?

A.372 He fell on the floor the English soldier.

Q.373 Could you see whether he fell forward or backward?

A.373 I do not know.

Q.374 Was there any other English soldier there at that time?

A.374 I have not seen any.

Q.375 Was there anyone else other than the soldiers that you have told us about and SMITH there?

A.375 No.

Q.376 Do you know where the first soldier that SMITH spoke to went?

A.376 No.

Q.377 Referring to the Exhibit "A" which direction did the Canadian soldier go passed?

A.377 Witness indicates SOUTH through the passage.

Q.378 Could you indicate where on the diagram that you saw this happen?

A.379 Witness indicates WEST on KLEINSTATIA STRAAT and Johnny came from KLEINSTATIA STRAAT.

Q.380 Where did Johnny strike the Englishman?

A.380 I don't remember on which side of the street but here in the street (indicates the same NORTH and SOUTH area but not sure which side of the street).

Q.381 Do you know what happened after the English soldier fell?

A.381 Yes Johnny came away and my sister-in-law and I went away to.

Q.382 Where did you go?

A.382 With Johnny and the two black boys and we stayed together. I stayed with Johnny and my sister-in-law. Johnny fired a gun and I said don't do that. Then I heard a shot. I cannot say whether Johnny or one of the black boys did it.

Q.383 Where did Johnny go after that?

A.383 I don't know because when I heard a shot I went away.

Q.384 And were did you go?

A.384 I go to sleep in a cafe down the street.

Q.385 Do you know what happened to your sister-in-law Anne JANSEN?

A.385 No.

Q.386 Were is Anne JANSEN now by the way?

A.386 She was killed.

Q.387 Do you know what happened to the English soldier that you have said was involved in this affair with SMITH?

A.387 No.

Q.388 You didn't see anyone remove his body or take him away anywhere?

A.388 No.

Q.389 Do you remember going to an identification parade at 9 Bn 2 CMRR?

A.389 Yes

Q.390 Who went there with you?

A.390 My sister-in-law.

Q.391 What did your sister-in-law do at that parade?

A.391 I don't know.

Q.392 Were you also taken on this parade to identify a soldier?

A.392 I do not understand your question.

Q.393 Did you recognise anyone you knew?

A.393 Yes.

Q.394 Who did you recognise on that parade?

A.394 Johnny SMITH.

Q.395 Did you say so at that time?

A.395 No.

Q.396 Why didn't you say?

A.396 Because I was a little afraid?

Q.397 Afraid of whom?

A.397 Johnny.

Cross-examined by the Defence

Q.398 When you were walking along the road towards the passage how many men did you see ~~[illegible]~~ coming towards you?

A.398 Just one other.

Q.399 When you saw SMITH rais his fist how many other people fought also?

A.399 Nobody else.

Q.400 Do you recognise that statement (showing original statement in Flemish)

A.400 Yes.

Q.401 Is that your signature?

A.401 Yes.

Q.402 I draw your attention to this sentence (Interpreter reads original Flemish statement to the witness. Sentence underlined in red pencil). Is that true?

A.402 It is true but I did not say that 2 black boys, just Johnny fight, they stayed together.

Q.403 You now state that the sentence just read to you in Flemish is not true?

A.403 It is like that, we stayed together, my sister-in-law, the two black boys and Johnny. Only Johnny hit the Englishman not the two black boys.

Q.404 Why did you not correct that statement before you signed it?

A.404 It is OK like that.

Q.405 Is that statement true or not true?

A.405 Yes it is true.

Q.406 Is your whole statement as written on that piece of paper true?

A.406 Yes.

Q.407 Is the sentence underlined in red true?

A.407 Johnny stayed with the two coloured together, Only Johnny fight.

Questioned by the President

Q.408 Johnny and two comrades attacked this soldier with their fists?

A.408 Only Johnny fight.

Defence continues his cross-examination

Q.409 You stated earlier that you could not remember on which side of the passage this took place?.

A.409 I remember the street but not which side.

Q.410 During the fight would you describe exactly what you saw SMITH do?

A.410 He indicated a blow and I grabbed hold of his arm and at the same time I heard a shot but whether two black boys stayed with Johnny I don't know.

Q.411 After SMITH raised his fist with the Englishman close to him describe exactly what followed?

A.411 I heard a soldier falling on the ground.

Q.412 You did not see what hit him.

A.412 I saw Johnny strike the English soldier.

Q.413 Where did you see him hit the English soldier?

A.413 On the chin.

Q.414 Where were you standing in relation to SMITH at that time?

A.414 We were all together.

Q.415 Was SMITH in front of you or behind you?

A.415 I don't remember exactly.

Q.416 You do not remember were SMITH was standing in relation to you but can you say whether the man who was hit fell to your left or to your right?

A.416 No.

Q.417 With which hand did SMITH hit the man?

A.417 I don't know.

Re-examination by the Prosecution

Q.418 You were asked where you were standing when SMITH struck the English soldier. How long did this whole affair take from the time you left the Beaver Club up to the spot were the English soldier was struck?

A.418 Maybe ten minutes.

Q.419 Did you leave the Beaver Club and go out to the passage and go right to this spot?

A.419 Before I talk with Johnny then I go.

Q.420 Did you know whether this fellow was English or just from what he said?

A.420 From what he said.

Q.421 Did this soldier strike at Johnny?

A.421 They were fighting together.

Q.422 How long were they fighting before the English soldier fell down?

A.422 A minute.

Q.423 Could you see the fight?

A.423 Yes.

Q.424 Did you see the English soldier strike at Johnny?

A.424 They were fighting together.

Q.425 Did the coloured soldiers join in that fight?

A.425 No they stayed together.

Q.426 Did you see who struck the first blow, the Englishman or Johnny?

A.426 I do not know.

Examined by the President

Q.427 You said that the English soldier said I am English. Did you know the English soldier say anything else to Johnny?

A.427 No.

Q.428 Do you recall bumping into the coloured soldier LUCKY and knocking him to the ground?

A.428 I do not remember.

Q.429 Do you remember bumping to any soldier?

A.429 No.

Questioned by the Court

Q.430 Did this English soldier that Johnny hit molest you in any way?

A.430 No.

Q.431 What is the first thing you saw happen after the Englishman said I am English?

A.431 I saw a fight.

Q.432 Do you remember that you have said you met Johnny outside the Beaver Club when he came out?

A.432 Yes.

Q.433 Do you remember also that you said ROBINSON and BARNES were there?

A.433 Yes.

Q.434 You have also told us that Johnny took a hold of you by the arm?

A.434 He put me away.

Q.435 What did he do?

A.435 A black boy came and said don't do that.

Q.436 What did Johnny do?

A.436 He go and I went after him.

Q.437 Did Johnny just take his hands and push you away that is all?

A.437 Yes.

Q.438 Was ROBINSON there at the time?

A.438 Yes.

Q.439 Did you have anything to do with ROBINSON at all?

A.439 No.

Q.440 Did your body come in contact with him?

A.440 No.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with RP 83(B).

Witness withdraws.

President closes the Court at 1120 hours.

Court is reassembled at 1130 hours.

Court is adjourned at 1135 hours.

Court is re-assembled at 1345 hours.

EIGHTH WITNESS - for the prosecution - duly sworn
Major A J BLANCHARD
2 Cdn Gen Hospital
RCAMC

Q.441 You are the Pathologist for what hospital?

A.441 20 Cdn Gen Hospital.

Q.442 On or about the 26 Dec did you perform an authopsy on a man with severe head injuries?

A.442 I did.

Q.443 What did you find regarding the injuries to Pte McCREESH?

A.443 I found first of all evidence of an injury to the man's head. There was a small laceration to his skull at the back of the head on the right side with swelling and some haemorrage. There were two fractures of the skull - one in the bone at the back of the head and also one at the base of the skull. There was a marked haemorrhage of the skull between the membranes. There was also evidence of what is know as contre-coup softening injury around the front due to violence.

Q.444 Did you notice any markings or disfigurations in the frontal area of his face?

A.444 No I didn't.

Q.445 Are you able to say from your investigation and finding the cause of the injury?

A.445 Some of form of violence applied to the back of the man's head could have been a blow with some weight sort of heavy instrument or due to falling down and striking his head against some hard object, it is impossible to say which.

Cross-examined by the Defending Officer

Q.446 How did you know what the man's name and number were?

A.446 His identity tags were on and each body for autopsy is tagged.

Q.447 Did you read the name and number on the disc?

A.447 Yes I did.

Questioned by the Judge Advocate

Q.448 Could this blow or damage to the back of the head be caused by a man's fist?

A.448 Under the damage in this situation no.

Q.449 As far as his face is concerned you saw nothing?

A.449 No.

Q.450 If a man is struck on the chin with a blow to knock him down would you expect to see any disfiguration?

A.450 Not necessarily, particularly with a blow on the chin.

Q.451 This blow on the back of the skull by a blunt instrument or falling, did you think that could have been a revolver barrel?

A.451 I had no idea of the means, just any sort of object.

Q.452 Was death the natural result of the damage?

A.452 Yes.

Q.453 Was it possible that if speedier action had been taken the man could have been saved?

A.453 Not in my opinion.

Questioned by the Court

Q.454 On the 26 Dec where you employed by or attached to 2 Cdn Gen Hosp?

A.454 I was attached.

In the opinion of the Court and the Judge advocate it is not necessary to comply with RP 83(b)
Witness withdrew.

PROSECUTOR ADDRESSES THE COURT

That is as far as I can go without the witness Capt BOURGET and since it is felt now that I should call him and you have planned to view the scene of this incident I would ask the court to view the scene of the incident and decide to re-assemble when you see fit. I should say, too, that Capt BOURGET has not been heard of yet but I do know a signal went out for him and in the course of events he should be here. If not, I believe we should go on and complete the case in his absence.

PRESIDENT

It is the desire of the Court to view this scene of the death and the Court will proceed there following which it will adjourn until 1000 hours Monday, 16 Apr 45.

JUDGE ADVOCATE ADDRESSES THE ACCUSED

I must advise you that the Court is going to see the scene of the incident as agreed upon between the Prosecutor and Defending Officer. You are not compelled at any time to give any evidence unless you wish to do so. Therefore it is not necessary for you to point out anything or explain anthing to any person.

Court is adjourned at 1515 hours 14 Mar 45.

Court re-assembles at 1000 hours 16 Mar 45.

PRESIDENT

At 1430 hours 14 Apr 45 the Court viewed the area of the incident the area being agrred upon between the Prosecuting and Defending Officers. Notice was taken by the Court of the following facts:

(a) the passage is 13 feet wide and along each side of the Passage way there are a number of small cafes and shops, chiefly the former. The passage is covered by a glass roof.

(b) The distance from the Tavern WINDSOR to the BEAVER CLUB is approximately 40 yds.

(c) KLEINSTATIA STRAAT also contains a number of cafes but is a regular street open to the sky and is approximately 25 feet wide including a narrow side walk on either side.

(d) The distance from the Tavern WINDSOR to the corner of KLEINSTATIA STRAAT and the Passage is approximately 10 yds and the distance from the same corner to the BEAVER CLUB is approximately 30 yds making a total of distance from the Tavern WINDSOR to the BEAVER CLUB 40 yds.

(e) The floor of the passage consists of smooth light-grey tile while KLEINSTATIA STRAAT consists of cobble stones.

(f) Entering the NORTH part of the Passage from KLEINSTATIA STRAAT there are two steps, the passage being higher than the street.

Those present at the viewing of the scene were - all three members of the Court; the Judge Advocate; the Prosecutor; the Defending Officer; the accused and provost escort and the Court Reporter.

NINTH WITNESS - for the prosecution - duly sworn
Capt H BOURGET
R de Mais

Q.455 What unit are you with?

A.455 Ehm I am attached now to the R de Mais.

Q.456 Do you remember a night of 23 Dec when you were in the city of Ghent here?

A.456 I do sir.

Q.457 Do you remember an incident occuring just as you came upon one of the streets?

A.457 I do.

Q.458 Will you tell the Court what you saw and what you know about it?

A.458 Around 2245 hrs on the 23 Dec 44 I was walking down BRABANTANDAM STRAAT and was walking back to camp and passing by along an alley I heard a noise which seemed to me like a gun shot so I stopped and went over to the alley. As I was walking towards a group of men I saw at the back of the alley a girl.

Q.459 Do you know who the girl was?

A.459 I cannot remember although I spoke to her.

Q.460 Is she the same girl here this morning?

A.460 I cannot be sure.

Q.461 Do you recognise the soldier sitting beside the Defending Officer now.

A.461 I cannot say I recognise this fellow now sir.

Q.462 How many people were in the vicinity were you met this girl on the night which you speak of?

A.462 I met this girl about 75 yds from the place were four soldiers were standing up.

Q.463 Could you describe who these four soldiers were or anything particular about them?

A.463 I am sure one was a negro.

Q.464 Are you able to tell who the others were?

A.464 No I cannot, there were three other soldiers.

Q.465 Will you continue telling what happened after you arrived at this spot?

A.465 After I spoke to the girl I took here into a cafe which is on the right of the alley.

Q.466 I show you a sketch know as Exhibit "A". Do you recognise that diagram?

A.466 I certainly do. I was walking down here and heard some shots. (Witness indicates end of Passage and Brabantandam Straat and moving SOUTH along the passage). I met the girl at the entrance to the passage and took here into a cafe on the WEST side of the passage.

Q.467 Then what did you do?

A.468 I moved along the wall and saw four soldiers standing up (Witness indicates "I" on diagram). After walking I saw another man lying on the ground.

Q.468 Then what happened?

A.468 I approached this fellow lying down.

Q.469 What condiction was he in?

A.469 It was very dark and I heard his moaning so with the help of the four soldiers I took his into the cafe (witness indicates cafe on EAST side of the passage in front of the spot marked "I"). I then examined the wounded man, looked at him and gave him morphine and then I went out and I ran SOUTH along the passage to Brabantandam to get the provost and when I got back I found the wounded man there but the other four soldiers had gone. After that I saw man out but did not see anything.

Q.470 Was that the last you saw of the four soldiers?

A.470 That is the last sir.

Q.471 Are you able to help in anyway with the identity of the soldier lying on the ground and the man you took in the cafe?

A.471 He was wearing an English battle dress.

Q.472 Any flashes on it?

A.472 I looked on his tunic for identity discs. They were found later in his pocket. Excuse me a moment sir, I made a mistake in my statement with reference to giving the man morphine (A.469). I gave morphine to this fellow after I was back with the provost and at the same time one stretcher bearer came in this cafe with me. That is where I gave the morphine, not before.

Cross-examined by the Defending Officer

Q.473 Referring again to Exhibit "A", will you take this pencil and mark on it as clearly as you can the position of the man who was on the ground?

A.473 Where he was lying?

Q.474 Where he was in the passage - at the end? along the side? or where?

A.474 Around the "X" already marked on the exhibit.

Questioned by the Judge Advocate

Will you tell us the size of the man you helped move into the cafe?

A.475 In the passage it was pretty dark so I did not see much, but as three of these men helped me take this wounded fellow into the cafe I can remember that one fellow had no beret on and had dark curly hair.

Q.476 You are referring to one of the men who helped you carry him in?

A.476 Yes.

Q.477 What else do you remember about him?

A.477 He was nicely built with square shoulders - I cannot say that I would recognise his face.

Q.478 Was he coloured or white?

A.478 One was coloured I remember that and this fellow was a white fellow. The first one I mentioned was white and I noticed this negro in the cafe.

Q.479 Now the wounded man - can you describe him?

A.479 Not very much but I remember he had a very thin face.

Q.480 How big was he?

A.480 I cannot remember very well, he was rather tall and big.

Q.481 Can you give us his height and size?

A.481 I cannot.

Q.482 What do you mean by tall and big?

A.482 About the same as I.

Questioned by the President

Q.483 Did I understand you to say that when you returned with the provost all the soldiers had left the cafe and only the wounded man was there?

A.483 Yes sir, only two civilians who were in the cafe at the time.

[illegible] In the opinion of the Court and the Judge Advocate it is not necessary to comply with RP 83(b).

Witness withdraws.

SUBMISSION BY DEFENCE

I would like to submit at this time that no Prima Facie case has been made out because the identity of the man whom SMITH is alleged to have hit has not been shown to coincide with the man who subsequently died in the hospital. The evidence so far is very contradictory in important parts. For these two reasons I submit that no Prima Facie case has been established.

REPLY BY THE PROSECUTION TO SUBMISSION MADE BY DEFENCE

I would like to reply on the first point raised by the Defending Officer. Under circumstances such as these it is very difficult to establish definite identity on the moment the incident occurs but I do submit in this case there can be no doubt whatever about the identity of the man who has been killed. The Prosecution has established first of all that a soldier was struck in the area we know as the Passage, that his body was on the floor of that Passage and that SMITH and the coloured fellows were there. Then the next thing the prosecution established is that the body was subsequently carried into the Tavern WINDSOR and Capt BOURGET, corroborates that and from the Tavern WINDSOR we find Capt BOURGET again, administering morphine in there and then we have him going to get the provost and an ambulance being led to the hospital by L/Cpl HANLEY. At the hospital we have Major NICHOL attending on the dying person and then we have the evidence of S/Sgt SMITH WHO prepared the body for burial and identifies him again by the identification tags. Now I say that the chain of circumstances has certainly proved in every respect the identity. There are such other words of dexcription from witnesses, in that, one first identifies him as an English soldier and another identifies the flashes as being from the Duke of Wellington Regiment, so that, on that account, the motion of identification of the deceased person must case for the lack of identification of the Defending Officer of no Prima Facie be dismissed. On the second point, that of conflicting evidence, I take it he means regarding the circumstances here. Regarding this may I suggest that there has been conflicting evidence here. In charge such as this there usually is but the Court can form its own opinion. That being so, there are no grounds for dismissal but there are grounds if you feel that way for discounting some of the witnesses you have heard. I say that because I feel that after having attended the scene of this incident any person as close to this, in an area so confined, possible saw more that has been told. I submit that there are no grounds for dismissal on either of the points raised by the Defending Officers

JUDGE ADVOCATE ADDRESSES THE COURT ON THE SUBMISSION OF DEFENCE

In considering a submission by a defending officer at the close of the case for the prosecution that a Prima Facie case has not been established against the accused, the court should disallow the submission if there is evidence which unconstradicted would justify a finding of guilty, that is more than a scentilla of evidence which supports the charge and which the court at this stage are not prepared to disbelieve. The Court at this stage need not consider or decide the credibility of witnesses or whether the prosecution has established its case beyond a reasonable doubt.

JUDGE ADVOCATE ADDRESSES THE ACCUSED

Do you understand that at this stage you are proceeding with your defence and you may or may not make a statement. If you wish to do so you can give it in either of two ways:

(a) Evidence on oath which makes you subject to cross examination by the prosecution, or

(b) Evidence not on oath in which case you are not subject to cross-examination.

Regardless of whether you give evidence on oath, or not on oath, or make a statement not on oath or say nothing you may still call witnesses in your defence.

Q.483 Is the accused aware of his rights in this matter?

A.483 (Defending Offr) - Yes.

FIRST WITNESS - for the Defence - previously sworn
F-58068 Pte SMITH E L
AASH of C - 11 CBR Bn

Q.484 Would you tell your story of this incident which occurred before Christmas?

A.484 I started off by having a little party which started at 1800 hours in the evening. At that time there were just three of us, myself and two other fellows. We got a bottle of cognac and consumed that and we bought another bottle and I met two friends of mine from my own outfit who joined the party. We just drank that bottle and bought a few more bottles which we drank in the BEAVER CLUB. About 9:30 I saw this girl Cecilia RAES come into the cafe and I knew her. As I did not want to cause a disturbance I decided to go outside with her. She had her sister-in-law with her who insisted that I find her boy friend by the name of Paul, a fellow whom I knew. I told her I didn't know were he was but she said I did. I said I would try to find him so - but Cecilia RAES was under the influence of liquor at that time and insisted I go with her. I called KING and ROBINSON to clarify that I would come at 10 o'clock but she wouldn't go away so I walked away towards the passage then she followed me towards the passage and we went right into the passage when along came an English fellow. This English fellow, as Cecilia RAES was turning away to go, bumped into her but as she didn't make anything out of it I thought it was just an ordinary accident. I told him he had better apologise which he didn't. There was a major coming by and told us we had better stop arguing as tomorrow was Christmas. He passed on and I wasn't going to let an Englishman get away without apologizing and told him if he didn't apologize we would have to have it out. The Englishman never said anything but just struck at me. I saw his blow coming but I blocked it and hit him once. He went down but he didn't get up. ROBINSON and KING were standing there with the two girls. ROBINSON bent down and I turned away back towards the BEAVER CLUB and I met two other fellows there from my regiment, a Sgt and A L/Cpl and we continued the party. That is all I remember until I was picked up the next morning.

Q.485 Did you see anybody else in the passage when Cecilia was bumped into?

A.485 Not that I recall sir.

Q.486 Did you hear any pistol shot fired at that time?

A.486 Yes.

Q.487 Did you fire any?

A.487 Not at that time.

Q.488 When did you fire?

A.488 I had fired a shot earlier in the evening when I shot the top off of a bottle of cognac.

Q.489 Did you hear any shots fired just about the time of the fight?

A.489 There was a shot immediately behind me.

Q.490 Who was in that area?

A.490 There were two chaps from my outfit and the Sgt and L/Cpl.

Q.491 Anyone else?

A.491 The two girls. There were people coming in and out of the passage at that time.

Q.492 Do you know where Cecilia was when the fight took place?

A.492 To my right rear.

Q.493 Could you see what she did?

A.493 I never took any notice of her as I paid more attention to the fellow in front of me.

Q.494 Did you see ROBINSON after the fight?

A.494 I do not remember except when I was picked up.

Q.495 That would be the following morning?

A.495 Yes, he didn't rejoin the party at the BEAVER CLUB that I remember.

Q.496 After you hit the man did you suffer any damage to yourself?

A.496 My right knuckles were skinned.

Q.497 Do you know where you hit him?

A.497 On the side of the jaw.

Q.498 How much ammunition did you have for your pistol that evening?

A.498 Six rounds.

Q.499 Have you still got the pistol and ammunition?

A.499 No they were taken away from me.

Q.500 How much ammunition did they take from you?

A.500 One fired round and five live rounds.

Q.501 How much of an interval was there between the time the Englishman swung at you and your blow at him?

A.501 I just blocked his blow and hit him.

Q.502 It was an immediate return?

A.502 Yes.

Cross-examination by the Prosecution

Q.503 Do you remember going back to the BEAVER CLUB after this affair was over?

A.503 Yes sir.

Q.504 Where you upstairs with some civilian friends in the BEAVER CLUB?

A.504 To be truthful I do not remember going back.

Q.505 You would not remember seeing ROBINSON there or any discussion?

A.505 No sir.

Q.506 You cannot remember saying to ROBINSON that "I gave him a real beauty".

A.506 No sir.

Q.507 When you said to this fellow, "well chum if you won't want to apologise I guess we'll have to have it out here", what was in your mind then?

A.507 Just if he didn't apologise we would just have to have a scrap.

Q.508 That was your idea?

A.508 Yes sir.

Q.509 Do you remember stopping anybody in that passage way or in the KLEINSTATIA STRAAT that night inquiring whether they were English or Canadian?

A.509 The major told us to stop arguing and I asked him if he was English or Canadian and he said ~~Engl~~ Canadian and I said I would take your advice first before I would an Englishman to stop the argument. That is what Cecilia means in her evidence.

Q.510 The witness, Cecilia RAES says that you spoke to the soldier asking if you are Canadian and he said yes then you told him he could go on. and then there was another soldier come along and then the fight started. Do you remember anything like that?

A.510 No sir.

Q.511 Had you seen the English soldier that you struck before this evening?

A.511 Never sir.

Q.512 He was just passing at the moment and you saw him bump into Cecilia RAES?

A.512 Yes.

Q.513 That was the whole reason why you attacked?

A.513 Yes sir.

Q.514 After the injured man was taken into the Tavern WINDSOR you and all your comrades left that Tavern did you?

A.514 I do not remember being there at that time?

Q.515 You didn't stay to see what happened to the injured man?

A.515 There were two provost there who were investigating the jeep to find out who owned the jeep.

Q.516 You didn't go up into the passage to find out what happened to the injured man?

A.516 I didn't know that he was injured in that way?

Q.517 What do you mean?

A.517 I didn't know he was injured in any way such as I do now.

Questioned by the Judge Advocate

Q.518 How long after the soldier bumped into your girl when this fight started.

A.518 About 2 minutes from the time the Major came up - 1½ to 2 minutes.

Q.519 You state that this chap struck at you first?

A.519 Yes sir.

Q.520 Did he strike you?

A.520 No I blocked his blow.

Q.521 What size was this man?

A.521 About 5ft 7in tall and would weigh about 150 lbs.

Q.522 Did the other soldier that you were with have anything to do with this at all?

A.522 Not that I recall.

Q.523 Do you recall whether the coloured soldier joined in the fight in any way?

A.523 No.

Q.524 Do you know whether they where present when the fight took place?

A.524 Yes, there were all around.

Q.525 Could they see what was going on?

A.525 Yes they could.

Questioned by the President

Q.526 Did the English soldier bump in Cecilia Haes or did Cecilia Haes bump into the English soldier?

A.526 She was just turning to go and the English soldier bumped into her.

Q.527 Did he knock her over?

A.527 No.

Q.528 When you asked him to apologise what was his reply.

A.528 His exact words were "I'll not apologise to no Belgian hag".

Q.529 Was it dark in the passage?

A.529 Yes.

Q.530 How did you know the officer was a major?

A.530 I could see his crowns as there was a certain amount of light coming from the windows of the cafes.

Q.531 Were you having an argument with Cecilia Haes just prior to the English soldier bumping into her?

A.531 Yes sir.

Q.532 With the result that she stepped back?

A.532 No, she was just going to leave with her sister-in-law when the English soldier came there. I don't think she heard me ask for an apology.

Q.533 If she didn't hear you then it is possible that he didn't hear you.

A.533 She was standing in front of me and she was walking away from me.

Q.534 Those words that you say the English soldier said about not apologising to no Belgian hag - were they the only words he said?

XXXXX

A.534 they were the only words he said. When the major came along and after he left I insisted on an apology. He never said anything but just struck out at me.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with RP 83(b)

The accused resumes his seat.

D-6-P1

SUMMING UP BY THE PROSECUTION

Mr President and Gentlemen:

My words will be very brief. The stories told by the witnesses here have been very straightforward. While there is some conflict on some minor points I am sure the stories told by all witnesses for the prosecution and the accused person himself have put together a very complete story of what happened this night in question. The prosecution have called before the court the two coloured witnesses KING and ROBINSON and the civilian witness Cecilia RAES who together told all of the circumstances surrounding this incident. The prosecution then called CSM GIBBS who had taken the statement from the accused person and it was established that the statement was voluntary and admitted in evidence. The accused admits striking a soldier in the Passage in the night in question. I submit that the prosecution have satisfied you who that soldier was that was struck and what subsequently happened to him. The events leading up to this assault do indicate that the accused person that night was at least quarrelsome and the evidence of having met some other soldier that night and having words with him in the Passage is clear and corroborated by more than one person and we have hisown statement of an English soldier bumping into Cecilia RAES and this soldier not apologizing to the girl when requested to do so and SMITH said they would have to "fight it out". The English soldier struck at SMITH. He did not land the blow and the accused struck the English soldier on the side of the jaw as he puts it. These briefly are the facts. I do not propose to say more on the facts as that is sufficient and I know you will take the law from the ADJA. For the purpose of a plying law to these facts I do wish to say one word on killings as a result of quarreling which is mentioned on pp 868 and 869 of Archbold and that question of provocation. I suggest there is no defence on this ground and you will of course consider that in your finding. "If parties, in their passion, fought immediately, or even if, immediately upon the quarrel, they went out and fought in a field (for this is deemed a continued act of passion) the killing in such a case would be manslaughter only, whether the party killing struck the first blow or not" (Archbold p 869). I say that the facts heard have a very close bearing to that quotation in law and that they should be considered in length. The story of the accused person only is that the English soldier struck at him. No other witness has even suggested that but if you are inclined to believe the accused's story I point that out to you for what it may be worth. Just a word on the question of identity I do not know how identification can be tied in any better than it is in this case. There are two ways in which identification could be established in such a case as this, one, at the scene of the indident, the other by tracing down the circumstances right to the death and the prosecution here have done the latter, not only positivily but completely. That is all I have Mr President.

D 6 - P 2

SUMMING UP BY THE DEFENCE

There is just one thing I would like to point out at first. At the beginning one witness was time for 1½ minutes and the Court just sat there. That seems to everyone, particularly the witness, a great length of time. 1½ minutes of action may seem to pass in a flash, whereas the same length of time spent waiting seems an age. This point was material to the evidence of ROBINSON. Cecilia RAES' evidence is contradicting and she did not recollect things which would be expected in view of other evidence which she gave. For example, she did not remember bumping into ROBINSON and knocking him over nor being bumped by the Englishman, nor which side of the Passage the fight occured, nore where she was standing, nor with what hand SMITH hit the man. All these things to put it mildly impeach her credibility. I do not mean to say she was lying but her memory is very poor. On the question of identity, a man was struck, he fell down and was carried into a cafe. There is evidence to show that HANLEY stayed with a man whom he identified by the tags and that this man was carried to an ambulance, but there is no evidence to the effect that the man taken to the ambulance was the same man who was taken to the cafe. There was evidence that the district is a pretty low one, both from the view by the Court and the and the evidence of other witnesses that fights are not infrequent there. It is possible that the man taken to the ambulance was not the one in the cafe. Secondly in that respect, that day of the year is just about the shortest and at approximately 2130 hrs it was pretty dark and again at that particular time as has been stated in evidence, arms were being carried owing to the threat of German pa...troops. Under these circumstances - a bad area, the general carrying of arms and the time of day - darkness - I suggest that a reasonable man in his own self protection would be inclined to hit first and ask questions afterwards if he was assaulted. In the dark SMITH saw a man attempt to hit him and the natural re-action I suggest is a parry and return. There is not much more to do in a case like that an in particular he is not going to calmly stand by while another man does not apologize after he has bumped into and insulted his girl. As to the credibility of SMITH, in his statement that the man who died struck at him first - as far as that goes no one else saw a fight at all. Cecilia RAES says she saw SMITH hit a man, but I have already mentioned the questions of her credibility. I shall not mention the law involved as the Judge Advocate will do so.

DG-P3

THE JUDGE ADVOCATE SUMS UP

It is my duty as Judge Advocate to advise the Court on the law and sum up the evidence. If I have at any time expressed a any personal opinion as to the facts of this case or should I at any time express any opinion of the facts it should be entirely disregarded. The Court and the Court alone is the sole judge of the facts.

The accused - Pte SMITH - is charged with manslaughter. Manslaughter is defined in archbold as follows:

"Manslaughter is the unlawful and felonious killing of another without any malice expressed or implied".

The Court in this case will have to determine many facts and in doing so the Court will have to judge for itself the credibility of witnesses. I wish briefly to review the evidence before the Court.

The witness KING recalled the evening of 23 Dec 44. He was with the accused at the BEAVER CLUB, which is not run by the Army. They had been drinking - there wereother soldier there - one of whom was the second witness ROBINSON.

Two girls come and one sent a message in for SMITH. SMITH went out accompanied by KING and ROBINSON. KING testified it was dark and he did not accompany the accused whom he stated walked up to the "Passage" accompanied by his girl. SMITH and his girl friend were arguing. He heard a noise as if some one was starting to run. He did not approach immediately, but went after a pause, and saw a man lying on the ground. There was Pte ROBINSON, the girl, SMITH and an officer. SMITH said "Who hit my chum?"

The injured man was assisted into the cafe and the officer left. He saw SMITH 30 minutes later at the BEAVER CLUB.

There were some shots heard by the witness that night, and he stated they were not where the incident occurred.

The second witness ROBINSON stated he went with SMITH when the girls arrived, and was present when SMITH left to see the girls outside the BEAVER CLUB. He was in the BEAVER CLUB with x SMITH and said they went out about 2000 hrs. He was trying to hold SMITH's girl until SMITH got away, but she broke away and went after SMITH. He heard the girl arguing with SMITH, he followed to get hold of the girl again. He was ahead of KING and first to arrive at the spot where SMITH was, when the girl bumped into him knocking him down.

SMITH said "there was some trouble and to catch two fellows". He did not remember seeing anyone although he say someone might have got past him without him seeing them. He heard a sound which he describes as similar to someone getting hit, he heard the sound just as he got up at the corner of the passage. He saw a man on the ground, saw an officer there and SMITH and later KING came. SMITH went in direction the two men had gone. Told the officer someone had hit his chum and told ROBINSON the "fellow was looking for trouble and to catch the other two."

SMITH had a weapon. Fired it into the air but he did not actually see him do it, this was after the fellow was put into the cafe. He left after the officer left.

He next saw SMITH in a room at the BEAVER CLUB the same night and SMITH told him he gave the "fellow a beaty and skinned his knuckles".

CSM GIBBS introduced the statement taken from the accused on the 27 Dec. He was also present at the identification parade when Anna JANSEN, since deceased, identified SMITH although there is no evidence before the Court as to the reason SMITH was identifi

Major NICHOLS, RCAMC, who examined the body, the name he only knows from the records, says the injury could have been caused by a blow from a blunt instrument or a fall. He noticed no marks on the face.

S/Sgt SMITH, Wardmaster, referred to 4619980 Pte McCREESH. He states that at approximately 0800 hrs 24 Dec the man was dead. He prepared the body for an autopsy.

L/Cpl HANLEY states he was at the Tavern WINDSOR at 2245 hrs 23 Dec 44. He did not enter the Tavern but stayed with the ambulance. A soldier was brought out on a stretcher and he accompanied him to the hospital. By means of the identity discs he definitely identified the soldier as Pte McCREESH. He said the man was bleeding from the back of the head. He left the injured man at 2300 hrs at the hospital. There are lots of cafes and many fights in this district.

The witness Cecilia RAES knows the accused as "JOHNNY". She does not recall the incident other than it was a Saturday night. With her sister-in-law she went to the BEAVER CLUB and Johnny came out. Johnny pushed her away and she went after him. SMITH said to a soldier "are you Canadian" to which he replied "yes" and he passed on. Another soldier came and SMITH askedhim the same question to which the soldier replied "no English". She says they fight and she saw Johnny hit the soldier on the chin. The other soldier fell down. She does not know who struck the first blow. The coloured soldiers ROBINSON and KING were there as well as herself. She states she did not bump into anyone. She and he sister-in-law went away with SMITH.

She recognised SMITH on the identification parade but was afraida to identify him. In reference to her statement in the Summary where she stated that the coloured boys and SMITH fought, she states in evidence upon cross-examination that only SMITH fought.

Major BLANCHARD, the pathologist, who performed the autopsy gave evidence as to severe injuries to the head, lacerations of the scalp. There were two fractures of the skull but no markings or disfigurements of the face. Violence applied to the back of the head, a fall or blow of a heavy instrument could have been the cause. Saw the identity tags on the body as being Pte McCREESH. Death resulted from the damage to the skull and nothing could have been done to save the man.

Capt BOURGET heard a shot on the "Passage" at 2245 hrs 23 Dec. He met a girl about 75 yds from a group of soldiers and took her into a cafe. He was unable to recognise the accused. Four soldiers as well as one on the ground were seen by him as he approached after taking the girl into the cafe. One of them was a negro and another was very well built. He assisted in taking the injured man into the cafe then he went for an ambulance. When he returned he administered morphine but noticed that the other soldiers had left.

I do not think it is necessary to review the evidence from the accused.

As I have said manslaughter is the unlawful and felonious killing of another without any malice either expressed or implied. The killing must be unlawful and not excusable or justifiable. It may be by poinoning, striking, starving, drowning, etc. It may be taken as law generally that in all cases where killing, though not with malice, is nevertheless incapable of justification or excuse, it is manslaughter. From the facts here there is a killing due to a fight. Killing by fighting may be either, first, murder, seconly manslaughter, thirdly homicide se defendo. The accused is not charged with murder and therefore murder need not enter into the deliberation of the Court. Homicide se defendo means killing in self defence. The question therefor is it manslaughter or self defence? With regard to selfdefence, if a man attacks me I am

entitled to defend myself and thedifficulty arises in drawing the line between mere self defence and fighting. The test is this, a man defending himself doesn't want to fight and defends himself solely to avoid fighting. Then supposing a man attacks me and I defend myself not intending or desiring to fight but fighting in one sense to defend myself and I knock him down and thereby unintentionally kill him, that killing is accidental. No provocation whatever can render homicide justifiable or even excusable but provocation may reduce the offence to manslaughter. We must consider however the fact that the accused is in a foreigh country and therefore the Court should take judicial notice of where the incident occured, the time of year and the fact that there was a paratroop scare and everyone was carrying weapons.

The law I have quoted to you is the English law on manslaughter. If the Court finds as a fact that the deceased struck the accused first, then the Court must consider whether under all the cirucmstances the accused used more force than was necessary to defend himself, and in doing this the Court may taken into consideration, the time, the place and that there was a paratroop scare.

If the Court should find as a matter of fact that ROBINSON and KING were accomplices, than their evidence must be considered with caution and the Court must be satisfied that their evidence is corroborated by some material fact or facts or evidence of other witnesses. The uncorroborated evidence is admissible in law but it is dangerous to convict upon it unless the court is satisfied that there is corroboration. This direction as to accomplices will only apply if the Court finds they were in fact parties to the assault or assisted in any way the commission of the assault. The defence raised the question of identity. If the court find as a fact that the body taken to the hospital is not the same person as the accused is alleged to have struck, or if they can not find as a matter of fact that the body taken to the hospital was the man struck in the street, the accused should be acquitted. The prosecution must prove that the person alleged in the particulars of the charge was the person struck, and that he died as a result of the injuries received. The Court too must satisfy themselves that he did not die as a result of negligent treatment, but as a direct result of injuries ceused by the accused.

In English law, the Court at the outset of their deliberations must remember that the accused person is presumed innocent until proven guilty and that the burden of proof is on the prosecution to prove to the Court the guilt beyond all reasonable doubt. Unless therefore the guilt of the accused has been established beyond a reasonable doubt he must be acquitted. By a reasonable doubt I do not mean some figment of the imagination, but some real honest doubt based on the evidence before the Court. That is all I wish to say unless the President, Defending or Prosecuting Officers wish me to direct the Court upon some matter which I may have overlooked.

Mr President, are there any further matters upon which you wish me to direct the Court? No.

Mr Prosecuting Officer, are there any further matters upon which you wish me to direct the Court? "Yes, read all Sec 4 on p.871 (Archbold)." (Read to the Court)

Mr Defending Officer, are there any further matters upon which you wish me to direct the Court? No.

E.3

PLEA OF MITIGATION BY THE DEFENCE

I shall give the particulars of the accused to begin with. The accused states he is 23 years old, enlisted on 30 Jan 44, arrived in England on Apr 44 and came to France on 1 Aug 44. He is married and has no children. He was arrested on 25 Dec 44 which up-to-date makes a total of 112 days of which 3 to 4 weeks were spent in hospital and about 5 other days not in arrest. In respect to this offence SMITH was arrested but at the time did not know that he had committed any offence for which he might be charged. This is shown by GIBBS' evidence that SMITH was the frankest man he has ever heard. If a man has a guilty conscience in that respect his first thought is to slip out of it and he wouldn't be as frank as that. Now in this Passage 12 - 13 feet wide two people do not usually collide by accident, so that any ordinary man seeing another bump into his girl would normally expect an apology to be pretty quickly forthcoming. If it wasn't it is quite reasonable for him to ask for it. In the very worst light this case amounts to a street brawl with fists, not weapons, even though SMITH was armed at the time. The reason I bring that out is because using your fist you do not expect to do any more damage than a black eye, certainly not kill a man. Legally, of course, when death does occur a charge of manslaughter will probably be laid. In such cases the sentence is usually light because the Courts realize the offence arose out of an accident, and not out of any illwill or intent to do any damage on the part of the accused. In civilian cases, I have not military precedents, the sentences imposed vary from a few days in prison to several years, but the longer terms are imposed in cases where there was at least gross negligence. In cases where the act committed is most unlikely to lead to any damage at all, and in fact, damage occurred due to an accident, the sentence is usually light for that reason. The question of self protection - the circumstances I have previously mention - are enough to lessen the degree of blame or culpability. For these reasons I suggest that a very light sentence would be appropriate in this case.

13 Apr 45

C. 42080 A/CSM. L. A. Gibbs.
No1 SIS. 1 Can Army

STATEMENT OF F58068 PTE SMITH EL, Argyl & Sutherland Highrs of Canada, 4th Div

I have been cautioned by Sgt Gibbs of the Special Investigation Section, that I am not obliged to say anything unless I wish to do so, but anything I do say will be taken down in writing, and may be used as evidence. I fully understand the meaning of this caution.

(sgd) Edward L. Smith

I joined the Canadian Army in Halifax N.S., in January 1944. I joined the artillery, and came overseas about six or seven months ago. I came to France about five months ago, but did not come with the artillery, but with the Canadian Fusilliers. I was in CBHQ for about two weeks, and then went to BHQ of the A & S Highrs. I stayed with them until 26th Nov., and then came on leave to Ghent for forty eight hours. I did not return to my unit.

During the time I was in Ghent I had about nine hundred Dutch guilders. When I came to Ghent I had a lot of time at the leave centre and different cafes, one of them the Beaver Club.

Last Saturday night 23 Dec 44, I had a date with my girl friend Cecilia RAES, who lives with her mother in a cafe on the corner of the "Passage" and one of the main streets of Ghent. I had seen her earlier in the day, and had asked her to meet me at 10.00 PM. I told her I would pick her up at her home.

At about 6.00 PM I went out with Al KING, 'Lucky' and 'Stuff' BARNES. These are all coloured men, and they are all in the Canadian Army. We bought a bottle of cognac at the 'O.K.' Cafe. We then returned to the Beaver Club, and drank the cognac. I also met two of my friends from my regiment, Pte John LEEMAN, and another one that I don't know by name. They were with us all evening. After we had finished this bottle LEEMAN and his friend went out and returned with two more bottles of cognac. We drank this between the five of us. Somebody else got another bottle, where from I don't know. I also met in the Beaver Club that night two other men from my regiment, Sgt Mike FLYNN and a L/Cpl., 'Tommy' is his first name. I had a few drinks with them.

I was sitting back in one of the corners of the Beaver Club with BARNES, KING and 'Lucky' and also a girl that BARNES goes with, at about 9.30 PM when I saw Cecilia come in the doorway of the club accompanied by her sister in law Annie. I got up and went outside with the two girls. Cecilia is very jealous, and she accused me of paying attention to other girls in the cafe. I called KING, BARNES and 'Lucky' out to prove that this was not true. I think LEEMAN and his friend came out too.

I took Cecilia away from the cafe door towards the 'Passage' entrace, and I asked her why she had come looking for me. She said Annie wanted to find her boy friend 'Paul', another Canadian. Cecilia wanted me to go with her, but I refused saying I would come to see her at a quarter to ten as I had arranged before. My companions said they would see that I came. Annie refused to leave until she had found 'Paul'.

I took the girls towards the 'Passage' and as they turned away to leave a soldier bumped into them. He said something, I don't remember what it was, and I told him he had better apologize. He refused and we got into an arguement. A Major came along, and he suggested we stop the arguement as the next day was Christmas. The officer passed on. I grabbed the soldier, and told him if he wanted to fight we would have it out right there. He was alone, I can't remember anybody being with him. He took a swing at me. I stopped his blow, and then I struck him with my fist in the mouth. In doing so I took the skin off the knuckles of my right hand. He fell to the ground, and did not get up again.

The girls ran away when the fight started. My companions were standing right behind me. 'Lucky' said 'Come on he is finished. He can't fight any more.' Mike FLYNN had come up at this time, and he bent down and looked at the man, and said 'Well, he is out', and then returned to his 'jeep' where 'Tommy' was waiting for him. Two Provost men came along at this time, and inquired about the 'jeep'. Mike and Tommy left, and the rest of us went back into the Beaver Club.

Later that night I went to bed in the Beaver Club, and early in the morning I was awakened by the Provost, who arrested me for being AWL.

. . . . . /OVER

/Immediately....

Gent, den 28 December 1944.

RAES Tertilla-Titelina,
Brabantdam, 18, Gent.
geboren te Gent.
huidig adres : Nieuwstraat, 3, Mariakerke.

verklaart als volgt :

Ik ken een Canadeesch soldaat zyn naam is Johnny ongeveer 4 weken. Ik heb deze soldaat van den namiddag gezeyn in the Seminare gelegen ân the Heep; maar ik was te verlegen voor hem te herkennen. Gedurende den tyd dat ik Johnny gekend hebt, was gy gedurende me 2 ander canadeesch soldaten; een van aldaar dragen den naam Stuff, den anderen Stuff broeder. Johnny kwam dekwels binnen in de cafe waar ik werk (Cafe Splendid).

Verleden Saterdag avond 22-12-1944 ongeveer 8.30, Johnny kwam binnen in den cafe en vroeg aan my voor hem te ontmoeten aan de door van de Beaver club op 9.45 P.M.; hy ed thans voor gegaan. Op 9.45 P.M. myn schoonzuster en ik zyn maar den door Beaver-club gegaan, hy was daar niet, wy hebben op den door geklopt en zy hebben geantwoord dat Johnny daar niet was, ik heb gezegd laat hem buiten. Johnny es thans buiten gekomen met zyn twee comraden met aldaar revolvers in aldaar handen. Johnny spreak een soldaat aan, en vroeg heb of dat gy een Canadeesch was; diemen soldaat heeft geantwoord "ja", hy heeft hem laten gaan. Kortz daar achter twee ander soldaten kwam af. Johnny vroeg of dan zy Canadeesch waren, se hebben geantwoord wy zyn Englishe. Johnny en zyn twee comraden hebben thans de English angevallen met aldaar vulsten. Johnny heeft thans eenem Englishmen uitgeslagen en op den grond gesmeten. Johnny heeft thans achter ut geslapt en heeft een revolver uitgetrokken. Ik heb thans aan zynen arm getrokken en gezegd "doe dat niet". Johnny heeft geantwoord "shut up" Ik heb thans een schot gehoord gekomen van den groep soldaten, maar ik weet niet wein dat gedaan heeft, elk ben thans weggeloopen, waar dat myn schoonzuster was weet ik niet. Wanner ik weg loopt twee ander soldaten kwamen by my, brachten zy my in een cafe waar ik een glas bier gedronkt heb. Die soldaten laten staan ben ik maar den cafe Druiftak gegaan in de Kleine Statiestraat waar geslapen hebt.

Ik kan niet zeggen wat dat ter met de twee Englishmen gebeurd is maar den volgenden dag hebben zy my gezegd dat gy dood was. Ik heb Stuff en zyn bréeder den volgenden morgen in den cafe Splendid zy zyn tegen my dat Johnny in het prisoen zat. Dat was de laatste te keer dat ik aldaar geyn hebt.

Terille Raes.

File here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. Yes - until 1400 hrs 13 Apr 45. Request granted. (1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) "DM" opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the First charge "DM" The Court is closed, and considers the submission.(2) The Court is re-opened, and the President announces that the submission is disallowed on the First charge(s) ~~, and allowed on the remaining charge(s)~~ "DM" ~~on the former, but the accused is (are) found Not Guilty on~~ "DM" ~~charge(s), and that, accordingly, the trial will proceed on the former but the accused is (are) found Not Guilty on the latter charge(s).~~(3) "DM"

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. Witness - on oath. Do you intend to call witnesses on your behalf? Ans. N/A. Ans. No. Are they witnesses as to character only? Ans. N/A.

(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the j/h under RP 42, 103(e).)

D7. The Court is closed to consider the finding "DM" (1) The finding(s) of the Court is "DM" recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President ~~announces the intention of any of Not Guilty, and~~ states to the accused that the finding(s) "DM" of the Court on the First charge(s), being subject to confirmation, will be promulgated later.(1) "DM"

~~(And the President announces that the accused is found Not Guilty on all charges and on the former charge(s) "DM" and that the proceedings are now ending in terminal fact. For the time being no finding is recorded with regard to the latter charge(s).)~~

~~and that the proceedings are now ending in terminal fact. For the time being no finding is recorded with regard to the latter charge(s).~~

(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans. No

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

~~No - The Prosecutor produces Statement(s) as to Character and Particulars of Service(s), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination; and then to the Court for admission in evidence. The Court is satisfied that these documents could be produced, because (a) they purport to be signed by (b) evidence required by AA 54(3) (a) and (b) has been given to the accused, because (a) they purport to be signed by (b) evidence required by AA 54(3) (a) and (b) has been given to the accused, and that they contain matter which may be admitted in evidence against the accused. Admitted in evidence and marked Ex ---- and No ---- respectively.(3)~~ "DM"

(1. MFB 353 or AFB 296. 2. MSM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E2. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes, through my defending officer.(2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas RO 309, 2323. MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 120. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

STATEMENT OF F58068 PTE SMITH EL, Argyl & Sutherland Highrs of Canada, 4th Div

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I was sitting back in one of the corners of the Beaver Club with BARNES, KING and 'Lucky' and also a girl that BARNES goes with, at about 9.30 PM when I saw Cecilia come in the doorway of the club accompanied by her sister in law Annie. I got up and went outside with the two girls. Cecilia is very jealous, and she accused me of paying attention to other girls in the cafe. I called KING, BARNES and 'Lucky' out to prove that this was not true. I think LEEMAN and his friend came out too.

I took Cecilia away from the cafe door towards the 'Passage' entrace, and I asked her why she had come looking for me. She said Annie wanted to find her boy friend 'Paul', another Canadian. Cecilia wanted me to go with her, but I refused saying I would come to see her at a quarter to ten as I had arranged before. My companions said they would see that I came. Annie refused to leave until she had found 'Paul'.

I took the girls towards the 'Passage' and as they turned away to leave a soldier bumped into them. He said something, I don't remember what it was, and I told him he had better apologize. He refused and we got into an arguement. A Major came along, and he suggested we stop the arguement as the next day was Christmas. The officer passed on. I grabbed the soldier, and told him if he wanted to fight we would have it out right there. He was alone, I can't remember anybody being with him. He took a swing at me. I stopped his blow, and then I struck him with my fist in the mouth. In doing so I took the skin off the knuckles of my right hand. He fell to the ground, and did not get up again.

The girls ran away when the fight started. My companions were standing right behind me. 'Lucky' said 'Come on he is finished. He can't fight any more.' Mike FLYNN had come up at this time, and he bent down and looked at the man, and said 'Well, he is out', and then returned to his 'jeep' where 'Tommy' was waiting for him. Two Provost men came along at this time, and inquired about the 'jeep'. Mike and Tommy left, and the rest of us went back into the Beaver Club.

Later that night I went to bed in the Beaver Club, and early in the morning I was awakened by the Provost, who arrested me for being AWL.

. . . . . /OVER

/Immediately....

Immediately after the fight a shot was fired. It was not fired by me, it seemed to come from the 'Passage'. It sounded like a P 38. I was carrying a .38 calibre in the belt of my trousers. I had fired a shot from this earlier in the evening, shooting the neck off the second bottle of cognac we had. This happened on the street near the Beaver Club. I only had six rounds of ammunition. I bought this weapon in the Beaver Club, from a Canadian soldier earlier in the same evening for six hundred francs.

This statement has been read over to me, and it is true. I have not nothing more to say.' (ENDS)

27 Dec 44 (Sgn) Edward L. Smith

Gent, den 26 December 1944.

RAES Tertilla-Titeline,
~~Brabantdam, 18, Gent.~~
geboren te Gent.
huidig adres : Nieuwstraat, 3, Mariakerke.

verklaart als volgt :

Ik ken een Canadeesch soldaat zyn naam is Johnny ongeveer 4 weken. Ik heb deze soldaat van den namiddag gezeyn in the Seminare gelegen én the Heep; maar ik was te verlegen voor hem te herkennen. Gedurende den tyd dat ik Johnny gekend hebt, was gy gedurende me 2 ander canadeesch soldaten; een van aldaar dragen den naam Stuff, den anderen Stuff broeder. Johnny kwam dekwels binnen in de cafe waar ik werk (Cafe Splendid).

Verleden Saterdag avond 23-12-1944 ongeveer 8.30, Johnny kwam binnen in den cafe en vroeg aan my voor hem te ontmoeten aan de deur van de Beaver club op 9.45 P.M.; hy ed thans voor gegaan. Op 9.45 P.M. myn schoonzuster en ik zyn naar den door Beaver-club gegaan, hy was daar niet, wy hebben op den door geklopt en sy hebben geantwoord dat Johnny daar niet was, ik heb gezwgd laat hem buiten. Johnny es thans buiten gekomen met zyn twee comraden met aldaar revolvers in aldaar handen. Johnny spraak een soldaat aan, en vroeg heb of dat gy een Canadeesch was; dienen soldaat heeft geantwoord "ja", hy heeft hem laten gaan. Korts daar achter twee ander soldaten kwam af. Johnny vroeg of dan sy Canadeesch waren, ze hebben geantwoord wy zyn Englishe. Johnny en zyn twee comraden hebben thans de English angevallen met aldaar vulsten. Johnny heeft thans eenen Englishman uitgeslagen en op den grond gesmeten. Johnny heeft thans achter ut gestapt en heeft een revolver uitgetrokken. Ik heb geantwoord "shut up" Ik heb thans een schot gehoord gekomen van den groep soldaten, maar ik weet niet wein dat gedaan heeft, elk hem thans weggeloopen, waar dat myn schoonzuster was weet ik niet. Wanner ik weg loopt twee ander soldaten kwamen by my, brachten sy my in een cafe waar ik een glas bier gedronkt heb. Die soldaten laten staan ben ik naar den cafe Druiftak gegaan in de Kleine Statiestraat waar geslapen hebt.

Ik kan niet zeggen wat dat ter met de twee Englishman gebuerd is maar den volgenden dag hebben sy my gezegd dat gy dood was. Elk heb Stuff en zyn bróeder den volgenden morgen in den cafe Splendid sy zyn tegen my dat Johnny in het prison zat. Dat was de laatste te keer dat ik aldaar gezyn hebt.

Tertilla Raes.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans Yes - until 1400 hrs 13 Apr 45. Request granted.
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) ~~XXX~~ "DM" opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the First charge ~~XXX~~ "DM" The Court is closed, and considers the submission.(2) The Court is re-opened, and the President announces that the submission is disallowed on the First charge(~~s~~, and allowed) on the ~~XXXX

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F-58068 Pte Edward Laughton SMITH ASSH of C - 11 CBR Bn

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 41	NOT GUILTY	GUILTY	Except that death occurred at approximately 0800 hrs 24 Dec 44 from injuries received on 23 Dec 44.
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44: findings on alternative charges see MML p 483 fn 4 para 2, RP 44: special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for N/A beginning on (date) N/A (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 111 days, of which 21 APPROX days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

TO SUFFER PENAL SERVITUDE FOR THE TERM OF SEVEN (7) YEARS AND TO BE DISCHARGED WITH IGNOMINY FROM HIS MAJESTY'S SERVICE.

(Sgd) "A N EDGLESTONE" Lt — 16 Apr 45 — (Sgd) "DONALD MacKENZIE" Major
Judge-Advocate, if any. — Date awarded. — President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 790.)

I RESERVE THE FINDING AND SENTENCE FOR CONFIRMATION BY SUPERIOR AUTHORITY.

Date 2 May 45 (Sgd) "J H Moore Bde" Commanding 2 CDN BASE REPT DP
(Moore, J.H., Brigadier)

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 111(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 572. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the finding but commute the sentence to that of Seven years imprisonment with hard labour. Time spent in hospital to be remitted as to commuted.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1) 7/5/45
(1. AA 57A. Delete if not used.)

(Sgd) "H D G Crerar" (HDG CRERAR) General

Date 7 May 45 — Commanding C in C First Cdn Army
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Cap 57A, 577.)

Accused.	Date.	Signature of Offr.
F-58068 Pte Edward Laughton Smith	9 May 45	"H F Richmond" Lt Col 57000 i/c Disciplinary Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

MEMORANDUM

Army Form C348 (Small)
(Lists of 30 interleaved)

Sender's Reference	Receiver's Reference	Date
S-4/Ass/DAPM-5.		21 Feb 45.

From	TO:
DAPM 2 CBRD.	DAAG., / Ech. GR Sec, HQ 21 Army Gp.

ATT. MAJ. J. T. HARVEY.

Ref. your A.1174 1/A Feb 45, and would please find copy of report involving D10750 Pte Kelly A.J.

For your information please.

520/21 AGP/1
A67

Capt
DAPM, 2 Cdn Base Ppt Gp



First Cdn Army

No 1 S.I.S.

Ghent

31 Dec 44

Re: F.58068 - Pte - SMITH E.L. - Argyll and Sutherland Highrs of Canada 4th Cdn Amm'd Div.

MANSLAUGHTER - Vanderdoncktdoorgang - Ghent

1. At approximately 245 Hrs, of the 23 Dec 44, Capt M. Bouget of 11 Bn 2 CBRG reported to the Cdn Provost Corps, Ghent that a soldier had been seriously injured in the s/m street. A Statement received from the officer later reads as follows:-

STATEMENT BEGINS: 'I am Capt Marcel BOURGET, of 11 Bn 2 CBRG at around 2245 hrs, I was walking back to camp on the sidewalk of Brabantdam. As I was passing by a large alley on the left side of the street, I heard shots which seemed to be fired from a pistol. I stopped and started to walk towards the place of the incident. As I was advancing towards the fellows I met a girl who saw the accident. I took her in a small cafe, and told her to wait there. I then moved towards the scene and saw four fellows discussing, and one lying on the alley. I looked at him and saw he was hurt, so I asked the fellows to take him to a cafe in front of where he was lying.

Having done that I examined the wounded fellow I thought he was badly hit and gave him morphine. I told the four fellows to stay there and I ran towards the Provost place to get some first aid. I then came back to the place where the incident had occurred with two provosts. When we arrived there the four fellows had gone, having left the wounded fellow behind. The Provost took the man to hospital and I reported to the Provost section.' (ends) Sgn - Marcel Bourget, Capt. Regt de Maisonneuve.

First

2. The wounded man carried the identification of Reg. No.4619980 - Pte - McCREESH, J. - Duke of Wellington Regt. (Br Army. When admitted to hospital he was unconscious and remained so until he died at 0600 Hrs the following day. He died in 2 Cdn Gen Hosp., and was attended to by Capt N.B. Hall. Br Army D.A.P.M., 16 LofC., was notified by CSM Tait of this section. Location of the dead man's unit was not known at the time, but I have since learned that his unit is part of the Br 7th Div. This man does not appear to have been in this city on leave, as a check has been made of the records of the leave Centre at this point.

3. An autopsy was performed by Major A.J. BLANCHARD, pathologist 2 Cdn Gen Hosp., on the 26 Dec 44. The report reads as follows.

BEGINS: Summary of Autopsy Findings in the case of 4619980 - Pte - McCREESH, J.
Died 24 Dec 44 - Autopsy done 26 Dec 44 - 55 Hrs after death.

The relevant findings were largely confined to the head. There was a small superficial laceration of the scalp in the occipital region just to the right of the mid line. This was about 1.2 cm long and was confined to the superficial layers of the skin. There was extensive oedoma and haemorrhage into the soft tissue of the scalp most marked in the left occipital region, but was also present on the right side.

There were two fractures of the skull; one about 10 cm long was located in the right half of the occipital

(Cont'd over)

home beginning at a point about 1 cm lateral to the internal occipital protuberance and running forward to end in the right jugular foramen. The second fracture involved the anterior surface of the petrouspertion of the right terporal bone. There was marked (surface of the petrous) haemorrhage into the subdural space with large clots over the cerebrum and in the anterior fossae. There was slight diffuse subarachnoid haemorrhage.

There was extensive contre-co p softening with petechial haemorrhage into the tips and interior surface of both frontal and temporal lobes.

There was haemorrhage into the sphencidal air sinus and the ethmoid air cells and the right middle ear. The right ear drum was perforated and blood was coming from the ear canal. The lungs showed passive congestion and oedema. The remaining organs were normal.

The cause of death in this case was fractures of the skull with subdural harmorrhage and contre-coup injury of the brain. The violence was applied to the right occipital area and could have been the result of a blow with a heavy blunt instrument or from a fall with violent impact of the head against some solid object.

(Sgn) A.J. Blanchard, Major, RCAMC
Pathologist
for Pathologist 2 Cdn Gen Hosp

26 Dec 44 (END)

4. The deceased was buried by 2 Cdn Gen Hosp., on the 27th inst., in the Gemeente Kerkhof, West Ghent, and the grave is situated on Row -O Line 6 Grave 9052.

5. It will be noted in the stement of Capt BOURGET, that he met a girl while proceeding to the scene of the incident. This woman was located, also her companion. Both of these women were interviewed and statements obtained. Their statements are as follows:-

Statement of Anna Theresia JANSEN - married - husband name Leo RAES, Address: Keizerlei 50, Antwerp.

'I have known Johnny Smith, a Canadian soldier since three or four weeks. I saw this soldier this afternoon in the Seminarie (HQ 9 Bn 2 CBRG) located on Reep, Ghent. I have identified this same soldier in a parade which was held at this same place. I also know two other soldiers, who were with him now and then. These men were coloured men, and were brothers. One of them is known as 'Staff'.

Last Saturday evening I left with my sisted in law at 9.45 P.M. to meet Johnny Smith at the Beaver Club. The Beaver Club was closed, we knocked on the door and asked after Johnny. Someone called from a window upstairs, saying that Johnny was not there, but my sister in law said that he was. The door then opened and Johnny and two other soldiers came out, all three of them carrying revolvers in their hands.

A soldier came up and Johnny asked him if he was a Canadian the soldier said 'yes'. Johnny said 'O.K.'. Johnny then went away and I said to Tercilla goodnight, and went on. I went on towards my home, and then heard somebody fighting. I could not see anything because it was too dark, but I saw Johnny strike a man, and heard a fist hitting flesh. I called Johnny, but he said 'Shut up'. I also took hold of him by the arm, but he threw me away. I then went home, just as I was putting the key in the door I heard a shot. I was too afraid to go in so I kept on my way down the passage where I met a soldier. He said to me 'What is wrong'. I told him the soldiers were fighting over there. He spoke very good French. A civilian also came down the passage, the officer told him to go and get the Provost. The officer took me into the Cafe Splendid. The officer left and I went back to my home. At 12.30 A.M. the Provost woke me up and questioned me about the case.'
(ENDS)

(Sgn) Jansen Anna

Statment of Tertilla Titalina RAES - Single - Address Brabant Dam 78 Ghent.

'I have known a Canadian soldier since four weeks. I saw this soldier this afternoon as Johnny

(Cont'd over)

Seminarie on the Reep, in a parade, but I was too afraid to identify him. During the time I have known Johnny, he always was accompanied by two other Canadian coloured soldiers. One of them's name was 'Stuff'. The other one was 'Stuff's' brother. Johnny often came into the cafe where I work the Cafe Splendid.

Last Saturday evening on the 23 Dec 44, at about 8.30 P.M., Johnny came into the Cafe and asked me to meet him before the door of the Beaver Club at 9.45 P.M. He then left the cafe. At 9.45 my sister in law (the a/m), went to the Beaver Club. We knocked on the door, and they answered that Johnny was not there. I asked them to let him out. Johnny then came out with his two comrades holding their revolvers in their hands. Johnny then stopped a soldier asking him if he was a Canadian the soldier said 'yes', so he let him go. Shortly after that two other soldiers came up, Johnny asking them if they were Canadian they answered 'No we are English'. Johnny and his two comrades then attacked the English by use of their fists. Johnny then knocked out an Englishman, knocking him on the ground. Johnny then backed up and pulled his revilver. I pulled his arm saying to him 'Don't do that.' Johnny answered 'shut up'. I then heard a shot coming from the direction of the 'Jeep', but I do not know who fired it. I then ran away. Where my sister in law was, I do not know. When I ran away two other soldiers caught up with me, bringing me in a cafe where I drank a glass of beer. I left these soldiers in the Cafe, and went over to the Cafe Druiftak, on the Kleing Statie Straat, where I slept over night. I cannot say what happened with the two English soldiers. The following day I heard that the Englishman was dead. I saw 'Stuff' and his brother the following morning in the Cafe Splendid. They told me that Johnny was in prison. That was the last time I saw them.' (ENDS)

(Sgn) Tertilla Raes.

26 Dec 44.

6. Both of the foregoing statements were taken down in Flemish and translated into English.

7. In the early hours of the 24 Dec 44, members of the Cdn Provost Corps, arrested the captionally noted at the Beaver Club Cafe, which is situated on Kleine Statie Straat. He had retired to bed in one of the upper rooms of the Cafe. He admitted that he was AWL and was placed in the Guard Room at HQ., 9 Bn 2 CBRG.

8. After interviewing the two civilians, and hearing their reference to a Canadian soldier by the name of 'SMITH', it was concluded that possibly the arrested man might be the one they referred to. On the 26 Dec 44, an identification parade was held at HQ., 9 Bn. which included Pte Smith. The civilians viewed the parade separately. Tertilla Raes viewed the parade first. She said Johnny Smith was on the parade, but she was too afraid to identify him. The other woman identified Smith without any hesitation. Following this I obtained the statements from the civilians. While taking the statements I obtained a description of the two coloured soldiers, who accompanied Smith at the time of the incident. One of them was described as wearing a leather jerkin with the word 'lucky' printed in white paint on the left breast.

9. In the P.M. of the 26th Inst., in company with members of the Provost Corps, a check was made in cafes for coloured soldiers answering this description. D.77695 Cfn Robinson W. 64 Coy, 12 Bn 2 CBRG, wearing a leather jerkin with the word 'LucKY' on left breast, was arrested. He admitted being with Smith at the time when the English soldier was attacked, and named the other coloured man as D.109540 Pte King A.J. of the Haversacks unit - Canadian Army Shows. King was found to be under arrest at 12 Bn 2 CBRG., for AWL., but as near as could be ascertained, he was not connected with this incident, as suggested by the two civilian witnesses.

10. On the 27 Dec 44, I interviewed Pte Smith at HQ 9 Bn I informed him of the nature of the investigation. He admitted attacking the English soldier, but stated he did not know that the man had died. He was properly cautioned, and made a statement

(Cont'd over)

which is as follows.

STATEMENT BEGINS: I have been cautioned by Sgt Gibbs of the Special Investigation Section, that I am not obliged to say anything uless I wish to do so, but anything I do say will be taken down in writing, and maybe used as evidence. I fully understand the meaning of this caution. (Sgn) Edward L. Smith.

I joined the Canadian Army in Halifax N.S., in Jan 1944 I joined the artillery, and came overseas about six or seven months ago. I came to France about five months ago, but did not come with the Artillery, but with the Canadian Fusilliers. I was in CBRG for about two weeks, and then went to BHQ of the A&S Highrs I stayed with them until 28th Nove., and then came on leave to Ghent for forty eight hours. I did not return to my unit.

When I came to Ghent I had about nine hundred Dutch guilders. During the time I was in Ghent I spent a lot of time at the leave Centre, and different cafes, one of them the Beaver Club.

Last Saturday night 23 Dec 44, Ihad a date with my girl friend Cecilia Raes, who lives with her mother in a cafe on the corner of the passage and one of the main streets of Ghent. I had seen her earlier in the day, and had asked her to meet me at 10.00 P.M. I told her I would pick her up at her home.

At about 6.00 P.M. I went out with Al King, 'Lucky' and 'Stuff' Barnes. These are all coloured men, and they are all in the Canadian Army. We bought a bottle of cognac at the 'O.K.' Cafe. We then returned to the Beaver Club, and drank the cognac. I also met two of my friends from my regiment, Pte John Leeman, and another one that I don't know by name. They were with us all evening. After we had finished this bottle Leeman and his friend went out and returned with two more bottles of cognac. We drank this between the five of us. Somebody else got another bottle where from I don't know. I also met in the Beaver Club that night two other menfrom my regiment, Sjt Mike Flynn and a L/Cpl Tommy is his first name. I had a few drinks with them.

I was sitting back in one of the corners of the Beaver Club, with Barnes, King, and Lucky, and also a girl that Barnes goes with, at about 9.30 P.M. when I saw Cecilia come in the doorway of the club accompanied by her sister in law Annie. I got up and went outside with the two girls. Cecilia is very jealous, and she accused me of paying attention to other girls in the Cafe. I called King, Barnes and Lucky out to prove that this was not true. I think Leeman and his friend came out too.

I took Ceciliaaway from the Cafe door towards the passage entrance, and I asked her why she had come looking for me. She said Annie wanted to find her boy friend 'Paul', another Cdn. Cecilia wanted me to go with her, but I refused saying I would come to see her at a quarter to ten as I had arranged before. My companions said they would see that I came. Annie refused to leave until she had found 'Paul'.

I took the girls towards the Passage, and as they turned away to leave a soldier bumped into them. He said something, I don't remember what it was, and I told him he had better apologise. He refused, and we got into an argument. A major came along, and he suggested we stop the argument, as the next day was Christmas. The officer passed on. I grabbed the soldier, and told him if he wanted to fight we would have it out right there. He was alone, I can't remember anybody being with him. He took a swing at me. I stopped his blow, and then I struck him with my fist in the mouth In doing so I took the skin off of the knuckles of my right hand. He fell to the ground, and did not get up again.

The girls ran away when the fight started. My companions were standing right behind me. 'Lucky' said 'come on he is finished. He can't fight anymore.' Mike Flynn had come up at this time, and he bent down and looked at the man, and said 'well, he is out', and then returned to his 'jeep' where 'Tommy' was waiting for him. Two Provost men came along at this time, and inquired about the 'jeep'. Mike and Tommy left, and the rest of us went back into the Beaver Club.

Later that night I went to bed in the Beaver Club, and

(Cont'd over)

early in the morning I was awakened by the Provost, who arrested me for being AWL.

Immediately after the fight a shot was fired. It was not fired by me, it seemed to come from the 'passage'. It sounded like a P.38. I was carrying a .38 calibre in the belt of my trousers. I had fired a shot from this earlier in the evening, shooting the neck off the second bottle of cognac we had. This happened on the street near the Beaver Club. I only had six rounds of ammunition. I bought this weapon in the beaver club, from a Canadian soldier earlier the same evening for six hundred francs.

This statement has been read over to me, and it is true. I have nothing more to say. (ENDS) (SDG) Edward L. Smith. 27 Dec 44.

2. The girl referred to in the above statement, as Cecilia is Tertilla Raes. The passage, mentioned is Vanderdonckdoorgang. This is an arcade, it runs between Brabantdam and Vlanderen Straat. It can also be entered from the middle at the junction of Kleine Statie Straat. This arcade is commonly known as the 'Glass Passage'. The revolver which Smith was carrying was recovered from him when he was arreste. There was one empty shell in the chamber. There are no marks or other evidence on the weapon to suggest that it had been used as a club for striking anybody. The weapon is an Enfield make, .38 Cal, number 2C.6557.

12. Also on the 27th inst. I interviewed D.109540 Pte King A.J. and from him obtained the following statement.

STATEMENT BEGINS: 'I first met 'smitty', who I know now as Pte Smith, at the Beaver Club Cafe in Ghent, last Tuesday 19 Dec 44. I met him through another coloured man by the name of 'Stuff'. I saw him a couple of times after that.

Last Saturday 23 Dec 44, I saw 'Smitty' in the Beaver Club at 1230 hrs. I spent most of the day with him. He bought a bottle of cognac, and I drank it with him. 'Stuff' and two other Canadian fellows, who I don't know by name, were also in on it. Partof the bottle we drank outside, and the rest in the Beaver Club. Later in the evening the two Canadian fellows got some more cognac which we drank among us.

About 10.00 P.M. we left the cafe, that is "Smitty", 'Lucky', myself and I think the other two Canadians. When we got outside we met two girls, one of them was 'Smitty's' girl friend Cecilia. 'Smitty' had told me about her, saying that she was always bothering him.

We started walking up the street to the right from the Beaver Club. I came in the rear. I heard a skuffle up in front of us. When I heard this I did not rush up right away, but when I did get up there I saw Smitty and an officer bent over a soldier that was lying on the floor of the 'passage'. They moved the soldier, who was unconcious into a nearby cafe. The officer said he would get the Provost. We then left the cafe with Cecilia followingus. She was looking for 'Smitty'. We had a couple of beers. We then returned to the Beaver Club. I found 'Smitty' upstairs there. I had no further conversation with 'Smitty' very much. He did not tell me what had happened in the passage. I stayed about fifteen minutes, and then returned to barracks.

I heard a few shots fired round about the time I heard the skuffle. Where they came from I don't know. I did not see 'Smitty' strike anybody.' (ENDS) Sgn A.J. King. 27 Dec 44.

13. Also on the 27th inst. I interviewed D.77695 Cfn Robinson W. known as 'Lucky'. The following statement was obtained.

STATEMENT BEGINS: 'I have known Eddy Smith for a long time. I knew him in Montreal for about a year, and then I met him again here in Ghent about three weeks ago. I did not know he was AWL until four or five days ago. I go to a cafe called the Beaver

(Cont'd over)

Club almost every night, and I have seen Smith there quite a lot. I also know his girl friend Cecilia, she is a Belgian girl.

I met Smith last Saturday night 23 Dec 44, in the Beaver Club. He came in with Charlie Barnes, a coloured man, and two or three white men, who I do not know. They went to a table in the corner, and started drinking, some girls went with the, I remained with my girl friend. They were drinking for quite a while, and then sometime after nine oclock the doorman came in and told one of the waiters that somebody wanted to see Smith.

Smith came over to me, and asked me to come with him. He said somebody wanted to see him outside. I went with him and another coloured man named Al King. When we got outside we found Cecilia and another girl waiting. Smith told us to wait by the Beaver Club Door with the other girl while he went down the street a bit to talk to Cecilia. He talked to her for a little while, and then started to curse and swear at her, and pushed her away.

We, that is King, the other girl and myself, moved towards them, as I knew he would hit her. I held Cecilia, and Smith went down towards the passage. She broke away from me, and caught up with him. Smith called to us to come with him, and we caught up to him just in the archway of the passage.

At this time I heard Smith say to somebody, "what is the matter with you?" then I heard somebody receive a blow. I heard a noise like somebody being struck in the face. Just as I got in the passage Cecilia came flying out to me. She fell against me with such a force that I fell down. I pushed her away, and went over to Smith. When I got to him I asked him what was the matter. He said 'This guy was looking for trouble'. and at the same time he asked me to stop the other two guys, but I didn't know what he meant. At this time I noticed a soldier lying on the ground at Smith's feet. Smith made a rush in the direction we had just come from. He was at this time pulling his revolver from his belt.

At this time Cecilia's mother arrive, and she was looking for her. Smith returned to the Passage, and on the way fired a shot in the air. An officer arrived and was examining the soldier who was lying on the ground. Smith said to him 'Somebody has hit my chum'. The Officer asked us to give him a hand, and King and I helped him move the man into a cafe.

King said to me 'lets go and get Smitty', and we left the Cafe and found Smith on the way to the Beaver Club. He was yelling for somebody by the name of 'Mike'. He went to a 'Jeep' and it was here that a somebody by the name of 'Mike' was. Two Provost men came up then, and asked whose jeep it was. The three of us returned to the Beaver Club. I next saw Smith when he was being arrested by the Provost early next morning in the Beaver Club.

Later that night in the Beaver Club Smith told me he had hit the man a realy beauty. I then noticed that the knuckles on his right hand were skinned.

This statement has been read over to me, and it is the truth. (KNDS) Sgn Cfn W. Robinson.
27 Dec 44.

14. It would appear that the only other parties who can give any further evidence in this connection are the four menfrom Smith's Regiment. Later on the night of 23 Dec 44, the Cdn Provost Corps, had reason to take the regimental particulars of Sjt Flynn and hiscompanion. It was not known at the time that they could in any way assist in this connection. Their particulars are as follows:- B.46446 L/Cpl Pearson T. Support Coy., and B.45863 Sjt Flynn M.J. also support company. I would respectfully suggest that these men be interviewed at their unit in this connection, and statements obtained. Nothing further is known about Leeman and his companion, but perhaps inquiries can be made for them at their unit, at the same time as Flynn and Pearson are being interviewed.

15. The clothing and personal effects of the deceased are held at this office. This includes one complete suit of battledress, pair of black oxford shoes, two pairs of socks, one army issue

(Cont'd onver)

Shirt, one pair issue shorts, one detached collar for shirt, one comb and case, set of upper false teeth, signet ring gold, 40 Guilders (Dutch) 20 francs (Belgium, coin 11 Centimes (Dutch) 21 francs (Belgium) 30 Centimes (French), one identification tag. No paybook was located. Thehospital authorities claim that the deceased was not carrying a paybook.

16. The two civilian witnesses suggest that the deceased was accompanied by another soldier, however all other witnesses deny this. It is felt that if there had been another man, he would have either stayed to assist his companion, or would have made inquiries for him later. The motive for the assault is doubtful. It can hardly be expected that it would be for robbery, as it is an accepted fact that little could be gained from assaulting a British soldier for this purpose. I am of the opinion that Smith was in an aggravated mood, and was prepared to pick a fight with anybody, especially when backed by his companions. I do not think that either King or Robinson took any part in the actual assault. I do not think that either of these two men have made a practice of carrying weapons. They were not armed when arrested, and there seems to be a slight exageration on the part of the civilian witnesses when they say the men came out of the cafe with their revolvers drawn. It is known that both of these women were slightly intoxicated on the night of the occurence.

17. May a copy of this report be sent to the Dead man's unit, and any useful information that can be obtained might be forwarded to this Detachment to conclude the investigation. This file wile will remain open until the results of para 14 are known. Copies of this report sent direct to OC 9 Bn and DAPM 2 C.B.R.G. All original statements held on file at this Detachment, also exhibits. Robinson and King are at present held in detention at 12 Bn 2CBRG.

STILL UNDER INVESTIGATION

Sdg: _____ Sjt
Reg No.C.42000 L.A. Gibbs.
No 1 S.I.S. - First Cdn Army.

CERTIFIED TRUE COPY OF ORIGINAL WHICH IS HELD ON FILE AT THIS HEADQUARTERS.

(C. Wood) DAPM. 2 C.B.R.G. Capt.

20 Feb 45.

BBB 73

PTE SMITH E.L.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C-42444 Pte Smith, Edward Lionel

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ~~for~~ beginning on (date) —— (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of /0 days, of which N.S. days were spent in hospital.(2)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: ~~To undergo detention for~~ 120 days ~~and to be dismissed the Service~~ and to be dismissed ~~on the expiration of his~~ Service ~~sentence~~ on the expiration of his sentence ~~and that he be reduced to the ranks~~ To undergo detention for 120 days and to be dismissed the Service on the expiration of his sentence and that he be reduced to the ranks ~~and forfeit all pay and allowances during the period of his imprisonment~~ ~~and that he be reduced to the ranks~~

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p ■ 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP 37(A).*)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty to them, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO (5)

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by using paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)

(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 44. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character, or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans ..... Do you intend to call witnesses on your behalf ?

Ans ..... Are they witnesses as to character only ? Ans .....

(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(*1. AA 54(3) (d), RP 45, 120(A). 2. AA 54(3), RP 43, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans NO

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (extract) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)

(*1. MFM 6. 2. AFB 355 or AFB 296. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans I do not wish to say anything (2)

(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2) [illegible]

(*1. When several accused tried separately see RP 76(C). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 108, 119(A), KR Can 308, 336, 563-566, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, C 42444 Private Edward Lionel SMITH, 1st Bn, Essex Scottish Regiment, a soldier of the Canadian Army Overseas is charged with:

FIRST CHARGE
Army Act 15(1)

ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

in the field, on 26 NOV 43, absented himself without leave from 2359 hrs, 26 NOV 43 until apprehended in London by the Canadian Provost Corps at 2320 hrs, 4 JAN 44. Total time absent 36 days, 23 hrs, 21 min. Costs of apprehension 3s-9d.

(B.E.S. MACDONALD) Lt.Col.,
Officer Commanding,
Essex Scottish Regiment.

In the Field
4 JAN 44

To be tried by Field General Court Martial:

(J.M. Rockingham) Lt-Col,
A/ Officer,
4 Can Inf Bde

In the Field
13 JAN 44

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/PAM/1697 (2663)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C42444	Private	--	Edward Lionel	SMITH	Essex Scot

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 13 Jan 44 endorsed by me, ~~for by or before which he was~~ "To be tried by Fie'd General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the case for reference to a superior authority~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~It is not practicable to appoint the Officers to form the Court (or Officer to preside) to the nearest place at which there~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~It is also not practicable to detail Officers to act as the Officer to attend the accused.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	GHB Stinson		RHLI

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by OC		RHLI
Capt	to be detailed by OC		R Regt C

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Capt	to be detailed by OC		Essex Scot

~~JUDGE ADVOCATE~~

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (*Country.*)

Date 13 Jan 44

J W Rockingham

(JW ROCKINGHAM) (*Signed personally. RP 105 fn 2.*)

Lt-Col (*Rank.*)

A/ Commanding 4 CDN INF BDE

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

CHARGE SHEET

The accused, C 42444 Private Edward Lionel SMITH, 1st Bn, Essex Scottish Regiment, a soldier of the Canadian Army Overseas is charged with:

FIRST CHARGE
Army Act 15(1)

ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

in the field, on 28 NOV 43, absented himself without leave from 2359 hrs, 28 NOV 43 until apprehended in London by the Canadian Provost Corps at 2320 hrs, 4 JAN 44. Total time absent 36 days, 23 hrs, 21 min. Costs of apprehension 3s-9d.

(R.J.G. MACDONALD) Lt.Col.,
Officer Commanding,
Essex Scottish Regiment.

In the Field
4 JAN 44

To be tried by Field General Court Martial:

(J.M. Rockingham) Lt-Col, A/C

In the Field
13 JAN 44

I desire to have Lt. W.H. Pope represent me at my proposed trial by Field General Court Martial. If this officer is not available, I then desire to be represented by Lt. R. Morgan.

Sgd. Pte. Edward L. Smith

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA8)
40/FA8/1697 (2668)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C42444	Private		Edward Lionel	SMITH	Essex Scot

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 13 Jan 44 endorsed by me, ~~FOR MY ORDER OF PLACE TO BE~~ "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for reasons as appear during the~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~A civil or military magistrate or the Offr referred to in Para (2) hereof is prevented from attending the Court.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~For the appointment of Judge Advocate see the Offr named hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	GHB Stinson	RHLI

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by OC	RHLI
Capt	to be detailed by OC	R Regt C

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	to be detailed by OC	Essex Scot

~~JUDGE ADVOCATE~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 13 Jan 44

J W Rockingham

(JW ROCKINGHAM)
(Signed personally. RP 105 fn 2.)

Lt-Col (Rank.)

A/ Commanding 4 CDN INF BDE
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S REPORT

I certify that No. C42447 Pte Smith E L

of Lovat Scouts is in a good state of health,

and fit to undergo Trial by Court martial.

R D Thompson Capt
Medical Officer

Station Field

Date 14 January '44

M. F. B. 246

Plea of mitigation
for.
C 42444 Pte Smith F. L.
of "D" Coy. 1st Bn. Canadian Scottish Regt. C.A.O.

On the 26 Nov. 43. I was granted a 48 hr. pass to go to London. While I was there I met several of my friends from the United States Army. Three chaps were from my home town in New York. So I am an American.

Since they were on leave, the custom of returning on the expiration of my pass. I stayed with my friends. The reasons for my doing so I will give later. Then, after their passes had expired and they had returned to their unit. I stayed on in London, thinking that it might be best rather than return too soon for I realized what I was up against. Knowing what I was up against. I continued to stay away as I didn't want to face my punishment and so I put it off as long as I could. Then I knew that I couldn't keep putting it off forever, so I decided to return and take my punishment.

The reasons for my going A.W.L. are simple. I had not made a great many friends in the Pln. and as I am rather self-contained in my social activities this was resented by the Pln and I felt the resentment. Then had come a period of fatigues and I had lasted for nearly a month and since the others on the fatigues were either light duty or unreliable men, I concluded that the Cpl considered me unreliable and this was hard to take though I know that it was because I had been given light duty the day I was detailed. These facts combined with the months fatigues at a small camp to which I was sent, plus the fact that I had met some chums from my home town, induced me to start my unofficial leave.

My absence was terminated as of state before when I realized that I couldn't put off returning any longer. Edward S. Smith

(pte.)

Exhibit "A"

CERTIFICATE IN ACCORDANCE WITH P.C. 2707 of 10 Apr. 42.

I Certify that No. C-[illegible] Rank PTE. Name [illegible] NEWH. H.A.

Unit [illegible] SCOTTISH REGT. was arrested at LONDON (Place)

at 2320 hrs. (hour) on 4 JAN. 44. (date) and that at the time of his arrest he was wearing (Military Uniform) or (~~Civilian clothes~~).
Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest.
(Strike out part inapplicable).

L.S. Grayson

(L.S. Grayson), Capt.,
London Area.

LONDON
4 JAN. 44.

Exhibit

Ref: K.R. & O. (Can.)

Expense Voucher Re—

Reg. No. C42444 Rank Pte Name Smith, E.L. Unit Essex Scottish Regt.

The following expenses were incurred in apprehending and returning the M/N Soldier to ... unit From

Date	Particulars	Amount £	s	d
	Escorts return fare from LONDON To Horsham		3	9
5 Jan 44	Prisoners single fare to LONDON From To Horsham		3	9
	Prisoners fare from London			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £			

(½ portion)

Brown ticket

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

L. S. Thompson Capt.

Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London.

C.M.F.O. 1000/43
A.G.P.R. 40/6/43 (1000)

Exhibit "B"

Expense Voucher Re—: Ref: R. R. & O. (Can) 539

Reg. No G42444 Rank Pte Name Smith, P.C. Unit Essex Scottish Regt.

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars (⅓ portion)	Amount		
5 Jan 44	Escorts return fare from LONDON To Horsham		3	9
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Horsham		Blow Ticket	
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		3	9

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

L. S. Grayson Capt.

Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 130055
40/P & R/885(2287)

Exhibit C

Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at In the Field on the 29th day of December 19 43, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. C 42444 Private SMITH, E.L., 1st Bn, The Essex Scottish Regiment.

DECLARATION.

The Court declare that C/42444 Pte. SMITH, E.L., illegally absented himself without leave (or other sufficient cause) in the field at 2350 hrs on 23 NOV 43, that he is still absent and that on 24 NOV 43 he was deficient, and that he is still deficient of the following articles (see appendix "A") to the value of $54.32 (75% of vocabulary price being $40.69)

Names of President and Members Captain D. Campbell - President

Lt. W.H. Pope) - Members
Lt. R.S.G. Williams)

Signature of Commanding Officer (D.V.S. MACDONALD) Lt.Col.,

CERTIFIED TRUE COPY.

F A Tilston Capt. & Adjt.

Signature of Officer having custody of the Original Record.

(129454) Wt.54682/1365 120,000 1/41 A.& E.W.Ltd. Gp.698 Forms/B115/57.

EXHIBIT "A" to PROCEEDINGS of FGCM

SUMMARY OF EVIDENCE

In the case of C 42444 Private Edward Lionel SMITH, 1st Bn, Essex Scottish Regiment, a soldier of the Canadian Army Overseas.

The accused is informed of his rights.

The C.O. directs that the evidence be taken on oath.

FIRST WITNESS: For the Prosecution

Capt. F.A. Tilston, Adjt, 1st Bn, Essex Scottish Regiment, of the Canadian Army Overseas, having been duly sworn states:

"I hereby present a certificate of apprehension purporting to have been signed by Capt. L.S. Grayson, D.A.P.M., London, Area. Attached as Exhibit "A".
I also present an expense voucher purporting to have been signed by Capt. L.S. Grayson, D.A.P.M., London Area. Attached as Exhibit "B".
I also produce certified true copy of Declaration of Court of Inquiry on Illegal Absence, declaring C 42444 Pte. Smith, E.L. to have been illegally absent without leave from 2359 hrs, 28 NOV 43. Attached as Exhibit "C". "

F.A. Tilston, Capt.

The accused declines to cross-examine the witness.

SECOND WITNESS: For the Prosecution

D 62102 A/Cpl Miller, R.S., 1st Bn, Essex Scottish Regiment, Canadian Army Overseas, having been duly sworn states:

"On Monday, 29 NOV 43, in my capacity as Coy Orderly Corporal, I made a bed check of the coy at 0700 hrs. Pte. Smith, E.L. of 16 Pl was not present nor was his bed slept in. Upon making enquiries I ascertained that Pte. Smith had not returned to his billets on expiration of his weekend pass. Pte. Smith's pass was not turned in by the room guard commander, along with the other passes collected by the guard on the night of 28/29 NOV 43. My duties as a Corporal take me through "D" Coy lines daily and I have not seen Pte. Smith on any day subsequent to 27 NOV 43."

R.S. Miller, Cpl.

The accused declines to cross-examine the witness.

The accused having been duly cautioned in accordance with R.P. 4 (e) states:

"I don't want to say anything now."

Certified that R.P. 4 have been complied with.

Taken down in the presence and hearing of the accused this 6th day of January, 1944.

L.C. Boud, Lieut,
Officer Detailed to take the Summary.

Summary of Evidence in the case of C42444 Private Edward Lionel Smith 1st Bn. Essex Scottish Regiment, a soldier of the Canadian Army Overseas

The accused is informed of his rights

The C.O. directs that the evidence be taken on oath.

First Witness for the prosecution - Capt F.A. Tilston, Adjt 1st Bn, Essex Scottish Regt of the Canadian Army Overseas having been duly sworn states:

I hereby produce a certificate of apprehension purporting to have been signed by Capt L.S. Grayson D.A.P.M. London Area attached as Exhibit A

I also produce an expense voucher purporting to have been signed by Capt L.S. Grayson D.A.P.M. London Area attached as Exhibit B

I also produce certified true copy of Declaration of Court of Enquiry re Illegal Absence taken on the 22nd Dec 43 and attached as Exhibit C

F.A. Tilston Capt

The accused declines to cross examine witness

Second Witness for the prosecution - D42102 A/Cpl Miller, R.H. 1st Bn Essex Scottish Regt Canadian Army Overseas having been duly sworn states

On Monday 27 Nov 43 in my capacity as Coy Orderly Corporal I made a bed check of the Coy at 0700 hrs. Pte Smith C. I. of 16 Platoon was not present nor was his bed slept in. Upon making enquiries I ascertained that Pte Smith had not returned to his billets on expiration of his week end pass. Pte Smiths pass was not handed in by the camp guard commander along with the other passes collected by the guard the night of 26th Nov 43 as Corporal takes me through O/C Coy lines daily 27-28 Nov 43 and have not seen Pte Smith on any day subsequent to 27 Nov 43

RW Miller cpl

He accused declines to cross examine the witness.

The accused having been duly cautioned in accordance with A.F. 464 states
"I don't want to say anything now"

Certified that R.P. 4 ~~(illegible)~~ have been complied with

Taken down in the presence and hearing of the accused the 6th day of January 1944

L'Brand Lieut
Officer detailed to take the summary

No. C42444 Name SMITH, E.L. Sqn., Battery, or Company | Corps R.A.A.F. | Date of enlistment 28/11/41 | G.C. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1. | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	5-5-43	Pte		AWL from 2359hrs 9/5/43 to 0800 hrs 3/6/43. A.A.Sec 15 (1)	Documentary.	28 days F.P.	5 Jun 43	Lt.ColB.J. Macdonald.	Forf 53 days pay & cost of Return
Field	26 Sep 43.	Pte		A.W.L. from 0700 hrs 26-9-43 to 2300 hrs.26-9-43.AA.Sec 15 (1)	Cpl. W.W. Buszowski.	3 forfeiture of pay	28/9/43	Lt ColJ.D. Wingay.	Forfeits total of 4 days pay

F.A Tilston Capt Adjt.

Certified true copy.

EXHIBIT "B"

Substitute for A.F.P.293

STATEMENT OF CHARACTER AND PARTICULARS
OF THE SERVICE OF ACCUSED

No. C 42444 RANK Pte NAME SMITH, Edward Lionel

OF THE ROYAL SCOTTISH REGIMENT, CANADA IS AND CONSISTS.

AGE 20 MARRIED OR SINGLE Single NO OF DEPENDANTS None

DATE OF ENTRY INTO 28-11-41

NO. OF DAYS SPENT IN GUARD, PRISON, (TO DATE OF TRIAL):

CIVIL nil MILITARY 19 HOSPITAL nil TOTAL 19

DATE OF PROMOTION, REDUCTION AND GENERAL STOP OF PAY, IF ANY:

- nil -

F.A. Tilston Capt

DATED: In the Field

This 14....day of Jan.....1942.

5Y-1 Pte. Smith, G. L.

RECORDED AT CMHQ IN AB 160 p. 54-1 H

RECEIVED 1946

FIELD GENERAL COURT-MARTIAL

CFAA96 (In lieu of AFA3) A/P No B/1608 (2664)

Convened by Order of Brig TJ Rutherford, CBE, ED Comd "E" Gp CRU dated 3 Jan 46

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L 38	Pte	Edward LLoyd	SMITH	4 Cdn Repat Dep

PROCEEDINGS REVIEWED
23 January 46 A J Brody maj
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) England on (*date*(s)) 8 Jan 46

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn a. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO (1).~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to an interpreter ? Ans~~

~~The Interpreter is sworn.(1)~~ Do you object to 6888404 Sgt O'NEILL, J. as shorthand writer ? Ans NO SIR

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO SIR (2)

(1. RP 116. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT. COL	C.E.W.GOODROW, OBE, ED	HQ CRU
Member	CAPT	K.M. LEITCH	1 CDN REPAT DEP
Member	LIEUT	F.B. ARMSTRONG	1 CDN REPAT DEP
~~Judge Advocate~~			
Prosecutor	LIEUT	W.ANDERSON	4 CDN REPAT DEP
Defending Offr	LIEUT	G.C. GAEBEL	4 CDN REPAT DEP

Questions by President: Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans NO (2)

(1. RP 28, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dir p 3.)

A8. The accused before arraignment make(s) (no) (~~no~~) plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addressee made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (does not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 8. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: L 38 Pte Edward Lloyd SMITH - 4 Cdn Repat Dep

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	GUILTY	GUILTY	
2nd	AA Sec 22	GUILTY	GUILTY	
3rd	AA Sec 40	GUILTY	GUILTY	
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence fm~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 17 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for the period of nine (9) months.

(Sgd) Judge-Advocate, if any. 8 JAN 46 Date awarded. (Sgd) C E Goodrow LtCol President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Finding and sentence confirmed

I direct that the accused be not committed to prison or detention barracks until further orders. 9/1

(1. AA 57A. Delete if not used.)

Date 9 Jan 46 (Sgd) J Rutherford Brig Commanding E Gp CRU. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
L38 Pte Smith, E Ll	11 Jan 46	H A Franks Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] *3.*

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. N.O. S.I.R.(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty ~~is~~ (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans..... Do you intend to call witnesses on your behalf?
Ans..... Are they witnesses as to character only? Ans.....
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (a), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. TO SIR
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(2), and certified true copy (copies) of Conduct Sheet(s)(3), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that those documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 255 or AFB 296. 2. MAM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Defending Officer's plea in mitigation attached.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any.~~(2)
(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges on all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2102, MML p 66, 727-759. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

C H A R G E S H E E T

The accused, L.38 Private Edward Lloyd SMITH, on Transient Strength of No 4 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE — WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

A A Sec 15(1)

in that he

at No 4 Cdn Repat Depot, absented himself without leave from 0830 hrs 1 Oct 45 until apprehended by the Cdn Provost at Teddington at 0830 hrs 11 Dec 45.
(Total absence: 71 days)

SECOND CHARGE — WHEN IN LAWFUL CUSTODY, ESCAPES

A A Sec 42

in that he

at Kingston, after being arrested by U.1970 Cpl MacKenzie, A.W. of the Cdn Provost Corps at 1445 hrs 18 Oct 45, escaped his custody.

THIRD CHARGE — CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

A A Sec 40

in that he

at Kingston, at about 1445 hrs 18 Oct 45, when ordered by the Cdn Provost to get into their jeep, failed to do so.

(R.E.A. Morton) Colonel
Commanding
4 Cdn Repat Depot

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(T J RUTHERFORD) Major
Comd
"E" Gp CRU

IN THE FD
3 JAN 46

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L 38	Pte		Edward Lloyd	SMITH	4 Repat Dep

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 2 Jan 46 endorsed by me, "(a) by an offr of any rank for trial" To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and also that it is not practicable to delay the trial for reference to a superior qualified offr~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I have received appointments to the Offices of the Court, viz: Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate the Officer named hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt Col	C E Woodrow, OBE, ED	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	To be detailed by CO 1 Cdn Repat Dep	1 Repat Dep
Lt	To be detailed by CO 1 Cdn Repat Dep	1 Repat Dep

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 3 Jan 46

(Signed personally. RP 105 fn 2.)
(T J RUTHERFORD)
Commanding "E" Gp CRU
Convening Officer.

Brig (Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (AFAS) (To take effect as AFAS) 22/7 & 8/1/46 (6621)

(See overleaf for oaths and notes for use on trial.)

Medical Officers' Certificate
KR(Can) para 557.

I certify that I have this morning examined:-

Regt'l No. L 38. Rank Gnr Name Smith E L.

of A Wing 4 CRD. (unit) and in my opinion he is

~~Fit~~ ~~Unfit~~ to undergo trial by Court Martial.

#(cross out one N/A and initial)

Station: Field

Date (of Court Martial) Jan 8 46

Sgd. R Williams Capt (Rank)
Unit
Medical Officer, RCAMC.

PLEA OF MITIGATION
BY THE DEFENDING OFFICER

Exhibit 5
154

As the Court can see from the evidence that was read out, that this man was apprehended by the Canadian Provost and that he showed no fighting mood towards the Provost, and when the fight occurred he immediately stepped back out of the scene of the action. This old soldier, who you can see by his documents joined in September 1939 and came overseas the same year, has pleaded guilty to the charges as set out before him and I, as defending officer, would like to stress these points: First of all, this man came overseas in December 1939 and during this time has been in action and has held his place and done his duty as a Canadian soldier. Granted, he has some crimes against him, as has every Canadian or nearly every Canadian, for which he has had to pay and he has paid for each one. Secondly, his parents at home have been having considerable from which they are now separated. This, of course, would cause any single person much mental strain, especially when they are due to go back to a home which they left some time ago. Thirdly, a girl who he is supposed to be married to in Scotland has "done the dirty" on him; in other words, she is now going to have a baby. This, of course, would tend to upset the mental capacity of this same person. Fourthly, he has been trying for some time to get his return to Canada but has always been unsuccessful in his attempt. As a result, this old soldier has been held back and has been put on jobs washing dishes and other fatigues instead of being put on an immediate draft for Canada. Now, with these few points in mind I beg of the Court not to consult the past crimes which you see on his Crime Sheet. Since he has pleaded guilty to these charges I beg of you to be very lenient when considering the sentence for him.

COMMENT BY PRESIDENT TO DEFENDING OFFICER

Your statement that every Canadian or nearly every Canadian has some crimes is incorrect. Most Canadians are crime-free.

Exhibit A.
Ord

SUMMARY OF EVIDENCE

Summary of Evidence in the case of L.38 Pte Smith, E.L., on Transit Strength of No 4 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas.

The Commanding Officer directs that all evidence be taken on oath.

First witness for the Prosecution

Lieut J.G. Craig, on the strength of "A" Wing No 4 Canadian Repatriation Depot, an officer of the Canadian Army Overseas, having been duly sworn, states:-

I hereby produce as documentary evidence a certified true extract from No 4 Cdn Repat Depot Part II Daily Order No 77 d/3 Nov 45 showing that L.38 Pte Smith, E.L. illegally absented himself without leave from 0830 hrs 1 Oct 45. I also produce, in accordance with Sec 165 (1) (a) of the A.A., a certificate of apprehension showing that L.38 Pte Smith, E.L. was apprehended by the Cdn Provost at 0830 hrs 11 Dec 45 at London. This certificate is purported to be signed by R.J. Stinson, Capt D.A.P.M., C.M.H.Q.

The accused declines to cross-examine the witness.

J.G. Craig Lt

(J.G. Craig) Lieut
"A" Wing No 4 Cdn Repat Depot

The a/m documents have been shown to the accused, marked by me as Exhibits "A" and "B" respectively and attached to the Summary of Evidence.

W. Anderson Lieut

(W. Anderson) Lieut
Officer detailed to take
The Summary of Evidence

Second Witness for the Prosecution

U.1970 Sgt McKenzie, A.W., No 8 Detachment, No 6 Area Provost, a soldier of the Canadian Army Overseas.

I certify that in my opinion the attendance of this witness, owing to the time and expense involved, is not readily procurable, a statement of his evidence has been read to the accused, marked by me as Exhibit "C" for the prosecution and attached to the Summary of Evidence.

The accused does not require the presence of this witness for the purposes of cross-examination.

W. Anderson Lieut

(W. Anderson) Lieut
Officer detailed to take
The Summary of Evidence

Third Witness for the Prosecution

A.59620 L/Cpl Smith, H., No 8 Detachment, No 6 Area Provost, a soldier of the Canadian Army Overseas.

I certify that in my opinion the attendence of this witness, owing to the time and expense involved, is not readily procurable, a statement of his evidence has been read to the accused, marked by me as Exhibit "C" for the prosecution and attached to the Summary of Evidence.

The accused does not require the presence of this witness for the purposes of cross-examination.

(W. Anderson) Lieut
Officer detailed to take
The Summary of Evidence

Fourth Witness for the Prosecution

Lieut W.A. James, on the strength of "A" Wing No 4 Canadian Repatriation Depot, an Officer of the Canadian Army Overseas, having been duly sworn, states:-

On 19 Oct 45 at 1400 hrs, the accused, whom I now recognize, reported to me and asked for a pass, he stated he had been in hospital and wanted leave. I made a check with the hospital to verify this statement and found out that Smith had not been in hospital. While I was calling the hospital the accused disappeared and I did not see him again until this date.

The accused declines to cross-examine the witness.

(W.A. James) Lieut
"A" Wing No 4 Can Repat Depot

The accused was cautioned as follows:-

Do you wish to make a statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement or give evidence on oath.

The accused does not wish to call any witnesses for the defence.

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence of the accused and that Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

(W. Anderson) Lieut
Officer detailed to take
The Summary of Evidence

In the field
20 Dec 45

APPENDIX "C"

"A" Wing
4 CDN REPAT DEPOT

A20/Discipline/1

15 Dec 45

Officier Commanding
No 6 Area Provost Coy
Cdn Provost Corps.

Sir:- Re: Statement of Evidence in the case of
L 38 Pte Smith E.L. No 4 Cdn Repat Depot.

(1) At Kingston at about 1445 hrs 18th Oct/45 I was on mobile patrol in company with L/Cpl Smith H. on Richmond Road when I saw the a/m soldier in company with another Canadian soldier.

(2) I approached them and requested to see their Leave Pass and MBM 1. They could not produce a Leave Pass. They were A.W.L. Pte Smith E.L. and the other Cdn soldier then produced their MBM 1 which I took possession of . I placed them under arrest and ordered them to get into our Jeep . At that time five Cdn soldiers approached and one of them said to Pte Smith and the other Cdn soldier under arrest, "you are not going to let them take you in,are you"? The other Cdn soldier under arrest replied ,"no I am not going in". With that I was knocked down and they all, with the exception of Pte Smith, attacked L/Cpl Smith H. and myself.

(3) In the fight that followed, I lost possession of Pte Smith MBM 1, and Pte Smith made his escape from Military Custody. Pte Smith's MBM 1 was picked up by the Civil Police Kingston about 5 minutes later, and handed over to me.

(4) For your information, Please.

Annerley Camp
15 th Dec /45

.....Sgt.
U 1970 A.W. MacKenzie
No 6 Detachment
No 6 Area Provost Coy

Annerley Camp
15 th Dec /45

Sir I have read over and corroberate the above statements

.....L/Cpl
A 59620 H.Smith .
No 6 Detachment
No 6 Area Provost Coy

EXHIBIT "C" WA

NO. 4 CANADIAN REPATRIATION DEPOT, RC Armd C

PART II ORDERS

BY

Colonel R.W.A. MORTON, D.S.O.
Officer Commanding

Last Order No. 76 dated 2 Nov 45

This Order No. 77 dated 3 Nov 45

TRANSIT STRENGTH

"B"

23. STRENGTH DECREASE:

(a) SOS Transit Strength as a des wef 29 Oct 45 having been decl illegally absent without leave from 0830 hrs 1 Oct 45 by a Ct Inq held 29 Oct 45. Def in kit in the value of $31.75

I-38 Pte SMITH, E.L.

(Signed) A. EDMONDSON, Capt.,
For (R.W.A. MORTON) Colonel,
Officer Commanding,
No. 4 Cdn Repat Depot (RC Armd C)

Extract from No. 4 Cdn Repat Depot Regt'l Part II Daily Order No. 77 dated 3 Nov 45 and certified to be a true extract from the original document.

(W.L. FISHER,) Lieut.,
A/Records Officer,
No. 4 Cdn Repat Depot (RC Armd C)

EXHIBIT "A" NA

CERTIFICATE IN ACCORDANCE WITH P.C.2797 of 10 Apr 42.

I Certify that No. L-3A &Rank Gnr. Name Smith E.L.

Unit No.4. Cdn. Repat. Depot. Was arrested at London (Place)

at 0830 (Hour) on 11-Dec.45 (Date) and that at the time of his arrest, he was wearing(Military Uniform)or ~~(Civilian Clothes)~~ Signature of Provost Marshal, Assistant Provost Marshal, or other Officer or the Commanding Officer of the portion of His Majesty's Forces or the Officer, Warrant Officer,or non-commissioned Officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable.)

(R.J.Stimson) CAPT.
D.A.P.M. C.M.H.Q.

London
12-Dec.45

EXHIBIT "B" 1942

Exhibit "D" Cleb

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
L.38	Pte	Smith, E.L.	"A" Wing 4 Cdn Repat Depot

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For	AA Sec 15(1)	20 times.
For	AA Sec 40	7 times.
For	AA Sec 10(4)	1 times.
For		times.

Date of first entry in Field Conduct Sheet 19 Apr 40

Date of last entry in Field Conduct Sheet 31 Jul 45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

187. *3. ~~The accused has not been convicted by a court martial or a civil court.~~

~~None~~

4. The accused has been awaiting trial on the present charges for No days in civil custody; and for 17 days in military custody, *i.e.*, No days in open arrest, 17 days in close arrest; of which No days were spent in hospital.

5. The present age of the accused is 27

187 6. The date of his ~~attestation~~ 6 Sep 39

7. The service which the accused is allowed to reckon is 6 yrs 3 mos

8. The accused is in possession of: 1939-45 Star; Oak Leaf; Italy Star France-Germany Star; Cdn Efficienc Medal; CVSM & Clasp.

State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*) The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of	
In the war substantive rank of	
In the acting rank of	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(20694) Wt.47129/4399 42,000/ 11/44 A.& E.W.Ltd. Gp.698 Forms.B.296(War).

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
FGCM	24 Jul 41 Field	(1) AA Sec 15(1) AWL 90 dys, 10 hrs, 30 mins. (2) AA Sec 24(2) Losing by neglect articles to value of £11-1-10 (3) AA Sec 40 Conduct to the Prej etc., was wearing badges of rank of a Staff Sgt to which he was not entitled.	48 dys Detn 48 dys Pay Total Forf 171 dys Pay and stoppage of Pay £17-9-2	16 days remission
FGCM	18 Apr 42 Field	(1) AA Sec 15(1) AWL 18 dys 8 hrs (2) AA Sec 40 Conduct to the Prej etc., possession of false pass. (3) AA Sec 24(2) Losing by neglect his eqpt to value of £2-3-0	110 dys Detn 139 dys Pay and stoppage of Pay £2-14-2	34 days remission
Summary Jurisdiction Northampton	29 Oct 41	Larceny	To pay 5/-Court Costs and refund £1-0-0 to plaintiff.	

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 28th day of December 1945

H A Tunbridge Capt

Adjutant
"A" Wing 4 Cdn Repat Depot

No. L.38 Name Smith, E.L. Sqn, Battery, or Company 77th Fd Bty Corps R.C.A. Date of enlistment 6 Sep 39 GC Badges Service or Proficiency Pay Substitut "C" N/K Character ??????????

Date of last entry in Company Conduct Sheet N/A No. and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No 1 Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
			SHEET	DESTROYED AFTER SIX MONTHS SERVICE - ENTRIES, Nil - CASES OF DRUNKENNESS, Nil					
	6 Mar 40			AA Sec 40 Cond to the Prej etc. Did remove a vehicle from the MT Garage without the necessary authority.	Capt G.A. Rankin	7 dys C.B.	23 Apr 40	Capt G.A. Rankin	
Field	19 Apr 40	Gnr		AA Sec 40 Cond to the Prej etc. having W.D. Vehicle No L.158939 unattended in the marked place.	Cpl Parkin L/C Dobbie	168 hrs Detn 7 dys Pay FR&I 149 1(b)	21 May 40	Lt-Col R.A. Wyman	Total Forf 7 dys Pay
Field	17 May 40	Gnr		AA Sec 15(1) AWL from 0930 hrs 13 Oct 40 to 2200 hrs 13 Oct 40. (Absent: 12 hrs 30 mins)	BSM Roberts Bdr Hayward	2 dys C.B.	14 Oct 40	R.S. Hallett Maj	1 dys Pay FR&I 149 1(a) (PTO)
Field	13 Oct 40	Gnr							

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	29 Oct 40	Gnr		AA Sec 40 Cond to the Prej etc. improperly dressed	RQMS Thompson	7 dys C.B.	30 Oct 40	Maj W.A. Townsley	
Field	7 Dec 40	Gnr		(1) AA Sec 40 Cond to the Prej etc., leaving a W.D. Vehicle unattended. (2) A.A. Sec 15(1) A.W.L.	RQMS Thompson Bdr Buchan	14 dys C.B.	9 Dec 40	Capt R.D. Telford	
Field	11 Dec 40	Gnr		AA Sec 15(1) AWL from 1400 hrs 11 Dec 40 to 0945 hrs 14 Dec 40. (Absent: 2 dys 19 hrs 45 mins)	Sgt Ashfield	14 dys C.B.	15 Dec 40	Maj W.A. Townsley	3 dys Pay FR&I 149 1(a)
Field	23 Mar 41	Gnr		(1) AA Sec 15(1) AWL from 0830 hrs 23 Mar 41 until apprehended in Edinburgh at 1900 hrs 21 Jun 41. (Absent: 90 dys 10 hrs 30 mins) Cost of apprehension £6-7-4.	Lt G.W. Myers Cpl Milton	48 dys Detn 48 dys Pay FR&I 149 1 (b)	24 Jul 41	F.G.C.M.	91 dys Pay FR&I 149 1(a)

(Cont'd over)

No. L.38 Name Smith, E.L. Sqn, Battery, or Company 77th Fd Bty Corps R.C.A. Date of enlistment 6 Sep 39 GC Badges Service or Proficiency Pay N/A 3/17 MFM 6 (AFB 122) 40/P&S/138 (5419)

Signature OC Company, etc ?????????? Character

Date of last entry in Company Conduct Sheet N/A No. and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No 2

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	23 Mar 41	Gnr		(2) AA Sec 24 (2) Losing by neglect his equipment, clothing and Regimental necessaries to the value of £11-1-10 as itemized in the Regimental Record Book. (3) AA Sec 40 Cond to the Prej etc when apprehended by the Military police in Edinburgh at about 1900 hrs 21 Jun 41, was wearing badges of rank to which he was not entitled i.e. badges of rank of a Staff Sgt.		To Pay £17-9-2 for deficiencies in kit and cost of apprehension			32 dys Pay FR&I 149 (1)(c)(i) Total Forf 171 dys Pay and stoppage of pay £17-9-2

Released from the Detention Barrack, Witley, on 23 Aug 41 sentence having expired. Remission earned under "Rules for Detention Barracks and Military Prisons". 16 days.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Northampton	17 Jun 41	Gnr		Larceny	To Pay 5/- Court Costs and refund £1-0-0 to plaintiff.		29 Oct 41	Court of Summary Jurisdiction Northampton	
Field	31 Dec 41	Gnr		AA Sec 15(1) AWL from 0830 hrs 31 Dec 41 to 1245 hrs 31 Dec 41. (Absent: 4 hrs 15 mins)	TBSM J.A. MacLean	5 dys F.P. 5 dys Pay FR&I 149 1(b)	5 Jan 42	Maj C.R. Archibald	Total Forf 5 dys Pay
Field	2 Feb 42	Gnr		AA Sec 15(1) AWL from 2359 hrs 1 Feb 42 to 1300 hrs 2 Feb 42. (Absent: 13 hrs 1 min)	TBSM J.A. MacLean	3 dys C.B.	3 Feb 42	Maj C.R. Archibald	1 dys Pay FR&I 149 1(a)
Field	7 Mar 42	Gnr		(1) AA Sec 15(1) AWL from 1030 hrs 7 Mar 42 to 1230 hrs 7 Mar 42. (Absent: 2 hrs.	TBSM J.A. MacLean	3 dys F.P. 3 dys Pay FR&I 149 1(b)	9 Mar 42	Maj E.L. DePencier	Total Forf 3 dys Pay
Field	8 Mar 42	Gnr		(2) AA Sec 15(1) AWL from 0930 hrs 8 Mar 42 to 1200 hrs 8 Mar 42. (Absent: 2 hrs 30 mins)					

3/17 MFM 6 (AFB 122) 40/F&S/108 (5413)

No. L.38 Name Smith, E.L. Sqn, Battery, or Company 92nd Bty Corps R.C.A. Date of enlistment 6 Sep 39 GC Badges Service or Proficiency Pay N/A Character

Date of last entry in Company Conduct Sheet N/A No. and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No 3 Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	27 Mar 42	Gnr		AA Sec 15(1) AWL from 0530 hrs 27 Mar 42 to 1545 hrs 2 Apr 42. (Absent: 6 dys 10 hrs 15 mins)	TBSM J.A. MacLean	14 dys F.P. 14 dys Pay FR&I 149 1(b)	4 Apr 42	Major E.L. DePencier	7 dys Pay FR&I 149 1a Total Forf 21 dys Pay
Field	18 Apr 42	Gnr		(1) AA Sec 15(1) AWL from 0615 hrs 18 Apr 42 to 1415 hrs 6 May 42. (Absent: 18 dys 8 hrs) (2) AA Sec 40 Cond to the Prej etc., in possession of false pass (3) AA Sec 24 (2) Losing by neglect his eqpt etc., lost eqpt to value of £2-3-0	TBSM MacLean BSM Tracy Sgt Frost Sgt Chester Capt Brownlee	190 dys Detn & Stoppage of Pay £2-3-0 plus 11s2d escort expenses. Reduced to 110 dys Detn and Stoppage of Pay £2-14-2 by CRA. 110 dys Pay FR&I 149 1(b)	17 May 42	F.G.C.M.	19 dys Pay FR&I 149 1a 10 dys Pay FR&I 149 1 (c)(1) Total Forf 139 dys Pay & Stoppage of pay 2-14-2

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	Finding confirmed by CRA 1 Cdn Div 19 May 42 but sentence was reduced to 110 dys Detn and stoppages of pay of £2-14-2.								
	Released from the Detention Barrack Headley Down 31 Jul 42, sentence having expired. Remission earned under "Rules for Detention Barracks and Military Prisons, 34 days.								
Field	23 Aug 42	Gnr		AA Sec 15(1) AWL from 2200 hrs 23 Aug 42 to 0935 hrs 31 Aug 42. (Absent: 7 dys 11 hrs 35 mins)	L/Bdr Downs Sgt Castle	16 dys F.P. 16 dys Pay FR&I 149 1(b)	1 Sep 42	G.T. Inch Lt-Col	8 dys Pay FR&I 149 1(a) Total Forf 24 dys Pay
Field	9 Sep 42	Gnr		AA Sec 15(1) AWL while undergoing F.P. (Absent: 3 dys 6 hrs) (2) AA Sec 10(4) Breaking out of barracks.	BSM Collard Bdr Serres Sgt West	14 dys F.P. 14 dys Pay FR&I 149 1(b)	15 Sep 42	T H Musgrave Col	4 dys Pay FR&I 149 1(a) Total Forf 18 dys Pay
Field	16 Nov 42	Gnr		AA Sec 15(1) AWL	Bdr Claxton Bdr Serres	2 dys Pay FR&I 149 (2)	16 Nov 42	G.T. Inch Lt-Col	1 dys Pay FR&I 149 1(a) Total Forf: 3 dys Pay

No. L.38 Name Smith, E.L. Sqn, Battery, or Company 92nd Bty Corps R.C.A. Date of enlistment 6 Sep 39 GC Badges Service or Proficiency Pay N/A 3/17 MFM 6 (AFB 122) 10/PAS/138/5412)

Date of last entry in Company Conduct Sheet N/A No. and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No 4 Signature OC Company, etc R.J. Wood, Capt Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	25 Jan 43	Gnr		AA Sec 15(1) AWL from 1400 hrs 25 Jan 43 to 1700 25 Jan 43. (Absent: 3 hrs)	TBSM Code Bdr Conway	21 dys F.P. 21 dys Pay FR&I 149 1(b)	30 Jan 43	Major H.J. Lake	3 dys Pay FR&I 149 1(a)
	26 Jan 43	Gnr		(2) AA Sec 15(1) AWL from 1330 hrs 26 Jan 43 until surrendering himself to the Civil Police at 1630 hrs 28 Jan 43. (Absent 2 dys 3 hrs)	BSM Tracey TBSM Code	Cost of Apprehension and return to Unit 12s11d			Total Forf 24 dys Pay and Stoppage of Pay 12s11d
	19 Jan 43	Gnr		(3) AA Sec 40 Cond to the Prej etc., did drive W.D. Vehicle in such a manner as to become involved in an accident.	Lieut J.M. Policha Bdr Conway				

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	13 Aug 44	Gnr		(1) AA Sec 15(1) AWL from 2100 hrs 13 Aug 44 to 0600 hrs 14 Aug 44. (Absent: 9 hrs) (2) AA Sec 15(1) AWL from 1130 hrs 14 Aug 44 to 1900 hrs 15 Aug 44. (Absent: 1 dy 7 hrs 30 mins)	Documentary	7 dys F.P. 7 dys Pay FR&I 149 1(b)	17 Aug 44	Lt-Col E.W. Stewart-Jones	2 dys Pay FR&I 149 1(a) Total Forf 9 dys Pay
Field	19 Nov 44	Gnr		(1) AA Sec 40 Neglect to the Prej etc., neglected to obey Coy Standing Orders No 58 d/3 Aug 44, prohibiting soldiers carrying unauthorized civilians in WD Vehs. (2) AA Sec 40 Cond to the Prej etc., used improper language when being checked by CMP on the carrying of civilians on 19 Nov 44.	Documentary	14 dys F.P. 14 dys Pay FR&I 149 1(b)	25 Nov 44	Capt O.M. Hill	Total Forf 14 dys Pay

No. L.38 Name Smith, E.L. Sqn, Battery, or Company Corps R.C.A. Date of enlistment 6 Sep 39 GC Badges Service or Proficiency Pay N/A 3/17 MFM 6 (AFB 122) 40/PAM/136 (5413)

Date of last entry in Company Conduct Sheet N/A No. and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No 5 Signature OC Company, etc D.W. Nichol, Lieut

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	1 Jan 45	Pte		AA Sec 15(1) AWL from 0830 hrs 1 Jan 45 to 1920 hrs 8 Jan 45. (Absent: 7 dys 10 hrs 50 mins)	Sgt Morrison	14 dys Pay FR&I 149 (2)	9 Jan 45	Capt O.M. Hill	8 dys Pay FR&I 149 1(a) Total Forf 22 dys Pay
Field	13 Jul 45	Pte		AA Sec 15(1) AWL from 2359 hrs 13 Jul 45 to 2215 hrs 17 Jul 45. (Absent: 3 dys 22 hrs 16 mins)	Documentary	Admonished	18 Jul 45	Maj H.C. Pattison	4 dys Pay FR&I 149 1(a)

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	23 Jul 45	Pte		AA Sec 15(1) AWL from 0730 hrs 23 Jul 45 to 0730 hrs 24 Jul 45. (Absent: 24 hrs)	Sgt Carvill	2 dys Pay FR&I 149 (2)	24 Jul 45	Lt-Col W.J. Stewart	1 dys Pay FR&I 149 1(a) Total Forf 3 dys Pay
Field	31 Jul 45	Pte		AA Sec 15(1) AWL from 1700 hrs 31 Jul 45 to 0815 hrs 2 Aug 45. (Absent: 1 dy 15 hrs 15 mins)	Documentary	28 dys Pay FR&I 149 (2)	2 Aug 45	Lt-Col W.J. Stewart	2 dys Pay FR&I 149 1(a) Total Forf 30 dys Pay

CERTIFIED TRUE COPY OF THE ORIGINAL DOCUMENT HELD IN MY POSSESSION

H.A. Fowler Capt.
(H.A. Fowler) Capt
Adj "A" Wing
4 Cdn Repat Depot

LIST OF WITNESSES IN THE CASE OF

L.38 Pte Smith, E.L.

FOR THE PROSECUTION

1.	Lieut J.G. Craig	- "A" Wing 4 Cdn Repat Depot
2.	U.1970 Sgt McKenzie, A.W.	- No 8 Detachment, No 6 Area Provost
3.	A.59620 L/Cpl Smith, H.	- No 8 Detachment, No 6 Area Provost
4.	Lieut W.A. James	- "A" Wing 4 Cdn Repat Depot

FOR THE DEFENCE

N I L

LIST OF EXHIBITS IN THE CASE OF

L.38 Pte Smith, E.L.

FOR THE PROSECUTION

Exhibit "A" - Certified true extract from No 4 Cdn Repat Depot Part II Daily Order No 77 d/3 Nov 45.

Exhibit "B" - Certificate of apprehension in accordance with Sec 163 (1) (m) of the A.A., purporting to be signed by R.J. Stinson, Capt D.A.P.M., C.M.H.Q.

Exhibit "C" - Statement of evidence by the Cdn Provost Corps purporting to be signed by U.1970 Sgt McKenzie, A.W. and A.59620 L/Cpl Smith, H., No 8 Detachment, No 6 Area Provost Coy.

FOR THE DEFENCE

N I L

I, L.38 Pte Smith, E.L., request the services of an Officer to defend me at my forthcoming trial by Court Martial.

L.38 Pte Smith, E.L.

PLEA OF MITIGATION
BY THE DEFENDING OFFICER

As the Court can see from the evidence that was read out, that this man was apprehended by the Canadian Provost and that he showed no fighting mood towards the Provost, and when the fight occurred he immediately stepped back out of the scene of the action. This old soldier, who you can see by his documents joined in September 1939 and came overseas the same year, has pleaded guilty to the charges as set out before him and I, as defending officer, would like to stress these points: First of all, this man came overseas in December 1939 and during this time has been in action and has held his place and done his duty as a Canadian soldier. Granted, he has some crimes against him, as has every Canadian or nearly every Canadian, for which he has had to pay and he has paid for each one. Secondly, his parents at home have been having considerable from which they are now separated. This, of course, would cause any single person much mental strain, especially when they are due to go back to a home which they left some time ago. Thirdly, a girl who he is supposed to be married to in Scotland has "done the dirty" on him; in other words, she is now going to have a baby. This, of course, would tend to upset the mental capacity of this same person. Fourthly, he has been trying for some time to get his return to Canada but has always been unsuccessful in his attempt. As a result, this old soldier has been held back and has been put on jobs washing dishes and other fatigues instead of being put on an immediate draft for Canada. Now, with these few points in mind I beg of the Court not to consult the past crimes which you see on his Crime Sheet. Since he has pleaded guilty to these charges I beg of you to be very lenient when considering the sentence for him.

COMMENT BY PRESIDENT TO DEFENDING OFFICER

Your statement that every Canadian or nearly every Canadian has some crimes is incorrect. Most Canadians are crime-free.

52-123 [illegible]

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : F.58068 Pte Edward Laughton SMITH

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA.Sec.15(1)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 21 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo detention for a period of six (6) months and to be put under stoppages of pay in the amount of £20.0.0 cost of return to his unit.

(Sgd) Judge-Advocate, if any. 3 APR 46 Date awarded. (Sgd) C. E. Woodrow President. (RP 45, 50) Lt. Col.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(C). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders.(1) (1. AA 57A. Delete if not used.)

(Sgd) A.H. Cumming Brig

Date 5 Apr 46 Commanding CRU Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date. Signature of Offr.

F.58068 Pte Smith E.L. 8 Apr 46. E Drulgrave Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 150 52-123

APR 27 1946

FIELD GENERAL COURT-MARTIAL

CFAps (In lieu of AFAs) 40, F & S/1098 M (44) 4/388

Convened by Order of Colonel M.B.K. Gordon Comd 1 Cdn Repat Depot dated 1 Apr 46

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F.58068	Pte	Edward Laughton	SMITH	4(Gen Rft) Wing, 1 Cdn Repat Depot

PROCEEDINGS REVIEWED 29 Apr 46 C.A. Tait, Maj. REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 3 APR 46

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 52, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1405 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused : ~~Do you object to~~ as interpreter ? Ans ~~.....~~

The interpreter is sworn.(1) Do you object to ~~Maj H.S. Symmons DSO~~ the shorthand writer ? Ans NO - S/E

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO - S/E (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 58(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Lt-Col	C.E. Woodrow OBE ED	HQ CRU
Member	Capt	W J KIRBY	1 Cdn Repat Depot
Member	Lieut	T M MACINTOSH	1 Cdn Repat Depot
~~Judge-Advocate~~			
Prosecutor	Lieut	E A WESSEL	1 C REP DEP
Defending Offr	Lieut	D I SMITH	1 C REP DEP

Questions by President : Is the Prosecutor a lawyer ? Ans Yes Is the Defending Offr a lawyer ? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (E) and fn 2 were not followed. See D1 p 2.)

A8. The accused before arraignment makes(s) (no) (a) plea. (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (AP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the witnesses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RaP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~(does)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 20, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 42 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA~~, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO - I.A.(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.*
5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is ~~(are)~~ not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (E). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans..... Do you intend to call witnesses on your behalf ?
Ans..... Are they witnesses as to character only ? Ans.....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 84(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3), (6), RP 43, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO I DO.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 143(3) (g) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB 315 or MFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans NO, BUT I WOULD LIKE TO MAKE AN EXPLANATION ATTACHED.(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 47, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 64, 138, 142, RP 46-50, 68, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 1323, As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. Where accused MML p 60, 737-739. already under sentence of imprisonment or detention see AA 44(B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The Accused, H.68060 Pte. Edward Laughton SMITH, CIC, on strength No 4(Con Htl) Sing, No 1 Cdn Repatriation Depot, a soldier of the Cdn Army Overseas, is charged with:

FIRST CHARGE

SECTION 15(1)

ARMY ACT

WHEN ON ACTIVE SERVICE

ABSENTING HIMSELF WITHOUT LEAVE

in that he,

in the Field, absented himself without leave from 0000 hrs 21 Dec 45 until apprehended at 1615 hrs 13 Mar 46 at Leeds, thereby incurring expenses in the amount of £3-0-9 in returning him to his Unit.

Absent: 82 days 6 hrs 15 mins.

(Officer Commanding,
No 4(Con Htl) Unit,
No 1 Cdn Repatriation Depot,
(Lorne Scots)
Cdn Army Overseas.

Field

29 March 46

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(M.B.K. Gordon)Col
Commanding Officer
#1 Cdn Repat Depot

In the Field
1 Apr 46

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(8).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F.58068	Pte		Edward Laughton	SMITH	4(Gen Rft) Wing, 1 Cdn Repat Depot

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 1 Apr 46 endorsed by me, (~~a copy or copies of any statement~~) " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior authority~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Bd Offr or President for the reasons I have stated herein~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereof the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Lt-Col	C.E. Woodrow ONE ED		HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	TO BE DETAILED BY OC 4(GEN RFT) WING	1 Cdn Repat Depot
Lieut	TO BE DETAILED BY OC 4(Gen Rft) WING	1 Cdn Repat Depot
~~RANK~~	~~WAITING MEMBER~~	~~UNIT~~
~~RANK~~	~~(RESERVE OFFR RP 106)~~	~~UNIT~~
	JUDGE ADVOCATE.	
~~RANK~~	~~RESERVE JUDGE ADVOCATE RP 106~~	~~UNIT~~

On Active Service in the Fd

in England (Country.)

Date 1 Apr 46

(Signed personally. RP 105 fn 2.)

(M.B.K. Gordon)

Commanding Colonel (Rank.)

No. 1 Cdn Repat Depot

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICERS REPORT.

KR(Can) 557

This is to certify that I have this morning medically examined

No. F-58068 Pte. Smith E.L.

and that in my opinion he is (fit) ~~unfit~~

to undergo trial by court-martial.

Station No. 3 C.M.P.& D.B.

Date April 3rd. 1946.

K.C. McQuaig Capt

K.C. McQuaig
RCAMC
Medical Officer
No. 3 C.M.P.& D.B.

Plea of Mitigation

for

F 38068 Pte. Smith E.L.

Plea attached, a/E 3

Smith volunteered in Jan. 44 came to England in Jul. 44 and was over on the Continent with the Chaudiere by Aug of the same year. He transfered to the Argyll + Sutherland Highlanders about Oct and fought with them till V.E day.

This man tried to volunteer earlier, as soon as he came of age as a matter of fact but [redacted] he was suffering with a rupture at the time, and was turned down by the medical board. He began private remedial treatment [redacted] and at about this time a girl [redacted] whom he had been keeping company, told him she was pregnant. He did the only thing a man could do in this predicament and married her. After they were married, however, she told him she was not pregnant and had only said she was, to make him marry her. After some time, the remedial treatment [redacted] he had been taking, was successful, up to the point where he was accepted by the medical board.

In November 45 Smith wrote to his wife telling her he was getting going to be demobbed in England and asking her to start divorce proceedings. This was not true of course, but he did volunteer for 6 months further service in the U.K.

Smith thinks that on receiving the letter, his wife ~~failed some strings in Canada~~ through an unknown source, requested his return home because his C.O. called him in, and told him he was to be R.T.C.'d. He informed the C.O. of his application for service in the U.K. and of the relationship existing between he and his wife, but to no avail, the feeling his reasons for staying here, were apparently important to him he went and, as a last resort, before being sent to Repat

Exhibit A

Okd

SUMMARY OF EVIDENCE

in the case of,

F.58068 Pte. Edward Laughton SMITH, CIC., on " strength No 4(Gen Rft) Wing, No 1 Cdn Repatriation Depot, a soldier of the Cdn Army Overseas.

"I produce the following documents in accordance with Overseas Routine Order No 5352, which have been read over and shown to the Accused, and which are attached hereto as Exhibits:" "

(1) Certified True Copy of the Declaration of a " Court of Inquiry dated 11 Jan 46 which declares that F.58068 Pte. Smith, E.L. absented himself without leave from 0800 hrs 21 Dec 45 and to be deficient in kit in the amounts of £11-2-11 (100%) or £8-7-10½(76%)
(Marked Exhibit "A")

(2) Certificate in Accordance with Army Act Section 163(1)(ii) signed by Lieut. F.T. Lawton, 181 R.A. Provost Coy., Northern Command, which declares that F.58068 Pte. Smith E.L. was arrested at Leeds, at 1615 hrs 13 Mar 46.
(Marked Exhibit "B")

(3) Expense Voucher (Ref KRA 0 (Can) 539) dated 14 Mar 46 and signed by R.J. Stinson, Capt., Officer Issuing Railway Warrant and Expense Monies, No. 6 Area Provost Coy., Cdn Provost Corps, London, concerning expenses incurred in apprehending and returning F.58068 Pte. Smith E.L. to London from Leeds.
(Marked Exhibit "C")"

.....C.E.Annis.....
(C.E. Annis) Lieut. M.A.,
Officer detailed to take
the Summary of Evidence.

THE ACCUSED WAS CAUTIONED AS FOLLOWS:

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be " given ~~as~~ evidence." "

The Accused reserves his defence.

The Accused does not call any witnesses.
"I certify that the above Summary of Evidence, consisting of one page, was taken down by me in the presence and hearing of the Accused, and that Rules of Procedure 4(c) (d) (e) and (f) have been complied with."

.....C.E.Annis.....
(C.E. Annis) Lieut. M.A.,
Officer detailed to take
the Summary of Evidence.

Field

18 Mar 46

Exhibit "A"

RECORD of the Declaration of a Court of Inquiry assembled at No. 1 C.G.R.U. on the 11th day of January 1946, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No.

DECLARATION

The Court declare that No. F-58068 Pte. Smith, E.L.

No. 1 C.G.R.U.

illegally absented himself without leave from No. 1 C.G.R.U.

at 0800 hrs. on the 21st day of December, 1945,

that he is still so absent, and that on the he was deficient, and

that he is still deficient of the following articles :—

General Coy Stores 1 CGRU 11 Jan 46

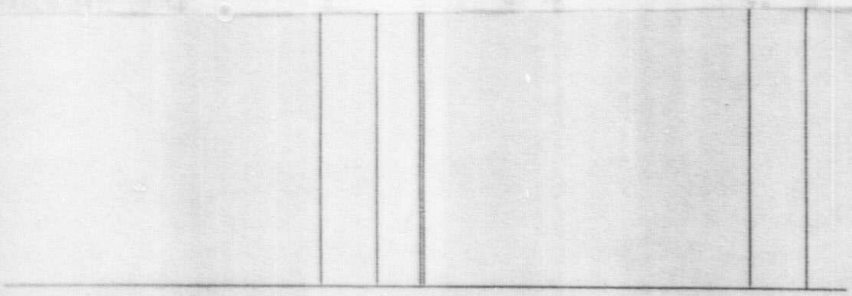
Deficiencies in the Kit of F 58068 Pte SMITH E.L.

Blouses Battle Dress	2	2	7	0	1	16	2
Boots Ankle Prs	1	1	6	0		19	8
Drawers Cell Short	2		3	10		2	10
Gloves Woollen Prs	1		2	1		1	6
Greatcoat Drab	1	2	11	8	1	18	9
Jackets Sweater	1		8	0		8	0
Shirts Angola	2		18	2		13	6
Beret & Badge	1		5	5		4	2
Trousers Battle Dress	2	2	18	7	2	3	10
Holdall	1			10			7½
Housewife	1		1	4		1	0
TOTALS		£11	2	11	£8	7	10½

Checked by 052131 L. A. Sutherland Sgt.

Witnessed by 886371 H. Stewart Pte.

APPENDIX "B"



Capt. J.R.A. MacDonald ..... President

Capt. W.L. Stirling ..... Member

Signed at No. 1 C.G.R.U. ..... Member

this 11 th day of January 19 46

Signature of Commanding Officer 'A.P. Dodds' Lt.-Col.

Certified true copy C E Ennis

Signature of Officer having custody of original record

(C.E. Ennis) Lieut. RCA.,
Lega l Officer.

3/60B HFB 375-AFB 115
40/P&S/392 (8703)

Exhibit "B"

W. H. Lawton certify that No. F/58068 Rank PTE
SMITH E. L. Unit ARGYLL & SUTHERLAND REGT. (CANADIAN ARMY)
LEEDS on 13 MARCH 46 at 16.15 hrs
W. H. Lawton
of his ... in military Uniform.
... of Provost Marshal, ... or other
... into whose custody the above named
... taken on ...

Exhibit "C"

Expense Voucher Re— Ref: KR & O (Can) 539

Reg No. [illegible] Rank Pte Name Smith, C. L. Unit 4 R/t Wksp
1 Edn. Reinf Depot

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit from London Ont. to Leeds

Date	Particulars	Amount		
14 March 46	Escorts return fare from LONDON To Leeds	1	8	6
	Prisoners single fare to LONDON From Leeds		14	3
	Prisoners fare from to			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares	0	6	0
	Total £	2	8	9

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

F. B. Harrison Capt

Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London

1/35 CMHQ 100-55
40-V & S-483 (6782)

Exhibit "B"

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number	Rank	Name	Regiment (or as the case may be)
P.58066	Pte.	Smith, E.L.	1 Cdn Repat Depot.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION. — If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

~~* Within last 12 months~~ C2E * Since Enlistment

For A.A. 16(1) ~~times~~ C2F 4 times

~~For~~ C2E ~~times~~ C2E ~~times~~ C2E

~~For~~ C2E ~~times~~ C2E ~~times~~ C2E

~~For~~ C1E ~~times~~ C1E ~~times~~ C1E

~~For~~ C1E ~~times~~ C1E ~~times~~ C1E

~~Number of instances of gallantry or distinguished conduct~~ C1E

or

~~There are no entries in the conduct sheets of the accused~~ C1C

2. ~~The accused has not been previously convicted, or~~ C5E

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 75 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time. ~~The accused at the present time is under sentence for~~ C1E

~~imprisoning on the day of~~ C5E

4. The accused has been in confinement, awaiting trial on the present charges, for 0 days in civil custody, and 21 days in military custody, making a total of 21 days, of which 0 days were spent in hospital.

5. The present age of the accused according to his record of service is 24 yrs 11 mos ~~attestation paper~~ C5E

6. The date of his ~~commission~~ C5E attestation specified in his record of service is 21 Jan 44 ~~attestation paper~~ C1E

7. ~~The service which the accused is allowed to reckon towards discharge or transfer to the reserve is~~ C5E

8. ~~The accused is entitled to deferred pay or gratuity in respect of~~ C1E ~~service~~ C5E

9. ~~The accused is entitled to reckon~~ C5E ~~service for the purpose of increasing his pension or~~ C5E

10. The accused is in possession of, or entitled to, the military decoration or military award ~~not to be in possession of or entitled to (state any military decoration or reward)~~ C1E 1939-45 STAR, AFRICA STAR, CANADA MEDAL

11. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of~~ C1E

12. ~~(In the case of an officer.) The accused holds in the army the rank of~~ C5E ~~dated~~ C5E ~~and in his regiment (or corps or department) the rank of~~ C1E ~~dated~~ C5E

W.13567/330 20M. 5/44. P. Ltd. T3-1.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. P.58088 *Rank* Pte. Name Smith, E.L. of 2 Cdn Inf Bde Regiment (or as the case may be).

(INSTRUCTION.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
F.G.C.M.	etc 16 Apr 45	A.A. 41	7 yrs Pen Ser.	Sentence commuted to 2 yrs imp with H.L. by C.G.C. 1/c FCA

etc

Released [illegible]

etc

In the rank of ..... YEARS.

In the rank of ..... YEARS.

In the rank of ..... YEARS.

(INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books, the paragraph may be struck through except the in the case of a trial by field general court martial when such matter must be obtained and the paragraph completed before the conviction is recorded.)

The accused has served ... with commendable diligence and efficiency since ... Date of Promotion.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this third day of April 45

C. E. Eaves, Lieut RCN
Legal Officer
Glasgow Main Repat Depot

M.F.M. 6
(A.F.B. 122)
17135—7-41 (2252—39)
H.Q. 1772-39-1055

No. F58068 Name SMITH, E.L. Sqn., Battery, or Company — Corps — Date of enlistment 31-1-44 — Service or Proficiency Pay — Character

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. 1 — Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field		Pte.		AA 15(1) AWL 12 dys, 16 hrs, 15min.		14 days C.B. 13 days pay.	13May44		Cost of app. $25.32
Field		Pte.		AA 15(1) AWL from 2359hrs 20Aug44 to 1900hrs 28Aug44 Released from detn on 4 Sep 44 granted 21 days remission of sent.		28 days detn	29Aug44 4Sep44		
Field		Pte.		AA 15(1) AWL frdm 1900hrs 29Jan45 to 2359hrs 2Feb45 abs: 4dys, 4hrs, 59min.		Admonished	8Jan45		5 Days Pay.
Field		Pte.		AA 41 To suffer pen. serv. for 7 yrs. and to be discharged from HM Services with ignominy. Finding conf but sent commuted to 2 yrs imp with HL by GOC i/c PCA 7 Jun 45		7 yrs Pen.Ser.	16 Apr45 F.G.C.M.		Total forf of 841 D.P. Released 13Nov45

P.T.O.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
							20-12-45	C2I	
Field		Pte.		AA Sec 15(1) AWL from 0830 hrs 18-12-45 to 1100 hrs 19-12-45 abs: 1day, 2hrs, 3mins.					Total forf of 18 D.F.
				Certified true ~~xxxx~~ extract from original MFM 4 held in my possession.					
				C. E. Ennis (C.E. Ennis) Lieut, RCA, Officer having custody or original document.					
			22 Mar 46 /AJM						

THE CASE OF F.58068 Pte. Edward Laughton SMITH

(i) LIST OF WITNESSES FOR THE PROSECUTION

Nil

(ii) LIST OF WITNESSES FOR THE DEFENCE

Nil

(iii) LIST OF EXHIBITS FOR THE PROSECUTION

(a) Cert True Extract of the Declaration of a Court of Inquiry held 11 Jan 46, concerning the absence without leave of F.58068 Pte. Smith, E.L.
(Marked Exhibit "A")

(b) Cert in Accordance with Army Act, Sec 163 (1) (jj) concerning the arrest of F.58068 Pte. Smith, E.L.
(Marked Exhibit "B")

(c) Expense Voucher d/14 Mar 46 concerning expenses incurred in returning F.58068 Pte. Smith E.L. to London from Leeds.
(Marked Exhibit "C")

(iv) LIST OF EXHIBITS FOR THE DEFENCE

Nil

(v) RECEIPT BY ACCUSED FOR COPY OF CHARGE SHEET AND SUMMARY OF EVIDENCE.

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence, taken in the Field, preliminary to my Court Martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court Martial.

.....
(F.58068 Pte. Smith, E.L.)

(vi) APPLICATION BY ACCUSED FOR DEFENDING OFFICER

I hereby request that the Convening Officer appoint an Officer to represent me at my Trial.

I desire the services of.....
if he is available.

.....
(F.58068 Pte. Smith, E.L.)

Signed in the Field

This 28 day of Mar. 1946

139 I (2nd case)
See 3498 for 1st case

REGIMENTAL DOCUMENTS

H.Q. FILE No. .....

NAME Gnr SMITH E.L. REGIMENTAL No. .....

UNIT OF ENLISTMENT ..... RANK .....

	CONTENTS	NON-EFFECTIVE BY
	COMBINED DECLARATION FORM OR ATTESTATION AND MEDICAL HISTORY (M.F.M.1 & 1A) OR (M.F.M.2 & 2A)	DEATH
	SERVICE AND CASUALTY FORM (M.F.M.4 & 4A) (A.F.B.103)	DATE
	PARTICULARS OF FAMILY (M.F.M.5)	CAUSE
	FIELD CONDUCT SHEET (M.F.M.6) (A.F.B.122)	AUTHORITY
	CERTIFICATE OF SERVICE (M.F.M.8) COPY OF, OR DISCHARGE CERTIFICATE (M.F.M.7) COPY OF	
	FORM OF WILL (M.F.M.10 OR M.F.M.10A)	
	DENTAL HISTORY SHEET	DISCHARGE
	MEDICAL REPORT OR CASE HISTORY SHEET	DATE
	MEDICAL EXAMINATION ON LEAVING THE SERVICE	REASON
	TRANSFER CLOTHING STATEMENT	AUTHORITY
	LAST PAY CERTIFICATE (M.F.D.930A)	
	PROCEEDINGS ON DISCHARGE	
	PROCEEDINGS COURT OF ENQUIRY	DESERTION
	DECLARATIONS COURT OF ENQUIRY	DATE
	PAY SHEETS	AUTHORITY
	CARDS	
	SUNDRY	

M.F.W.2389
66/P & S/1115

Correspondence to be PINNED here.

20 MAY 1942
5-4-2
1 CDN. DIV.

139 I

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this SEVENTEENTH day of MAY, 19 42

Whereas it appears to me, the undersigned, an officer in Command of ROYAL CANADIAN ARTILLERY, FIRST CANADIAN DIVISION, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[I am unable to appoint :—

*(1. Three Officers to form the Court.)

*(2. A Field Officer as President.)

for the following reasons, namely :—]

*Omit if not applicable.

PROCEEDINGS REVIEWED.

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	G.W. Johnston	1 Med Regt R.C.A.

Members.

Rank.	Name.	Regiment.
Captain	J.C. Whitwill	2 Lt A.A.Regt RCA
Lieut.	A.G. Thomas	1 Med Regt R.C.A.
Lieut.	WAITING MEMBER T.L. Carter	2 Fd Regt R.C.A.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Brig'r
Commanding CAA 1 Cdn Div
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
~~No~~ L 38 Gnr. Smith, E.L. 3 Cdn Fd Regt	1st Charge: W.O.A.S. absenting himself without leave (A.A. Sec.15(1))	Guilty	Guilty	Sentence The finding & the Court But owing The sentence is 110 days
	2nd Charge: W.O.A.S. conduct to the prejudice of good order and military discipline (A.A. Sec.40)	Guilty	Guilty 90 days detention	detention and Stoppages of pay in the amount of
	3rd Charge: W.O.A.S. losing by neglect his equipment clothing and necessaries (A.A.Sec.24(2))	Guilty	Guilty Stoppages of Pay 6 Shillings and the amount two pence)	£ 2-14-2 (Two pounds fourteen shillings and two pence) J.C. Spencer Brigadier
			7 x 3-0 pence Each charge of 1/-	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— No

(Signed) J.C. Spencer Brigadier, Commanding 1 C.A. 1 Can Div (Signed) [illegible] President.
Convening Officer (*c*)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 17th day of May 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(~~3. The interpreter~~)
*(~~4. The officers under instruction~~)

* Omit if not applicable.

were duly sworn.

Signed this 17th day of May 1942.

[illegible] Johnston
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~)

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 19th day of May 1942

J.C. Spencer Brigadier
Confirming Officer.

Promulgated and extracts taken in the case of L-38, Gnr. Smith, E. L., 3 Fd Regt RCA

(*a*) (Dated) 20 May 42 (Signed) [illegible] (F. A. Ford) Lt.-Col., Comd., 3 Fd. Regt., R. C. A.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused, No. L-38, Gnr. Smith, E. L., 92 Fd. Bty., 3 Fd. Regt., R. C. A., a soldier of the Canadian Army, is charged with:--

First Charge
SEC. 15(1) ARMY ACT

When on Active Service, absenting himself without leave:--

in that he

in the field, at 0615 hrs., on 18 Apr 42, absented himself without leave from 3 Fd. Regt., R.C.A., until apprehended by the Canadian Provost Corps in High Street, Blackheath, at 1415 hrs., 6 May 42. Total time of absence is 18 days, 8 hours. Expenses incurred in this regard are 11s. 2d.

Second Charge
SEC 40 ARMY ACT

When on Active Service, conduct to the prejudice of good order and military discipline:--

in that he

at Blackheath, at 1415 hrs., on 6 May 42, was in possession of a document purporting to be a genuine leave pass, knowing it not to be genuine.

Third Charge
SEC. 24(k) ARMY ACT

When on Active Service, losing by neglect his equipment, clothing and regimental necessaries:--

in that he

in the field, on 12 May 42, was deficient the following articles of equipment, clothing and regimental necessaries, the value being £5.7.5, being 75% of the vocabulary price in accordance with Canadian Army (Overseas) Routine Order No. 1398:

Articles	No.	Value
Battledress, blouse	1	~~£1. 0. 6~~ } FOUND
Battledress, trousers, prs.	1	~~1. 0. 6~~ }
Drawers, woollen, prs.	1	7. 6
Titles, shoulder, "3 RCA"	2 pr	2. 4
Knives, clasp	1	3. 4
Overalls, blouse, denim	1	~~2. 2. 6~~ / FOUND
Overalls, trousers, denim, prs.	1	~~1. 0. 6~~ /
Shirts, flannel	2	1. 0. 0
Shirts, woollen	2	15. 6
Towels, hand	1	1. 6
Drawers, shorts, P. T., prs.	1	2.11
Bags, ration	1	2½
Mugs, drinking, 1-pt.	1	11
Straps, web, supporting	2	1. 4
Tins, mess	1	2.10
Eyeshields, anti-gas	2	9
Outfits, respirator, anti-dim	1	2½
Gloves, woollen, khaki, prs.	1	1.11
Div patches, prs.	1	1.
Total value		£7. 3. 3
Less 25%		1.15.10
75% in accordance with C.A.(O)R.O. 1398		£5. 7. 5

7.3.3 LESS 4.6 = 17.3 LESS 3.0 = 14.3

In the field
13 May 42

(F. A. Ford) Lt.-Col.,
Comd., 3 Fd. Regt., R.C.A.

To be tried by Field General Court Martial.

Date_____

Exhibit A.

A

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 557

I certify that I have this morning examined

No. L-38, Gnr. Smith, E. L.

of 92 Fd. Bty., 3 Fd. Regt., R. C. A.

and in my opinion he is fit/~~unfit~~ to undergo Trial

by Court Martial.

In the field
17 May 42

M Carleton Capt RCAMC
for (P. K. Tisdale) Capt., RCAMC
M.O. 3 Fd. Regt., R. C. A.

17 May 43

Trial of No. 138 Pvt Smith Co 3rd Bn Light Regt RAA
Prosecutor: Capt. J.D. Winn 3rd Bn Light Regt RAA
Defending Officer: Lt W.R. McIntyre 3rd Bn Light Regt RAA

Officers under instruction:

1. The order concerning the duties to be observed in the presence of the accused.

2. The charge to be read to the accused.

3. The prosecutor, members, defending officers under instruction, shorthand writer and interpreter are duly sworn.

4. The accused is asked his name and answer and is duly arraigned on the charges.

5. The evidence being given orally is recorded in shorthand.

6. The prosecutor addresses the court.

7. The defending officer addresses the court.

8. The prosecutor addresses the court in reply.

9. The court is cleared and considers its finding.

10. The court announces its finding.

DEFENCE

The accused is informed of his rights in accordance with R.P. 40(a) and Note 2 on page 644 of the Manual of Military Law, 1929 edition.

The accused is asked the following questions:-

Q.1 Do you wish to give evidence as a wit ness?

A.1 No.

Q.2 Do you intend to call any other witnesses on your b-half?

A.2 No

Q.3 Are they witnesses as to character only?

A.3 N.A.

See R.P. 41

IX

AFTER FINDING.

Lieut AC Patterson, 2d Dn Sup. Coy was duly sworn and states:-

"I produce a certified copy of A.F.B. 122 relating to the accused. (The said copy is marked , signed by the President, and attached to the proceedings).

Question to the accused

"Do you wish to address the Court, or to call evidence as to character?"

Answer:- Nil

The (~~accused~~)(Defending Officer) makes the following plea in mitigation of sentence:-

The pass was not used to defraud the Army but to obtain a Railway ticket for return to his unit. Gnr Smith had admitted wrongdoing and realized his wrongdoing, and was willing to be punished for his improper conduct.

The defending officer also requested that Gnr Smith be allowed to do his punishment with his unit.

J Johnston
Maj
i/c Mil Dept L&A

Evidence of Court Martial

L-38 Gnr. Smith C.L. 3rd Field Regiment R.C.A.

Character Witness for Prosecution.

Capt. Patterson 3rd Field Regiment R.C.A.

As Adjt. Officer of 3rd Field Regiment R.C.A. I am in charge of Regimental Documents which I now produce to the Court.

Attached and marked Exhibit

The accused after the defending officer to make a statement on his behalf.

1. The prisoner not wishing to depend to any but to obtain a military ticket for his return to his unit.
2. The accused humbly asks to be punished with his unit.

Taken down by me this 9th day of May 1942.

Lieut. [illegible]
1st Medium Regiment R.C.A.

Adjutant

SUMMARY OF EVIDENCE IN THE CASE OF L38
Gnr SMITH, E.L. 92 BATTERY, 3 FIELD REGIMENT,
R.C.A.

ON THE DIRECTION OF THE COMMANDING OFFICER
THE EVIDENCE IS TAKEN ON OATH.

1st Witness

M4084 TBSM Maclean, J.A. "F" Troop 92 Battery, 3 Field Regiment, R.C.A. having been duly sworn states:

"At Selsden Court, PATCHING, Sussex on 18 Apr 42 at the reveille parade Gnr Smith, E.L. was reported absent. When checking on this report I found he was not in the billets or the billet area. He attended no further parades nor did I see him until 8 May 42 when he was brought to the Battery Office under escort. I had not issued a pass to this man nor had anyone else to the best of my knowledge. The weekend after 18 Apr 42 I found that an old pass book, used for the purpose of issuing Sunday passes was missing, and thought that it had been mislaid. It was thoroughly searched for and not found."

J.A. Maclean
(J.A. Maclean)

The accused declines to cross-examine this witness.

2nd Witness

M4159 B.S.M. Tracy, C.G. 92 Battery, 3 Field Regiment, R.C.A. having been duly sworn states:

"At ANGMERING, Sussex, on 18 Apr 42 at approximately 0930 hours it was reported to me at the Battery Office by Bdr Sagan, A. that Freddie Troop had reported the absence of Gnr Smith, E.L. The following morning I made enquiries from Freddie Troop if the above mentioned gunner had returned. On finding that he had not I gave orders for a casualty return covering his absence to be made. Further returns, as required, covering his absence were submitted until 8 May 42 at which time he was brought to the Battery Office by the Regimental Provost to appear before Major de Pencier. He was accompanied by charges prepared by No.6 Provost Coy and in the documentary evidence attached there was included a pass in favour of this man. It was stamped with 92/109 Field Battery and was signed by no officer of the Battery that I know of. The signature on the pass was Parker and there was no officer of that name in the Battery at that time or at the present date."

EXHIBIT (A)

C.G. Tracy
(C.G. Tracy)

The accused declines to cross examine this witness.

Third Witness

B21172 Sgt Frost, J.R., 6 Provost Company S.I.S. Canadian Provost Corps.

EXHIBIT C

In accordance with Rule of Procedure 4(G) see exhibit C. The accused does not demand the attendance of this witness for cross-examination.

L38 Gnr Smith, E.L. 92 Battery, 3 Field Regiment, R.C.A. having been duly cautioned in accordance with Rule of Procedure 4(E) reserves his defence.

I certify that Rules of Procedure 4(c)(d)(e)(f)(g) have been duly complied with.

The above evidence was taken down in my own hand this 9th day of May 1942 at Findon Place, FINDON, Sussex.

(J.D. Muir) Capt, R.C.A.
92 Battery,
3 Field Regiment, R.C.A.

APPENDIX "A"

SCHEDULE OF EXHIBITS L38 Gnr SMITH, E.L.
92 BATTERY, 3 FIELD REGIMENT, R.C.A.

(a) Pass.

(b) Form in accordance with R.P. 163 (1) (jj).

(c) Statement of B21172 Sgt Frost, J.R.
No.6 Provost Coy.

APPENDIX "B"

List of Witnesses:

(1) M4084 TBSM MacLean, J.A. F Troop 92 Battery, 3 Field Regt, R.C.A.

(2) M4159 BSM Tracy, C.G. 92 Battery, 3 Field Regt, R.C.A.

(3) B21172 Sgt Frost, J.R. 6 Provost Coy, S.I.S. Canadian Provost Corps.

Summary of Evidence in the case of No. L-30, Gnr. Smith, E. L., 92 Fd. Bty., 3 Fd. Regt., R. C. A.

By direction of the Commanding Officer the summary of evidence is taken on oath.

1st Witness for the Prosecution

No. M-4139, L/Sgt. Dionne, J. H., 92 Fd. Bty., 3 Fd. Regt., R. C. A., having been duly sworn, states:

I am the Storeman of the 92 Bty. stores. When Gnr. Smith was reported absent his kit was checked and turned into the Bty. stores. After his return his kit was again checked and the following deficiencies were found:

Articles	No.	Value
Battledress, blouse, serge	1	£1. 2. 6
Battledress, trousers, serge	1	1. 0. 6
Drawers, woollen	1	7. 6
Titles, shoulder, "3 RCA"	2 pr	2. 4
Knives, clasp	1	3. 4
Overalls, blouse, denim	1	1. 2. 6
Overalls, trousers, denim	1	1. 0. 6
Shirts, flannel	2	1. 0. 0
Shirts, woollen	2	15. 6
Towels, hand	1	1. 6
Shorts, P. T.	1	2.11
Bags, ration	1	2½
Mugs, drinking, 1-pt	1	11
Straps, web, supporting	2	1. 4
Tins, mess	1	2.10
Eyeshields, anti-gas	2	9
Outfits, respirator, anti-dim	1	2½
Gloves, woollen, khaki	1 pr	1.11
Div Patches	1 pr	1.
Total value		£7. 3. 3

The accused declines to cross-examine this witness.

J H Dionne

(J. H. Dionne) L/Sgt.
92 Fd. Bty., 3 Fd. Regt., R.C.A.

The accused, having been duly cautioned in accordance with Rule of Procedure 4 (E) reserves his defence.

Certified that Rule of Procedure 4 (C)(D)(E)(F) and (G) have been complied with.

Taken down by me in the presence and hearing of the accused this thirteenth day of May, 1942.

J M Brownlee

(J. M. Brownlee) Captain
Adjt., 3 Fd. Regt., R. C. A.

Statement of EVIDENCE in the case of
L-38 Gnr. Smith, E.L.
3rd. Field Regt. R.C.A.

Sir,

At London on the 6-5-42.at about 1415hrs. While on duty in company with Sgt. Chester I was proceeding along High St. Blackheath when I saw the a/n soldier . I asked him for his pass, he produced one which expired at reveille Upon further questioning he admitted that the pass was false and that he was A.W.L.

I placed him under arrest and escorted him to No.6 Cdn. Provost Coy. H.Q. where I handed him over to the N.C.O. i/c of cells to be detained.

J.R.Frost
---------- Sgt.
(B-21172 Frost,J.R.)

London.
6-5-42

Sir,

I have read over and corroborate the above statement.

H.W.Chester
---------- Sgt.
(B-6047 Chester,H.W.)

London.
6-5-42

REMARKS

CHARGE

Army Form B 252
(See King's Regulations)

3rd. Field Regt. — Regiment
R.C.A. — Battery / Squadron / Troop or Company

CHARGE against No. L-38 Rank Gnr.

Name Smith, E.L.

Place Blackheath Date of Offence 6-5-42

OFFENCE W.O.A.S. Was absent without leave from? 0615 hrs 18 Apr 42 Untill apprehended by the S.I.S. Canadian Provost Corps in High St. Blackheath at about 1415hrs. 6-5-42. (2) Was in possession of a leave pass purporting to be genuine knowing it not to be genuine at 1415hrs. 6-5-42.

SEC 15(1) A.A.
SEC 40 A.A.

TOTAL ABSENCE 18 days 8 hrs.

Names of witnesses
Sec. 15 (1) A.A.
Sec. 40 A.A.

Sgt. Frost. S.I.S. Cdn. Provost Corps.

Sgt. Chester. S.I.S. Cdn. Provost Corps.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

In a Calling-out of the whole Army Reserve is ordered every soldier on pass must return immediately to his unit without waiting for instructions.

92/109 Field Battery, R.C.A., C.A.F.

No. M.W. Regiment

Army Form B199A
(In reply to this)

PASS

No. L 38 (Rank) Gnr (Name) Smith G. H.

has permission to be absent from his quarters duly, from

Date 3.5.42 to Date 6.5.42

for the purpose of proceeding to* Longcross

(Station) Horsell Common

(Date) 3.5.42

M[illegible]

O.C. 92/109 Field Battery, R.C.A.
(P.T.O.

* Destination not required unless absence is to exceed 24 hours, unless justification is desirable owing to local conditions or is necessary to enable purchase of a rail ticket at reduced fare.

† Leave whichever is not applicable.

W. 6555/1501. 10/39. H.L.P.Co. T.51.5254

CROWN COPYRIGHT RESERVED

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. L-38 Rank Gnr. Name Smith, E.L. Unit 3rd Fld. Regt. R.C.A.

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars	Amount		
2 May 42	Escorts return fare from LONDON To Worthing (⅓ portion		5	2
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Worthing		5	7
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		11	2

I certify that the above statement of Expenses is Correct. and that the amounts are fair and just.

H.M.S. Worthing
M. E. Byers A.P.M. Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000 55
40/P & S/483

LIST OF EXHIBITS

In the case of No. L-38, Gnr. Smith, E. L., 3 Fd. Regt. R.C.A.

(1) Certificate in accordance with Army Act Sec. 163(1)(JJ)

(2) Statement of No. B-21172, Sgt. Frost, J. R., S.I.S., Canadian Provost Corps.

(3) Statement of No. B-6047, Sgt. Chester, H. W., S.I.S., Canadian Provost Corps.

(4) Army Form B295 - PASS.

(5) Expense Voucher for trip London to Worthing 11s 2d.

(F. A. Ford) Lt.-col.,
Comd., 3 Fd. Regt., R.C.A.

In the field
13 May 42

Exhibit D.

No. L-38 Name Smith, E. L. Sqn., Battery or Company 92 Fd Bty Corps 3 Fd Regt RCA Date of enlistment 6 Sep 39 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

M.F.M. 6 (A.F.B. 111)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
ALDERSHOT	19 Apr 40	Gnr		Sec 40 AA - did remove a vehicle from the M.T. garage without the necessary authority.	Capt Rankin	7 dys C.B	23 Apr 40	Capt. G.A. Rankin	
FARGO CAMP	17 May 40	Gnr		Sec 40 AA - leaving W.D. vehicle No. L-158939 unattended in the market place at DEVIZES.	Cpl Parkin L/Cpl Dobbie	168 hrs detn	21 May 40	Lt-col R.A. Wyman	
St Lucia Bks BORDON	13 Oct 40	Gnr		Sec 15 (1) AA - WOAS AWL from 0930 hrs 13 Oct 40 to 2200 hrs 13 Oct 40 (12 hrs 30 mins).	BSM Roberts Bdr Hayward	2 dys C.B. (Forfeits 1 days pay)	14 Oct 40	Major R.S. Hallett	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	29 Oct 40	Gnr		Sec 40 AA - WOAS conduct to the prejudice &c - improperly dressed	R/MS Thompson	7 dys C.B	30 Oct 40	Major W.A. Townsley	
In the Field	7 Dec 40	Gnr		(1) Sec 40 AA - WOAS conduct to prejudice &c - leaving W. D. vehicle unattended. (2) Sec 15 (1) AA - WOAS AWL	R/MS Thompson Bdr Buchan	14 dys CB	9 Dec 40	Capt R.D. Telford	
In the Field	12 Dec 40	Gnr		Sec 15 (1) AA - WOAS AWL from 1400 hrs 11 Dec 40 to 0945 hrs 14 Dec 40 (2 dys 19 hrs 45 mins)	Sgt Ashfold	14 dys C.B. forfeits 3 days pay.		Major W.A. Townsley	
COBHAM Surrey	18 Mar 41	Gnr		Sec 15 (2) AA - WOAS AWL from parade at 1715 hrs 18 Mar 41.	Lt Graham L/Bdr Lord	3 hrs pack drill	19 Mar 41	Major W.T. McHugh	

No. L-38 Name Smith, E. L. Sqn., Battery or Company 92 Fd. Corps 3 Fd. Regt. RCA Bty Date of enlistment 6 Sep 39 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. | Character

M.F.M. 6 (A.F.B. 122)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	23 Mar 41	Gnr		CHARGE 1 Sec 15 (1) A.A. - WOAS AWL from 0830 hrs 23 Mar 41 to 1900 hrs 21 Jun 41 (90 dys 10 hrs 30 min) CHARGE 2 (Cost of apprehension £6.7.4) Sec 24 (2) A.A. - WOAS losing by neglect equipment etc value £11.1.10. CHARGE 3 Sec 40 A.A. - WOAS conduct to the prejudice &c - wore badges of rank to which he was not entitled.	Lt. Myers Cpl. Milton	48 dys detn. and to pay for deficiencies ~~£17.9.2~~ and cost of returning to unit £17.9.2	24 Jul 41	F.G.C.M.	Forfeits 91 dys pay FR&I 149(1)(a) 32 dys pay FR&I 149(1)(c)(i) 48 dys FR&I 149(1)(b)
RELEASE									

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
RELEASED FROM THE DETENTION BARRACK WITLEY ON 23 AUG 42 SENTENCE HAVING EXPIRED. REMISSION EARNED UNDER "RULES FOR DETENTION BARRACKS AND MILITARY PRISTONS" 15 days.									
In the Field	31 Dec 41	Gnr		Sec 15 (1) A.A. - WOAS AWL from 0830 hrs 31 Dec 41 to 1245 hrs 31 Dec 41 (4 hrs 15 mins)	TBGM Maclean	5 dys F.P. and to forfeit 5 dys pay.	5 Jan 42	Major C.R. Archibald	Forfeits 1 days pay F.R.A I 149 (1)(a).

No. L-[illegible] Name Smith, E. L. Sqn., Battery or Company 92 Fd. Coy 3 Fd. Regt. RCA Bty Date of enlistment 6 Sep 39 G.C. Badges

Service or Proficiency Pay

M F M 6 (A F B 122)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 3 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	2 Feb 42	Gnr		Sec 15 (1) WOAS AWL from 2359 hrs 1 Feb 42 to 1300 hrs 2 Feb 42 (13 hrs.)	TBSM Maclean	3 dys C.B.	3 Jan 42	Major C.R Archibald	Forfeits 1 dys pay FR&I 149 (1)(a)
In the Field	7 Mar 42	Gnr		Sec 15 (1) AA - WOAS AWL from 1030 hrs to 1230 hrs 7 Mar 42	TBSM Maclean	3 dys F.P. forfeits 3 dys pay	9 Mar 42	Major E.L. dePencier	
In the Field	8 Mar 42	Gnr		Sec 15 (1) AA - WOAS AWL from 0930 hrs to 1200 hrs 8 Mar 42	TBSM Maclean				
In the Field	27 Mar 42	Gnr		Sec 15 (1) AA - WOAS AWL from 0530 hrs 27 Mar 42 to 1545 hrs 2 Apr 42 (6 dys 10 hrs 15 mins)	TBSM Maclean	14 dys F.P. forfeits 14 dys pay	4 Apr 42	Major E.L. dePencier	Forfeits 7 dys Pay FR&I 149(1)(a)

(F T O)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

Certified a true copy

J M Brownlee

(J. M. Brownlee) Capt.
Adjt., 3 Fd. Regt., R.C.A.

3FR/5-4-3
13 May 42

H. Q., R. C. A.
1 Cdn. Div.

Application for Field General Court Martial
No. L-38, Cnr. Smith, E. L.

The accused, the m/n, has requested that Lieut. W. R. McIntyre, 77 Fd. Bty., 3 Fd. Regt., R.C.A. defend him at his trial.

(F. A. Ford) Lt.-col.,
Comd., 3 Fd. Regt., R.C.A.

Exhibit E

ARMY FORM B 296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
L-38	Gnr.	Smith, E. L.	3 Fd. Regt., R. C. A.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with:—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, preference being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For Sec. 40 A. A.	nil	times	4	times.
For Sec. 15 (1) A. A.	5	times	9	times.
For		times		times.
For		times		times.
For		times		times.

Number of instances of galiantry or distinguished conduct, nil

or

~~There are no entries in the conduct sheets of the accused.~~

2. ~~The accused has not been previously convicted or~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, ~~or the sentence in the preceding paragraph is under suspension for~~

beginning on the day of

4. The accused has been in confinement, awaiting trial on the present charges, for no days in civil custody, and 8 days in military custody, making a total of 8 days, of which no days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ / ~~attestation paper~~ is 22 yrs 3 mos.

6. The date of his ~~enrolment~~ / attestation specified in his record of service / ~~attestation paper~~ is own statement 6 Sep 39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is n.s.

8. The accused is entitled to deferred pay or gratuity in respect of n.s. service.

9. The accused is entitled to reckon n.s. service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award ~~(or is in possession of or entitled to wear any military decoration or award).~~

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of dated and in his regiment (*or* corps or department) the rank of dated

(71/38-40) W1.30244/102 75,000 12/40 A.& E.W.,Ltd. Gp.678

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. ..... Rank ..... Name ..... of ..... Regiment (*or as the case may be*).

(*INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispositions with trial, must be inserted.*)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted
F.G.C.M.	In the field ~~23 March 41~~ 24 July 1941	(1) Sec. 15 (1) A. A. WOAS AWL 91 days (2) Sec. 24 (2) A. A. £11.1.10 (3) Sec. 40 A. A. WOAS wearing badges of rank to which he was not entitled.	48 dys detn.	

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 17 day of May 1942

J. A. Ford Lieut
2nd Lt. Regt. Rep.

13 The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

		Date of Promotion.
In the rank of		
In the rank of	n.s. years,	
In the rank of	years	
	years,	

(*Instructions.—If any matter in any of the above paragraphs extend for detail from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph concerned amended accordingly.*)

Correspondence to be PINNED here.

L.38 - Gnr SMITH, E.L.
8 Cdn Army Fd Regt, R.C.A.

Army Form A.3.

RECEIVED

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this day of JULY, 19 41

Whereas it appears to me, the undersigned, an officer in Command of Corps Royal Artillery, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[illegible]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[illegible]

* Omit if not applicable.

*(1. [illegible]

*(2. [illegible]

for the following reasons, namely :—]

President.

Rank.	Name.	Regiment.
Major	E.R. Suttie	1 Survey Regt RCA

Members.

Rank.	Name.	Regiment.
Captain	R E Hazlett	11 A Fd Regt, RCA
Lieutenant	G H Sutton	11 A Fd Regt, RCA

Signed J.H. Roberts Brigadier
(J.H.ROBERTS)
Commanding Corps Royal Artillery
Convening Officer.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
L.38 Gnr SMITH, E.L. 8 Cdn Army Fd Regt, RCA	First Charge A.A. Sec 12 (1)(a) as per Charge sheet attached	Not Guilty	Not Guilty of Desertion but Guilty of Absence without leave.	Confirmed J.H.R.
	Second Charge A.A. Sec 24(2) as per Charge Sheet attached	Guilty	Guilty	
	[redacted] Third Charge Sec 40 A.A. as per Charge Sheet attached	Guilty	Guilty To undergo detention for 42 days. To be put under stoppages of pay until the loss made good the sum of $17-4-2 in respect of deficiencies of Kit £11-1-10 and Uniform incurred in apprehending and returning him to the unit £6-7-4.	

In the field signed this 24th day of July 1941 E.H. Hutton major President

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary) :— No Sir.

(Signed) J.H. Roberts Brigadier (Signed) E.H. Hutton Major
[J.H.ROBERTS] Commanding Corps Royal Artillery Confirming Officer (d) President

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the twenty fourth day of July 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) ~~Shorthand Writer~~
*(4. ~~The officers under instruction~~)

* Omit if not applicable.

were duly sworn.

Signed this 24th day of July 1941.

E.H. Hutton major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (i) on page 782 M.M.L. 1929.

I certify that ~~the terms of~~ *A.C.I. 570 of 1918 have been complied with.

Signed this ~~day of~~ 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be ~~not~~ committed to prison or detention barrack until further orders.)

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

J.H.R.

Signed this 26th day of July 1941.

J.H. Roberts Brigadier
Confirming Officer.

Promulgated and extracts taken in the case of L.38 Gnr Smith E.L.

(a) (Dated) 26 July 1941. (Signed) E.H. Hutton Major
(For Brig. Commanding 8 Cdn Field Regt. R.C.A.)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[84] Wt. 28682/1310 7m 1/41 W. & Co., Ltd. Gp. 748/2

CHARGE SHEET

The accused, L-38, Gnr. Smith, E.L. 8 Cdn Army Field Regiment, RCA., a soldier of the Canadian Army (Overseas), is charged with:-

1st Charge Sec.12(1)(a)A.A. WHEN ON ACTIVE SERVICE, Deserting His Majesty's Service, in that he was absent without leave from 0830 hrs. 23 Mar 41, till he was apprehended by the Military Police in EDINBURG, SCOTLAND, at about 1900 hrs 21 Jun 41, thereby incurring costs of apprehendion in the amount of £6-7-4 (Six pounds, seven shillings and four pence).

2nd Charge Sec.24(2) A.A. WHEN ON ACTIVE SERVICE, Losing By Neglect His Equipment, Clothing and Regimental Necessaries to the value of ~~£11/5/4~~ 11/1/10 as itemized in the Regimental Record Book.

	£	/				£	/	
Bag, kit, 1			5/	3	Blouse, denim, 2		9/	2
Blouses, serge, 1		1/	2/	6	Trousers, " , 2		8/	10
Boots, ankle, 1 pr.		1/	2/	6	Razor, 1			5½
Boots, rubber, 1 pr.			5/	2	Shirts, flannel 2		1/ -/	-
Brushes, boot, 1				8½	Shirts, woollen, 2		1/ -/	-
Brushes, polishing 1			2/	1	Shoes, canvas, 1 pr.		3/	6
Brushes, button 1			1/	2	Socks, 3 pr.		3/	10
Brushes cloth 1			2/	9	Spoon, table, 1			4
Brushes, shaving 1			1/	2	Towels, hand, 2		2/	8
Cap, comforter, 1			1/	3	Shorts, gym, 1		1/	11
Brushes, tooth, 1				5	Shirts, guy, 2		3/	-
Cap, Fd Service, 1			2/	2	Attach, brace 2		1/	10
Comb, hair, 1				2	Bag, ration 1			3
Drawers, woollen, 2 pr.			12/	6	Belt, waist, 1		3/	7
Dressing, Field 1			1/	2	Braces, 2 pr.		3/	5
Fork, table, 1				4	Haversack, 1		6/	3
Gloves, woollen, 1 pr.					Helmet, steel 1		9/	-
Holdalls, 1				11	Straps, shoulder 2		1/	1
Housewives, 1				6	Straps, web supp 2		3/	6
Jacket, sweater, 1			6/	9	Tin, mess, 1		2/	9
Knife, clasp, 1			3/	4	Blankets, 1		15/	-
Knife, table, 1				8	Sheets, ground, 1		10/	-
					TOTAL	£11/	1/	10

3rd Charge Sec. 40A.A. WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE, in that he, when apprehended by the Military Police, in EDINBURG, SCOTLAND, at about 1900 hrs. 21 Jun 41 was wearing badges of rank to which he was not entitled. e.g. badges of rank of a Staff Sergeant.

Dated in the Field 14 Jul 41.

[illegible] Lieut-Col.
(E. C. Flowl) Commanding,
8 Cdn Army Field Regt., RCA.
Cdn Army (O/S).

To be tried by Field General Court Martial.

[illegible] Brigadier.

8 CDN ARMY FIELD REGIMENT, RCA.

Exhibit "A".

I certify that No. L-38, Gnr. Smith, N.L. is fit to undergo Trial by Field General Court Martial.

W.J. Ewen Capt.
(W. J. Ewen) Medical Officer.
8 Cdn Army Field Regt., RCA.

24 Jul 41

8TH ARMY FIELD REGT., R.C.A.

Proceedings and evidence in the case of L-38 Gnr. Smith E.L. 8 Cdn Army Field Regt., R.C.A.

In the Field 24 day of July 1941.

The Court, as under, assembled at 1530 hrs.

President: Major E.R. Suttie 1 Survey Regt. R.C.A.

Members: Capt. R.E. Hogarth 11 A F Regt. R.C.A.
Lieut. S.H. Southam 11 A F Regt. R.C.A.

Prosecutor: Capt. F.A. Robertson, Adjutant 8 C A F Regt. R.C.A.

Defending: Lieut. J.W. Bennett 8 C A F Regt. R.C.A.

The accused was identified by Capt. F.A. Robertson who laid before the Court the Certificate of the Medical Officer stating that the accused was fit to undergo trial. This certificate was marked exhibit "A".

The order convening the Court was read in the presence of the accused, prosecutor, defending officer, witnesses.

The names of the president and members of the court wereread in the presenee of the accused and Gnr. Smith was asked if he objected to be tried by any of those officers. Gnr. Smith stated that he had no objections.

The Court was sworn in. The shorthand writer was sworn in. The witnesses were marched out and the Court proceeded to arraign the accused.

The first charge was read by the President of the Court and the accused pleaded "Not Guilty."

The second charge was read by the President of the Court and the accused pleaded "Guilty."

The President, on behalf of the Court, ascertained that the accused understood the nature of the charge and the affect of his plea of "Guilty." The accused was advised to withdraw his plea if he felt there was any evidence that he ought to plead "Not Guilty." The accused repeated his plea of "Guilty."

The third charge was read by the President of the Court and the accused pleaded "Guilty."

The fourth charge was read by the President of the Court and the accused pleaded "Guilty."

The first charge was read again by the President of the Court.

The Court proceeded to deal with Charge One.

Question by Court-Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence.

Answer---No sir.

TRIAL OF L-38 Gnr. Smith E.L.

PROSECUTOR Capt. F.A. Robertson

DEFENDING OFFICER Lieut. J.W. Bennett

The first witness Lieut. G.W. Myers was called and duly sworn in. He states:

My name is Lieut. G.W. Myers, Subaltern in 8th A F Regt., R.C.A. From 31 Dec 40 to 21 Jul 41 I hald appointment as Regimental Orderly Officer and as such had charge of Regimental Records. I have here certified true copy of Court of Inquiry declaration regarding Gnr. Smith's absence without leave and deficient of certain equipment. This is army book AB 68 being the regimental record book and in it is certified true copy of the declaration of a Court of Inquiry on the illegal absence of L-38 Gnr. Smith E.L., appended to which is signature of Lt-Col E.C. Plow, Commanding 8th Army Field Regt., R.C.A.

Declaration reads as follows:

The Court declares that L-38 Gnr. Smith, E.L. illegally absented himself without leave from the 22 Mar 41 at Cobham, Surrey, and was still absent at the sitting of this court, and so we declare L-38 Gnr. Smith E.L. illegally absented himself for 21 days, and was found deficient in equipment, clothing and necessaries issued to him to the sum of £14-8-6 itemized as follows:-

Anklets, web 1		3	11	Bag, ration 1			3
Bag, kit 1		5	3	Belt, waist 1		3	7
Blouses, serge 2	2	5	0	Braces, 2pr		3	5
Boots, ankle 2 prs	2	5	0	Haversack 1		6	3
Boots, rubber 1 pr		5	2	Helmet,steel 1		9	0
Brushes, polishing 1			8½	Straps,shoulder 2		1	1
Brushes, boot 1		2	1	Straps,web 2		3	6
Brushes, button 1		1	2	Tin, mess 1		2	9
Brushes, cloth 1		2	9	Blankets 1		13	0
Brushes, shaving 1		1	2	Sheets,ground		10	0
Cap, comforter 1		1	3	Respirator 1		17	9
Brushes tooth 1			5				
Cap, Fd. Service 1		2	2				
Comb, hair 1			2				
Drawers, woolen 2 pr		12	6				
Dressing, field 1		1	2				
Forks, 1			4				
Holdalls, 1			11				
Housewives 1			6				
Jacket, sweater 1		6	9				
Knife, clasp 1		3	9				
Knife, table 1			8				
Blouse, denim 2		9	2				
Trousers, denim 2		8	10				
Razor 1			5½				
Shirts, flannel 2	1	0	0				
Shirts, woollen 2	1	0	0				
Shoes, canvas 1 pr		3	6				
Socks, 3 prs.		3	10				
Spoon, table 1			4				
Towels, hand 2		2	8				
Shorts, gym 1		1	11				
Shirts, gym 2		3	0				
Attach, brace 2		1	10				

TOTAL COST £14-8-6

TRIAL OF L-38 Gnr. Smith E.L. 8 A F Regt.R.C.A.

PROSECUTOR Capt. F.A. Robertson

DEFENDING OFFICER Lieut. J.W. Bennett

The second witness L/Cpl. Milton J.W. No.C5626 was called and duly sworn in.
He states:

I am L/Cpl Milton J.W. of the Canadian Provost Corps. I was on duty in Edinburgh on 21 June 41.

On the evening of 21 June 41 I was taking two soldiers up to headquarters for questioning as I past, the accused, Gnr. Smith, who I recognize here in this court, (pointing to Gnr. Smith). The two soldiers who were with me asked if they could speak to him. They said that he was their brother. I took the two soldiers to headquarters where they were questioned. The one soldier said, "that fellow we met on the street was my brother." The Sgt. Major said for me to pick him up, so I went down to the Post Office where the accused was. I asked him for his pass, and asked him if the other soldier I had was his brother and would he come up and identify him. On arrival at headquarters, the accused, was asked if he was absent. At first he denied it but after the other soldiers said it was no use he admitted he was absent.

Cross-examined

Question-Did Gnr. Smith raise any objections about coming to headquarters?
Answer---No sir.

Questions by the Court

Question-Was he wearing Staff Sgt. or Sgt's stripes?
Answer---I cannot say for sure as I do not remember which one had on Sgt's stripes and which one Sgt's stripes.

TRIAL OF L-38 Gnr. Smith E.D. 8 A F Regt., R.C.A.

PROSECUTOR Capt. F.A. Robertson

DEFENDING OFFICER Lieut. J.W. Bennett

The President of the Court informed the accused that he could either give evidence as a witness under oath in which case he was liable to be cross-examined by the Prosecutor and questioned by the Court or make or hand in a statement not on oath, in which case he could not be questioned or he could say nothing. The accused elected to give evidence under oath.

Accused No. L-38 Gnr. Smith E.L. 8 Cdn A F Regt. R.C.A. was sworn in. He replied to following questions put to him by his Defending Officer.

Question-Did you have any intention of deserting his Majesty's Forces?
Answer---No sir.

Question-Did you attempt to leave the British Isles?
Answer---No sir.

Question-Did you wear civilian clothes?
Answer---No sir.

Cross-examined

Question-At the time you left the Regiment were you fed up?
Answer---No sir.

Question-Why did you leave?
Answer---I cannot say sir. They treated me fine, but I just got fed up and wanted something to do. When I left the Regiment I did not intend to stay away more then 2 days.

Question-While you were away did you use any false names or false documents?
Answer---No sir, except my pass which was made out in the name of Steacy. When I was asked to produce a pass I showed them this one.

Question-Did you think of giving yourself up?
Answer---No sir.

Question-Did you think of coming back?
Answer---Yes sir, I came back as far as Kingston and from there I decided to go again.

TRIAL OF L-38 Gnr. Smith E.L. 8 A F Regt. R.C.A.

PROSECUTOR Capt. F.A. Robertson

DEFENDING OFFICER Lieut. J.W. Bennett

The Prosecution, in summing up, stated:

"Gnr. Smith appears to have been tired of soldiering in the Regiment and decided to leave for no other good reason. He was successful in getting as far away as possible and probably would have left the country, had it been possible to do that without getting caught. He evaded capture, probably through concealing his identity and he made no attempt to return to his unit until apprehended in Edinburgh some three months after leaving it. There has been no evidence produced to show that he did actually attempt to return to his unit. He returned to Kingston, but turned around and went away again. It can only be concluded that he had no intention whatsoever of returning. I submit, therefore, that in these circumstances he must be found guilty of the charge of desertion."

The defence, speaking on behalf of the accused, states:

"Gnr. Smith came over with the 3rd Field Regiment as soon as war was declared. He transferred to the super heavys on the coast, and when that was disbanded he came to this Regiment. We found his duties satisfactory, otherwise, he would have not held the job he did. I would like to add that he has been under arrest for 31 days, and his conduct has been satisfactory. He never did try to obstruct justice in anyway. He is now 22 years of age.

TRIAL OF L-38 Gnr. Smith E.L.S A F Regt.

PROSECUTOR Capt. F.A. Robertson

DEFENDING OFFICER Lieut. J.W. Bennett

IN SUMMING UP the President of the Court stated:

"The evidence presented by the first witness has shown that a properly constituted Court of Inquiry proved that Gnr. Smith illegally absented himself without leave from 0830 hrs. 23 March 41 and the evidence of L/Cpl Milton established that he was apprehended at about 1900hrs. on 21 June 41. To prove desertion it is necessary to prove intention. I has not been proved that intention to desert existed and the accused under oath has stated that he did not intend to desert.

The Court was closed at 1640 hrs to deliberate on their findings.

The Court was opened at 1655 hrs to consider the other charges.

The President of the Court referred to the summary of evidence and to the evidence already recorded which had bearing on the charges to which the accused had plead guilty.

The accused was asked if he had any statement to make, or statement in mitigation of punishment.

The accused declined to make any statement.

The prosecution called Lieut. G.W. Myers who identified the document presented by the Prosecutor as certified true copy of the AFW 6 of the accused and this together with the original copy was laid before the Court.

The Prosecutor being duly sworn stated that Gnr. Smith has been in custody awaiting trial for a period of 32 days.

The Court was cleared to determine the sentence.

The Court rose at 1710 hrs.

SHEET ONE

Summary of Evidence in the Case of L-38, Gnr. Smith, E.L. 8 Cdn Army Field Regiment, RCA. a soldier of the Cdn Army (Overseas).

By direction of the Commanding Officer the Summary of evidence is taken on oath.

1st Witness for the prosecution

The Regimental Records of the 8 Cdn Army Field Regt., R.C.A., show that L-38, Gnr. Smith, E.L. was not holding at the time he went absent on 22 Mar 41, any rank and was not, therefore, entitled to wear badges of rank.

The following documents are submitted as exhibits:-

Exhibit "A" Certified true copy of the Declaration of the Court of Inquiry in the case of L-38, Gnr. Smith, E.L.

Exhibit "B" Certificate of Arrest in the case of L-38, Gnr. Smith, E.L.

Exhibit "C" Certificate of D.A.P.M. showing costs of apprehension in the case of L-38 Gnr. Smith, E.L.

Exhibit "D" Forged pass in possession of the accused at time of apprehension.

G.W. Myers Lieut.
(G. W. Myers).

The accused declines to cross-examine this witness.

E. Hunter major President.

SHEET ONE

1st Witness for the Prosecution

Lieut. G.W. Myers, 8 Cdn Army Field Regt., RCA. having been duly sworn, states:-

The Regimental Records of the 8 Cdn Army Field Regt., R.C.A., show that L-38, Gnr. Smith, E.L. was not holding at the time he went absent on 22 Mar 41, any rank and was not, therefore, entitled to wear badges of rank. The document which is submitted as Exhibit "A" is a certified true copy of a Court of Inquiry concerning L-38, Gnr. Smith, E.L.

G.W. Myers Lieut.
(G. W. Myers)

The accused declines to cross-examine this witness.

EXHIBIT 'A'

DECLARATION OF A COURT OF INQUIRY
In the case of L-38, Gnr. Smith, E.L.

DECLARATION

The Court declare that L-38, Gnr. Smith, E.L. illegally absented himself without leave from the 22 Mar 41 at COBHAM, SURREY? and was still absent at the sitting of this Court, and so we declare L-38, Gnr. Smith, E.L. illegally absented himself for 21 days, and was found deficient in equipment, clothing and necessaries issued to him to the sum of £~~1.7.10~~ 14.8.6 as itemized below:-

	£	/			£	/	
Anklets Web. 1			3/11	Blouse, denim, 2		9/	2
Bag, kit, 1			5/ 3	Trousers, " , 2		8/	10
Blouses, Serge, 2		2/	5/ -	Razor, 1			5½
Boots, ankle, 2 pr.		2/	5/ -	Shirts, flannel 2		1/	-/ -
Boots, rubber, 1 pr.			5/ 2	Shirts, woollen, 2		1/	-/ -
Brushes, boot, 1			8½	Shoes, canvas, 1 pr.			3/ 6
Brushes, polishing, 1			2/ 1	Socks, 3 pr.			3/ 10
Brushes, button, 1			1/ 2	Spoon, table, 1			4
Brushes, cloth, 1			2/ 9	Towels, hand, 2			2/ 8
Brushes, shaving, 1			1/ 2	Shorts, gym, 1			1/ 11
Cap, comforter, 1			1/ 3	Shirts, gym, 2			3/ -
Brushes, tooth, 1			5	Attach, brace, 2			1/ 10
Cap, Fd Service, 1			2/ 2	Bag, ration, 1			3
Comb, hair 1			2	Belt, waist, 1			3/ 7
Drawers, woollen, 2 pr.			12/ 6	Braces, 2 pr.			3/ 5
Dressing, Field, 1			1/ 2	Haversack, 1			6/ 5
Fork, table, 1			4	Helmet, steel 1			2/ -
Gloves, woollen, 1 pr.				Straps, shoulder, 2			1/ 1
Holdalls, 1			11	Straps, web supp, 2			3/ 6
Housewives, 1			6	Tin, mess, 1			2/ 9
Jacket, sweater, 1			6/ 9	Blankets, 1			13/ -
Knife, clasp, 1			3/ 4	Sheets, ground, 1			10/ -
Knife, table, 1			8	Respirator, 1			17/ 9
				TOTAL	£14	8/	1

"I certify the above to be a true Copy".

G. W. Myers Lieut.
(G. W. Myers).

STATEMENT OF EVIDENCE IN THE CASE OF

No. L-38, Gnr. SMITH, E.L.
8th Field Regiment,
The Canadian Royal Artillery.

Sir,

At EDINBURG on the 21st June, 1941 at about 1900 hrs. in company with L/Cpl. Murphy C.M. Police I was on duty in WATERLOO PLACE where I saw the above named soldier.

He was improperly dressed. I checked him for his pass, which was forged and he was wearing the badges of rank of a Staff Sergeant to which he was not entitled. He was absent without leave.

I conducted him to the BARRIER GATE GUARDROOM where he was handed over to the N.C.O. i/c to be detained.

(Sgd)
J.W. Milton L/Cpl.
Canadian Provost Corps.

Edinburgh.
21.6.41.

Sir,

I have read over and corroborate the above statement.

(Sgd)
F. Murphy L/Cpl.
C.M. Police.

Edinburg.
21.6.41

"I certify the above to be a true copy."

Dated in
the Field
2 Jul 41.

Capt.
(F. A. Robertson) Adjutant.
8 Cdn Army Field Regt., RCA.
Cdn Army (O/S).

SUMMARY OF EVIDENCE

"Certified that Rule of Procedure 4 (c)(d)(e)(f) and (g) have been complied with."

Taken down by me in the presence and hearing of the accused, this 26th day of June, 1941, In the Field.

Robertson Capt.
(F. A. Robertson) Adjutant.
8 Cdn Army Field Regt., RCA.
Cdn Army (O/S).

STATEMENT BY THE ACCUSED

The accused, after being cautioned in accordance with Rule of Procedure, 4 (5), states :-

I am guilty of all five charges except that I am not deficient all of the articles listed in the 2nd Charge. Some of these articles have been recovered and I should therefore be credited with such recovery.

SIGNED E. L. Smith
L-36, Gnr. Smith, E.L.

STATEMENT BY THE ACCUSED AS TO REPRESENTATION AT TRIAL

It is Requested that Lieut. G. W. Graham, of the 8 Cdn Army Field Regiment, RCA. represent me at my trial.

E. L. Smith

L-38, Gnr. Smith, E.L.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
L-38	Gnr.	SMITH, E.L.	8 CDN ARMY FIELD REGT.? RCA.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 671, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, provisions being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	times	times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct,

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, ~~or the sentence at the present time is [illegible] for~~

beginning on the day of

4. The accused has been in confinement, awaiting trial on the present charges, for No days in civil custody, and 32 days in military custody, making a total of 32 days, of which No days were spent in hospital.

5. The present age of the accused according to his attestation paper is 24 years

6. The date of his attestation specified in his attestation paper is 6 Sep 39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is

8. The accused is entitled to deferred pay or gratuity in respect of service.

9. The accused is entitled to reckon service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award ([illegible])

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N.A.

12. (*In the case of an officer.*) The accused holds in the army the rank of N.A. dated

and in his regiment (*or* corps *or* department) the rank of dated

Capt

(P 61140) Wt. 30244/3951 75,000 12/40 A.A. & H.W. Ltd. Gp. 4/11

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. ..... Rank ..... Name ..... of ..... Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 17 day of July 19..

---

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

Date of Promotion.

In the rank of ..... years, ...

In the rank of ..... years .....

In the rank of ..... years .....

(INSTRUCTION—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

CHARGE

Army Form B 252
See King's Regulations

THE ROYAL CANADIAN ARTILLERY. Regiment
8th FIELD REGIMENT. Battery / Squadron / Troop or / Company

CHARGE against No L.30. Rank Gnr.

Name SMITH. [redacted] D.A.P.M.

Place EDINBURGH. CANADIAN MILITARY POLICE AREA. Date of Offence ?

OFFENCE WHEN ON ACTIVE SERVICE.

0830 hrs 23 Mar 41

(1) Absent without leave from ? until apprehended by the Canadian Provost Corps on the 21st June 1941 at about 19.00.hrs.
(2). Wearing the badges of rank of a Staff Sergeant to which he was not entitled.
(3). In possession of a forged pass.
(4). Improperly dressed - Neck of tunic open and wearing collar and tie.

In Waterloo Place at about 19.00.hrs.

Names of Witnesses Time absent: 90 days, 10 hrs, 30 minutes.
L/Cpl. Milton. Canadian Provost Corps.
L/Cpl. Murphy. C. M. Police.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Remanded for trial by Court-
26 Jun 41 Lt. Col. Provost Officer

S/324

Statement of **EVIDENCE** in the case of

No. L.36. GNR. SMITH. E.L.
8th Field Regiment,
The Canadian Royal Artillery.

Sir,

At EDINBURGH on the 21st June 1941 at about 19.00.hrs. in company with L/Cpl. Murphy, C.M.Police I was on duty in WATERLOO PLACE where I saw the above named soldier.

He was improperly dressed. I checked him for his pass, which was forged and he was wearing the badges of rank of a Staff Sergeant to which he was not entitled. He was absent without leave.

I conducted him to the BARRIER GUARDROOM where he was handed over to the M.C.O. i/c to be detained.

Edinburgh.
21.6.41.

J. W. Milton L/Cpl.
Canadian Provost Corps.

Sir,

REMARKS

I have read over and corroborate the above statement.

Edinburgh.
21.6.41.

J Murphy L/Cpl.
C.M.Police.

If a Calling-out of the whole Army Reserve is ordered every soldier on pass must return immediately to his unit without waiting for instructions.

No. ... Regiment 3rd. Field Reg: R.C.A.

Army Form B.265
(In pads of 100.)

PASS

No. L. 1468 (Rank) TSM (Name) TRACEY. A.E.

has permission to be absent from his *quarters/duty, from

1200 hrs June 12th to 1200hrs June 24th 1941

for the purpose of proceeding to* Retford Notts.

(Station) in the field.

(Date) June 12th 1941 77th Bat[illegible] (P.T.

* Destination not required unless absence is to exceed 24 hours, unless [illegible] is allowable owing to local conditions or is necessary to enable purchase of a rail ticket at reduced fare.

† Date of return is not applicable.

CROWN COPYRIGHT RESERVED

Ref: K.R.& O.(Can.)539

Regt.No: L.38

Rank: Gnr. Smith

Name: Smith.E.L.

Regt: 8th.field Regt.

Unit: R.C.A.

The following expenses were incurred in apprehending and returning the m/n soldier to his unit from Edinburgh

DATE	PARTICULARS	AMOUNT		
23/6/41	Escorts return fare from Edinburgh to London	3	0	8
	Prisoners single fare to London from Edinburgh	3	0	8
	Prisoners single fare from London to [redacted]			
	Escorts expense for b[redacted] meals for the prisoners.		6	
	TOTAL -- £	6	7	4

I certify that the above statement of expenses is correct and that the amounts are fair and just.

Capt.
(H.Maurice Gould)
D.A.P.M. Canadians.

NOTE.

No reimbursement for this account is to be sent to our office from your goodself,as the amount has been paid from petty cash.and charged to Public Funds.

If the accused is found guilty a stoppage of pay should be put through your units Part II Orders.

No. L38 Name Smith E.L. Sqn., Battery, or Company 77th Fd. Bty. Corps 1 Div. Date of enlistment 6-9039 G.C. Badges Service or Proficiency Pay

MFM 6 (A.F.B. 133)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Aldershot	19-4-40	Gnr.		Did remove a vehicle from the M.T. Garage without the necessary authority. (Sec.40 AA)	Capt. G.A.Rankin	7 days C.B.	23-4-40	Capt. G.A.Rankin	
Fargo Camp	17-5-40	Gnr.		Leaving W.D.Vehicle No.L158939 unattended in the market place at Devizes.	Cpl.Parkin L/C.Dobbie	C.M.P. C.M.P. 168hrs detention	21-5-40	Lt-Col.R.A.	
St.Lucia Barracks Bordon	13-10-40	Gnr.		1.W.O.A.S. Absenting himself without leave, in that he failed to appear at the place of parade appointed by his C.O. Absent from 0930 hrs 13-10-40 to 2200hrs 13-10-40. Absent 12hrs and 30min. (Sec. 15 para 1 A.A.)	BSM Roberts,J Bdr.Hayward,R.	2 days C.B. Forfeits one day's pay	14-10-40	R.S.Hallett, Major	

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the field	29Oct40	Gnr.		W.O.A.S. Sec 40 A.A.Conduct to prejudice etc. improperly dressed	RQMS Thompson	7 days C.B.	30 Oct40	Major W.A.Townsley M.C. A/O.C. 8 A A F Regt.R.C.	
In the field	7Dec40	Gnr.		1.W.O.A.S.Sec 40A.A. Conduct to prejudice etc.leaving a W.D. Vehicle unattended	RQMS Thompson Bdr.Buchan	14 days C.B.	9 Dec.40	Capt.R.D.Telford (Adjutant)	
				2.W.O.A.S.Sec.15(1)A.A. A.W.L.	RQMS Thompson Bdr.Buchan				
In the field	11-12 -40	Gnr.		1.W.O.A.S.Sec.15(1)A.A. A.W.L. from 1400hrs 11-12-40 to 0945hrs Absent 2 days 19hrs and 45min.	Sgt. Ashfield	14 days C.B. Forfeits 3 days pay.		Major W.A.Townsley.	
In the field	18Mar41	Gnr.		A.W.L. in that he, was absent from a parade at 1715hrs. 18 Mar 41. (Sec.15A.A.).	Lieut. Graham,G.W. L/B. Lord,W.J.	3 hrs pack drill	19-3-41	Major W.T.McHugh	

Certified true copy.

(P.A.Robertson) Adjutant, 8th A.A. Regt. R.C.A.

Box
Sgt. Smith R.L.

O. H. M. S.

M. F. B. 270
1000M-12-40 (6664-09-75)
H.Q. 1772-39-67

807

Correspondence to be PINNED here.

RECEIVED
29 AUG 1942

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this 20 day of August, 1942.

Whereas it appears to me, the undersigned, an officer in Command of 1st Canadian Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

*[I am unable to appoint :—

~~*(1. Three Officers to form the Court.)~~

*(2. A Field Officer as President.)

~~*(3. Three Officers having more than one year's service.)~~

for the following reasons, namely :—]

owing to the exigencies of the service

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

* Omit if not applicable.

PROCEEDINGS REVIEWED

21 Sep 42

President.

Rank.	Name.	Regiment.
Capt.	A.J. Duck	4 PLDG

Members.

Rank.	Name.	Regiment.
Capt.	J.B. McElhinney	1 Cdn Div Sup Coy
Lieut.	H.G. Williams	1 Cdn Div Pet Coy
Lieut.	J. Morris	4 PLDG

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed ~~(Lt.-Col. Provost) Judge Advocate~~ Brigadier
~~Commanding~~ 1st Canadian Division
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B.94586 Sgt. SMITH, E.L. 1 Cdn Div Ord WS	1st charge A.A. 41	Not Guilty	Not Guilty. A.J. Duck Capt.	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— Answered in the negative

(Signed) H.D. Stevenson. Brigadier (Signed) A.J. Duck Capt.
(H.D. Stevenson, Major General)
Commanding 1 Cdn Div Confirming Officer (*e*) President.

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 26th day of August 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. ~~The officers under instruction~~)

were duly sworn.

* Omit if not applicable.

Signed this 26th day of Aug 1942

A.J. Duck Capt.
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (*b*) on page 762 M.M.L. 1929.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison until further orders.)

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this day of 19

Confirming Officer.

Promulgated and extracts taken in the case of

(*a*) (Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible]

Page 3

CHARGE SHEET

The accused, B-94586 Sgt. E.L. Smith, No. 1 Group, 1 Cdn. Div. Ord. W/Shop, R.C.O.C., C.A.O., is charged with:

First charge:
A.A.Sec.41.

While on active service, committing a civil offence, that is to say, receiving stolen goods:

IN THAT HE

At Lanehurst, Albourne, on 11 JUL 42, did receive one bottle of whiskey, value £1.3.0, the property of Major C.W.James, of Lanehurst, knowing the same to have been stolen.

Major,
Commanding Officer.

9.JUL.42

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

Div adjt
Div
Cdn

Date 20 Aug 42

I have satisfied myself that none of the officers detailed as members of the Court have previously served upon any Court of Inquiry respecting the matters forming the subject of the charge(s) before the Court Martial.

A. J. Duckett

(Signature of the President)

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD IN THE FIELD ON THE 26th DAY OF AUGUST 1942

Trial of:- B94586 Sgt. E.L. Smith, 1 Grp, 1 Cdn Div Ord W/Shops.

Court assembled at 1400 hrs 26 Aug 42.

Prosecutor:- Capt. A.H. Gilmour

Defending Officer:- Capt. J. Rodgers

Due to the exigencies of the Service, Capt. McElhinney, was unable to attend, member in waiting Lieut J. Morris 4 Cdn Recce Regt (4 P.L.D.G.) replaced him.

Accused arranged and pleads Not Guilty.

1st Witness for Prosecution: C42019 L/Cpl McCardley J. R.C.M.P.

Reads statement of his own and Capt Baker, Exhibit "H".

Defence does not cross examine witness.

2nd Witness for Prosecution: Sgt. Buckland (P29) East Sussex, Hurstpierpoint Police Station.

Statement of Sgt Smith's read and presented to Court. Exhibit "J"

Examined by Prosecutor.

Defence cross-examines the witness.

3rd Witness for Prosecutor: B94197 Cpl Webb A.E.

Examined by Prosecutor.

Cross-examined by Defence.

Re-examined by Prosecutor.

4th Witness for Prosecutor: B88124 Pte Groom E.C.

Examined by Prosecutor.

Prosecutor presents statement of Pte Groom. Exhibit "K".

Defence examines the witness.

Prosecutor re-examines the witness.

5th Witness for Prosecutor: B94233 Pte Tregwin A.E.

Prosecutor examines witness.

Defence examines the witness.

Prosecutor did not re-examine the witness.

1st Witness for Defence: B94776 S/Sgt Armour W.J.

Examined by Defence.

Prosecutor examines the witness.

Defence re-examines the witness.

2nd Witness for Defence: B94161 Sgt Major Carrie C.H.

Examined by Defence.

Examined by Prosecutor.

Prosecutor sums up his case.

Defence has Accused sworn in as Witness.

States: I joined in 1915, served until 1919. Joined as a Pte, and finished as a Capt. (Canadian Army).

Prosecutor does not examine witness.

Defence sums up.

Court closed for consideration.

Court re-opened.

Accused brought in as a Witness and questioned by Court.

Court closed for findings.

A. J. Duck (Capt)
P.L.D.G.

'7' EXHIBIT "H"

STATEMENT OF L/CPL. J. McCARDLE, C-42019, OF NO. 1 PROVOST COY. R.C.M.P.

C-42019 L/Cpl. J. McCardle, No. 1 Provost Coy., RCMP, having been duly sworn, states:

On July 12, 1942, at approximately 1330 hours, as a result of information received, I proceeded to the Duke of York Public House, accompanied by Sgt. Buckland, of the civilian police. As a result of enquiries there, I placed Pte. Harrison under close arrest, and in his presence, two bottles of French Vermouth were taken from out of the hedge slightly north of the Public House. Shortly after I placed Ptes Tregwin and Carter under close arrest. They were escorted to the Civilian Police Station at Hurstpierpoint. I asked Pte.Carter to open his tunic. On the left hand side there were small bits of paper, from the label on the Vermouth bottle found in the hedge, adhereing to the top of his trousers.

These men were warned and informed that there was a charge pending against them. They made a voluntary statement, to the Police Sgt., which I witnessed. Pte. Harrison then took me to the spot where he had cached seventeen (17) bottles of mixed (assorted) liquor, which I subsequently recovered and took back to the Civilian Police Station. I then informed Lieut.Gilmour the Adjutant of the Unit, regarding the above. As a result of further inquiries, I proceeded with him and the Civilian Sgt. to Banstead where I placed Pte.Groom under close arrest and informed him of the charge. He was warned and elected to make a statement to the Police Sgt. This was taken down by the Sgt. and witnessed by me. S/Sgt.Rumball was then placed under arrest, informed of the charge and then we returned to Danehurst. Cpl. Webb, and S/Sgt. Armour were then placed under close arrest. The two NCOs. were warned, informed of the charges pending. Cpl. Webb gave a statement admitting his guilt. S/Sgt. Armour also made a statement. S/Sgt.Rumball made a statement but refused to sign it. I then requested Mr.Gilmour to have the Sgt.Major place S/Sgt.Smith under close arrest upon his return to billets. I entered the cellar with Mr.Gilmour and Mr.Else and removed seven (7) bottles of lime juice and two (2) bottles of (I believe) home made wine. This is held at H.Q. Orderly Room.

This statement has been read over by me. It was made voluntarily, and it is quite true.

C-42019 L/Cpl. J. McCardle
No. 1 Prov. Coy., R.C.M.P.

Taken down by me, in the presence of A.S.M.S. Critchley, R.N.F., 1 C.D.O.W/C, RCOC, at Sayers Common, Albourne, Sussex, 21st day of July, 1942.

L.P.Baker, Captain.

'8'

COPY

EXHIBIT 'J'

EAST SUSSEX CONSTABULARY

Hurstpierpoint Station Haywards Heath Division

Statement taken at Hurstpierpoint

Place Lanehurst Time 11 a.m. Date 14 July 42

Name Eric Leonard SMITH, No.B94586 Staff Sergeant
No.1 Group, 1st Canadian Division Ordnance Workshop, R.C.O.C.
Address Lanehurst, Hurstpierpoint
Occupation Soldier Age 45 years

Statement:-

I ahve been cautioned that anything I may say will be taken down in writing and may be used in evidence.

E. L. Smith

B-94586 S/Sgt.Smith. E.L.

At 4 p.m. on the 11th July 1942, I returned to Lanehurst and was issuing weekend passes and Cpl Webb approached me and said, "On account of you being transferred to another Unit, I should like to buy you a drink". I replied, "I'm in a hurry". I was going to my room to wash, and he said he had a bottle of liquor and it would be here in a few minutes. I came to my office, Cpl Webb was waiting, and myself Pte Groom, S/Sjt Rumball and Cpl Webb went into my office, we drank liquor from a bottle in glasses, it was whiskey, I was sober. I had two drinks, large ones. We were waiting to go on pass, the truck was waiting to take us to a railway station. Cpl Webb said, "I can get another bottle". I replied, "Alright, dont be long". I was anxious to get away. After we had drank the first bottle, I left S/Sjt Rumball in my office. Pte Groom and Cpl Webb went out into the hall. I followed up and told them to hurry up. They were standing near the dining room door. I went upstairs, issued some passes, and returned to my office, and Cpl Webb was then going into my office. Pte Groom came in from the back way with a sealed bottle, he too came into my office. Now present was Cpl Webb Pte Groom, S/Sjt Rumball and myself and a few minutes later I heard S/Sjt Armour outside and called him in. I did not see Cpl Webb go through the window, or hear him call out. I did not see Pte Groom go to him. I did not see Pte Groom take a kit bag to Cpl Webb. The second bottle was whiskey, we all drank it I had two large glasses, I was not feeling intoxicated, but not drunk. I asked Cpl Webb if there was an off-license in the district. He replied,"No". I said, "Where did you get it". He replied, "Never mind where I got it". These are the exact words spoken by Cpl Webb and myself. This was after we had drank the first bottle. No questions were asked where the second bottle came from.

We got into a 15cwt truck and drove to Haywards Heath railway station. Seated in the truck was Cpl Webb, Pte Groom, S/Sjt Armour, S/Sjt Rumball and myself. I did not see a kit bag in the truck, Left hand side of the truck was seated nearest to cab, Pte Groom, next S/Sjt Rumball, and next to him Cpl Webb. On the opposite side was seated nearest the cab S/Sjt Armour and I was next. I was last to get in the truck. We were all smoking. We all spoke as to where we were going. On the way someone produced a beer bottle, it was corked. Cpl Webb and the others tried to open it, someone dropped it and it broke. Pte Groom gave me a bottle of whiskey. What I done with it I do not remember. I do not know what brand it was, I put it in my blouse. I saw S/Sjt Rumball had a bottle of drink, I dont know what it was, I saw it in his blouse. I was suspicious as to where the liquor was coming from, this was after I had been given my bottle of whiskey in the truck. I wondered where all the liquor was coming from, as it is hard to buy. I did not ask where it came from, it had never happened before that bottles of whiskey were handed around as on this occassion. I did ask where it came from. I got off the truck at Haywards Heath, we all went into a pub opposite the railway station. I had a beer I think we all had a beer. Someone said, "Let's have another". I said, "Come on I(m im

(over)

a hurry. These were the exact words I used. We all left went across to the railway station, caught a train to Redhill. We all got in the same compartment. There were three women in this compartment. We got in conversation, passed cigarettes round. We all got off at Redhill. We all caught a bus here to Burgh Heath I was still carrying my bottle of whiskey in my blouse. The others got off the bus at Fox Hotel at Upper Kingswood. I went on alone to Blue Anchor Hotel at Kingswood. I from there walked to Surrey Yoeman Hotel, Burgh Heath, still carrying my bottle of whiskey. I there had more drinks with friends. I hid my bottle of whiskey, I do not remember where. At 9.50 p.m. on the 12th July 1942, I saw Sjt Buckland, Lieut Gilmour and a L/Cpl. Sjt Buckland asked me questions. He asked me something about liquor. I replied, "I do not know what you are talking about", or words to that effect. I did not know at that time about all the liquor whiskey, which I had drank before we left Lanehu st, and the bottle I had had in the truck, which I had hidden, but I did not tell the police Sergeant when he questioned me about it. I have no reason to explain why I did not tell the police sergt what I knew.

E.L. Smith

B-94586 Sgt.Smith, E.L.

The above statement was made by Staff Sergt Smith in my presence and recorded by me at the same time.

Herbert Buckland Sgt 29 (Singed) Herbert Buckland Sgt 29

NO.1 GROUP, 1 CDN DIV ORD WORKSHOP, RCOC '9' Exhibit 'K'

STATEMENT MADE

NAME: Private No.B88124 Everett Charles CROOK

ADDRESS: No.1 Cdn Div Ord W/S, RCOC.

OCCUPATION: Soldier AGE: 27 years

Having been duly sworn, states:-

"I have been cautioned that I do not have to make a statement, and that anything I say will be taken down and may be given as evidence. I wish to make a voluntary statement on oath".

(SIGNED) B 88124 Chas Crook Pte

"A short time ago Cpl Webb told me that he had a bottle of whiskey. At about 1500hrs Saturday, 11 July 42, just after parade, I suggested we get the bottle. He told me where it was hidden and I took his kitbag on a bicycle and got the bottle from the bushes near the Transport Cafe, returning to the billets. I gave Cpl Webb the bottle and put the bicycle away.

S/Sjt Smith, S/Sjt Rumball, Cpl Webb and I went into S/Sjt Smith's office and commenced drinking the bottle. I left before the bottle was finished and went up to a farm about a mile away to get paid for working after hours.

I returned to the house at about 1830hrs and met Cpl Webb and S/Sjt Smith in the hall near the main door. I was then told there was a wine cellar in the house. Cpl Webb tried to open the door in the presence of S/Sjt Smith and myself. He was unsuccessful and went outside through the french window at the bottom of the stairs.

S/Sjt Smith and I remained in the hall talking for about five minutes when Cpl Webb called me. I went outside and saw him go into the cellar. I returned to my room and went back out. There was three or four bottles just outside the window, and I returned and got Cpl Webb's kitbag which was in my room. I returned to the cellar window and put six (6) bottles - two (2) of Haig whiskey; two (2) champagne; one (1) French white wine, and one bottle (unlabelled), in the kitbag. By this time Cpl Webb was outside and had closed the window. I left the kitbag in the hedge along the passage way and went to the outside toilet.

I went into the back hallway where someone told me to get another bottle of whiskey. I got one bottle of whiskey, and took it into S/Sjt Smith's office.

S/Sjt Smith, S/Sjt Rumball, S/Sjt Armour, Cpl Webb and I, drank the bottle. I went outside, picked up the kitbag, and put it in the truck preparatory to going to Haywards Heath. The rest came out and got in the truck, and we left for Haywards Heath. On the way we divided the liquor - with the exception of one bottle (without label) which was broken.

S/Sjt Smith, S/Sjt Rumball, Cpl Webb and I each had a bottle.

The truck driver dropped us all at the station and left. We had a beer in the pub across the road and caught the train to Redhill. I left the kitbag in the truck. I took a bus to Kingswood to see friends.

At about 2300hrs Sunday, 12 July 42, I was placed under arrest by the Adjutant, a sergeant of the civilian police, and a L/Cpl of the R.C.A.S.C., and brought back to billets.

This statement has been read over by me. It was made voluntarily, and it is quite true".

(SIGNED) B 88124 Chas Crook Pte

Taken down by me, in the presence of A/Sjt Critchley, R.E.P., 1 CDN/S, RCOC, at Bayards Common, Albourne, Sussex, 15th July, 1942.

(SIGNED)

1

No. B-94586 Name SMITH, E.L. Sqn., Battery or Company No.1 Gp Corps 1 C.D.O.W/S, RCC Date of Enlistment .12.39 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

MFM 6 (A.F.B. 122) 30074—6-15—(762) H.Q. 1777-40-18

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				CERTIFIED NO ENTRIES					

(P.T.O.)

TTT-225

Pte. Smith F.

RECORDED AT CMHQ IN AB 160, TTT 225

CPA/MIL/10 (Dec) of AFA31
407P dt 8/1/1946 (40/16)

FIELD GENERAL COURT-MARTIAL

4/38B

RECEIVED 8 AUG 1944 JAG BRANCH C.M.H.Q.

Convened by Order of Brig CSM Gostling, ED dated Comd "A" GP CRU 8 AUG 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C20644	Pte		Fred	SMITH	6 CIRU CIC

PROCEEDINGS REVIEWED

J. Rutherford Capt.
19 Aug 44

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 6th 9 Aug 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(X) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn b. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1400 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(1)~~

(1. KR Con 557. 2. AA 44-8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.

~~A5. President to accused: Do you object to an interpreter? Ans~~

~~Do you object to a shorthand writer? Ans~~

~~The Interpreter is sworn.(1) The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court I

Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(5). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	C H COOK	6 CIRU
Member	Capt	J. DUCHAINE	6 C I R U
Member	Lt	D A J. PARÉ	6 C I R U
~~Judge Advocate~~			
Prosecutor	LIEUT	P M. LeBEUF	6 C I R U.
Defending Offr	CAPT	H B. GONDER	6 C I R U.

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (b) and fn 2 were not followed. See DJ 8 [illegible])

A8. The accused C20644 Pte SMITH, F before arraignment make(s) (two) (no) plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in All cases and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~(is advised as to)~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), and call witnesses as to character and make an address in mitigation of punishment.(2)

(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans Yes (5)

(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 1 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on the charge(s). The accused is (are) so informed, ~~and he (they) changes (change) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~

(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET.

The accused, No C-20644, Private Fred SMITH, Cdn Inf Corps, on the strength of No 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
SECTION 15 (1)
ARMY ACT

WHILST ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

in the Field, did absent himself without leave from 2300 hours on the 2nd day of July, 1944, until he was arrested at 0900 hours on the 3rd day of August, 1944, thereby incurring expenses for his return to his unit to the amount of Fifteen Shillings and eight pence (£0.15.8).

(Total absence: 31 days, 10 hours).

(W.N. MORGAN), Col.
Commander
6 Cdn Inf Rft Unit

In the Field
7th Aug 44.

To be tried by Field General Court Martial.

(G S N Gostling)Brig
Comd
"A" Gp Cdn Rft Units
C A (O)

Field
6 Aug 44

FIELD GENERAL COURT-MARTIAL

646

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C20644	Pte		Fred	SMITH	6 CIRU CIC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has (~~have~~) committed the offence~~(s)~~ set forth in the Charge Sheet~~(s)~~ attached and on (*date*) 5 Aug 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence~~(s)~~ should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.~~

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a PJ Offr as President, for the reason I have attached hereto.~~

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. ~~I also appoint as Judge-Advocate a human who is not named hereunder.~~

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
MAJOR	C H COOK	6 CIRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by OC 6 CIRU	
Lt	to be detailed by OC 6 CIRU	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	to be detailed by OC 6 CIRU	

~~JUDGE-ADVOCATE~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England
(Country.)

(Signed personally. RP 105 fn 2.)

Brigadier
(Rank.)

Date 5 Aug 44

Commanding "A" Gp Cdn Rft Units C A (C)
(G S N Gostling)
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (For use of AFAS) (See P & S/1807 (4/45).)

(*See overleaf for oaths and notes for use on trial.*)

Medical Offr's Certificate
K R (Can) para 557

I certify that I have this morning examined No: C26644 (Rank) Pte
Smith F (Name) of 6 C.I.R.U. and in my opinion he is
fit to undergo trial by Court Martial.

Station
Date August - 9 - 1944 Sgd (Medical Offr)

B.2 Statement by the accused:

"On or about ~~26th~~ 27th June 1944 I applied for a 24 hour pass for the following Thursday. I applied for this pass to go and see my sister who lives in Leeds. On the Thursday ~~morning~~ noon 6146 when I went to get the pass I was told that my application had been rejected and that I would get the pass on the week-end, on the Saturday. I then told Major Perry that the pass would be not much use to me then, that I wanted this pass to go and see my sister, that it was the only afternoon she could get off during the week (Thursday afternoon) and that I wanted to see her about some family difficulties over a will. We were both concerned in this will. That night I tried to get to see her but could not therefore missed my bus when I was coming back and had to walk from Alwoodley near Leeds. I was therefore late arriving back in camp. I was brought up for Orders next morning and remanded to the Coord Offr. I was a confirmed Cpl. at the time and I was remanded by him and told that he wanted to see my request to revert to Pte. on his desk by 1100 hrs the next morning. After I got out I saw Lieut Barr who asked me how I had got along. I told him all about it and he advised me not to sign the requisition to revert. The next morning before I went up for Offrs I paraded to Major Perry and he advised me to sign the requisition rather than take a Court Martial. I signed the sheet and was automatically fined one days pay and reprimanded. After that I went out and as I do think I had been fairly treated and I kept on at my

B-2 Statement by the accused - (con)

Saturday Sunday I went AWL"

R.P. 83(b) complied with.

E-1 Character evidence by Responding Officer.

Capt H.B. Cowdry, R.C.I.R.U., sworn, states:

I enlisted in the first week of Sep 1939 and from that time until May 1941 I was continuously in the same platoon as the accused and I commanded the said platoon for about nine months of the aforementioned period. During that time the accused, then a private soldier, was a well trained, dependable soldier and most dependable of all when conditions were tough. Subsequently, due to changes in organization which separated me from the accused I had less opportunity to note his goodness but a considerable time after this the accused was promoted to Cpl and others when speaking of him to me gave him a good record. It is unfortunate that at present no other officers or senior NCOs are available to confirm my statement or add any further opinions of their own, but I feel sure that if they were available to Court would thereby be well satisfied as to the accused's reliability and efficiency as a trained machine gun NCO.

R.P. 83(b) complied with. Cross exam: None. Exam by Court: None.

E-2 Address in mitigation of punishment.

"On the merits of the case the accused has been found guilty. In the hope of mitigation of sentence the defence respectfully desires attention to the following points: (a) the accused was denied a pass for Thursday not once but twice even after he had explained the reasons for his request. The fact that his superior officer gave him a pass on a different day indicates first, that there was nothing serious to prevent his absence on leave and secondly that they did not consider that the reasons for his request were illegal. However to the accused the reasons were serious. Certain family heirlooms which had been willed to him and to his sister had been taken out of their hands and legal action was necessary to restore them to rightful ownership.

E-3. Address in mitigation of punishment (con)

ept even after the accused made his reasons clear his superiors attempted to do nothing to accommodate him considering the fact that Thursday afternoon was the only time when he could see his wife. It is not incumbent upon the army to explain its decisions to soldiers but the average soldier whose personal plans are affected by army decisions in an inexplicable way quite naturally believes that the army doesn't give a damn about him except for his duty hours. — (b) Returning the accused's ~~decision~~ the conflicting advice given him by two of his officers created confusion in his mind and undoubtedly contributed to the sense of injustice from which he was already suffering — (c) Ever since the first week of the war until he left his battalion the accused has been a ~~Private~~ machine gunner and his ability was such as to earn for him a Cpl's rank and a responsible position in the gun team. His promotion stopped prior, his value as a combat N.C.O. yet on being drafted from his battalion to a reinforcement unit eight months ago at which unit he remained continuously, except while on course, till he went AWL. He has never been given any machine gun work nor permitted to proceed on any draft to field units. On occasion he was warned and did parade for a draft and was taken off that draft without any explanation being given him. His category is "A" and has been since his voluntary enlistment. He has demonstrated his ability as a machine gunner, he has expressed his wish to join his comrades with whom he served for four years. His duties here, however, have consisted mainly of permit and Ordinary Cpl duties and other occupations which have not given full scope

E-3 Address in mitigation re punishment (cont'd)

ex the of his natural talents or the training which he has received in the army ——— (d) The Defence submits the foregoing statement for the reason that it appears to the Defence that the circumstances thus outlined gradually worked upon the accused's mind and culminated in actions on his part of which he would never have been guilty if he had been more judiciously employed. The accused's MFM 6 will show that he has frequently jeopardized his own chances but his record as a trained machine gunner supports the opinion that he would be a valuable soldier in the field of battle. He has told a staff officer and they believed that the army did not recognize his best usefulness to [redacted] and he took his own means of forgetting the army as he believed it had forgotten him. He realizes and regrets his actions and the Defence asks a plea of mitigation on the basis of his past record and his future service with his own battalion rather than in a reinforcement unit".

R.P. 83 (2) complied with

Ex "A"

6H6

SUMMARY OF EVIDENCE

In the case of No C- 80644, Private Fred SMITH, Cdn Inf Corps, on the strength of No 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, this Summary of Evidence is taken on Oath.

First Witness for the Prosecution — Lt M.P. MENARD, Cdn Inf Corps, on the strength of No 6 CIRU., having been duly sworn, states as follows:

I hereby produce the following documents relating to the accused, No C-80644, Pte Smith F.:

(i/ Record of the declaration of the Court of Inquiry purporting to be signed by the ass/adjt of 6 CIRU. This document is marked exhibit "A" and is attached to the Summary of Evidence.

(ii/ Certificate in accordance with Section 163(1)(m) of the Army Act purporting to be signed by the officer in charge of Manchester City police station. This document is marked exhibit "B" and is attached to the Summary of Evidence.

(iii/ Expense Voucher Ref E.P. & C.(Can) 539 purporting to be signed by the ass/adjt of 6 CIRU. This document is marked exhibit "C" and is attached to the Summary of Evidence.

The accused declines to cross-examine this Witness

M. Menard Lt.

The accused was then cautioned as follows: "Do you wish to make a statement or to give evidence on Oath? You are not obliged to say anything or to give any evidence unless you wish to do so, but whatever you may say or any evidence you may give will be taken down in writing and may be used in evidence".

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in presence and hearing of the accused and that Rules of Procedure 4 (C),(D),(E),(F) and (G) have been duly complied with.

Paul M. LeBouf Lt.
officer detailed to take the Summary of Evidence.

In the Field
7th Aug 44.

/mrm

Exh Ex B

RECORD of the Declaration of a Court of Inquiry assembled at Farnley Park, Otley, Yorks on the 26th day of July, 1944

for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental necessaries or Clothing of No. C.20644 Pte Smith F. C.I.C. 6 C.I.R.U.

DECLARATION

The Court declare that C.20644 Pte Smith, F. Canadian Infantry Corps, No. 6 Canadian Infantry Reinforcement Unit illegally absented himself without leave from 2300 hrs on the 2nd day of July, 1944 and that he is still so absent and that on the 2nd day of July, 1944 he was deficient and that he is still so deficient of the following articles mentioned in the evidence in the amount of £2-17-3.

ARTICLES	NO	VOCAB PRICE	APPX VALUE
1 Battle dress Blouse	1	$ 8.25	$3.94
Battle dress trouser	1	8.39	4.04
Razor	1	.06	.04
Botts ankel pr	1	8.46	4.04
Anklets pr	1	.99	.74
		$ 17.15	$12.80

Names of President and Members:

PRESIDENT	Capt W.B. Sawdon	C.I.C.
MEMBERS	Lieut J.M. Yeomans	C.I.C.
	Lieut R.R. Ryan	C.I.C.

Signature of Commanding Officer Lt-Col W.E. Morgan, Colonel

Certified true copy [signature] A/Adjt

Signature of Officer having custody of original record

RHQ

Exhibit C

CERTIFICATE IN ACCORDANCE WITH SECTION 163(1)(m) OF THE ARMY ACT.

I certify that the person whose description is given below was arrested at Manchester (place) at 2.15 a.m. (hour) one the ..... day of August 1944

Regimental particulars of Officer or soldier referred to.

No. 206 444
Rank Pte.
Name [illegible]
Unit [illegible] Regt.
C Kenya,

Description.

Age 24
Height
Complexion
Hair
Eyes
Marks

MANCHESTER CITY POLICE 5 AUG 1944 DETECTIVE DEPARTMENT

INSPECTOR OF POLICE
POLICE STATION ASHLEY ST
MANCHESTER 3

Signature of Officer of Police in charge of Police Station where the above named person was taken, or placed in custody, on arrest.

[signature] Wood
in charge of INSPECTOR OF POLICE
Police Station

16. Where it is necessary to produce evidence in the form of the certificate of apprehension under this paragraph, such certificate can only be admitted as evidence when it embraces the essential particulars laid down. In particular it is essential that it should be actually signed by the Police Officer in charge of the station where the accused person was taken into custody, and that the Police Officer should show on the certificate that he was, in fact, in charge of the station.

Expenses Voucher Req. Ref K.R. & O.(Can)532

Reg.No. C-20644 Rank Private Name Fred Smith Unit C.C.I.R.U.

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit from

Date	Particulars	Amount £	s	d
	Escorts return fare from Yorkshire To manchester			
4 Aug 44	Prisoners single fare to ditto From manchester			
	Prisoners fare from To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fare			
	TOTAL	£:-	15	8

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

W. F. Thomas Lt
asg Adjt.

B.21726 L/Cpl Hopkins C.J.

646 Exhd D EXE

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C-80644	Private	Fred SMITH	Cdn Inf Corps

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence to each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AA.15(1)A&L — 6 times.

For AA.19 drunkenness — 1 times.

For AA40 — 4 times.

For AA.9 (8(— 1 times.

Date of first entry in Field Conduct Sheet 14 may 40

Date of last entry in Field Conduct Sheet 1 jul 44

~~2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.~~

~~3. The accused at the present time is under sentence for~~ ~~beginning on the~~ ~~day of~~

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for Nil PMS days in civil custody; and for Six PMS days in military custody, *i.e.*, Nil PMS days in open arrest, Six PMS days in close arrest; of which Nil PMS days were spent in hospital.

5. The present age of the accused is 29 years old

6. The date of his ~~attestation joining up for military service~~ 5 sep 39

7. The service which the accused is allowed to reckon is 4 yrs 295 dys

8. The accused is in possession of‡ Cdn Vol Med & Clasp

‡State the military decorations (if any) held by accused.

~~9. If the accused is a warrant officer or N.C.O.~~ The accused has served continuously without reduction, to the present date—

Date of Promotion.

In the substantive rank of

In the war substantive rank of

~~In the acting rank of~~

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(41134) W.L.8670-068 100,000 4/42 A.& E.W.Ltd. Cp.695
(32459) W1.22926/1672 60,000 9/41 " " Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 9th day of Aug. 1944

officer having custody of original documents - esq/adj

6HG EXE

3/17 MFM 6 (AFB 122) 40/FAS/136 (5412)

No. C-20644 Name Fred SMITH | Sqn, Battery, or Company | Corps Cdn Inf Corps | Date of enlistment 5 sep 39 | GC Badges n/a | Service or Proficiency Pay n/a

Date of last entry in Company Conduct Sheet n/a | No. and date of last drunk n/a | Period not reckoning towards freedom from extra fine n/a | Sheet No 1 | Signature OC Company, etc A.D. Fortey Maj. | Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
(Canada) Field	13 may 40	Pte		AA.9(2) Disobeying a lawful command	Sgt. Jones	3 days C.B.	14 may 40	Maj.Fortey	
(Canada) Field	17 may 40	Pte		AA.40 Conduct to the prejudice etc	Sgt.Moore	7 days C.B.	18 may 40	Maj.Fortey	
Field	17 jun 41	A/ Cpl	( )	AA.40 Conduct to the prejudice etc	C.SM.Gill	Reduced to Pte	18 jun 41	L/Col.Rogers	
				AA.19 Drunkenness	Sgt.David	Warning			
Field	6 jul 41	Pte		AA.15(1)AWL from parade	Sgt.Corder	7 days C.B.	7 jul 41	Capt.Whitesore	
Field	16 nov 41	Pte		AA.15(1)AWL from parade	Sgt.Ashman	7 days C.B.	17 nov 41	Capt.Bettapiece	
Field	28 nov 41	Pte		AA.15(1)AWL 23 hrs 1 mi	Cpl.Clark	10 days C.B.	1 dec 41	Capt.Bettapiece	Forf 1 day pay for AWL
Field	5 feb 42	Pte		AA.40 Conduct to the prejudice etc	Cpl.Comming	3 days C.B.	5 feb 42	Lt.Jackson	
Field	11 jan 42	Pte		AA.40 Conduct to the prejudice etc	Sgt.McHugh	4 days C.B.	11 jan 42	Lt.Armstrong	
Field	5 may 42	Pte		AA.15(1)AWL 15 hrs 10 mi	Sgt.David	4 days C.B.	7 may 42	Capt.Bowlsy	Forf 1 day pay for AWL

certified true copy dated: officer having custody of original documents

P.T.O.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field 24	jan 43	A/Cpl		AA.15(1)ARM. 1 day 8 hrs 45 mi	Sgt. Walker	Reduced to Pte	26 jan 43	Maj. Pettapiece	Forf 2 dys pay for AWL
Field 29	jun 44	Cpl		AA.15(1)ARM. 7 hrs	Lt. Shellman	Reprimanded	1 jul 44	L/Col. Clingan	Forf 1 dey pay for AWL

Certified true copy consisting of one page dated: 9 Aug 44

Officer having custody of original documents.

LIST OF EXHIBITS

In the case of No C-20644, Private Fred SMITH, Cdn Inf Corps, on the strength of No 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

Exhibit "A" - Summary of Evidence

Exhibit "B": Record of the declaration of the Court of Enquiry

Exhibit "C": Certificate in accordance with A.A.163(1)(a)

Exhibit "D": Expense Voucher Ref N.D. A C (Can) 539

E - AFB 296

F - MFM 6

In the Field
7th Aug 44.

LIST OF WITNESSES

In the case of No C-20644, Private Fred SMITH, Cdn Inf Corps, on the strength of No 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

Prosecution

Lt W.P. Mensaw, Cdn Inf Corps, on the strength of No 6 C.I.R.U.

Defence

Nil

In the Field
7th Aug 44.

1. I acknowledge that I have been served with a copy of the Summary of Evidence taken prior to my trial by Court-Martial. I further acknowledge that I have been served with a true copy of the charge (s) upon which I am being brought to trial by CM.

2. I desire the services of an officer to represent me at my trial by CM. I request the services of:

Capt. Gordon (C.S.L.F.O.) 6 C.I.R.U.

if he is available.

In the Field
7th day of Aug 1945.

F. Smith. (A/6.)

7/8 Gordon.

FECM- C. 20644 Pte Reid Smith. 6 C.I.R.U.

Certified Lat Capt. & Major, detained as Waiting Member appeared and was dismissed

9 Aug 44.

C.H. Cook Major
President.

F.G.C.M. C20644 Pte. Reid Smith 6 C.I.R.U.

Certified that the undermentioned officers, detailed as officers under instruction, were present:

Lieut. A. G. Emmett 6 C.I.R.U.
Lieut. H.G.L. Williamson 6 C.I.R.U.

C.H. Cook. Major
President.

9 Aug 44

HQCM - C20644 Pte Reid Smith 6 C.I.R.U.

Certified that the undermentioned officers, detailed as officers under instruction, were present.

Lieut A. G. Emmett 6 C.I.R.U.
Lieut H.G.R. Williamson 6 C.I.R.U.

C.H. Cook, Major
President.

9 Aug 44

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. Delete remainder of this para. if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)

NB. If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans.....Do you intend to call witnesses on your behalf? Ans.....Are they witnesses as to character only? Ans.....

(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative commencement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans. Yes

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produced Statement[X] as to Character and Particulars of Service[1], and certified true copy of Conduct Sheet[X][1], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex D & E and Ex D & E respectively.(2)

(1. AFB 355 or AFB 3348. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement[X] and Conduct Sheet[X], and in mitigation of punishment?(1) Ans. Yes

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to answer on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 563-566, Overseas RO 309, 2322, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : C20644 Pte Fred SMITH - 6 CIRU - CIC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1) Nil

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 6 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo detention for 180 days

To be put under stoppages of pay until he has made good the sum of fifteen shillings and eight pence (£0-15-8) in respect of cost of apprehension.

(Sgd) ..... 9 Aug 44 (Sgd) Cpt Cook Major

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~

(1. AA 57A. Delete if not used.)

Date 11 Aug 44 (Sgd) (G S N Gostling) Brigadier

Commanding "A" Gp Cdn Rft Units CAO

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
C-20644 Pte Smith Fred 6 C.I.R.U - C.I.C.	12 Aug 44	E.G.T. Bourcier CAPT., ADJT. 6 CDN INF.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

MMM-75

SGMN SMITH FA

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: M 4604 Sgt Smith Franklin Alexander Smith, 1st Can Army Signals

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 24 Dec 40	Not Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lack of kit see RP 44 fn 6.)

At present undergoing ~~or undergone~~ ~~imprisonment~~ ~~detention~~ for ~~three months~~ beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 10 days, of which ~~nil~~ days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under £2.)

Sentence Awarded by the Court:

To suffer Field Punishment for 28 days and to forfeit all ordinary pay for a period of 28 days

(Sgd) W. H. Van Wyck Capt — Judge-Advocate, if any. 25 May 44 — Date awarded. (Sgd) [illegible] — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

confirmed

~~I am not prepared to confirm the sentence of~~ ~~[illegible]~~

(1. AA 57A. Delete if not used.)

(Sgd) W. H. Roaf

Date 24 MAY 1944 Commanding (W. G. H. Roaf) Brigadier A Con Troops Offr.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused. Date. Signature of Offr.

M 4604 Sgt Smith F A — 26 May 44 — [signature] Lt-Col

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

No illegalities or irregularities such as would warrant withholding confirmation.

Date 24 May 44

A.A. & Q.M.G. H.Q. 1 Can Corps

RECORDED AT CMHQ IN AB 160 mm 475

RECEIVED 1 JUN 1944 JAG BRANCH C.M.H.Q.

CPA 66 (In Lieu of CA 30) 40-1-43 5/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig W. H. Roaf, Comd 2 Army Troops dated 20 May 44

ACCUSED. 1st Can Army

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or unfirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
M-4604	Sgt	Franklin Alexander	Smith	1st Can Army Signals

PROCEEDINGS REVIEWED 2 Jun 44 W. H. Van Wyck

REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS REVIEWED See G.H.Q. 21 Army Gp Date 30 May 44

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 23 May 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 7/20

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 693, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 72, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~not~~ brought before the Court. At 10.15 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~not~~ fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused ceased to be tried by court-martial instead of being dealt with~~ [illegible]

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to~~ as interpreter? Ans ~~[illegible]~~

~~The Interpreter is sworn.~~ ~~Do you object to~~ as shorthand writer? Ans ~~[illegible]~~

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 23, 71, 158, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	R. Cameron	6 Can Corps Hospital
Member	Capt	M. L. Snyder	1st Can Army Signals
Member	Capt	D. J. Cannon	1 Can Rd Maint Co.
Judge-Advocate	Capt	W. H. Van Wyck	HQ 2 Army Troops
Prosecutor	Lt	W. A. B. Winters	1st Can Army Signals
Defending Offr	Lt	H. N. Van Wyck	6 Can Corps Hospital

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans Yes

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused M 4604 Sgt Smith F A before arraignment make(s) ~~no~~ plea(s) [illegible] (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~not~~ arraigned ~~severally~~ on ~~the~~ charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 486 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and, considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form Dual.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. .....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 3 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on the ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on the ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereof proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans. To give Evidence. Do you intend to call witnesses on your behalf?
Ans. Yes. Are they witnesses as to character only? Ans. No.
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. Cf* 495. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*E*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*a*), *RP* 45, *120*(*A*). 2. *AA* 54(3), *RP* 45, *117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. Yes sir I wish to call a witness.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. C, and Ex. D, respectively.(3)
(1. *MFB* 351 *or AFB* 2515. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. I do otherwise some witnesses on my behalf Sir.(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or say anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 3.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566. *Overseas RO* 309, 1323, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(18), (*d*)(*i*), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

First Charge
Section
40
Army Act.

The accused, M.9604 Sigmn Frank Alexander Smith, First Cdn Army Signals, a soldier of the Canadian Army Overseas, is charged with:-

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field between Oct 1943 and Jan 1944 was improperly concerned with the disposal to William Harry Sprinks, Ashtead Surrey, a civilian, of about 30 gallons of paint and 11 blankets, the same being public property.

In the field
19 May 44

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(W.G.H. Rosf) Brig
Comd A Tps
First Cdn Army

(K.O. McCullagh) Lt.Col.,
Officer Commanding,
First Cdn Army Signals.

In the field
20 May 44

Exhibit

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/FA3/1497 (2068)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) uppmt, A/rank or A/uppmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M.9604	Sigman	Sigmn	Franklin Alexander	SMITH	First Cdn Army Signals

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 20 May 44 endorsed by me, (~~or by an offr of his class for~~ me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for such a period as a superior qualified offr~~.)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court [illegible] a Pr Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	L. LAMOUREUX		6 Cdn Gen Hospital

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Captain	K.A. SUGDEN		First Cdn Army Signals
Captain	D.G. CANNON		1 Cdn Ord Maint Coy RCOC

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Lieut.	G.S. BLAKE		6 Mob Laundry & HU

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
Capt.	D.G. DEAN, ADJA		Hq A Tps, First Cdn Army

On Active Service in the Fd

in England
(Country.)

Date 20 May 44

W.G.H. Roef
(Signed personally. RP 105 fn 2.)
(W.G.H. Roef)
Brigadier
(Rank.)

Commanding A Tps, First Cdn Army
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

This is to certify that I have examined M-8804 Sigmn. Smith F.A. to-day and found him fit to undergo trial by Court-martial.

23 May 44

Lieut Armstrong Capt
(T.W. Armstrong) M.C.
First Cdn Army Signals.

Examination

Before arraignment the accused objects to the charge under A.W. 32, in that the word "improper" should modify "disposed". As laid the disposal is not alleged to be improper, and the charge should be amended.

Defending officer submits the above argument.

Prosecuting officer states that the charge is proper in that the word "improper" modifies the whole clause concerned with the disposal.

The J.A. advises the court that the question is one of grammatical construction that the question is whether the particulars in the charge laid do constitute conduct prejudicial to good order & military discipline.

The court is closed to consider their decision.

The court decide not to allow the submission.

The court is reopened and their decision announced.

Defendant's Evidence

Cross examined
by Defending Officer -

All the 8 cans bore a good mark similar to those on the 2 cans produced. (The Defending Officer does not require the production of the other cans & blankets). I do not know the meaning of the numbers on the cans, except that I suppose they are post. cans. I did not tell the Court before Stod- his statement, that I would do what I could for him. Duckworth was not charged at the same time as he was away, but he is now charged. Sgt. Rumbelow could not see the identification parade forming up.

R.P. s 3(3) is complied with.

~~Prosecutor rests.~~

Second Witness for Prosecution — Detective Constable Edward White, Surrey Joint Police Force, duly sworn states.

On 11th May I went with Sgt Watts to premises of Admiral Steamship Co. at 20a. I saw the [illegible] Webley-Fosbery pistols, and I also found 5 [illegible] similar to Ex. B 3, 5 pairs [illegible] similar to those in Ex. B. and 11 army blankets similar to the one in Ex. B.

At 1245 hrs. 12 May, with 8 pistols, an identification parade was held. 8 selected pistols in the hearing of the whole parade, which included the accused to put out the man

who had told me had sold the property. He guided out the accused.

Cross-Examined by Defending Officer
there were 14 blankets and 2 prints & premises and I don't know how many of them the accused was concerned with.

Examined by Court.
I identify the 2 exhibits in Ex B, as two of those I took from Springs premises. I cannot say whether the blanket in Ex B was an army blanket or not, but it is similar to them.

R.P. 83(B) is complied with

Third Witness, William Harry Spinks, 88 Stag-hays for Prosecution Ashstead, Surrey, duly sworn states.

The witness is warned under par 95, page 96 M.C.M.

In Feb or March 1943, the accused's mate came to me and asked if I want to buy paint or blankets. We bartered about the price, I agreed to purchase what he had if the other party agreed. He told me he could not sell it without another party consent. He came back the next day, agreed, that I could

pick it up at 8 o'clock that night. I went to St. Romans, Woodfield Lane, at 8 o'clock, and got the goods & took it to our garage where I later stored it with St. Pat.
I received some blankets, I forget how many, but under 20, I was supposed to get 500 yds of paint but it wasn't all there. I received about 10 cans of paint. I paid Smith the money the day after I got the goods.

Cross-examined by Defending Officer.

Smith had been in my place quite often before this. I thought it was purchasing civilian paint & blankets. I do not know Duckworth, but I have heard his name. Smith didn't mention any name when he said he had to get someone else's consent. The paint I bought from Smith was the same paint that I sit took from my place. There was nothing on the paint or blankets to indicate they were govt. property. It was dark when I picked up the goods. Smith helped me load the goods.

Examined by Ct.

I had no reason to suspect that the paint & blankets were army property. I do not remember whether the accused said they were civilian property. I do recall him saying "It is the same as they use in civvie st."

R.P. 83(3): complied with.

the prosecution is closed.

First witness - M-9604 Sgt Wm Franklin Alexander for defence. Smith, 1st Edn. Army Signals duly sworn, states -

I met Duckworth who told me about selling some civilian ~~paint~~, hard finish, gloss paint, asking me if I knew anyone who would buy it. I told him I would try & find someone. I went to Sprinks to borrow some tools & asked him if he could use some civilian paint, which I described to him. I told him there was about 5 00 pds paint, he suggested £3. I told him I would take it up with Duckworth as it didn't belong to me. I saw Duckworth who agreed to the price & said that Sprinks could get it from the ~~premises~~ hut that night & deliver it. I reported this to Sprinks that night & helped Sprinks load the paint from the ~~premises~~ hut into his car. It was dark & I didn't see the colour of or the markings on the containers. The paint had been in a small room on the 1st floor of the house we were billeted in. Duckworth had taken it from there to the ~~premises~~ hut shortly after I arrived even when it was dark. Duckworth reported to me that he had to unload. Duckworth had also said he had some blankets to sell. I asked him what kind of blankets they were & he said they were not army blankets. I described them to Sprinks as civilian blankets. The blankets were included in the deal although Sprinks didn't take them. All this happened about 15th Nov. 43 or a little and of Nov. About the first of Nov, I saw Duckworth leave up in a lot with three other men

Lt. Col. Maddeaux, Sgm. Vale, and Sgm. Swanson, and saw them unload a number of cans of paint & some blankets, placing them in the Nissen Hut. Late the same day, Duckworth moved a number cans & some blankets from the hut to a small room on the 2nd floor of the house we were billeted in. The room was kept locked & Duckworth kept the key. Some cans of army (khaki camouflage paint were left in the Nissen Hut. I never examined the paint, before or after it was moved from the Nissen hut.

I did not know I would receive any thing for selling the paint & blankets. I did not help remove the good from the house to the Nissen hut. Sprinks & I alone could get on to this car. I did not examine the paint before it was moved into the house when it was first brought there. Duckworth did not tell me where the paint was he wanted me to sell. I saw the paint at about the same time & before I approached Sprinks about the purchase. I never wondered where Duckworth got the goods from. I have sold nothing else for him. I think I mentioned Duckworth's name to Sprinks.

I joined the Army in Sept. 4, 1939. Before that I was a district salesman with the C.P.R. I arrived in England 8th Fd. 1940. I am a fitter now & have been since 1940. I have served with 1st Div, 1st Ch. Corps and later with Army Tps.

Cross-examined by Crown counsel-

I do not know whether the paint put in

Sprinks car was the same paint as that which had been brought there about 1 Nov.

Examined by Pte.

When Duckworth first spoke to me about selling the goods, I suspected that the paint & clothing were the same as had been brought in by truck about the 1st of Nov & moved into the house by him. I suspected that they were govt. property. I had in fact seen some of the paint from this load which was left in the kitchen hut, and identified it as govt. property. When Duckworth told me they were not army goods, it removed all suspicion that the goods were govt. property.

R.P. 83(B) complied with

Second Witness for defence. 3 31088 Pte Cpl Maddeaux. R., 7 DR section, 3 Co (1st Cdn Army Signals, duly sworn states -

I was in the truck which picked up some paint in Nov from Emmplace, in company with Sgt. Duckworth. We unloaded it at the kitchen hut. I was present when later the same day, it was moved from the kitchen hut to the house by Sgt. Thomas & I was put in a room with a Yale lock on the door. Duckworth had the only key to the room.

Prosecutor declined cross examine

R.P 83(B) is complied with

Claim amount

The Defending Officer addresses the Court.

The point is whether the accused knew the goods were govt. property. Without that there would be no case.

Smith told Spring they were civilian goods. The markings on the paint indicate it is govt property, but there is no markings on the blankets. Smith could only have seen the paint twice. The first time when it was first brought there, he paid no attention to it. The second time it was dark and he could not see it.

The contract for its sale took place before the goods were loaded. If later he had a suspicion that it was govt property he cannot be convicted. CSM Tait has said that Smith has helped him throughout.

I ask for a dismissal

The Prosecuting Officer addresses the Court.

I submit that the charge is fully proven.

The Judge summing up

1. The respective duties of J. & Court
2. The point at issue is what was in the mind of the accused when he sold the goods.
3. Reviews the facts
4. The accused must either know the goods to be public property, or suspect that they are and proceed to sell them without taking sufficiently adequate steps to determine their ownership to satisfy his mind.
5. Onus of proof on the prosecution.
6. Circumstantial Evidence MML p 281.
7. Reasonable doubt MML p 88.

Exhibit B, is retained by the writer, pending instructions as to its disposal and a receipt from the prosecuting officer is attached hereto.

Exhibit "A"
to Canadian affr.

STATEMENT OF M-9604, Sgmn. SMITH, Franklin Alexander, 7 D.R. Section, 3 Coy., H.Q. First Cdn Army Signals, R.C.C.S.

I have been cautioned by C.S.M. Tadt, T.B., No.1 S.I.S., that am not obliged to say anything unless I wish to do so, but anything I do say will be taken down in writing and may be given in evidence.

To show that I understand this caution, I sign my name here

--- F.A. Smith.

I am Frank Alexander Smith, age 37 years, and was born at Innisfail, Alberta. I am a lineman in civilian occupation. I engaged in the Canadian Army on the 4 September 1939, and arrived in England on the 8 February 1940. I served with 1 Cdn Div Sigs, 1 Cdn Corps Sigs., and was posted to H.Q. First Cdn Army Signals in January 1943. Since that time I have been posted with 7 D.R.Section, 3 Company. I have known Signalman Duckworth since I came overseas. When I came to Army Signals, he was the Sgt. in 7 D.R. Section. I cannot remember the exact date, but it was about the end of November 1943 or the beginning of December, 1943, when Sgt. Duckworth approached me about some paint which he wanted to dispose of. He told me this paint was civilian paint, hard finish. He asked me if I knew anyone who wanted to buy it. He also said that he had some blankets he wanted to sell. I told him I would look around and see if anyone wanted to buy it. I approached Mr. Sprinks of Ashtead Streamline Taxi Service, in Ashtead, and asked him if he wanted to buy the paint and the blankets. He quoted a price of thirteen pounds for the 500 lbs of paint and eleven blankets, stating that he didn't want the blankets, but he wanted the paint. I said I would take it up with Sgt. Duckworth and I would let him know later, which I did and Sgt. Duckworth agreed to accept the thirteen pounds for the paint and he would throw in the blankets with it. I told Sprinks what Sgt. Duckworth had said about the paint and the blankets. So Sprinks came down that night with his car and we loaded it with the paint and the blankets. The next day, I went up to the taxi office, and Sprinks paid me the thirteen pounds, which I gave to Sgt. Duckworth, and in turn, he paid me two pounds. Some of the paint was in five gallon containers, and some in three gallon cans. It was dark when we loaded the paint and I cannot say as to the colour of the containers. The paint and blankets were stored in a small room of the second floor of the house we were living in called "Saint Ronons" in Woodfield Lane, Ashtead. Sgt. Duckworth carried the paint and blankets from this room to the Nissen hut after it was dark and just before Sprinks came to pick it up. I saw a lot of paint when Sgt. Duckworth unloaded a three ton truck containing paint which he placed in this same Nissen hut, about two weeks before, by Signalman Vale and two other members of the Section. Later, he moved most all this paint into the room on the second floor, leaving a few cans with a little paint in each in the Nissen Hut. The cans which were left in the hut contained Army khaki camouflage paint. There was no other paint there other than those cans I have mentioned which had a little coloured paint in the bottom of each. I was present when the paint was brought to "St Ronons", and also when Sgt. Duckworth carried it down from the room on the night we sold it to Sprinks as the Nissen hut I mentioned was used by me as a fitter's shop and storeroom. I have read over this statement and it is correct and true to to the best of my knowledge and memory.

had had

F.A. Smith.

Taken at Mickleham Surrey,
this 13 May 1944.

WITNESS: (T.B. Tadt)

E 1.

Clarence Hayes

W tres in mitigation

V. D Sterbeck W. 2, 1st Cdn Army Signals, duly sworn states

I have known Sgm. Smith for four months, during which time I have been his section officer. He has given no trouble & has been efficient. I have been satisfied with him as a soldier as a member of the section

Prosecutor declines to cross examine.

RP s 3(3) complied with

Alamance Hosp 23 May 44

Do acknowledge receipt of Ex B, D held by me pending instruction as to its disposal.

Exhibit B, Army.

1. Blanket, similar to Army issue blankets
2. 1 5 gal can with gov't ~~stamp thereon~~ sealing label.
3. 1 3 gal can with ~~extra~~ gov't. seal thereon

W A Wilson Jr

Summary of Evidence in the case of M 9604 Sigmn Smith F.A. 7 D.R. Section First Cdn Army Signals

The Commanding Officer directs that the evidence be taken on oath.

First Witness For Prosecution

C 30818 A/CSM Tait T.B. No.1 S.I.S. First CdnArmy having been duly sworn states:-

"On 12th May in company with Detective White, Leatherhead police, I made a search of premises known as Ashtead Streamline Taxi Service, located in Ashtead Surrey and operated by Wm Henry Sprinks. In the basement of a house located on the premises we were shown a quantity of paint approx 30 gals which Mr Sprinks informed us had been purchased by him from a Cdn soldier. The containers of these various coloured paints bore gov't contract numbers and other markings identifying same as gov't property. In the office, in a cupboard, we found eleven blankets which Mr Sprinks informed us had come from the same source. Mr Sprinks stated that the name of this Cdn soldier was Frank Smith and that he had been a member of the personnel who had lived at the house known as St Romans in Woodfield Lane Ashtead. At about 1900 hrs on 12 May 44, ~~an~~ an identifiastion parade was held of members of # 3 Coy First Cdn Army Signals, all being dressed in battle dress including the accused numbering approx 25 men. Mr Sprinks who was being detained by myself, was not given the opportunity of seeing the parade formed up. When called by Det. White, Mr Sprinks walked thru the two front ranks and placed his hand upon the person of the accused, thereby identifying him as the soldier from whom he had purchased the paint and blankets. The accused was placed under arrest and cautioned.

On 13th May 44 whilst continuing inquiries as to the source of the paint in question, the accused informed me that he was in no way connected ~~x~~ with the theft of the paint. I again cautioned him and he made a signed statement voluntarily which I now produce. (Attached as Exhibit "A")

My inquiries indicate that Sigmn Smith was not connected with the theft of the paint;and in the matter of disposing of it he acted as agent. His assistance in clearing up this theft has been very much appreciated and his manner throughout the entire investigation was extremely helpful.

C 30818 A/CSM Tait T.B.)

The accused declined to cross examine the witness.

Second Witness for Prosecution

William Harry Sprinks, 88 Stag-Leys Ashtead Surrey, after having been duly sworn states:--

"I am the owner of Ashtead Streamline Car-Hire service. About the end of November 1943, Frank Smith approached me and asked me if I had any use for some civilian paint and blankets that he had. Knowing that the blankets would be useful in my occupation and that the paint would be useful for decorating. I offered him thirteen pounds for the lot. I thought thirteen pounds was a reasonable price to pay.

About 2000 hrs, I drove to St Ronans House and picked up the blankets and paint in question from the Nissen hut at the back of the house. The paint was put in the cellar the next morning where it remained until shown to CSM Tait. The blankets had been used during the winter months and returned to the cupboard at the end of March 1944.

I paid Frank Smith the thirteen pounds about noon the day after I picked up the paint and blankets.

W H Sprinks

(William Harry Sprinks)

The accused declined to cross-examine the witness.

Third Witness For Prosecution

Edward White, Detective Constable of Surrey Joint Police Force, stationed at Leatherhead; being duly sworn states:-

At 1145 on 12 May 44 in company with CSM Tait I went to the Street Ashtead to premises of Streamline Taxi Coy. At about 1400 hrs I saw the owner Mr Sprinks there. He already knew me as a police officer and C.S.M. Tait made his identity known. I told Sprinks I had good reason to believe that he had some military property at the garage, and he said,"Look, I realize I have been a fool and if I get this matter straightened out I promise you nothing like this will happen again". I then cautioned him and from the office in a cupboard he handed me fourteen blankets saying, "I bought these from a soldier". From the cellar at the same address he handed me eight tins of paint being three of seventy pounds and five of 48 pounds, two m/c inner tubes, one m/c tyre, which was brand new, a pair of m/c leggings and an m/c coat and from a motor car No.EMU 645 he handed me one tire. He said, "I bought these off a soldier, for £13 round about xmas time". I only refused about a week ago twenty pairs of new boots and 80 gals of petrol. I then told him that I intended to take possession of the property, believing it to be property of the Cdn Gov't and that I would see him later. At 1850 hrs the same day in company with CSM Tait and Sprinks, I went to Walton on the Hill in consequence of what Sprinks had told me. I conducted an identification parade. There were 20 men on parade one of whom was the accused Smith. When these men were first paraded Smith was standing in the middle file third from the left. But when CSM Tait went to fetch Sprinks who was in his car about 20 yds away I requested the Signal CSM to permit Smith to change his position and he then permitted Smith to do so. Smith then went and stood in the rear rank from the right. I asked him if he was satisfied where he was standing, and he replied, "yes". Sprinks then came and stood by me in front of the parade and I told him to look at the men and see if he could recognize the soldier who had sold him the army property. He walked along the front rank also looking at the same time at the other two ranks, he then walked through the ranks up to Smith and touched him on the shoulder and said, "that is the man". The parade was then dismissed and in the presence of Major Bown, CSM Tait, I asked Smith if he was satified with the parade and he replied, "yes quite satisfied".

Edward White Det. Cons.

Edward White(Detective Constable)
Surrey Joint Police Force,
Leatherhead

The accused declined to cross-examine the witness

First Witness For Defence

B 31088 L/Cpl Maddeaux R. being duly sworn states:--

I am B 31088 L/Cpl Maddeaux R of 7 D.R. Section First Cdn Army Signals. One morning in the middle of November 1943 Sigmn Vale, Sigmn Lawson and myself were detailed by Sgt Duckworth to accompany him. We were not informed of our destination. We arrived at Penn Place. We loaded a number of cans of paint on our truck. There were 5 and 3 gal cans of paint. We also loaded a small number of blankets in the truck. When we returned to our billets the truck was unloaded and the paint and blankets were put in the Nissen Hut at the rear of St Ronans billet. Sometime later most of the paint was taken from the Nissen Hut and carried up to the second floor of our billets. It was placed in a little room and the door locked.

Sigmn Smith was not present on the trip to Penn place.

R. Maddeaux
(B 31088 L/Cpl Maddeaux R.)

The accused declined to cross-examine the witness.

Second Witness For the Defence

A 103560 Sigmn Vale, W. having been duly sworn states:--

I am A 103560 Sigmn Vale W. of 7 D.R. Section First Cdn Army Signals. I am the driver of the 7 D.R. truck. One morning at approx 0800 hrs in the middle of Nov 1943 I was detailed by Sgt Duckworth to accompany him. As I did not know where we were going and was unfamiliar with the country Sgt Duckworth drove the vehicle. We arrived at a place that I was told was Penn Place. At this place we loaded a number of cans of paint on my vehicle with a few blankets. We returned to billets unloaded the paint and put it in the Nissen Hut.

Sigmn Smith was not present on the trip to Penn Place; nor was he present during the unloading of the vehicle.

W. Vale
(A 103560 Sigmn Vale W.)

The accused declined to cross-examine the witness.

Question to the Accused

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence".

The accused then made the following statement on oath:--

"I am Frank Alexander Smith, age 37 years, and was born at Innisfail Alberta. I am a lineman in civilian occupation. I engaged in the Canadian Army on the 4th September 1939, and arrived in England on the 8th February 1940. I served with 1 Cdn Div Sig, 1 Cdn Corps Sigs., and was posted to H.Q. First Cdn Army Signals in January 1943. Since that time I have been posted with 7D.R. Section, [illegible] 3 Company. I have known Sigmn Duckworth since I came overseas. When I came to Army Signals, he was the Sgt. in 7 D.R. Section I cannot remember the exact date, but it was abut the end of November 1943 or the beginning of December 1943 when Sgt Duckworth approached me about some paint which he wanted to dispose of. He told me this paint was civilian paint, hard finish. He asked me if I knew anyone who wanted to buy it He also said that he had some blankets he wanted to sell. I told him I would look around and see if anyone wanted to buy it. I approached Mr Sprinks of Ashtead Streamline Taxi Service, in Ashtead, and asked him if he wanted to buy the paint and the blankets. He quoted a price of thirteen pounds for the 500 lbs of paint and eleven blankets, stating that he didn't want the blankets, but he wanted the paint. I said that I would take it up with Sgt Duckworth and I would let him know later, which I did and Sgt Duckworth [illegible] agreed to accept the thirteen pounds for the paint and he would throw in the blankets with it. I told Mr Sprinks what Sgt Duckworth had said about the paint and the blankets. So Sprinks came down that night with his car and we loaded it with the paint and the blankets. The next day I went up to the Taxi office and Sprinks paid me the thirteen pounds, which I gave to Sgt Duckworth, and in turn he paid me two pounds. Some of the paint was in five gallon containers, and some in three gallon cans. It was dark when we loaded the paint and I cannot say as to the colour of the containers. The paint and blankets were stored in a small room of the second floor of the house we were living in called St Ronans" in Woodfield Lane, Ashtead. Sgt Duckworth carried the paint and blankets from this room to the Nissen Hut after it was dark and just before Sprinks came to pick it up. I saw a lot of paint when Sgt Duckworth unloaded a three ton truck containing paint which he had placed in this same Nissen hut, about three weeks before, by Signalman Vale and two other members of the Section Later, he moved most all this paint into the room on the second floor leaving a few cans with a little paint in each in the Nissen hut. The cans which were left in the hut contained Army khaki camouflage paint. There was no other paint there other than those cans I have mentioned which had a little coloured paint in the bottom of each. I was present when the paintw was brought to "St Ronans", and also when Sgt Duckworth carried it down from the room on the night we sold it to Sprinks as the Nissen hut I mentioned was used by me as a fitter's shop and storeroom. I have read over this statement and it is correct and true to the best of my knowledge and memory.

F.A. Smith

(M 9604 Sigmn Smith F.A.)

I certify that Rules of Procedure 4(c), (d), (e) and (f) have been complied with.

Taken down by me in the presence of the accused in the field this 15 day of May 1944.

A.H. Waters Lt

Officer Taking Summary of Evidence

M.F.M. 6
(A.F.B. 122)
17BM—7-41 (1919-39)
H.Q. 1172-39-1652

No. M.9604 Name Smith F.A. | Sqn., Battery, or Company: #1 Coy | Corps: 1 Cdn Corps Sigs | Date of enlistment: 4 Sep 39 | C.C. Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc.: D.N. MacLeod Capt.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Calgary Alta.	17Sep 1939	Sgmn	1st	Drunkenness (A.A.19)	Sgt McDougall	Admonished	18 Sep 1939	Lt. Hurdle	
On 17 Sep 41 this soldier completed 2 yrs of good conduct and in accordance with R.O. 319 C.A.(A.F.) Overseas the above entry was transferred from previous sheet which was destroyed 14 Nov 41 (D.N. MacLeod)Capt.									
Field	30May 42	Sgmn		WOAS;AWL from 2300 hrs 30 May to 0015 hrs 31 May 42. Abs 1 hr. 15 mins A.A. 15(1)	Cpl Edie L/Cpl Harvey	3 Days C.B.	1 Jun 42	Major MacLeod.	

Certified to be a true copy from the records in my possession

19 May 44

Capt. D.

Ex Libdc.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
M 9604	Sigmn	Smith F.A.	First Cdn Army Signals

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with:—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, permission being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For	A.A. 19	times	1	times.
For	A.A. 15(1)	times	1	times.
For		times		times.
For		times		times.
For		times		times.

Number of instances of gallantry or distinguished conduct, Nil

~~[illegible]~~

2. The accused has not been previously convicted, or N.A.

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, or The accused at the present time is under sentence for N.A. beginning on the N.A. day of N.A.

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 10 days in military custody, making a total of 10 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~attestation~~ attestation paper is 37

6. The date of his ~~attestation~~ specified in his ~~attestation~~ attestation paper is 4 Sep 1939

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is Nil

8. The accused is entitled to deferred pay or gratuity in respect of Nil service.

9. The accused is entitled to reckon Nil service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or is in possession of or entitled to (state any military decoration or reward)*). N.A.

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N.A.

12. (*In the case of an officer.*) The accused holds in the army the rank of N.A. dated N.A., and in his regiment (*or corps or department*) the rank of N.A. dated

(*[illegible]) [illegible] A.& E.W.Ltd. [illegible]
([illegible]) [illegible]

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. ..... Rank ..... Name ..... of ..... Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 23rd day of May 44.

..... Adjutant.
First Canadian Army Sig...

13. The accused has served as a non-commissioned officer continuously, without reduction to the present date,

In the rank of ..... Date of Promotion .....
In the rank of ..... years.
In the rank of ..... years.
In the rank of ..... years.

(Instruction.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such witnesses as are available and the paragraph endorsed accordingly.)

88E - Gnr Smith F.D.

O. H. M. S.

M. F. B. 270
1000M-12-40 (9866-69-70)
H.Q. 1773-88-67

28

Correspondence to be PINNED here.

Received 2/1/42

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Fifth day of December, 19, 41

Whereas it appears to me, the undersigned, an officer in Command of Royal Canadian Artillery, 2 Canadian Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

* Omit if not applicable.

*[I am unable to appoint:—

*[1. Three Officers to form the Court.]

*[2. A Field Officer as President.]

*[3. Three Officers having more than one year's service.]:

for the following reasons, namely:—]

In my opinion, military exigencies, namely the dispersion of units, and difficulties of communication, and other difficulties, renderit inexpedient to observe the provisions of these rules inconsistent with appendix "A" to D.R.O. 772 on the trial of the person named in the annexed schedule.

President.

Rank.	Name.	Regiment.
Major	A.H. Birks	5 Cdn Fd Regt

Members.

Rank.	Name.	Regiment.
Capt.	R.C.M. Cooper	5 Cdn Fd Regt
Capt.	G.A. Blakely	6 Cdn Fd Regt
Lieut (Waiting Member)	E. Kirk	2 Cdn A Tk Regt

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed R.A. Bruce Brigadier,

Commanding R.C.A. 2 Cdn Div.

Convening Officer.

SCHEDULE.

Number, Rank (*a*) Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
D.6017 Gunner SMITH, F.D. 5 Cdn Fd Regt, RCA.	FIRST CHARGE: A.A. Sec. 6 (2)(e) when a soldier acting as sentinel on active service, sleeping on his post. (See charge sheet attached).	Guilty	Guilty & 60 Days Detention.	I confirm the finding and sentence of the Court but remit thirty-three days detention R K Brand Brig

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer ~~the accused in open court~~ "NO"

(Signed) R A Brand Brigadier (Signed) A H Birks, Major 5 Cdn. Fd. Regt. President.
Commanding R.C.A. 2 Cdn Div. Confirming Officer (*e*)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

* See footnote (*b*) on page 762 M.M.L. 1929.

Evidence and Charge Sheets (if necessary) to be PINNED here.

27

I certify that the above Court assembled on the 13th day of December, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule. **B.** Certificate of President as to proceedings.

I also certify that :—
1. The members of the Court
2. The witnesses
~~3. The interpreter~~
~~4. The officer under instruction~~
were duly sworn.

* Omit if not applicable.

Signed this Thirteenth day of December 1941.
A H Birks, Major.
President of the Court Martial.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with. **C.** Certificate in case of death sentences.

Signed this Thirteenth day of December 1941.
A H Birks, Major
President of the Court Martial.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences. **D.** Confirmation.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

~~*I direct that the soldier named in the margin be not committed to prison until further orders.~~

Signed this 20th day of December 41.
R A Brand Brigadier
C.R.A., 2 CDN. DIV.
Confirming Officer.

Promulgated and extracts taken in the case of D 6017 Pte Smith F.D.

(*a*) (Dated) Dec 22nd 41 (Signed) [illegible] Lieut. R.C.A.C.A.D.I.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

5

The accused, D-6017, Gunner FREDERICK DORAN SMITH, Regimental Headquarters, 5th Field Regiment, R.C.A., a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE:
(A.A. Sec. 6 (2) (e).)

When a soldier acting as sentinel on active service, sleeping on his post,

in that he,

at Glynleigh, near Hailsham, Sussex, between 0400 and 0500 hours on the 30th of November, 1941, when sentry on the barrier in the main entrance to Regimental Headquarters, 5th Field Regiment, R.C.A., was asleep.

To be tried by
FIELD GENERAL COURT MARTIAL

Dated In The Field This
5th day of December, 1941.

R.A. Fraser Lt.Col.
C.O., 5 Cdn Fd Regt., R.C.A.

R.A. Fraser Brigadier,
C.R.A., 2 Cdn Div.

048

Appendix "B"

Record of Proceedings of a F.G.C.M.

1. Trial of D6017 Gnr. Smith, F.D.
5th Cdn. Fd. Regt.

Held at H.Q. 73rd Cdn. Fd. Bty., 5 Cdn. Fd. Regt., in the field on the Thirteenth Day of December 1941.

2. Court

President	Major A.H. Birks	5 Cdn. Fd. Regt.
Members	Capt. R.C.W. Hooper	5 Cdn. Fd. Regt.
	Capt. S.A. Blakely	6 Cdn. Fd. Regt.
Prosecutor	Lieut. T.H. Montgomery	5 Cdn. Fd. Regt.

Defending Officer Major F.T. McIntosh, 5 Cdn. Fd. Regt.

3. The accused arraigned and pleads GUILTY to the following charge:-

"When a soldier acting as a sentinel on active service sleeping on his post i.e. he at Glynleigh, near Hailsham Sussex between 0400 and 0500 hours on the 30th of November 1941, when a sentry on the barrier in the main entrance to Regimental Headquarters 5th Field Regiment, R.C.A. was asleep.

4. Rule of Procedure 35 (B) is complied with.

5. The abstract of evidence is read.

6. The Prosecutor files A.F.B. 296 and a certified true copy of M.F.M. 6.

7. The accused in mitigation of punishment hands in a written statement which is read, initialled and attached to the proceedings hereto.

8. The accused declined to call any witnesses as to character.

9. The accused declined to call any witnesses in accordance with R.P. 37 (P).

Certified a true record of this trial.
This Thirteenth day of December 1941.

A.H. Birks, Major ..... President.

Trial of D6017 Gnr. Smith. F. D. 9

The accused's statement in mitigation of punishment:-

I have pleaded guilty to the charge and wish to make the following statement in mitigation of punishment:

On the morning of the 29th of Nov I arose at reveille which is at 0600 hrs and was employed cleaning my kit and truck until 0800 hours. All morning I was employed hauling poles under Lieut Wilby and in fact did not get back to dinner until 1430 hrs. During the afternoon I was again hauling poles until 1930 hrs when I reported to the guardroom.

At this time I asked both Lieut Wilby and L/Bdr Parsons the NCO i/c guard to be relieved as I was very tired, and did not feel up to doing guard duty after my long day on the road. Lieut Wilby agreed that this was a reasonable request, but unfortunately no relief was available, and I mounted my post at 0100 hrs for a four hour shift. In my exhausted condition I consider this too be too long a time for a sentry to remain on guard and respectfully draw your attention to KR Can 841 which states that sentries will be relieved every two hours, or in cold or inclement weather every hour.

I 2nd Lieut A.A. on guard for approx three and a half hours when the Adjutant found me asleep. The commander of the guard had visited my post at 0350 hrs and found me alert. At about 0420 hrs I went into the hut, sat down and must have just dozed off when the adjutant arrived at the barrier. ~~At this time I had been posted for 2½ hrs.~~ A.A.S.

I say in mitigation of punishment that it was impossible under the above circumstance for me not be become drousy, though I realise that by falling asleep I committed a serious crime.

I am aware of no orders preventing me from going into the hut or sitting down in it. The orders were read to me by L/Bdr Parsons before being posted.

The adjutant did not place me under close arrest, but left me on guard, saying a charge would be laid.

F. D. Smith

AHB

ABSTRACT OF EVIDENCE

In the case of D-6017 Gnr. Smith, F.D., 5 Fd. Regt., R.C.A.

Lieut. T.H. Montgomery, 5th Fd Regt. R.C.A., is directed by the C.O. 5th Fd Regt., R.C.A., to prepare an abstract of evidence in the above case in accordance with D.R.O. No. 772, App. "A".

FIRST WITNESS

Capt. R.W. Coristine, Adjutant, 5th Fd Regt., R.C.A., stated:

At about 0430 hrs. on the 30th Nov./41, I was approaching Regimental Headquarters, 5 Fd Regt., R.C.A., in Ford Sedan No. CM 4202353. The approach to this position is guarded by a barrier put in place each evening, with a sentry posted on it. The duties of the sentry with regard to his tour of duty and his actions on the approach of vehicles or persons to the barrier are laid down in Regimental standing orders. On arriving at this road barrier the vehicle in which I was riding halted and we waited for the sentry to open the barrier. No sentry appeared, and after about one minute's wait, I dismounted and opened the barrier, upon which the vehicle drove ahead a few yards and stopped at the sentry box. I walked over to the sentry box and saw the sentry's rifle leaning against it. I entered the sentry box, which is in the form of a very small hut, and found the sentry asleep in a chair. He awakened when I spoke to him. I informed him that I would place a charge against him.

SECOND WITNESS

Lieut. H.W. Peck, R.S.O., 5 Fd Regt., R.C.A., stated:

At about 0430 hrs. on the 30th/Nov./41, I was a passenger in a W.D. vehicle No. CM 4202353 with Capt R.W. Coristine and Lieut. R.H. Craig, entering the Regimental Headquarters position of the 5 Fd Regt., R.C.A. We stopped at the road barrier in the entrance to the position and waited there for a reasonable time for the sentry to open the barrier. No sentry appeared, and Capt. Coristine dismounted, opened the barrier himself, then entered the small hut which is near the barrier, and awakened the sentry who was asleep in a chair.

THIRD WITNESS

Lieut. R.H. Craig, O.C., 5 Fd Regt., R.C.A., stated:

At about 0430 hrs. 30th Nov/41 I was a passenger in Ford Sedan W.D. No. CM 4202353 with Capt. R.W. Coristine and Lieut. H.W. Peck, approaching the position of Regimental Headquarters, 5 Fd Regt., R.C.A., at Glynleigh, near Hailsham, Sussex. When

0446

When we arrived at the road barrier at the entrance to the position we waited for the sentry to appear to open the barrier. No sentry appeared. The barrier is situated on a gravel driveway and we consequently made considerable noise on approaching it. After waiting for the sentry to appear, Capt. Coristine dismounted, opened the barrier, and went into the small hut used as a sentry box. The sentry was asleep in a chair.

The above abstract of evidence was taken by me, in the field, on the 2nd of December, 1941.

(T.H. Montgomery), Lieut. R.C.A.

848

15

R. S. M. J.T.E.McNeil, 5th Field Regt.,R.C.A. stated:-

I am in charge of administration of Regimental Headquarters, 5th Fd Regt.,R.C.A.

From the period Nov 22 - 29 ~~MMX~~ 1941, inclusive, Gnr. Smith; F.D. was only given his fair share of duties, and to the best of my knowledge he had at least five nights free during that period.

On the evening of 29 Nov 41 at 1800 hrs, Gnr. Smith was detailed in orders to mount guard. The duties of Main gate Guard are laid down in R.H.Q. Part I Orders dated 19 Nov 41. The tour of duty is one shift of two hours and twenty minutes and a second shift of two hours.

The Guard mounts at 1800 hrs and dismounts at 0700 hrs, - a total of thirteen hours. The tour of duty of 2 hours and 20 mins is rendered necessary by the exigencies of the service in that there is a shortage of personnel available for guard duty.

Supplement to Abstract of evidence in the case of D-6017 Gnr. Smith; F.D.

D-6167 L/Bdr.Parsons; E.J.

I was N.C.O. i/c Guard at R.H.Q. 5 Cdn Fd Regt R.C.A. 29-30 Dec 41.

Gnr. Smith; F.D. was a member of the Guard. He did not hear the orders to the guard read as he mounted late.

Over to Page 2.

17

PAGE 2.

To my knowledge he has been a member of the guard several times before.

Gnr. Smith was posted to the main gate at 0100 hrs 30 Nov 41. His tour of duty was for four hours.

The above supplement to the abstract of evidence was taken by me in the Field 11 Dec 41.

Montgomery Lt R.A.

Q48

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EXTRACT FROM R.H.Q. PART I ORDER #100 dated 19 Nov 41.

Orders for Sentry at Glenleigh

1. No. 1 post extends around and in the whole of the car park No. 2 post extends along and road from the entrance to the S/L billets up to the point on the road opposite the Detention Hut.
2. He will be posted by the N.C.O. i/c Guard and will not quit his post until properly relieved.
3. He will proceed on his beat in a stealty and ever suspicious manner and will report all unusual occuranses to the N.C.O. i/c Guard.
4. He will ensure that all personnel regardless of rank are properly identified before being allowed to proceed.
5. He will examine the work tickets of all drivers bringing in and taking out vehicles and will not allow them to proceed without a properly made out work ticket.
6. He will take charge of all government property in sight of his post and will allow no damage be done to it.
7. He will keep the time in and out, destination and number of each vehicle, M.C. or otherwise that goes out when he is on beat.
8. He will report any unusual occurrnce to the N.C.O. i/c Guard.

Certified True Copy

(R. W. Coristine), Captain,
Adjutant, 5th Field Regt., R.C.A.

D6017
Pte Smith F D

21

STATEMENT AS TO CHARACTER.

Name - Smith, F.D.

Regt. No. - D-6017

Unit - 5 Cdn Field Regt.

M. or S. - Married

No. of Deps - 3

Date of Birth - 4-9-14

Good character, 11 days.

Capt

AHB

23

D6017 Gnr SMITH F.D.
5 F.D. REGT. R.C.A.

Friday Street
13-12-41

James Campbell Capt
RCAMC

OHB

D-6017 SMITH; Frederick Doran | 5th Fd Bty R. C. A. | Date of Enlistment Sept 5 1939 | Sheet No.2. | Signature O.C. Company, etc. (Signed) H.M.Hague,Major,

Place	Date of Offence	Rank	Offence	Witnesses	Punishment Awarded	Date of Award	By Whom	Remarks.
Sherbrooke	16 Apr 40	Gnr	1.AWL from 0200 hrs 16 Apr 40 until 1200 hrs 16 Apr 40	RSM Gough;A.C. Bdr Stirling;A.	Admonished Forf 1 dys Pay	19Apr 40	Major Keefler	2.2.36
"	5 May 40	"	1.AWL from 2359 hrs 5 May 40 until 0330 hrs 6 May 40		7 dys C.B. Forf 1 dys pay	6 May	"	D.O.102
Petawawa	22 Jul 40	"	1.AWL from 0700 hrs 22 Jul 40 to 0800 23 Jul 40 (Absent 24 hrs)	RSM McNeil Sgt Robison	5 dys Pay 1 dys Pay FR&I	24 Jul	Lt.Col Roome	D.O. 35
Aldershot	14 Jan 41	"	Feloniously stealing a bicycle at Aldershot,Hants.	Civil Police	Fined £2--	13 Feb 41	Court of Summary Jurisdiction	
Field	28 Oct 41	"	Conduct to the prej,-etc. Late for a parade	Sgt BuchananHS	3 dys C.B.	29 Oct 41	R.W.Coristine.	
Field	7 Oct 41	"	AWL 2359 hrs 7 Oct to 0745 hrs 8 Oct 41	Bdr.Thompson	Forf 1 dys pay 120 hrs detent.	9 Oct 41	Lt.Col. Roome.	

Certified True Copy of M.F.M. 6 held by 5th Cdn Fd Regt on 3 Dec 41.

(R. W. Coristine), Captain,
Adjutant.

QMB

2-1

Correspondence to be PINNED here.

Proceedings Reviewed 13/1/42 [illegible] Reviewing Officer (Field) C.M.F.D.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this Fifth day of December, 19 41

Whereas it appears to me, the undersigned, an officer in Command of Royal Canadian Artillery, 2 Canadian Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

* Omit if not applicable.

*[~~It is impracticable for any of~~
~~the Officers duly detailed for the Court~~
~~to act as President~~
~~all Field Officers having other duties~~
~~at the place~~]

for the following reasons, namely :—]

In my opinion, military exigencies, namely the dispersion of units, and difficulties of communication, and other difficulties, renderit inexpedient to observe the provisions of those rules inconsistent with appendix "A" to D.R.O. 772 on the trial of the persons named in the annexed schedule.

CERTIFIED TRUE COPY OF CONVENING ORDER, CHARGE SHEET, AND TRANSCRIPT OF PROCEEDINGS.

for (Staff Capt) R.C.A.

President.

Rank.	Name.	Regiment.
Major	A.H. Birks	5 Cdn Fd Regt

Members.

Rank.	Name.	Regiment.
Capt.	R.C.W. Hooper	5 Cdn Fd Regt
Capt.	S.A. Blakely	6 Cdn Fd Regt
Lieut (Waiting Member)	R. Kirk	2 Cdn A Tk Regt

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed R A Bruce Brigadier,

Commanding R.C.A. 2 Cdn Div.

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D.6017 Gunner SMITH, F.D. 5 Cdn Fd Regt, RCA.	FIRST CHARGE A.A. Sec. 6 (2)(e) When a soldier acting as sentinel on active service, sleeping on his post. (See charge sheet attached).	Guilty Guilty	60 Days Detention	I confirm the finding and sentence of the Court but remit thirty three days detention R A Fraser Brig.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer "NO"

(Signed) R A Fraser Brigadier (Signed) A H Birks. Major
Commanding R.C.A. 2 Cdn Div. 5 Cdn. Fd. Regt.
Convening Officer (e) Presiding

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 13th day of December, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses

* Omit if not applicable.

~~3. The interpreter~~
~~4. The officers under instruction~~

were duly sworn.

Signed this Thirteenth day of December 1941
A H Birks, Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 764 M.M.L. 1929.

~~I certify that the terms of s.s.c.i. 470 of 1918 have been~~ complied with.

Signed this Thirteenth day of December 1941
A H Birks, Major
President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison until further orders.)

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 20th day of December 1941
R A Fraser Brig.
Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused, D-6017, Gunner FREDERICK DONAN SMITH, Regimental Headquarters, 5th Field Regiment, R.C.A., a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
(A.A. Sec. 6 (2) (e).)

When a soldier acting as sentinel on active service, sleeping on his post,

in that he,

at Clynleigh, near Hailsham, Sussex, between 0400 and 0500 hours on the 30th of November, 1941, when sentry on the barrier in the main entrance to Regimental Headquarters, 5th Field Regiment, R.C.A., was asleep.

(Sgd) (R.E.G.Rcome) Lt.-Col.,
C.O., 5 Cdn Fd Regt., R.C.A.

To be tried by
FIELD GENERAL COURT MARTIAL

Dated in the Field This
5th day of December, 1941

(Sgd) R.A.Fraser, Brigadier,
C.R.A. 2 Cdn Div.

Appendix "B"

Record of Proceedings of a F.G.C.M.

1. Trial of D6017 Gnr. Smith, F.D.
5th Cdn. Fd. Regt.

Held at H.Q. 73rd Cdn. Fd. Bty., 5 Cdn. Fd. Regt., in the field on the Thirteenth Day of December 1941.

2. Court

President	Major A.H. Birks	5 Cdn. Fd. Regt.
Members	Capt. R.C.W. Hooper	5 Cdn. Fd. Regt.
	Capt. S.A. Blakely	5 Cdn. Fd. Regt.
Prosecutor	Lieut. T.H. Montgomery	5 Cdn. Fd. Regt.

Defending Officer Major F.T. McIntosh, 5 Cdn. Fd. Regt.

3. The accused arraigned and pleads GUILTY to the following charge:-

"When a soldier acting as a sentinel on active service sleeping on his post i.e. he at Glynleigh, near Hailsham Sussex between 0400 and 0500 hours on the 30th of November 1941, when a sentry on the barrier in the main entrance to Regimental Headquarters 5th Field Regiment, R.C.A. was asleep.

4. Rule of Procedure 35 (B) is complied with.

5. The abstract of evidence is read.

6. The Prosecutor files A.F.B. 296 and a certified true copy of M.F.M. 6.

7. The accused in mitigation of punishment hands in a written statement which is read, initialled and attached to the proceedings hereto.

8. The accused declined to call any witnesses as to character.

9. The Accused declined to call any witnesses in accordance with R.F. 37 (F).

Certified a true record of this trial.
This Thirteenth day of December 1941.

A.H. Birks Major
.....President.

KK-13 (Case #2)
GNR SMITH FD
See E-88 for 1st case

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this twentieth day of July, 19 43

Whereas it appears to me, the undersigned, an officer in Command of Royal Canadian Artillery 2nd Canadian Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[redacted]

* Court where Convening Officer is a Commanding Officer or is of Field rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

[redacted]

* Omit if not applicable.

19 Aug 43

President.

Rank.	Name.	Regiment.
Maj	J.F. MERLOCK	5 Cdn Fd Regt

Members.

Rank.	Name.	Regiment.
Capt	W.G. GRAHAM	4 Cdn Fd Regt
Lieut	W.E. LLOYD	3 Cdn LAA Regt
Waiting Member ---	Lieut E.H.E. Reid,	3 Cdn LAA Regt

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed P.C. Tees

Commanding (P.C. Tees) Brigadier R.A. 2 Cdn Div

Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
D6017 Gnr Frederick Doran SMITH 5 Cdn Fd Regt	FIRST CHARGE Army Act Sec 40 See Charge Sheet attached	not guilty	~~guilty~~ ~~To undergo detention for 90 days~~ ~~and to be dismissed from the service~~ ~~and to forfeit all pay and allowances during the period of detention~~	Confirmed (P.C. Tees) Brig CRA 2 Cdn Div 22 July 43
	SECOND CHARGE Army Act Sec 8 (2) See Charge Sheet attached	not guilty	~~guilty~~ ~~To undergo detention for 90 days~~ ~~and to be dismissed from the service~~ ~~and to forfeit all pay and allowances during the period of detention~~ ~~to run concurrently~~	
	THIRD CHARGE Army Act Sec 8 (2) See Charge Sheet attached	not guilty	~~guilty~~ ~~To undergo detention for 90 days~~ ~~and to be dismissed from the service~~ ~~and to forfeit all pay and allowances during the period of detention~~ ~~to run concurrently~~	
	FOURTH CHARGE Army Act Sec 9 (2) See Charge Sheet attached	not guilty	~~guilty~~ ~~To undergo detention for 90 days~~ ~~and to be dismissed from the service~~ ~~and to forfeit all pay and allowances during the period of detention~~ ~~to run concurrently~~	
	FIFTH CHARGE Army Act Sec 19 See Charge Sheet attached Alternative to First to Fourth Charges, inclusive.	not guilty	not guilty To undergo detention for 120 days 21 July 43 J.J. Markey	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) No Sir

(Signed) P.C. Tees (P.C. Tees) Brigadier R.A. 2 Cdn Div — *Commanding*

(Signed) J.J. Markey Maj — *Convening Officer (e)* — *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 21st day of July 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. The officers under instruction)

* Omit if not applicable.

were duly sworn.

Signed this 21st day of July 1943.

J.J. Markey Maj GG
President of the Court Martial.

C. Certificate in case of death sentence.

* See footnote (c) on page 764 M.M.L. 1939.

~~I certify that the terms of A.C.I. 570 of 1940 have been complied with.~~

~~Signed this~~ ~~day of~~ ~~19~~.

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~I remit the portion of the sentence of detention which exceeds [illegible] days.~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this twenty-second day of July 1943.

P.C. Tees
Confirming Officer
(P.C. Tees) Brigadier
CRA 2 Cdn Div

Promulgated and extracts taken in the case of D6017 Gnr. SMITH Frederick Doran

(a) (Dated) 23 July 43 (Signed) (E.D. WIGHSWANDER) LT-COL RCA Comd 5 Cdn Fd Regt., R.C.A.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused D6017 Gnr FREDERICK DORAN SMITH, 5 Cdn Field Regiment R.C.A. a soldier of the Canadian Army (A.F.) is charged with:

FIRST CHARGE
A.A.Sec.40

W.O.A.S. Conduct to the prejudice of good order and military discipline in that he on 17 Jul 43 in a public conveyance between West Wittering and Chichester was wearing no headdress and had his battledress tunic unbuttoned.

SECOND CHARGE
A.A.Sec 6(2)

W.O.A.S. Using insubordinate language to his superior officer in that he on date and in place abovementioned in first charge did say to Major J.M.Watson when the latter requested evidence of his identity - "Who in hell are you to ask for my paybook" or words to that effect.

THIRD CHARGE
A.A.Sec.6(2)

W.O.A.S. Using insubordinate language to his superior officer in that he in Chichester on 17 Jul 43 did say to No.D135566 Bdr Clowery,H. when the latter refused to fight with him, "You dirty yellow bastard" or words to that effect.

FOURTH CHARGE

W.O.A.S.Disobeying a lawful command given by his superior in that he on 17 Jul 43 in Chichester when ordered by said Bdr Clowery,H. to stay in the "liberty" truck did not do so.

FIFTH CHARGE
A.A.Sec.19
(alternative to first to fourth charges both inclusive)

W.O.A.S. Drunkenness in that he on 17 Jul 43 in and near Chichester was drunk and said and did those things alleged in first to fourth charges both inclusive.

(E.L.M. Burns) Lt.Col.RCA
(E.L.M. Hanswender) Lieut Col.R.C.A.
C.O. 5 Cdn Fd Regt R.C.A.

In the Field
19 Jul 43.

To be tried by Field General Court Martial.

(F.C.Rees) Brigadier
CMA 2 Cdn Div

In the Field.
Jul 43.

B2

Statement of accused as to whether he desires to have an officer assigned by the Convening Officer to represent him at trial (R.P.14 (B)

"I wish a defending officer."
"I desire the services of - A/Capt W.A. Martin if he is available.

In the Field

Date - 20 Jul 43

F.D. Smith

D-6017 Gnr. SMITH, F.D.

MEDICAL OFFICER'S REPORT

I certify that No. D6017, Gnr Frederick Doran SMITH

of 5 Cdn Fd Regt RCA is in a fit state of health,

and fit to undergo Trial by Court martial.

(J.M. Medical Officer, M.C.)
M.O. 5 Cdn Field Regt R.C.A.

Station Field

Date 21/7/43

M. F. B. 246

2DM—6-41 (783)
H.Q. 1172-39 680

J D Murdock Major

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for General and District Courts-Martial

Proceedings of a Field General Court-Martial held at 4th Can Fd Regt on the 21st day of July 1943. by order of Brigadier DC Tees Commanding 2 Can Div Artillery dated the 21st day of July 1943.

President.
Maj J J Morlock.

Members.
Capt W G Graham
Lieut W E Lloyd.

, Judge Advocate.

Trial of* D6017 Gnr Frederick Doran Smith 4th Can Fd Regt.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that is not available to serve owing to~~

~~, waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† Capt W C Newman 5th Can Fd Regt

~~Counsel~~ defending officer† Capt W A Martin 5th Can Fd Regt

At 1050 o'clock the Trial commences.

The order convening the Court is read, and is marked X signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. No.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

---

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Mil. Forms B. 271
10M—9-39 (2132)
H.Q. 1772—39-224

B

The President, members ~~and judge-advocate~~ are duly sworn.

The following officers under instruction are duly sworn.

Lieut W C Murdoch 4th Coast Fld Regt.
Lieut G M. Wright 4th Coast Fld Regt.
Lieut E H H Reid 3rd Coast L.A.A Regt

Charge-Sheet

Instruction. *If the accused has elected to be tried under Army Act, sec. 48 (8) the fact should be here recorded.*

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Question to the accused. Are you guilty or not guilty of the [first] charge against you, which you have heard read?

Answer. Not Guilty

Question. Are you guilty or not guilty of the second charge against you, which you have heard read?

Answer. Not Guilty

Question. Are you guilty or not guilty of the third charge against you, which you have heard read?

Answer. Not guilty

Question. Are you guilty or not guilty of the fourth charge against you, which you have heard read?

Answer. Not guilty.

Are you guilty or not guilty of the fifth charge
~~whose upon have been made~~
Not guilty Objection to charge 5 - drafting - overruled
~~Charge the~~

~~The Court having pleaded Guilty to~~
~~provisions of Rule of Procedure 25 (B) are here complied with.~~

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

C

Proceedings on Plea of Not Guilty

*Instruction. (See R. P. 39 (A)) Question.

*Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No.

The prosecutor makes ~~an~~ No opening address [~~hands in a written address which is read, marked~~ , ~~signed by the President, and attached to the proceedings.~~] FJM

The prosecutor proceeds to call witnesses.

First witness for prosecution. Capt Henderson

being duly sworn, is examined by the prosecutor.

~~Will you tell the court~~

~~Capt Henderson the~~ FJM

He identifies the accused.

Will you tell the court what happened on evening of Sat Jul 17.

On evening of Sat Jul 17 I was travelling with ~~Maj~~ Watson on the Chichester bus. We were sitting in the front seat top deck. At about 2150 some gunners boarded the bus and took seats on the top deck. There was a lot of loud, foul language and I looked around and recognized Gnr Smith and noticed in addition to the fact he was causing a commotion that his battle dress blouse was completely undone and he was without beret dress. I got up, went down the bus and told Gnr Smith

to get himself properly dressed and to quiet him down. I then proceeded to the bottom deck of the bus to make sure that neither Gen Smith nor Gen Jones who was with him, got off the bus at the next stop — the Burnham Hotel. Returning to the top of the bus I saw Maj Watson was involved in an argument with Gen Smith. I heard him say to Maj Watson that his name was Brown and also who the hell are you Maj Watson pursued his identity and Gen Smith did not produce his when asked to do so. Gen Smith became violent and Gen Clowry who was sitting opposite was told to place him under arrest. There was much violent abusive conversation and scuffling took place between Gen C & Gen S. After all the entrance for some time — women who were travelling on top of bus got off in Chestnut Gen Smith was told to board the lorry back by Gen Clowry and myself

Pros — Was it a regular place or —

I changed the word — It was ordered to dismount from the truck on at least two occasions and each time was ordered to get back in and stay in. I saw Gen Smith while on top of the bus threatening Gen C and I heard him say You dirty yellow bastard or words to that effect because Gen C wouldn't take his time & go fishing to check

Pros. Was there any thing else

Yes I heard him say to Gen Jones several times words to the

effect that he had better make
up his mind this before and not to
remember anything tomorrow.

Pros. Did you see any people were
on top deck of bus.

Wit – Well this episode was I some
what, a distance I from or
five miles between Burnham
& Old Chichester

Def. – You said there was a commotion
on back of bus. Could you
make this a little clearer

Wit – I said very vivid.

Def – How did you address Sir Smith.

Wit – I said better if you were to
keep quiet

Why did you go to back of bus.

I went to see if anyone
were in need of attention I was told
there was one got on to get to hotel.

Def. What time was it when Maj
Watson was speaking to Sir Smith

Wit – 4.30

Def. – Was it light at that time.

– It was perfectly light on top
of bus.

You told Barr. Cleary to place
Smith under arrest.

W – Yes.

Def. – The people got off the bus.
Could that be Commercial Street

Wit – Yes.

Def How long before it left the
spot.

W. ½ hour.

Def – perhaps longer.

Def. – Could Smith have
given you his name. Did

you relieve him of duties as driver

Pros. Dismissed. Every one but W— me + Bell C.

Proo —
we may have mentioned where he got the $ but I dont recollect him.

Court — What cond. Smith.

W. — Drinking but in possession of his wits.

Court — Would you consider him fit to be duly sworn.

No.

Second Witness:
Maj J M Watson 5 RCA.
having been duly sworn.

Witness was objected.

On evening of 3 June 40 I was on duty as Officer of the Day + about 9.30 pm I went to the Officers Mess + sat up stairs. One man was rowdy + using foul language. Capt Henderson was talking to him + the proceeded to abuse him. Capt H. spoke to him some more + left Officers Mess. Capt H. left Sinclair using improper remarks to me. Capt H. + I went out + asked name. He gave it as Brown. I asked for his pay book + he replied Who the hell are you to ask for my pay book or words to that effect. He asked for my card which I showed him. He then gave name as Smith but did not at any time show me his pay book. Bdr C. was ordered to escort Smith back to Camp. He certainly appeared

of trouble ~~in~~ Smith was elbowing
his way ~~in~~ to get thru part of
Bus. Ct. at this point all women
& children got off bus. as it looked
like trouble. Mat Chi S. ordered
into lib. truck as ordered. Twice
he got out of truck & att. to cause
trouble.

Pros. – What did Smathers when he got out
of truck

W – Argue & swear.

Pros. – Could he get off to mingle?

Wit. – Could. Some

Pros. – How long have you been with RCA

Wit – 5 week.

Def. – Had seen Smith down in Key

Wit. – Yes but he was in crowd in front of us

Def. – ~~Was~~ it not possible Smith
didn't know who you were

Def. Witness – Dress wearing bulletin
had RCA on it.

Pros.

Def – When Smith knew who you
were he said his name was
Smith

Wit – Yes.

Def. Did he make an attempt to
look for your work?

Wit – No opportunity

Def – Could you prove people
got off ~~bus~~ bus now.

Wit. – They got off when bus stalled

Def. How long had truck in Chi
before leaving?

Wit. about an hour.

Pros. - When you spoke to Smith how many people on top deck.

Wit - some standing

Pros. You were in one uniform

Witness - Battledress - yes.

Pros. - was Smith able to see you

Wit He was facing me directly

Pros. You was were standing over him then

Witness Yes.

Def. - anything said to you. eg. Capt H.

Witness - Impression was general criticism of officers + don't pay any attention to them

Third Witness

01566 Bdr. Clowery H serving in 1 Corps.

On Sat 17 July 43. I was on upper deck of Chichibus. Smith + Jones mounted bus + Driver Capt Henderson went up to bus Smith He argued so I told Smith to be quiet. Smith swore at me + I placed him under arrest + started + I felt a fist against the side of my face

I retreated Capt Henderson went down stairs + Maj Watson asked Smith for pay book. Smith gave his name as Brown.

Pros. What other conversation between Smith + Maj Watson?

Wit "Who the hell are you.

On Chi Smith wants to fight me and he called me a dirty yellow bastard He was ordered into truck by Major, Capt + myself. He was marched to the Bus, 7 A Sq to, and to the Officers

Pros. You know + could easy nize May What.
W— Yes. it was quite light
Def— What Condition of Gen. Smith.
W— ~~Drunk~~ He had been drinking
Def—

Def— Smith you his correct name when May Watson ~~sent~~ him for his
he look for his pay book.
W. Yes he looked for it + couldn't find it.
~~could not find that.~~

Fourth Witness
D6902 — J. Bee. Opp. E.T. being duly sworn.
I was going to Liberty truck about 2245 + Capt Hand. Told me to act as escort + witness. He was going to obtain ~~Lorgee~~ + got out of truck after being ordered so. He was calling of Jean dirty sons bitches + mules. He also called Bill Chowyn dirty yellow bastard. He was telling someone he was going to plead drunk to charge.
Def. — He was drinking. Then could he not have gotten out of the truck to urinate.
Wit. — He couldn't have got out of truck to urinate on main street of Chichester
Def — When was this the Liberty truck left?
Don't know exactly, its supposed to leave at 2245.
Pros. — What do you mean by drinking to excess.
Wit — Not really drunk but had a little too much.
Capt—

Fifth Witness
B 6455 L/Cpl Mahon C.L. 5th Bty
July Month.

On 18th July. I was guard at 5th 7th Regt I took gunner Smith & Gnr Jones into custody. Smith was agressive & said if he were charged with anything he would get charges for something. I warned him & he said O.K. I sent Smith under escort to get bedding. They returned in 10 min & Smith prepared for bed. He was talking & I had to keep him quiet.

Defence objects to production of Voluntary confession because Smith hadn't been warned that it would be used against him in court.
Witness dismissed.
Proc — P42 —

Evidence was purely pre and Voluntary bec Gnr Mahon did not didn't wish to hear what Smith had to say.
Pge — not

D/J If prisoner has to make a statement usual precaution to be taken. (Para 79 page 93)
Court finds that the confession is admissable under Manual. Army Act Chap 5 sect 77.

Witness recalled —
Witness Wants to make it clear that what he has to say was said to anyone & not especially to him. Gnr. Smith said he hadn't had a drink since Capt Henderson seen him. Witness took Smith out on way to beach head & had him replaced when they returned. He was previously last passed his duties course talking. I went in two Clowery & had pushed him back in tent. Lieut Watson (Duty officer) spoke for pay book.

Pros. – What about Jones.
Wit – Sm. one to Jones –

– All right I'll plead drunkness and if he pleads guilty – one point because things concerning it had best be forgotten.

Pros. – Have your information was given in response to questions by me?
Wit – No.
Def. – Would you say Smith was drunk.
Witness will be wasn't when but he recognized it.
Def. – Was Smith pres. when you gave evidence.
Wit. Yes.
Def – Did you give evidence just to prompt + them give evidence to court.
W – Yes
Def. Were you prompted – things to mention her.
W. – Evidence was made more convincing for me.
Def. – Did pros. have a paper marked in ink when you were giving evidence
Wit I didn't see it
Def What time did Smith start talking Between midnight + 0100 hrs.
Def. You gathered there was a difficulty Smith + Highlanders.
W – Yes.
Def. – May. Watson quarrel. By that was any thing serious meant
Wit – No.
Pros – ~~Was you~~ What induced you come + give evidence
W – I was reluctant to give evidence but I was told it was my duty

Pros — Was I threatening when I told you it was your duty

W. — You made me feel that I was a fool if I didn't

Pros. — Didn't I in anyway force you or tell you what to say?

W — No.

Sixth Witness.

D13645 Ward G. A. F. being duly sworn states

Pros. Do you recognize Gov Smith this

W

Pros

W I was on the guard tent and was awakened to help on guard. I was told to go down to the lines with Smith to get his blankets. Returned to the guard tent and I went back to bed. When Smith & Jones started talking Bar Mahyon told them to stop. I gathered that there had been a disturbance on the bus. He said that he had had some trouble with Capt. and he also said that when Major Watson asked him for his pay book he had asked him for this identity card. He also said he had a little trouble with Bar Flournoy

Pros So that all you heard Gov Smith say

W. Yes

Pros Take him Gov Smith

W. He understood him say

Def Was Gov Smith under the influence of drink

W He had been drinking
(See page D attached)

First Witness for Defense.

D 8123 Gov Reynolds BJ being duly sworn states

Def Do you recognize the accused

W. Yes

Def Will you tell what you know about the case

W. I saw Gov Smith at the transit on Chichester

and he appeared to be under the influence of liquor

Gnr.
[illegible]971 Jones J. J being duly sworn states

Def Read Were you out with the accused on 17 July

W yes

Def will you tell the court about it

W. We were drinking heavily and I dont remember any thing about it. Gnr Jones was drinking with us all night but I dont know what happened to him. I dont remember anything till I woke up in the guard room

6

[illegible]6082 Gnr Lumsden L.J. being duly sworn states

Def will you tell the court what you know about this case

W - I was at the dance and went to the pub for a drink. At the door I saw Gnr Jones stagger into the Pub. I called him by name but he did'nt answer. I would say he had been drinking

D16852 Gnr Smith E.J. being duly sworn states

Def will you tell the court what you know about this case

W. I was driving the Liberty truck on 17 July and when I saw Gnr Smith at the truck I would say that he was drunk. He could just navigate and that's all.

Summing up of the Defence

Def. Gnr Smith has been in England for 3 years, with 7 Fd Regt since Sept 1939. Some people find daily recreation in Pubs. Officers must help men keep out of troubles rather than try to antagonize them. Try to humour the man. There was a personal grudge between Capt Henderson & Gnr Smith, which Gnr Smith still held. The first man to accost Smith was Capt Henderson and he, not being in full possession of his faculties, did not like the manner in which he was approached. Both Capt Henderson & Major Watson testified that the man was not fit for duty and so he could not have been completely sober. Negligence on the part of the officers concerned in not seeing that Smith was placed in military custody immediately. Nearly two hours elapsed before he was sent home. Witnesses have stated that Gnr Smith was drunk, one that he could hardly stand. This is a common crime and aggrieved by the first charge

Summing up of the prosecution

First charge of Cond. to the Prej. of Good order & Military Discipline has been brought out by the first three witnesses

Second charge of insubordinate language has been also brought out by three witnesses that he disobeyed use the language brought out

The third charge has also been brought out by witnesses But in the crowded streets of Colchester he used the language attributed to him

It has also been brought out that the accused got out of the truck twice in one hour after having been ordered to stay in it

As for the alternate charge it has been brought out the accused's degree of drunkenness. Drunkenness is no excuse for the behavior of the accused

Def in Mitigation of Sentence.

It is to be hoped that the court will take into account the fact that Gnr Smith was not sober when these acts were committed

D

The prosecution is closed.
RP 40 complied with

Defence

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. No.

Question. Do you intend to call any other witness in your defence?

Answer. Yes

Question. Is he a witness as to character only? *Answer.* No.

INSTRUCTIONS TO THE COURT

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(iii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

~~The evidence of the accused (and of the witnesses for the defence (including witnesses as to character) is recorded on a separate page (see overleaf).~~ gmm

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(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says† No.

~~[Hands in a written address which is read, marked signed by the President and attached to the proceedings.]~~ gmm

(See page 10 for defence evidence)

Instruction. † In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court *above*.)

E

Finding*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused

Guilty of charges 1 to 4
Not Guilty of the 5th charge.

Court re-opened & finding on 5th charge is announced.

Proceedings on Conviction *before Sentence*

*When the Court is already open this sentence will be struck out.

~~*The Court being re-opened, the accused is again brought before it.~~ JDM

Prosecutor under O/S RO 3131 ~~is duly sworn~~ JDM

Evidence of character, &c.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness* AFB 296 + MFM 6

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked G + H, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness* Yes

Question.

~~Have you compared the contents of the above statement with the regimental books? Answer.~~ JDM

Question.

~~Are they true extracts from the regimental books, and is the statement of entries in the conduct sheet a fair and true summary of those entries? Answer.~~ JDM

JDM

~~Cases examined by the accused.~~

[Observation.—If by reason of the nature of the service of the accused in a depot, penal corps, or otherwise the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court, the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Question to the accused.

Do you wish to address the Court? Answer Yes (see page 13 ante)

The Court is closed for the consideration of the sentence.

(5) J D Moriarty Major

SUMMARY OF EVIDENCE
in the case of

D6017 Gnr Frederick Doran Smith, 73rd Fd Bty,
5 Cdn Field Regiment R.C.A.

a soldier of the Canadian Army Overseas.

The accused is informed of his rights.

The C.O. directs that the evidence be taken on oath by Capt W.C.Newman, 5 Cdn Fd Regt R.C.A.

FIRST WITNESS FOR THE PROSECUTION

Capt G.K.Henderson, 5 Cdn Fd Regt RCA, having been duly sworn states:

"I identify the accused as the soldier in question in this case. On 17 Jul 43 at about 2155 hrs I was returning to Chichester in company with Major J.M.Watson on the front seat of the top deck of a bus. There were some soldiers and civilians also seated on the top deck of this bus. The accused and Gnr Jones boarded the bus. I heard a commotion and finally turned back and saw them about mid-way down the bus. Gnr Smith had no headdress on and his battledress was completely undone. I walked back and told the accused to button up his tunic and to quiet down. I proceeded immediately to the lower part of the bus to see that no soldiers of the unit alighted from the bus when it stopped at Birdham. When the bus started I rejoined Major Watson who was then talking to the accused. I heard the accused give his name to Major Watson as "Brown", at the same time saying, "Who the hell are you? I want to see your identification." Major Watson produced his military card. The accused did not produce his paybook when ordered. His attitude became threatening. Bdr Clowery who was sitting opposite, was told to place him under arrest. The accused started to struggle with Bdr Clowery. Before it was over all civilians in bus, men, women and children left the top deck.

"Arriving at Chichester the accused was ordered to board the Liberty Truck and to stay on it. Bdr Clowery, I and Major Watson all gave this order, at different times. The accused got on and off at least twice and acted in the most insolent and insubordinate manner.

"The accused recognized me when I first spoke to him.

"The accused appeared to have been drinking but he knew what he was doing. I heard him say to Gnr Jones around the Liberty Truck, "that he had beaten worse raps than this and to remember nothing in the morning."

"By the Liberty Truck I saw the accused threaten Bdr Clowery and callhim a 'yellow bastard' because he would not go behind the Church and fight with the accused."

Cross-examined by the accused:-

Q.1 You told the C.O. that you went down to the bottom deck of the bus to see that I did not get off for another drink - as I could have - so you must have presumed that I could not stand another drink.

A.1 Your conduct was such that I was going to see that youneither dismounted from the bus or had another drink. It was obvious that drink would not improve your conduct.

Q.2 It is hard for you to know how much I understood or not after I had been drinking.

A.2 That is true.

The accused declines to cross-examine further.

(G.Keith Henderson)Capt R.C.A.

SECOND WITNESS FOR THE PROSECUTION

Major J.M.Watson, 5 Cdn Fd Regt R.C.A., having been duly sworn states:

"I identify the accused as the soldier in question in this case. At 2200 hrs I was travelling on top deck of a bus going into Chichester. Capt Henderson was with me. Several soldiers also seated themselves on the top deck of this bus. The accused,who was one of them, was using foul language and Capt Henderson went back and spoke to him. The accused's tunic was undone entirely and his cap was off. Capt Henderson then went below and the accused continued to make improper remarks - some of which referred to Capt Henderson. I went back to him and asked him his name and he gave it as 'Brown'. I asked for his paybook and he said words to the effect 'Who in the hell are you to ask for a paybook; where is your identification', so I showed him my military card. He did not show his paybook. He then stated his name was Smith. This was corroborated by other soldiers. Capt Henderson returned and we told Bdr Clowery,who was riding in the same bus, to escort Smith back to camp.

"Cnr Smith the accused started to struggle with Bdr Clowery. All civilians,which included women and children, left the top deck of the bus.

"On arriving at the Liberty Truck in Chichester, the accused was ordered into the truck and to stay there,but I saw him get off the truck twice and continue to act disorderly."

(J.M.Watson)Major R.C.A.

The accused declines to cross-examine this witness.

THIRD WITNESS FOR THE PROSECUTION

D13566, Bdr.Clowery,H., 5 Cdn Fd Regt RCA, having been duly sworn states:

"I recognize the accused as the person to whom I shall refer to as such in my statement. On 17 Jul 43 at about 2150 hrs I was on the top deck of the bus returning to Chichester. There were about fifteen other people on the bus - soldiers and civilians of both sexes. I was sitting about two seats behind the accused when I saw Capt Henderson go up to the accused who had no headdress on and whose tunic was open at the front. A conversation developed so I got up and ordered Smith to sit down, and when he did not obey I ordered him under arrest.

"He did not sit down. Capt Henderson then left. Major Watson then came and asked the accused for his paybook. Gnr Smith started to look for it but did not find it. He said to Major Watson, "Who the hell are you," or something. He gave his name as "Brown" to Major Watson. By that time Capt Henderson came back. I thought Smith was going to hit Capt Henderson and I stepped in, and then he challenged me to fight. He jostled me. I returned to my seat. All the civilians left the top deck of the bus.

"When we got back to Chichester the accused again challenged me to a fight and when I would not he called me a 'dirty,yellow bastard'. There were at least twenty-five around when this was going on including some civilians. I ordered him to get in the truck and stay there - so did Capt Henderson and Major Watson. He got out of the truck twice after that order.

"I heard him say "Fuck all the bombardiers, fuck all the sergeants and fuck all the officers."

"I came back with the accused on the Liberty Truck. Sgt Firth was in charge of the accused who on our arrival was turned over to L/Bdr Malyon,C.H. N.C.O. i/c Main Gate Guard."

D13566, Bdr Clowery,H.

The accused declines to cross-examine this witness.

FOURTH WITNESS FOR THE PROSECUTION

D6902, L/Bdr Epps,E.T., 5 Cdn Fd Regt RCA, having been duly sworn states:

"The accused is the person to whom I refer as such in my statement. I came to the Liberty Truck at Chichester busstop at 2235 hrs. I was detailed by Capt Henderson to act as escort and witness together with Bdr Clowery, to the accused and Gnr Jones.

"When I got up to the truck I heard the accused call Bdr Clowery a 'dirty,yellow bastard' because he would not go behind the Cathedral and fight. He called the officers 'dirty fuckers' and 'cunts'. I was looking after Gnr Jones but I saw the accused get in and out of the truck once - I cannot say if he got out again. When either Capt Henderson or Major Watson ordered the accused back into the truck he took his time about it.

"I heard the accused tell Gnr Jones he was going to plead drunk to the charge."

D6902, L/Bdr Epps,E.T.

The accused declines to cross-examine the witness.

FIFTH WITNESS FOR THE PROSECUTION

B6455, L/Bdr Malyon,CH., 5 Cdn Fd Regt RCA,having been duly sworn states:

"I was NCO i/c guard at No.4 post on 17 Jul 43. At approximately 2330 hrs the Liberty Truck returned from Chichester and in consequence of information I woke up Gnr Ward and I took the accused,whom I recognize, and Gnr Jones into custody. I heard the accused say that if he was going to be charged that he was going to make it worth while,so I warned him to behave and so he said that it would be O.K. - that he would not make any trouble for me.

"Gnr Ward went with the accused to get his bedding. They returned in about 10 minutes. Gnr Smith got undressed. He walked unassisted and he undressed himself. He started talking. I asked him to be quiet because Gnr Ward had to go on the beat at 0200 hrs and had to get to sleep. He said that he had no pillow and that the tent was spinning around at about sixty miles per hour.

"He mentioned he lost his cigarette lighter. He said that on a trip to Beachy Head that he was driving Capt Henderson and that he had got a little drowsy and Capt Henderson had taken the wheel and he told Capt Henderson that so long as he was in charge of the vehicle that he was in control of the vehicle and Capt Henderson was not to interfere with the driving. On the return from Beachy Head Capt Henderson had him replaced.

"He also stated that ever since then he felt Capt Henderson had a grudge against him, for after Capt Henderson had left the battery he had got his proficiency pay and qualifications as Dvr Mech entered in his paybook.

"He said Capt Henderson had told him to button up his tunic and put his cap on, and that after that Bdr Clowery had come forward and pushed him down into the seat. He said a 'queer' major asked for his name and he replied that his name was Brown. He said the Major asked for his paybook and he said he asked for the major's identification and that the major did show him it.

"Several times I told him that it was none of my business and that I would rather not hear any of it. I heard the accused say to Gnr Jones that he could not say anything in defence of himself on one point or he would queer the whole thing and that he would plead drunkenness. He told Jones that he would iron things out in the morning. Before this he had told me that he had invited Bdr Clowery behind the Church and that he had referred to him as a 'yellow bastard'. He went to sleep then."

Claude H. Malyon

B4358, L/Bdr Claude H. Malyon

The accused declines to cross-examine this witness.

SIXTH WITNESS FOR THE PROSECUTION

D13645, Gnr Ward, G.A.P., 5 Cdn Pd Regt RCA, having been duly sworn states:

"On 17 Jul 43 I was on guard at the Main Gate. I was awakened at 2340 hrs and in consequence of orders from L/Bdr Malyon I went with the accused, whom I recognize, to get his blankets. He went under his own power. We returned to the guard tent. I went back to my bed which was in the guard tent. There was talking going between Smith and Jones and I heard L/Bdr Malyon tell them to keep quiet as I wanted some sleep. They were talking about the trouble they had been in during the evening on the bus. The accused said that Capt Henderson and some major told him to button up his tunic which he had undone. The major asked for his paybook and the accused asked him for his identity card, which the accused said he did not do so, he did not show him his paybook.

"He said that he had trouble with Bdr Clowery and that he offered to fight it out with him and that Bdr Clowery would not fight. He said that he was a 'yellow bastard'.

"He said that when Capt Henderson was here in the battery he never got a break but after he had gone he got his Driver Mechanic qualification through and his proficiency pay."

Geo A F Ward
D13645, Gnr.Ward,G.A.F.

The accused declines to cross-examine this witness.

////_____////

The accused having been duly cautioned in accordance with R.P. 4(E) says:

"I do not wish to say anything until I see a lawyer."

The accused does not wish to call any witnesses for the defence at this point.

_____

Certified that R.P. 4 complied with.
In the Field.
19 Jul 43.

W C Newman Capt
(W.C.Newman)Capt R.C.A.
Officer detailed to take the Summary.

No. D6017 Name SMITH, F.D. | Sqn., Battery, or Company | Corps R.C.A. | Date of enlistment 6 Sep 39 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 A.F.B. 172

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. Major R.C.A.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sherbrooke	16 Apr 40	Gnr		AWL from 0200 hrs 16 Apr 40 until 1200 hrs 16 Apr40.Absent 10 hrs.	RSM Gough Bdr Sterling	Admonished	19 Apr 40	Major Keefler	Forf 1 days pay FR&I
Sherbrooke	5 May 40	Gnr		AWL from 2359 hrs 5 May till 0330 hrs 6 May 40. Absent 3 hr 31 min.	RSM McNeil Sgt Robison	7 days C.B.	6 May 40	Maj.Keefler	Forf 1 days pay FR&I
Petawawa	22 Jul 40	Gnr		AWL from 0700 hrs 22 Jul 40 till 0700 hrs 23 Jul 40. Absent 24 hrs	RSM McNeil Sgt Robison	5 days forf of pay	24 Jul	MESS ROOM Lt Col MCA	Forf 1 days pay FR&I
Aldershot	14 Jan 41	Gnr		Feloniously stealing a bicycle at Aldershot	Civil Police	Fined 12-0-0	13 Feb 41	Court of Summ.Juris.	Aldershot
Field	28 Oct 41	Gnr		Conduct to the prejudice,etc.i.e. late for parade.	Sgt Buchanan	3 days C.B.	29 Oct 41	RM Coristine,Adj.	
Field	7 Oct 41	Gnr		AWL from 2359 hrs 7 Oct 41 to 0745 hrs 8 Oct 41.Absent 7 hrs 46 mins. AA 16.1.	Bdr Thompson	120 hrs detention	9 Oct 41	MESS Room Lt.Col MCA	Forf 1 days pay FR&I

(FTO)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	23 Nov 41	Gnr		Sleeping on his post. A.A.6.	Capt Coristine Lieut Craig Lieut Peck	27 days detention	13 Dec 41	F.G.C.M.	
Field	9 Feb 43	Gnr		W.O.A.S, absent without leave from 2259 hrs 9 Feb 43 until 0100 hrs 10 Feb 43. Absent 2 hrs 1 min. AA 15.1.	Sgt Green, DJ	7 days C.B.	14 Feb 43	RCD Stewart Major RCA	

CERTIFIED TRUE COPY.

(H.C.D. Stewart) Major RCA
Comd 72nd Fd Bty R.C.A.
19 Jul 43.

J D Marlock Major

M.F.B. 355
40/P & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D-6017	Gnr	Frederick Doran SMITH,	5 Cdn Fd Regt., R.C.A.

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental and Squadron, Battery ~~Conduct sheets~~ Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For	A.W.L.	one times	Four	times
For	Conduct to the prej.	times	One	times
For		times		times
For		times		times

Number of instances of gallantry or distinguished conduct

or, NIL

~~There are no entries in the conduct sheets of the accused.~~

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted.~~

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act A.F.A. 73 Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

~~or,~~

~~The accused at the present time is under sentence for beginning on the day of~~

4. The accused has been ~~in confinement~~ under close arrest awaiting trial on the present charges, for from 2200 hrs 17 Jul 43 days in ~~civil custody, and~~ days in military custody, making a total of days in custody, ~~of which days were spent in hospital.~~

5. The present age of the accused according to his record of service is attestation paper is 28 yrs 10 mos 13 days

6. The date of his ~~commission specified in his record of service is~~ attestation attestation paper 5 Sep 39

7. The service which the accused is allowed to reckon towards discharge is 3 yrs 10 mos 12 days

8. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward (or is in possession of or entitled to). State any ~~air force~~ military decoration or reward.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated, and in his regiment (or corps), the rank of dated.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

N.A. Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused, Number D5017 Rank Gnr

Name Frederick Doran SMITH of 5 Cdn Field Regiment RCA Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	Field, 13 Dec 41	Sleeping on his post. A.A.6	27 days detention	
Court of Summary Jurisdiction	Aldershot, 13 Feb 41	Feloniously stealing a bicycle at Aldershot	Fined £2-0-0	

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 19th day of Jul 43 (R.C.D.Stewart)Major RCA.
Comd 73rd Fd Bty R.C.A.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked "G" signed by the president, and annexed to the proceedings.

J.M.Mackay Major

317a

B-76165 Plt Smith G-L

Tex. Cdn Def Hold Unit

10/5/714

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this 8th day of April, 1941.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS, CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; [redacted]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

[redacted]

President.

Rank.	Name.	Regiment.
Major	T.E. Hayhurst	No.1 Cdn Inf Hldg Unit

Members.

Rank.	Name.	Regiment.
Captain.	S.S.T. Cantlie	No.2 Cdn Inf Hldg Unit
Lieutenant	R.F. Wodehouse	No.1 Cdn Inf Hldg Unit
Lieutenant	D.F. Newson	No.3 Cdn Inf Hldg Unit

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed. L. F. Page. Brigadier

Commanding Cdn Base Units, Cdn Army.

Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B-76865 PTE. SMITH,F.H. (Tor Scot reinforcement) No.1 Cdn (M.G.) Hldg Unit.	First Charge A.A. Sec 15 (1) as per charge sheet	GUILTY	GUILTY	I confirm the finding & sentence of the Court but mitigate the sentence to one of 120 days detention L
	Second Charge A.A. Sec 15 (1) as per charge sheet	GUILTY	GUILTY	
	Third Charge A.A. Sec 15 (1) as per charge sheet	GUILTY	GUILTY	
			TO UNDERGO DETENTION FOR A PERIOD OF SIX MONTHS.	

In sentencing the accused the court has been influenced by his Age and recommend that on completion of his detention that he be transferred to another unit.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) L. T. Rapp. Brigadier (Signed) Thos F Haythornthwaite maj.
Commanding Cdn Base Units, Cdn Army. *President.*
Convening Officer (*e*)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 10th day of April, 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. The ~~Interpreter~~ Court Stenographer
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 10th day of April 1941.

Thos F Haythornthwaite
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 764 M.M.L. 1939.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*I direct that the soldier named in the margin be not committed to prison until further orders.~~ L

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 14th day of April 1941.

L. T. Rapp. Brigadier
Confirming Officer.

Promulgated and extracts taken in the case of B 76865 Pte Smith F H

(*a*) (Dated) 21st April 1941 (Signed) [illegible] Captain Adjutant No. 1 M.G. Holding Unit, C.A.S.F.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

B2

CHARGE SHEET

The accused No B76865 Pte Smith, F.H., Toronto Scottish Regt, on the strength of 1 Cdn (MG) Holding Unit, C.A. (O) an active unit of the Canadian Army Overseas as a reinforcement for his Regt a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec. 15 (1)
ARMY ACT

Absenting himself without leave
in that he
at Bordon, Hants, did absent himself from 1 Cdn (MG) Holding Unit, C.A. (O) from 2200 hrs 27-2-41 until 0630 hrs 28-2-41.

SECOND CHARGE
Sec 15(1)
ARMY ACT

Absenting himself without leave
in that he
at Bordon, Hants, did absent himself from 1 Cdn (MG) Holding Unit, C.A. (O) from 0800 hrs 28-2-41 until 0200 hrs 4-3-41.

THIRD CHARGE
Sec 15 (1)
ARMY ACT

Absenting himself without leave
in that he
at Bordon, Hants, while in lawful custody in the Detention Barracks room did absent himself without leave from 1745 hrs 5-3-41 until he surrendered himself to the Metropolitan Police, London, at 1655 hrs 27-3-41

.....Lt.Col
O.C. 1 Cdn (MG) Holding Unit
C.A. (O)

Bordon, Hants,
1 Apr 41

To be tried by Field General Court Martial

.....Brigadier
Commanding Cdn Base Units.

Bordon, Hants
This 5th day of April 41.

President Lt Col F Hopkinson
#1 Cdn HU.

B-76865, Pte. Smith, F.H., No. 1 Cdn. (MG) Holding Unit, tried by Field General Court-Martial at Bordon, Hants., on the 10th day of April, 1941.

The order convening the Court, the charge-sheet and the summary of evidence are laid before the Court.

Prosecutor - Lieut. J.M. Prescott
Defending Officer - Lieut. A.D. Anderson.

At 1000 hours the Trial commences.

The names of the President and members of the Court are read over in the hearing of the accused and they severally answer to their names.

Q1 - Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?
A1 - No, sir.

The President and members are duly sworn.

Q2 - Do you object to M-15577 Sgt. Stanley Fidler, The Edmonton Regiment, C.M.H.Q., acting as Court Stenographer?
A2 - No, sir.

The Court Stenographer is duly sworn.

The charge-sheet is signed by the President and annexed to the proceedings.

The accused is arraigned upon each charge in the above mentioned charge-sheet

Q3 - Are you guilty or not guilty of the first charge against you, which you have heard read?
A3 - Guilty, sir.
Q4 - Are you guilty or not guilty of the second charge against you, which you have heard read?
A4 - Guilty, sir.
Q5 - Are you guilty or not guilty of the third charge against you, which you have heard read?
A5 - Guilty, sir.

R.P. 35(B) is complied with by the Court.

Q6 - Do you wish to make any statement in mitigation of punishment?
A6 - No, sir.
Q7 - Do you wish to give evidence yourself or to call any witnesses as to character?
A7 - No, sir.

Lieut. J.M. Prescott, No. 1 Arty. Holding Unit, is duly sworn.

Q8 - Have you any evidence to produce as to the character and particulars of service of the accused?
A8 - A.F.B. 296 and M.F.M. 6, sir.
Q9 - Is the accused the person named in the statement which you have heard read?
A9 - Yes, sir.
Q10 - Have you compared the contents of the above statement with the regimental books?
A10 - Yes, sir.
Q11 - Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?
A11 - Yes, sir. I also have a letter which Col. Carpenter wishes me to introduce; it is from the mother of the accused. It contains a certified copy of the registry of birth showing that the accused was born on the 23rd day of May, 1923. It also shows that he practically ran away from home, and that his father is a Great War veteran now serving with the R.C.E.

Q12 - Do you wish to address the Court?
A12 - (Defending Officer) In view of the evidence brought forward by the prosecutor there are only a few words I would like to say. While this chap is under age he is likely to have been a hero worshipper and made friends with the wrong type of people and looked up to the bad eggs who were continually going a.w.l. and bragging about not being afraid of anything. I would like to call attention to his extreme age and family background -- his father and mother. His father is a veteran of the last war once again serving with the R.C.E.; and his mother is interested in him. I think he is too young to be thrown in with associations which would give him trouble.

The Court is closed for the consideration of the sentence.

Thos F Hayward maj

Summary of Evidence

in the Case of
B.76865, Pte. Smith, F. H, No1. M.G. Holding Unit, C.A.(O).
On instructions of the Commanding Officer
this summary is taken on oath.

1st Witness for the prosecution: B 76458 Sgt Barrett, H.W. No1. Cdn M.G. Holding Unit, being duly sworn states I am B 76458 Sgt Barrett, H.W. No1. Cdn M.G. Holding Unit. ~~On the 26th Feb. 27th 1941 I was on~~ I am Coy. Orderly Sgt. of "A" Coy. On Feb 27, 1941 B76865, Pte. Smith. F.H., was absent when I took tatoo roll call at 2200 hrs. I did not see him again till 0630 hrs Feb 28, 1941 when I warned him for Company Office at 0800 hours. He did not appear at Coy. Office and I did not see him again until after he had been arrested in London.

The accused declined to ~~cross~~ Sgt. Barrett H.W. cross-examine the above witness

2nd Witness for the Prosecution. Capt. J.E. Lockhart, Adjutant, No1. Cdn. M.G. Holding Unit, C.A.(O). being duly sworn states I am Capt. J.E. Lockhart Adjutant, No1 ~~Canadian~~ Cdn M.G. Holding Unit, C.A.(O). and I produce a Charge Sheet, A.F.B. 252. from A.P.M., Cdn, London Area, with statement of Evidence regarding the surrender of the accused Pte Smith whom I recognize, marked Exhibit "A" for identification

R E Lockhart Capt
1 Can M.G. Holding Unit

The

The accused declined to cross examine the above witness
The attached statement of Evidence, Exhibit "A", was read to the accused and he declared that he was willing for it to appear in evidence.

The accused was warned in accordance with R.P. 4(E) and asked if he wished to make a statement. He declined.

Taken down in writing by me in the presence and hearing of the accused ~~at B.C.D.R. Hants this~~

Certified that R.P. 4(E), (D) and (F) have been complied with

Taken down at
Bordon, Hants.
This 5th Day of March, 1941

R.L. Angilley Lt
#1 Cdn M.G. H.U., C.A.(O).

The summary of evidence in the case of No B76865 Pte Smith F.H. No 1 Cdn (M.G.) Holding Unit C.A.(O) This summary is taken under oath by instruction of the Commanding Officer.

First witness for the prosecution — No D76568 Cpl Nash H.C. No 1 Cdn (M.G.) Holding Unit C.A.(O) being duly sworn states

I am No D76568 Cpl Nash H.C. No 1 Cdn (M.G.) Holding Unit. I am performing the duties of R.P. I know the accused Pte Smith. On march 5/41 Pte Smith was in Detention Barracks No 1 Cdn (M.G.) Holding Unit.

I saw Pte Smith at 1930 hours March 5 at about 1745 hours I was placing Pte Drum in the cell Smith occupied when I discovered Smith was absent. I do not know how he got out.

Pte Smith was returned by C.M.P. on march 28-3/41

The accused declined to cross examine.

Cpl H.C. Nash
R.P.

Second witness for the Prosecution — Capt R.E. Lockhart No 1 Cdn M.G. Holding Unit C.A.(O) being duly sworn states

I am Capt R.E. Lockhart No 1 Cdn M.G. Holding Unit. I am adjutant of the said Unit. I identified A.F.B.252 with respect to the accused Pte Smith when I recognize

I also introduce A.F.O 1617 - certificate of surrender relating to the accused

(A.F.B.252 Exhibit A2 A.F.O 1617 Exhibit B)

The accused declines to cross examine

R.E. Lockhart Capt
1 M.G. Holding Unit

The accused having been duly warned under A.R. 4(c) declines to make a statement

Taken down in writing in the presence and hearing of the accused at Borden Camp this 31st day of March 1941

Corrigenda The A.R. 4 c d & e have been complied with.

J.R.L. Prescott Lieut
No 1 Cdn M.G.
C.A.(O)

Borden Camp
31 March 1941

LIST OF WITNESSES

Prosecution

1	B76458 Sgt Barrett, H.W.	1 Can (MG) Holding Unit
2	Capt R.E. Lockhart	1 Can (MG) Holding Unit
3	D76568 Cpl Nash, H.C.	1 Can (MG) Holding Unit

Defence

NIL

914.

LIST OF EXHIBITS

1	A.F.B. 252	APM, London Area
2	A.F.B. 252	APM, London Area
3	A.F.O. 1617	Certificate of Surrender

34 Carlo court Ave
Toronto, Ont
Canada

Dec 30 – 1940

To Officer Commanding
No 1 C. M. G. Holding unit
Toronto Scottish Regt.

Dear Sir

I am writing this Re my son F. H. Smith # B 46865. at present in your unit. He is only 17½ years of age. I am sending his Birth Certificate. He enlisted in July without consulting his Father or myself and before we hardly realized what was happening he had sailed for England in 3 weeks or less. If

However we waited to see how Chingo would turn out, But as he does not seem to be making a very good soldier we would like to know if he could be returned to Canada for the time being or discharged, His father is in the Army since September R.C.E. Active Service force, also a veteran of the great war. I am in failing health myself, here alone, and it is a great worry to both of us him being over there in trouble most of the time. yours

Hoping you will give
this your kind consideration
I am yours most
Sincerely
Edith J. Smith

JJA

Description of Court by which tried, or status of Officer disposing of the charge on dispensing with Trial	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 10th day of April 41

R.G. Fullerton Lieut.

Officer i/c Records,
1 Cdn. M.G. Holding Unit, C.A.

10-4-41.

MEDICAL OFFICER'S CERTIFICATE.

I CERTIFY that No. B76865 Pte Smith, F.H., 1 Cdn. (MG) Holding Unit Regiment

is* Fit to undergo trial by Court-Martial.

Signature of the Medical Officer H.R.L. Davis Capt RAMC

Army Form B296.

* Insert "fit" or "unfit."

Statement as to Character and Particulars of Service of Accused.

B-76865 Pte. SMITH, F.H. of the Toronto Scottish Regiment 1 Cdn. M.G. Holding Unit.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be referred to in the proceedings.

See Para. 664, K.R. 1935.

*The numbers inserted should correspond with the number of Entries in the Conduct sheets, provision being given in the usual manner where in each entry, and in any recognised special acts of gallantry or distinguished conduct.

Instructions.—If the charge is for drunkenness the particulars must be stated separately and dated.

	*Within last 12 months.	*Since Enlistment.
For Absent without Leave	Nine times	Nine times.
For Breaking out of Brks	One times	One times.
For Breaking out of Detn.	Two times	Two times.
For Failing to appear at place of parade etc.	Three times	Three. times.

~~Nil. No entries of gallantry or distinguished conduct~~

or

~~There are no entries in the Conduct sheets of the accused.~~

~~The accused has not been previously convicted~~

nor.

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

W1. 4264/0264 50,000 5/40 W. & L. Ltd. 12—3264

[illegible]

[illegible]

[illegible]

4. The accused has been in confinement, awaiting trial on the present charges

[illegible]

and 6 7(4) days in Military Custody.

Total 6 7(4) days.

[illegible]

5. The present age of the accused according to his [illegible] record of service / attestation paper is 19 yrs 10 months

6. The date of his [illegible] attestation specified in his [illegible] record of service / attestation paper is 2nd July 1940.

[illegible]

[illegible]

[illegible]

Certified Copy.

No B76865 Name SMITH, F.H. | Sqn., Battery or Company | Corps T.S.R. (MC) | Date of enlistment 2-7-40. | G.C. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. One. | Signature O.C. Company, etc.

MFM 6 (A.F.B. 133)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishments awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bordon	19-10-40.	Pte.		AWL from 1730 hrs. 19-10-40, to 1330 " 24-10-40. Time absent: 116 hours.	C.S.M. Farrell.	7 days C.B. 5 days pay.	25-10-40.	Major. W.B. Davidson.	Forfeits 5 days pay
Bordon.	27-10-40.	"		(1) Breaking out of barracks while on C.B. (2) AWL from 2200 hrs 27-10-40, to 1700 " 28-10-40.	C.S.M. Farrell.	1 day's pay.	31-10-40	Major McQuade.	Forfeits 1 day's pa
Bordon.	27-10-40.	"		Failing to appearat meal parade	Documentary	3 days C.B.	2-11-40	Major Davidson.	
Bordon.	2-11-40.	"		(1) AWL from 2215 hrs. 2-11-40, to 1100 " 15-11-40.	Cpl Barrett	21 days detn.	22-11-40	Lt-Col. Carpenter.	Forfeits 30 days pay

(P.T.O.)

Name	Date of offence	Rank	Corps or Formation part	Offence	Nature of Character	Punishment awarded	Date of award of order dispensing with trial	By whom awarded	Remarks
Bordon.	2-11-40.	Pte.		(2) AWL from 0800 hrs. 16-11-40, to 0830 " 21-11-40. (3) When in arrest, escaping.	L/C Lavery				
Bordon.	23-11-40.	"		(1) Breaking out of detention.	Sgt Pickling	7 days detn.	29-11-40	Lt-Col. Carpenter.	Forfeits 3 days pay " 7 days pay
				(2) AWL from 1230 hrs 23-11-40, to 1415 " 25-11-40.	Cdn Provost Corps.				
Bordon.	22-12-40.	"		AWL from 2200 hrs. 22-12-40, to 1945 " 26-12-40.	Cpl. Cox.	4 days pay.	27-12-40	Lt-Col. Carpenter.	Forfeits 4 days pay
Bordon.	30-12-40.	"		AWL from 2200 hrs. 30-12-40, to 1500 " 7-1-41.	Cpl Barrett.	24 days pay.	9-1-41	Lt-Col. Carpenter.	Forfeits 8 days pay
Bordon	12-1-41.	"		AWL from 1000 hrs. 12-1-41, to 2200 " 13-1-41.	Cpl Barrett	3 days pay	17-1-41	Lt-Col. Carpenter	Forfeits 2 days pay

Certified Copy.

No. B76865 Name SMITH, P.H. Sqn., Battery or Company — Corps T.S.R. (MC) — Date of enlistment 2-7-40. — G.C. Badges — Service or Proficiency Pay — Character

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. Two. — Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bordon.	31-1-41.	Pte.		AWL. from 2200 hrs. 31-1-41, to 1025 hrs. 3-2-41.	Cpl Barrett.	168 hrs detn.	4-2-41.	Lt-Col. Carpenter,	Forfeits 7 days pay
Bordon.	13-2-41.	"		Failing to appear at a place of parade appointed by his C.O. before being properly relieved.	C.S.M. Parrell.	168 hrs detn.	17-2-41.	Lt-Col. Carpenter.	Forfeits 7 days pay
Bordon.	25-2-41.	"		Failing to appear at place of parade appointed by his C.O. after being warned to do so.	Documentary	4 days pay.	27-2-41	Lt-Col. Carpenter.	

Certified Correct

Officer i/c Records,
1 Cdn. M.G. Holding Unit. C.A.

(P.T.O.)

Copy.

Births and Deaths Registration Act, 1874.

CERTIFICATE OF REGISTRY OF BIRTH.

(Fee not to exceed Three-pence).

I, the undersigned, Do hereby certify that the Birth of FREDERICK WILLIAM SMITH born on the 23rd day of May One thousand nine hundred and twenty-three has been duly required by me at Entry No. 151 of My Register Book No. 29.

Witness my hand, this 4th day of July, 1923.

(Registrar of
T.E.BUCKWORTH Deputy.(Births & Deaths

District Peterborough Sub-District Stilton.

Caution.- Any person who (1) falsifies any of the particulars on this certificate, or (2) uses it as true, knowing it to be false, is liable to Prosecution under the FORGERY Act, 1913, or the Perjury Act 1911.

(Sgd.) T.E.H.

I have compared this document with the original and hereby certify that it is a true copy thereof.

23 May 1941

for Judge Advocate General.

375 B. St. Smith 73

A8
Cwnsld

A5
Cwnsld

Army Form A.3.

Correspondence to be PINNED here.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this 9 day of July, 1941.

Whereas it appears to me, the undersigned, an officer in Command of 1st Canadian Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*[I am unable to appoint —

*(1.) Three Officers to form the Court.]

*(2.) A Field Officer as President.]

*(3.) Three Officers having more than one year's service.]

for the following reasons, namely :—]

President.

Rank.	Name.	Regiment.
Major	W.W.G. Darling	4 Cdn Recce Bn.

Members.

Rank.	Name.	Regiment.
Capt.	A.S. Biddlebrg	4 Cdn Fd Amb
Capt.	E.D. Matthone	4 Cdn Fd Amb
Acting Lieut.	N.H. Gallingall	1 Cdn Div Sup Col

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed E.W. Pearkes
(G.R. Pearkes) Major-General
Commanding 1st Canadian Division
Convening Officer.

A6 wounded

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B.86247 Pte. Smith, F.H. 5 Cdn Fd Amb	1st charge A.A. 15(2)	Sd/	NOT GUILTY struck out. GUILTY wounded. 10 DAYS F.P. wounded.	I confirm the finding & the sentence of the Court. Sd/ Pearkes Maj-Gen 1 Cdn Div

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— No.

(Signed) Sd/ Pearkes. (Signed) wounded Sterling
(G.R. Pearkes) Major-General (W.W.G. ~~Sterling~~) Major
Commanding 1st Canadian Division 4 Cdn Recce Bn (4 PLDG)
Convening Officer (a) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

A7 wounded

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the day of , and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) wounded
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 16th day of July 1941.

wounded Sterling major
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (*b*) on page 762 M.M.L. 1940.

Signed this ~~day of~~ wounded 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison until further orders.) Sd/

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 21st day of July 1941.

Sd/ Pearkes
Confirming Officer Maj-Gen 1 Cdn Div

Promulgated and extracts taken in the case of B86247 Pte Smith F.H.

(*a*) (Dated) 29 Jul 41. (Signed) W.W. Sterling Capt.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] 35-4113—83 300-0 1/40 P. D. G. Ont.

C1
amend

THE ACCUSED ELECTS TRIAL BY COURT MARTIAL

CHARGE SHEET

The accused, B86247 Pte. Smith, F.H., Royal Canadian Army Medical Corps, a soldier of the Canadian Army (Overseas) is charged with:

A.A.Sec. 15(1) ABSENCE WITHOUT LEAVE

When on Active Service,

in that he,

at Stangrave Hall, Godstone, did absent himself without leave from 1700 hrs. 17 Jun 41 until 1700 hrs. 19 Jun 41.

C H Playfair
(C.H. Playfair) Lt.-col.
Officer Commanding
5 Cdn. Fd. Amb.

1st Witness B89756 Sgt. Plant, having been duly sworn was questioned
Q. Will you tell the Court in your own words what you know about this case?
A. In the absence of the Sgt-Major I refused Pte. Smith a forty eight hour pass on disciplinary grounds.
Q. Why?
A. Smith's conduct did not warrant a pass.
Q. When or how would this pass be dated?
A. From 1700hrs 17 Jun 41 until 1700hrs 19 Jun 41.
Q. You were acting R.S.M.?
A. No, sir the R.S.M. was just away on leave, I was in temporary charge.
Q. Then you had the authority to refuse the pass?
A. Yes, sir.
Q. Do you know if Pte. Smith was warned that his pass was cancelled?
A. I instructed Cpl. Burstead to tell him
Q. Do you know if the pass was actually refused?
A. I do not know, sir.
Q. You do not know if the defendant was told?
A. I was not there at the time, sir.
Q. You instructed the Orderly Room Cpl.?
A. Yes, sir.

2nd Witness B89755 Cpl. Burstead, F.H. having been duly sworn was questioned:-
Q. Will you tell the Court what you know of this Case?
A. Yes, sir. I was instructed by Sgt. Plant to cancel Pte. Smith's 48 hr pass. I advised L/Cpl. Foster to tell Smith that his pass for the 48 hrs between the 17 and 19th had been cancelled.
Q. How did you do so?
A. By written message, sir.
Q. Do you know if he was informed?
A. I could not say so.
Q. Are you doubtful that he was informed?
A. I could not say whether he was or not but Cpl. Foster was warned to tell him.
Q. Was ther a 48 hr pass made out for Pte. Smith?
A. Yes, sir, but it was cancelled.
Q. What was the date on the seven day pass?
A. 17 Jun 41 to 24 Jun 41.

3rd Witness W3776 L/Cpl. Foster, E.W. having been duly sworn was questioned:-
Q. Will you give evidence against Pte. Smith?
A. I was instructed by Sgt. Plant through the Orderly Room Cpl., to tell Pte. Smith that his 48 hour pass was cancelled. We had been out on a two day scheme and when we came back I informed Smith that his pass was cancelled. On the 24th of June I inspected the stubs of the passes to see who was on leave. I noticed Smiths pass read 19th to 26th of June and he had left on the 17th of June. I reported this to the acting R.S.M. Q.M.S.Middleton.
Q. How did you inform Smith of the cancellation?
A. Verbally, sir.
Q. You know Smith left for leave on Tues., 17th of June?
A. Yes, sir.
Q. When you checked on Tues 24th you reported Smith absent?
A. Yes, sir.
Q. Is this the pass?
A. Yes, sir.
Q. Could there be any mistake in the pass causing Smith to think his leave started earlier?
A. No sir, because when the 48 hour leave was cancelled the date on the seven day pass was not changed therefore it read 19-26th June.
Q. Is it normal proceedure for men going on leave to go without checking out? Board changed
A. We keep a list on the sir, and the men know when it is their turn.
Q. Do the men always get their passes two days ahead of their leave?

A. No, sir.

4th Witness — B89859 Q.M.S. Middleton, C.R. having been duly sworn was questioned:-
Q. Will you tell the Court your own words what you know concerning this case?
A. L/Cpl. Foster informed me that Pte. Smith was A.W.L. on the morning of the 24th June 41. I found he was not on parade and that his pass should have been up.
Q. You looked up the leave list and saw Smith had leave from 17th Jun .
A. Yes sir.
Q. On the 24th you were informed by Orderly Room Cpl that Smith should have returned on Jun 24th.
A. Yes, sir.
Q. That would make him A.W.L. from 24th to 26th.
A. Yes, sir.

The Accused — B86347 Pte. Smith, P.H. having been duly cautioned and sworn was questioned:-
Q. Tell us what you know about this case?
A. I had my pass on the 17th and so I got ready to go and left on my leave. I had been warned by Cpl.Foster that my 48 hour pass was cancelled but as I had my seven day pass I left on leave. I went to Redhill to pick up my girl friend as were going away together. I returned the next night to a dance in Godstone and after that went a away again. When my sever days were about up I looked at my pass and saw that the date on it was the 26th. I was happy about it and stayed out the full time on the pass.
Q. You returned to the dance at Godstone?
A. Yes, sir.
Q. Did anyone warn you that you shouldn't be away?
A. No, sir.
Q. When you looked at your pass didn't you see the first date was the 19th and not the 17th?
A. No sir, I just looked at the last date and saw it read 26th, I was overjoyed and made use of it.
Q. Have you ever read the instructions on the back of a pass?
A. I may have sir.
Q. Could you tell me what is on it?
A. No, sir.
Q. When you requested the 48 hour pass was it granted?
A. Yes, sir I was supposed to on leave after the two day scheme we had on the 15th and 16th.
Q. You had the passes?
A. Yes, sir.
Q. So when you were refued the leave you thought you could start on the 7 day leave?
A. Yes, sir, I was on the list to go on the 17th.
Q. Have you ever received you leave passes two days ahead of time before?
A. No, sir, we always received them on the day we were to go on leave.
Q. Who gave you the pass?
A. The Orderly Room Cpl. gave them to me along with my warrant and ration card.
Q. When you get a railway warrant do you change it for a ticket?
A. Yes, sir.
Q. What is a warrant like--a series of papers?
A. Yes, sir, about so big.
Q. You handed it in at the station and received a railway ticket in exchange--did not you notice the date on it or the pass?
A. No, sir I just handed everything in because they were all pinned together. They returned the ration card and pass andtthe ticket.
Q. You had no idea that you were A.W.L. for two days?
A. No, sir.

SUMMING UP BY THE COURT.

The Court can see that through neglect of duty that the prisoner Pte. Smith,P.W. is guilty of the charge of being A.W.L. for two days from 1700hrs 17 Jun 41 until 1700hrs 19 Jun 41.

SUMMING UP BY DEFENCE.

Gentlemen, I think this case is plainly the fault of slackness on the part of the Orderly Room. Pte. Smith was issued a pass two days before his leave should have started. A thing that had never been done in the past. I think it may have been rather irregular for him to take advantage of this mistake but after all he can hardly be blamed for that, for I think most any soldier would have done the same thing. He came back to a dance and mixed with his own fellowx soldiers and no one told him that he was considered absent, he was not detained in any way, so quite naturally he would not consider himself A.W.L. I do no think there are very may soldiers look at their passes for when they get them they figure they are on leave until the pass says it is finished. Smiths pass read the 20th and de did as anyone else in his shoes would do---stay until the pass expired. I f anyone is to blame for this overstaying of leave it is the Orderly Room and not the man.

W.W.S. Darling maj/w.
President F.G.C.M
4 Edm. Fusrs Bn (4 PLDR)

No. B86247 Pte. Name Smith, F.H. Sqn., Battery, or Company 1 Div. Pet.Coy., RCASC Corps transferred 5 Field Amb.RCAMC Date of enlistment 11.9.39 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. J.Fitzrandolph | Character

M.F.M. 6 (A.F.B. 122) 5000M—8-39 (1783) H.Q. 1777-45-18

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Ifield	14.9.40	Pte.		AWL from 2359 hrs. 14 Sep.40 until 2230 hrs. 15 Sep.40.	Sgt.Kempling	5 days.Field forfeits 1 days pay.	17 Sep.40	Punishment.forfeits 5 days pay. J.Fitzrandolph, Capt.	
In Field	20.4.41	Pte.		WOAS, AWL in that he at 0700 hrs 20 Apr.41 did absent himself without leave, thereby missing a duty, which was performed by another. A.A.Sec. 15(1)	Sgt.Shepherd,A.G.	Automatic forfeiture 1 days pay. Awarded forfeiture 7 days pay. total forfeiture 8 days pay.	24 Apr.41	Major C.H.Playfair	

Certified true copy of M.F.M. 6 held by 5 Cdn. Fd. Amb. O.C. Sutton capt

(P.T.O.)

The accused B86247 Pte. Smith, F.H. was on
OPEN ARREST pending trial from 26 Jun 41.

81

MARY OF EVIDENCE in the case of B86247 Pte. Smith, F.H.,
5 Field Ambulance, Royal Canadian Army Medical Corps.

FIRST WITNESS: B89766 Sgt. Plant, A.L., No. 5 Field Ambulance,
Royal Canadian Army Medical Corps.

"On 17 Jun 41, I was in charge of the issue of passes. I had a request for a 48 hour pass from Pte. Smith and I refused that pass.

PTE SMITH questions the witness: "What were the dates on the application for 48 hour pass."

Sgt. Plant: " The dates on the application were from 15 to 17 Jun 41, at which time Pte. Smith was with the unit on a scheme and all 48 hour passes had been cancelled for those dates. Had a 48 hour pass been granted Pte. Smith on his return from the scheme, the dates of the 48 hour pass would have read 17 to 19 Jun 41 and his 7 day pass would have been for period 19 to 26 Jun 41.

29 Jun 41
Stangrave Hall,
Godstone, Surrey.

A. L. Plant Sgt.

F.H. Smith

85

SUMMARY OF EVIDENCE IN THE CASE OF B86247 Pte. Smith, F.H.
No. 5 Field Ambulance, Royal Canadian Army Medical Corps.

SECOND WITNESS: B89755 Cpl. Binstead, W.F., No. 5 Field Ambulance, Royal Canadian Army Medical Corps.

"On 17 Jun 41 I was Orderly Corporal. Between 1600 hrs and 1630 hrs. I was given the leave passes, to hand out, by L/Cpl. Foster, and was instructed to inform Pte. Smith that his 48 hour leave was cancelled. I did so."

The accused declines to question the witness.

29 Jun 41
Stangrave Hall,
Godstone, Surrey.

Cpl W.F. Binstead ..... Witness Capt.

Pte F.H. Smith ....

87

SUMARY OF EVIDENCE in the case of B86247 Pte Smith, F.H.
No. 5 Field Ambulance, Royal Canadian Army Medical Corps.

THIRD WITNESS: H3776 L/Cpl Foster, E.W. No. 5 Field Ambulance
Royal Canadian Army Medical Corps.

"On Tuesday, 17 Jun 41, I was Ordered by Sgt. Plant to cancel 48 Hour Leave of Pte Smith. Cpl. Binstead, the Orderly Corporal for the day, was instructed to advise Smith of the cancellation when he handed him his 7 Day Pass. On Tuesday 24 Jun 41, when checking pass Stubs to see if all men on leave had returned, I found that Pte. Smith was absent and that his pass read 19 to 26 Jun 41, and that he had left at about 1630 hrs 17 Jun 41, on 7 day leave. I reported this to A/RSM QMS Middleton.

The accused questions the witness: "L/Cpl Foster, why wasn't my pass made out from 17 to 24 Jun 41."

L/Cpl Foster: "Because an application for a 48 hour leave had been turned in to the Orderly room and due to the fact that the Unit had been on a scheme, the date of the pass for 48 hrs read 17 to 19 Jun 41, the scheme having been held 14 - 15 and 16 Jun 41. The 7 day pass, therefore, read 19 to 26 Jun 41. When the 48 hrs pass was cancelled the dates on the 7 day pass were not changed.

29 Jun 41.
Stangrave Hall,
Codstone, Surrey.

E.W. Foster
F.H. Smith

89

SUMMARY OF EVIDENCE in the case of B86247 Pte. Smith, F.H.
No. 5 Field Ambulance, Royal Canadian Army Medical Corps.

FOURTH WITNESS: B89859 QMS Middleton, C.R., No. 5 Field Ambulance, Royal Canadian Army Medical Corps.

"I was A/RSM from 15 to 27 Jun 41. On 24 Jun 41 L/Cpl. Foster reported to me that Pte. Smith should have returned from leave at 1700 hrs. that date, but on checking, he found that Pte. Smith's pass was made out from 19 to 26 Jun 41. Although his 48 hour pass covering period 17 to 19 Jun had been cancelled, Pte. Smith had left on 7 day leave on 17 Jun 41." I was present at roll call each morning from 17-26 Jun 41. The accused was absent."
The accused declines to question the witness.

29 Jun 41
Stangrave Hall,
Godstone, Surrey.

C.R. Middleton. QMS.

Pte. F.H. Smith.

B 1

SUMMARY OF EVIDENCE in the case of B86247 Pte. Smith, F.H., No. 5 Field Ambulance, Royal Canadian Army Medical Corps.

THE ACCUSED DECLINES TO MAKE A STATEMENT.

Taken down by me, Thomas C Gibson, Captain, this 29th day of June, 1941, in the presence of the accused. Rule of Procedure 4 complied with.

T.C. Gibson capt
.....

D1

This is to certify that I have examined: B86247 Pte. F.H. Smith, and find him fit to undergo Trial by Court Martial.

(W.E. Glass) Capt.
5 Cdn Fd Amb.

16 Jul 41.

E 1
Accused

I, No. B86247 Pte. Smith, F.H. desire ~~(do not desire)~~
to have an officer assigned to represent me at my trial
by Court Martial.
I desire the services of Major Davidson, HQ 16 I B. if he is
available.

29 Jun 41.

Pte F.H. Smith

F1
Record

LIST OF EXHIBITS

1. Seven day Pass dated 19 to 26 Jun 41.

J. C. Eitam Capt

If a calling-out of the whole Army Reserve is ordered every soldier on pass will return immediately to his unit without waiting for instructions.

No. 6 - 7 3 Regiment No. 5 Fd. Amb. R.C.A.M.C.

Army Form B295
(In pads of 100)

PASS

No. B 86242 Rank Pte (Name) Smith, E. H.

has permission to proceed on leave/duty, from

17 hrs 9 Jun 41 to 24 hrs 16 Jun 41

for the purpose of proceeding to Sackville and Sat.

(Station) J. C. Tilton Capt

(Date) 7 Jun 41 for Commanding

No. 5 Fd. Amb. R.C.A.M.C.

ORDERLY ROOM
7 JUN 1941
5 CDN. FD. AMB. RCAMC

W.L. 2918,500. 10/40. H.W.V. O.P.W. St. Pad.

* Destination not required unless allowance is to exceed 24 hours, unless owing to local conditions or is necessary to enable purchase of a rail ticket at reduced fare.

† Delete whichever is not practicable.

CROWN COPYRIGHT RESERVED

Returned 1600 hrs 16 Jun 41

soldier on pass who requires medical advice may apply for it, personally if possible, to the nearest Military, R. Naval or R. Air Force hospital or other Medical formation, production pass. If, however, he resides more than two miles from such hospital, etc., he may apply to a civilian doctor to whom he will show this pass, and the doctor will [illegible] the following scale of charges in respect of attendance on the soldier at the latter's

ADVICE AND MEDICINE	If he resides more than 2 miles away	Greater distances
Day	4s. 6d.	An addition of 6d. for each mile or part of a mile with a limit of £1 a visit.
Night 22·00 to 07·00 hrs.	6s. 0d.	

When the soldier visits the surgery of a civilian doctor, the fee payable in respect of such visits will be :—2s. per visit.

The Soldier will at once report the employment of the civilian doctor by a letter addressed to his Commanding Officer to whom the civilian doctor will submit his claim on Army Form O 1667 for payment.

If hospital treatment is necessary, the soldier will at once report the fact, if possible, to the nearest Military, R. Naval or R. Air Force hospital, Military Reception Station or Medical Inspection Room for Troops, and telling that to his Commanding Officer, when arrangements will be made, wherever possible, for any necessary treatment to be given from military sources. If a soldier is admitted to a R. Naval or R. Air Force hospital, he will report the fact immediately to his Commanding Officer. If, in the event of emergency, a soldier is admitted to a civil hospital, he will report the fact immediately to his Commanding Officer, who will at once notify the Assistant Director of Medical Services concerned.

When a soldier on pass is prevented by sickness, which must be properly certified, or by other unavoidable reason, from rejoining his Corps by the date on which his pass expires, he is to report himself before that date—

To the nearest General or other Officer on the staff of the Army or to the Commanding Officer of any unit or detachment of the Regular Army; or (if none of these be within convenient distance) to a Justice of the Peace.

If in Fire, he is to furnish the medical certificate to his C.O.

A Soldier on leave or furlough who requires emergency dental treatment must apply for it to the nearest military, Royal Naval or Royal Air Force Hospital or Dental Centre.

If he resides more than two miles from such hospital or dental centre, he may apply to a civilian dental practitioner to whom he will show this pass; the dental practitioner will be paid only for strictly emergency treatment and at the rates admissible under the National Health Insurance Act (Dental Benefit Regulations).

The soldier will at once report the employment of the civilian dental practitioner to his Commanding Officer, and the practitioner will submit his claim for payment on Army Form O 1667, and forward it to the Deputy Director of Medical Services at the headquarters of the Command in which the soldier is temporarily resident.

These instructions, where applicable, will also be held to refer to a member (other than an officer) of the Auxiliary Territorial Service or of a Voluntary Aid Detachment called out for service.

During his pass period (24 hours a soldier is to leave his address with the Captain of his Company, and he must at all times be prepared to rejoin on the shortest notice, if ordered to do so.

NOTE.—The above instructions are not applicable to a soldier on Field Service overseas.

If a calling-out of the whole Army Reserve is ordered every soldier on pass shall return immediately to his unit without waiting for instructions.

No. [redacted] 6 - 72 Regiment No. 5 Fd. Amb. R.C.A.M.C., C.A.S.F. Canada

PASS

Army Form B.595
(In pads of 100)

No. B86247 (Rank) Pte (Name) Smith E.H.

has permission to be absent from his quarters/duty, from

1700 hrs 17 Jan 41 to 0800 hrs 19 Jan 41

for the purpose of visiting Mrs. Smith, Seat.

(Station) [redacted]

(Date) 17 Jan 41

J.C. Tibbetts Capt
for Commanding
No. 5 Fd. Amb. C.A.S.F.

* Destination not required unless absence is to exceed 24 hours, unless otherwise directed owing to local conditions or is necessary to enable purchase of a rail ticket at reduced fare.

† *Delete whichever is not applicable.*

ORDERLY ROOM 5 SEP 1941 No. 5 Can. Fd. Amb. R.C.A.M.C. Overseas

W. 2624/305, 150m, 10/40, D.P.W., 41-7852

CROWN COPYRIGHT RESERVED

A Soldier on pass who requires medical aid must apply for it, personally if possible to the nearest Military, R. Naval or R. Air Force hospital or other Medical formation, showing this pass. If, however, he resides more than two miles from such hospital, etc., he may apply to a civilian doctor, to whom he will show this pass, and the doctor will be entitled to be allowed the following rates for medical attendance on the soldier or the latter's child:—

AND MEDICINE	Not more than 2 miles away	Greater distances
Day	4s. 6d.	An additional 6d. for each mile or part of a mile with a limit of £1 a visit.
Night 22·00 to 07·00 hrs.	6s. 1d.	

When the soldier visits the surgery of a civilian doctor, the fee payable in respect of such visits will be :—3s. per visit.

The soldier will at once report the employment of the civilian doctor by a letter addressed to his Commanding Officer, to whom the civilian doctor will submit his claim on Army Form O. 1067 for payment.

If hospital treatment is necessary, the soldier will at once report the fact, if possible, to the nearest Military, R. Naval or R. Air Force hospital, Military Reception Station or Medical Inspection Room for Troops, and furnish that to his Commanding Officer, when arrangements will be made, wherever possible, for any necessary treatment to be given from military sources. If a soldier is admitted to a R. Naval or R. Air Force hospital, he will report the fact immediately to his Commanding Officer. If, in the event of emergency, a soldier is admitted to a civil hospital, he will report the fact immediately to his Commanding Officer, who will at once notify the Assistant Director of Medical Services concerned.

When a soldier on pass is prevented by sickness, which must be properly certified, or by other unavoidable causes, from rejoining his Corps by the date on which his pass expires, he is to report himself before that date—

To the nearest General or other Officer on the staff of the Army or to the Commanding Officer of any unit or detachment of the Regular Army; or if none of these be within convenient distance) to a Justice of the Peace.

If in Eire, he is to furnish the medical certificate to his C.O.

A Soldier on leave or furlough who requires emergency dental treatment must apply for it to the nearest military, Royal Naval or Royal Air Force Hospital or Dental Centre.

If he resides more than two miles from such hospital or dental centre, he may apply to a civilian dental practitioner to whom he will show this pass; the dental practitioner will be paid only for strictly emergency treatment and at the rates admissible under the National Health Insurance Act (Dental Benefit Regulations).

The soldier will at once report the employment of the civilian dental practitioner to his Commanding Officer, and the practitioner will submit his claim for payment on Army Form O 1067, and forward it to the Deputy Director of Medical Services at the Headquarters of the Command in which the soldier is temporarily residing.

These instructions, where applicable, will also be held to refer to a member [other than an officer] of the Auxiliary Territorial Service or of a Voluntary Aid Detachment called out for service.

While on this pass every 24 hours a soldier is to leave his address with the Captain of his company, and he must at all times be prepared to rejoin on the shortest notice, if ordered to do so.

NOTE.—The above instructions are not applicable to a soldier on Field Service overseas.

52-110

Lyn. Smith, FL.

RECORDED AT CMHQ IN AB 160. 5-2-110

RECEIVED 8 JUN 1945 JAG Br. C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CPA86 (In lieu of AF W3121 & W.P.& S./1698)

4388

Convened by Lieut Col. R. H. Webb Comd RCE 1 Cdn Div dated 1 June 1945

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F 91678	Sgt		Francis Lamard	Smith	1 Cdn Bd Coy RCE

PROCEEDINGS REVIEWED 21 June 45 Hunter Capt REVIEWING OFFICER JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED 21 Jun 45 D.J.A. 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 4 June 1945

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

33/46

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed. adt

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3) adt

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1130 hours trial commences. adt

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~ adt

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused: Do you object to as interpreter? Ans } adt

The Interpreter is sworn.(1) Do you object to as shorthand writer? Ans }
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (1) adt

(1. RP 110. 2. If no objection, waiting member retires. RP 68(3). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	A. L.	Carmichael	2 Hd Bn Coy RCE
Member	Lieut	C. J.	Young	3 Hd Coy RCE
Member	Lieut	A. R.	Colvoys	1 Hd Coy RCE
Judge-Advocate				
Prosecutor	Lieut	E. J.	Healy	1 Hd Coy RCE
Defending Offr	Lieut	F. S.	Sawyer	1 Hd Coy RCE

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2) adt

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (8) and fn 2 were not followed. See Dr p 32.)

A8. The accused F 91678 Sgt Francis Lamard Smith before arraignment makes(s) (no) plea(s) adt
to 1st Sentence Healy adt (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 121, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is (are) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~not~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. adt

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 3. The proceedings are continued on Record Form 3 adt

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

H 102

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement ? Ans ..... (5)

(*1. RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 2, *MML p* 54 *para* 47. 4. *See para* L3 *of Record Form* E.
5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

FIRST CHARGE
Sec. 15 (1)
Army Act

The accused, No. F91678 Spr. Francis Leonard SMITH, 1 Cdn. Fd. Coy., R.C.E., a soldier of the Canadian Army on Active Service is charged with:

WHEN ON ACTIVE SERVICE ABSENT WITHOUT LEAVE

in that he

in the field in Holland did absent himself without leave from 1400 hrs. 24 May 45 until 1340 hrs. 26 May 45. Absent: 1 day, 23 hrs. and 40 mins.

SECOND CHARGE

Sec. 40
Army Act

The accused, No. F91678, Spr. Francis Leonard SMITH, 1 Cdn. Fd. Coy., R.C.E., a soldier of the Canadian Army on Active Service is charged with:

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field in Holland was improperly concerned in the use of vehicle WD No. CZ4286765 from 1400 hrs., 24 May 45 until 1340 hrs. 26 May 45

(J.W. Bailey) Capt. RCE.,
A/ Officer Commanding,
1 Cdn Fd Coy., R.C.E.

Place: In the Field

Date: 28 May 45

To be tried by Field General Court Martial.

.....Lt.Col
Commander, Royal Canadian Engineers

Place: In the Field

Date: 2 June 45

E-Exhibit A

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F.91678	Spr		Francis Leonard	SMITH	1 Cdn Fd Coy RCE

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 2 Jun 45 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	A.D. Carmichael	2 Fd Pk Coy RCE

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Lieut	C.T. Young	3 Fd Coy RCE
Lieut	A.R. Belanger	1 Fd Coy RCE

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
	To be detailed by OC 1 Cdn Fd Coy RCE	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Holland (Country.)

(Signed personally. RP 105 fn 2.) Lt-Col (Rank.)

Dat. 1 Jun 45

Commanding RCE 1 Cdn Inf Div
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (WA 98 (In lieu of AFA 2) 40/P & S/1697 (8148))

(*See overleaf for oaths and notes for use on trial.*)

MEDICAL CERTIFICATE

"I certify that I have this morning examined F91678, Spr. SMITH, F.L., of the 1 Cdn Fd Coy., R.C.E., and in my opinion he is fit/~~unfit~~ to undergo trial by Court Martial.

J.A. Ritchie Capt.
Medical Officer"

Station: In the Field

Date: 4 Jun 45.

Statement by 1st witness for prosecution. LIEUT G. B. DARLING. pag 1

I having been duly sworn state

I am ~~x~~ platoon officer in charge of No 2 Pl. 1 Cdn Fd Coy R.C.E. On the 24th of May 1945 at 1400 hours I arrived back from a trip and was told that the stores truck was missing. Cpl Stroud, transport Cpl. was with me on this trip and returned at the same time. He checked the transport lines and found the vehicle missing. I naturally took steps to find if any individuals in the platoon were missing also. I checked the platoon lines and did not see Spr. Smith anywhere. I did not see him for the remainder of that day.

~~The following day at 0900 hours Sgt Demers called the roll on platoon parade and ~~ Spr. Smith was~~ absent.~~ On the 25th May 1945 I was present at 0900 hrs at a platoon parade. The roll was called and Spr. Smith was absent. I did not see Spr. Smith again until he was reported in by the guard. I asked Spr. Smith where he had been and received no answer. I then placed him under open arrest. I checked the transport lines and saw that the missing vehicle was there. I then asked Spr McNeil, platoon storeman to see if any stores were missing. He reported to me that nothing was missing.

x examined by prosecution.

I recognize Spr. Smith as one of the men in my platoon.

Spr. Smith was not on duty on the 24th May at 1400 hrs but was confined to platoon lines

at 0900 hours on 25th May the parade was a muster parade.

The platoon 15 cwt Stores truck was missing on the 24 May 1945.

The vehicle had not been detailed for any job which might account for its absence at 1400 hours.

At 1400 hours 24th may 1945 both Spr. Smith and the stores truck were missing.

I saw Spr. Smith about 1630 hours 26 May 1945.

I did not see the vehicle ~~Spr. Smith~~ between the time of its ~~first~~ absence till it was returned on the 26th ~~May~~ 1945. } do.

I did not see Spr. Smith or the missing vehicle at any time between 1400 hrs 24 May till 1630 hours 26 May 1945

cross examined by defence.

do. } I saw every other member of my platoon and also the vehicles at 1400 hours 24 May 1945.

When I checked the platoon lists I did not see Spr. Smith or Spr. Gilbains.

The men off duty are confined to the camp.

There is a check of vehicles leaving the platoon area by the POW guard.

Other vehicles use the road into my platoon area.

Every man does not report to me when off duty to go into Alkmaar on recreational transport.

~~The guard~~ do.

Question by the court.
What time does recreational transport go into Alkmaar?
Answer. After 1700 hours.
Quest. Does this confinement to camp apply for 24 hours of the day
Ans. No
Quest. How long does it apply.
Ans. Between 2300 hours to 1700 hours. the following day.
R.P.80(a) complied with

Second witness for the prosecution F22331 Spr. McNeil, A.
having been duly sworn states :-
I am the platoon storeman in 2 platoon and handle the stores in the stores truck. I do not know the number of the stores vehicle. I would recognise the vehicle by the stores that are on it. I first knew that the stores truck was missing about 1400 hrs on 24th May 1945. We left from I saw it was about 1600 hrs. on the 26th May 1945. The last time I saw the vehicle before it was missing was about 1100 hours 24 May 1945.
No cross examination by defence.
Quest by court. Who was the driver of the stores vehicle
Ans. There was no steady driver at that time.

R.P 86) complied with

Third witness for the prosecution:- M 35878, L/Cpl Lamoureaux, P.A. having been duly sworn states.

I am a L/Cpl in charge of No 8 Section of 2 platoon 1 Cdn Fd Coy R.C.E. Spr. Smith is in my section and I recognize him as the accused. I cannot recall having seen Spr Smith at anytime between 1400 hours ~~and~~ 25th May 1945 and 1340 hours 26th May 1945. I was guard commander on the 26th May 1945 and was told to watch for Spr Smith and Spr. Williams when they came in. I was warned to watch for a vehicle that was missing from the platoon. I did not know it was the Stores vehicle. When Spr. Smith and Spr. Williams returned I told them to report to Mr. Darling. The time was 1340 hours 26 May 1945. They arrived back in a 15 cwt. Spr. Williams was driving it. Spr. Smith was also in the vehicle. I could not say that it was a platoon vehicle but I did recognize it as a coy vehicle. I told Spr. Williams and Spr. Smith to report to Mr. Darling. The vehicle was driven into the platoon cw past by Spr. Williams before I spoke to him.

Cross examination by the defence. I do not check each vehicle going in and out of the ~~coy~~ platoon area.

R.P.S.(6) complied with

Fourth witness for the prosecution :- F 91406 Cpl Stroud, J.
having been duly sworn states :-

I am transport Cpl in 2 platoon and in charge of detailed vehicles. I have just 2 15 cwt trucks, one for the Kitchen and the other for G 1098 Stores. I first knew that one of my 15 cwt vehicles was missing about 1400 hrs of the 24th May 1945. It was the stores truck that was missing. I have a record of the number of the vehicle and I also know the number. 2 Lt De Jagne normally drives the stores truck but was on leave at the time. Nobody was driving the vehicle in the absence of 2 Lt De Jagne. I did not authorize a trip for the vehicle on the morning of the 24 May 1945. I first knew that the 15 cwt was missing on returning from Den Helder about 1400 hrs 24 May and it was about 1600 hours on the 26th May that I first knew it had returned. During the time the stores truck was missing the 15 cwt Kitchen truck made a trip to Brussels. Sgt. Robin was driving it. After the 15 cwt stores truck returned I investigated its disappearance with Lieut Darling.

Cross examined by Defence Counsel.

The vehicle had gone about 500 miles between 1400 hours 24th May and 1300 hours 26 May 1945

RP 884 complied with.

Q. by court. What is the number of the 15 cwt stores truck.
Ans. CL 4286765

First witness for the defence. K 15371 Spr. Elliyott F. H. having been duly sworn states:- I saw Spr. Smith about 2300 hrs. on the 24 May 1945 in the platoon area.

Cross examined by prosecution. I saw Spr. Smith as I was coming outside on the road to the latrine. Spr. Hillman was with him. I did not talk to him as I saw that he had had a few drinks. He was about ten feet away when I saw him. When I came back from the latrine I did not see either Spr. Smith or Spr. Hillman. I do not know where exactly Spr. Smith slept. RP 816) complied with

Second witness for the defence. F 91678 Spr. Smith F.L. having been duly sworn states:- There have never been any orders posted or given verbally by Mr. Darby that we are confined to platoon area. When I came off guard at 1100 hrs on the 24th May I had dinner at 1200 hours. Spr. Hillman and I were still in the area but went down behind the bush and had a few drinks. We hung around there all day and never ate supper. He came back that night about 2300 hours. I went to my room and Spr. Hillman went to his. Spr. Hillman came into my room the next morning about 0600 hrs. He never waited for breakfast but went out to the road and tried to thumb a ride. He got

a lift into Alkmaar ade. He had a few more drinks ade in Alkmaar and finally ended up in a town on the Alkmaar, Amsterdam highway. He got fucking pretty good there and stayed in an empty shack in town. The next morning we started back with the intention of coming back to camp. He got a lift so far with a truck and it stopped. He were trying to get another lift into camp. He were standing there and an Englishman saw we were Canadian and told us there was a Canadian vehicle in the bush. He went down the road along a side road into the bush and we saw that it was a coy truck. He saw nobody around that may have been the driver so we decided the best thing to do was bring it back with us. On the way out of the side road we saw a coy leave truck coming back with Sgt. Long in the front seat beside the driver. He flew the hood and tried to get them to stop. The fellows in the back waved and I recognized some of them. Spr. Pigeon & Demers from HQ. and Gr. Healey from No 2 platoon before for Mr. Darling. He put the truck in the parking lot & camp. Then we continued straight back and walked down to where Lt Lamoureux was standing. He told us to report to Mr. Darling no guard accompanied us to Mr. Darling - we went over on our own. He was standing there playing with his horse and when he saw us he

said "where in hell have you been, its about time you were back in here" He put us under arrest and said he did not want to see us any more.

cross examined by prosecution.

In 2 platoon working it is said if we go out after doing 24 hours guard. We do other guarding duties with the German working in the minefields. There are no other duties so far since we went down there except digging a dump or a latrine. The bush with respect to the platoon is just down back of the houses we are living in. I sleep in a house. I did not see Lt Lamoureaux when I went to bed that night. We were going to report that we had found a vehicle but the Offrs did not give us the chance. I offer no reason why I did not notify the M.T. Offr. The road where we found the vehicle is the side of Amsterdam. The vehicle was found just past the roadblock from Alkmaar. I couldn't say whether there was any block by the roadblock or not. The vehicle was on the EAST side of the Alkmaar Amsterdam road

Quest. by the court:- What time did you return with the vehicle

Ans. about 1340 hours - the time that Lt Lamoureaux checked us in.

Quest. How far from camp was the vehicle found.

Ans. about 8 miles.

Prosecutor's closing address.

From the evidence submitted it is a fact that Spr. Smith was not available for duty from 1400 hrs 24 May to 1340 hours 26 May 1945. even though he was seen by only one man at 2300 hours on the 24th May. With regard to the missing vehicle there are 4 factors

1. vehicle was missed about the same time that Spr Smith was missed
2. They returned together
3. That when the English vehicle dropped them off should be so close to the platoon vehicle
4. Spr. Smith did not see fit to notify anyone in authority that the missing vehicle in which he returned had been found abandoned.

RPS 3(6) complied with.

Closing address. Pros

Statement by the Defence.

In the evidence brought out by the prosecution there is ~~two~~ discrepancy in time for those stated in the charge sheet and secondly the number of the WD vehicle in question does not agree to the one on the charge sheet. As to the question of why Spr Smith did not report to his MT Cpl. his evidence indicates that he wasn't given the opportunity. The prosecution has failed to produce concrete evidence that Spr. Smith is guilty of the charges as read.

REBUTTAL

In regard to the first point there is no discrepancy as it is fixed by the ~~Cpl~~ first ~~time~~ the guard and Mr. Darling's ~~present at the time of the arrest~~ Spr. Smith was under an arrest and had ample opportunity to inform the MT Cpl of the vehicle

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
F91678	Spr.	SMITH, F.L.	1 Cdn Fd Coy., R.C.E.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, provisions being given to the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For Commended for Gallantry	times 1	times.
For A.A. 15(1)	times 1	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct, 1.

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

~~The previous convictions of the accused by a court-martial or a civil court, shown on the conduct sheet or in the Army Book 153 (Statement of Service), are as follows :—~~

3. The accused is not under sentence at the present time, *or* ~~He was under sentence on the present occasion~~ ---- beginning on the ---- day of ----

4. The accused has been in confinement awaiting trial on the present charges, for ---- days in civil custody, and $\not\beta$ 9 $\not\alpha$ days in military custody, making a total of $\not\beta$ 9 $\not\alpha$ days, of which ---- days were spent in hospital.

5. The present age of the accused according to his ~~attestation~~ attestation paper is 28 Jan.1921.

6. The date of his ~~attestation~~ specified in his ~~attestation~~ attestation paper is 9 Mar 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 5 yr, 2 mon, 19 days

8. The accused is entitled to deferred pay or gratuity in respect of 5 yr, 2 mons 19 days

9. ~~The accused is entitled to reckon for the purpose of increase of pay~~

10. The accused is in possession of, or entitled to, no military decoration or military award (*or is in possession of or entitled to (state any military decoration or reward)*). Calr Leaf, CVSM & Clasp-- 1939-43 Star.

11. ~~(If the accused is a warrant officer.) The accused is/is not~~ ~~rank of~~

12. (*In the case of an officer.*) The accused holds in the army the rank of ~~L.A.~~ dated

and in his regiment (*or corps or department*) the rank of dated

(72947) W1.31705/1877 10,000 12/42 A.S.R.W.L.td Gp.4/8

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. ..... Rank ..... Name ..... of ..... Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating thise convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 29th day of May 45

J.C. Bailey Capt

23. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

	Date of Promotion.
In the rank of	.....
In the rank of ..... years,	.....
In the rank of ..... years,	.....
In the rank of ..... years,	.....

(Instruction.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through except that in the case of a trial by field general court-martial the information may be obtained from such inquiries as are available and the paragraphs concerned amended accordingly.)

No F91678 Name Smith, F.L. | Sqn, Battery, or Company | Corps R.C.E. | Date of enlistment 9 Mar 40 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAM/136 (34428)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Previous sheet destroyed 9 Oct 44: Last entry 9 Oct 42; no case of drunkenness.									
" Commended for Gallantry 1 Cdn Div R.O. 237 d/21 Jul 44. Conspicuous Gallantry in saving the life of a comrade from flooded BIFERNO river. (KR. CAN) 1518 (b) (xvi)									
Field	18 Nov 44	Spr		AA 15(1) AWL from 1900 hrs to 2300 hrs., 18 Nov 44. (Absent 4 hrs 30 mins)	Sgt. Shiers, H. L/Sgt Coveduck, I.H.	14 Days Pay	19 Nov 44	Maj. W.W.K. Forf 14 McConnell days pay	FR&I 149(2)
Field									

"Certified to be a true copy from the regimental books in my custody"

28 May 45

(J.W. Bailey) Capt. RCE,
A/ O.C. 1 Cdn Fd Coy., R.C.E.

(PTO)

1 Cdn. Fd. Coy., R.C.E.,
28 May 45.

Summary of Evidence in the case of F 91678, Spr. Smith, F.S., 1 Cdn. Fd. Coy., R.C.E., C.A.O., charged with absenting himself without leave from 1400 hrs. 24 May 45 until 1340 hrs. 26 May 45 (A.A. Sec. 15 (1)), and further charged with being improperly concerned in the use of vehicle W.D. No. CZ 4286765 from 1400 hrs. 24 May 45 until 1340 hrs. 26 May 45 (A.A. sec. 40).

By direction of the Commanding Officer, the evidence is taken under oath.

1st Witness: Lieut. G.B. Darling, 1 Cdn. Fd. Coy., R.C.E., sworn, states:

"I am Lieut G.B. Darling, Pl. Officer of 2 Pl., 1 Cdn. Fd. Coy., R.C.E.

"On 24 May 45, I returned to the Pl. at 1400 hrs. I was informed that the stores truck, W.D. No. CZ 4286765, was missing. I immediately checked the Pl. lines to find out if the vehicle were missing, & could not find it. I then checked the lines, & found that C 25792, Spr. Williams, F.J. & F 91678, Spr. Smith, F.S. were absent. The regular driver for this vehicle was on leave. Spr. Williams had been detailed for a trip with F 22331, Spr. McNeil, A., the Pl. storeman, by Cpl. Stroud, the Pl. transport cpl., to go to coy. HQ on the morning of 24 May 45. This detail was to bring back the Pl. mail. Neither Spr. Williams or Spr. Smith were present in the camp for the remainder of the day. The following morning, F/Sgts. Demers & I called a Pl. parade & Spr. Williams & Spr. Smith were absent. I did not see either of them again until 1340 hrs. 26 May 45. They were reported in by Spr. Harris who was on guard duty. I checked the parking area, & found the missing vehicle there. I also ordered the storeman to check the stores in the vehicle, & he found nothing missing. I placed Spr. Williams & Spr. Smith under arrest."

The accused declined to cross-examine the witness.

G.B. Darling
Lieut. G. B. DARLING

2nd Witness:

M65699, S/Sgt. Demars, A.W., 1 Cdn. Fd. Coy., R.C.E., sworn, states:
"I am acting Recce S/Sgt. of 2 Pl., 1 Cdn. Fd. Coy., R.C.E.
"At 0900 hrs. 25 May 45, I called the roll on muster parade. Spr. Williams & Spr. Smith were not present. I did not see either of them again until after they had reported back."
The accused declined to cross-examine the witness.

S/Sgt Demars
M65699, S/SGT. DEMARS, A.W.

3rd Witness:

M35878, S/Cpl. Lamoureux, P.A., 1 Cdn. Fd. Coy., R.C.E., sworn, states:
"I am no. 8 section S/Cpl. in 2 Pl., 1 Cdn. Fd. Coy., R.C.E.
"On 26 May 45, I was Pl. guard commander. I was given orders to watch for Spr. Williams & Spr. Smith to return, & to have them report to Lieut. Darling. I saw both Spr. Williams & Spr. Smith return to the Pl. lines in a 15 cwt. vehicle at 1340 hrs, 26 May 45. Spr. Williams was driving. I told Spr. Harris to tell Spr. Williams & Spr. Smith to report to Lieut. Darling. I cannot say whether the vehicle in which they returned was the missing vehicle."
The accused declined to cross-examine the witness.

L/Cpl Lamoureux P A
M35878, L/CPL. LAMOUREUX, P.A.

M100568, Spr. Harris, A., 1 Cdn. Fd. Coy., R.C.E., sworn, states:
"I am a sapper in 7 section, 2 Pl., 1 Cdn. Fd. Coy., R.C.E.
"On 26 May 45, I was on guard duty. At 1340 hrs., 26 May 45, I saw Spr. Williams & Spr. Smith standing near S/Cpl. Lamoureux. I did not see any vehicle. I reported to Lieut. Darling that Spr. Williams & Spr. Smith had returned."
The accused declined to be cross-examined.

A Harris
M100568, Spr. HARRIS, A.

The accused was cautioned as follows:

Q.- Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing & may be given in evidence.

A.- I do not wish to make any statement or give any evidence.

The accused does not call any witnesses.

J. L. Smith
F91678, SPR. SMITH, F.L.

I certify that the foregoing Summary of Evidence consisting of pages was taken down by me in the presence of the accused and that R.P. 4 (c), (d), (e), (f) & (g) have been complied with.

Ed. L. Healy, Lieut.
ED. L. HEALY, LIEUT.

In the Field
28 May 45.

LIST OF WITNESSES FOR THE PROSECUTION IN THE CASE OF

F91678 SPR. SMITH, F.L., 1 CDN FD COY., R.C.E.

Lieut.	G.B.	Darling	- 1 Cdn Fd Coy., R.C.E.
M65699	L/Sgt.	Demars, A.W.	- 1 Cdn Fd Coy., R.C.E.
M35878	L/Cpl.	Lamoureux, P.A.	- 1 Cdn Fd Coy., R.C.E.
M100568	Spr.	Harris, A.	- 1 Cdn Fd Coy., R.C.E.

CL. 42 26765

Fix here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No (1) adt.

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1) adt.

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(3)~~ adt.

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?

Ans. Give evidence. Do you intend to call witnesses on your behalf?

Ans. Yes. Are they witnesses as to character only? Ans. No adt.

(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2) adt.

(1. AA 54(3) (4), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form E or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1) adt.

Ans. No

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true ~~copy~~ (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. A and Ex. B respectively.(3) adt.

(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. No adt. prosit.

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 64, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to reinstate from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F 91678 Spr Lancelot Leonard Smith 1 Fd Coy RCE

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st 15 VI	Not Guilty	Guilty	
2nd 40	Not Guilty	Not Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn k.)

~~At present under~~ sentence for ..... beginning on (date) ..... nil

(I. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 9 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

10 Suffer Field Punishment No 1 for thirty days in addition to the ordinary punishment of five (5) days and to forfeit all pay for the said five (5) days

(Sgd) ..... Judge-Advocate, if any. 4 Jan 45 Date awarded. (Sgd) ..... President. (RP 43, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-760, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1) Upon

(1. AA 57A. Delete if not used.)

Date 7 Jan 45 (Sgd) ..... Commanding ..... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
F-91678 Spr Smith F L	8 Jan 45	J W Bailey Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

DD-29
PTE SMITH FM

DD-29 A.

8220.

Army Form A.3.

Correspondence to be PINNED here.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 28th day of APRIL, 1943.

Whereas it appears to me, the undersigned, an officer in Command of FOURTH CANADIAN INFANTRY BRIGADE, Canadian Army (Active), , on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

yes

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable.

*~~[I am unable to appoint :—~~

~~*(1. Three Officers to form the Court.)~~

~~*(2. A Field Officer as President.)~~

~~for the following reasons, namely :—]~~

yes
yes
yes
yes

(15)

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Maj	A.E.A. BLISS	Argyle & Sutherland Highrs

Members.

Rank.	Name.	Regiment.
One Captain	To be detailed by	O.C. R Regt C
One Captain or Lieutenant to be detailed by		O.C. RHLI
WAITING MEMBER - One Lieutenant to be detailed by		O.C. RHLI

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed J.E. Sager
(J.E. SAGER) Brigadier,
Commanding 4 CDN. INF. BDE.
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B.67963 Private Frank Morris SMITH 1st Bn., THE ROYAL REGIMENT OF CANADA.	FIRST CHARGE: A.A.Sec.15(1) - "absenting Himself without leave"(See Charge Sheet att.)	guilty	Guilty 90 days det A.C.B.Bliss Major 29 Apr 43	①Confirmation ? the found charge ; refused ② Confirm the findings and sentence on the first, second, and third charges. 30 April 43 J.E. Sager Brig. Comd. 4 Cdn. Inf. Bde.
	SECOND CHARGE:- A.A.Sec.40 - "An act to the Prejudice of Good Order and Military Discipline". (See Charge Sheet att.)	guilty		
	THIRD CHARGE:- A.A.Sec.40 - "An Act to the Prejudice of Good Order and Military Discipline". (See Charge Sheet att.)	guilty		
	FOURTH CHARGE:- A.A.Sec.40 - "Making a false statement to an NCO of the Military Police" (See Charge Sheet att.)	guilty		

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) J.E. Sager (J.E. SAGER) Brigadier, *Commanding* 4 CDN. INF. BDE. *Convening Officer* (*e*)

(Signed) A.C.B.Bliss Major, 1 Bn. The Royal Regiment of Canada. *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to *mercy*, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 29th day of April 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*~~(3. The interpreter)~~ N.A.
*~~(4. The officers under instruction)~~ N.A.

were duly sworn.

* Omit if not applicable.

Signed this 29 day of April 1943.

A.C.B.Bliss Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 762 M.M.I. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial. N.A.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

J.E.S.

Signed this 30 day of April 1943,

J.E. Sager Brig.
Confirming Officer.

Promulgated and extracts taken in the case of B67963 PTE SMITH F.M.

(*a*) (Dated) 1 MAY 43 (Signed) LT COL. L BN. THE ROYAL REGIMENT OF CANADA

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

W.L. 47262/1857 15 M. 5/41 K.JL/3295/22 Cp. 4888.3

B. 2

G.C.R.B.

CHARGE SHEET

The accused No. ~~B67963~~ B67963 Pte. Smith Frank Morris, 1st Bn., The Royal Regiment of Canada, a soldier of the Canadian Army Overseas is charged with:-

FIRST CHARGE
Sec 15 (1)
Army Act.

Absenting himself without leave

in that he

at LITTLEHAMPTON, whilst under open arrest absented himself without leave from 2245 hrs 20 April 1943 until apprehended by the Military Police in PORTSMOUTH at 1400hrs 22 April 1943.

SECOND CHARGE
Sec.40
Army Act.

An act to the Prejudice of Good Order and Military Discipline

in that he

at PORTSMOUTH on the 22 April 1943 was in possession of what purported to be a genuine pass, having drawn the same himself with intent to deceive.

THIRD CHARGE
Sec.40
Army Act.

An Act to the Prejudice of Good Order and Military Discipline,

in that he

on or about the 20 April 1943, with intent to deceive, did make an entry in his M.B.M.1 Part 1, showing the granting of a seven days privilege leave.

FOURTH CHARGE
Sec.40
Army Act

Making a false statement to an N.C.O. of the Military Police

in that he

at PORTSMOUTH on the 22 April 1943, when asked the whereabouts of his ration card by an N.C.O. of the Military Police, with intent to deceive replied, " I have given it to my young lady at the Y.M.C.A.", well knowing the statement to be false.

J.C. Anderson

(J.C.M. Anderson) Major
a/Officer Commanding, 1 R. REGT. C.,
CANADIAN ARMY.

27 Apr 43

To be tried by F.G.C.M.

J.R. Sager

(J.R. SAGER) Brigadier,
Commanding,
4 CDN. INF. BDE.

28 Apr 43.

MEDICAL OFFICERS REPORT

I certify that I have this morning examined

No. B.67963 Pte. Smith F.M. of 1 Bn. Royal Regiment of Canada

and he is in a Good state of ~~health~~ physicaly to undergo Trial
health

by Court Martial.

(J.R.Nixon) Major
Medical Officer

1 Bn. Royal Regiment of Canada.

Station In the Field

Date 29 April 43.

Substiute for
M.F.B. 246
25 M 6 41 (793)
HQ 179/239 440

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for General and District Courts-Martial

Proceedings of a Field General Court-Martial held at in the field
on the 28th day of April 1943 by order of Brig J. E. Sager
Commanding the 4th Can Inf Bde.
dated the 28th day of April 1943

President.

Major A.C.D. Bliss 1st Bn. The Argyll & Sutherland Highlanders of Canada.

Members.

Capt. J. J. MacArthur 1st Bn. 48th Highlanders of Canada and Major C.
Lieut. A.C. Logie 1st Bn. The Argyll & Sutherland Highlanders of Canada. acted R.N.A.

~~Judge Advocate~~ G.O.D.

Trial of* B. 67963 Pte. Smith, Frank Morris, 1st Bn The Royal Regt of Canada.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that ..... is not available to serve owing to~~

~~, waiting member takes his place as a member of the Court. G.O.D.~~

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† Capt. J. W. G. Hunter (lawyer) 1st Bn The Queens York Rangers

Counsel‡ or defending officer† Lieut R.S. Sudeling 1st Bn. The Royal Regt of Canada.

At 0945 o'clock the Trial commences.

The order convening the Court is read, and is marked A and signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. No

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Mil. Form B. 271
10M—9-39 (7122)
H.Q. 1772—39-224

BAB.

The President, members ~~and judge-advocate~~ are duly sworn. Read.

~~The following officers under instruction are duly sworn.~~ Read.

Charge-Sheet

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

Instruction. If the accused has elected to be tried under Army Act, sec. 38 (8) the fact should be here recorded.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Guilty *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

Guilty *Answer.*

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

Guilty. *Answer.*

The accused having pleaded Guilty to four ~~charges~~ Read charges, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

Read B

CC

Proceedings on Plea of Guilty

*To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charges to which he has pleaded "Guilty" read to him again.]

The accused B. 67963 Pte Smith. Frank Morris is found guilty of four charges as laid.

*The summary (or abstract) of evidence is read, marked C, signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. The accused yes in mitigation of punishment says:— I was worried about having to appear before my O.C. on a charge which I had not committed as I had been warned that if I would be tested Detd. on. if I appeared before him again. ~~[or hands in a written statement, which is read, marked ——— signed by the President, and attached to the proceedings.]~~ GDD.

Instruction.

*If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

GDD.

Do you wish to give evidence yourself or to call any witnesses as to character? *Question to the accused.*

Yes I wish Lieut Luchtling my platoon Commander to give character evidence. *Answer.*

Evidence as to character.

Lieut R. J Luchtling 1st Bn The Royal Regt of Canada having been duly sworn states that the accused is a good soldier in the field and a good influence in the platoon

RFLB.

E

Finding*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused

G.C.R.

Proceedings on Conviction *before Sentence*

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

Capt. J. W. L. Hunter, prosecutor, (lawyer) is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked D, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes.

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* No. This was a certified true copy.

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes.

Cross-examined by the accused.

No

[Observation.—If, by reason of the nature of the service of the accused in a department, corps, or otherwise, the finding of the Court renders him liable to any correctional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.* Yes.

The Court is closed for the consideration of the sentence.

F.C.R.

F

Sentence

The Court sentence the accused to 90 days detention

Sentence.

GRR.

B67693 for C.

SUMMARY of Evidence in the Case of B-67693 Pte.Smith F.M. 1st Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas.

The accused is informed of his rights.

The Commanding Officer directs that the Evidence be taken on Oath.

First Witness for the Prosecution, B-66819 Sgt Lloyd C.? 1st Bn The Royal Regiment of Canada, sworn states:-
Upon the 23 April 1943 accompanied by an escort, I travelled to Portsmouth where I picked up B-67693 Pte.Smith F.M. whom I identify as the accused, and brought him back to my Unit under close arrest. I received certficate of apprehension, pass and Pay Book M.B.M.1 which I now introduce as exhibit "A" "B" and "C" respectively.

The accused declines to cross-examine.

C Lloyd
(B-66819 Sgt.Lloyd C.)

Second Witness for the Prosecution: B-66671 A/Sgt.Harrison G.E. 1st Bn The Royal Regiment of Canada sworn states:-
I am a Platoon Sgt in C Coy of the Royal Regiment of Canada B-67693 Pte.Smith F.M. whom I identify as the accused and who is a member of C.Coy. Came up for Coy Office on the morning of the 20 April 1943. The Coy Comd remanded him to the C.C. and placed him under Open Arrest. On the above date I was Coy Orderly Sgt, and on checking the billets at 2245 hrs Pte.Smith was absent. Accompanied by the Duty N.C.O. I searched the billets and was unable to find Pte. Smith. The Pass Exhibit B now produced to me was not issued by C Coy and is not signed by any officer of my Coy.

The M.B.M.1, part 1, Exhibit C, belongs to the accused and the entry on page 17 was not made by any officer in C.Coy. The signature on both the pass and pay book are unknown to me, and I cannot even recognize them as names.

The accused declines to cross-examine.

G E Harrison
(B-66671 A/Sgt.Harrison G.E.)

Third Witness for the Prosecution: 162025 L/Cpl.W.G.Burt, 161 Proc Coy.(H.C.)
A written statement of this witness' evidence, purporting to be signed by him, has been read to the accused and is included in the summary (Attached as ExhibitD). Having regard to the expense and loss of time involved the attendance of this witness cannot, in my opinion, be readily procured.

The accused does not demand the attendance of this witness for cross- examination.

Fourth Witness for the Prosecution: 6083007 L/Cpl.A.F.Smith 161 Prov Coy.(H.C.)
A written statement of this witness' evidence, purporting to be signed by him, has been read to the accused and is included in this summary (Attached as Exhibit "E") Having regard to the expense and the loss of time involved the attendance of this witness, cannot in opinion, be readily procured.
The accused does not demand the attendance of this witness for cross-examination.

The accused having been duly cautioned in accordance with R.P. 4 (e) says:
I wish to mak a statement under oath.

The accused No.B-67693 Pte.F.M.Smith,sworn, states:

The pass was an old one from D.Coy and I filled it out and used it. I made the entry of privilege leave in my pay book. The fourth charge is true I did try and fool the Provost Corporal.

The accused does not wish to call witnesses in his defence at this point.

F M Smith

(~~B-67693~~ 67943 Pte.Smith F.M.)

Certified that R.P.4
complied with,
In the Field
26 Apr 43.

J.W.C. Hunter, Capt.
(J.W.C.Hunter)Capt
Officer detailed to take the Summary.

P.C.C. Bliss
Major

CHARGE

Army Form B 252
(See King's Regulations)

The Royal Regt. of Canada, Regiment

1st Batt. Battery / Squadron / Troop or Company

CHARGE against No. B/67963 Rank Pte.

Name Smith F.M.

Place ?. Date of Offence [redacted]

OFFENCE W.O.A.B. 1. Absent without leave from ---? until apprehended by the military Police in London Road, Portsmouth about 1400 hrs, 22nd April, 1943. 2nd. Being in possession of forged pass. 3rd. Forging and Officer's signature. 4th. Making false entries in his Militia Book M.I. Pt. 1. 5th Stating Falsehoods to an N.C.O. of the Military Police.

Names of Witnesses:—

L/Cpl. W.G. BURR C.M. Police.

L/Cpl. A.E. SMITH C.M. Police.

Signature of O.C. Battery, Squadron, Troop or Company } Captain, Staff Assistant, Portsmouth Garrison

Punishment Awarded }

By whom Awarded }

Adjutant.

P.T.O.

[illegible] W1/4469/135 1,500,000 1/42 H. & H., Ltd. G.661/47

Exhibit D.

Statement of Evidence in the Case of :
No. B/67963 Pte. Smith F.M., 1st Batt. The Royal Regt. of Canada,
Littlehampton, Sussex.

Sir,

At Portsmouth on the 22nd April, 1943, about 1400 hours, I was on duty in London Road, accompanied by L/Cpl. Smith C.M.Police, when I saw the above named soldier. I stopped him and asked him to produce his pass. He produced A.F.B.295 (Pass form) attached. On scrutinising same, I noticed it was made out from A.F.20/4/43 until 2359 hrs 29/4/43 for the purpose of proceeding to Portsmouth. It appeared to have been erased in several places, particularly the officer's signature. I asked him if it was a genuine pass. He replied "Yes". Not being satisfied I conveyed him to Military Police Headquarters. I then examined his Militia Book (A) Pt.1 (Page 17)(attached) and noticed an entry for 7 days' privilege leave granted on the 20/4/43 and an officer's signature. I questioned him regarding the entry and he replies "It is alright I am on nine days' leave, but they have only put seven in the book." I then asked him to produce his ration card. He replies, "I have given it to my young lady at the Y.M.C.A., I am meeting her at 1430 hours". I made enquiries at the Y.M.C.A. and found his statement to be false. I then tried to get in communication with his Unit with the assistance of the Civil Police, Littlehampton, at about 1830 hours, I was informed by the C.O. the Unit that the above-named was an absentee and had broken open arrest. I then apprehended him. I cautioned him, and told him he would be charged with the offences. He replies " Yes, I admit altering the pass and the entries in the pay book, I did not think you could get in touch with my unit". I conveyed him to Victoria Barracks Guard Room where he was handed over to the R.C.O.i/c Guard to be detained.

162025. 1st Batt. L/Cpl.
161 Prov; Coy. (R.C.)

Portsmouth.
22.4.43.

Sir,

I have read over and corroborate the above statement.

608300 A F Smith L/Cpl.
161 Prov; Coy. (R.C.)

Portsmouth.
22.4.43.

CERTIFICATE IN ACCORDANCE WITH ARMY ACT SECTION 163 (I) (ii)

I certify that No. B/67963 Rank PTE Name SMITH F. M.

Unit 1st Royal Regt. CHINDITS was arrested at PORTSMOUTH (place)

at 1400 (hour) on 22nd April 1944 (date) and at the time of

his arrest was wearing Military Uniform.

Signature of Provost Marshal or A.P.M. or other Officer into whose custody the above named person was taken on arrest.

.....

.....

Exhibit A

D

STATEMENT OF CHARACTER AND PARTICULARS
OF SERVICE OF ACCUSED

No.B-67965 Pte SMITH F.M., 1 st Bn The Royal R"giment of Canada

Age: 23 Married or Single: Single No. of Dependents: None

Date of Attestation: 29 Jul 40

No of days spent in close arrest (to date of trial) SIX

Civil: — Military 6 Hospital — Total 6

DATES OF PROMOTIONS, APPOINTMENTS AND CONFIRMATIONS OF RANK, IF ANY

A CERTIFIED TRUE COPY OF M.F.M.6 MUST ACCOMPANY THIS FORM.

J.D. Fairhead

(J.D. Fairhead) Capt
Adjutant, 1 R. REGT. C., CDN ARMY

Dated at: In the Field.

This 29 day of April 1943

To be dated and signed as of date of trial.

G.P.B. Bliss
Major.

STATEMENT AS TO CHARACTER AND PARTICULARS

No. B67963 Name Smith J. W. Sqn., Battery, or Company C Corps 1st Regt C

Date of last entry in Company Conduct Sheet 21-10-40 No. and date of last drunk Nil

Period not reckoning towards freedom from extra fine

Date of enlistment 30-7-40 G.C. Badges

Sheet No. 1

Signature O.C. Company, etc.

Service or Proficiency Pay

Character

M.F.M. 6
A.F.B. 122
(2135—7-41 (1219-20)
H.Q. 1772-99-1452

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden	4/10/40	Pte	Nil	AWL from 0600 hrs 8/10/40 to mid 15/10/40 hrs 7 days (2 days 6 hrs 0 mins) Attested	Sgt Brown F.K. Bartlett	6 days pay 9.11.40 to 14.11.40	21-10-40	Col Mc Lean	12 days pay Nil
Camp Borden	2/12/41	"	"	AWL from 2300 hrs 2-12-41 until 0030 hrs 10-12-41 (7 days 1½ hrs)	Sgt Ferguson	7 days	10-12-41	Major Mitchell	7 days pay F.R.T.
Camp Borden	31/3/41	"	"	AWL from 0630 hrs 31-3-41 to 0630 hrs 1-4-41 (24 hrs A.A Sec 15 (1))	Sgt Ferguson Cpl Buchan	2 Days C.B	1-4-41	Major Mitchell	1 Day pay F.R.T.
Camp Borden	16-4-41	"	"	AWL from 0730 hrs 16-4-41 to 0600 hrs 17-4-41 (Total 22 hrs 30 mins AA Sec 15 (1))	Sgt Nicholls	7 Days C.B	21-4-41	Lieut Williams	1 Day Pay F.R.T.
					(Over)				G.P.O. 1703

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden	4/4/41	Pte	Nil	AA Sec 15 (1) AWL from 2130 hrs 17-4-41 until 1100 hrs 22-4-41 — 104 hrs 30 mins Cost of apprehension £15.8.8	Sgt Englund Sgt Hall Cpl Fisher (Dec)	Forfeits $15.8 Stoppages	12-7-41	Lt Col R.L. Denison	Forfeits Sgt Englund FRL CAA
Mattawa	22/11/41	"	"	WOAS. AWL 23.57 hrs 22-11-41 to 2300 hrs 23-11-41 - A.A. Sec 15(1)	Sgt Lennox Cpl Allwood	14 days det	24-11-41	Maj Cameron	Three days Fatigue Cancd
In the Field	30-4-42	"	"	A.W.L. A.A. Sec 15(1) In that he absented himself from 2245 hrs 30-4-42 till 2305 hrs 30-4-42	Sgt Adams Capt Clyde	3 days C.B.	1-5-42	H.Q. R.C.A.O.	
In the Field	6-6-42	"	"	A.A. Sec 40 O.W.O. 193. In charged with neglecting to obey a standing order in that he did disobey a C.M. Vehicle at an excessive speed of 30 M.P.H.	Lt Lawson (RA) Pte Bradley	Forfeits 14 days Pay	18-6-42	H.Q. Coe M.G. Battn	

A 83 D

M.F.M. 6
(A.F.B. 272)
12SM—7-41—(3253-20)
H.Q. 1772-39-1602

No. B-67963 Name Smith A. M. Sqn., Battery, or Company C Corps 1 R. Regt C. Date of enlistment G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet 6/6/42 No. and date of last drunk — Period not reckoning towards freedom from extra fine Sheet No. 2 Signature O.C. Company, etc. A. A. Thompson Maj Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	28-4-42	Pte		Sec 11 May Failure to Obey a Standing Order in that he used a W.D. Vehicle on a Non official Holiday for his own Private purpose without authority Sec 40 Conduct to Prej. th. in that he did neglect to maintain his rifle in a manner according to Standing Orders.	Sgt Purdy Pte Bullock Cpl Corbett	14 days C.B.	24-8-42	2/Lt Col Hamm	RR & FD
In the Field	2-10-42	"		AA Sec 15 (2) W.O.A.S. in that he was A.W.O.L. from 0915 hrs 21 Oct 42 till 1121 hrs 21 Oct 42	Sgt Partridge Cpl Cockell	5 days C.B.	21-10-42	Major A.A. Thompson	A.A.Thompson Major R.T.O.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	6-11-42	Pte		A.A. Sec 11 Neglecting to obey an Order in That did take without Auth: a bicycle Contrary to an Order published 5 Sept 42	S/Sgt Clay. S.	3 days C.B.	7-11-42	Maj. O.C. Illegible	
In the Field	17/3/43	"		A.A. Sec 15 Awl from 235 9 hrs 17-3-43 till 1900 hrs 18/3/43 (19 hrs)	Sgt Turner E.	Forf 5 days Pay	24-3-43	2/I. O.C. Nicholls	Forf 1 day pay 7 R & I 1940 (1) (a)
In the Field	22/3/43			A.A. Sec 15 Failing to appear at Place of Parade.	Sgt Turner E.	Forfeits 10 days pay 7 R & I 1940	24-3-43	2/I. O.C. Nicholls	
In the Field	22/3/43			A.A. Sec 9(2) Disobeying a lawful Command - (continued to wear a Uniform which he had been ordered not to wear	C.S.M. Pentadge	Forfeits 5 days pay 7 R & I 1940 (1) 10 Pay for Cost of Trial on M.E.C. 5/13	24-3-43	2/I. O.C. Nicholls	

AAG B

No. B67963 Name Smith F M. Sqn., Battery, or Company C Corps 1 R. Regt. R.C. Date of enlistment 30/7/40 G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 122) 175M—7-41 (1205-39) H.Q. 1773-39-1003

Date of last entry in Company Conduct Sheet 2/4/43 No. and date of last drunk — Period not reckoning towards freedom from extra fine Sheet No. 3 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	1/4/43 31/5/43	Pte	NIL	A. H. Sec 15(1) AWL from 1330 hrs 31/3/43 to 1358 hrs 1/4/43 A. H. Sec 15(1) AWL from 2100 hrs 1/4/43 to 2400 hrs 1/4/43 — A. H. Sec 40 Can. Def. Act. Reed. etc. — Left Guard Room Without Permission.	Lt. Osler 2/Sgt. Hoxie Sgt. Turner (forf 48 hrs leave)	15 Days F.P. No 1 forf 15 days Pay F.R. & I. 148 (1) (a)	2/4/43	Maj. A.D. Young M.C.	

Certified True and Correct Copy. H. Fairhead CAPT. & ADJ. ROYAL REGIMENT OF CANADA

P.T.O.

2396 Dr. Smith. F.D. 29 Jan 42 Orig. proceedings to A.G.'s Dept.

B-76865 Pte. Smith, F.W.
No.1 Cdn (MG) Hldg Unit

Army Form A.32 2376

Correspondence to be PINNED here.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this 8th day of September, 19 41.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS, CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[illegible]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*[illegible]

*(1. [illegible])

*(2. [illegible])

*(3. [illegible])

[illegible]

PROCEEDINGS REVIEWED

President.

Rank.	Name.	Regiment.
Major	A.J. Flood	No.1 Cdn Ing Hldg Unit.

Members.

Rank.	Name.	Regiment.
Captain	W.M. Stedman	No.2 Cdn Inf Hldg Unit
Lieutenant	L.L. Van Luven	No.1 R.C.A.S.C. Hldg Unit
Lieutenant	J.T. Holland	No.3 Cdn Inf Hldg Unit

* Must be signed personally by the Officer actually in command at the time, and all alterations in the compositions of the Court to be initialled by him

*Signed D.M. Ludlow Brigadier

Commanding Cdn Base Units, Cdn Army.
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B-76865 PTE. SMITH, F.W. No.1 Cdn (MG) Hldg Unit.	First Charge A.A. sec 15(1) Second Charge A.A. sec 40 See charge sheet attached.	Guilty to all charges	Guilty on the Second charge The Accused is to suffer death by being shot With hard labour Finding & sentence confirmed but commuted to five years detention	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— No.

(Signed) [signature] Brigadier (Signed) [signature] Major
Commanding Cdn Base Units, Cdn Army / *Convening Officer (a)* *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 11th day of Sept-1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) stenographer
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 4th day of September 1941.
[signature]
President of the Court Martial.

C. Certificate in case of death sentence.

* See footnote (b) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been~~ complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*I direct that the soldier named in the margin be not committed to prison until further orders.~~)

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 18th day of Sept 1941
[signature] Brigadier.
Confirming Officer.

Promulgated and extracts taken in the case of B-76865 Pte Smith F.W.

(a) (Dated) 20th Sept 41 (Signed) [signature] Lieutenant
No. 1 M.G. Holding Unit C.A.S.F.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused, No. B76865 Pte. Smith, F.W. of the Toronto Scottish Regiment, (M.G.) on the strength of the No. 1 Canadian Machine Gun Holding Unit, an active unit of the Canadian Army (Overseas) as a reinforcement for his regiment, as a soldier of the Canadian Army (Overseas), is charged with:

FIRST CHARGE
ARMY ACT
SEC 15 (1)

WHEN ON ACTIVE SERVICE, absenting himself without leave,
in that he
at Aldershot North, absented himself without leave from 0600 hours 21 Jul 41 until apprehended by the Military Police at Leicester - at 0050 hours 28 Aug 41. Time absent 36 days 18 hours and 50 minutes. Cost of escort, £1/4/9½.

SECOND CHARGE
SEC 40
A.A.

WHEN ON ACTIVE SERVICE, conduct to the prejudice of good order and military discipline,
in that he
at Leicester, on 28 Aug 41, was improperly dressed, in that he was not carrying a respirator anti-gas nor steel helmet.

ALDERSHOT NORTH
4 SEP 41.

(F.I. Carpenter) Lieut-Col.
Commanding, 1 Cdn. M.G. Holding Unit,
C.A. (O.)

To be tried by Field General Court Martial

(F.R. Phelan) Brigadier
Commanding Cdn Base Units.

Bordon, Hants
This 6th day of Sept 41.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD AT ALDERSHOT ON THE 11th DAY OF Sept. 41.

TRIAL OF:- No. B-76665, Pte. Smith, F.W., No. 1 M.G.H.U.

The order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:- (Name) Capt. R.E. Lockhart (Unit) 1 M.G.H.U.

Defending Officer:- (Name) Lt. J.M. Prescott (Unit) 1 M.G.H.U.

At 1000 hrs the trial commences.

The order convening the Court is read, signed by the President and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1. Do you object to be tried by me as President or by any of the officers whose names you have heard read over? A1.- No, sir.

The President, members ~~and judge advocate (if any)~~ are duly sworn.

The officers under instruction are duly sworn.

Q2. ~~Do you object to~~ noting as shorthand writer?

A2.-

~~The shorthand writer is duly sworn.~~

The accused pleading Guilty to the charges in the above mentioned charge sheet, R.P.35(B) is duly complied with.

The summary of evidence is read, signed by the President, and attached to the proceedings.

Q3. Do you wish to make any statement in mitigation of punishment?

A3.- No, sir.

Q4. Do you wish to give evidence yourself or to call any witnesses as to character? A4.- No, sir.

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER.

Defending Officer:- I would like to call the attention of the Court to the age of the accused. The age of the accused is now eighteen although his attestation papers show him to be twenty. The ~~Army~~ certificate of the accused was at one time in the hands of this unit and at that time an application was made to have the accused sent back to Canada. The accused was only sixteen when he came over here and I would like to draw the attention of the Court to the fact that he is now only eighteen. He is easily led and most of his offences are of a minor nature, simple a.w.l. offences. He has been led astray by other boys and I would like that to be taken into consideration when dealing with the accused.

Prosecutor, sworn, produces A.F.B. 296 and M.F.M. 6.

.....
President of Court Martial

Summary of evidence in the case of B-76865 Pte Smith, F. W. (T.S.R.) (M.G.) 1.C.M.G.H.V. C.M.(O)

By direction of the Commanding Officer this summary of evidence is taken on oath

First Witness for the Prosecution

Sgt. R. E. Fullerton S.A.I. (Cav.) 1.C.M.G.H.V. C.M.(O) having been duly sworn states:

at 1.C.M.G.H.V. on 2 Sept 41. I am Records Officer and I produce from the records of which I am in charge a certified true copy of a Declaration of a Court of Inquiry dated 14 August 1941 declaring as to the absence without leave of B-76865 Pte Smith F. W. from 0600 hours 21st July 41. marked appendix "A"

R. E. Fullerton Lt.
Records Officer

The accused declines to cross-examine this witness

Second witness for the Prosecution

S/Cpl. Matthews J. J. C.M. Police, Leicester

Third witness for the Prosecution

S/Cpl. McGuire D. C.M. Police, Leicester.

a written statement of these witnesses evidence has been read over to the accused and is included in the summary as appendix "B"

Certified that due to the loss of time the expense involved and the exigencies of the service the attendance of these witnesses cannot in my opinion be readily procured.

The accused elects not demand the attendance of these witnesses for cross-examination

Charles C Hill Capt
C.H.D.C (M.4).
I.C.M.S.H.U.

Fourth Witness for the Prosecution — C-21227. C.S.M.S. Ling S.T. C.H.D.C. (M.4). I.C.M.S.H.U. having been duly sworn states.

At I.C.M.S.H.U. on 2 Sept 41 I am C.S.M.S. and on that day I carried out an inspection of the clothing kit and regimental necessaries of the accused in his presence. I checked the articles of kit in the accused's possession against those charged on his M.F.H. 800 and found him to be deficient those items enumerated on a list now produced as Appendix "C" to the total value of £3-10-3.

C-21227 A.S. Ling C.S.M.S.
C.H.D.C. (M.4).
(A. Scrn. M.4 N.H.)

The accused declines to cross-examine the witness. The accused having been warned in accordance with R.P. 41(c) reserves his defence.

Sheet 3

Certified ~~that~~ R.P. 4(c)(a)(e)(f) and (g)
have been complied with
Taken down by me in the presence
and hearing of the accused this 3rd
day of Sept. 1941

C. Hanks C. Kirk Lieut
C.M.F.C (M.S) I.C.M.S.H.U

First Witness for the Prosecution — Lieut R.E. Fullerton S.C.I. (M.S) I.C.M.S.H.U. having been recalled states:

I also produce Certificate of Canadian Provost Corps certifying to the expenses of escort for the accused amounting to £1.49½ appended. D

R.E. Fullerton Lt
ICM.S.H.U.

The accused electing to ~~cross~~ examine the witness

Taken down by me in the presence and hearing of the accused at Aldershot this 3rd. day of September 1941.

Charles C Kirk

SUMMARY OF EVIDENCE in the case of B76865 Pte. Smith, F.W. (TSR/MG) (1CMGHU.) C.A. (O.). By direction of the Commanding Officer this summary of evidence is taken on oath.

FIRST WITNESS FOR THE PROSECUTION. Lieut. R.E. Fullerton, (SLI/MG) (1CMGHU) C.A. (O.) having been duly sworn states:

At 1 CMGHU on 2 Sep 41, I am Records Officer and I produce from the Records of which I am in charge a certified true copy of a Declaration of a Court of Inquiry dated 14 Aug 41, declaring as to the absence without leave of B76865 Pte. Smith, F.W. from 0600 hours 21st July 41. Marked Appendix "A".

(R.E. Fullerton) Lieut.
Records Officer, 1CMGHU

The accused declines to cross-examine this witness.

SECOND WITNESS FOR THE PROSECUTION. L/Cpl. Matthews, J.L. (C.M. Police Leicester).

THIRD WITNESS FOR THE PROSECUTION. L/Cpl. McGuire, D. (C.M. Police, Leicester).

A written statement of these witnesses evidence has been read over to the accused and is included in the summary as Appendix "B".

Certified that due to loss of time, the expense involved, and the exigencies of the service, the attendance of these witnesses cannot in my opinion be readily procured. The accused also does not demand the attendance of these witnesses for cross-examination.

Charles C. Hill, Lieut.
CHofO/MG, 1 CMGHU.

FOURTH WITNESS FOR THE PROSECUTION. C21227 CQMS Ling, G.L. (CHofO/MG 1CMGHU) having been duly sworn, states:

At 1 CMGHU on 2 Sep 41 I am CQMS and on that day I carried out an inspection of the clothing, kit and regimental necessaries of the accused in his presence. I checked the articles of kit in the accused's possession against those charged on his M.F.C. 600 and found him to be deficient those items enumerated on a list now produced as Appendix "C" to the total value of £3/10/3.

C21227 CQMS G.L. Ling,
CHofO /MG 1 CMGHU.

The accused declines to cross-examine this witness.

The accused having been warned in accordance with R.P. 4(e) reserves his defence.

Certified that R.P. 4 (c) (d) (e) (f) & (g) have been complied with.

Taken down in writing by me in the presence and hearing of the accused this 3rd day of September, 1941.

Charles C. Hill, Lieut.
CHofO/MG 1 CMGHU

FIRST WITNESS FOR THE PROSECUTION. Lieut. R.E. Fullerton, (SLI/MG) (1CMGHU) having been recalled, states:

I also produce Certificate of Canadian Provost Corps certifying to the expenses of escort for the accused, amounting to £1/4/9½, Appx. "D". The

R.E. Fullerton, Lieut.
1CMGHU

The accused declines to cross-examine this witness.

Taken down by me in the presence and hearing of the accused at Aldershot North this 3rd day of Sep 41.

Charles C. Hill, Lieut.
1CMGHU.

MEDICAL OFFICER'S CERTIFICATE

I certify that No. B76865 Pte. Smith, F.W. of the Tor. Scot. R. (MG) (1CMGHU) is FIT to undergo trial by Court-Martial.

11th Sept. 1941

H.R.L. Davis

(H. R. L. DAVIS,) Capt., R.C.A.M.C.
M.O., 1 Cdn. (M.G.) Holding Unit, C.A. (Q)

CERTIFIED COPY.

No. B76865 Name SMITH, F.W. | Sqn., Battery, or Company | Corps T.S.R. (MG) | Date of enlistment 2-7-40. | G.C. Badges | Service or Proficiency Pay | Character | MFM 6 (A.F.B. 122)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bordon.	10-10-40.	Pte.		Sec. 15 (1) A.A. AWL 116 hours.	C.S.M. Parrell.	7 days C.B.	25-10-40	Major Davidson.	Forf. 5 days pay.
Bordon.	27-10-40.	Pte.		Sec. 10 (3) A.A.	C.S.M. Parrell.	Forfeiture of 6 days pay.	31-10-40	Major W.C. McQuade.	Forf. 1 day's pay. PR&I 149
				Sec. 15 (1) A.A. AWL 19 hours.	C.P.C. Documentary	3 days C.B.	2-11-40	Major Davidson.	
Bordon.	27-10-40.	Pte.		Sec. 15 (2) A.A.	Cpl Barrett.				
Bordon.	2-11-40.	Pte.		Sec. 15 (1) A.A. AWL 12 days 12 hrs 45 min.	L/C Lavery.	21 days detn.	22-11-40	Lt-Col. F.I. Carpenter.	Forf. 39 Days pay. PR&I 149.
				Sec. 15 (1) A.A. AWL 5 days 30 minutes.	L/C Bishop.				
				Sec. 10 (4) A.A.					

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bordon.	23-11-40.	Pte		Sec. 10 (4) A.A. Sec. 15 (1) A.A. AWL 2 days 1 hour 45 min.	Sgt Pickling Cdn. Prov. Corps.	7 days detn	29-11-40	Lt-Col. P.I. Carpenter.	Forf. 3 days pay. FR&I 149 (1) a.
Bordon.	22-12-40.	Pte.		Sec. 15 (1) A.A. AWL 3 days 21 hrs 45 minutes	Cpl. Cox.	Forfeiture of 4 days pay.	27-12-40	Lt-Col. Carpenter.	Forf. 4 days pay. FR&I 149 (1) a.
Bordon.	30-12-40.	Pte.		Sec. 15 (1) A.A. AWL 7 days 17 hours.	Cpl Barrett.	Forfeiture of 24 days pay.	9-1-41.	Lt-Col. Carpenter.	Forf. 8 days pay. FR&I 149 (1) a.
Bordon.	12-1-41.	Pte.		Sec. 15 (1) A.A. AWL 1 day 12 hours.	Cpl Barrett	Forfeiture of 3 days pay.	17-1-41.	Lt-Col. Carpenter.	Forf. 2 days pay. FR&I 149 (1) a.
Bordon.	31-1-41.	Pte.		Sec. 15 (1) A.A. AWL 2 days 12 hrs 25 min.	Cpl Barrett	168 hrs detn.	4-2-41	Lt-Col. Carpenter.	Forf. 3 days pay. FR&I 149 (1) a.
Bordon.	13-2-41.	Pte.		Sec, 15 (2) A.A.	C.S.M. Farrell.	168 hrs detn	17-2-41	Lt-Col. Carpenter.	
Bordon.	25-2-41.	Pte.		Sec: 15 (2) A.A.	Documentary.	Forfeiture of 4 days pay.	27-2-41	Lt-Col. Carpenter.	
Bordon.	22-2-41.			Sec. 15 (1) A.A. AWL (3 Charges) Sentence reduced to 120 days detention. Remission of Sentence & Pay:- 38 days.	Documentary Evidence.	6 months detn	10-4-41	F.G.C.M. Bgdr L.F.PAGE C.B.C.	Forf. 182 days pay

No. B76865 Name SMITH, P.W. | Sqn., Battery, or Company | Corps T.S.R. (MG) | Date of enlistment 2-7-40 | G.C. Badges | Service or Proficiency Pay | MFM 6 (A.F.B. 122)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Aldershot.	5-7-41.	Pte.		Sec. 15 (1) A.A. AWL 1 day 1 hour 40 minutes.	Documentary Evidence.	Admonished.	7-7-41.	Lt-Col. Carpenter.	Forf 2 day pay.

Certified True Copy
R.E. Sullenton Lt
Officer i/c Records
1 Cdn M.G. Holding Unit Canada

(P.T.O.)

Army Form B.206.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
B-76865	Private.	SMITH, F.W.	TORONTO SCOTTISH REGIMENT (MG) 1 CDN M.G. HOLDING UNIT. C.A.(O).

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 617, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, pre-minutes being given to the most serious offence in each entry and to any recognized special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For Sec. 10 (4) A.A.	Three times	Three times.
For Sec. 15 (1) A.A.	Ten times	Ten times.
For Sec. 15 (2) A.A.	Three times	Three times.
For Sec.	times	times.
For	times	times.

[redacted]

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

[redacted]

4. The accused has been in confinement, awaiting trial on the present charges, for ..... days in civil custody, and Eight days in military custody, making a total of Eight days, of which No days were spent in hospital.

5. The present age of the accused according to his [redacted] attestation paper is 20

6. The date of his [redacted] attestation specified in his [redacted] attestation paper is 2nd July 1940.

[redacted]

(**)40-940 W1.30244/0402 75,000 12/40 A.& E.W.Ltd. Gp.678

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B76865 Rank Private Name SMITH, P.W. of T.S.R. (MG) Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispositions with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge or order of the disposing authority.	Punishment remitted
F.G.C.M.	10-4-41 Bordon.	Sec. 15 (1) A.A. (3 Charges)	GUILTY on all Charges. To undergo detention for a period of six months. Sentence mitigated to 120 days detention by Brigadier L.F.PAGE Commanding Cdn. Base Units. 14th April 1941.	38 days

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 11 day of September 1941 Rk7

R.E. Fullerton Lt
Officer i/c Records,
1 Cdn. M.G. Holding Unit, C.A.

Rk7

Convictions.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraphs must be struck through, except that in the case of a fine by field general court-martial the information may be obtained from such sources as are available and the paragraphs inserted carefully accordingly.

346 D
Pte Smith J.O.

Orig to AG 7A 13 Jan 42 -

O. H. M. S.

M. F. B. 270
E.Q. 1772-53-47

B-76865 Pte. Smith, F.W. 316 D
No.1 Cdn M.G. Hld Unit

Army Form A.3.

Corresponding Folio to be PINNED here.

PROCEEDINGS REVIEWED.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this 27th day of October, 1941.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS, CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[redacted]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*[redacted]

*(1. [redacted]

*(2. [redacted]

*(3. [redacted]

[redacted]

President.

Rank.	Name.	Regiment.
Major	W.W. Henderson V.D.	No.3 Cdn Inf Hldg Unit

Members.

Rank.	Name.	Regiment.
Captain	B.H. Jorgenson	No.3 Cdn Arty Hldg Unit
Lieutenant	B.W.S. Wood	No.3 Cdn Arty Hldg Unit
Lieutenant	A.T. Bezio	No.2 Cdn Inf Hldg Unit.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed E.W. Sulan Brigadier
Commanding Cdn Base Units, Cdn Army.
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B-76865 PTE. SMITH, F.W. No.1 Cdn M.G. Hldg Unit.	First Charge A.A. sec 22 Second Charge A.A. sec 15(1) See charge sheet attached.	Not Guilty Plea in bar of Trial Not Guilty Plea in bar of trial.	Court finds Plea in bar proved.	Confirmed. [signature] Brig.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) [signature] Brigadier (Signed) W.K. Henderson Maj.

Commanding Cdn Base Units, Cdn Army. *President.*
Convening Officer (*e*)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 12th day of Nov., and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) Shorthand writer Cpl.
*(4. ~~The officers under instruction~~) Cpl.
were duly sworn.

* Omit if not applicable.

Signed this 12th day of Nov. 1941.

W.K. Henderson Maj
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or having such authority, recommends suspension.

*~~I direct that the soldier named in the margin be not committed to prison until further order.~~

Signed this 15th day of November 1941.

[signature]
Confirming Officer.

Noted.
~~Promulgated and extracts taken~~ in the case of B-76865 Pte Smith F.W.

(*a*) (Dated) 17th Nov. 41 (Signed) [signature]

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused B-76865 Pte Smith, F.W., of the Toronto Scottish Regiment (MG), on the strength of the No. 1 Canadian MG Holding Unit, an active unit of the Canadian Army Overseas, as a reinforcement for his regiment, as a soldier of the Canadian Army Overseas, is charged with:-

First Charge
A.A. Sec 22

WHEN ON ACTIVE SERVICE, when in confinement, escaping, in that he, at Witley, Surrey, on the 8 Oct 1941, when in confinement in the Canadian Detention Barracks at Witley, escaped.

Second Charge
A.A. Sec 15(2)

WHEN ON ACTIVE SERVICE, Absenting himself without leave, in that he, at Witley, Surrey absented himself without leave from 0645 hours 8 Oct 41 until apprehended by the Regimental Police, No. 1 Canadian Machine Gun Holding Unit at Malplaquet Barracks, Farnborough at 2355 hours 8 Oct 41. Time absent 17 hours, 10 minutes.

(F.I. Carpenter), Lt.-Col.,
O.C. 1 Cdn. (MG) Holding Unit,
C.A.(C)

FARNBOROUGH, HANTS,
23 OCT 41.

To be tried by Field General Court Martial

(F.R. Phelan) Brigadier
Commanding Cdn Base Units.

Farnborough, Hants
This 27th day of Oct 41.

No. B-76865, PTE. F.W. SMITH, No. 1 Canadian Machine Gun Holding Unit, tried by Field General Court Martial at WITLEY, Surrey, on the 7th day of November, 1941.

The order convening the Court, the charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:-	Lieut. J.H.H. Depew,	No. 1 CMGHU.
Defending Officer:-	Lieut. R.H. Evans,	No. 1 CAHU.

At 1030 hrs the trial commences.

The order convening the Court is read, signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?
A1. No, sir.

The President and members are duly sworn.

The officers under instruction are duly sworn.

Q2. Do you object to B66944, Sgt. T. Pyburn, R.Regt.C., acting as short-hand writer?
A2. No, sir.

The shorthand writer is duly sworn.

The charge sheet is signed by the President and annexed to the proceedings.

The accused is arraigned upon each charge in the above mentioned charge sheet.

Q3. Are you guilty or not guilty of the first charge against you, which you have heard read?

A3. DEFENDING OFFICER: Sir, the proper plea is one in bar of trial, and the Court will note that under R.P. 36 where such a plea is offered the matter is referred back to the confirming officer.

Q4. THE COURT: What are your grounds for a plea in bar of trial?
A4. DEFENCE: The charges against the accused have already been dealt with by a competent authority. His plea is that this Court has no jurisdiction to try this case whatever.
Q5. Does the accused wish to give evidence himself or call any witnesses in support of his plea?
A5. Yes sir, one witness.

No. C-41995, S/SGT. R.H. DURFY, Canadian Provost Corps, Canadian Detention Barracks, being duly sworn, is examined by the defending officer:-

Q6. Give the court your number, rank, name and unit?
A6. I am No. C41995, S/Sgt R.H. Durfy, CPC, Cdn Det Bks.
Q7. What are your duties there?
A7. I am NCO i/c of records.

Q8. I show you a document; will you tell the court what that is?
A8. That is a charge against No. B76865, Pte Smith F.W., a charge of escaping from detention on the 8 Oct 41. He was awarded punishment of 21 days P.D.2, which was carried out at the det bks.
Q9. Whose initial is that on that document?
A9. That is Major Ball's, the Commandant's, initial.
Q10. Do you know if that covers an escape which occurred on 8 Oct 41?
A10. Yes sir, it does.
Q11. Do you know if the accused was absent after that escape?
A11. He was absent from the time he escaped until he returned.
Q12. Do you know when he returned?
A12. I have not got the records right here, sir; that charge just covered the act of escaping.
Q13. How do you know that?
A13. By the wording of the charge, that he escaped on that date.
Q14. I show you here AB 52B, Offences & Punishment Book. Will you tell the court what that is?
A14. Yes, that is the Offences & Punishment Book of the det bks. When a man is charged with an infraction of the regulations, for an offence against discipline, it is entered in this book, the particulars of the charge and the punishment awarded. With reference to this case, on 9 Oct there is a record here of Pte Smith F.W. charged under para 165(A), sec 17, punishment awarded 21 days P.D.2, signed "George W. Ball, Major."
Q15. And you say that punishment was carried out?
A15. Yes, sir.

DEFENCE: I submit this as an exhibit, with the request that it be returned at the conclusion of this trial; it is an official regtl book.

Q16. Do you know if there are regulations contained in the rules of det bks relating to absentees?
A16. Not relating to absentees.

CROSS-EXAMINED BY THE PROSECUTOR

Q17. Would you tell the court what steps are taken by the det bks when a man escapes or absents himself for a period of time with regard to his pay?
A17. With regard to his pay, when a man escapes from det he is automatically considered as not serving his sentence when he is away, and therefore if he is out of det for a period of 10 days, for example, when he returns he has 10 days over the original period covered by his sentence to serve.
Q18. How does that affect his pay?
A18. To the extent he would have to be charged with being AWL for the period of time he was away, and then he would automatically forfeit that period of pay.
Q19. If a man was charged under det bks regulations and summarily punished by the Commdt of the Det Bks for, like in this case, being absent for 17 hrs, he would serve an extra day's detention?
A19. Yes, sir.

Q20. THE COURT: This soldier was charged under para 165(A), sec 17, which is, I suppose, Rules of Det Bks?
A20. Yes sir, that is correct.
Q21. What was that for - escaping from custody?
A21. Escaping or attempting to escape from detention.

The Court is closed to consider their decision.
The Court is re-opened, and the accused is again brought before it.

THE COURT: The Court find that the plea in bar of trial is proven on both charges, and the Court allow the plea.

Q8. I show you a document; will you tell the court what that is?
A8. That is a charge against No. B76865, Pte Smith F.W., a charge of escaping from detention on the 8 Oct 41. He was awarded punishment of 21 days F.D.2, which was carried out at the det bks.
Q9. Whose initial is that on that document?
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A11. He was absent from the time he escaped until he returned.
Q12. Do you know when he returned?
A12. I have not got the records right here, sir; that charge just covered the act of escaping.
Q13. How do you know that?
A13. By the wording of the charge, that he escaped on that date.
Q14. I show you here AB 52B, Offences & Punishment Book. Will you tell the court what that is?
A14. Yes, that is the Offences & Punishment Book of the det bks. When a man is charged with an infraction of the regulations, for an offence against discipline, it is entered in this book, the particulars of the charge and the punishment awarded. With reference to this case, on 9 Oct there is a record here of Pte Smith F.W. charged under para 165(A), sec 17, punishment awarded 21 days F.D.2, signed "George W. Ball, Major."
Q15. And you say that punishment was carried out?
A15. Yes, sir.

DEFENCE: I submit this as an exhibit, with the request that it be returned at the conclusion of this trial; it is an official regtl book.

Q16. Do you know if there are regulations contained in the rules of det bks relating to absentees?
A16. Not relating to absentees.

CROSS-EXAMINED BY THE PROSECUTOR

Q17. Would you tell the court what steps are taken by the det bks when a man escapes or absents himself for a period of time with regard to his pay?
A17. With regard to his pay, when a man escapes from det he is automatically considered as not serving his sentence when he is away, and therefore if he is out of det for a period of 10 days, for example, when he returns he has 10 days over the original period covered by his sentence to serve.
Q18. How does that affect his pay?
A18. To the extent he would have to be charged with being AWL for the period of time he was away, and then he would automatically forfeit that period of pay.
Q19. If a man was charged under det bks regulations and summarily punished by the Commdt of the Det Bks for, like in this case, being absent for 17 hrs, he would serve an extra day's detention?
A19. Yes, sir.
Q20. THE COURT: This soldier was charged under para 165(A), sec 17, which is, I suppose, Rules of Det Bks?
A20. Yes sir, that is correct.
Q21. What was that for - escaping from custody?
A21. Escaping or attempting to escape from detention.

The Court is closed to consider their decision.
The Court is re-opened, and the accused is again brought before it.

THE COURT: The Court find that the plea in bar of trial is proven on both charges, and the Court allow the plea.

Summary of Evidence in the case of No.B-76 865 Pte. Smith, F.W., Toronto Scottish Regiment (M.G.), No. 1 Canadian (M.G.) Holding Unit, C.A.(O.).

By direction of the Commanding Officer, the evidence herein is taken on oath.

FIRST WITNESS.

No. B-66852 Cpl. Sheehan, F.N., Canadian Detention Barracks, being duly sworn, states.

"On Wednesday, 8 October, 1941, while on duty in Hut A 1 at Canadian Detention Barracks, Witley, at 0645 hours, a dispute started at the far end of the hut, and I left my post at the door to settle it. When I turned around again, I missed Soldier Under Sentence Smith, the accused, whom I recognize, and Soldier Under Sentence James. I reported this to Staff-Sergeant Bayles. Later, on latrine parade, I missed another man, also named Smith. I reported this to the R.S.M."

The accused declined to cross-examine the above witness.

Sgd. F.N. Sheehan, Cpl.

SECOND WITNESS.

No. B-26113 Staff-Sergeant Bayles, A., Canadian Detention Barracks, being duly sworn, states:-

"I was in charge of the compound at Canadian Detention Barracks, Witley, on Wednesday, 8 October, 1941. At about 0700 hours, as a result of an report I had received, I searched the compound, with two relief men, for two soldiers under sentence, James and the accused, Smith. I failed to find either of them in the compound. I then went to the Staff-Quarters, called out the day staff, and then returned to the compound, and reported the escape to the R.S.M. I did not see the accused until brought back in under escort the next day.

The accused declined to cross-examine the above witness.

Sgd. A. Bayles.

THIRD WITNESS.

No. A-340G8 Sergeant Fickling, A., No. 1 Canadian (M.G.) Holding Unit, C.A.(O.), being duly sworn, says:-

"I am Provost Sergeant at No. 1 Canadian (M.G.) Holding Unit. At about 2100 hours, 8 October, 1941, as a result of information I had received, I had my Provost staff make a search of the barracks area for Pte. Smith, the accused, Pte. James and another. At about 2355 hours, as a result of further information, I had Hut No. 2, surrounded, then I entered the hut and found the accused, and Pte. James, and another in the doorway. They were all dressed in Detention Barracks dress. I apprehended them, placed them in the guard room, and had the Detention Barracks informed.

The accused declined to cross-examine the above witness.

Sgd. A. Fickling.

FOURTH WITNESS.

No. B-76742 Cpl. Lavery, W.J., No. 1 Canadian (M.G.) Holding Unit, C.A.(O.), being duly sworn, states:-

"I am with the Regimental Police, of No. 1 Canadian (M.G.)Holding Unit. On Wednesday, 8 October, 1941, I participated in a search of Malplaquet Barracks area for three soldiers said to have escaped from the Detention Barracks, Witley. Late that night, I saw the accused, Pte. Smith, Pte. James and another, being escorted to the guard room. I saw them placed in a cell there, and I was later in charge of the guard room, and I turned them over to an escort from Canadian Detention Barracks at about 0100 hours, 9 October, 1941."

The accused declined to cross-examine the above witness.

Sgd. Cpl. Lavery, W.J.

The accused, after being cautioned in accordance with R.P. 4 (E), declines to make a statement.

Taken down by me at Witley, Surrey, this 17th day of October, 1941, in the presence of the accused. Rule of Procedure 4 complied with.

J.H.H. Denew, Lieut.
1 Cdn. M.G. Holding Unit, C.A.(O.).

Summary of Evidence in the case of No. B 76865 Pte. Smith F.W., TSR Coy, 1 Edn (NG) Hoeding Unit, C.A.(O).

By direction of the Commanding Officer, the evidence herein is taken on oath.

First Witness No. B 66 852 Cpl. Sheehan, T.H., Canadian Detention Barracks, being duly sworn, states:-

"On Wednesday, 8 October, 1941, while on duty in Hut A1 at Canadian Detention Barracks Witley, at 0645 hrs. a dispute started at the far end of the hut, and I left my post at the door to settle it. When I turned around again, I missed S.U.S. Smith, the accused, whom I recognize, and S.U.S. James. I reported this to Staff-Sergeant Bayles. Later, on latrine parade, I missed another man, also named Smith. I reported this to the R.S.M."

The accused declined to cross-examine the above witness.

Second Witness No. B 26113 Staff Sergeant Bayles, A., Canadian Detention Barracks, being duly sworn, states:-

"I was in charge of the compound at Canadian Detention Barracks, Witley, on Wednesday, 8 October, 1941. At about 0700 hours, as a result of a report I had received, I searched the compound, with two relief men, for two soldiers under sentence, James and the accused, Smith.

I failed to find either of them in the compound. I then went to the Staff-Quarters & called out the day staff, and then returned to the compound, and reported the escape to the R.S.M. I did not see the accused until brought back in under escort the next day."

The accused declined to cross-examine the above witness.

A. Bayles.

Third witness No. A 340x8 Sergeant Fickling, A., No.1 Cdn (MG) Holding Unit, C.A.(C). being duly sworn, says:

" I am provost sergeant at No.1 Cdn (MG) Holding Unit. At about 2100 hours, 8 October, 1941. as a result of information I had received, I had my provost staff make a search of the barracks area for Pte. Smith, the accused, Pte. James and another. At about 2355 hours, as a result of further information, I had hut No.2. surrounded, then I entered the hut and found the accused, and Pte James, and another in the doorway. They were all dressed in Detention Barracks dress. I apprehended them, placed them in the guard room, and had the ~~Detention~~ Detention Barracks informed.

The accused declined to cross-examine the above witness.

A. Fickling

WSH

Fourth Witness No. B 16742 Cpl Savery, W.J., No. 1 Cdn (MG) Holding Unit, C.A.(O.), being duly sworn, states:-

I am with the Regimental Police of No. 1 Cdn (MG) Holding Unit. On Wednesday, 8 October, 41 I participated in a search of Malplaquet Barracks area for three soldiers said to have escaped from the Detention Barracks, Witley. Late that night, I saw the accused, Pte. Smith, Pt James and another, being escorted to the guardroom. I saw them placed in a cell there, and I was later in charge of the guardroom, and I turned them over to an escort from Canadian Detention Barracks at about 0100 hours, 9 to 10 October, 1941.

The accused declined to cross-examine the above witness.

Cpl Savery W.J.

The accused, after being cautioned in accordance with R.P. 4(E), declines to make a statement.

Taken down by me at Witley, ~~Hants~~ Surrey, this 17th day of October, 1941, in the presence of the accused. Rule of Procedure 4 complied with.

J H H Dalyell
Lieut.
1 Cdn (MG) Holding Unit, C.A.(O).

WHH.

MEDICAL OFFICER'S REPORT

I certify that No. B76965.- Pte. Smith, F.W. (SUS)
of (No.1M.G.H.U) Cdn. Det. Bks. is in a good state of health,
and fit. to undergo Trial by Court Martial.

Medical Officer
CANADIAN DETENTION BARRACKS

Station Camp. 101. Cdn. Det. Bks.
Witley.

Date Nov. 7th. 1941

Exhibit "A"
Anderson May '41

DATE: 9 Oct 41

REPORT ON:

S.U.S. 791 REGT'L.NO. B76865 RANK Pte NAME SMITH, F.H.

CHARGED under Para. 165a, Sec.(17) Escaping Detention on 8-10-41

F H Smith

SIGNATURE OF W.C.O.

21 days FDS

PUNISHMENT AWARDED

CMDT'S. INITIALS

WITNESS.

VV-92
SGT SMITH F.W.A.

B-5231 Sgt Smith, F. W. A.
2 CASCRU

VV-92

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this fifteenth day of November, , 1943 .

Whereas it appears to me, the undersigned, an officer in Command of "E" Group, Canadian Reinforcement Units, , on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[I am unable to appoint a-

*(1) [Three Officers to form the Court]

*(2) [A Field Officer as President]

*Omit if not applicable.

for the following reasons, namely :—]

Proceedings Reviewed
3 Dec 43
W. W. Murphy Capt
.....
Reviewing Officer (J.A.G.) (Branch)

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Lt.-col	D.L. Redman, VD	CRU

Members.

Rank.	Name.	Regiment.
Captain		1 CASCRU
Lt		1 CERU

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (J. C. Rutherford) Brig
Commanding "E" Gp, CRU
Convening Officer.

SCHEDULE

Number, Rank (*a*) Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B-5231 Sgt Smith, F. W. A. 2 CACRU	FIRST CHARGE A.A. Sec 18 (4) See charge sheet attached	not Guilty	Guilty	Finding and Sentence confirmed and that direct that five gold buttons three pence of gold and a dirk knife be returned to Capt R A Erickson
	SECOND CHARGE A.A. Sec 18 (4) See charge sheet attached	not Guilty	Guilty	
	THIRD CHARGE A.A. Sec 18 (4) See charge sheet attached	not Guilty	Guilty	
	FOURTH CHARGE A.A. Sec 18 (4) See charge sheet attached	not Guilty	Guilty	
			Sentence To be Reduced to the Ranks. 17th Nov 1943	

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?" No Pet
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) _____ (Signed) _____
[R. J. RUTHERFORD] Brig
Commanding "E" Group, CHU
Convening Officer (c) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 17th day of November 1943 and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses

*Omit if not applicable.

*(3. The Interpreter)
*(4. The officers under instruction)

were duly sworn.

Signed this 17th day of Nov. 1943

_____
President of the Court Martial.

C. Certificate in case of death sentence.

*See footnote (*b*) on page 769 M.M.L. 1929.

*I certify that the terms of *A.C.I. 570 of 1918 have been complied with).

*Signed this _____ day of _____ 19__

_____
President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

Signed this 17 day of Nov 1943

_____
Confirming Officer.

Promulgated and extracts taken in the case of B-5231, Sgt Smith, F.W.A.

(*a*) (Dated) 20 Nov 43 (Signed) D.C.O'Brien Major
[D.C. O'Brien]
A/O.C. 2 CACRU

Promulgated and extracts taken in the case of

(Dated) _____ (Signed) _____

Promulgated and extracts taken in the case of

(Dated) _____ (Signed) _____

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[20704] W1.47155/332, 25,000, 7/42, A.& E.W.,Ltd. (Gp.)/69
[21782] W1.18006/1259, 40,000, 7/42

JAG BRANCH - REVIEW RECORD

Accused

B 5231 Sgt Smith F WA

15 Gen Base Dental Coy

Remarks	Date
Trial in (Country) Eng.	17 Nov 43
Charges Sec 18 (4)	
Sentence Reduced to ranks	17 Nov 43
Rec'd from CR at JAG Branch	29 Nov 43
To WH W for (pre)(post) rev	30 Nov 43
	30 Nov 43
Recommendations by JAG Rev 2	
(1) Pass and record.	
(2) ~~Ltr on irregularities~~	
(3) ~~Quash charge(s).~~	
(4)	
Ret'd to JAG Rev 1 by Rev 2	3 Dec 43
Passed to	
Passed to	
To AG 5 for	
Ret'd from AG 5 to JAG Rev 1	
Instrs by JAG Rev 1 on disposal	
Record and file	3 Dec 43
Instrs completed by	

No.2 CANADIAN ARMOURED CORPS REINFORCEMENT UNIT.

CHARGE SHEET

in the case of

B-5231 Sergeant Frederick William Albert SMITH, of No.15 Canadian Base Dental Company, Canadian Dental Corps, a soldier of the Canadian Army Overseas, whilst on active service, who is charged with:-

First Charge.
Sec.18(4)
Army Act.

Stealing property belonging to a person subject to military law,

in that he,

at Aldershot, Hants., on or about the 23rd day of September, 1943, stole a gold button, the property of Captain R.A. Erickson, Canadian Dental Corps, a person subject to military law.

Second Charge.
Sec.18(4).
Army Act.

Stealing property belonging to a person subject to military law,

in that he,

at Aldershot, Hants., on or about the 5th day of October, 1943, stole three pieces of gold, the property of Captain R.A. Erickson, Canadian Dental Corps, a person subject to military law.

Third Charge.
Sec.18(4).
Army Act.

Stealing property belonging to a person subject to military law,

in that he,

at Aldershot, Hants., on or about the 2nd day of November, 1943, stole a gold dental bridge, the property of No. D-124576, Private Teasler, S., of No. 15 Canadian Base Dental Company, Canadian Dental Corps, a person subject to military law.

Fourth Charge.
Sec.18(4).
Army Act.

Stealing property belonging to a person subject to military law,

in that he,

at Aldershot, Hants., on or about the 6th day of November, 1943, stole a gold button, the property of Captain R.A. Erickson, Canadian Dental Corps, a person subject to military law.

(J.H. Perry) Colonel,
Commanding,
No.2, C.A.C.R.U.

Aldershot, Hants.,
12 November, 1943.

Approved
Gm Graham Capt
DAAG.
13 Nov 43.

To be tried by F.G.C.M. in the Field.

15 Nov 43

(W. J. RUTHERFORD) Brig
Comd
"Z" Gp, CRU

Medical Officers' Certificate
K.R. (Can) Para 557.

I certify that I have this morning examined B.5231 (No.) SGT. (Rank)
SMITH F.W.A. (Name) of 15 Can. Base Dental Coy. C.D.C. (Unit)
and in my opinion he is ~~unfit~~ fit to undergo trial by Court Martial.

Station Aldershot

Date 17 Nov. 43

(Sgd) L.W. Corbett Capt. (Medical Officer)

PROCEEDINGS OF A FIELD GENERAL COURT-MARTIAL
HELD AT MALDUQUET BARRACKS FARNBOROUGH - HAMPSHIRE
ON THE 17th. DAY OF November 1943

The accused B.5231 Sgt. Smith F.W.A. Unit #15 Edn. Base Dental Lty. Edn. Dental Corps

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 and 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked stated that he had no objection to the President or any Member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President Lt. Col. D.L. Redman ... Unit. C.R.U. .....

Members Capt. J.H.J. Embleby ... Unit. #1 CASC.R.U.
Lieut. W.C. Flemming ... Unit. #1 C.C.R.U. ....

The officers under instruction are duly sworn:-

Lieut. R.W. Wiber ... Unit. #1 CASC.R.U. ...
——— ... Unit. .....
.... Unit. .....

Prosecutor Maj. W.J.A. Wallace ... Unit. 2 C.A.C.R.U. ....

Defending Officer Lieut. H.V. GAR ... Unit. 2 CACR.U. .....

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(b) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
The Prosecutor produces MFB 355, AFB 296 and MFM 6.
The Court complies with R.P. 36(B).

Pursuant to R.P. 37 THE ACCUSED:-

(a) Makes a statement in mitigation of punishment.
(b) Calls witnesses as to character.
(c) Calls witnesses in mitigation of punishment.
(d) Addresses the Court by his Defending Officer.

Overseas R.D. 3262 complied with.
The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE and ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER.

Proceedings follow on Foreground.

Opening address by the Prosecutor, in the case of
B-5231 Sgt. Smith, F.W.A.,
No.15 Cdn.Base Dental Coy., C.D.C.

The accused is charged with four separate counts of "stealing" in that he on four separate dates stole and sold, or caused to be sold, articles of gold which were the property of persons subject to military law.

It is realized that "stealing" can only be proved when sufficient evidence is produced to show that the accused "without the consent of the owner, fraudulently and without any claim of right made in good faith, takes and carries away anything capable of being stolen, with intent at the time of such taking, permanently to deprive the owner thereof".

The prosecution, through the introduction of witnesses, will endeavour to produce sufficient evidence to show that the accused on each count took, without the consent of the owner, articles of gold and that he then sold or caused them to be sold to a Jeweller in the town of Aldershot, thereby permanently depriving the owner thereof.

The Prosecution will endeavour to prove that the persons who were the owners of the articles at the times of the thefts, were persons "subject to military law".

Two civilian witnesses will be called, one a Police Detective Constable, who will tell the Court that after being duly cautioned, the accused made a voluntary statement admitting that he took all articles shown as exhibits and that he personally sold three of these articles, and caused a third party to sell the other article. The third party namely Private Barrett will give his account of what happened in the latter case.

The other civilian witness, a Jeweller and Pawnbroker, will give evidence that he purchases the articles produced as exhibits, and that they were "sold" not "placed in pawn".

Had all these items been taken on the one occasion, it might be suggested that it was a temporary "mental lapse" on the part of the accused, but it will be noted that there is a period of 45 days from the first to last incident, which might reasonably be inferred to indicate a slow but regular system of stealing gold and obtaining sums of money therefor.

Had the amounts realized been of large proportions there might be an excuse offered by the defence of "temptation", but when it is realized, as will be stated by the Jeweller, that the amounts varied from 24/- for the first article, to 8/-, 7/9 and 11/3 for the others, it cannot reasonably be claimed a "temptation", for the amounts involved are not worth the possibility of detection and consequent punishment.

The Prosecution would now like to call the firstywitness, Private Tessler of the Canadian Dental Corps.

(W.J.A.Wallace) Major,
(Prosecutor)
No.2, C.A.C.H.U.

In the Field,
17 November, 1943.

MM

Trial of B 5-231 Sgt T.W.A. Smith 2 CAC R.A.A.
page 1

The accused when arraigned pled not guilty to all the charges
The Austin John R P 39 'H' was asked
The answer "No sir" was recorded.
The Prosecution made an opening address which is attached

1st witness for the Prosecution
D 124572 Pte S. Fossey of 15 Base Dental Lab C.A.D.C being duly sworn states
I am attached to 2 CAC R.A. I enlisted 23 June 1942. I have served continuously in the army since that date.
About 2 weeks ago my gold dental bridge had been in for repairs & mine and I asked Capt Buchan if he would get it finished. I looked in his kit for the bridge but couldn't find it. I searched the 2 in the kit of the other 2 dental officers and I couldn't find it. Later the same day with permission I went to Civil Police Station Headquarters and reported the loss. From information received I returned to Civil Police & between the next day and 9am Sgt. A.A. Lightfoot who then went with me to Phillips Jewelry Store Adelaide and after talking the jeweler produced some gold and he also produced my bridge which I had lost.
(The Prosecutor produced an article)
witness continues)
I recognize this as my gold dental bridge which I lost & there were 2 porcelain teeth on it.
MARKED EX 1 by Court

I wore this bridge I have had it about
3 yrs I paid for it not the government
Cross examd by D/Sgt O'Keeffe
This puts in my mouth but not properly
now because one end is now out in
when I spoke to Capt Erickson about
repairing the bridge he ordered me to
get an impression it. It had been in Capt
Ericksons Kit. I had brought it over
from the other clinic and put it in Capt
Ericksons Kit about two weeks before that
RP 53 (B) Fm
Re-examd by Prosecutor
Capt Erickson had the bridge in repair
per over 2 months.
RP 53 (B) was tendered with
2nd witness for the Prosecution
Set top. Lieut Port of Hampshire
joint Police Force stationed at Aldershot
very duly proven Marks
On afternoon 6 Nov 43. Pte Trosser
reported that his gold dental bridge
had been stolen from the clinic at
2 Cdn R.H. The same afternoon I
visited Private Phillips quarters
though at address not where I was shown
a gold dental bridge, a gold button
3 pieces of gold and another gold button
by the Sergeant Mr Hibbert. On the
afternoon Thursday 9th Nov I saw the
accused at 2 Cdn R.H. I told him I was
a police officer I cautioned him and
I said between 1st Oct/43 and 4 Nov 43
a gold bridge was stolen from the

clinic at 2 o'clock. I have reason to advise you are responsible and the person who told it to Messrs Phillips. He replied "yes I don't know what made me do it." This was in R S m's office I then cautioned him and charged him with stealing a gold bridge. In reply he said I will tell you all about it I've had a lot of worry lately. I told him to accompany Police Station where he made a statement. He read the words of the caution at the top of the sheet. Then I read the words to him and he signed under the caution. He made a statement which I typed as he dictated on that sheet. When finished he read the typed statement over and signed. I signed it as witness. This is the caution and statement. The A-G opposite said he objected to the admission of the statement and asked leave to cross examine and have accused given evidence on this admission only. Granted.

Witness Cross Examined by A-G opposite

R S m's office is about 12' by 12'. I was alone in it with accused. As far as I was aware the accused was not then under any charge. I charged the accused before we left the room. I did this because before I came into the room from information received I had decided to charge the accused.

The accused being duly sworn states when he keptpoint saw me in R S m's office I was already in making enquiries

close arrest. after Wightpool told me who he was and why he was there. He said that if I made a statmt now instead of prolonging the thing it would be the easier for me. This was the chief police caution to make a statemt

Cross Examd by the Prosecutor

D.R.S. ms oppm Wightpool had nothing to the effect that I must have to say anything. This was before I admitted anything. Wightpool said that if I said anything now it would help me out a lot more or make it easier for me

2nd witness for the Prosecution

D. it transl. Wightpool recalled said I did not say anything to the accused in the R.S. m.s oppm to the effect that if he made a statemt then instead of prolonging things it would be easier for him or anything of that nature when I first entered the room I cautioned him as follows "you are not obliged to say anything unless you wish but what you do say may be given in evidence"

The D.P. oppm admitted the Court replying to Sec 78 P.E. m.m.l the accused said that the Police officer said it would be easier for him. There was the police officer's word against this. The accused was naturally afraid I'll grant that the caution was properly given by the police officer

The Prosecutor refers to the remainder of Para. 76 dealing with 2nd para and

Trial of B 5-231 Sgt T.W.A Smith 2 C.A.C. R.A

Page 5

continuing to the end of the para 76.
and submits that the confession should
be admitted
The Court was cleared to consider the submission
The Court resumed
The President announced that the Court
had decided to admit the statement
2nd witness for the Prosecution recalled
My name is Det-Constable Wightfoot said
This is the statement. These are the signatures
of the accused. These my signature pointing
to signatures on the statement
(Statement is marked as Ex 2)
The gold bridge (Ex 1) I recognize as one
I saw at Phillips on 6 Nov when shown
to me by Mr Hebbard. I handed it to major
Wallace the prosecutor
I recognize these 3 pieces of gold as
being one handed to me by Mr Hebbard
on 6th Nov and which I handed to the
Prosecutor (marked Ex 3)
I recognize the large gold button as
being one handed to me by Mr Hebbard on
6 Nov which I handed to the Prosecutor
marked Ex 4)
I recognize the small gold button as
being one handed me by Mr Hebbard
on 6 th Nov and which I handed to the
Prosecutor (marked Ex 5)
The opening of page [illegible] referred to Cross Examn
3rd witness for the Prosecution (L.P. 36) was complied with
A 20113 Pte A W Barrett of C A C being
duly sworn states
Sgt Smith the accused came into my

Woman and asked me if I was going down town that morning I said yes. She asked me if I would take some old gold to a Jeweller and sell it. She gave me the gold I took it to the Jeweller he got it like and it was more that had been thrown out I took it to the Jeweller. I return the name was Phillips I received 8 shillings I signed my name on a book. I came back and gave her Forth 8 shillings. She gave me 2 shillings for my work.

These (EX 3) are the pieces of gold I refer to. I have never sold any other gold. I know the accused well.

The 4 young officers declined to cross examine

R P 6 3 (B) was charged with 4th witness for the Prosecution

John T. Hebbard being duly sworn states I am manager of H Phillips Jewellers and Pawnbrokers 17-21 High Street Aldershot On 23 Sep 43 I purchased a piece of gold from the accused It is what I now know as a button. This (EX 4) is the button Industrial man to say that he had melted it down and I paid him 24 shillings for it On 5th Oct I bot 3 pieces of gold from a soldier by name of Barrett These (EX 3) are the pieces I paid him 8 shillings

On 2nd Nov I bot another piece from the accused I paid him 11/3 for it This EX 1 is the piece

On 6th Nov I bot another button

of gold from the accused for 7/9
This Ex 5 is the bottle of gold
That day the right boot came into the shop
with a C.A.C soldier inquiring on
Monday getting I handed the gold above
referred to the right boot.
The gold was dust not panned.
Cross examd by H of U Apras
We don't care whether we buy or take
on pawn we always pay more when
we buy than when we take in Pawn
Gold is usually dust not panned
K.P. 53(B) was tagged with
5 Th letters for the Prosecution
Major J. A Grant Can Dental Corps
being duly sworn states
I am O/C Dental Clinic at 2 Can K.U. Edmonton
my Lab No 15 Datta a pair of 15 boots
including my self are accused are attached
for all purposes except Night duties
On Monday 5 Th Nov. I received the right boot
case to our clinic with a dental
bridge. I fitted the bridge in Pte
Nissens mouth. It pitted out I sent
them back that it was made for Pte
Nissen. I have been practising 15 yrs
as a Dentist. This (Ex 1) is the bridge
I notice many details which I recognize.
Cross examd by H Spanky Offr
There was a thin edge around in which
had to be straightened out. It was like
tissue paper. Any rough handling
would cut this.
The accused would take me from

about 23 Sept 143. I had no trouble
with him. He was pretty efficient
in his work, up to average
by the witness for the Prosecution
Capt K A Erickson of Co's duties wrgs
duty during stated.
I was crossing Pt Tessies bridge
I had lost some gold and I told Tessier
to open the bridge Sunday I wanted
to find it and asked Tessier for it. After looking
for it and asked Tessier for it. After looking
he reported it was gone I have lost
other gold during this summer and fall.
This was my personal property. I lost
2 gold buttons for the cuffs of dress
uniform and other things which I had in
my kit. Buttons of same the 4 buttons
Ex 1 looks like Tessier's bridge
Ex 2, I can't recognize. I can't say those
are not the straps I had in my kit
Ex 4. looks like a button which I lost
Ex 5 looks like a button which I lost
Sept 44th the accused washed after
my dental kit I lost the gold I lost
in the drawers of the kit which was
mottled.
Cross Examd by Def Officer
I had not graduated when I joined the
army. Sometimes patients have gold
out of teeth with the dentist but the
most should apply it to the customer
first. I brought the gold I lost prove my
ownership. I think the gold in Ex 3 to 5-
are mine. The accused was my dental
assistant. I found him efficient as such

Examd by the Court

I have not seen any buttons like EX 4 and 5 except the 2 I found at last. anywhere in Edn & until boys in England I lost 2 such buttons only. I want one of these buttons which I had to cast the top of the ring I am now wearing. It was the twin of the 2 buttons I had

The Prosecution is closed RP 33 (3) is complied with

The Prisoner at 1410 hrs elects to remain silent and reasonable at 2000 hrs

The Prisoner advised the accused under note 2 R P 40

The accused decided to give evidence on oath

Evidence for the Defence

1st witness for the Defence

The accused being duly sworn states

I joined the Militia in 1936. I went active in Aug 39. I transferred to C D C in Dec 1939. I am a Chief Assistant. As such I have free access to my Officers Kit. Most clerks keep their gold under lock and key. I am married

Cross Examined by the Prosecution

There was no safe or strong box where gold could be locked and the lab-technician had a lockable box with him when I was on leave from which I returned on 24th Oct 43.

Examd by the Court

I took the gold button from the Kit drawer on the Kit of Capt K A Erickson on 23rd Sept 43 and I took the other gold button from the Kit of Capt K A Erickson on 5th Oct 43 I took the gold crowns from the Kit of Capt K A Erickson on 2nd Nov 43. I was A

The chair assistant of last Erickson. His kit was never touched. There was a bolt on it

K P & 3 (B) was charged with
Case for D opens is closed
The Prosecution addresses the court on the
Finding - attached in writing
The D.C. Off'r addressed the court
statement in writing attached
The court is closed for the finding
The court reopens.
The Prosecution produced M 7 B 3 5 5
and cert copy of M 7 M 6 in relation to
the accused K.P. 46 (B) is charged with
The D.C. Off'r produced a written
statement as to character by Lt H R Landsman
who could not be present
The statement was accepted
The D. Counsel Officers Plea in mitigation
is attached
L C O R O 3 2 6 2 is charged with
The court was closed to consider sentence

WM

Introduct Address re Trumbring

This is not a case of ~~a~~ re-sale

Brg [illegible] Offence

It is admitted that statement was made

Statement has been accepted by the court, requires no further comment as to validity. Does it however, convict the accused on the specific charges.

Summing Up:

1. Bridge. Items: "Recent possession"

All the prosecution has proved is that the accused was disposed of the bridge to his own advantage, after taking it from the clinic.

It has not, clearly, been established just when the bridge was taken. The witness, PO Tessler says he "last saw it, about 3 wks before seeing it in Phillips' store." Was the accused, then, in "recent possession", that is recent in regard to when the bridge was stolen. ~~Could not the bridge have been stolen by someone~~. Could not the accused have come into possession either proper or improper (to his own advantage) of the bridge and disposed of it to his advantage?

Capt Ericson did not know the whereabouts of the bridge. It has clearly been shown in evidence that Ericson thought ~~Tessler~~ had it and Tessler thought Ericson had it.

Can it be, then, upheld by this court, that the accused stole property, of a person subject to mil Law? (not as despicable as below mentioned case)

Is this case to be compared ~~to that~~ of when A takes B's greatcoat, knowing it to be B's and, intends to keep it?

The defence says NO. The defence admits that accused was in improper possession and that he disposed of the bridge, but that he did NOT in fact, steal it.

---

2 Gold referred to in charges 1 — 2 — 4.

The onus ~~probandi~~ is on the prosecution to prove that this gold was stolen from a person subject to military law.

Now, before theft can be proved one must prove ownership.

Ownership of this particular gold has not been established, beyond a reasonable doubt.

Custom ~~does~~ is law. Ericson says that to his knowledge it is NOT the custom of dentists to keep gold recovered thru' dental operations. Therefore as it is not, in fact, the custom then, has he, the dentist, the right to the gold? Did he prove that he had gold of his own on hand in the clinic?

Then there is the matter of identification, which it is admitted that lack of identification does not in fact prove lack of ownership; even so, the dentist could NOT identify the buttons, and the bits and pieces as definitely belonging to him.

I ask the court, again, to take judicial notice of the fact that an officer who through inadvertance and or carelessness leaves valuable property in a position where a subordinate or servant can be imparted to temptation is indeed violating military law.

I think we can disregard Ericson's testimony. Title, ownership not having been established, can this court find the accused guilty of stealing property of a person subject to military law?

In view of the fact that the accused is only charged ~~o~~ ~~steal~~ (state 18 4) & not with improper possession, the Defense contends that he did not in fact steal, but may have been in improper possession.

I therefore ask for an acquittal on all charges.

(~~Being~~ in

My

Defending Officer Lieut

Closing Address by Prosecutor.

Having heard all the evidence the Prosecution contend that sufficient evidence has been produced to warrant convictions on all charges as laid before the Court.

It is contended that the first witness established the fact that he is "subject to military law", that he had a gold dental bridge stolen that it was his personal property and that he recognizes the exhibit before the Court as his property.

It is submitted that the evidence of the second witness - Det.Cons. Lightfoot - was not shaken by cross-examination and that the Confession was obtained in accordance with the best traditions of the British Police and in accordance with the rules for guidance in obtaining such confessions as is outlined in M.M.L., Chap.VI, para.78 (pp.91 and 92). It is further submitted that he identified the exhibits as being the articles of gold handed to him by Mr. Hibberd of Phillips Jewellery and Pawnshop. His evidence as to the dental bridge in particular, was substantiated by the evidence of Pte. Tessler.

The evidence of Mr. Hibberd leaves, in my mind, no doubt but that the accused himself sold three of the exhibits and that the accused received to money obtained by their sale. This witness also established the fact that the articles were "sold" and were not placed in "pledge". This establishes, in my mind, the fact that the accused intended to permanently deprive the lawful owner of his goods.

The evidence of the witness - Private Barrett - was not questioned by the accused and it can therefore, I contend, be accepted as the truth and that the accused did, in fact, send this witness to sell certain articles of gold, and that the accused received the proceeds from this sale, less the amount he gave the witness as a commission for the sale.

Major Grant stated that with 15 years experience as a practicing dentist, it was his opinion that the dental bridge was, in fact, made for Private Tessler. This evidence it is contended may be taken as evidence by an expert as regards this type of evidence, that is, dentistry.

The weakest evidence for the prosecution was that of Captain Erickson, and this witness stated that he recognized the dental bridge without hesitation. He was not able to positively identify the other articles but stated that they were similar to the articles he had lost, and that they may have been the articles he did so lose. As the articles which were produced as exhibits and which it is contended were sold by the accused or on his behalf by the witness Barrett, correspond so closely to the articles lost by this witness in the past few months, it is submitted that there is sufficient "circumstantial" evidence to warrant a conviction on these three charges of stealing articles of gold the property of Captain Erickson, who stated in his evidence that he was a Captain of the Canadian Dental Corps and that he was in fact a commissioned officer of the Canadian Army Overseas.

One of the leading rules with respect to circumstantial evidence is that "The facts on which it is sought to found the inference of guilt must be visibly and evidently connected with the crime."
It is submitted that sufficient evidence has been produced to prove that the accused did in fact sell the articles or cause them to be sold and that in the case of Pte. Tessler's bridge that it was missing from a stated place, e.g., Capt.Erickson's kit. It may further be assumed from the evidence of the witness Barrett that the pieces of gold he sold for the accused, and which he recognized, were also from Capt.Erickson's kit, as Capt. Erickson stated in his evidence that the accused was his dental or chair assistant and would know where any articles placed in the kit were.

(W.J.A.Wallace) Major,
(Prosecutor)
No.2, C.A.C.R.U.

17-11-1944.

Instigation:

Reference to statement by Capt J.R. Landman.
- Accused is married
- Long service, good record.
- efficient in his job as the "average"

The accused made no attempt to "cover up his identity, when he sold these articles. he did not know they were property of person subject to mil law. ~~He obtained money~~ There is nothing despicable in his act. the raw gold scrap which was left, lying around, by a careless person and did - fact convert it to his account

Therefore ask for the most lenient possible sentence which I think is a reprimand or ~~at most~~ a reduction to the ranks. I do not think that in view of all the facts stands in danger of losing ~~is~~ his rank, that he should be sent to imprisonment or detention

Thank you very much - Sir ——

H.H. Van Lient
17 Nov 1943
H

Defending officer

MM

W. & S. Ltd. 17067 Form C 12.

JOINT POLICE FORCE.

HAMPSHIRE ~~CONSTABULARY~~.

E 42 MM

PERSON'S STATEMENT.

This Form will be used when a person desires a Police Officer to take down a statement he wishes to make.

CAUTION.

(To be read to person).

You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence.

CERTIFICATE.

I, Frederick William Albert SMITH, , having been cautioned that I am not bound to say anything, and that what I say may be given in evidence, wish to make a statement, which I have asked Det.Cons. T. LIGHTFOOT. to write down for me.

Signature F W A Smith 4/4

Date ~~xxxxxx~~ 9th November,1943. Time commenced 3 25p.m.

Since February,1943, I have been attached to 15th. Dental Corps, at Salamanca Barracks, working in the clinic. On the 23rd September,1943, I was in the clinic when I found a gold button in the drawer. I did not think it was of much value and did not belong to anyone. I took it and sold it in PHILLIPS, Shop, High Street, Aldershot, for 2/-, and gave the shop keeper my name.

I think it was on the 5th October,1943, I found gold crowns in the kit in the clinic. I took these and asked Pte. BARRETT, if he would take them down the town and sale for me. He did so and when he came back,he gave me 8/0d, or approximately that amount. I believe I gave him half crown,or three bob for selling it.

After I returned from leave, on 24th October,1943, I was short of cash and on the 2nd November, I found a gold bridge in the kit in the clinic. I took this also and sold it at PHILLIPS, for 11/3d, and again gave my name.

On the morning of the 6th November,1943, I took another gold button from the clinic which I sold to PHILLIPS, for 7/9d.

I realise the foolishness of my acts now and I am very sorry. I have always held a clean character in the Army and if it is possible I am willing to do anything in my power to clear up the matter in the easiest possible way.

This statement has been read *by me, ~~over to me at my request~~, and is correct. I have been allowed to make any corrections I wish.

F W A Smith 4/4 Signature of person making statement.

Countersigned,

T. Lightfoot - D/Sgt.

*Cross out words not applicable.

Insert at appropriate place in statement, date, time of commencement and duration of any breaks.

MM

ON ACTIVE SERVICE

CANADIAN LEGION

WAR SERVICES

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17th November 1943

This is to certify that I have known the dependant Sgt. Small J.W.A. for a period from April 1941 to January 1942 while we were both members of the Sergeants Mess, No 2 CCS.

During that time myself and the members of the Mess found him honest and trustworthy - He fulfilled his Army obligations and his contact with the Mess members left nothing to be desired - Any debts he incurred were met and discharged on the next pay day.

At one period at Dieppe N.B. it was customary to rotate the members of the Mess in the capacity of Steward - Sgt. Small, taking his turn, handled cash for the bar sales and slot taking always verified his accounts was correct - In conclusion his conduct was naturally ethical and salutary.

C5 3010 Lt. R.R. Henderson. PLEASE USE BOTH SIDES D. R. Haidman Lieut

SUMMARY OF EVIDENCE
in the case of

B-5231 Sergeant SMITH, F.W.A.
No. 15, Canadian Base Dental Company,
Canadian Dental Corps.

The Commanding Officer directs that all evidence be given on Oath.

PROSECUTION.

1st. Witness. D-124576 Private TESSLER, S., No. 15 Base Dental Company, Canadian Dental Corps, having been duly sworn, states:

"I am a regularly enlisted soldier of the Canadian Army (Active), serving Overseas. I enlisted at Westmount Barracks, Montreal, Province of Quebec, on the 23rd June 1942.
My dental bridge had been in No.2 C.A.C.R.U.Dental Clinic for repairs by Captain Erickson, Canadian Dental Corps. I asked Captain Erickson if he would complete it before he went on leave. On his agreeing to do so, on 4th November 1943 I went to look for it in his Dental Kit. It was not there, so I then looked through the Dental kits of the other Dental Officers and failed to locate it.
On 6 November 1943, in company of Detective Constable Lightfoot of the Hampshire Constabulary C.I.D., I went to a Pawnbrokers shop in Aldershot, known as "H.Phillips, Jewellers and Pawnbrokers, 17 High Street, Aldershot." I explained to the Manager what we were looking for and he produced a bridge which I recognized as being my property.
On Monday, 8 November, 1943, Major Grant of the Canadian Dental Corps, fitted the bridge Detective Constable Lightfoot and myself had seen in the Pawnshop, in my mouth, and it fitted.
I again recognized it as my property.

Questioned by Officer taking down the Summary.

Q.1. Who actually owns the bridge in question?

A.1. I do.

Q.2. When did you purchase it?

A.2. I have had it about five years.

Q.3. Who paid for it when you first got it?

A.3. I did, myself.

Q.4. Did the Canadian Government finance your purchase of this bridge in any way?

A.4. No sir.

Cross-examined by the accused.

Q.5. I did not know the bridge was your personal property when I took it, did I?

A.5. I wouldn't know. D-124576 Pte. Sidney Tessler.

The accused declines to further cross-examine this witness.
The witness withdraws.

2nd.Witness. Detective Constable T. Lightfoot of the Hampshire Joint Constabulary, having been duly sworn, states:-

I am a Detective Constable of the C.I.D.Branch of Hampshire Joint Constabulary.
At 2.40p.m. on 6th November, 1943, I received a report from Private Tessler, Canadian Dental Corps, of this case, and went with him to the shop of "H.Phillips", High Street, Aldershot, Hants.
I was shown the gold bridge (produced and marked "A"). I was also shown a large gold button (produced and marked "B") and two crowns and part of a bridge (produced and marked "C") and also a small gold button (produced and marked "D"), by the Manager, Mr.Hibberd.
At 2.30p.m. on the 9th November, 1943, I saw Sergeant Smith at Warburg Barracks and told him I was a police officer and cautioned him and said "Between 1st October and 4 November, 1943, a gold bridge valued at nine pounds was stolen from the Dental Clinic at No.2 C.A.C.B.U. I believe you are responsible for it and the person who sold it at Messrs. Phillips and Son on the 2nd November, 1943."
He replied "Yes. I don't know what made me do it."
I charged him with the offence and in reply he said "I was hard up for cash. I have had a lot or worry lately. I'll tell you all about it."
I conveyed him to Aldershot Police Station where he made the following statement after I had read the caution to him. He then signed the statement. (Produced and marked "E").

The accused declines to cross-examine this witness.

[redacted] T. Lightfoot

The witness withdraws.

1st.Witness. Re-called. Questioned by Officer taking down the Summary of Evidence.

Q.6. Can you identify your bridge from exhibits on the table?

A.6. Yes Sir. (Witness recognized Exhibit "A".).
D-124574. Pte. J Tessler

Accused declines to cross-examine the witness on his re-call.
The witness withdrews.

3rd.Witness. Mr. John T. Hibberd, having been duly sworn, states:

I am the Manager of H. Phillips, Jewellers and Pawnbrokers, 17-21 High Street, Aldershot, and reside on the premises.
On 23 September 1943 this Sergeant (recognizes the accused) brought in what I believe you call a button of gold (recognizes exhibit "B"). He told me it was bits of gold from teeth and he had melted it down, and I gave him twenty-four shillings for it. He gave the name of Sergeant F.W.A.Smith of the Canadian Army Dental Corps which name was in the paybook he produced.

On 5 October, 1943, I purchased from a soldier who gave the name of A.W.Barrett, 15th Company, Canadian Dental Corps, three pieces of gold (recognizes Exhibit "C") for which I gave him eight shillings.
On 2 November, 1943, I purchased again from Sergeant Smith, a piece of gold (recognizes Exhibit "A") for which I gave him eleven shillings and three pence.
On 6 November, 1943, I purchases a piece of gold (recognizes Exhibit "D") for seven shillings and nine pence from Sergeant Smith.
On the afternoon of 6 November, 1943, a policeman in plain clothes came into the shop accompanied by a soldier of the Canadian Dental Corps, inquiring about some gold which was missing from the Canadian Dental Corps.
I produced the gold now before you (Exhibits "A","B","C" and "D").
On 8 November, 1943, I handed the gold over to the Police.

Cross-examined by the accused.

Q.7. Did I say I had melted them down, or that they had been melted down?

A.7. You might have stated that they were pieces of gold which had been left over and had been melted down, not necessarily by yourself. It is so long ago now I have forgotten just what you did actually say.

John T. Hebbert

The accused declines to further cross-examine this witness.
The Witness withdraws.

4th Witness. A-20113 Private Barrett, A.W., No.15 Canadian Base Dental Company, Canadian Dental Corps, having been duly sworn, states:

I am attached to No.3 C.I.R.U. Dental Clinic at Aldershot, Hants.
About one or two months ago Sergeant Smith asked me if I was going down town. I said I was. He asked me to take down some pieces of gold to a Jewellers shop and he would give me a couple of shillings for my trouble.
I took it down to a Jewellers shop and asked him if he bought old gold. He said he did.
He weighed it and gave me eight shillings. I gave him my pay book to check my name, number and rank.
I signed the book for receiving eight shillings.
I brought the eight shillings back to Sergeant Smith.
He gave me two shillings and took the balance.

Questioned by Officer taking down the Summary of Evidence.

Q.8. Could you recognize the gold?

A.8. Yes. (Witness recognizes Exhibit "C" from four exhibits).

Q.9. When Sergeant Smith gave you the gold and asked you to take it to a Jewellers what did he tell you to do with it?

A.9. To sell it.

Q.10. Did you know whose gold it was?

A.10. No sir.

Q.11. Had you any idea it might be Government Property?

A.11. No sir.

Q.12. Have you ever sold any other gold of this sort?

A.12. No sir.

Q.13. Did you know Sergeant Smith well?

A.13. Yes.

Q.14. Is he in this room?

A.14. Yes. (Witness recognizes the accused). A20113 Pte A.W. Bartt

The accused declines to cross-examine this witness.
The witness withdraws.

5th.Witness. Major J.A. Grant, Canadian Dental Corps, having been duly sworn, states:
On Monday, 8 November, 1943, Mr. Lightfoot, a member of the civil police, came to our Dental Clinic in No.2 C.A.C.R.U., with a dental bridge.
I tried the bridge in Pte. Tessler's mouth and having had 15 years experience as a practicing dentist, will state that the bridge fitted Pte. Tessler's mouth and am willing to certify that the bridge was made for Pte. Tessler.

Q.15. Is Pte. Tessler a person subject to Military Law?

A.15. Yes. He is a regularly enlisted soldier in His Majesty's Forces; that is, in the Canadian Army Overseas.

Q.16. Could you recognize the dental bridge you fitted in Pte. Tessler's mouth?

A.16. Yes. (Witness recognizes Exhibit "A" by peculiar shape of the 3/4 gold crown and lack of two "tags" over which the porclain facing fits.). J.A. Grant Major

The accused declines to cross-examine this witness.
The witness withdraws.

6th.Witness. Captain R.A. Erickson, Canadian Dental Corps, having been duly sworn, states:
I had been working on a bridge of Pte. Tessler's for about a months and a half. I had made one inlay for it from some gold which was my personal property, and which I used for experimental purposes.
The inlay did not fit very well so I took the bridge out again and made him a Crown.
I had previously asked Pte. Tessler to look after the bridge himself.
On 3 or 4 November, 1943, I asked Tessler for the Bridge for a fitting. He stated he had left it in my kit, and when we examined the kit the bridge had gone. Tessler seemed quite anxious to get the bridge back, so I suggested he try the Pawnbrokers. This he did.

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Questioned by Officer taking down the Summary of Evidence.

Q.17. Has any gold been missed at any other time from the Dental Clinic at No.2, C.A.C.R.U.?

A.17. I did lose some pieces of my own gold.

Q.18. Has any other gold been missed?

A.18. No.

Q.19. Can you describe the other gold you lost?

A.19. They were bits and pieces I had in my kit for three months and longer. It was gold I had kept for a couple of years. The only parts I remember are two gold buttons, one from the casting for a ring and another the button from Tessler's Crown.

Q.20. Could you recognize any of this gold now?

A.20. I cannot say definitely.

Q.21. Can you identify any of the pieces of gold I now show you?

A.21. Witness cannot identify any of the articles in Exhibit "C" Witness stated Exhbit "D" looks like a Dental Casting, but cannot identify it.
Witness states Exhbit "A" is Tessler's Bridge.

Q.22. Is there any special reason by which you recognize this piece of gold?

A.22. I recognize it by the grooves of the cuspid crown, but would have to try it in Pte. Tessler's mouth to be certain.

Witness cannot identify Exhibit "B".

Q.23. Was the gold you lost from your kit and which you said was in 'button' form, like any of the exhibits you have seen?

A.23. Yes. Two of the buttons shown may have been the ones I lost.

Q.24. Is it a practice in Dentistry to melt odd bits of gold into 'button' form?

A.24. I do not know. I think the dealers would rather have gold in the form of scraps.

Q.25. Was the Dental Bridge you were working on for Pte.Tessler Government Property?

A.25. No.

R G Edmonson Capt

The accused declines to cross-examine this witness.
The Witness withdraws.

Question to the Accused by Officer taking down the Summary of Evidence.

Q.26. Do you wish to make any statement or to give evidence upon Oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be ~~xxxx~~ given in evidence.

A.26. No sir.

J.A.A. [illegible] Capt.

Certified that Rule of Procedure 4, (C), (D), (E) and (F) have been complied with.
Taken down by me at Aldershot, Hants., in the presence and hearing of the accused, these 10th, 11th and 12th days of November, 1943.

(W.J.A.Wallace) Major,
No.2, C.A.C.R.U.
Officer detailed to take down the Summary of Evidence.

LIST OF WITNESSES
In the case of
B-5231 Sergeant SMITH, F.W.A.
No.15, Canadian Base Dental Company,
Canadian Dental Corps.

For the Prosecution.

D-124576 Pte. TESSLER, S.	No.15 Cdn.Base Dental Co. Canadian Army, Overseas.
D/C. T. Lightfoot,	c/o Hants.Joint Police Force, Aldershot, Hants.
John T. Hibberd, Esq.	c/o H. Phillips, 17-21 High Street, Aldershot, Hants.
Captain R.A. Erickson,	No.15 Cdn.Base Dental Co., Canadian Army, Overseas.
Major J.A. Grant,	No.15 Cdn.Base Dental Co., Canadian Army, Overseas.
Pte. Barrett, A.W.	No.15 Cdn.Base Dental Co., Canadian Army, Overseas.

For the Defence.

N I L.

LIST OF EXHIBITS
in the case of
B-5231 Sergeant SMITH, F.W.A.
No.15, Canadian Base Dental Company,
Canadian Dental Corps.

"A" Gold bridge.

"B" Gold Button.

"C" Two Gold Crowns and Part of Gold Bridge.

"D" Small Gold Button.

"E" Person's Statement signed by Sgt. F.W.A. Smith.

Statement in accordance with Rule of Procedure 14(B).

I, No. B-5231, Sergeant Smith, F.W.A., Canadian Dental Corps, desire to have an officer assigned to represent me at my trial by Court Martial.
I desire the services of Lieut. BRODIE, No.I C.A.C.R.W., if he is available.

F.W.A. Smith

(F.W.A.Smith) Sergeant,
No. B.5231.

Aldershot, Hants.,
12 November, 1943.

20 Nov 43

Received from Adjutant, No. 2 C.A.C.R.U.

2 gold buttons,
3 pieces of gold,
1 Dental bridge.

Exhibits in case of Sgt. Smith, F.W.A.

(R.A. Erickson), Captain,
Canadian Dental Corps.

Received
Sgt. R.G. Fenton

MFM 6
(AFB 122)
40/PA&S/156 (3438)

No B5231 Name Smith F.W. Sqn, Battery, or Company | Corps Canadian Dental | Date of enlistment 12 Dec 39 | GC Badges | Service or Proficiency Pay |

Date of last entry in Company Conduct Sheet | N/A | No and date of last drunk | N/A | Period not reckoning towards freedom from extra fine | N/A | Sheet No 1 | Signature OC Company, etc | S.R. Wertman | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award of order dispensing with trial	By whom awarded	Remarks

CERTIFIED CORRECTLY
(W.S. NICHOLSON) CAPT.
No. 2 C.A.C.R.U.

(PTO)

M.F.B. 355
20M—11-41 (2273)
H.Q. 1772-39-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B-5231	Sgt.	SMITH, F.W.A.	No. 2 C.A.C.R.U.

1. The following is a fair and true summary of the entries in the ~~Service~~ Regimental and Squadron ~~Battery~~ ~~Conduct~~ sheets ~~or Company Conduct Sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	Nil times	Nil times
For	times	times
For	times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct~~

~~or~~

There are no entries in the conduct sheets of the accused.

~~Award, Date of Act, & Gazette Reference in respect of each case to be stated separately.~~

2. The accused has not been previously convicted

~~Previous conviction of the accused by a Court Martial or a civil court, of summary awards under Air Force Act A.F.A. 39 and particulars with that under A.A. 39 are not set in the schedule Section 47 of the Army Act and not otherwise dealt with in this statement.~~

3. The accused is not under sentence at the present time.

~~The accused at the present time is under sentence for ——— beginning on the ——— day of ———~~

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in ~~civil~~ custody, and 9 days in military custody, making a total of 9 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~enrolment~~ attestation paper is 23 yrs, 4 mons, days

6. The date of his ~~enrolment~~ attestation specified in his ~~record~~ attestation paper is 12 Dec 39

7. ~~The service which the accused is allowed reckon towards discharge or~~

8. ~~The accused is entitled to ——— service for the purpose of determining his pension, etc~~

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward ~~or is in possession of or entitled to. State any air force decoration or reward awarded.~~

10. ~~If the accused is a warrant officer: The appointment he was made a warrant officer last held Air Force the regimental rank of ———~~

11. ~~(In the case of an officer:) The accused holds in the Royal~~ Canadian Air Force ~~the rank of~~ Permanent Force ~~unit~~ ~~dated~~, and ~~the~~ regiment (or corps), ~~the rank of~~ ~~dated~~.

12. ~~The accused has served as a non-commissioned officer continuously, without reduction, to the present date:~~ The accused has served as a non-commissioned officer continuously without reduction, to the present date:--

6 Mar 40 Date of promotion.

In the rank of Corporal 2/12 years.

In the rank of Sergeant 3½ years.

In the rank of N/A years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Army Act, and of cases in which trial has been dispensed with of accused, Number Rank Unit Name of Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 17 day of Nov. 43

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

Capt & Adjt
No. 1 Con. Base Coys - R.C.A.F.

EE-43

RFN SMITH G.

COUNTER NUMBER 583691

HOUR 15,05

OPERATOR'S INITIALS E. M.

RELIEVING OPERATOR R. D.

EE-43

Correspondence to be PINNED here

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

"A."
Order convening the Court.

On Active Service, this fourth day of May, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 7 Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

C Wightman Major President

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[illegible]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable. *[illegible]

[illegible]

A.D.J.A.G.

Norr.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

Rank.		Name.	Regiment.
Major	P.J.	GILMOUR	13 Fd Regt RCA
		President.	
Rank.		Name.	Regiment.
Major	C.M.	WIGHTMAN	1 C Scot R
		Members.	
Rank.		Name.	Regiment.
Captain	J.L.	MUIRHEAD	R.C.A.P.C.
Lieutenant	H.L.	THOMPSON	Regina Rif
Waiting Member Lieutenant	D.R.	RAMSAY	Regina Rif

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (H.W. FOSTER) Brigadier
Commanding 7 CANADIAN INFANTRY BRIGADE
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
L74443 Rfn SMITH, George Regina Rif	First Charge: AA Sec 18(2)	not guilty	Not guilty	Finding and sentence confirmed. Shyllebeare Lt.-Col.
	Second Charge: AA Sec 40	not guilty	Guilty.	
	(See charge sheet attached)		To forfeit all ordinary pay for a period of 90 days. 5 May 1943	

C Wightman Major
President
J H Gibson Maj
J.A.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?" No.
Answer (to be recorded on a separate sheet if necessary):—

(Signed) H.W. Foster (Signed) C. Wightman
(H.W. FOSTER) Brigadier, (C.M. WIGHTMAN) Major
Commanding 7 Cdn Inf Bde. 1.C. Scot.R.
Convening Officer (e) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 5th day of May 43, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 5th day of May 1943.

C Wightman Maj
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19~~

C W
President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

Signed this 6 day of May 1943

Shyllebeare, Lt.-Col.
Confirming Officer. A/
7 CDN. INF. BDE.

Promulgated and extracts taken in the case of L74443 Rfn Smith, G. Regina Rif.

(a) (Dated) 7 May 43 (Signed) J H Gibson, Lt.-Col.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused L74443 George Smith, 1st Bn. The Regina Rifle Regiment, a soldier of the Canadian Army placed on active service, is charged with:

FIRST CHARGE
AA Sec 18(2)

WILFULLY INJURING HIMSELF WITH INTENT THEREBY TO RENDER HIMSELF UNFIT FOR SERVICE,
in that he
at approximately 2115 hours on the 19th day of December, 1942, in his quarters in Steyning, Sussex, by discharging his rifle, wilfully injured himself by shooting his left foot, with intent thereby to render himself unfit for service.

SECOND CHARGE
AA Sec 40
Alternative Charge

NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,
in that he
at approximately 2115 hours on the 19th day of December 1942, while in his quarters at Steyning, Sussex, did so negligently handle his rifle as to cause it to be discharged and thereby injured his left foot and rendered himself temporarily unfit for service.

Remanded for trial by Field General Court Martial this 21st day of April, 1943.

(W. Kennedy), Major,
A/O.C., Regina Rif.

To be tried by Field General Court Martial.

(H. W. Foster), Brigadier,
Comd., 7 Cdn. Inf. Bde.

Dated In The Field

This 4 day May of 43.

"B"

C Wightman Major
Regiment

MEDICAL CERTIFICATE

I hereby certify that I have this date examined L74443 Rfn. Smith, G., 1st Bn. The Regina Rifle Regiment and he is fit to undergo trial by Field General Court Martial.

Dated in the field this 5th day of May, 1943.

Capt.,
M.O., Regina Rif.

6 Witnesses present

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a General Court-Martial held at on the field

on the fifth day of May 19 43 by order of

B. A. Foster Brigadier

Commanding 1 Canadian Infantry Brigade

dated the fifth day of May 19 43

President.

Major C. M. Eighteen
1 C Bat R.

Members.

Capt J. L. Marshall
R.A.P.C.

Lieut. W. L. Thompson
1 Regina Rif.

Major T. J. Gilmour K.Q.3 Can Div

, Judge Advocate.

Trial of* L 7424 3 Pte Lance C
Regina Rifle Regt R.W.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that ~~is not available to serve owing to~~

~~, waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lt. W. D. Gray Regina Rifles

~~Counsel~~ or defending officer† Capt J. C. Munro Reg Rifles

At 1015 o'clock the Trial commences.

The order convening the Court is read, and is marked 'A', signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

W3.W13439/28. 25,000 pds. 8/43 K. & E., Ltd. G467/53. Forms A 9/2b

R.W.

B

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn.

Lieut D. R. Ramsey Regina Rifles

Charge-Sheet.

Instruction. *If the accused has elected to be tried under Army Act, sec. 16 (8), the fact should be here recorded.*

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

not guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

not guilty *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

no third charge *Answer.*

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

no fourth charge *Answer.*

~~The accused having pleaded Guilty to charge, the provisions of Rule of Procedure 5 (3) are here complied with.~~

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A))

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No

RW. 71 ~~The prosecutor makes an opening address [hands in a written address which is read, marked , signed by the President, and attached to the proceedings.]~~

The prosecutor proceeds to call witnesses.

First witness for prosecution. Capt. J. G. Ramsay. 7th Cdn Field Dressing station.

being duly sworn, is examined by the prosecutor.

I was M. O. of the Regina Rifles. about 2100 hrs on or about 19th of Dec 42 at the R.A.P. of the unit I examined the accused (identifying accused). His left foot was covered with first field dressings saturated with blood. I removed the dressings & found a gunshot wound of the ankle & foot. The wound of entrance was about 2 inches above the ankle on the inside of leg & the wound of exit was along the margin of the foot about opposite the instep on the outside of foot. I redressed the wound & had him evacuated to No 1 Field Hospital.

Cross Exam. I should say he was partly conscious when I examined him. He was suffering from some shock. I did not examine him since.

To Court. In my opinion from what I saw on my examination the wound would permanently (2) disable him to some extent. R.P. 83(b) complied with

C2

2nd Witness for Pros

L27993 Rfn Joseph Polachek 1 Bn Regina Rifles duly sworn states:-

I know accused. I was in Barracks the night of 19 Dec '42. I heard a rifle shot. I went down stairs & met Rfn McDonald coming into the room where the deceased was. I saw the accused lying on the floor with his shoulders on another mans bed. It was approx 9.15 in the evening. His rifle was lying on his left side with some of his cleaning equipment. He had a bullet wound through his left temple. I cut away the stove & took the belt off McDonald & then put field dressing.

Cross Examination. A pull through & oily rag was by the rifle. It looked as if he had been cleaning the rifle.

Re-Exam. It was a mat & bed but a palliasse (Cross) It was a mat & bed but a palliasse

To the Court. Rfn McDonald was at the door of the room when I arrived. When I arrived & went in the room there was no one else there but the accused, Rfn McDonald & I. About 50 to 60 people including the accused occupied that room. The accused was not talking. He was in no condition to talk. Some other boys came in after McDonald & I arrived.

R.P. 83(1) complied with.

3rd Witness
for Pros. K-85455 Rfm. Walter David Lawrence - Regina Rifles duly sworn:

I know Smith the accused. I was in Bks upstairs with Rfm Michalenko & at about 2115 hours I heard a shot. I looked thru the top rooms & found nothing. I went down stairs & heard some one groaning. I went into a room & found rifleman Smith. He was laying beside Rifm Biggars bed. I asked Smith what was the matter & he replied he was shot in the foot. I called for assistance and Rifm Michalenko came into the room also Rifm Polachek. I told them to look after Smith while I went for the doctor. I went to the R.A.P. & came back with Rifm Haas. When I got back Smiths foot was bandaged up. A Cpl from the R.A.P. arrived & took charge. When I asked Smith what was the matter the exact words of his reply were "My foot".

No X was examined by me.

To Court - When I went in the room Smith was there also. He was on floor with his back resting against Rifm Biggars bed Quarters & he was holding his head. I saw the rifle laying at his left side. When Smith said "My foot" I looked & saw blood coming out through his sock in the ankle of the left boot. I saw a bullet through - I did not examine the rifle

R.P. 831 / Complies cross.

L. 4

4th Pros Witness. L. 27945 Rfn Michalenko P.N. Regina Rifles duly sworn:-

I know Smith the accused. I was in my room with Lawrence. I heard a shot. Lawrence went down + in a few minutes called me. I went into Smiths room. Smith was on the floor - Polochek was trying to remove his shoe. Lawrence went for the M.O. I could see that his foot had been shot. I saw the rifle the full length + civil bootle on the left of Smith. I did not hear Smith say anything.

No Cross Examination

To Court - I do not remember examining the rifle - the medical Orderly picked the rifle up.

R.P. 83 (H) supplies exhibit

5th Witness for Pros. L. 74428 Rfn McDonald D.N. Regina Rifles duly sworn states

I know Smith the accused. I heard the shot. I heard Lawrence yell for help. We ran in the room + saw Smith lying on the floor. Polochek removed the shoe + I got out a first field dressing + helped bandage Smiths foot. It was his left foot - it had been shot.

No Cross Exam.

To the Court. I did not examine the rifle - I saw it laying there.

R.P. 83 (H) supplies exhibit

C5

6. Pros Witness. L 27455 Rfn. Haas N.L. Reg. Rifs duly sworn states.

I am a medical orderly. On the night of Dec 19th 42 I saw Smith the accused. I was called to attend him & found him suffering from a gun shot wound in his left foot. A first field dressing had been applied. I got him ready for removal to R.A.P. I picked up his rifle & examined it & found one spent cartridge in the firing chamber. I left it there & took the rifle to R.A.P. There were no other rounds in the magazine nor on the floor.

No cross exam.

To Court - It was an old type Lee Enfield. The rifle was on the floor on Smith's left side. lying on its working handle & bolt. A pull through was lying on the floor beside the rifle

R.P. 83 (b) complies with

7th Pros. Witness. L 27521 A/Cpl A.H. Parker Reg. Rifs duly sworn states.

I know accused. I was Medical Orderly - I was called to attend Smith. I found him on a bed in my room. His foot was bandaged in good shape.

No cross Examination

R.P. 83 (b) complies with

C6

7th Witness L27677 Cpl Allen N.W.
for Pros. 1 Bn Roy. Ruffles.

not examined by Prosecutor.
Cross Examined. I have been an N.C.O.
since about May 1942. Witness is
shown a ~~MK II~~ No 4 Lee Enfield
rifle MK I.) When a round is forced
into the breach by closing the bolt
the round will not explode unless
the trigger is pulled so as to
release the striker. Smart
served in my section about 2 weeks.
He was new to the Coy. He served
well & I considered him a good
soldier. He never caused any trouble.
re-Re-examination.
To the Court. When emptying my rifle I remove
the magazine & take the rounds out.
It is a faster way. If a man ~~loaded~~
his rifle with 5 or 10 rounds - closed
his breach he would have one
~~cartridge~~ round in the chamber & ~~more~~ in
the ~~Magazine~~ magazine. This round could be
spotted. I have given instructions
frequently on the handling of a rifle
& cleaning a rifle the insts are
to first remove the magazine & bolt
& rifle sling - after clearing your rifle
magazine & bolt. The first safety precaution
is to assume that there are no rounds
in the rifle. The working mechanism is
in principle the same as the old rifle.
R.P. 83 (4 combined sets)

D

The prosecution is closed.

The accused is informed of his rights under RP 40.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. Yes.

Question. Do you intend to call any other witness in your defence?

Answer. No.

Question. ~~Is he a witness as to character only? Answer.~~

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

~~The evidence of the accused (and of the witnesses for the defence~~ including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says:†

~~[hands in a written address which is read, marked signed by the President and attached to the proceedings.]~~

1st Defence Witness: The accused L 74443 Pte George Smith - Reg. Rifles duly sworn states I am 28 yrs old - married - no children - I have been in the army 1½ year + in England since July 1942. My home is at Saskatoon Sask. I joined this unit in the field in December 1942

Instruction.

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, see Instructions to the Court above.)

D2

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

I was admitted to hospital 19 Dec 42 suffering from a bullet wound in left ankle & foot. I was discharged from 1st Gen Hospital about 15th of March to convalescent home & rejoined this unit about 23 April 43.

My ankle is stiff & I have a lot of pain in my ankle when I walk & it keeps me awake at nights - I am not able to march - I cannot walk very good - I limp. I was sitting on a folded palliasse on the floor cleaning my rifle after I had finished cleaning my rifle I was going to try to fix the magazine as I had always had a lot of trouble with the magazine when firing. When I pulled the bolt back to discharge the spent round the other rounds in the magazine would jump up & out of the magazine & cause a jam. ~~when~~ so that when I pushed the bolt ahead to push a round into the chamber it would cause a jam & the round would not go in the breach, so I took the magazine off & bent the lips on the top of the magazine down & in a little - then I put the magazine back on the rifle and placed a round in the magazine. I was going to push the round down under the bolt - I was going to slam the bolt

bolt closed and pull the bolt back quick to find out if the magazine was fixed. I just slammed the bolt to and the round fired. The round went through my left foot. I don't remember if I pulled the trigger the same time I slammed the bolt home. I did not intend to pull the trigger. I did not intend the round to explode.

No Sir, I did not intend to wound myself. I have had a education.

Cross Examination—

I cleaned my rifle prior to firing the magazine. I took the bolt out of the rifle. I know the should be a certain safety angle on my rifle. I was holding the rifle that way when I was firing it. I did not know any safety angle it might in question. I put 10 rounds in the magazine when I charge my rifle. I figured one round was all I needed to test the rifle. I did not care to waste too many rounds I used.

Re Exam: The room we took in the room I occupied. It was a two story home, I may have been on the second floor and there were soldiers on the floor above me. I had my rifle from July 1942. I did not see an armor shoot at I was at the range 40 or 50 times. The magazine gave me trouble all that time.

I did not report this to any officer or N.C.O.

The round gave trouble by the round flying up from the magazine.

I had the round from 3 C.A.R.A. and I had not been issued any since of 6.10.98. Two or three days before leaving the holding I had a kit inspection I found the round after the kit inspection.

I did not notice anyone else in the room I had fun at with my rifle the previous week or we were doing rifle training and slept all day.

R P 83 B has been complied with.

The prosecutor makes a final address summing up the evidence & contends that in the absence of carelessness & negligence the accident would not have happened.

The defending officer makes a closing address.

The Judge Advocate sums up.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused is not guilty of the first charge & is guilty of the 2nd charge

~~The Court is sworn~~

H Robinson Maj A

Proceedings on Conviction before Sentence.

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Lieut W D Grayson is duly sworn.

Evidence of character, &c.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Cert copy of 7th Conduct sheet & statement of character & service

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked G & H, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

Answer. Yes

Cross-examined by the accused. No

[Instruction.—If by reason of the inquiry of the Court in pursuance of the sentence or in consequence of the evidence of character, the finding of any Court requires alteration or additional punishment, or any addition to that to be awarded, the Court, the prosecutor, and the witnesses, by the direction of the Court, the accused, and the Court must reassemble and the matters and grounds of that additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.* No

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused L 74443 Rfn. Smith George to forfeit all ordinary pay for a period of 90 days. Sentence.

5 May 1943

C Wightman major
President

No. L74443 Name SMITH, C. Sqn., Battty., or Company "A" Co Corps Regina Rif. Date of enlistment 30 Jan 42 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra line | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Unit of Drunkenness	Offence	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
No entries - Provisional Conduct Sheet									

Army Form B. 122.

A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

NUMBER	RANK	NAME	REGIMENT (or as the case may be)
L-74443	Rfn	Smith, G.	1st Bn. The Regina Rifle Regiment

Note.-At a trial by field general court martial this summary may be compiled fro the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

N.B. See p arn. 677, K.R., 1940
The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, a nd to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.-If the charge is for drunkenness the entries for drunkenness must be stated separtely and dated.

	WITHIN LAST 12 MONTHS	SINCE ENLISTMENT
FOR	Nil TIMES	Nil TIMES
FOR	TIMES	TIMES
FOR	TIMES	TIMES
FOR	TIMES	TIMES
FOR	TIMES	TIMES

Number of instances of gallantry or distinguished conduct,

2. The accused has not been previously convicted, or

3. The accused is not under sentence at the present time or

4. The accused has been in confinement awaiting trial on the present charges,

for _____ days, total of _____ days, of which _____ days were spent in hospital.

5. The present age of the accused according to his attestation paper is 28 years

6. The date of his attestation specified in his ~~xxxxxxxxxxxxxxxxxx~~ attestation paper is 30 Jan ~~43~~ 42

7. The service which the accused is allowed to reckon towards discharged or transfer to the reserve is 1 year, 2 months, 23 days

8. ~~The accused is entitled to deferred pay or gratuity in respect of _____ service.~~

9. ~~The accused is entitled to reckon _____ service for the purpose of determining his gratuity, etc.~~

10. The accused is in possession of, or entitled to, no military decoration or military award.

11. The accused has been in open arrest since 20th April ~~March~~ 1943.

12

"H"

SCHEDULE OF CONVICTIONS BY A COURT MARTIAL OR CIVIL COURT, OF SUMMARY AWARDS UNDER SECTION 47 OF THE ARMY ACT AND OF CASES IN WHICH TRIAL HAS BEEN DISPENSED WITH OF ACCUSED.

NO.....RANK.....NAME.....of.....REGIMENT (or as the case may be).

(INSTRUCTION--A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under AA 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 22 day of April 1947

[signature]

The accused has served, as a non-commissioned officer continuously, without reduction, from the present date:

DATE OF PROMOTION

IN THE RANK OF ..... years, ...

IN THE RANK OF ..... years, ...

IN THE RANK OF ..... years, ...

(Instructions.--If any matter in any of the above paragraphs is stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such source as are available and the paragraphs amended accordingly.)

79.L.

Pte SMITH. G.

O. H. M. S.

M. F. B. 270

Correspondence to be PINNED here.

79C.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Eleventh day of July, 19 42.

Whereas it appears to me, the undersigned, an officer in Command of 2nd Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[I am unable to appoint :—

*(1. Three Officers to form the Court.)

*(2. A Field Officer as President.)

for the following reasons, namely :—]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

* Omit if inapplicable.

PROCEEDINGS REVIEWED.

19 Aug 42.

President.

Rank.	Name.	Regiment.
Major	R.P. Clark	PPCLI

Members.

Rank.	Name.	Regiment.
Lieut	J.L. Madore	Edmn R
Lieut	J.T.W. Grass	Edmn R
(W) Lieut	M.E. Robertson	PPCLI

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

*Signed [J C Vokes] Brig
2 Cdn Inf Bde
Commanding Convening Officer.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
K.53653 Private SMITH, G. Seaforth of C.	1st Charge Sec 41 Army Act Committing a Civil Offence, that is to say, Stealing.	Not Guilty	Guilty of the charge with the exception that he did not steal £30-0-0 of the £40-00 mentioned in the said charge. Six Month Detention Signed in the Field this 18th day July 1942 H W Wemyss Lt Col A D J & 1st Lieut Judge Advocate R P Clark Maj Pres	I confirm the finding of the Court but reduce Sentence to 120 days det Lieut

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— No, no.

(*Signed*) (C Vokes) Brig
Commanding 2 Cdn Inf Bde

(*Signed*) R P Clark Maj
H W Wemyss Lt Col
A D J & 1st Lieut
Judge Advocate
Convening Officer (*e*) *President*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Route and Charge Sheets (if necessary) to be PINNED here.

B.

I certify that the above Court assembled on the 18th day of July 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule. Certificate of President as to proceedings.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) Judge Advocate
*(4. ~~The officers under instruction~~) Shorthand Writer

were duly sworn.

* Omit if not applicable.

Signed this 18 day of July 1942

J. H. Mangle Capt
A.D.J.A. 1st Div
Judge Advocate

H. W. Chamberlain
President of the Court Martial.

C.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with. Certificate in case of death sentences.

* See footnote (b) on page 762 A.M.L. 1929.

Signed this day of 19

President of the Court Martial.

D.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences. Confirmatory

~~*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~ LW

To be omitted in penal ...itude, im...onment or ...intion having been awarded, the ...firming ...icer either has ...rity to ...prison ...n ... of ... such ...rity, ...nerals ...tence.

Signed this 31st day of July 1942

W. H. Stokes Brigadier,
Comdg. 2 Cdn. Inf. Bde.
Confirming Officer.

Promulgated and extracts taken in the case of 1553653 Gnr. Smith, E.W.G.

(a) (Dated) 1 Aug 42. (Signed) J.D. Perrin Maj.

Promulgated and extracts taken in the case of

(Dated) AUG 5 1942 (Signed) By D.W. McLean Capt for B. Vokes, Brigadier, Comdg. 2 Cdn. Inf. Bde.

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

Exhibit "J"

Medical Report

18 July 42

I Certify that I have examined K 53653 Pte. Smith G. of the Seaforth Highlanders of Canada and find him Fit to undergo trial by Court Martial.

Signed T.L. Torrance Capt. M.O. S.H. of C.

CHARGE SHEET

The accused, No. K53655 Pte. Smith, G., The Seaforth Highlanders of Canada, a soldier in the Canadian Army (Overseas) is charged with, While on Active Service,

COMMITTING A CIVIL OFFENCE,
THAT IS TO SAY, STEALING,

First Charge
Sec. 41
Army Act.

in that he, in the field, on 3 July, 1942, stole the sum of forty pounds (£40-0-0) in money, the property of Miss Elizabeth Smith Reys, of St. George's Nursing Home, Aurstpierpoint, Sussex.

Lt.-Col.
J.H.S. Tait
O.C. THE SEAFORTH HIGHLANDERS OF CANADA.

To be tried by F.G.C.M.

Brigadier,
Comdg 2 Can. Inf. Bde

18 JULY

K.53653 Pte. Smith, G., Seaforth of C

Lieut. F.C. Hall, Seaforth of C

Lieut. E.D. Fulton, Seaforth of C

Nil

Medical Certificate produced and marked "I".

No.

Very briefly the evidence which will be called will not be called in chronoligical order becausseveral witnesses have to return to duty. It will be shown that the accused was at a certain inn where he met the complainant Miss Heys, that he saw in Miss Heys purses large sum of money, that the accused asked that he be invited up to the house for a meal and returned on their invitation for this purpose. Arriving there the purse in question was left on a table. The accused displayed considerable interest in the safety of this purse and made several remarks respecting it and urged that the proper precautions should be taken. The two persons concerned, the owner and her nurse disappeared and came back. The accused then left without having gone further. He was seen a few minutes later in an inn where he produced two £5 notes. On being questioned about the notes by a police constable he stated that he had been given these notes by the nurse. Evidence will be given that he bought considerable liquor and went to London where he was seen throwing money around and returned when the money was spent.

1st witness for the prosecution

Miss Elizabeth Smith Heys, Matron, St. George's Nursing Home, Hurstpierpoint having been duly sworn, is examined by the prosecutor.

Q. You remember the evening of 3 Jul 42? Where did you go?
A. The Matsfield Arms, Clayton.

Q. About what time?
A. About 7.30 p.m.

Q. Who was with you?
A. Nurse Stocks.

Q. Was the accused there when you arrived?
A. No.

Q. Did you later see him there?
A. He came in about half an hour later.

Q. What happened then?
A. Nurse Stocks and myself went in and there was no one there. Someone we knew came in and we called this person over and bought him a drink. Following that Smith walked in and stood on the right hand side.

Q. You were facing the bar and Nurse Stocks on the right?
A. Yes, this other man stood on my left and then Smith stood on Nurse's right.

Q. What happened then?
A. I paid for two rounds of drinks out of the money in my pocket and I had no occasion to go into my purse. Then Nurse decided she would pay for some and then found she only had 6d short and asked me to lend her 6d. I gave her my bag and said "Don't change a 10, change a 5".

Q. How much money was in your bag?
A. £65 in notes.

Q. How was it made up?
A. Three £10 notes and seven £5s.

Q. How was it in your purse?
A. Folded in four in the front of the bag.

Q. You handed her the purse and then what happened?
A. She took out one £5 note and gave me back £4 and some change. She put the rest of the bills back in after she took the £5 out.

Q. Did you see her do that?
A. Yes.

Q. What did she do with the purse?
A. Gave it to me and I put it in front of myself on the bar.

Q. What happened about 9.20 p.m.?
A. I said it was getting late and we had some work to do. Smith asked if he could get a meal and I told him to get into the car. He got in.

Q. Where was the handbag in the car?
A. In the car pocket in the front.

Q. What happened when you got home?
A. I put my purse on a chair and went downstairs to get changed. Smith called out "Bette". Both of our names are Bette and I didn't know who he meant, but I went down to get changed.

Q. When did you see him again?
A. When I came back up changed.

Q. Was he there then?
A. Yes, he said he was going.

Q. What did he say?
A. He said he had better be going and that I was getting busy.

Q. Did he say anything about your purse?
A. He said it was in the chair.

Q. He said he was going?
A. Yes, and went.

Q. Were you in the hall all the time from the time you came up until he left?
A. He left when I came up.

Q. Prior to Nurse Stocks ordering these drinks and finding she didn't have sufficient money, had you opened your purse?
A. No, I had enough loose money in my pocket and I had used that. Had I had more I would have given her that instead of my bag.

Q. After Smith went what did you do?
A. After that the night nurse told me about a patient and I had

Q. Were the Nurse and Smith whispering?
A. I think it was because Smith wanted to take her out.

Q. When he asked you about supper you said yes?
A. Certainly.

Q. Did you think it was improper that they should be whispering?
A. I thought it was rude.

Q. Yet you were willing that Nurse Stocks should look after him?
A. We wouldn't have supper with him, the maids would look after him.

Q. You said you told Nurse Stocks?
A. She would have told the maid.

Q. Do you frequently quarrel?
A. We don't.

Q. Are you sure the only thing which made you mad was her whispering to Smith?
A. There was no other reason or I wouldn't have come out with her.

Q. Had you had reason to be displeased with her shortly before this?
A. No.

The Prosecutor requests that the Defence indicate the reason for this trend of questioning. The Defence replies that he is trying to show there was a violent disagreement between the two women and that the Nurse chose to get even by taking some money from the purse of Miss Heys.

Q. You hadn't had any serious disagreement with her? Then please explain why you phoned our duty officer at 0430 hrs 2 Jul 42 in an extremely irate state?
A. Nurse Stocks is employed by me. I know her Mother very well and am responsible for her. On that night Nurse Stocks was still out. I phoned to find out where she was as she was with an officer of the Seaforths. I think I had reason to do that and when she came in told her she must keep better hours or leave the Nursing Home. That is my business.

Q. Were you annoyed with her?
A. Obviously.

Q. You did have a disagreement with her?
A. There was no disagreement.

Q. Did you make any reference to this occasion on the night in question?
A. I don't think so.

Q. How did you reprimand her?
A. I told her it mustn't happen again. I can't have my staff out all night.

Q. What did she say?
A. That it wouldn't happen again.

Question by the Judge Advocate

Q. Was the accused present?
A. No.

Defence continues

Q. You said you had large sums of money in your purse. You also said you had a considerable amount in your pocket. I would like you to consider how it is that you can recollect so exactly the sums you had in your possession?
A. I don't usually have bank notes. Patients pay me in £1 notes. I prefer cheques. The cash money I allow to accumulate until Saturday when I bank.

Q. You don't like having notes in large denominations?
A. I said I don't like taking £1 notes for fees. The £65 I

Q. Did you later see him there?
A. He came in about half an hour later.

Q. What happened then?
A. Nurse Stocks and myself went in and there was no one there. Someone we knew came in and we called this person over and bought him a drink. Following that Smith walked in and stood on the right hand side.

Q. You were facing the bar and Nurse Stocks on the right?
A. Yes, this other man stood on my left and then Smith stood on Nurse's right.

Q. What happened then?
A. I paid for two rounds of drinks out of the money in my pocket and I had no occasion to go into my purse. Then Nurse decided she would pay for some and then found she only had 6d short and asked me to lend her 6d. I gave her my bag and said "Don't change a 10, change a 5".

Q. How much money was in your bag?
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Q. How was it made up?
A. Three £10 notes and seven £5s.

Q. How was it in your purse?
A. Folded in four in the front of the bag.

Q. You handed her the purse and then what happened?
A. She took out one £5 note and gave me back £4 and some change. She put the rest of the bills back in after she took the £5 out.

Q. Did you see her do that?
A. Yes.

Q. What did she do with the purse?
A. Gave it to me and I put it in front of myself on the bar.

Q. What happened about 9.20 p.m.?
A. I said it was getting late and we had some work to do. Smith asked if he could get a meal and I told him to get into the car. He got in.

Q. Where was the handbag in the car?
A. In the car pocket in the front.

Q. What happened when you got home?
A. I put my purse on a chair and went downstairs to get changed. Smith called out "Bette". Both of our names are Bette and I didn't know who he meant, but I went down to get changed.

Q. When did you see him again?
A. When I came back up changed.

Q. Was he there then?
A. Yes, he said he was going.

Q. What did he say?
A. He said he had better be going and that I was getting busy.

Q. Did he say anything about your purse?
A. He said it was in the chair.

Q. He said he was going?
A. Yes, and went.

Q. Were you in the hall all the time from the time you came up until he left?
A. He left when I came up.

Q. Prior to Nurse Stocks ordering these drinks and finding she didn't have sufficient money, had you opened your purse?
A. No, I had enough loose money in my pocket and I had used that. Had I had more I would have given her that instead of my bag.

Q. After Smith went what did you do?
A. After that the night nurse told me about a patient and I had

to go along. We both sat up all night in the dining room as we use it for an office as well. The handbag did not leave the table and neither of us could have touched it as we were both present. It was not opened until the next morning. Next morning Nurse Stocks wanted £5 for a new dress and I told her to take it from the bag. She got my bag and I found there were four £5 notes left out of the six.

Q. What condition were they?
A. Just pushed in crumpled up.

Q. How much?
A. Four £5 notes.

Question by the Court

Q. How much was missing?
A. £40.

Q. There was originally £65. £5 was taken out at the Matsfield Arms to pay for drinks?
A. Yes.

Cross Examination by the Defence

Q. Did you frequently have large sums of money on your person?
A. Yes.

Q. Did you take any great care that the fact was not known?
A. No one knows of that other than Nurse Stocks and I trust her not to steal.

Q. Did you attend the dog races?
A. I think that is my business.

Q. I have asked you a question.

The Prosecution objects on the grounds that this question has no bearing on the case. The Judge Advocate requests that the witness answer the question.

A. I have attended the dog races.

Q. Did you win money?
A. I win more than I lose.

Q. How much money did you have in your pocket on the night in question?
A. I should say about 16/- in silver.

Q. I am referring to the notes in your pocket?
A. About twenty two £1 notes.

Q. While you were in the Matsfield Arms how much did you have to drink?
A. I paid for two and Nurse paid for one.

Q. During the whole of the time?
A. Yes.

Q. How long were you there?
A. From about 7.30 until shortly after nine.

Q. Did you ask Smith to come home?
A. He asked could he come home for a meal and I said certainly.

Q. Had you had soldiers in your home before?
A. On about three occasions.

Q. You said you were going to be busy that night?
A. I had to be busy.

Q. Did you and Miss Stocks have a quarrel?
A. No. We had a word because Smith was talking to her and I said why talk to a person like that and we did get annoyed and have a few words.

Q. Were the Nurse and Smith whispering?
A. I think it was because Smith wanted to take her out.

Q. When he asked you about supper you said yes?
A. Certainly.

Q. Did you think it was improper that they should be whispering?
A. I thought it was rude.

Q. Yet you were willing that Nurse Stocks should look after him?
A. We wouldn't have supper with him, the maids would look after him.

Q. You said you told Nurse Stocks?
A. She would have told the maid.

Q. Do you frequently quarrel?
A. We don't.

Q. Are you sure the only thing which made you mad was her whispering to Smith?
A. There was no other reason or I wouldn't have come out with her.

Q. Had you had reason to be displeased with her shortly before this?
A. No.

The Prosecutor requests that the Defence indicate the reason for this trend of questioning. The Defence replies that he is trying to show there was a violent disagreement between the two women and that the Nurse chose to get even by taking some money from the purse of Miss Heys.

Q. You hadn't had any serious disagreement with her? Then please explain why you phoned our duty officer at 0430 hrs 2 Jul 42 in an extremely irate state?
A. Nurse Stocks is employed by me. I know her Mother very well and am responsible for her. On that night Nurse Stocks was still out. I phoned to find out where she was as she was with an officer of the Seaforths. I think I had reason to do that and when she came in told her she must keep better hours or leave the Nursing Home. That is my business.

Q. Were you annoyed with her?
A. Obviously.

Q. You did have a disagreement with her?
A. There was no disagreement.

Q. Did you make any reference to this occasion on the night in question?
A. I don't think so.

Q. How did you reprimend her?
A. I told her it mustn't happen again. I can't have my staff out all night.

Q. What did she say?
A. That it wouldn't happen again.

Question by the Judge Advocate

Q. Was the accused present?
A. No.

Defence continues

Q. You said you had large sums of money in your purse. You also said you had a considerable amount in your pocket. I would like you to consider how it is that you can recollect so exactly the sums you had in your possession?
A. I don't usually have bank notes. Patients pay me in £1 notes. I prefer cheques. The cash money I allow to accumulate until Saturday when I bank.

Q. You don't like having notes in large denominations?
A. I said I don't like taking £1 notes for fees. The £65 I

had had for ages.

Q. How long?
A. I can't exactly say, but for some weeks.

Q. Did you look at them frequently?
A. No.

Q. Did you count them every time you opened your bag?
A. No, they were counted that evening.

Q. Why?
A. I made sure I had the seven 5s and three 10s.

Q. It just happened you counted it that evening?
A. Yes, I was just going out with my handbag.

Q. Are you in the habit of leaving it in the hall?
A. No.

Cross-Examination by the Court

Q. When Smith went home with you where did he sit?
A. In the dining room.

Q. Was he in a position to have access to the purse?
A. No.

Q. Did you make any record of the serial numbers on the bills?
A. No.

Q. Can you recall who gave you those bills?
A. Yes.

Q. Had they made any record of the numbers?
A. No.

Q. At what time did you and Smith arrive at the Nursing Home?
A. I think about 9.20 p.m.

Q. At what time did he leave the Home?
A. He couldn't have been there more than a quarter of an hour.

The Court adjourns from 1015 hrs to 1025 hrs.

2nd witness for the Prosecution

Miss Betty Stocks, Nurse, St. George's Nursing Home, Hurstpierpoint having been duly sworn, is examined by the prosecutor.

Q. Are you employed by Miss Hayes?
A. Yes.

Q. Do you remember the night of 3 Jul 42?
A. Yes.

Q. Were you together?
A. Yes.

Q. Where did you go?
A. To the Matsfield Arms, Clayton.

Q. About what time did you get there?
A. About 7.30 or 8.00.

Q. Was Smith there?
A. No, we went into the Saloon and no one was there.

Q. Did Smith come in?
A. Yes.

Q. What time?
A. About 8.15 or 8.20.

Q. What happened then?
A. Matron had been buying drinks and I said I would buy the next one.

Smith came in and then what did he do first of all?
He came up to the bar and spoke to Matron. Matron then

introduced me to him.

Q. Then you undertook to buy drinks?
A. Yes.

Q. Where was Smith standing?
A. On my right.

Q. Then what happened?
A. I asked them what they would have. They told me and I ordered them. When I came to pay I was 6d short so I said to Matron have you any money. She gave me her bag and said to take some from it, but to take a £5 not a £10. I took a wad out.

Q. Can you describe it?
A. I know it was folded in four and quite a sized wad.

Q. What was on the outside?
A. I don't know, I just took one from the bag.

Q. Then what did you do?
A. I gave it to the landlord and he handed the change over the counter and I gave it to Matron and I put the other notes in the bag and gave it back.

Q. How were they when you put them back?
A. Quite tidily. There is a small pocket in the bag and these notes were folded in four and I put them straight in the bag. There was nothing else in that pocket.

Q. Then what did you do?
A. I gave the purse back to Matron and she put it on the counter.

Q. Do you recall Smith saying anything about a meal?
A. Smith said he would like to go back and have something to eat.

Q. What did Miss Heys say?
A. I know she was quite willing.

Q. What was Miss Heys position during this time?
A. She was standing on my left and the other person was on her left.

Q. Where was the purse?
A. It was on the counter in front of her left arm.

Q. Did you see anyone touch that purse after you gave it to Miss Heys?
A. No.

Q. Did you leave the bar before you left for the evening?
A. No.

Q. Was the purse in view all the time?
A. Yes.

Q. What time did you return home?
A. We got back about 9.20.

Q. What happened after you got back?
A. Matron was on duty and she said she was going to change and we both left the hall. Matron went downstairs and I went upstairs and as I got to the top of the stairs Smith called "Bette" and I didn't know who he meant.

Q. How far up the stairs were you?
A. I was on the landing at the top.

Q. Continue?
A. I didn't know who he meant. I came back downstairs and Smith had walked to the doorway. He said that he better be going as Matron was busy and he said don't forget Matron's purse is there and I am going and I want you to see it is still there. I said "Don't worry" and he went down the steps.

Q. He went down the steps leading to the front door?
A. Yes, and then down the driveway.

Q. He went right out of the house?
A. Yes.

Q. What did you do then?
A. I went downstairs and told Matron and after a few minutes we came back and he was still in the hall. I don't remember what was said but I know Smith did say "Don't forget the purse is still there".

Q. Where were you when Matron opened her purse?
A. On Saturday morning we were going to Hurstpierpoint and I had seen a dress I wanted, but didn't have any money.

Q. What did you see in the purse?
A. I saw that the bank notes that were in the purse had been just pushed in, not as I left them and there were not as many.

Q. Did you count them?
A. No.

Q. How do you mean "pushed in"?
A. They were not folded into four. They were just crumpled up and had just been pushed in anyway.

Q. When you went down to tell the Matron that Smith was leaving how long were you away before you came up again?
A. About five or ten minutes.

Q. Did you see Miss Heye look in the purse before you went out?
A. No.

Cross-Examination by the Defence

Q. While you were in the Matsfield Arms how many drinks did the Matron buy?
A. I have no idea.

Q. How many did you have?
A. I had about three or four beers.

Q. Did you have one each time the party you were with had one?
A. I don't remember, I don't think so. Matron was drinking short drinks.

Q. She had more than you did?
A. She may have had one or two more.

Q. Were you whispering to Smith in the bar?
A. He was talking to him.

Q. Did the Matron object to it?
A. Yes, she didn't like it.

Q. What were you talking about?
A. He was telling me how much he disliked the fellow that was talking to Matron and I agreed with him.

Q. Is that all?
A. Yes.

Q. Did you mention at all the fact that the Matron had disapproved of you being out late a short while before?
A. I did not.

Q. Did you have a quarrel with the Matron that night?
A. No, Matron was rather annoyed with me and told me because Smith had been whispering. That's all.

Q. She was annoyed because Smith was whispering to you?
A. Yes.

Q. That is rather extraordinary. I would like to know if you were whispering to Smith or not?
A. No I wasn't whispering. We may have been speaking in low tones, but it wasn't whispering.

Q. Was the Matron annoyed that you had got home late on the morning of 2 Jul 42?
A. She was annoyed because I came in early that morning.

Q. Was she very angry?

A. She just told me not to let it happen again or I would not be able to stay in her employ.

Q. Did you resent it?
A. No.

Q. What time did you get back?
A. About 4.25 a.m.

Q. It's not very late is it?
A. Matron thinks so.

Q. You did not think it was unreasonable of her?
A. No because she has been annoyed with other nurses that do the same thing.

Q. Can you say how much money was in her bag when you opened it in the Matsfield Arms?
A. No.

Q. When you returned to the hospital and went upstairs, had you just reached the top when Smith called?
A. Yes.

Q. Did youcome down immediately?
A. Yes.

Q. How long were you out of sight of him?
A. Not very long. When Smith called I hesitated because I didn't know whether he meant Matron or me and she did not come so I went downstairs.

Q. You could see the bottom of the stairs from where you were?
A. Yes I could see the bottom.

Q. After you had come down to tell Matron Smith was leaving, when you got back up was the purse in the same place as it was before?
A. I couldn't say I don't know.

Q. How many times did Smith call attention to the purse?
A. Once to me and once to Matron.

Q. You don't know if it was in the same position?
A. It was in the same chair.

Q. When you put the money back in you said it was folded neatly. Did the purse bulge?
A. It is a small plain bag about six inches by eight and it had a lot of things in the main pocket and the small pocket that the notes were in is stitched on the inside, to the outside wall of the purse.

Q. Did the notes form a bulge?
A. No.

Q. Is the purse a type that crumpled notes would make a bulge?
A. I don't think so.

Q. Who carried the purse into the dining room?
A. Matron.

Q. Where did Smith go when you first came in?
A. Just came into the hall.

Q. Did you and the Matron have a quarrel when you returned?
A. Matron was still annoyed with me because she said I was rude by talking to Smith about the other man she was talking to. She knew I was talking about him.

Q. She was short with you in the hall?
A. She was still annoyed with me.

Q. Was it obvious?
A. Yes.

Q. Who suggested that Smith should come back to supper?
A. Matron. Smith asked and Matron agreed.

Q. Who first mentioned the subject?
A. Smith.

Q. Did she agree readily?
A. Yes, I think she was quite willing.

Q. Would you say she approved of Smith?
A. I don't know what she thought of him.

Q. It is rather strange that if she was annoyed she still fell in with the suggested that he come home?
A. I don't think she was annoyed with him, but me.

Q. Was it obvious in the bar she was annoyed with you?
A. No.

Q. When did you leave the Matsfield Arms?
A. I didn't get into the car in the yard. I walked up the road and Matron picked me up.

Q. Why did you do that?
A. I was annoyed because I didn't think I had done anything to make her annoyed so I told her I would walk home.

Q. Matron was annoyed with you and you with her?
A. We were not very annoyed once she picked me up. She picked me up and that more or less made it up.

Q. Did you give Smith £10.
A. I did not.

Q. When you came downstairs after he called "Bette" were you and he alone with the purse?
A. Yes, for about a minute.

Q. Time enough for someone to take something out of the purse without Miss Heys knowing about it?
A. I don't think so.

Q. Did Smith have supper?
A. No.

Q. Why not?
A. I don't know why he didn't?

Q. Do you think he was aware that the Matron and you were annoyed with each other?
A. It may have been obvious to him.

Q. I don't wish to be unpleasant, but would it be fair to say you and the Matron were in the habit of having flareups and then have them die down?
A. I don't think so, no.

Q. She would bring things up after they were over?
A. She does sometimes, but it isn't a habit.

Cross Examination by the Judge Advocate

Q. How long does it take you to walk from the Matefield Arms to your home?
A. About half an hour.

Q. What time did you arrive at the Home in company with Smith and Miss Heys?
A. About 9.20.

Q. What time did he leave?
A. About 9.35.

Q. Did you see him leave?
A. I was in the hall with Matron when he left.

Mr. G.C. Agambar, licensee, Matsfield Arms, Clayton, Sussex having been duly sworn, is examined by the prosecutor.

Q. Do you know Miss Hayes?
A. Yes, know her as a customer.

Q. Do you remember seeing her on the night of 3 Jul 42?
A. Yes.

Q. When did she come in?
A. About 7.30 or 8.00 I should say.

Q. Do you remember seeing her purse?
A. Yes, on the counter.

Q. Do you remember Miss Stocks ordering drinks?
A. Yes.

Q. What happened then?
A. Miss Stocks bought a drink and after putting her hand in her pocket found she didn't have enough money to pay. The bag was passed from Miss Heye to Miss Stocks and was opened exposing a large amount of money.

Q. Did Miss Heys say anything?
A. Something about changing a £5 note instead of a £10.

Q. Then what?
A. I changed a £5 note.

Q. Did you see what came out of the purse?
A. There was quite a few bundles of £5 and £10.

Q. Was there more than one bundle?
A. Several little bundles I should say from memory.

Q. What happened then?
A. The bag was passed back to Miss Heys along the counter and it was in charge of her the whole time.

Q. Where was Smith standing?
A. Next to Miss Stocks.

Q. Did you happen to notice him when Miss Stocks took the money out of the purse?
A. Rather a surprised expression. Opening ones eyes as we term it.

Q. Anything else about it?
A. Nothing else about it, he opened his eyes with a surprised expression.

Q. After the purse was passed back did Miss Heys keep it?
A. She kept it between her arms which were leaning on the counter.

Q. Did she leave the bar?
A. No.

Q. Could anyone have got into that purse?
A. No.

Q. Do you recall hearing any conversation with Smith and Miss Heys about a meal?
A. No.

Q. What was the condition of Miss Heys and Smith with regard to drinking?
A. Perfectly sober, the whole party was.

Cross-Examination by the Defence

Q. Were Smith, Miss Heys and Miss Stocks talking in low tones?
A. Just normal conversation.

Q. Could you overhear everything?
A. Yes at the time I was serving, not when I was at the other end of the bar.

Q. Does your deafness come and go?
A. Yes it is catarral.

Q. Were you surprised to see so much money?
A. Not with Miss Heys.

Q. Had you not known that fact would you have been surprised to see so much money?
A. Yes I would.

Q. With strangers that might have opened your eyes?
A. Yes, probably it would.

Q. How many rounds of drinks did you serve to this party?
A. Three times.

Q. What sort of drinks?
A. Spirits and beer.

Q. What did Smith drink?
A. Spirits and beer.

Q. Did he drink with them the whole time he was in there?
A. Yes.

Q. Did you overhear or see any signs of whispering on the part of Smith and Miss Stocks?
A. No.

Q. Did they seem to be having a chat which might cause annoyance?
A. They were perfectly friendly.

Q. Do you remember who left first?
A. I should say Miss Heys followed by Smith and then Miss Stocks.

Q. What became of the fourth man?
A. He came around into the other bar and stayed until closing.

Q. Do you think he knew there was a lot of money in the purse?
A. That is difficult for me to say. The purse was not opened his way.

Q. Did he hear Matron say change a £5?
A. Yes.

The Court adjourns from 1115 hours until 1120 hours.

4th witness for the prosecution

Mrs. E.C. Freeman, wife of the licensee of the Queen's Head Hotel, Clayton, having been duly sworn, is examined by the prosecutor.

Q. Do you recognize the accused?
A. Yes.

Q. When did you last see him?
A. I saw him a fortnight ago yesterday, that is the 3 Jul 42.

Q. Where did you see him?
A. He came into the public house and said "Hello Mother". All the Canadian boys call me Mother. He said he wanted a bottle of beer. He said it was his birthday and I said I hoped he had had a good one. He said he had had a swell present. I think he used that word.

Q. Then what happened?
A. He had his bottle of beer and gave me a £5 note.

Q. What happened then?
A. He said as it was his birthday that we had all better have one with him.

Q. Did he buy drinks for everyone in the house?
A. No, just a few that he knew.

Q. Then what happened?
A. It was my own fault. It was time. He asked me as it was his birthday would I let him have a bottle of whiskey. I obliged him. My husband was quite annoyed. He didn't have a note from the officer like he usually does.

Q. What did he pay with it for?
A. With another £5 note.

Q. You received the £5 note from him?
A. Yes.

Question by the Judge Advocate

Q. Did you keep a record of these two notes?
A. Yes, the numbers.

Q. Have you that record with you?
A. No.

The prosecutor explains that the numbers of the notes were not considered vital, as Miss Heys does not herself know the numbers.

The defence decline to cross examine the witness.

5th witness for the prosecution

Sgt. H.A. Buckland, East Sussex Constabulary, stationed in Hurstpierpoint having been duly sworn is examined by the prosecutor.

Q. Do you know the accused?
A. Yes.

Q. Did you interview him in connection with the loss of certain money by Miss Heys?
A. I did.

Q. Did he make a statement?
A. No.

Q. Did he answer your questions?
A. Yes.

Q. Did you administer a caution to him?
A. Yes.

Q. What caution?
A. I told him that anything he said would be taken down in writing and used in evidence against him.

Q. Did you take notes?
A. Yes.

Q. Have you the notes with you?
A. I have.

Question by the Defence

Q. Did the accused see the notes after you had taken them?
A. Yes.

Question by the Judge Advocate

Q. Did the accused sign the notes?
A. No.

Prosecution continues

Q. Would you tell the Court what was said?
A. It was at 1.00 p.m. on the 7 Jul 42 I saw the accused and cautioned him. I told him I had received information and was making inquiries respecting the loss of £40 from Miss Heys home in Hurstpierpoint. I told him I understood that he had bought a bottle of whiskey from the Queen's Head Hotel and I asked him ....

Q. When you first questioned him as to the larceny of the money, before mentioning the fact that he had spent certain money in the Queen's Head. What did he say before that?
A. He did not say anything, he went straight on. I asked him what money he had purchased a bottle of whiskey with in the Queen' Head. He replied "I paid for the whiskey with with two £1 notes in the Queen's Head." I told him that I had received information he had changed two £5 notes in the Queen's Head when he purchased this whiskey. He then retracted and said "I paid for the whiskey with a £5er."

I asked him where he obtained them from and he replied "The young nurse gave me two £5 notes. I know the nurse had no money of her own as when at the Matefield Arms she did not have enough money to pay for the drinks. She got the money from the oldest woman's purse. It belongs to the oldest woman. It was from the same purse as the young woman got the £5 from in the Matefield Arms."

Cross-examination by the Defence

Q. When did you receive information as to the alleged larceny?
A. At 8.00 p.m. on the 6 Jul 42.

6th witness for the prosecution

Lieut. A.S. Innes-Smith, P.P.C.L.I. having been duly sworn, is examined by the prosecutor.

Q. Were you in London on 5 Jul 42?
A. Yes.
Q. Did you see the accused?
A. Yes.

Q. Did you see him in London that day?
A. Yes.

Q. Where?
A. At the Horse and Groom pub.

Q. What was he doing?
A. He was standing by the bar.

Q. Were there many people with him?
A. Some civilians.

Q. Was he buying drinks?
A. Yes.

Q. What was his condition?
A. My opinion is that when he left he was drunk.

Q. Did he speak to you?
A. He came up to me and offered to buy some drinks. We declined but he insisted and then he insisted on buying a second one for me.

Q. Did you see any money in his possession?
A. Just some silver was all I could see.

Cross-Examination by the Defence

Q. You say he was with some civilians?
A. He was talking with them. I don't know if they were a party or not.

Q. Did he appear anxious in any sense that you did not see him?
A. No.

Question by the Judge Advocate

Q. What time did you see him there?
A. Between 1230 hrs and 1330 hrs.

7th witness for the prosecution

Capt. G.F. Williamson, R.C.A.P.C. att Seaforth of C having been duly sworn, is examined by the prosecutor.

Q. Are you Paymaster of the Seaforth of C?
A. Yes.

Q. Do you know the accused?
A. Yes.

Q. What is the last payment received by Smith prior to 3 Jul 42?
A. 30 Jun 42.

Q. How much did he receive?
A. Ten shillings. His previous payment was made on 3 Jun 42 being the balance of his May pay in the amount of £3. No other payments were made in the month of June or in the

first week of July. Pte. Smith's balance at the end of June in his paybook after receiving 10/- was £18.62 being withheld at his own request to cover a forfeiture which he had been awarded on 30 Jun 42.

Q. During the month of June he had received the total of £3.10.0?
A. Yes.

Cross-examination by the defence

Q. At the time Smith made the request to withhold this payment did he say why he was doing it?
A. He had received a forfeiture from the OC.

Q. Did he say he would rather do it this way because he had enough money otherwise?
A. It was indicated to that extent.

Q. Did he say anything to you about not being short of money?
A. Yes on 30 Jun.

Q. When he received his last payment?
A. Yes.

Q. Do you recall what he said?
A Not exactly, but the effect was that he had some money in London, but I don't know where.

Q. He would have enough for his normal requirements even though he left his money in his paybook?
A. He said he had other funds at the time.

Q. Had he any previous stoppages that you recall?
A. I can't recall any.

Q. Do you know of any reason why Smith would have been short of funds as far as a soldier has funds up to the time he received the stoppage?
A. He received his May pay about £3.10.0 and at that time his account was in credit.

PROSECUTION ENDS

Defence

I make formal application for dismissal of the charges against the accused on the ground of lack of sufficient evidence. In the first place the charge laid is that the accused stole £40 the property of Miss Heys. There has been no evidence produced that anyone saw the accused take the money from Miss Heys bag. There has been no evidence to show that the accused was in possession of that amount of money. Those are the first grounds of my application. There has been evidence that the accused was in possession of £10. That money has not been identified as the property of Miss Heys. He is accused of having stolen this money, not having stolen money in his possession. I quote from Archibald's Criminal Pleas "Where the defendant pleads not guilty, the prosecution is obliged to prove any fact stated in the indictment which is necessary to prove the offence charged." Had this charge been framed that he had stolen sums unknown or that he had stolen £10 I would not be making this application, but he is charged with stealing £40 and there is no evidence for the defence to meet. The prosecution have not discharged the burden of proof which lies upon them. I would point out this is not a technicality but goes with the very essence. You have an accused soldier charged with the theft of £40. I take my stand on the ground to remember indicated and would ask the Court in considering the ordinary that they are bound by the laws of the land law in practice.

Prosecution

[illegible] the Court that the [illegible] of the accused. The Judge Advocate will of course [illegible] doubt, not a fanciful onus is on the crown to prove [illegible] does not mean as suggested A reasonable doubt, means [illegible] on circumstantial evidence. doubt, or a mere possibil[illegible] that an accused could be [illegible]

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Prosecution

The Judge Advocate will of course direct the Court that the onus is on the crown to prove the guilt of the accused. A reasonable doubt, means a reasonable doubt, not a fanciful doubt, or a mere possibility. It does not mean as suggested that an accused could be convicted on circumstantial evidence.

In a case of theft in order to obtain a conviction it is not necessary to produce a witness who actually saw the crime, if it were it would put a great premium on crime. It is not necessary to go that far. It is only necessary to produce circumstances which, or from which an inference may be drawn that the accused took that money. As to the matter of amount. The Court is open to find the accused guilty of stealing £10. I am going into this merely to meet the objections of the defending officer. I would suggest that the Court find the man guilty of stealing the amount. On a charge of stealing £40 it is not necessary to have an alternative of stealing a lesser amount. It is open to the Court to make a special finding that the accused is not guilty of stealing. The defending officer stated that if there had been a lesser charge of stealing £10 he would not make a motion, but it would have been incorrect to include that charge because the Court may find him guilty on a special finding andthe Judge Advocate will direct you that it is a principle of criminal law that where a person in possession of stolen goods must give a reasonable explanation of how he came into possession. The evidence we have is that certain money was missing. The accused was in a public house where he produced two £5 notes. It is shown from the evidence of the Paymaster that it was unlikely that this soldier would have that money. The accused is clearly called upon to give an explanation as to how he came by that money. He did give one to the police constable which is clearly unsatisfactory. First of all he stated he purchased this liquor with £1 notes and then he comes further with this tale of the money having been given him by Miss Stocks. At the same time he told the police constable he knew that that money given to him by Miss Stocks had been taken by Miss Stocks from Miss Heys purse. That is not a case of receiving stolen goods, that is taking part in the theft. There are two elements to taking and taking away. The taking away is as much an element as the taking. If I pick up an article and throw it out of the window to someone else, that person is as guilty as I am. On his own admission he is guilty of the theft of £10.

Judge Advocate

The defence has moved for non suit on the grounds the prosecution has not established a prima facie case. While they are considering this motion the Court should read the definition of stealing on page 118 M.M.L. and also para 66 on page 124 M.M.L. I agree with the prosecution in that certain evidence was given to Sgt. Buckland which indicated that the accused knew that £10 at least of the money which he is charged with having stolen came from the purse of Miss Heys. It is open to the Court on consideration of the matter whether they should dismiss the case now or whether they should put the accused on his defence. It is the duty of the court to consider the matter in closed court and if they do come to the conclusion that the prosecution has showed no prima facie case, they may then dismiss the charge, however, if they come to the conclusion that the prosecution has made a prima facie case they must announce it and go on with the case.

Court adjourns for the consideration of the motion.

The President announces that the Court has considered the motion and have overruled it.

Court adjourns from 1210 hours to 1405 hours.

At the request of the Defending Officer Miss Heys is recalled. The Court is of the opinion that RP 76 need not be complied with.

Miss Heys is recalled, and is informed she is still under oath, and is examined by the defence.

Q. Did you phone the duty officer here last night?
A. Yes, asking for this case to be withdrawn.

Q. What is your reason?
A. My reason is that Nurse Stocks is worried and I knew that I would not get my money back and I thought it would be a waste of time.

Q. You don't want this case to come up for a definite reason knowing that it would bring discredit on yourself and on Nurse Stocks because you know Smith was not responsible for the money disappearing. I ask you, was that the reason?
A. No, the reason is that Nurse Stocks has no occasion to steal. She never has done and there has been £100s of pounds in the house at times.

Q. Why was Nurse Stocks worried?
A. Because she has never been in a court.

Q. Why did you lay the information in the first place?
A. Because the money had been taken and I think it is up to him to return it.

Q. I don't wish to enter into an argument with you, but you must have known it would result in some sort of proceedings?
A. Yes.

Q. Do you still deny you had no other motive?
A. Yes.

The prosecution declines to cross examine the witness.

Yes

Yes

No

The accused elects to give evidence on oath.

1st witness for the defence

K.57653 Pte. Smith, G., Seaforth of C having been duly sworn, is examined by the defence.

Q. Will you tell the Court what happened on 3 Jul 42?
A. That night I went down to Brighton for a few beers and had some supper and took the bus back. On the way back to camp I got off at the pub and went into the bar and ordered a pint of beer and these two ladies were there. I ordered a beer and she told the bartender she would pay for it, asking me if I would have a scotch. I said it was all right. She ordered it up and paid for it. We had two or three drinks and she told the young woman about whispering to me.

Q. Who paid for the drinks?
A. The Matron and the nurse paid for them. The Nurse wanted to go over and speak to some officers who were in the bar, but the Matron didn't want her to and that's where the whispering came in as Nurse told me the Matron objected to it. We had another drink and decided to go home as they had to go on shift. I was standing there not paying much attention and they got up and I came out with them. The two of them were sitting in the car when the Nurse jumped out and called something back to the Matron and went down the road. The Matron closed the car door and went down the road after her. I started walking down the road and passed them and said "Good night" when she opened the car door and said "Get in". She told me to come down to the house and have some supper. I went down to the house with them and when we got in the Matron showed me into a sitting room. I just sat down when the argument started again in the hallway. I went out to see what it was about and just as I got out the Matron slapped the Nurse over the face. The nurse went to the door and I thought she was going and then she came back and slapped the Matron over the face. The Matron got up and went downstairs and the Nurse went upstairs. I called her down and told her I was going. I told the nurse to look after the Matrons purse as I was going and it was laying in the hallway and the door was open and if anything happened I was going to be blamed for it. She said if there was going to be any cleaning up she would attend to it and I had nothing to worry about. I went down the steps to the door when I was called back by the Nurse. She said "Here's something go and have a drink". I saw it was two £5 notes she had put in my hand. When she gave them to me she said something about going to have a few drinks, because the Matron was made and she wouldn't give me a bottle of beer. I went down to Hurstpierpoint and went into the first pub I came to. It was the first time I was in it and spent the money in there. There were a few of the boys in there. I bought them a drink with the money and then ordered a bottle of scotch which I paid for and then went back to camp. I knew nothing more about the £40 until I was taken in front of Mr. Hall Tues morning.

Q. Where did yougo when you went in the Nursing Home?
A. She showed me into a sitting room off the hallway and the Nurse and Matron stayed in the hallway.

Q. Why did you leave the house without supper?
A. With this argument going on the the slapping each other I didn't want to be mixed up in any trouble.

Q. How much did you have to drink in the Matefield Arms?
A. Three or four double scotches. We would finish one drink and put the empties on the counter and refill them.

Q. Did they have drink for drink with you?
A. She ordered them for all of us.

Q. How about herself?
A. She was drinking too.

Q. How would you describe her condition?
A. She was pretty well intoxicated. I don't know how much she had to drink before.

Q. How about Miss Stocks?
A. I don't know how much they can carry.

Q. You haven't answered my question, how was Miss Stocks?
A. I would say she was a little gay.

Q. When you went into the Queen's Head what did you pay for the drinks with?
A. I cashed one of the £5 notes.

Q. That was to pay for the beer and scotch you had?
A. Yes.

Q. Did you pay for more than one round?
A. There were three or four.

Q. Did you buy more than one round of whiskey?
A. Yes.

Q. How did you pay for the subsequent rounds?
A. With the change from the £5.

Q. What did you pay for the bottle of whiskey with?
A. With the other £5.

Q. You heard the evidence of Sgt. Buckland that when he first questioned you you said you paid for it with £1 notes?
A. After changing the first £5 I paid for the drinks with the change. That is what I meant.

Q. What was your own state that night?
A. With these double scotches I was beginning to feel them.

Q. Did you pause to think before you accepted the money?
A. I never gave it a thought.

Q. Did you see the Nurse take the money from the bag?
A. No.

Q. Did you suspect she was going to?
A. I never gave it a suspicion at all.

Q. How long were you in the nursing home?
A. About 15 minutes.

Q. What were your actions the next day?
A. I was in camp next morning and I went to London in the afternoon and back in camp next day. I went to London again in the afternoon and missed the train back by three minutes.

Q. Do you know Mr. Smith who gave evidence this morning?
A. He was 2 i/c when I was training in Calgary.

Q. How are you fixed with regard to money?
A. I get money from home and whenever I need it I always get it from home.

Q. How long before this episode did you last receive money from home?
A. Six weeks or two months.

Q. How did this money come?
A. By cheque usually, sometimes my Mother puts a $5 bill in a letter.

Q. Did it come over by cable and then the cheques were made out here?
A. Yes.

Postal Orderlies Receipt book, item dated 15.5.42 produced, marked "J", signed by the president and attached to the proceedings.

Q. Have you received any cheques lately?
A. Yes.

Q. Will you tell the Court for what amounts?
A. One for £1.2.4 and the other for £5.0.0

Q. Who are they payable to?
A. Me.

Q. Where are they from?
A. One from my Mother and the other from my wife.

The Court examines the two cheques.

Q. Do you remember the amount of the last money received before the 3 Jul 42?
A. It was a $5 in a letter.

Q. How about what came in a registered letter?
A. I can't say off hand.

Q. Where did you stay in London?
A. At the Imperial Hotel.

Q. Do you recognize this?
A. The receipt for the room.

Q. How much did you pay?
A. 11/6 I believe.

Q. This says 12/6?
A. It usually is 11/6.

Receipt produced, marked "K", signed by the President and attached to the proceedings.

Q. When did you get that receipt?
A. The night I went to stay there. They give you this chit which entitles you to a room and breakfast.

Q. Do you recognize this?
A. Yes, it is a bed check from the YWCA Brighton.

Produced, marked "L", signed by the President and attached to the proceedings.

Q. Why did you ask the paymaster to stop all your money but 10/-?
A. When I went up to get the 10/- I thought I was just as well off to leave the rest in my pay book until I was squared up with the army.

Q. Have you any relatives in this country?
A. Yes.

Q. What is their financial condition?
A. They are in good financial condition.

Q. What would they do if you asked them for money?
A. I would get it immediately, but I don't ask them.

Q. Where did you get the service medals you wear?
A. I was five years in the Seaforths in the last war.

Q. How long have you been with the Regiment this time?
A. I joined up in May 1940 and came overseas to join the regiment.

Q. What family have you?
A. Wife and child.

Q. What was your occupation?
A. I was with the Vancouver Police [illegible] and the Harbour Commission?

Q. Have they any record [illegible] you?
A. No I joined up of my own free will.

Q. Can you [illegible] this nurse giving you this money?
A. I have no idea. It is the first time I have seen her.

A. I would like to emphasize one point. Where were you when she gave it to you?
A. At the foot of the stairs just going out on the driveway.

Q. Where were you when she called you?
A. Out on the way to the street from the house.

Q. Where are they from?
A. One from my Mother and the other from my wife.

The Court examines the two cheques.

Q. Do you remember the amount of the last money received before the 7 Jul 42?
A. It was a £5 in a letter.

Q. How about what came in a registered letter?
A. I can't say off hand.

Q. Where did you stay in London?
A. At the Imperial Hotel.

Q. Do you recognize this?
A. The receipt for the room.

Q. How much did you pay?
A. 11/6 I believe.

Q. This says 12/6?
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Produced, marked "L", signed by the President and attached to the proceedings.

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A. When I went up to get the 10/- I thought I was just as well off to leave the rest in my pay book until I was squared up with the army.

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A. Yes.

Q. What is their financial condition?
A. They are in good financial condition.

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A. I would get it immediately, but I don't ask them.

Q. Where did you get the service medals you wear?
A. I was five years in the Seaforths in the last war.

Q. How long have you been with the Regiment this time?
A. I joined up in May 1940 and came overseas to join the regiment.

Q. What family have you?
A. Wife and child.

Q. What was your occupation?
A. I was with the Vancouver Police Force and the Harbour Commission.

Q. Have they any record against you?
A. No I joined up of my own free will.

Q. Can you account for this nurse giving you this moneyK?
A. I cannot. I have no idea. It is the first time I have seen her.

Q. I would like to emphasize one point. Where were you when she gave it to you?
A. A. the foot of the stairs just going out on the driveway.

Q. Where were you when she called you?
A. Out on the way to the street from the house.

Cross-Examination by the Prosecutor.

Q. You say Miss Stocks was feeling the effects of her drinking, that she was feeling gay?
A. I felt the effects, so I imagine she would.

Q. She did not behave in a drunken manner?
A. No.

Q. You wouldn't say they were drunk?
A. I would say they were pretty well intoxicated.

Q. From what did you conclude she was feeling the effects of her drinking?
A. The was she was talking all the time and standing right up close to me and talking about a previous conversation with an officer.

Q. You concluded she was drunk because she got confidential?
A. I would sayshe was feeling quite good and she was quite intoxicated.

Q. You concluded she was quite intoxicated.
A. Yes.

Q. You came to this conclusion because she was confidential?
A. Not because she was confidential, but I know that any amount of liquor affects your mind and makes you talk.

Q. How many did she have when you were there?
A. She was having drinks every time we ordered.

Q. Swilling them down?
A. No.

Q. How many did she have?
A. They had four or five when I was there?

Q. You heard the bar tenders evidence. Do you disagree with that?
A. We had four or five.

Q. You heard the evidence of the bartender that Miss Heys and Miss Stocks had three or four drinks that evening. Do you disagree with that?
A. I don't know what they had before I came in. I say they had three or four while I was there.

Q. They had three or four while you were there?
A. What else did Miss Stocks do that would indicate she was drunk besides getting confidential?

Q. They had three or four while you were there?
A. Yes.

Q. What else did Miss Stocks do that would indicate she was drunk besides getting confidential?
A. She wanted to get talking to some officer and the Matron was calling her back saying she had been out late the night before with some officer and she didn't want it to happen again.

Q. You came to the conclusion she was drunk?
A. Yes.

Q. Did you come to the conclusion Miss Heys was intoxicated?
A. Yes.

Q. Very intoxicated?
A. Yes.

Q. You heard the evidence of the bartender who said they were sober. Do you disagree with that?
A. Yes.

Q. When did the question of going home with Miss Heys for a meal come up?
A. I never suggested it as I had just come from Brighton where I had a meal.

Q. The matter of a meal didn't come up until you were outside the Matafield Arms?
A. Yes.

Q. Why did you follow them outside?
A. With the argument going on and their condition I thought I would go out and see what happened and when I arrived outside the Matron and the Nurse were in the car and just then the door opened and out came the nurse and she started down the road.

Q. You followed them out to be of assistance?
A. Yes, I wanted to see how they made out.

Q. Out of curiosity?
A. I thought I might see a fight.

Q. When the car moved off why didn't yougo back in?
A. I wasn't fussy about going in.

Q. You decided to go home after you got outside?
A. I don't drink much and I had had enough liquor.

Q. You followed Miss Heys and Miss Stocks outside out of curiousity and when you decided to go home?
A. I stood around for three or four minutes before I decided to go.

Q. What happened then?
A. I started to go down the road and as I passed the car they asked me to come down to the house.

Q. Didn't you tell the court you weren't interested ins meal?
A. Yes.

Q. Why did you acquire interest in one suddenly?
A. I didn't say I was going to eat. My intention was to be dropped off at the main entrance to Danny.

Q. You were not going back to the house?
A. No.

Q. You have told the court the Matron got you to go down for a meal?
A. I am not saying she wasn't sincere, but the arguments were still going on in the car.

Q. It was your plan to get off at Danny?
A. I was going to ask them to stop.

Q. Why didn't you?
A. She was flashing down the road and we were there before I knew it.

Q. You didn't ask her to let you off?
A. She was passed before I could.

Q. When you arrived at the nursing home you still didn't wish a meal?
A. Not a meal.

Q. Why did you go into the house?
A. I was invited in.

Q. You say you went into the living room?
A. The nurse showed me into the sitting room.

Q. While in there you heard an argument in the hall?
A. Between the nurse and the matron.

Q. You went outside again to see what was going on?
A. I did.

Q. That nursing home is set back from the road about 25 yards?
A. I couldn't say, it was the first time I have been there. It is set back from the road some.

Q. It has a driveway leading up to the property?
A. Yes.

Q. There is a high wall around the property?
A. I couldn't say.

Q. You asked Miss Stocks about the purse?
A. I didn't ask her about it, I told her about it.

Q. What did you tell her about it?
A. When the argument ended the Matron went downstairs and the Nurse went upstairs and I saw the purse was laying there. I called to her to come back.

Q. What did you say to her when she came back?
A. I didn't want to be around and the main door was open and if anything went wrong I didn't want to be involved.

Q. You knew there was a sum of money?
A. I didn't know.

Q. Was that the first time you saw a £5 note?
A. When the nurse put it over the counter.

Q. You were concerned that someone might come in and steal the purse?
A. I didn't know how long they were going to be in. What with their high tempers and the open door anyone could have come in.

Q. You brought this matter to their attention?
A. I thought the Matron was going and I didn't want to see anything happen.

Q. The nurse told you if there was any cleaning up to be done she would do it later?
A. Yes, it was none of my business.

Q. The purse was off your mind?
A. As long as it was in there I didn't worry about it.

Q. You left then?
A. Yes.

Q. Miss Stocks went downstairs after she had come from upstairs?
A. Yes.

Q. After speaking to Miss Stocks you left the cleaning up to her?
A. Yes.

Q. You turned around and left?
A. Yes.

Q. Why did you come back?
A. I didn't come back, I was called back by the nurse.

Q. You heard the evidence of Miss Stocks and Miss Heys. The evidence of Miss Heys is that she came upstairs and you were there. She came into the house, she went downstairs to get changed and about 10 minutes later she came upstairs after she had changed and that you were still there. Is that correct or isn't it?
A. No. The Matron went downstairs after she got a slap in the face.

Q. Her statement which you heard is that after going downstairs she came back up again 10 minutes later and spoke to you is false?
A. I don't remember her coming upstairs.

Q. Do you recall Miss Heys swearing in her evidence that when she came back upstairs you were there?
A. Yes.

Q. Is that true?
A. I didn't see her come upstairs.

Q. You don't know?
A. I didn't see her. The last time I saw the Matron was when she got slapped across the face and went downstairs.

Q. If she says that 10 minutes after the conversation which you describe with Miss Stocks and which Miss Stocks has admitted

that is the conversation about the purse and the cleaning up. If Miss Heys says that 10 minutes later that she came up stairs and you were still there, that story is false?

A. Absolutely.

Q. What you say is that you left immediately after your conversation with Miss Stocks?

A. I left after I saw the Matron get up and go down the stairs and I never saw her after that.

Q. Miss Heys must be lying if she says she saw you 10 minutes after your conversation with Miss Stocks?

A. She didn't see me and I didn't see her.

Q. You heard Miss Heys say that after she came back upstairs you spoke to her about the purse?

A. I never spoke to Miss Heys at all. It was to the nurse. The Matron after she got slapped in the face got up and went downstairs.

Q. You knew Miss Stocks had no money of her own?

A. I didn't know if she had any or not.

Q. I mean on her person?

A. I couldn't say.

Q. You remember when Miss Stocks bought a round of drinks and then found she didn't have sufficient money?

A. I saw her going into the Matrons bag. The Matron told her to get some money out.

Q. Did you not tell the police constable that she had insufficient money to pay for the round?

A. I don't remember saying that to him.

Q. You don't remember saying that to Sgt. Buckland?

A. No.

Q. You are telling us now that you didn't know whether Miss Stocks had any money or not?

A. I don't know about later on.

Q. Do you remember saying that?

A. I heard her say that to the Matron.

Q. Do you still deny that you knew that Miss Stocks had no money that night?

A. She didn't have any in the public house, I don't know about when we got to the house.

Q. You heard the statement which you gave to Sgt. Buckland in which you said according to Sgt. Buckland "I knew the lady had no money" or words to that effect?

A. Yes at the Matefield Arms, I don't know after that.

Q. Did you think that the two £5 notes which she gave to you were her own property?

A. I couldn's say.

Q. You didn't think about the matter at all?

A. No.

Q. It was just manna from heavan and you didn't care?

A. I thought she was just trying to do a good turn. I didn't give it a thought.

Q. You heard Sgt. Buckland's statement that you told him she got it from the older woman's purse. Do you deny making that?

A. The only thing I know about is at the Matefield Arms.

Q. You stated the money you received from Miss Stocks you knew to have come from the same purse from which the £5 came at the Matefield Arms?

A. I wouldn't accuse anyone unless I saw them. The only statement I was talking about was at the Matefield Arms.

Q. That statement is incorrect then?

A. It is incorrect as far as money from the house is concerned. I knew she didn't have any because I heard her asking.

Q. You say you got down to the foot of the stairs when Miss Stocks called you?
A. Yes.

Q. How long did it take you to get there?
A. Not long.

Q. She called you from there?
A. She called me by name.

Q. How long after you left her?
A. About a minute or two.

Q. Did you think that in a minute she would have had time to go and get some money from her own purse?
A. I don't know.

Q. You knew she had no money?
A. I knew she didn't have money in the pub but she may have had some at home.

Q. She didn't have time to go and get money from any other place between the time you left and she called you?
A. All the time she was in there she was under my eyesight.

Q. I suggest that you know very well if your story is true that that money came from Miss Heys purse?
A. I couldn't tell you. I didn't see that Nurse touch Miss Heys purse.

Q. Are you asking us to believe that you had no idea in the world, no guess, no suspicion as to where that came from?
A. Yes.

Q. You went to London the following day?
A. Yes.

Q. Did you have leave?
A. I didn't, I just went out.

Q. You didn't have permission.
A. I quite often go without permission.

Q. This was on Saturday?
A. In the afternoon.

Q. Did you stay the night?
A. I was back Saturday night.

Q. What did you do in London?
A. Went up and had a look around. It is a change from camp life.

Q. You came back Saturday night and went up again Sunday?
A. Yes.

Q. What did you do on Sunday?
A. Went up and had a look around.

Q. Did you drink?
A. Yes, but not to excess.

Q. Did you see anyone up there?
A. One or two soldiers I know and some civilians.

Q. Did you see any women?
A. Yes.

Q. Did you tell Sgt. Buckland you spent your time with a married woman?
A. I just talked to her on the street. I have known her for a long time.

Q. Do you deny that you said to Sgt. Buckland that you spent the time you were AWL with a married woman?
A. No.

Q. Who was this married woman?
A. A Mrs. Thompson.

Q. What is her address?
A. I don't know. I was to meet her in Trafelger Square on Sunday afternoon.

Q. You spent Saturday afternoon in London, came back to camp and went again on Sunday afternoon and spent Sunday there?
A. I missed the last train.

Q. How much money did you spent on this absence?
A. Not more than £4.

Q. How much money did you spend in the Queen's Head?
A. Quite a bit.

Q. How much?
A. It was £2 for whiskey and 4 or 5 rounds of scotch and beer which amounts to some money.

Q. More than £4.
A. Four double scotches is 10/-.

Q. Would you say you spend more than £1.
A. Yes.

Q. How much then?
A. It would be more than £2 I guess. I couldn't say definitely.

Q. You went in around 9.30?
A. That is why I spent it fast.

Q. When were you on the Vancouver Police Force?
A. 1927 to 1932.

Q. Were you dismissed?
A. I resigned of my own accord.

Re Cross-Examination by the Defence

Q. Your alleged statement to Sgt. Buckland, I would like to clear a point. You did spend some of the time with a married woman?
A. Yes.

Q. You told Sgt. Buckland you had met a married woman?
A. I told him I met one that I knew.

Q. If the question were put this way. Do you deny that you said to Sgt. Buckland that you spent part of your time with a married woman, what would be your answer?
A. I don't deny that.

Q. Did you say to him you spent all your time?
A. No.

Cross-Examination by the Court

Q. How long have you known Miss Heys?
A. It is the second time I have seen her and the first time I have seen the Nurse.

Q. You produced two cheques, when did you write home for those?
A. When I was AWL last month. About the beginning of Jun. I wrote home and told them I was going AWL and I knew I would have no pay.

Q. Those cheques arrived when?
A. Yesterday.

Q. They were telegraphed?
A. I don't know how they came over.

Q. Would you say it is worse to be drunk then to be intoxicated?
A. If you are intoxicated you are moving around, but if you are drunk you are out.

Q. You heard Mrs. Freeman state you went into the public house and stated it was your birthday. Is that correct?
A. I said it jokingly.

Q. Was it?
A. No, but it is next month.

Q. How long did you remain at the Nursing home?
A. Not long, about 15 minutes.

Q. Were you at any time alone?
A. No.

Q. Did you see Miss Heys bag while you were there? Where was it?
A. On a chair in the middle of the hallway.

Q. Where did you remain?
A. First I was in the sitting room and I came out into the hall when the argument and as I was on my way out I just called the attention of it to the nurse.

Q. When you went to Mrs. Freeman's public house and spent the £5 notes were you asked to endorse them?
A. No.

Q. Did you look on the reverse side?
A. No.

Q. Did you know it was customary to endorse them?
A. No.

2nd Witness for the Defence

K.67019 Pte. Snow, D., Seaforth of C having been duly sworn is examined by the Defence.

Q. Do you know Miss Heys?
A. Yes.

Q. Have you ever seen her with large sums in her purse?
A. Yes.

Q. What would you say as to her handling of these sums?
A. She is very careless. I have seen her with as high as £50 or £60 in her hands and she would just push them in her pocket. That is the impression I got.

Q. Have you ever been out with her?
A. Yes, 2 or 3 times down at the races and in the Matefield Arms 2 or 3 times.

Q. Have you ever seen her drunk?
A. Yes.

The prosecution objects on the grounds that the character of the witness is being prejudiced. Objection sustained.

Q. Have you seen Miss Heys under the influence of liquor?
A. Yes, every time I have seen her.

Cross-Examination by the Prosecution

Q. Have you seen her twice at the races and three or four times in the Matefield Arms, is that all?
A. Yes.

Cross-Examination by the JudgeAdvocate

Q. Have you ever gone home with her?
A. Yes, twice.

Q. When was that?
A. About three or four weeks ago.

Q. Did she invite you?
A. Yes.

Q. What happened when you were there?
A. There were three of us and the girls that was there?

Q. Who do you mean the girl?
A. The young one that goes with her.

Q. Have you seen her today.
A. No.

Q. Was any money ever given you or your friends while you were visiting there?
A. Not to my knowledge.

Q. When was this occasion you saw Miss Heys carelessly handle money and stuff it in her pocket?
A. I have seen it done at the race track and at the Mansfield. In her home if anyone wanted to they had all the chance to take some.

Q. Have you ever seen a £5 note?
A. Yes.

Q. You say she left money lying around. What do you mean by that?
A. Lying around on the mantle piece or on the table and she was always taking money from one pocket and putting it in another.

Q. Who were your companions when you visited her?
A. Ptes. Montgomery and Pattick of "C" Coy.

Q. Were they with you on any occasion when she carelessly handled her money?
A. Yes.

3rd Witness for the Defence

Lieut. A.W. Mercer, Seaforth of C having been duly sworn is examined by the Defence.

Q. On the night of 17 Jul last were you Orderly Officer?
A. Yes.

Q. Did you receive a phone call?
A. I received several during the night.

Q. Did you receive a call from the Matron of St. George's Nursing Home?
A. Yes.

Q. What time would this call come in?
A. About 0100 hours.

Closing address by the Defence

I will deal with the case presented against the accused under two heads. First the law which applies and secondly the weight of evidence. The accused is charged with stealing the sum of £40 property of Miss Heys. The prosecution, when I made my motion this morning pointed out that even though he were not found guilty of stealing £40, but found to have stolen £10, could be found guilty of stealing £10. As I see it the prosecution has tried to show in the first place that he stole the whole £40 which of course is denied by the accused. The prosecution then tried to seek a verdict of stealing £10. He can only be guilty of stealing £10 if his own answer is taken as a basis, that is if he received the sum of £10 he can only be found guilty as an accomplice. An accomplice is someone who must have knowledge at the time the crime is committed, that a crime is being committed, a person who receives money which has been stolen knowing it was stolen at the time. He can be charged with having stolen property. To be an accomplice you must have had some knowledge at the time the crime was committed, that it was being committed. The only other way he could be found guilty of stealing £10, that is guilty on his own admission, is if he was found guilty as an accessory. As the accused is charged with having stolen £40 I submit he could not be found guilty as an accessory. That is the state of affairs if the basis of the prosecution's case is made to be the accused's admission he got £10. He might be charged with receiving stolen goods, but he cannot be found guilty as an accomplice or an accessory. The prosecution have also tried to throw

doubt on the accused's statement that he received the money from the Nurse and also upon his statement he did not see the Nurse take the money from the bag. He did not know she had taken it. Even if he knew afterwards that she had taken it he is not an accomplice nor is he a receiver of stolen goods. He is not an accomplice unless by his presence at the theft, had some part in it. So much as to the question of the accused being found guilty on his own admission. The question of the charge as a whole. In order to prove the offence, that the accused is guilty of the offence charged, I submit that it is necessary that the money be traced. It is necessary to show that this money was stolen. I would point out that the money has not been traced, the serial numbers of the notes are not known and I submit that there is no suggestion of proof that this money was actually stolen. Had they been able to produce the notes themselves and even the two £5 notes and proven them to have been stolen from the purse of Miss Heys that would be different, but that fact is not proven. We have no proof that the money was stolen. We have no notes brought to the attention of the Court, that they came from Miss Heys bag and identified as such. We could not, because she does not know the serial numbers. In order to support the charge the Prosecution must bring forward facts which point the guilty of the accused beyond any reasonable doubt. If those facts can be shown to be untrue or if on the other hand other circumstances can be shown to have existed at the same time that makes for a reasonable doubt and the prosecution has failed to xx discharged its duty. They have to prove that the only way this thing could have happened is by the accused stealing it. We have the testimony of an independent witness that Miss Heys was known to have large sums of money and that she was careless in the handling. I submit that the probable explanation of this loss is that it was not due to theft, but carelessness. That explanation has not been considered, the prosecution has produced no evidence that that explanation is intolerable and the point I am making is that we have one explanation which points to the accused, and another explanation even more tolerable which indicates his innocence, that first open because of the burden of proof could not be held to justify a conviction. I say that not only does the carelessness of Miss Heys make it equily probable of the loss, but I say that in view of the fact brought out in cross examination render that a probability. The money had been lying there in her purse for weeks. It just happens that the night it was stolen she counted it. It might be a coincidence, but I submit a strange one. I submit that the money might have been stolen at any time, she says it was found gone when she looked into her purse at 1030 on the morning after the accused had been there. I would call her evidence into question further by simply stating she is not a reliable witness. She said she had three or four drinks that night. The accused said she had a good many more than that. He admits himself that he had an amount sufficient for him to feel the effects and if he did, so would she. She denied having had any quarrel with the nurse that night, when I first questioned her. On being pressed and asked why she phoned up, she said it was true the nurse was out late one night. We said she had spoken to the nurse about it and admitted that they had had a quarrel. The nurse admitted the matron lectured her on this matter and brought it up again in the Matsfield Arms. I submit because she was under the influence and also when they got back in the house. She would not have done that had she not been excited by liquor. I say her statement are not Acceptable and that her evidence in general is open to question and is not evidence on which the accused can be convicted. The accused is charged with sterling £40. He admits having received £10 of the £40. Is it the action of a man who has just stolen £10 or £40 to go streight across the street and ask to have two of them changed. It will be no doubt alleged that this was carefully thought out. It may be suggested that the accused did this in order to make available to himself this plea I am making, that is he wouldn't be likely if he stole the money to go across and spend it. He went across the street and changed the notes and returned to camp. He was in camp Saturday morning, he then went to London Saturday

afternoon. He came back that night and did not leave again until Sunday about 1100 hours.He went to London on Sunday and went AWL. If the man was guilty he would not have come straight out and changed the money, nor would he have stayed around in camp that night before going to change the money. He would have got rid of it. He did not, he stayed in camp and went up to London in the afternoon and came back that night. If it is alleged by the Prosecution that those are the acts of a criminal, a criminal that knows the worst thing he can do is run away and therefore deliberately stayed so as to cast off the idea of suspicion, then will the Prosecution explain the fact that he went AWL the next day. If they take that line of argument, they admit his going AWL would cause suspicion and induce the belief that he went up to dispose of the money. They might say the accused is a psychologist and he was going to avail himself of both, but he is not, nor is he a thief. He is a soldier who is proud of his service with the Regiment in the last war and this and one who would not have entered any thought of stealing money and in the event of having done so would not behave as he did. It has been proven by the accused own statement and the exhibits given to the Court that he was xxx in the habit of receiving money from home. Part of the case for the prosecution is that the accused received no pay, but 10 shillings after 10 Jun. Therefore he was in need of money and any he had must have been stolen. The fact that he was in need of money is obviously alleged in support of the guilty of the accused, but I submit that he was not in need of money. He had money from home regularly, he has relatives in this country from whom he could have got money and I submit that even though he did wish to ask them for money, he would have rather than stolen it. He told the Paymaster when he asked him to keep back all but 10/- that he would not be short of money. The prosecution then say where did he get this money from, and the accused admits where he got it from. He spent that, and his action s in London staying at the Imperial Hotel for 12/6 are not those of a man with a lot of money. He paid two pounds for a bottle of whiskey and about £1 for drinks in the bar. That is three. His trip to London cost him about £4 which is £7. That leaves £3 more. His staying at the Imperial Hotel and buying a room in the YMCA Brighton for £ 2/- which room he did not use, are those the action of a man flush and if it is going to be alleged that he lived economically because he did not want to be suspected, how is that to be reconciled with the fact that he cash two £5 notes. I submit that is proof that he received them sincerely and that he did not steal the other £30 which Miss Heys alleged are lost. On these grounds I ask the Court to acquit the accused.

Closing address by the Prosecution

It is certainly true that this man has a long and honorable military record and he has a wife and family andthe Court would certainly be most unwilling to find him guilty unless he has been proved guilty beyond a doubt. I would like to mention again that it must be a reasonable doubt and not just a shadow or a possibility of doubt. I think that the chain of circumstantial evidence in this case is complete as complete as any chain can be. All that is lacking is evidence of someone seeing the man pick up and remove the money from the purse. If the onus were on the prosecution to produce some witness who actually saw the theft it would put a great premium on theft, because the very simplest precaution is to remain unobserved when carrying out a theft. First let us assume that the accused had made no explanation. During the course of the evening Miss Heys and Miss Stocks are in the Matefield Arms and Smith comes in, he sees this money, a large amount and shortly after that, he asks Miss Heys to take him home for a meal. He goes along with them to the house and gets inside. He calls Miss Stocks back after both women have left and calls attention to the fact that the purse is lying there. Why did he display such an interest in the purse, that is for the Court to decide?

He then leaves, in other words demonstrates to Miss Stocks that he is leaving and goes out and she sees him on his way out. He goes downstairs and Miss Stocks then goes down to the basement and tells Miss Heys she that he has gone. They come up about 10 minutes later and Smith is back there. I think the answer is evident, he came back to remove the money from the purse. I would submit that he was caught there by accident. He had that feeling that they were careless, that they would probably not look in the purse. Having then covered his trail he leaves the house and goes to the Queen's Head. The Defending Officer makes the point that the money hadn't been discovered. The money was produced before the barmaid and Smith has admitted that it came from the Nursing Home, that the two £5 notes came from the Nursing Home. He had been drinking and there was just time for a drink before going home. It was a foolish thing to do. It was the mistake that anyone might have made. The knowledge of the money, thepushing himself forward for the invitation back to the house, the opportunity to steal the money and being discovered a very short time afterwards with a sum of money he would not have had otherwise had in his possession are worthy of consideration in the chain of circumstantial evidence. The Defending Officer has pointed out of certain money from home. He had written for money from home as a result of losing money through AWL, but this money he had written for had not come through at the time of the theft, therefore he was apparently in need of funds at this time. Miss Heys says she had £65, however erratic she may be she certainly must be a business woman to run an establishment at a profit. Why he did not take the whole amount is probably another attempt at covering up. He thought they were drunk, he thought they were careless with money, and if he did not take the whole amount, and if she had not counted the money the night before, it would not have been noticed should they have opened the purse on the night in question. It is also interesting to look at his explanation, the history of the explanation. It did not come into being instantly. Smith was interviewed by Sgt. Buckland and he was asked about spending money he bought drinks with. He said he bought it with £1 notes. Why did he not admit there and then if his story was true that he got two £5 notes from Miss Stocks. He had nothing to worry about, if his story was true, and yet he didn't admit it until questioned upon the point and then admitted it. You heard Miss Stocks give her evidence and you heard the accused give his and you are entitled to draw your own conclusions. The accused chose to be evasive, he did not wish to give direct answers and chose to explain rather than answer. First of all he says he was invited to the Nursing Home by Miss Heys, then he says he just happened to go out when they did and then he finally tells us that he went out because he thought there might have been a fight. He has also said he just wanted to go to Danny, yet on the way home he makes no request to get out of the car, but goes right up to the house. Smith goes in with them to the Nursing Home. He is taken into the sitting room. Again we have this story of the fight and him going to see the fun and then decides to go. Miss Heys then went downstairs and Miss Stocks upstairs and Smith noticed the purse and seems rather concerned with it. He called Miss Stocks back and suggested to her that this purse should not be left as it was. He then leaves. We have I think, one of the keystones of the prosecution, Smith once having left recognized it would be necessary for him to see they did not see him come back, because that would have demonstrated that he had had the opportunity to steal the money, therefore his story is that he told Miss Stocks about it and left. He did not come back, he did not see Miss Heys. I ask you to remember Miss Heys evidence, she gave that evidence before hearing Smith's story, and also that her evidence corroborates that of Miss Stocks. Smiths story is that. Miss Heys went downstairs and Miss Stocks went upstairs, he called to her and he then spoke to her about the purse. He was then free to go, no worry about the purse, and left.

Miss Stocks saw Smith go down the stairs, just to make sure that he had got away. She then went downstairs and went to see Miss Heys. When they came back about 10 minutes later Smith was still there. We have Smith attacking the credibility of Miss Stocks suggesting her as a thief, but the credibility of Miss Heys is not attacked and her story corroborates that of Miss Stocks.

Closing Address of the Judge Advocate

In order that the Court may have clear in their minds what stealing is, I refer them to para 50 on page 116 M.M.L. (reads). There is no doubt that £40 of money is capable of being stolen and from that you are safe to imply, in view of Miss Heys stating £40 was stolen, that the taking and carrying away of that amount of money was done without her consent. I wish also to draw to the attention of the Court para 4p on page 81 and 82 of the M.M.L. concerning circumstantial evidence (reads). The accused went into the box under oath and gave evidence and in respect to that he stated that he had procured £10 in notes as a gift from Miss Stocks the nurse assistant of the owner of the money alleged in the charge. The conclusion here is, was the £10 which the accused had, and which he changed in the Queen's Head Hotel, was that £10 money which belonged to Miss Heys? That is a conclusion for the Court to find. They have several sets of circumstances in front of them. Miss Hey said she had so much in her purse, so much is missing. Miss Heys also stated that the purse was opened in her presence and in the presence of the accused. Other witnesses said the accused saw the money and the accused himself said that he did not see the money, and that when he received the money from Miss Stocks he did not see her take the money from a purse and you also have a statement presented by Sgt. Buckland in which he, after cautioning the accused, received a favorable statement from the accused to the effect that the accused had received the money from Miss Stocks and Miss Stocks had taken it from the handbag which Miss Heys had. That is the first problem which the Court has. The next is in respect to the doctrine of recent possession found on page 124 M.M.L. para 66 (reads). The other problem here is the statement of the accused, one that might reasonably be true and which is consistent with innocence. It may or may not be but that is a question for the court to find and even if they are not convinced of the truth of that statement, but if it is consistent with innocence they must find him not guilty. No evidence was brought up before the Court concerning where a possible £30 may be, or what happened to it. Miss Heys stated that she lost £40, the accused stated he received £10. The Court may, if it comes to the conclusion it does not believe the accused, may make a special finding under RP 44p to the effect that he is not guilty of stealing £40, but is guilty of stealing a lesser amount and naming the lesser amount. The question of alternative finding has been brought up by both the defence and prosecution and in this regard I refer you to A.A. 56, para 6 (reads). Stealing is a felony. The other alternatives which the Court may consider are found on page 174 M.M.L. in the third column opposite stealing, they are embezzlement and false pretences. In considering this a civil charge, if the Court wanted to give an alternative finding, the only ones are attempting to steal, embezzlement and false pretences and I consider from the facts which have been brought before the Court none of those three fit the case. I wish to draw the attention of the Court to a maxim of English law that an accused is not guilty until he is proved guilty. If the Court has any doubt in its mind incoming to a decision, that doubt must be given in favor of the accused.

The Court closes for consideration of the verdict.

Lt. F.C. Hall

"M"

No.

4th witness for the defence.

4.sphlS CSM Stone, J.A., Seaforth of C having been duly sworn, is examined by the Defence.

Q. Do you know the accused?
A. Yes.

Q. How long have you known him?
A. For 3 years.

Q. Would you tell the Court your opinion as to his character and ability as a soldier?
A. I know the accused. He was until about two months ago an NCO in my company and one of the best I had. I myself recommend this man for promotion. As a soldier he has never fallen out of battle drill, route march or tough going. On working parties he set a fine example in control of his men and I think for a man of his age he has set a fine example to the young men of my company. As a soldier he has the interest of the Regiment at heart, I know this from discussions with him and as a soldier, he is one of the best.

Q. Have you any knowledge of his record with the Regiment in the last war?
A. The only knowledge I have is that he served with the Imperial Seaforths and has served with other Imperial Regiments.

Summary of Evidence

in the case of No. A93653 Pte. Smith, G., The Seaforth Highlanders of Canada.

First Witness: M.,ss Elizabeth Smith Heys, Matron, of St. George's Nursing Home, Hurstpierpoint, Sussex, having been duly sworn, states:

At about 19:30 hours on Friday evening, 3 July, 1942, I, in company with M.,ss Betty Stocks, nurse, of the St. George's Nursing Home, Hurstpierpoint, Sussex, entered the 'Matsfield Arms', Clayton, Sussex. We had a drink, and at about 20:30 hours the accused, Pte. Smith, G., entered the bar room and joined us. We were standing at the bar.

Miss Stocks ordered a drink for the three of us, and discovered that she did not have sufficient money for the purchase. I then gave my bag to Miss Stocks. Smith was standing next to her. I said to Miss Stocks: "Don't change a ten, change a five." Miss Stocks removed the notes, which were folded in four, from the bag, and took off one five pound note. She purchased some drinks with this money, and the change was given to me. Miss Stocks had in the meantime replaced the other bills in the bag, and returned it to me.

At about 21:30 hours it became necessary for Miss Stocks and myself to return to duty, and we prepared to move. I said, in Smith's presence, that I had to get back to work. Pte. Smith then asked if I could supply him with a meal, and I said that this would be all right. We then went to my private car, and the three of us came directly to the St. George's Nursing Home.

As we entered the hallway I threw my handbag on the chair, saying that I would be late for duty. I went downstairs to get changed into uniform, and M.,ss Stocks went upstairs. About ten minutes later I came upstairs. Smith was then standing in the hallway. He said to me: "Don't forget, your purse is in the chair." I told him that we had some work to do and he left. He did not say anything about eating.

Before going to the Matsfield Arms that evening I had in my purse sixty-five pounds in bank notes, consisting of three ten pound notes, and seven five pound notes. These notes were folded together, in four folds. Prior to handing my bag to Miss Stocks I had not had occassion to open it, having previously purchased drinks from loose cash in a pocket of my coat.

Immediately after Pte. Smith left the St. George's Nursing Home I picked up my bag and took it into the dining room, where I placed it on the dining room table. Miss Stocks and I were on duty all night, one or the other of us being continuously in the dining room.

At about 10:30 hours on the following morning I opened the bag. I discovered that the only notes left in my bag were four five pound notes, very crumpled, and shoved in as though placed there in a hurry.

Signed: Elizabeth Smith Heys

The following questions were asked the witness by the accused:

Q. Where did you pick me up? At the Matsfield or further down the road, about 200 yards?
A. Nurse Stocks and myself were standing at the bar when Smith came in. He joined us. We did not pick him up.

Q. After we had finished drinking, where did you pick me up?
A. I left the bar, and Smith got in the car in the Matsfield yard. I had had occassion to speak to Miss Stocks for allowing Smith to whisper to her at the bar, and I was annoyed at her at the time. Smith got into the car in the yard, and I drove down the road about 200 yards before stopping for Miss Stocks to get in the car.

Q. Is it not the case that, when we came out of the Matsfield, you and the nurse had an argument there, and the Nurse proceeded about 200 yards down the road, and you then drove off and caught up with her?
A. The question is already answered.

Q. Did I not bid you good-night when you and Miss Stocks were sitting in the car 200 yards from the Matsfield?
A. No. Smith got into the car in the Matsfield yard.

Q. When did I ask you to take me to your home for a meal?
A. At the bar, in the Matsfield Arms.

Q. Is it not the case, when we arrived at your home, that you slapped the nurse's face for being rude?
A. I have never struck one of my staff.

Q. Is it not the case, when you struck the nurse, the nurse, after a minute, returned and struck you?
A. No.

Signed: Elizabeth Smith Heys

Second Witness: Miss Betty Stocks, Nurse, of the St. George's Nursing Home, Worstpierpoint, Sussex, having been duly sworn, states:

I have heard the evidence of Miss Elizabeth Smith Heys, and I corroborate what she has said.
I remember Miss Heys handing me her purse in the Matsfield Arms at Clayton. I removed a five pound note from the roll which she has described, refolded it as it was before, in four folds, and returned it to the purse. I closed the purse and returned it to Miss Heys.
When Pte. Smith, Miss Heys, and myself returned to the St. George's Nursing Home at about 21:20 hours Miss Heys threw her purse on a chair in the hallway, and went downstairs. I went upstairs, and as I was on the stairs Smith called to me and said: "I am going now, as Matron will be busy. Her purse is on the chair, and I want you to see that it is still there." I then went downstairs to tell Miss Heys that Smith was leaving. We both came back upstairs in about five minutes. Smith was still in the hall. I corroborate what Miss Heys has said about what then occurred, and about what occurred on the following morning. I was present when Miss Heys opened her purse.

Signed: Betty Stocks

The accused asked the witness the following questions:

Q. Was I in the car when you got into it?
A. Smith got into the car in the yard of The Watsfield Arms. I got into it about 200 yards up the road.

Q. Is it not the case, that the Matron was very drunk?
A. No. She was not drunk.

Q. Did you see me at any time touch the Matron's purse?
A. No. I did not.

Q. When I told you about the Matron's purse being left on the chair, did I not ask you to remove it or give it to the Matron?
A. Smith called my attention to it being in the chair, but I don't recall him asking me to remove it.

Q. At the time that I spoke about the purse, did I not say: "Better remove that purse to safety in case anything happens to it?"
A. I remember Smith saying to me that the purse was on the chair, but I don't remember anything else he said.

Q. Did you not say: "If there is any clearing up of the purse, I will tend to that later?"
A. When Smith asked me about the purse, I believe I told him not to worry about it. I would see to it later.

Q. Where did you get the two five pound notes which you handed to me, saying that it was for me to have a drink?
A. I did not hand Smith two five pound notes or any money.

Signed: Betty Stocks

Third Witness: No. A-92732 Sgt. Buchanan, D., The Seaforth Highlanders of Canada, having been duly sworn, states:

I was in the Queen's Head Hotel, Hurstpierpoint, Sussex, at 21:30 hours on 5 July, 1942. At about 21:45 the accused, Pte. Smith came into the saloon bar. Pte. Smith said to me that it was his birthday, and he bought me a drink.

Signed: Sgt. D. Buchanan.

The accused declines to cross-examine this witness.

Fourth Witness: Lieut. G.F. Williamson, R.C.A.P.C., having been duly sworn states:

I am the Paymaster of The Seaforth Highlanders of Canada. The accused No. A-93693 Pte. Smith, G., last received a payment in the amount of ten shillings on 30 June 1942, on A.R. No. 34 dated 30 June 1942. His previous payment was made on 5 June 1942, on A.R. No. 21, being the balance of May pay, in the amount of three pounds. No other payments were made during the month of June or during the month of July for the first seven days. Pte. Smith's balance at the end of June, in his Pay Book, after receiving ten shillings, was eighteen dollars and sixty-two cents, being witheld at his own request to cover a forfeiture which he had been awarded on 30 June, 1942. The said request was made on 30 June 1942.

Signed: G.F. Williamson, Lieut.

The accused declines to cross-examine this witness

The accused declines to cross-examine this witness.

Certified that owing to the exigencies of the service and the delay involved, the attendance of the following witnesses cannot readily be procured. The written statements of these witnesses were read over to the accused, who did not require their attendance for cross-examination.

1. George Clarence Agamber, Licensee of the "Hatsfield Arms", Clayton, Sussex.
2. Mrs. G.C. Agamber, wife of the Licensee of the said Hatsfield Arms.
3. Horace Sidney Freeman, Licensee of the "Queens Head Hotel", Hurstpierpoint, Sussex.
4. Edith Caroline Freeman, wife of the Licensee of the said Queens Head Hotel.

Signed: F.C. Hall, Lieut.
Officer taking Summary.

Fifth witness: George Clarence Agamber, Statement follows:

On Friday evening, 3 July, 1942, I was serving at the private bar of the Hatsfield Arms. Miss Elizabeth Heys and Miss Stocks came into the bar about 20:30 hours. Sometime later Pte. George Smith, of The Dearforth Highlanders of Canada, came into the bar, and joined Miss Heys and Miss Stocks. The three of them were standing at the bar.

A short time later Miss Stocks ordered drinks for Miss Heys, Pte. Smith, and a Pte. Paddock, as well as herself. Pte. Smith was then standing on the right of Miss Stocks, and Miss Heys was standing on her left. Miss Stocks discovered that she did not have sufficient money to pay for the drinks, and Miss Heys then handed to her her purse, saying "Here's a fiver, get a tenner." Miss Stocks opened the purse, and brought out a large wad of notes folded together. She removed a five pound note, and I saw Miss Stocks return the wad of notes to the purse and close the purse. She then pushed the purse along the counter to Miss Heys. This incident took place about 21:00 hours. While Miss Stocks had the wad of notes in her hand I noticed that Pte. Smith looked surprised, and took a long look at the money.

To the best of my knowledge the purse was not opened again for the rest of the evening. It remained on the bar counter until Miss Heys left. She left in company with Miss Stocks, and Pte. Smith.

My wife and daughter were helping in the bar during the evening. Miss Heys' purse was right beside her on the bar, and she did not move away during the course of the evening before her departure.

8 July 1942

Signed: Geo. C. Agamber

Sixth witness: Mrs. G.C. Agamber, Statement follows:

On Friday evening, 3 July, 1942, I was assisting my husband to serve at the bar of the Hatsfield Arms. About 20:30 hours I noticed Miss Heys' purse on the bar. I was serving at the bar continuously during the evening, and did not see anybody touch the purse. The purse was right beside Miss Heys, and she never moved away from her position at the bar.

8 July 1942

Signed: D. Agamber

Seventh Witness: Horace Sidney Freeman, Statement follows:

I am the licensee of the Queens Head Hotel. At about 21:30 hours on Friday the 3rd July 1942 a Private soldier came into the private bar of my hotel. He gave to my wife two five pound notes, which she immediately handed to me. The serial numbers of these notes were O/2246/2793 and O/2147/1799. The soldier was with a sergeant of The Seaforth Highlanders of Canada who, so I understand, is stationed at Hampton Lodge.

6th July 1942.

Signed: Horace S. Freeman.

Eigth Witness: Edith Caroline Freeman, Statement follows:

I am the wife of the licensee of the Queens Head Hotel. At about 21:30 hours on the 3rd July 1942 I was serving at the bar, when a Canadian soldier wearing a red square flash on his shoulders came into the private bar. While he was here he gave me two five pound notes to have changed. I asked my husband to look at them, and when he approved, I changed them for him. The soldier bought some drinks, and a bottle of whiskey. He left when the bar closed at 23:00 hours. The soldier was an elderly man, about 45, clean shaven, about 5 ft. 1 in., well built. He had a square face, pale complexion, fair hair, inclined to gray.

6th July 1942.

Signed: Edith Freeman.

The accused was cautioned pursuant to R.F. 4 4B), and made the following statement, under oath:

Statement follows:

On Friday night 3 July, 1942, I went into the Waterfield to have a drink. When I arrived in there I asked for a pint of beer, and was going to pay for it when Miss Keys said: "Forget about it as I will pay for it." At the same time she asked me if I would have a double Scotch. I said yes. We had quite a few double Scotches, and Miss Keys told the other nurse that it was time to go on night. Before leaving Miss Keys had an argument with the nurse, Miss Stocks, for trying to get away with one of the officers who was drinking at the Waterfield. That went on for about ten to fifteen minutes, until Miss Keys said to the nurse: "The hell with this. We are going home." Before leaving the Waterfield the matron bought a large bottle of wine. They went outside. I followed out to see if they got going. I saw her put the wine bottle in the back of the car, and there were six or eight beer bottles lying on the back seat. I bid the two of them good-night, and before they left they started to argue again. The nurse jumped out from the front seat, and ran about 200 yards up the road, towards Massocks. I went over and stood beside the bus stand, when Miss Keys backed out of the yard and made off in the direction of the nurse. I waited there for about three to four minutes, to see if the Matron's car would move away, before I went down there. It remained there, and I came down the road towards it coming home to dump. When I was passing the car I bid the two of them "good-night" as I was passing. Miss Keys called: "Come back". She opened the back door and told me to jump in.

(cont'd)

The accused made the following statement. (cont'd)

She said "I will drive down to the house and you can have some supper with us." She drove home, put the car in the garage, and the three of us went into the house. She showed me into the sitting room. While I was there I heard the two of them arguing in the hallway again. I came out to see what the trouble was, and I saw the nurse strike the Matron across the face. The nurse ran down towards the front door of the house, and turned and came back and struck the Matron on the face. The Matron got up and went downstairs. The nurse went upstairs about four stairs, watching the Matron go down. I asked the nurse "What is your idea in striking the Matron?" She said: "She hasn't got to strike me in front of any soldier." I said: "I am going right now", because I did not wish to be mixed up in any of their fights. When I was ready to go I saw the Matron's purse lying in an armchair in the hall. I told the nurse to remove it, as it was lying in the main hallway, give it to the Matron. At the same time I told her that it was no place, if anything happened to the purse, that I would be getting blamed for it. She said "Never mind. If there is going to be any cleaning up, I will attend to that later." I told her I was going right home right there and then, and was on the foot of the outside steps when the nurse called to me. She handed me two five pound notes, saying "You can have a drink with that, as the Matron is too damn drunk and mad at the moment that she wouldn't fetch the wine or the beer from the car." Having the two five pound notes, I went to the Queens Head Hotel in Hurstpierpoint and had a few drinks there, along with Sgt. Buchanan. I also bought a bottle of Scotch, and then proceeded home to camp. I never knew anything more about the money until I was questioned about it after having been placed in custody. I plead innocent to all this. Miss Heys and Miss Stocks were very drunk.
At the Waterfield Arms I paid no attention to the money when Miss Stocks bought a round of drinks.

Signed: George Smith

R.P. 4 had been complied with.

Taken down by me in the presence of the accused this 8th day of July, 1942.

Signed: F.C. Hall, Lieut.
The Seaforth Highlanders
of Canada.

To: Defending Officer, President and Members of Field General Court Martial.

Take Notice that the following Additional Witness be called on the trial by Court Martial of No. 453653 Pte. Smith, G.

Lieut. A.D. Innes Smith, R.N.V.R.

who will testify that the accused was in London on or about 5 Jul 42 and that, in a Public bar, he displayed [redacted] sums of money and was offering drinks to patrons in the bar.

Signed: F.C. Hall
F.C. Hall, Lieut.
Prosecuting Officer.

To: Defending Officer, President and Members of Field General Court Martial.

Take Notice that the following Additional Witness be called on the trial by Court Martial of No. 453653, Pte. Smith, G.

Sergeant Rugland, Hurstpierpoint Police

Who will testify as to a statement made by the accused.

Signed: F.C. Hall
F.C. Hall, Lieut.
Prosecuting Officer.

Summary of Evidence

in the case of No K 53653 Pte Smith, C.
The Seaforth Highlanders of Canada

First Witness Miss Elizabeth Smith Hayes, matron, of St George's Nursing Home, Hartsfield Point, Surrey, having been duly sworn, states:

At about 19:30 hours on Friday evening, 3 July, 1942, I, in company with Miss Betty Stokes, nurse, of the St George's Nursing Home, Hartsfield Point, Surrey, entered the Hartsfield Arms, Clayton, Surrey. We had a drink, and at about 20:30 hours the accused, Pte Smith, C, ~~[illegible]~~ entered the bar room and joined us. We were standing at the bar.

Miss Stokes ordered a drink for the three of us, and discovered that she did not have sufficient money for the purchase. I then gave my bag to Miss Stokes. Smith was standing next to her. I said to Miss Stokes: "Don't change a ten, change a five." Miss Stokes removed the notes, which were folded in four, from the bag,

and took off one five pound note. She purchased some drinks with the money, and the change was given to me. Miss Stocks had in the meantime replaced the other bills in the bag, and returned it to me.

At about 21.20 hours it became necessary for Miss Stocks and myself to return to duty, and we prepared to move. I said, to Smith's friend, that I had to get back to work. The Smith then asked if I could supply him with a meal, and I said that this would be all right. We then went to my private car, and the three of us came shortly to the St. George's Mansions Hotel.

As we entered the hallway I threw my handbag on the chair, saying that I would be late for duty. I went downstairs to get changed into uniform, and ~~Miss Stocks went upstairs~~

About ten minutes later I came upstairs. Smith was then standing in the hallway. He said to me: "Don't forget, your purse is in the chair." I told him that we had some work to do and he left. He did not say anything about eating.

Before going to the Metropole Arms

that evening I had in my purse sixty-five pounds in bank notes, consisting of three ten pound notes, and seven five pound notes. These notes were folded together, in four folds. Prior to handing my bag to Miss Stokes I had not had occasion to open it, having previously purchased drinks from bar cash in the pocket of my coat.

Immediately after Pte. Smith left the St George running house I packed up my bag and took it into the dining room, where I placed it on the dining room table. Miss Stokes and I were on duty all night, one or the other of us being continuously in the dining room.

At about 10.30 hours on the following morning I opened the bag and discovered that the only notes left in my bag were four five pound notes, very crumpled, and stored in as though placed there in a hurry.

Elizabeth Smith Sgt.

The following questions were asked the witness by the accused:

Q. Where did you pick me up? At the Matofield or further down the road, about 200 yards?

A. Nurse Stocks and myself were standing at the bar when Smith came in. He joined us. We did not pick him up.

Q. After we had finished drinking, where did you pick me up?

A. I left the bar, and Smith got in the car in the Matofield yard. I had

Q. had reason to speak to Nurse Stocks for allowing Smith to remain at the bar, and I was annoyed at her at the time. Smith got into the car in the yard, and I drove down the road about 200 yards before stopping for Nurse Stocks to get in the car.

Q. Is it not the case that, when we came out of the Matofield, you and the nurse had an argument there, & the nurse proceeded about 200 yards down the road & you then drove off and rang it up with her?

A. The question is already answered.

~~[illegible]~~

Q. Did I not bid you good night when you and Miss Stocks were sitting in the car 200 yards from the Mat. field?

A. No. I will got out the car in the Mat. field yard.

Q. When did I ask you ~~[illegible]~~ to take me & your home for a meal?

A. At the bar in the Mat. field Arms.

Q ~~[illegible]~~

at your home, that ~~[illegible]~~ you slapped the nurse's face for being rude?

A I have never struck one of my staff

Q. Is it not the case, when you struck the nurse, the nurse, after a minute, returned and struck you?

A No.

Elizabeth Smith Hall

2nd Witness. Miss Betty Stocks Nurse, of the St. George's Nursing Home, Hunstanton Sworn, having been duly sworn, states.

I have heard the evidence of Miss Elizabeth Smith Hays, and I corroborate what she has said.

I remember Miss Hays handing me her purse in the Mutrofield Arms at Clayton. I removed a five pound note from the roll which she had described, unfolded it as it was before, in four folds, and returned it to the purse. I closed the purse and returned it to Miss Hays.

When Pte Smith, Miss Hays, and myself returned to the St. George's Nursing Home at about 21.20 hours Miss Hays threw her purse on a chair in the hallway, and went downstairs. I went upstairs, and as I was on the stairs Smith called to me and said: "I am going now, as Matron will be busy. Her purse is on the chair, and I want you to see that it is still there." I then went downstairs to tell Miss Hays that Smith was leaving. We both came

back upstairs in about five minutes.
Smith was still in the hall.

I corroborate what Miss Hays has said about what then occurred, and about what occurred on the following morning.

I was present when Miss Hays opened the purse Betty Weeks

The accused asked the witness the following questions:

Q Was I in the car when you got out?

A. Smith got out the car & then had got hold of the arms. I got out & about 200 yards up the road.

Q. Is it not the case that the matron was very drunk?

A. No. She was not drunk.

Q Did you see me at any time touch the matron's purse?

A. No. I did not.

Q. When I told you about the matron's purse being left on the chair, did I not ask you to remove it & give it to the matron?

A. Smith called my attention to [illegible] being in the chair, but I don't recall him ~~saying anything~~ asking me to remove it.

Q. ~~It was not the case, when I asked you to remove it, at that time,~~ At the time that I spoke about the purse, did I not say: "~~Mr~~ Better remove that purse to safety in case anything happens to it"?

A. I remember Smith saying to me that the purse was on the chair, but I don't remember anything else he said.

Q. Did you not say: "If there is any clearing up of the purse, I will look to that later"?

A. When Smith asked me about the purse, I believe I told him not to worry about it. I would see to it later.

Q. Where did you get the two five pound notes which you handed to me, saying that it was for me to have a drink?

A. I did not hand Smith two five pound notes or any money.

Betty Stocks.

3rd Witness No. K 52732 Sgt Buchanan, V.
the Seaforth Highlanders of Canada,
having been duly sworn, states:

I was in the Queens Head Hotel,
Huntspierpoint, Sussex, at 2130 hours
on 8 July 1942. At about 2145
the accused, Pte. Smith came into the
saloon bar. Pte Smith said to me
that it was his birthday, and he
bought me a drink.

Sgt D Buchanan.

The accused declines to cross examine
the witness.

4th Witness Lieut. G. F. Williamson,
R.C.A.P.C. having been
duly sworn, states:

I am the Paymaster of the Seaforth
Highlanders of Canada. The accused
K 55655 Pte Smith, C., last received pay

a payment in the amount of ten shillings on 30 June 1942, on A.R. No 34 dated 30 June 1942. His previous payment was made on 3 June 1942, on A.R. No 21, being the balance of may pay, in the amount of three pounds. No other payments were made during the month of June or during the month of July for the first seven days. His monthly balance at the end of June, on his Pay Book, after receiving ten shillings, was eighteen dollars and sixty two cents, being withheld at his own request to cover a forfeiture which he had been awarded on 30 June, 1942. The said request was made on 31 June 1942.

[signature] Lieut.

The accused declines to cross-examine the witness.

Certified that owing to the exigencies of the service and the delay involved, the attendance of the following witnesses

cannot readily be procured. The written statements of the witnesses were read over to the accused, who did not require their attendance for cross-examination.

1. George Clarence Agamber, Licensee of the "Matfield Arms", Clayton, Surrey.
2. Mrs G.C. Agamber, wife of the Licensee of the said Matfield Arms.
3. Horace Sidney Freeman, Licensee of the "Queens Head Hotel", Hurstpierpoint, Sussex.
4. Edith Caroline Freeman, wife of the Licensee of the said "Queens Head Hotel"

J.W. Hall, Lieut
Officer taking Summary

5th Witness G.C. Agamber Statement follows.

6th Witness Mrs G.C. Agamber " "

7th Witness Horace Sidney Freeman " "

8th Witness Edith Caroline Freeman " "

Statement of George Clarence Agambar, Licensee of the "Matofield Arms," Clayton Sussex.

Re No. K53653 Pte. Smith, George

On Sunday evening, 3 July, 1940, I was serving at the private bar of the Matofield Arms. Miss Elizabeth Hayes and Miss Stanton came into the bar about 20:30 hours. Some time later Pte. George Smith, of the Scottish Highlanders of Canada, came into the bar, and joined Miss Hayes and Miss Stanton. The three of them were standing at the bar.

A short time later Miss Stanton ordered drinks for Miss Hayes, Pte. Smith, and a Pte. Paddock, as well as herself. Pte. Smith was then standing on the right of Miss Stanton, and Miss Hayes was standing on her left. Miss Stanton discovered that she did not have sufficient money to pay for the drinks, and Miss Hayes then handed to her her purse, saying "Change a fiver, not a tenner." Miss Stanton opened the purse, and brought out a large wad of notes folded together. She removed a five pound

note, and I saw miss Starkes return the wad of notes to the purse and close the purse. She then pushed the purse along the counter to miss Heys. This incident took place about 2100 hours.

While miss Starkes had the wad of notes in her hand I noticed that Pte. Smith looked surprised, ~~of~~ and took a long look at the money.

To the best of my knowledge the purse was not opened again for the rest of the evening. It remained on the bar counter until miss Heys left. She left in company with miss Starkes and Pte. Smith.

My wife and daughter were helping miss Heys. ~~purse was~~ purse was on the bar during the evening. ~~I did not~~ I did not see anyone touch it. ~~during the evening~~ during the evening before its departure

5 July 1942

Lt C. Ogamian

Statement of Mrs. G.C. Agambar, wife of the Licensee of the "Metsfield Arms", Clayton, Sussex

Re No. K53653 Pte Smith, George

On Friday evening, 3 July, 1942, I was serving my husband & was at the bar of the Metsfield Arms ~~Clayton~~ ~~between~~ about 20 3/4 hours & noticed three Navy boys' faces on the bar. I was serving at the bar continuously during the evening, and did not see anybody ~~come~~ touch the pint. The boy was with a couple more Navy, and he never moved away from the position at the bar.

8 July, 1942

L. Agambar

Statement of Horace Sidney Freeman, "The Queens Head Hotel", Burstpierpoint, Sussex.

I am the licensee of the Queens Head Hotel. At about 21.30 hours on Friday the 3rd July 1942 a Private soldier came into the private bar of my hotel. He gave to my wife two five pound notes, which she immediately handed to me. The serial numbers of these notes were G/2246/2793 and G/2147/1729. The soldier was with a sergeant of the Seaforth Highlanders of Canada who, so I understand, is stationed at Hampton Lodge.

6th July 1942.

Signed Horace S. Freeman.

Horace S Freeman

Statement of Edith Caroline Freeman, "The Queens Head Hotel", Burstpierpoint, Sussex.

I am the wife of the licensee of the Queens Head Hotel. At about 21.30 hours on the 3rd July 1942 I was serving at the bar, when a Canadian soldier wearing a red square flash on his shoulders came into the private bar. While he was here he gave me two five pound notes to have changed. I asked my husband to look at them, and, when he approved, I changed them for him. The soldier bought some drinks, and a bottle of whiskey. He left when the bar closed at 22.00 hours. The soldier was an elderly man, about 45, clean shaven, about 6ft 1in, well built. He had a square face, pale complexion, fair hair, inclined to grey.

6th July 1942.

Signed.....Edith Freeman.

Edith Freeman

The accused was cautioned pursuant to R.P. 4(E), and made the following statement, under oath:

On Thursday night 3 July, 1942, I went to the Metfield to have a drink. When I arrived in there I asked for a pint of beer, I was going to pay for it when miss Heyes said: "Forget about it I will pay for it." At the same time she asked me if I would have a double Scotch. I said yes. We had quite a few double Scotches, & miss Heyes told the other nurse that it was time to go on shift. Before leaving miss Heyes had an argument with the nurse, miss Stubbs, for trying to get away with me & the officer who was drinking at the Metfield that night or for about ten & fifteen minutes, until miss Heyes said to the nurse: "to hell with them We are going home." Before leaving the Metfield the nurse bought a large bottle of whis-

they went outside. I followed out to see if they got going. I saw the first the wine bottle in the back of the car, & then we saw a sight ten bottles lying on the back seat. I bid the two of them good-night, & before they left they started to argue again. The nurse jumped out from the front seat, and ran about 200 yards up the road, towards Warwick. I went on & stood beside the bar-stand, when two boys backed out of the yard & made off in the direction of the nurse. ~~[illegible]~~ I waited there for about three & four minutes, & see if the motor car would move away, before I went down there. It remained there, and I came down the road towards it coming home to camp. When I was passing

the car I told the two of them "good night" as I was passing [illegible] this they called: "Come back." She opened the back door and told me to jump in. She said "I will drive down to the house and you can have some supper with us." She drove home, put the car in the garage, & then I was sent into the house. She showed me into the sitting room. While I was there I heard the two of them arguing in the hallway again. I came out to see what the trouble was, and saw the nurse strike the matron across the face. The nurse ran down towards the front door of the house, & turned and came back and struck the matron on the face. The matron got up & went downstairs. The nurse went upstairs about four stairs, watching the matron go down. I asked the nurse "What is your idea in striking the matron?" She answered: "She hasn't

got to strike me in front of any soldier."
I said: "I am going right now," because
I did not want to be mixed up in any
of them fights. When I was ready to go
I saw the matron's fiance lying on
an armchair in the hall. I told the
nurse to summon it, as it was lying
in the main hallway, or give it to
the matron. At the same time I told
her that it was no place, if anything
happened to the fiance, that I would
be getting blamed for it. She said
"never mind, if there was going to
be any shooting up, I will attend to
that later." I told her I was going
right home right then and there, and I
was on the front of the outside steps
when the nurse called to me. She
handed me two five pound notes, saying
"You can have a drink with that, as
the matron is too damn drunk and
mad at the moment that she wouldn't
let us have the wine or the beer from the car."

Having the two pints of beer,
I went to the Queens Head Hotel
on Hastings Street and had a few drinks
there, along with Sgt. Buchanan.
also bought a bottle of Scotch, &
then proceeded home to camp. I never
knew anything more about the money
until I was questioned about it after
having been placed in custody.
plead innocent to all three. Mrs
Hey and Mrs Stocks were very
drunk.

At the Westfield Camp I paid no
attention to the money when Mrs Stocks
bought a round of drinks.

George Smith

R.P. 4 has been complied with.

Taken down by me in the presence of the
accused this 8th day of July, 1940

F.C. Hall Lieut.
Deputy Attorney Generals of
Canada.

EXHIBIT "N"

No. K53653 Name Pte Smart G. Sqn., Battery or Company C Corps Seaforth 9C Date of enlistment Sheet No. 1

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | G.C. Badges | Signature O.C. Company, etc. | Service or Proficiency Pay | Character

M.F.M. 6 (A.F.B. 1222)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order suspending award	By whom awarded	Remarks
On the field	5-6-42	Pte	—	W.O.A.S. Absent without leave from 2300 hrs 5-6-42 to 0430 hrs 22-6-42 Sec 15 (1) A.A.	Cpl McLeod	28 days Forf of Pay	2 July 42	O.C. Coy	17 days awarded [illegible] 11 days of which to be spent in Guard Tent

Certified true copy.

J.W. Bowman
Adjt. The Seaforth Highs of Canada

[illegible] Capt
13 July 42

EXHIBIT
"M"

Statement as to Character and Particulars of Service of the accused.

A53653 Pte. Smith, G., The Seaforth Highlanders of Canada.

The accused has been in confinement since 6 July 1942 awaiting trial on the present charges, for ~~[illegible]~~ days in civil custody, and 12 ~~and~~ days in military custody, making a total of 12 days, of which nil days were spent in hospital.

The present age of the accused is 42 years according to his attestation paper.

The date of his attestation, specified in his attestation paper is 28.2.40.

The accused ~~has no conviction or entitled to no military decoration or punishment~~ is in possession of or entitled to a military decoration. General Service 41 clasp. Victory & Territorial 41 clasp.

J.H. Sowan
Lieut.

G.R. Clarke Lieut
Adjutant



Y.M.C.A. STEINE HOUSE, BRIGHTON

H.M. Forces : Bed and Breakfast 2/- each

Name J. Smith

Regt. No. K53653 Date 6/7/42

Received by [illegible] Room 2

Note—The Stewards have the right to refuse admission to any man under the influence of alcohol, and no intoxicating drink is allowed to be brought on the premises. No money returned

CLOSE 11 p.m. PROMPT.

To: Officer Commanding
The Seaforth Highlanders of Canada

Sir: I request the services of Lieut Fulton

to represent me at my forthcoming Field General Court Martial.

George Smith

EXHIBIT K

NOTICE.

GUESTS are respectfully informed that the Proprietors cannot be responsible for boots, umbrellas, coats, hats, etc., left in Corridors, Halls, or Public Rooms; such articles should be given in charge of the Porters.

Cheques not taken in payment of Accounts.

Visitors arriving without luggage are requested to pay a deposit and settle their Accounts daily.

Guests not entirely satisfied with their Room, or the service, will greatly oblige by at once mentioning same to the Management.

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Room 302
Charge 12/6 per 1
Date 5.7.42

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Apply:

Table d'Hôte Meals

Breakfast 7.30 to 9.30
(Sundays, 8.30 to 10.30)

Luncheon 12.30 to 2.30
(Sundays, 1 to 2.30)

Dinner 6.30 to 8.45

Afternoon Tea served in Lounge.

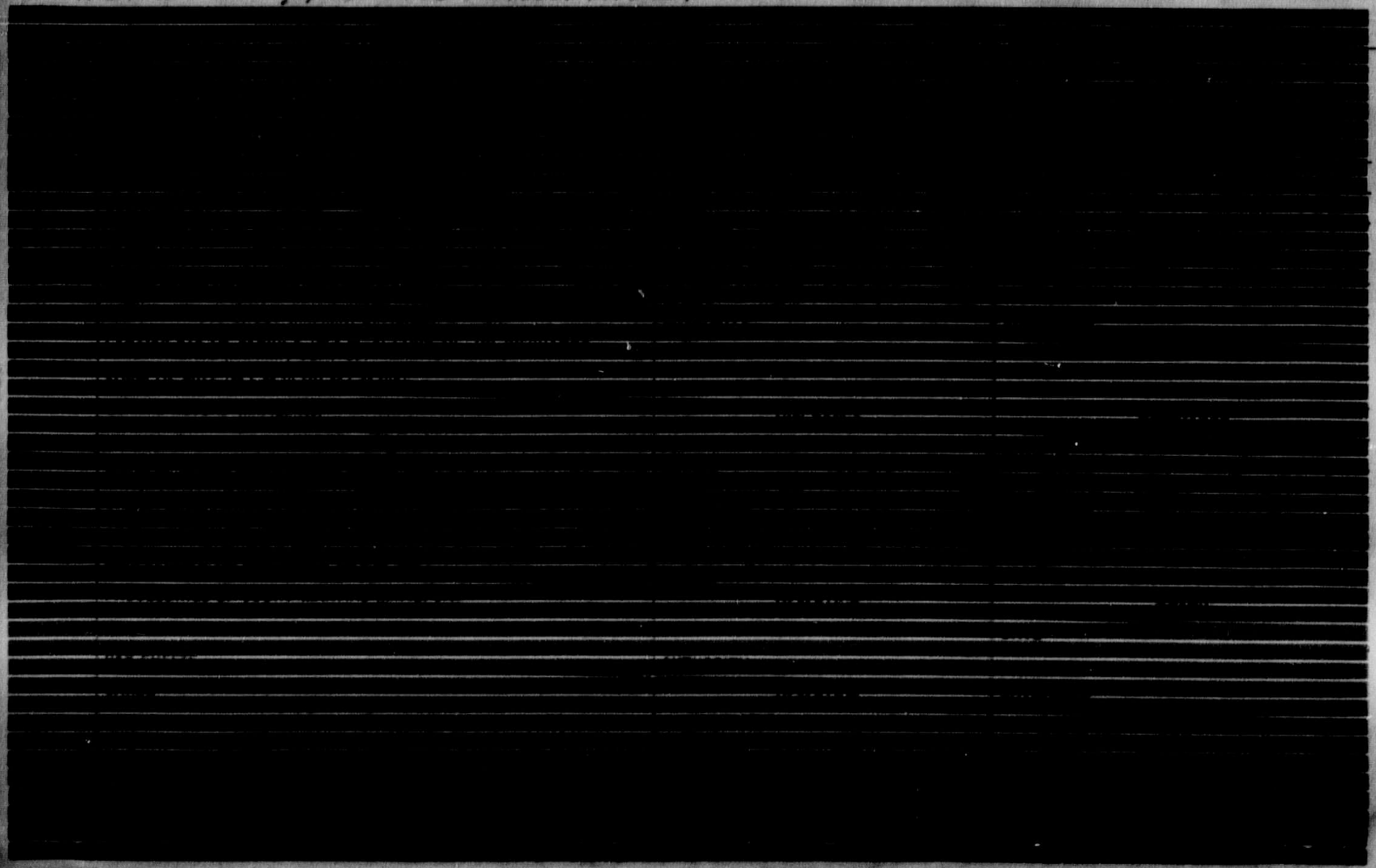
Suppers served till Midnight.

Meals served [illegible] Carte at any [illegible]

For Meals served in the Restaurant, an extra charge of 1/6 will be made for each person.

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C.A.O. F.—1—91 Fort Smith, Ark.



FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

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FLASH NUMBER ONE

FLASH NUMBER ONE

C.A.O.F.—1—91 Env Smart Co.

RECORDED AT CMHQ IN AB 160 p. CAB. 1-1-91

FIELD GENERAL COURT-MARTIAL

CPA86 (To lieu of AFA8) 40/P & S/1698 (4800) 4/38B

Convened by Order of Brig. H. L. Sparling Comd RCA 3 Cdn Inf Div dated 29 Dec 43 CAOF

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
L301	Gnr	"	George	Smith	2/13 Cdn 3d Regt RCA

PROCEEDINGS REVIEWED

Date 29 January 46

HQ DJAG

PROCEEDINGS REVIEWED

9 Feb 46 A. J. Brady, major

REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Germany on (date(s)) 31 Dec 43

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. (CAOF)

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet ~~(if~~ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3) RLC. LLC.

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is ~~(are)~~ ~~[redacted]~~ ~~sworn~~. The accused is ~~(are)~~ brought before the Court. At 0940 hours trial commences. RR.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO (Offr).~~ LLC. HS. LLC.

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused: ~~Do you object to~~ ~~[redacted]~~ as interpreter ? Ans LLC.

~~The interpreter is sworn.(1). Do you object to~~ ~~The shorthand writer is sworn.(1)~~ LLC as shorthand writer ? Ans LLC.

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	H. Cowan	2/14 Cdn 3d Regt RCA
Member	Capt	L. H. King	2/13 Cdn 3d Regt RCA
Member	Capt	D. D. Christie	2/13 Cdn 3d Regt RCA
Judge-Advocate			
Prosecutor	Lieut.	J. R. Ray.	2/13 Cdn 3d Regt RCA.
Defending Offr	Capt.	W. J. Baker	2/13 Cdn 3d Regt R.C.A.

Questions by President: Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 2.)

A8. The accused L301 Gnr Smith, G. before arraignment make(s) (no) objection(s) plea(s).(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. LLC.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF AB6 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~(as altered under~~ considers the Instrs on Procedure after Arraignment at top of p 2. The pro- LLC. ~~ceedings~~ are continued on Record Form 5

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.[2]

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).[1] If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]

President to accused : Do you wish to make a statement ? Ans No [5]

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1)~~ The Court decides (not) to advise accused to change his ~~(these)~~ plea(s) of Guilty to Not Guilty on all charge(s). The accused is ~~(not)~~ so informed, ~~and he (they) changes(s) his (these) plea(s) to~~ ~~charge(s)~~ ~~Part I of the Schedule is amended accordingly~~

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty ✓ (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.[1]

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex **A**, initialled and read aloud by the President.[1]

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and marking on appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

f4c.

CHARGE SHEET

The accused, L301 Gnr George SMITH, 2/78 Bty, 2/13 Cdn Fd Regt RCA (CAOF) a soldier of the Cdn Army is charged with:

First Charge
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field absented himself without leave from 0600 hrs 5 Sept 45 until 1200 hrs 23 Sept 45 (Absent 18 days 6 hrs)

Second Charge
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field while under close arrest absented himself without leave from 2000 hrs 28 Sept 45 until 2200 hrs 6 Dec 45 (Absent 69 days 2 hrs)

In the Field

Date.- 21 Dec 45

Ken Telford Lt-Col
(K D TELFORD) Lt Col RCA
Commanding Officer
2/13 Cdn Fd Regt RCA (CAOF)

To be tried by F.G.C.M.

Date 22 Dec 45

H A Sparling
(H A SPARLING) Brig RCA
CRA 5 Cdn Inf Div (CAOF)

f.g.c.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA40) 40/FA95/1697 (2545)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 320, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L301	Gnr		George	SMITH	2/13 Cdn Fd Regt RCA

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person[X] named above as the accused, being subject to military law, has [illegible] committed the offence(s) set forth in the Charge Sheet[X] attached and on (*date*) 31 Dec 45 endorsed by me, (~~[illegible]~~), "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ([illegible])

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person[X], and to consist of the Offrs appointed or detailed hereunder.

4. [illegible]

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. [illegible]

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Maj	R G COWAN		2/14 Cdn Fd Regt RCA

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	A G LAING		2/12 Cdn Fd Regt RCA
Capt	D T CHRISTIE		2/3 Cdn A Tk Regt RCA

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Lt	A M RITCHIE		2/12 Cdn Fd Regt RCA

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in GERMANY (*Country.*)

Date 29 Dec 45

(*Signed personally. RP 105 fn 2.*) Brig (*Rank.*)

Commanding RCA 3 Cdn Inf Div CAOF

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(*See overleaf for oaths and notes for use on trial.*)

MEDICAL CERTIFICATE.

---

nr Smith G -- 2/13 Cdn Fd Regt RCA (CAOF)
have carefully examined the above-named soldier and find him fit to
[redacted]
Field General Court-Martial.

ort Germany

[redacted] 45

11/45 A.& E.W.Ltd. Gp.698

D. C. Rubin Capt
Signature of Medical Officer
(I C Rubin) Capt RCAMC
2/13 Cdn Fd Regt RCA
(CAOF)

MEDICAL CERTIFICATE.

L-301 Gnr Smith G -- 2/13 Cdn Fd Regt RCA (CAOF)
I CERTIFY that I have carefully examined the above-named soldier and find him fit to
be committed to x detention barracks/
undergo trial by Field General Court-Martial.

Station Dever Airport Germany

Date Dec. 31 [redacted] 1945

(24551) W1-40834/4471 30,000 11/45 A.& E.W.Ltd. Gp.698

D. C. Rubin Capt
Signature of Medical Officer
(I C Rubin) Capt RCAMC
2/13 Cdn Fd Regt RCA
(CAOF)

SUMMARY OF EVIDENCE Ex. A
in the case of

L 301 Gnr Smith, G., 2/78 Bty, 2/13 Cdn Fd Regt RCA (CAOF),
CHARGED WITH
(1.) AWL (AA Sec 15 (1) ~~; (2.) AWL (AA Sec 15 (1) ; (3.) When in confinement escaping (AA Sec 22)~~ ; (4~~3~~) AWL (AA Sec 15 (1) .

By the direction of the Commanding Officer the evidence is taken on oath.

FIRST WITNESS

L154080 L/Bdr Ell P A 2/78 Bty, 2/13 Cdn Fd Regt RCA (CAOF), having been duly sworn states:-

I, L154080 L/Bdr Ell P A, made out the Tattoo Report for the 2/78 Bty at 2300 hrs 5 Sep 45 and listed L-301 Gnr Smith G, as absent from 0630 hrs 5 Sep 45.

Q. "Did you know L-301 Gnr Smith G by sight?"

A. "Yes, sir."

The accused wishes to cross-examine this witness:-

Q. "Did you leave word in the room the night of 5 Sep 45 for me to report to you when I came in."

A. "Yes, I did."

Q. "Did Gnr Carman come and tell you that I had arrivedin that night?.

A. "Yes, Gnr Carman did come."

.....
(L154080 L/Bdr Ell, P A)

"The certified true extracts of Part II Orders Nos 14, 19, and 21, produced as documentary evidence, were read to the accused, marked Exhibits "A" "B" and "C" respectively, signed by me and attached hereto."

J.S. FREEBORN LT.

SECOND WITNESS K 68643 SGT HARVEY R.H.

R.H.Q., 2/13 CDN FD REGT RCA (CAOF), duly sworn, states:-

" I am K 68643 Sgt Harvey R.H.
On 23 Sept 45 I was acting in the capacity of guard commander on the main gate, Mc Naughton Barracks. At approximately 1200 hrs 23 Sept 45, L 301 Gnr Smith G. came into the guard room and surrendered himself. I took all the particulars, placed him under close arrest and immediately notified the Duty Officer."
The accused does not wish to cross examine this witness.

K 68643 Sgt Harvey R.H.

THIRD WITNESS C 115084 BDR MALETTIE R.

2/81 Bty, 2/14 Cdn Fd Regt RCA (CAOF), duly sworn, states:-

" I, C 115084 Bdr Malettie R was 2 ic of the main gate guard at Mc Naughton Barracks on 28 Sept 45. I was asleep in the guardroom from about 2230 hrs till about 0600 hrs the next morning. When I woke up I was told that Gnr Smith and another prisoner had escaped."
Q. "Did you see Gnr Smith G. in custody the night of 28 Sept 45?"
A. "I am not sure when, but I saw him going in and out for meals."
Q. "Did you inspect the cells the morning of 29 Sept 45?"
A. "Yes I did and Gnr Smith was not present."
The accused does not wish to ~~examine~~ cross-examine this witness.

Bdr Malettie R.

FOURTH WITNESS D 7675 R.S.M. JAMES E.R. 2/14 Cdn Fd Regt RCA (CAOF), sworn states:-

"I, D 7675, R.S.M. JAMES E.R., on the morning of 29 Sept 45 I was informed by R.S.M. Richardson, 2/13 Fd Regt RCA that a member of the 2/13 Fd Regt had escaped from the camp guard room. As the guard on duty was from 2/14 Cdn Fd Regt I went over to the guard room to investigate. I found that Gnr Smith,G. L 301 had escaped through what I considered negligence. I there fore placed Sgt Seaton E.R., the guard commander under arrest and relieved him."
Q. "Did you inspect the cells on morning of 29 Sept 45?"
A. "I did and L 301 Gnr Smith G. was not there."
The accused does not wish to cross-examine this witness.

E.R. JAMES, R.S.M.

FIFTH WITNESS A 61567 BDR WERSTINE J.T., 2/78 Bty, 2/14 Cdn Fd Regt RCA (CAOF) sworn states:-

"I, A 61567 Bdr Werstine J.T., was on main gate guard on the night of 28-29 Sept 45. I saw the accused, Gnr Smith G. in the guard room in custody on his return from supper. Next I heard about it was in the morning when Sgt Seaton reported Smith had escaped and we went and looked in the cellar Gnr Smith G. was not present. I was with Sgt Seaton looking around the guardroom and saw a basement window was open." The accused declines to cross-examine this witness.

BDR WERSTINE J.T.

SIXTH WITNESS D 135341 GNR BAIRD D.R., 2/81 Bty 2/14 Cdn Fd Regt RCA (CAOF), sworn, states:-

"I,D 135341 GNR BAIRD D.R. was on the main gate guard on 28 Sept 45. I saw Gnr Smith D. coming back from supper with escort about 1730 hrs. That was the last I saw of him. I did not see the cells in the morning of 29 Sept 45.
The accused declines to cross-examine this witness.

GNR BAIRD D.R.

" The Certificate of Surrender, produced as documentary evidence, was read to the accused, marked Exhibit "B", signed by me, and attached hereto."

J.S. FREEBORN LT.

The accused was cautioned as follows:-

Q. "Do you wish to make any statement or give any evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

A. "I do not wish to make a statement."

The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence, consisting of six pages was taken down by me in the presence of the accused and that RP 4 (C), (D)(E)(F), and (G) (13) have been complied with.

J.S. FREEBORN LT.,
2/13 CDN FD REGT RCA CACF

IN THE FIELD
20 Dec 45.

LIST OF EXHIBITS

Exhibit "A" — Certified true extract of 2/13 Cdn Fd Regt RCA (CAOF) Part 11 Order No 14

Exhibit "B" — Certified true extract of 2/13 Cdn Fd Regt RCA (CAOF) Part 11 Order No 19

Exhibit "C" — Certified true extract of 2/13 Cdn Fd Regt RCA (CAOF) Part 11 Order No 21

Exibit "D" — Tattoo Report as of 2300 hrs, 5 Sept 45 signed by Ll54080 L/Bdr ELL, P.A., 2/13 Cdn Fd Regt RCA (CAOF)

Exibit "E" — Certificate of Surrender signed by Capt T Jamieson Quirk, Commanding 13 Provost Company

Exhibit "A"
Hudson 46

2/13 CANADIAN FIELD REGIMENT RCA (CACF)
PART II ORDERS
issued by
CANADIAN SECTION 2nd ECHELON HEADQUARTERS
BRITISH ARMY OF THE RHINE

Last Order
No 13
15 Sep 45

No 14
23 Sep 45

"B" OTHER RANKS

9 ABSENT WITHOUT LEAVE

(b) AWL from 0400 hrs 5 Sep 45
L 301 Gnr SMITH G

(RSC WILLIAMS) CAPT
for Offr IC
CDN SEC 2 ECH HQ BAOR

CERTIFIED TRUE EXTRACT OF PART II ORDER No 14

19 Dec 45

(R PETERSON) A/Capt
Adjutant
2/13 CANADIAN FIELD REGT RCA
CACF

Officer in custody of the original

Exhibit "B"
J Stenborn Lt.

2/13 CANADIAN FIELD REGIMENT RCA (CAOF)
PART II ORDERS
issued by
CANADIAN SECTION 2nd ECHELON HEADQUARTERS
BRITISH ARMY OF THE RHINE

Last Order No 18 13 Oct 45 — No 19 19 Oct 45

"B" OTHER RANKS

12 ABSENT WITHOUT LEAVE

(f) AWL from 0600 hrs 5 Sep 45 STILL absent 0600 hrs 13 Sep 45 (8th day)
L 301 Gnr SMITH G

(g) AWL from 0600 hrs 5 Sep 45 Ret from AWL 1200 hrs 23 Sep 45
L 301 Gnr SMITH G

(i) AWL from 2000 hrs 28 Sep 45
L 301 Gnr SMITH G

(j) AWL from 2000 hrs 28 Sep 45 Still absent 2000 hrs 6 Oct 45 (8th day)
L 301 Gnr SMITH G

(MT VENOETTE) Capt
for Offr IC
CDN SEC 2 ECH HQ BAOR

CERTIFIED TRUE EXTRACT OF PART II ORDER No 19

3rd DEC 45

(M PETERSON) A/Capt
Adjutant
2/13 CANADIAN FIELD REGT RCA
CAOF

Effect in custody of the original

Exhibit "C"
J. Strubbe A.

2/13 CANADIAN FIELD REGIMENT RCA (CAOF)
PART II ORDERS
issued by
CANADIAN SECTION 2nd ECHELON HEADQUARTERS
BRITISH ARMY OF THE RHINE

Last Order No 20 29 Oct 45 — No 21 — 31 Oct 45

"B" OTHER RANKS

6 ABSENT WITHOUT LEAVE

(a) AWL from 2000 hrs 28 Sep 45 Still absent 2000 hrs 20 Oct 45 (22nd day)

L 301 Gnr SMITH G

(MT VENGHTER) Capt
for Offr IC
CDN SEC 2 ECH HQ BAOR

CERTIFIED TRUE EXTRACT OF PART II ORDER No 21

19 Dec 45

(R REIDSON) A/Capt
Adjutent
2/13 CANADIAN FIELD REGT RCA CAOF

Officer in custody of the original

Exhibit "D"
J Thurlow Lt

2/78 Bty RCA

5 Sept 45

R.H.Q.
2/13 Cdn Fd Regt RCA

TATTOO REPORT

1. As of 2300 hrs 5 Sep 45

B 454 14 Smr J Gdsm S.M.S 2357 28th Aug 45
B 144240 " Thomas V C Ohio 2nd Sept 45
L 31 " Smith S 063[illegible] 2nd Sept 45

Exhibit "B"
J Thurlow Lt

J.T.

Exhibit "E"
J Structon Lt

Under Army Act Sec 153 (1) (a)

CERTIFICATE OF SURRENDER

I, the undersigned, certify that Regt'l No. L 301 ..... Rank ..Gnr.....

Name ..... SMITH, G. ..... Unit ..... 2/78 Bty, 2/13 Field Regt ..

Formation ...C.A.O.F. ..... SURRENDERED to ..EXCpl H. Mavety, ..

of No. 13 Cdn Provost Coy at ..Nijmegen ..... in Holland at 2200

..... hrs, on the ..6th day of ..December ..... 1945 as being a sold[illegible]

absent without leave. XXXXXXXXXXXXXXXXXXX

Orderly Room Stamp

Signature of Provost officer in whose custody the s/m soldier is placed upon arrest.

(T. Jamieson Quirk) Capt
Comd 13 Cdn Pro Coy

To Whom It May Concern

I, the undersigned, request that Lieut Russell, 8 L AA Regt, RCA defend me at my coming trial, or if he is not available, request that the Convening Authority appoint an officer to act as my defending officer.

G. Smith.

For Offrs.

Summary of Evidence
in the case of

L 301 Gnr Smith, G., 2/78 Bty, 2/13 Cdn Fd Regt RCA (CAOF), charged with (1) AWL (AA Sec 15(1)); ~~(2) AWL (AA Sec 15(1)), (3) when in confinement escaping (AA Sec 22),~~ (2) AWL (AA Sec 15(1)).

By the direction of the Commanding Officer the evidence is taken on oath.

First Witness L 154080 L/Bdr Ell P.A., 2/78 Bty, 2/13 Cdn Fd Regt RCA (CAOF), duly sworn, states:-

"I, L 154080 L/Bdr Ell P.A., made out the Tattoo Report for the 2/78 Bty at 2300 hrs 5 Sept 45 and listed L 301 Gnr Smith G. as absent from 0630 hrs 5 Sept 45."

Q. "Did you know L 301 Gnr Smith G. by sight?"

A. "Yes, sir."

The accused wishes to cross-examine this witness:-

Q. "Did you leave word in the room the night of 5 Sept 45 for me to report to you when I came in?"

A. "Yes, I did."

Q. "Did Gnr Carman come and tell you that I had arrived in that night?"

A. "Yes, Gnr. Carman did come."

P.A. Ell

"The certified true extracts of Part II Orders Nos. 14, 19 and 21, produced as documentary evidence, were read to the accused, marked Exhibits "A", "B" and "C" respectively, signed by me, and attached hereto."

J S Fuchon Lt

Second Witness K 68643 Sgt Harvey R.H. RHQ, 2/13 Cdn Fd Regt RCA (CAOF), duly sworn, states: —

"I am K68643 Sgt Harvey R.H., On 23 Sept 45 I was acting in the capacity of guard commander on the main gate, McNaughton Barracks. At approximately 1200 hrs 23 Sept 45, L 301 Gnr Smith G. came into the guard room and surrendered himself. I took all the particulars, placed him under close arrest and immediately notified the Duty officer."

The accused does not wish to cross-examine this witness.

K68643 - Sgt Harvey R H

Third Witness C 115084 Bdr Malettie R., 2/81 Bty, 2/14 Cdn Fd Regt RCA (CAOF), duly sworn, states: —

"I, C115084 Bdr Malettie R. was 2 IC of the main gate guard at McNaughton Barracks on 28 Sept 45. I was asleep in the guardroom from about 2230 hrs till about 0600 hrs the next morning. When I woke up I was told that Gnr Smith and another prisoner had escaped."

Q. "Did you see Gnr Smith G. in custody the night of 28 Sept 45?"

A. "I am not sure when but I saw him going in and out for meals."

Q. "Did you inspect the cells the morning of 29 Sept 45?"

A. "Yes, I did, and Gnr Smith was not present."

The accused does not wish to cross-examine this witness.

Beb Mallette R.

Fourth Witness D 7675 R.S.M. James E.R. 2/14 Cdn Fd Regt RCA (CAOF), sworn, states:-

"I, D.7675, R.S.M. James E.R., on the morning of 29 Sept 45 I was informed by B.S.M. Richardson, 2/13 Fd Regt RCA that a member of the 2/13 Fd Regt. had escaped from the camps guard room. As the guard on duty was from 2/14 Cdn Fd Regt I went over to the guard room to investigate. I found that L/Bdr Gnr Smith, G. had escaped through what I considered negligence. I therefore placed Sgt Seaton E.R. the guard commander, under arrest and relieved him."

Q. "Did you inspect the cells on morning of 29 Sept 45?"

A. "I did and L/Bdr Gnr Smith G. was not there."

The accused does not wish to cross-examine this witness.

E. R. James RSM.

Fifth Witness A61567 Bdr Werstine J.J., 2/81 Bty, 2/14 Cdn Fd Regt RCA (CAOF) sworn states:—

"I, A61567 Bdr Werstine J.J., was on main ~~gate~~ guard on the night of 28-29 Sept 45. I ~~saw~~ the accused, Gnr Smith, G. in the guardroom in custody on his return from suppa. Next I heard about it was in the morning when Sgt Seaton reported Smith had escaped and we went and looked in the cells. Gnr Smith G. was not present. I was with Sgt Seaton looking around the guardroom and saw a basement window was open."

The accused declines to cross-examine this witness.

J.J. Werstine

Sixth Witness D 135341 Gnr Baird D.R., 2/81 Bty 2/14 Cdn Fd Regt RCA (CAOF), sworn, states:—

"I, D135341 Gnr Baird D.R. was on the main ~~gate~~ guard on 28 Sept 45. I ~~saw~~ Gnr Smith G. coming back from supper with escort about 1730 hrs. That was the last I saw of him. I did not see the cells in the morning of 29 Sept 45."

The accused declines to cross-examine this witness.

D.R. Baird

"The Certificate of Surrender produced as documentary evidence, was read to the accused, marked Exhibit "E", signed by me, and attached hereto."

J S Fruborn Lt

The accused was cautioned as follows:

Q. "Do you wish to make any statement or give any evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

A. "I do not wish to make a statement."

The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence, consisting of seven pages was taken down by me in the ~~presence~~ of the accused and that RP 4 (C), (D), (E), (F), and (G)(13) have been complied with.

J S Freeborn Lt
2/13 Cdn Fd Regt RCA (CAOF)

In the Field
20 Dec 45

Ex "B"

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
L 301	Gnr	SMITH G	2/13 Can Fd Regt RCA (CAOF)

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers inserted should correspond with the number or entries in the conduct sheet(s) produced, bring down to the most serious offence in each entry, and to any mentioned special acts of gallantry or distinguished conduct.

Instructions.—If the sheets do not bear such entries the entries for disciplinary cases may be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For AWL.	One time	AWL. One times.
For	time	times.
For	time	times.
For	time	times.
For	time	times.

NO LIST OF AWARDS OF GALLANTRY OR DISTINGUISHED CONDUCT,

or

THERE IS NO ENTRY IN THE CONDUCT SHEET OF THE ACCUSED

2. THE ACCUSED HAS PREVIOUSLY BEEN [illegible]

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. THE ACCUSED IS UNDER SENTENCE OF IMPRISONMENT, or The accused at the present time is suspended under sentence for 136 days beginning on the 15 day of July 1945

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 14 days in military custody, making a total of 14 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his next of kin attestation paper is 38 years 4 mons

6. The date of his ENLISTMENT attestation specified in his ENLISTED ATTESTATION attestation paper is 23 May 1941

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 4 years 7 mons

8. THE ACCUSED IS ENTITLED TO [illegible] YEARS

9. THE ACCUSED HAS BEEN [illegible] TIMES IN THE COURSE OF HIS SERVICE.

10. The accused is in possession of, or entitled to, no military decoration or military award [illegible]

11. IF NO ENTRY APPEARS ABOVE: The accused before he was liable to serve under the [illegible] SERVICE

12. THE ACCUSED HAS [illegible] THE ACCUSED'S MILITARY CONDUCT [illegible] YEARS

AND HAS [illegible] IN THE COURSE OF THAT SERVICE [illegible] YEARS

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. L 301 Rank Gnr Name SMITH C of 2/13 Cdn Fd Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
FGCM	Field 29 May 45	15 (1) AA AWL 19 days 10 hrs	6 mons Det	sentence suspended 15 Jul 45

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 21st day of June 45

R D Telford Lt Col

(R D TELFORD) LT COL
Commanding Officer
2/13 Cdn Fd Regt RCA (CAOF)

M.F.M. 6
(A.F.B. 122)
100M—11-40 (6725)
H.Q. 1772-45-18

No. L.301 Name SMITH G | Sqn., Battery, or Company | Corps RCA Ex "C" | Date of enlistment 23 May 1941 | G.C. Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No. | Signature O.C. Company, etc. R Hegan Maj | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
									Cases Drunkenness NIL
				On promotion to rank of sjt wef 1 May 42. Date of last entry 2 Mar 43.					
New sheet prepared									
Field	29Apr 45	L/Bdr		AA Sec 15(1) AWL from 0900 hrs 29 Apr 45 to 1900 hrs 18 May 45 Absent 19 days, 10 hrs, time in arrest 10 days, 5 hrs.	Documentary evidence	6 mos Det Sjt Arseneau	29 May 45	RCCM	Forf 20 days Pay PR&I 149 (1) (a) 10day pay PR&I 149 (1)(a)(i)
						Sentence suspended 15 Jul 45			
						Marks earned 284			
						Days in suspension 136			
				Certified true copy		(R Patterson) A/Capt., Adjutant, 2/11 Cdn Fd Regt RCA (CAOF)			
				20 Dec 45					

(P.T.O.)

P.C.

President and members of the court;

Truly the most disheartening facts of alcoholism that I have heard, and the vile effect that it has on mind and body, and the evil path that it directs, was told to me yesterday during this season of peace and goodwill. For yesterday I heard from the lips of Smith, the truth about how he is the devoted slave of alcohol. Since then, I've wondered why Smith isn't under medical care, or under a personality who can show him the way, because quite frankly he doesn't know it himself. During his total absence of approximately eighty seven days, he was drunk about half the time. He's a non volunteer with a point score of 126 and he was to be repatriated at the end of September, however he's still here. A man with 126 points, with four years and seven months

of faithful service, without crime, but for one exception, shows his steadfastness during action. This previous breach of discipline occured near the conculsion of hostilities. Before Smith went absent in early Sept. he was aware of his return to Canada, and the fact that he was not a volunteer proves the desire of his return. His father, who is a veteran of the last war, and a mother getting along in age would like to see their son, and he them. But this did not subdue the ever present, ever strengthening and ever powerful grip of Alcohol on his system. This man does not need detention, he needs rather, compession he needs the good influence of his mother, and the steadying qualities of his father, he needs the good environment of his home, and as I see it, he needs an honourable discharge from the army, in which he has served so well.

I beg of the court to consider his good service, and the apparent good citizenship of his family and himself. Consider also the admirable feeling this man had for his Regt from which he was detached, and posted to C.M.O.F. That feeling portrays the ideal for which he fought, the ideal of brotherhood, and now he stands alone, without friends. He loved the 8th/9th Regt and didnt want to leave it. He has been away from home for 3½ years, and the following are his terms of service.

L/Bdr - 1 April 42
A/Bdr - 1 May 42
A/Sgt - 15 July 42
Confirmed Bdr 1 July 42.
A/Lt 1 Oct 42
A/Sgt 31 Jan 43.
Confirmed Sgt 11 May 43.

This man has thrown a great deal away during the past eight months, and I beg of the court to be as

lenient as possible in awarding punishment. I feel strongly for this man who has given himself to strong drink and who is beyond himself. For better be it, after all these years of faithful service to send him home where he belongs, he has run his course in the army, let us do him no further harm. I can assure you gentlemen, that I sincerely believe, that no good will come of many days in detention for Smith. Many cases in recent times of various types have been considered from the standpoint of compassion, and it is felt, that the need has never been so great nor leniency so urgently required as now. Smith unfortunately is an addict, and a man so possessed pays tenfold through mental suffering and physical ~~suffer~~ harm for his desire to drink

Capt.
2/3rd Can Fd Regt RCA (Cmdg).

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans.....
Do you intend to call witnesses on your behalf?
Ans.....
Are they witnesses as to character only? Ans.....
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF AP5. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. No
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 86 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Only in mitigation of punishment. Nil.(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A); KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(7), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : L 301 Gnr Smith, G. 2/13 Cdy. 2d Lgt., R.C.A.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... beginning on (date) ..... nil.

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 24 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

One hundred and fifty (150) days detention.

(Sgd) ..... 31 Dec 45 (Sgd) R.B. Cowan Maj

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is : I confirm the finding and sentence.

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

Date 14 Jan 46 (Sgd) ..... Brig

Commanding R.C.A. 3 Cdn Inf Div, C.M.F.

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
L 301 Gnr Smith G.	15 Jan 46	Rex Telford Adv.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

201 D. Bunnw Smith, Z,

Army Form A.3.

Correspondence to be PINNED here.

PROCEEDINGS RECEIVED.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this 20th day of October, 19 41

Whereas it appears to me, the undersigned, an officer in Command of Royal Canadian Artillery, 2 Canadian Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*I am unable to appoint:—

*(1. [illegible])

*(2. [illegible])

*(3. [illegible])

for the following reasons, namely:—]

In my opinion, military exigencies, namely the dispersion of units, and difficulties or communication and other difficulties, render it inexpedient to observe the provisions of these rules inconsistent with appendix "A" to D.R.O. 772 on the trial of the person named in the annexed schedule.

President.

Rank.	Name.	Regiment.
Major	N.F. Smith	6 Cdn Fd Regt.

Members.

Rank.	Name.	Regiment.
Capt.	H.A. Farthing	5 Cdn Fd Regt.
Capt.	G.S. Browne	4 Cdn Fd Regt.
Capt. (Waiting Member)	D.A. Drummond	8 Cdn A Fd Regt.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed R.A. Bruce Brigadier,

Commanding R.C.A., 2 Cdn Div.

Convening Officer.

2

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B.12086 Gunner SMITH, George 8 Cdn A Fd Regt, RCA	FIRST CHARGE A.A. Sec. 18(4) Stealing property belonging to a person subject to military law (see charge sheet attached)	not guilty	not guilty	
	SECOND CHARGE (Alternative) A.A. Sec. 40 Conduct to the prejudice of good order and military discipline, was improperly in possession of Illinois watch. (see charge sheet attached)	not guilty	guilty	

Sentence to undergo 60 days Detention

Confirmed
J.C. Lobb
Brig

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) R.A. Fraser Brigadier, (Signed) N.I. Smith Major
Commanding R.C.A., 2 Cdn Div. President.
Confirming Officer (*e*)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

47

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 28 day of October 41, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) Lieut Lemieux
*(4. ~~The officers under instruction~~)

were duly sworn.

* Omit if not applicable.

Signed this 28 day of October 19 41

N.I. Smith Major
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (2) on page 762 M.M.L. 1939.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

*~~I direct that the soldier named in the margin be not committed to prison until further orders.~~ just.

Signed this 11th day of Nov 19 41

J.C. Lobb Brig just
~~Major-General~~
Confirming Officer. Cmdy 2 Cdn Div.

Promulgated and extracts taken in the case of B 12086 Gnr Smith Geo
(*a*) (Dated) 14 November 1941 (Signed) L.A. Jones Lieut-Col
(A.A. JONES) i/c Administration
2 Cdn Div

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] W.L. 40113—892 [illegible] P.St. G.6a

H.Q. 8th CDN ARMY FIELD REGIMENT, RCA.

MEDICAL OFFICER'S CERTIFICATE

28 Oct 41.

I certify that I have today examined B-12086, Gnr. Smith G. of the 8th Cdn Army Field Regiment, and that he is fit to undergo trial by Field General Court Martial.

W.J. Ewen Capt.
(W. J. Ewen) Medical Officer.
8th Cdn Army Field Regiment, RCA
Cdn Army (O/S).

(AAJ) 5

CHARGE SHEET

The accused, No B12086, Gnr George Smith, of the 61st Field Battery, 8th Army Field Regiment, RCA, a soldier of the Canadian Army (Active) is charged with:

FIRST CHARGE
A.A. Sec. 16(4)

STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW

in that he at the Officers' Mess of 8th Army Fd Regt, RCA, Cobham Surrey, did steal "Illinois" watch No2456016, the property of M21030, Gnr. Lovegrove, C. J., on or about 23 Sep 41.

SECOND CHARGE
(Alternative)
A.A.Sec. 40

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he at place aforesaid, on or about 25 Sep 41, was improperly in possession of above mentioned "Illinois" watch, the property of the aforesaid Gnr. Lovegrove.

(L. M. Jones, Lieut-Col)
Comd. 8 Cdn Army Fd Regt, RCA
Canadian Army (Active)

Dated in the Field
9 Oct 41

To be tried by Field General Court Martial

R A Bruce Brigadier.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL, HELD AT OLD HEATHFIELD, EAST SUSSEX ON TUESDAY, 28 OCTOBER, 1941

TRIAL OF NO. B12086, Gunner Smith, George., 8 Cdn Army Field Regt.

PRESIDENT: Major W. F. Smith, 6 Cdn Fd Regt, R.C.A.

MEMBERS: Capt. H. A. Parthing, 5 Cdn Fd Regt, R.C.A.
Capt. G.S. Browne, 4 Cdn Fd Regt, R.C.A.

PROSECUTOR: Capt. P.A. Robertson, 8 Cdn Army Field Regt., R.C.A.

DEFENDING OFFICER:

1. The Order convening the Court is read in the presence of the accused.
2. The accused is asked if he objects to the President or any of the Members of the Court, and his answer is "No."
3. The President and Members of the Court are duly sworn.
4. Rule of Procedure 30(A) is complied with and the accused answers "No".
5. The Prosecutor makes reopening address.
6. The Prosecutor proceeds to call witnesses.

The next case was called - Gnr. Smith

FIRST WITNESS:

H2930 Gnr. Ludgrow,C.J.

Prosecutor: Tell the court your occupation and what you were doing on the day you lost your watch.

Witness: I was on fatigues in the Officers' Mess. Before starting work I took off my wrist watch and hung it on a nail in the Kitchen. I was out of the kitchen on several occasions on returning on one of these times I noticed the watch was missing. I reported it to the Sgt and he had the men turn out their pockets but it was not found.

Prosecutor: How long have you known the accused?

Witness: Three months.

Prosecutor: Had you ever worked with the accused before?

Witness: Yes several times when I was in the Officers' Mess.

Prosecutor: Could the accused have seen the watch hanging up in the kitchen and was he working near it?

Witness: Yes he could have seen the watch and at different times was working near it.

Defence: How can you identify this watch as yours?

Witness: There is a niche in the case, I repaired the strap myself and recognize the repair, also there are some jewels missing?

Defence then suggested to the witness and court that it might be rather hard to identify a watch as there were so many that looked alike.

SECOND WITNESS:

L18033 L/Sgt. Patterson,W.S.

N.C.O. i/c Officers Mess

On the day and date mentioned I was on duty in the Officers' Mess. I noticed the watch hanging on a nail and when Gnr. Ludgrow reported it missing I assembled the men and had them turn out their pockets, but the watch was not found.

Prosecutor: Did you have the quarters searched?

Witness: No Sir, I just had the men turn out their pockets.

Prosecutor: Do you recognize this watch?

Witness: Yes sir. That is the watch that was hanging on a nail in the kitchen of the Officers' Mess.

11

Prosecutor: Did you ever see this watch in the possession of Gnr. Ludgrow.

Witness: Yes sir on several occasions

Prosecutor: Was accused out of the mess after the watch was reported missing?

Witness Yes sir

Prosecutor: Was the accused on duty on the day the watch was reported missing?

Witness Yes Sir

Prosecutor: Did accused continue to work in the mess after the search had been made?

Witness Yes Sir

Defence: Can you positively identify this watch as the one that was hanging on a nail in the Officers' Mess kitchen.

Witness Yes sir, I would say that is the watch that was hanging on a nail in the Officers' Mess kitchen.

Defence But you might have been mistaken?

Witness I might have been mistaken, but dont think so.

THIRD WITNESS

M2156 Gnr . Johnson,H.E.

Prosecutor: Tell the court what you know about this case

Witness I was on duty in the Officers' Mess kitchen when a watch was reported stolen. Sgt. Patterson had the men empty their pockets but the watch was not found. On the night of 25 Sep in the Running Mare Public House Gnr. Tarnavesu drew my attention to the fact that Gnr. Smith was wearing a watch. I did not remember seeing Gnr. Smith wearing or owning a watch. I did not see the watch close up, but from a distance of eight to ten feet the watch looked like the one lost by Gnr. Ludgrow

Defence I object, the exhibit should be referred to as A watch and not the watch. There may be two different watches involved. The accused claims the Exhibit is his watch claims a watch was taken from the Officers' Mess kitchen.

Prosecutor: How long have you known the accused and did you ever know him to have a watch.

Witness I have known the accused for three months and never seen him with a watch

Prosecutor: Is the watch on exhibit the one Gnr. Smith was wearing in the Running Mare Public House.

Witness Yes

Defence: It would be difficult to identify a watch from a distance of ten feet. I wouldnt attempt to do so myself.

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FOURTH WITNESS:

M2326 Gnr. Tarnaveau, M.T.

Prosecutor: Tell the court what you know of this case.

Witness: I was with Gnr. Johnson in the Running Mare and noticed a watch on the accused. I asked him the time and he looked at the clock on the wall, and not the watch on his wrist. Miss Thrustle was with him and pulled his sleeve back and looked at the watch. The watch answered the description of the one reported missing. On Thursday 26 Sep while out on a message for Lieut. Stuart I met Miss Thrustle and noticed she was wearing a watch similar to the one that had been stolen. I told her I thought it was a stolen watch and she said the accused had given it to her to mind while he was out on manoeuvres. I told Miss Thrustle she should turn in the watch to the Duty Officer, Lieut. Rogers. Lieut. Rogers was not there so I took the watch. Just before Miss Thrustle left, Lieut. Rogers came in and I gave him the watch.

Prosecutor: How long have you known the accused and have you ever known him to own a watch?

Witness I have known the accused for 5 or six months and have never seen him wear a watch.

Prosecutor: Is this the watch that was turned in (exhibiting Exhibit A)

Witness Yes.

President of the Court suggests that the Prosecutor should prove that something had been stolen

Prosecutor: I am leading up to that now

Defence: You went to the trouble of asking the accused the time, why?

Witness I was suspicious that it was the watch that had been taken.

Defence: Are you a detective?

Witness No sir

Defence: Then why did you go to all this trouble?

Witness I was working in the mess at the time and with the rest of the men was under suspicion. There had been stuff taken before and the Major told us to keep a lookout.

FIFTH WITNESS

Miss Violet Thrustle, Elmcroft, The Tylt, Cobban.

The charges were read and the members of the court introduced and their duties explained. Witness knows nothing of the first charge.

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Prosecutor: Explain to the Court what you know of this case

Witness: Gnr. Smith left the watch with me on Thursday the night he left on manoeuvres. I was to mind it until he returned. I had it until Tuesday and was wearing it because my own was broken. I turned it in on Tuesday. I met Gnr. Tarnaveau and he asked me the time and then told me he thought it was stolen property. I gave the watch to Gnr. Tarnaveau and he gave me a receipt for it and then the officer came in and Gnr. Tarnaveau gave it to the officer in my presence.

Prosecutor How long have you known the accused and did you ever see him with a watch prior to it being turned over to you?

Witness I have known the accused 6 weeks and never knew him to have a watch

Prosecutor: When did you first see accused wearing a watch?

Witness On the night in the Running Mare, I am not sure of the date.

Defence then cross questioned the witness and tried to ascertain the exact date Miss Thrustle first saw the watch. He suggested that she might have seen the watch a day or so before the time it had been reported stolen. Miss Thrustle said that was possible, but there was some confusion over dates.

Miss Thrustle was informed by the President she might be called later as a witness.

SIXTH WITNESS

Gnr. Gallant, A.F. M29161

Prosecutor: Do you recognize this watch?

Witness: Yes sir, it is Gnr. Ludgrow's watch

Prosecutor: Tell the court what you know about this case.

Witness: I have known Gnr. Ludgrow for two years, he bought the watch from Gnr. Reid and he has owned several watches during the two years.

Defence: How can you identify the watch?

Witness: By the strap, Gnr. Ludgrow added a piece of leather out of an old purse to the strap.

SEVENTH WITNESS

Gnr. Reid, R. M29073

Prosecutor: Do you recognize this watch (producing exhibit)

Witness: Yes it is one I got from my father and sold to Gnr. Ludgrow, I am satisfied that it is the watch I sold to Gnr. Ludgrow

Prosecutor: Has the watch been changed in any way?

Witness: Yes, a piece of leather has been added to the strap.

EIGHTH WITNESS

EIGHTH WITNESS

Gnr. Costera, E.B. H 3629

Prosecutor: Do you recognize this watch? Tell the court what you know about it.

Witness: Gnr. Reid used to own that watch, he got it from his father in July and sold it to Gnr. Ludgrow. I have seen the watch several times when Gnr. Ludgrow was wearing it.

Miss Thrustle was recalled

President: Did you ever know Gnr. Smith to have a watch.

Witness: No

President: Did he give you the watch or just loan it to you?

Witness: Just loaned it until he returned from manoeuvres

Sgt. Paterson was recalled

President: Did you have the men turn out all their pockets including the field service dressing pocket.

Witness: They did not turn out the field service dressing pocket.

President: Then it is possible that the watch might have been concealed in on of the pockets.

Witness: Yes sir

The Accused was asked if he wished to make a statement, after being duly warned, and declined but later consented and testified that the watch known as exhibit A was his. He had not been wearing it for some time as it has been in the repair shop in London. While in London around the 17th of Sept he had reclaimed it. The accused stated it was in the repair shop to have some jewels fixed or replaced.

The President of t he Court suggested that the Defence should produce some witnesses.

The Defence stated that it was the duty of the Prosecutor to prove that Exhibit A did not belong to the accused

THE COURT IS CLOSED FOR CONSIDERATION OF FINDING

THE COURT FINDS THE ACCUSED "NOT GUILTY" ON THE FIRST CHARGE.

CHARACTER WITNESS

Lieut. MacLeod

Gnr. Smith was my batman for three months and was satisfactory. I lost nothing while he was my batman

THE PROSECUTION FILED A.F.B. 296 and M.P.M. 6 IN CONNECTION WITH THE ACCUSED.

THE ACCUSED DECLINED TO MAKE A STATEMENT IN MITIGATION OF PUNISHMENT

THE COURT IS CLOSED FOR CONSIDERATION OF SENTENCE.

Summary of Evidence in the case of No. B-12086, Gunner Smith G. of the 61st Field Battery, 8 Cdn Army Field Regiment R.C.A., Cdn Army (O/S).

By direction of the Commanding Officer the Summary of Evidence is taken on oath.

1st Witness for the Prosecution

H-29130 Gnr. Lovegrove C. J., 71st Field Battery, 8th Cdn Army Field Regiment, R.C.A., Cdn Army (O/S) having been duly sworn states:-

On Tuesday 23 Sep 41, I was on duty at the Officers' Mess of the 8th Cdn Army Field Regiment. In order to wash dishes, I took off my wrist watch and hung it on a nail close to where I was working. I left the room for a few minutes and when I returned my watch was gone, I reported the loss to the Sergeant Cook who had the other men turn out their pockets but the watch was not found. Gnr. Smith, whom I recognize was one of the fatigue men on duty that day and was present at the time of questioning by the Sergeant Cook. My watch is of Illinois make and there are a number of movement jewels missing. I identify the watch produced for my inspection as being the watch I lost on the 23 Sep 1941.

L. J. Lovegrove.
Gnr. Lovegrove C.J. H-29130

The accused declines to cross-examine the witness.

SHEET TWO

L-18033 L/Sgt Paterson W.S., Headquarters, 8th Cdn Army Field Regiment, R.C.A., Cdn Army (O/S) having been duly sworn states:-

2nd Witness for the Prosecution

I am Sergeant Cook at the Officers' Mess of the 8th Cdn Army Field Regiment. On Tuesday 23 Sep 41 I noticed a wrist watch hanging on a nail on the wall of the room where the fatigue men were working at the Officers' Mess. I asked to whom it belonged and Gnr Lovegrove said, "It is mine ". About five minutes after Gnr Lovegrove reported to me that someone had taken his watch from where it had been hanging. I paraded all the fatigue men to the batmen's room and had them turn out their pockets. Gnr. Smith G., who I recognize was one of the fatigue men present. The watch was not found at that time.
I identify the watch produced for my inspection as being the watch in question.

L-18033 L/Sgt Paterson W.S.

Question by the accused

Can you prove that this was the watch which was hanging on the nail in the kitchen ?

Answered by the 2nd Witness

To the best of my knowledge, I believe that this was the watch which I saw, but I have no mark nor identification that it is the identical watch.

M-3236 Gnr. Tarnava M.T., 61st Field Battery, 8 Cdn Army Field Regiment, R.C.A., Cdn Army (O/S), having been duly sworn states:-

3rd Witness for the Prosecution

On Thursday, 25 Sep 41, in the evening, I was in the Running Mare public house with Gnr. Johnson H. E. I saw Gnr Smith G. there and noticed he was wearing a wrist watch which struck me as being suspicious as I knew Smith did not own a watch. I went over and asked Smith the time, he looked up at the clock but the girl, Violet Thrussel, with whom he was with, pulled back his sleeve, and I saw him wearing an Illinois wrist watch. Having been on fatigue duty at the Officers' Mess at the same time as Gnr Lovegrove I knew he had lost his watch. As soon as I could I asked Lovegrove for a further description of his watch. He told me it was an Illinois make and that the strap was worn through partly on one side.
On Tuesday 30 Sep 41 I saw Violet Thrussel who was wearing the watch in question. I told her I thought it was stolen and advised her to turn it over to the Officer in charge of the rear party.
On Thursday 2 Oct 41 Violet Thrussel came to Brown Tiles and asked for the Officer in Charge of the rear party, Lieut Rodgers. He was out, so she gave me the watch and I gave her a receipt for it. As soon as Lieut Rodgers came in I turned the watch over to Him.
I identify the watch now shown to me as being the watch in question.

M T Tarnava
M-3236 Gnr, Tarnava M.T.

Question by the Accused: Can you prove that this is the watch that you saw on my wrist ?

Answered by the 3rd Witness: Yes.

SHEET FOUR

M-2156 Gnr. Johnston H.E., 61st Field Battery, 8 Cdn Army Field Regiment, R.C.A., Cdn Army (Overseas), having been duly sworn states:-

4th Witness for the Prosecution

On Thursday 25 Sep 41 I was in the Running Mare public house with Gnr Tarnava. I saw Gnr Smith G. there and he was wearing a wrist watch. This struck me as suspicious as I knew that Smith did not own a watch. Also the watch Smith was wearing corresponded to the description of the watch, which was lost by Gnr Lovegrove. Having been on the same fatigue as Lovegrove when his watch was stolen I heard the description given at that time.

M-2156 Gnr Johnston H.E.

The accused declines to cross-examine the witness.

SHEET FIVE

Violet Thrussel, domestic, Elmcroft, Tilt Road, Cobham, Surrey, having been duly sworn, states:-

5th Witness for the Prosecution

On Thursday 25 Sep 41 Gnr George Smith gave me a wrist watch asking me to keep it for him while he was on manoeuvres. It was an "Illinois" watch with a black strap worn partly through on one side. On 30 Sep 41 while talking with Gnr Tarnava, he told me that he thought the watch, which I was wearing was stolen. Not wishing to have anything to do with stolen property I took the watch to Brown Tiles, Avenue Road, to give to the officer in Charge. The Officer in Charge was not there so I gave it to Gnr Tarnava and obtained a receipt from him.
I identify the watch produced for my inspection as being the watch in question.

Violet Thrussell
Violet Thrussell

The accused declines to cross-examine the witness.

SHEET SIX

Lieut. R.A. Rodgers, 107th Field Battery, 8 Cdn Army Field Regiment, R.C.A. Canadian Army (Overseas) having been duly sworn, states:-

6th Witness for the Prosecution

On Thursday 2 Oct 41 Gnr Tarnava turned over to me an Illinois wrist watch which had been given to him by a girl. I was given to understand that this watch had been stolen. On Saturday 4 Oct 41 I turned the aforementioned watch over to Major Haszard.
I identify the watch produced for my inspection as the watch I turned over to Major Haszard.

R.A. Rodgers Lieut.
Lieut. R. A. Rodgers

The accused declines to cross-examine the witness.

SHEET SEVEN

H-29161 Gnr Gallant A.P., 71st Field Battery, 8 Cdn Army Field Regiment R.C.A., Cdn Army (Overseas), having been duly sworn states:-

7th Witness for the Prosecution

I identify the watch produced for my inspection - Illinois wrist watch # 2458916 as being one which I have seen worn by Gnr. Lovegrove frequently during the past two months and I know he bought it from Gnr Read D.P.

Gallant A P
H-29161 Gnr Gallant A.P.

The accused declines to cross-examine the witness .

SHEET EIGHT

H-29073 Gnr Read D.P., 71st Field Battery, 8 Cdn Army Field Regiment, R.C.A., Cdn Army (Overseas) having beem duly sworn states:-

8th Witness for them Prosecution

About two months ago I sold Illinois wrist watch # 2458916 to Gnr Lovegrove and I have frequently seem him wearing it since that time. Prior to the time of sale the watch had been in my possession for approximately four months. I originally obtained the watch from my father.

D P Read

H-29073 Gnr Read D. P.

Question by Captain F.A. Robertson Officer taking Summary of Evidence

Is this the watch which you sold to Gunner Lovegrove?

Answered by 8th Witness

Yes, I am positive.

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LIST OF WITNESSES FOR THE PROSECUTION
in the case of B-12086 Gnr. Smith G.

1st Witness - H-29130 Gnr. Lovegrove C.J.
71st Battery
8 Cdn Army Field Regiment
R.C.A. Cdn Army (Overseas)

2nd Witness - L-18033 L/Sgt. Paterson W. S.
Headquarters
8 Cdn Army Field Regiment RCA
Canadian Army (Overseas)

3rd Witness - M-3236 Gnr. Tarnava M.T.
61st Field Battery
8 Cdn Army Field Regiment
R.C.A. Cdn Army (Overseas)

4th Witness - M-2156 Gnr. Johnston H.E.
61st Field Battery
8 Cdn Army Field Regiment
R.C.A. Cdn Army (Overseas)

5th Witness - Miss Violet Thrussell
Elmcroft, Tilt Road,
Cobham, Surrey.

6th Witness - Lieut. R.A. Rodgers
107th Field Battery
8 Cdn Army Field Regiment
R.C.A. Cdn Army (Overseas)

7th Witness - H-29161 Gnr. Gallant A.P.
71st Field Battery
8 Cdn Army Field Regiment
R.C.A. Cdn Army (Overseas).

8th Witness - H-29073 Gnr. Read D. P.
71st Field Battery
8 Cdn Army Field Regiment
R.C.A. Cdn Army (Overseas).

Having been duly cautioned in accordance with the Rule of Procedure 4 (E) the accused declines to make a statement.

Rules of Procedure 4 (c) (d) (e) and (f) have been complied with.

Taken before me at Cobham, Surrey this 9th day of October 1941.

Capt.
(F. A. Robertson) Adjutant
8 Cdn Army Field Regiment
R.C.A. Cdn Army (O/S).
Officer ordered to take
Summary of Evidence.

LIST OF EXHIBITS

(a) " Illinois " Wrist watch # 2458916.

(b) 1 Leather Pocket Book.

(c) Certified true copy of M.F.M. 6.

9 Oct 41

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ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B-12086	Gunner	Smith G.	8 Cdn Army Fd Regt., R.C.A.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 672, K.R., 1940.

* The numbers herein stated should correspond with the number of *entries* in the conduct sheets, preference being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For Failing to appear at Parade	2 times	2 times.
For A.W.L. Sec. 15 A.A.	1 times	1 times.
For Involving in accident in which Bus was damaged	1 times	1 times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct,

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for ..... beginning on the ..... day of .....

4. The accused has been in confinement, awaiting trial on the present charges, for NO days in civil custody, and ..... days in military custody, making a total of ..... days, of which ..... days were spent in hospital.

5. The present age of the accused according to his [attestation paper] is 37

6. The date of his [attestation] specified in his [attestation paper] is 9 Oct 39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is .....

8. The accused is entitled to deferred pay or gratuity in respect of ..... service.

9. The accused is entitled to reckon ..... service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (or is in possession of or entitled to (*state any military decoration or reward*)).

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of .....

12. (*In the case of an officer.*) The accused holds in the army the rank of ....., dated ....., and in his regiment (or corps or department) the rank of ....., dated .....

(7)(6648) Wt.30264/3902 75,000 10/40 A.& E.W.Ltd. Gp.698

Capt
9 Oct 41

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. ..... Rank ..... Name ..... of ..... Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer dispensing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ..... day of .....

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13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of ..... years. .....

In the rank of ..... years .....

In the rank of ..... years. .....

(Instruction.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the explanation may be inserted from such sources as are available and the paragraphs concerned amended accordingly.)

No. B-12086 Name Smith George | Sqn., Battery, or Company | Corps 40TH Battery | Date of enlistment 9/9/39 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.B. 122)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. Sgd- F.J.Keen (Maj) | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Hamilton	3-12-39	Gnr		A.W.L. from Quarters 0001 to 0039 hours	Bdr.Leitch	Admonished	3-12-39	Maj. Keen	(Sgd)
Bordon	1-4-41	Gnr		Failing to appear at the place of parade, in that he did not appear at Guard-mounting at 1650 hours, 1/4/41 A.A. Sec. 15 (2) (making a replacement necessary)	Sgt. Clarke H.E.	3 dys. C.B. Forfeits 1 dys pay under F.R.& I A153 B	2/4/41	Maj. R.M. Jones O.C. "C" Bty No. 1 CAHU	(Sgd)
Bordon	21-3-40	Gnr		Failed to appear on Parade (A.A.15)	Bdr Foster	5 days C.B.	4-3-40	F.J.Keen	(Sgd)
Bordon	16-4141	Gnr		A.W.L. in that he did absent himself from 0600 hrs. 16-4-41 till 0600 hrs 17-4-41. Absent 24 hrs. A.A. Sec. 15. (1)	L/Bdr Ellis BSM Shepherd D.	7 days C.B. Forfeits 1 days pay under F.R.& I 149-1-A	17-4-41	Maj. R.M. Jones O.C. "C" Bty	(Sgd)

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of charge dispensing with trial	By whom awarded	Remarks
ield	5/7/41	Gnr		W.O.A.S. Neglect to the prejudice of good order and military discipline in that he was involved in an accident in which Bus, owned by South Down Motors, was damaged. Documentary		Fined 0-7-6		Major W.G.Myatt (Sgd)	

(Certified that this is a true copy)

Robertson Capt

(F. A. Robertson)

9 Oct 41

ARMY FORM B.296

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Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B-12086	Gunner	Smith G.	8 Cdn Army Fd Regt., R.C.A.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers to be stated should correspond with the number or entries in the conduct sheets, precedence being given in the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For Failing to appear at Parade	1 times	2 times.
For A.W.L. Sec. 15 A.A.	1 times	1 times.
For Involving in accident in which Bus was damaged	1 times	1 times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct,

or

There are no entries in the conduct sheets of the accused

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for ..... beginning on the ..... day of .....

4. The accused has been in confinement, awaiting trial on the present charges, for NIL days in civil custody, and ..... days in military custody, making a total of ..... days, of which ..... days were spent in hospital.

5. The present age of the accused according to his [redacted] attestation paper is 37

6. The date of his [redacted] attestation specified in his [redacted] attestation paper is 9 Oct 39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is .....

8. The accused is entitled to deferred pay or gratuity in respect of ..... service.

9. The accused is entitled to reckon ..... service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)).

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of .....

12. (*In the case of an officer.*) The accused holds in the army the rank of ..... dated .....
and in his regiment (*or* corps or department) the rank of ..... dated .....

28 Oct 41

(27/6/40) W1.20243/262 75,000 12/40 A.A. & W.W. Ltd. Gp.698

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Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. Rank Name of Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this day of

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of years.

In the rank of years

In the rank of years.

(Instructions.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph completed accordingly.)

JJ.124

A/RSM SMITH G.

F/601-7
D-92163 C.S.M.(A/R.S.M.) Smith, G.
1 C.O.R.U.

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A. Order convening the Court.

On Active Service, this Seventh day of January, 1943.

Whereas it appears to me, the undersigned, an officer in Command of "F" Group, Canadian Reinforcement Units, Canadian Army Overseas, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [redacted]

*Omit where Convening Officer is a Commanding Officer, or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

* [redacted]

	President. Name.	Regiment.
Rank.		
LIEUT-COLONEL	D.L.REDMAN, V.D.,	H.Q., C.R.U.
	Members. Name.	Regiment.
Rank.		
CAPTAIN,	P. McMURDO,	1 Tpt.Coy., R.C.A.S.C.
CAPTAIN	C.E.DUNKER,	7 C.C.C., R.C.E.
LIEUTENANT	WAITING MEMBER. C.E.LAFOND,	R 22 R., C.I.S.

*Signed (A.P.ARCHAMBAULT) Brigadier
Commanding "F" Group, C.R.U.,
(Convening Officer.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D-42163 C.S.M.(A/RSM) GEORGE SMITH. 1 C.C.R.U.	FIRST CHARGE. Sec.40 Army Act.	Not Guilty	Guilty Sentence to be reduced to the rank of Sergeant. 11 Jun 1943	Finding and Sentence Confirmed.

The D.J.A.G. Canadian Military Headquarters, having advised that the conviction on the charge on these proceedings is invalid, I hereby direct that the record of the said conviction be, and the same is, hereby removed, and the accused relieved of all consequence of his trial hereon.

(See Charge Sheet Attached.)

In the Field 6th August 1943

(LOUIS RIDDELL) Colonel
Commander
"F" Group, C.R.U.

Promulgated in No 1 CCRU Part II D.O. No. 12 dated 14 Jan. 43

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) (J.P.R. CHAMBAULT) Brigadier, (Signed)
Commanding "F" Group, C.R.U.
Convening Officer (s) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

CHARGE SHEET

The accused No. D-82163 C.S.M. (Acting R.S.M.) Smith, G., No.1 Canadian Ordnance Reinforcement Unit, soldier of the Canadian Army Overseas, is charged with:-

1st Charge
Sec 40
A.A.

"WHEN ON ACTIVE SERVICE, NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE".

in that he at Bordon, Hants, on the 20th of September 1942 knowing a disturbance and breach of the peace was about to be created by personnel of No.1 Cdn. Ordnance Reinforcement Unit neglected to prevent the said disturbance.

(Harold M. Bailey) Lt.-Col.,
Commanding Officer,
No.1 Cdn. Ordnance Reinf. Unit.

Bordon, Hants,
6 Jan 43.

To be tried by Field General Court Martial.

(J.P. ARCHAMBAULT) Brigadier,
Commanding 2nd Group, C.R.U.,
Convening Officer.

Bordon, Hants.,
7 Jan 43

NO.1 CANADIAN ORDNANCE REINFORCEMENT UNIT 1CORU/5-2

MEDICAL OFFICER'S CERTIFICATE

I certify that D.8.2163 R.S.M. Smith. H..... has been examined by me this morning and is fit to undergo trial by Court Martial.

Date 9 Jan 43 ..... W. MacJones Capt.....
Medical Officer,
No.1 C.O.R.U.

NO.1 CANADIAN ORDNANCE REINFORCEMENT UNIT 1CORU/5-2

MEDICAL OFFICER'S CERTIFICATE

I certify that D.8.2163 R.S.M. Smith. H. has been examined by me this morning and is fit to undergo trial by Court Martial.

Date 8 Jan 43 ..... W. MacJones Capt.....
Medical Officer,
No.1 C.O.R.U.

TRANSCRIPT OF EVIDENCE

In the case of D 82163 CSM (A/RSM) SMITH, G. 1 C.O.R.U., held at New Martinique Barracks, Bordon, Hants, on the 7th day of January, 1943.

The Order convening the court, the charge sheet, the summary of evidence and the Medical certificate are laid before the court.
The Court satisfy themselves as provided by Rs.P. 22 and 23.
The Accused is brought before the Court.
Prosecutor:- Major J. Friedgut, D.J.A., H.Q. C.R.U.
Defending Officer:- Major Miller, 1 C.O.R.U.
At 100 hrs. the trial commences.
The Order convening the Court is read, signed by the President, and annexed to the proceedings.
The names of the president and members of the court are read over in the hearing of the accused, and they severally answer to their names.
Do you object to be tried by me as president, or by any of the officers whose names you have heard read over ?
A:- No, sir.
The President and members are duly sworn:-
PRESIDENT:- LT.-COL. D.L. REDMAN, V.D. H.Q. C.R.U.
MEMBERS :- CAPT. P. MCMURDO 1 Tpt. Coy. R.C.A.S.C.
CAPT. C.E. DUNKER 7 C.C.C. R.C.E.
Lieut. F.A. Rinder, officer under instruction, is duly sworn.
Do you object to H 20133 Pte. Millard R. and Sjt. Bentley J., acting as shorthand writers ?
A:- No, sir.
The shorthand writers are duly sworn.
The charge sheet is signed by the president, and annexed to the proceedings.
The accused is arraigned upon the charge in the above-mentioned charge sheet, and pleads not guilty to the charge against him.
The Court complied with R.P. 39(A)
A:- No, sir, we are ready to proceed.

Opening address by the Prosecutor:-
In this case the evidence which follows concerning this set of circumstances will come out quite clearly, so I will not take up the time of the court by making an opening address.

1ST WITNESS FOR THE PROSECUTION:- Colonel H.M. BAILEY, O.C. 1 C.O.R.U., having been duly sworn, is examined by the Prosecutor:-
Q1:- You are Lt.-Col Bailey, O.C. 1 C.O.R.U., and were such on the 20th of September, 1942 ?
A1:- Yes.
Q2:- Do you recognise the accused ?
A2:- Yes.
Q3:- Do you recall having a conversation with him on that date ?
A3:- Yes, it lasted for quite over an hour. There was no conversation between sergeant-major Smith and myself about anything that happened on Sunday night.
Q4:- You had a conversation on Sunday morning, did you discuss anything about Binstead ?
A4:- We discussed something that we heard had happened at Binstead on Saturday night.
Q5:- Did the accused tell you that something had happened at Binstead on that night ?
A5:- Yes. My reply to the story of the Marines being killed was that I did not believe it. It was probably another rumor. The accused said the men were incensed over the Marine being killed. I told him I did not want our men mixed up in it.
Q6:- What prompted you to ask that question ?
OBJECTION BY HIS DEFENDING OFFICER --- OBJECTION OVER-RULED
Q7:- Was there anything said by him which caused you to think that they might get mixed up with the Marines troubles ?
A7:- No.
Q8:- What else was said ?
A8:- We had a discussion about some transport that was used the night before, there was nothing further said, we discussed other things.
Q9:- Did you follow up your statement, your request to him that your men should not become mixed up in the Marines troubles ?
A9:-No, I said that our men should not get mixed up in it.

Q10:- Did you ask him to see to it ?
A10:- No.
Q11:- Did you give him any orders to safeguard any of your men getting into the disturbance ?
A11:- No, the only orders I gave him were in relation to transport, regarding the mis-use of transport, referring to the night before.
Q12:- I am concerned, and the court is concerned, only with a certain disturbance.
A12:- I never thought any disturbance would take place.
Q13:- Why did you ask him to see that your men did not get mixed up in it ?
A13:- I did not tell him to see that our men did not get mixed up in it.
Q14:- Did you not think it necessary to tell him ?
A14:- I did not think there was any danger of them getting mixed up.
Q15:- The sergeant-major told you that there had been a Marine killed the night before ?
A15:- That he had heard that.
Q16:- You stated just now that your men were incensed about it.
A16:- Some of them.
Q17:- Did you then tell him to do anything or to see to anything that would prevent the men from getting mixed up in it ?
A17:- We went on then talking about the transport, and I said your men must not get mixed up in the Marines affairs or troubles, I do not recall exactly what I said.
Q18:- Did you say anything that would make the sergeant-major concerned about seeing your men did not get mixed up in the matter ?
A18:- I thought he would be on guard by my saying that.
Q19:- What did he say to that ?
A19:- Something, I think, to the effect that 'not to worry, to trust your sergeants and men'.
Q20:- Did you say to sergeant-major Smith, these words, or words to this effect "Now, sergeant-major, see to it that our men don't get mixed up in this trouble "?
A20:- With regard to anything that happened on Sunday night, no, it was more in relation to what happened Saturday night. It is difficult to separate the two. I asked him if our men were mixed up in the Saturday night business. I asked him if our transport had been mis-used Saturday night, and he said "no", but I suspected it had been. I then warned him that a result of the mis-use of transport, as I saw it I was reasonably sure that some of our trucks had been mis-used, and that he was to see that our trucks were not mis-used.
Q21:- We are concerned with the other affair. Your men were incensed, and you did not want them to get mixed up in it ?
A21:- I was concerned, yes.
Q22:- A marine having been killed, your men were incensed ?
OBJECTION BY THE DEFENDING OFFICER
Q23:- You dis-believed the sergeant major that the men were incensed ?
A23:- No, I did not think they were. I did not believe the report that the men were incensed over the death of a Marine.
Q24:- At any rate, you said you did not want your men to mixed up with the Marines' troubles ?
A24:- About that.
Q25:- What did the sergeant-major answer to that ?
A25:- I do not remember the accused's words, but to the effect to not worry about the men, and certainly allayed any fears I might have.
CROSS-EXAMINED BY THE DEFENDING OFFICER
Q26:- In other words, there was no question as to the conduct of your men in your mind ?
A26:- Except with regard to the use of transport.
Q27:- And with regard to transport, you gave definite instructons?
A27:- Yes.
Q28:- And the only definite instructions you gave him were with respect to transport ?
A28:- Yes.
Q29:- And you told him you would find it necessary to deny the sergeants transport for their dances if there was further mis-use of transport ?
A29:- Yes.
Q30:- Did you find out if a Marine had been killed ?
A30:- Yes, I found that one had been injured, that was all.
Q31:- The accused was your regimental sergeant major, an acting as same at the time ?

A31:- Yes.

2ND WITNESS FOR THE PROSECUTION:- L 27080 Sjt. HOPKINSON, R.F. 1 C.O.R.U., having been duly sworn, is examined by the Prosecutor:-

The defending officer objected to taking the evidence of this witness, because he had only now been handed a copy of the witnesses evidence in the summary.

Lieut. Burrows, for the prosecution, stated that the evidence of this witness had been taken in the summary the day before yesterday, in the presence of the accused.

The defending officer then objected on the ground that the summary of this witnesses evidence did not appear to connect with the accused. He also stated that one of the elemts to be proved was that a disturbance did take place at the time and place stated.

Q32:- You were a member of 1. C.O.R.U. on the 20th of September, 1942 ?
A32:- I was sir, I am security sergeant of this unit, and also training N.C.O.
Q33:- Do you recall the 20th of September, 1942 ? What occurred on that evening ?
A33:- There had been a disturbance at Binstead.
Q34:- Just describe it.
A34:- I went into the N.A.A.F.I. at approximately 8 P.M. in the evening, and Sjt. Lefebre came up to me and said there was a party on, and told me to come along, which I did, and got on the truck. There were others got on the truck, which proceeded to Binstead. About a mile from Binstead the truck stopped.
Q35:- How many trucks were there ?
A35:- Two, sir.
Q36:- How many men in each truck ?
A36:- About 15 or 20. The trucks stopped on the road, and the troops got out and started towards Binstead. I got out, along with Sjt. Lefebre.
Q37:- How many troops were there altogether ?
A37:- There were troops allover. I would say about 200, a mixture of Marines and Ordnance men. We proceede up the road. When they got close they began to yell. I noticed several had clubs, that is just ordinary sticks.
Q38:- What were they yelling ?
A38:- Yelling for the gipsies. Sjt. Lefebvre said there was trouble, and asked me to go into the pub, on the left hand side of the road. There was quite a few troops in there, and civilians, and I sat down at a piano and started toplay, and there was a feeling of good will.
Q:- Outside of Binstead ?
A:- The pub is in Binstead.
Q:- You say there was about 200 men with sticks, were they talking ?
A:- They were talking away and hollering.
Q:- Were they walking ?
A:- They started to run.
Q:- Of this 200 men, how many did you estimate would be Ordnance Forcement unit men ?
A:- It was pretty hard to say, but I think about a quarter of them.
Q:- How many were in the truck with you ?
A:- About 15 to 19.
Q:- Did they have anything in their hands ?
A:- No, sir, not that I could see.
Q:- Where did you pull away from ?
A:- Sergeants' mess.
Q:- Knox and Sjt. McGinnis got on there too ?
A:- Not Sjt. -major Smith.
Q:- Did you see him that evening ?
A:- I saw him in the mess as I came in.
Q:- About 8 o'clock ?
A:- Yes,
Q:- Did he speak to you, or did you hear him speak to anyone ?
A:- No, sir.

CROSS-EXAMINED BY THE DEFENDING OFFICER

Q:- Did any of the men in the truck with you have sticks ?
A:- No, sir, not that I saw.

Q51:- Did any of the men with you do any of this yelling ?
A51:- After they got out of the trucks they ran up the road just as they entered Binstead.
Q52:- Knox, McGinnis and Lefebvre were there, but no other sergeants ?
A52:- I do not remember sir.
Q53:- There were at least four ?
A53:- I do not think Sergeant Knox was in the same truck I was in.
Q54:- When you got in the truck, were there any other men in the truck ?
A54:- Yes, sir, and more got in at the transport lines.
Q55:- Did you know how many men were to go in that truck ?
A55:- It could take 30 men, it was not over-loaded.
Q56:- Did you or other of of the sergeants do anything to stop this ?
A56:- I was ordered by Sjt. Lefebvre to go in the pub, and I did so, I was not ordered to take any steps to prevent it.
Q57:- Do you know the name of any man who was carrying a stick ?
A57:- No, sir.
Q58:- Were you close enough to any man carrying a stick to stop him ?
A58:- No, sir.
Q59:- When you were in the pub, did any of the Provost come in and speak to you ?
A59:- No, sir. I saw the provost in the truck outside and was asked my name and gave it. They asked who was in charge of the party, and I told them I did not know.
Q60:- Had you seen that provost before ?
A60:- No, sir.
Q61:- You say there was no disturbance outside the pub, was there any inside the pub ?
A61:- I did not go outside to see. When I got outside there was no disturbance.
Q62:- How many of the provost were there ?
A62:- I saw three.
Q63:- Did you tell them that there had been a disturbance ?
A63:- I believe they did mention it.
Q64:- Before you got up in the trucks, you say you were invited to go on a party ?
A64:- Yes, sir.
Q65:- Was there any explanation for the party ?
A65:- No, sir, I was away all afternoon, and heard nothing about it.
Q66:- You at no time saw anything that you thought as an N.C.O. you should interfere with ?
A66:- No, sir.

QUESTIONED BY THE COURT

Q67:- Some evidence has been given respecting orders from Sjt. Lefebvre.
A67:- It wasn't exactly an order, it was more of an invitation.
Q68:- You did not think it stranged that all these men were in the truck at the sergeants' mess ?
A68:- I asked questions after I got in the truck.
Q69:- He just asked you to go to this party ?
A69:- Yes.
Q70:- At no time did you receive any order from Sjt. Lefebvre ?
A70:- No orders, sir.

RE-EXAMINED BY THE PROSECUTOR

Q71:- You were glad of the opportunity to go ?
A71:- Yes, sir.
Q72:- When this invitation came to you you were playing the piano in the sergeants' mess ?
A72:- No, sir.
Q73:- I have witnesses who say you were playing some band instrument.
A73:- I was playing a base fiddle.
Q74:- You had been in the mess some time before this invitation came ?
A74:- About 15 or 20 minutes.
Q75:- Did you have a glass of beer ?
A75:- I do not remember.
Q76:- Then you were not surprised when you went in the mess, you had been there for some time ?
A76:- 15 or 20 minutes.

QUESTIONED BY THE COURT
(Capt. McMurdo)

Q77:- There was nothing unusual about this party. Is that the normal procedure, to go outside the sergeants' mess and find a truck full of men there ?
A77:- I would not say it was normal.

Q78:- Had you ever been on a party by truck from this unit before ?
A78:- No, sir.

3RD WITNESS FOR THE PROSECUTION:- 055 Sjt. B.W. LEFEVRE No. 1 Cdn. Field Security Section, having been duly sworn, is examined by the Prosecutor:-
Q79:- Do you know the accused, A/RSM Smith ?
A79:- Yes, sir.
Q80:- You know that on September 20th 1942 he was RSM of No. 1. CORU ?
A80:- Yes, sir.
Q81:- On that day you were attached to what unit ?
A81:- No. 1 CORU, No. 12 Section.
Q82:- What is your job with 1 CORU ?
A82:- In my area there were 18 units, and I looked after the security endof it, and 1 CORU was one of the units.
Q83:- Where did you mess ?
A83:- At 1 CORU.
Q84:- Do you recall the 20th of September, 1942 ?
A84:- Yes sir. It was on the evening of the 20th of September that I went into the sergeants' mess at 1 CORU about 8 o'clock; There was a lounge for three people, and I sat on it beside RSM Smith and his lady friend. This was Sunday evening.
Q85:- Were there ladies in the mess ?
A85:- She was the only lady there, although it was a ladies night in the mess. I had a few words with the RSM and he asked me if I was going to the party, and I said "what Party", and after he said "well if you don't know anything about it, its a thing which is to be kept quiet". So I told him I was interested in a party, so he then mentioned that the boys were going down to Binstead to raid the hop-pickers. At the time mentioned he looked at his watch and mentioned that it was 3 minutes to eight. A few minutes passed, and I noticed a group of the boys in the mess edging towards the door.
Q86:- NC.Os ?
A86:- Yes, sir. As I was going out the door, I noticed Sjt. Hopkinson, who had been at the bar, I knew him very well, and I told him to hurry, that a party was going on. When they opened the door, I noticed a vehicle outside the door of the sergeants' mess. This all happened in a matter of minutes, it happened very quickly. I went next to the mess and took up my equipment, which was my head gear and pistol. I ran out of the main building and had to run to get on the truck, as it was in motion, and was helped on by people I did not know. We drove down the parade square, and turned left, and we stopped, and more men boarded the vehicle. These men were waiting, for the moment the vehicle stopped, they jumped on, and we were off again. Then we drove a little more and stopped, and more men got on the vehicle. There was room for noone else in the vehicle, and the words in the vehicle were that the remainder would be picked up later. After driving for some minutes, we stopped along a little back road, at the time I did not know where it was. We stopped there and we all got o t of the vehicle, and I noticed men on another vehicle. The men were all grouped up, and the word was to not go apart too much, but to stick togetherss much as possible. After a few minutes the men began to get hurried and anxious, wanting to walk towards Binstead.
Q87:- What do you mean by men ?
A87:- In the truck I heard a lot of talk of hiding their caps, and they did so, it was very dark.
Q88:- Sjt. Hopkinson was in the same truck with you ?
A88:- Yes, sir. the truck was filled.
Q89:- You said that the men in the truck were Ordnance men ?
A89:- I cannot swear that they were all Ordnance men.
Q90:- At the first stop, were their men other than them joinedyou ?
A90:-There was a bunch of men and another vehicle that I could see. After a while the men began to walk into the village of Binstead. I walked along with Sjt. Hopkinson. After a while I noticed some noise and a few more men appeared around us. I assumed they arrived in the vehicle, that was from the conversation I heard.
Q91:- There were three vehicles then ?
A91:- I am not sure, It may have been that one of the trucks came back with a second load.
Q92:- How many men altogether were there ?
A92:- I would say about 300 men. There were some Royal Marines and the rest were canadiens.

Q93:- Of the Canadians, were some from the Ordnance unit ?
A93:- Yes. The men picked up sticks, bricks, and so on along the road. When they got closed to the village, there were about 300 men approaching the village, they ran into the village, and a few of the men at the head of the crowd yelled "lets go", and away they went. I didn't know what would be flying.
Q94:- Did you see anything done whentney started to run into the village ?
A94:- I did not know what was going tonappen, sticks or stones or what.
Q95:- Did you have any indication as to whom you might meet ?
A95:- Hop pickers. We decided to stick togetner, in case anyone got in a jam, and more or less stick togethere, and they could not get into any trouble.
Q96:- What was the object of this ?
A96:- I heard that their idea was to meet the men of the hop-pickers on account of an incident that had happened the night before.
Q97:- From what you gathered they were going to beat up the men of the hop-pickers at Binsted ?
A97:- Yes, sir.
Q98:- Did you know before you got into the truck that that was the object ?
A98:- No, sir. I did not untilfrom the RSM that they were going to raid the hop-pickers. I did notknow until the RSM told me.
Q99:- Why did you take Sjt. Hopkinson ?
A99:- Because Iknew him, and was able to depend on him, as he was security N.C.O.
Q100:- What happened as they ran into town ?
A100:- First of all I noticed a group of troops around a civilian in the middle of the road, and I heard the man shouting "I'm no gipsy, I'm no gipsy", or words to that effect, and the troops were saying "oh, so you don't like Canadians, we'll show you if you like Canadians."No bodily harm was done to him. There were a group of men about the pub, at the left hand side of the road upon our entering the village. They were hanging on the door, apparently the doors were locked. They were about to break down the door. They were shoving on the door, and it was on the point of being opened, it was just hanging. I walked up to the pub, the group of men and told them that if they broke the door of the pub, the police would be down, and they would have trouble, and that the landlord had nothing to do with the gipsies, and that if they broke the door there would be a hell of a lot of trouble over it, and everyone would be in trouble. This advice was taken by the men, and they quit battering the door. In the meantime, men had gone to the back of the pub, and there was a lot of noise, and everybody was talking at the same time, and a few of the men who were leading, until the landlord of the pub opened the doors himself. As he opened the doors, it was a big rush. I managed to squeeze in, and I noticed that the majority of the people in the pub were old ladies and young children, who were crying at the time. These people were hop-pickers. I learned that from talking to most of the people there. Most of the words used were that their husbands had gone.
Q101:- Why were they crying ?
A101:- Because of the noise from the group of men around, and that the troops were going down to beatup their men folks. I heard some of them say they were afraid because their men folks would be beaten up by the troops.
Q102:- Did you overhear any conversation between the troops and the women ?
A102:- Yes, later. I talked to civilians in the pub who were men, but not hop-pickers, but were pub locals of the village. These men had mentioned that they had locked the doors and taken the women and babies to avoid the being hurt in the scramble. There was no one hurt that I could see. I went to the door, and saw that troops had entered into the other pub, which is opposite to the pub I was in. I told Sjt. Hopkinson to stay in the pub I had gone into, and do his best to keep everybody happy and keep them out of trouble, which he did. As I was leaving, he sat down at an old piano. I went across the road to the other pub. It was crowded. In there I noticed a number of civilians.
Q103:- Was there any disturbance in the second pub ?
A103:- Yes, because there was an old man, whom I thought would be one of the troops were around him, and he swore he was not a hop-picker, and took out his identity card to swear he was englisn, and not gipsy. I went in and talked to him, and told him he would be all right, and that he would not be harmed. His wife walked over, and she was crying, because she thought her husband was going to be hurt. There was no other disturbance in the pub. At that time the troops had heard in the pub, and I had also heard, from some a few local people that the gipsies at a camp at the back of this pub through the fields.

Q104:- Some distance away ?
A104:- Three or four hundred yards away. One of the boys who took over in the pub called out" all men to get in one group in the road" All the men in the pub went our to the middle of the road, where one group was already waiting, and all troops who were noticed around the village were approached and made to stick together, and to gather as many troops as possible to go to the hop-pickers camp. They walked around the back of this pub, over the field to this camp. There was about 100 to 150 of them.
Q105:- Were there any Ordnance men there ?
A105:- Yes, sir.
Q106:- There were men of the Ordnance Reinforcement unit, any Marines, or what ?
A106:- I cannot swear to it, but any of the troops I walked with, or got mixed up with were Ordnance reinforcement unit. As they approached the camp, which is a camp comprised of houses on wheels, they began to run and shout. They had walked up to the camp very quietly previously. They thought they would not be heard. As they arrived at the camp there was a great deal of noise. The doors of the huts opened with the ladies of the huts appearing in the door-way, crying, with their children, saying that there were no men in the huts, that the men had run away, that they were alone, and that the babies were crying and frightened. Here the troops broke up into smaller groups. These groups were split up in a group for each door of the huts on wheels. The ladies in the camp began to ask the troops to go away, and pleaded with the troops to go away. One old lady wanted to swear to God that there were no men in the camp, and to let the troops go over the place and search. All of this I saw. This took place for about one-half hour. Amongst the women in the camp were a few young girls, who began to take the troops minds off the raid. I went around the group, and talked with the majority of the women, and children in the camp, and told them that the troops would not harm them, and would soon be leaving when they found there were no men. I noticed in the camp that no bodily harm was done to anyone. There were no men civilians in the camp. Here the troops began to walk around the fields to be sure that the men were not hiding in around the camp. After a few minutes more, I saw that a group of troops were talking to two women and some children. Here I was asked what I was doing there. I looked up, and the man was in P.T. dress. I did not know him by name, but knew he was from the Ordnance reinforcement unit, as I had seen him at the gym. Along with him was a man whom I knew as Hayes, who was a boxer at I DONO. He also was in gym kit. They had only arrived in the village at that time How they arrived, I do not know. They began to take over control of the group who were around the camp. They got them together, and told them they were making their way into the village again, and that there was nothing doing in the camp.

QUESTIONED BY THE COURT
(Capt. McMurdo)

Q107:- This was the first time you saw anybody take control of the group ?
A107:- Yes, the men in P.T.kit. There was lots of cases before, but it was hard to see just who. PROSECUTION
Q108:- I take it that the men finally all returned to camp ?
A108:- Yes.
Q109:- How did the men get back ?
A109:- The group I was with went to the trucks which we had left in the trees. I know a lot of fellows remained in the pub.
Q110:- Between the time you left the hop-pickers camp and got back to the Ordnance reinforcement unit, did anything important happen ?
A110:- Not particularly.
Q111:- The provost were there ?
A111:- Later they were.
Q112:- What did they do ?
A112:- They arrived in a truck, and were outdoors.
Q113:- Did they arrest anybody ?
A113:- I don't know.
Q114:- Did they try to get the boys out of Binsted ?
A114:- Yes, the actual disturbance was all forgotten about after.
Q115:- Did you discuss this incident with the accused at any time after ?
A115:- I heard they were having an enquiry in the unit. The RSM warned me to be at Major Millers' office at two o'clock for the enquiry, but I had other arrangements from my own office, and could not be in two places at once, which I tried to explain to the RSM. Later on in the evening

I told him I had seen Major Miller , but he did not get that straight. A few days later the RSM said I was to report to "F" Group to give a statement. I asked him if I t was an order or a message. He told me it was an order, and I was to obey orders. I then explained to the RSM that if he received a message in this unit, it was not an order, but a message, as I had 18 units to work with, and he did not know what type of work I was doing. We had a few words in the mess at that time. During that day I did not report to "F" group, because I had already reported 24 hours previously, and knew I was not needed at "F" group. At meal-time the RSM got up while about 100 members of the mess were eating, and asked me if I had been to "F" group. I said I had not and he said if I was not going to obey orders toget the hell out of the camp. I told him that if he had received an order, to pass it to me. I would receive his message and go on from there. A few days later, either on the monday or Friday, they had a snow in the mess that night. In the evening about 8 o'clock, I was in the mess having a beer, when sergeant-major MaGill, sergeant-major Boyd, and the RSM walked in to the middle of the floor and asked me whether I had been to "F" Group to make a statement. I told him it was personal matter, and to be discussed between him and I privately, and not in public. He then asked me if I went as one of the boys to Binstead, or if I had sneaked to report on it. I said I would have been foolient to say I went as one of the boys. He said if I had gone tosneak on the boys, he would have me beaten up and run out of camp. I told him that I was surprised that he as RSM of the camp to take that view, when he could have prevented it, and not encouraged it . He mentioned that the colonel of the unit knew that the boys were going to Binstead, but he mentioned that they were not to use any transport. Here I told him that I was surprised that he was going to put his colonel on the spot by speaking like that in front of witnesses. Sergeant-major MaGill said "you will get us in a spot, sergeant-major, don't discuss it here in the mess".

CROSS-EXAMINED BY DEFENDING OFFICER:

Q. 1 What is your name?
A. 1 William Gross Lefebvre.
Q. 2 When are you V.W. Lefebvre?
A. 2 I used those initials in civilian life.
Q. 3 Not for security reasons?
A. 3 No sir.
Q. 4 I understand you to say that when you got into the truck, it was too dark for you to see who was there?
A. 4 Yes sir.
Q. 5 Where you able to find Sgt. Hopkinson?
A. 5 Yes sir, I found him by his voice.
Q. 6 He was the only person in the truck that you knew?
A. 6 He is the only person I can name.
Q. 7 He is the only person you can name?
A. 7 No sir, I can name Sgt. McInnis, Knox, McAdam and a few others.
Q. 8 And you can only give these names to the Court that you have given, by recognizing their voices?
A. 8 Yes sir.
Q. 9 It was too dark for you to see anybody else in the truck?
A. 9 Yes sir.
Q. 10 How many minutes after this alleged conversation with the Sgt. Major that you went to the truck?
A. 10 Just two or three minutes.
Q. 11 That is the conversation you say that you had with him on the bench when the lady was present?
A. 11 Yes sir.
Q. 12 You say that the truck stopped and picked some other men up do you know at what point the truck stopped?
A. 12 I would know the direction the truck went. We were still in the camp grounds.
Q. 13 Was the truck overloaded?
A. 13 It was when we left.
Q. 14 More than the proper number in the truck?
A. 14 Yes sir.
Q. 15 Who was i/c of the truck?
A. 15 I don't know.
Q. 16 Did anybody appear to be i/c of it?
A. 16 Not that I could see.
Q. 17 As senior N.C.O., would it not be your duty to prevent this truck being overloaded?
A. 17 A man in my position would have had no chance of interfering with what was going on.
Q. 18 I am talking now of the truck when it was within the lines of Martinique Camp?
A. 18 Yes sir.
Q. 19 There ~~was~~ were in this truck, five other sergeants, did you suggest to them that they should take the proper steps?
A. 19 No sir.
Q. 20 Didn't you think of suggesting to these sergeants that they should do their duty?
A. 20 There was a lot of things I had to keep to myself.
Q. 21 Who stopped the truck?
A. 21 The driver naturally.
Q. 22 Who was the driver?
A. 22 I don't know.
Q. 23 What was the number of this truck?
A. 23 I don't know.
Q. 24 What was the number of the other truck?
A. 24 I don't know.
Q. 25 Who was the man who had the laether blackjack that you saw?
A. 25 I don't know his name.
Q. 26 If it was too dark to see the faces of any of the men, in the truck, how do you expect the Court to believe that you saw a blackjack?
A. 26 He showed me the blackjack right to my face.
Q. 27 And you took no steps to find out who it was?
A. 27 No sir, I was scared.
Q. 28 Did you not notice this man so you would know him again?

4.

A. 55 About the same place.
Q. 56 Did you see Sgt. Wood?
A. 56 No sir at no time.
Q. 57 Did you go back to the Public House for Sgt. Hopkinson?
A. 57 Yes sir.
Q. 58 You have had words on quite a number of occasions with the Sgt.-Major?
A. 58 Not many sir.
Q. 59 Have you mentioned them all?
A. 59 Yes sir, since this affair in Binstead.
Q. 60 Do you recollect an occasion after the dance in which the S/M found you in the kitchen?
A. 60 No sir.
Q. 61 Do you say that you were never in the kitchen after a dance?
A. 61 I had a written authority to go in the kitchen any time.
Q. 62 The ~~information I wish~~ occasion I wish to draw you attention was about 0230 hours after a dance had been held and you were in the kitchen?
A. 62 I can't recollect that.
Q. 63 On this occasion there was a young lady with you?
A. 63 Not that I can remember.
Q. 64 You asked the S/M at 0230 hours after the trucks had gone how you were going to get her home?
A. 64 I still can't remember.
Q. 65 You understand that I'm referring to one particular occasion when you were in kitchen with a young woman and the S/M came in?
A. 65 No sir, I have never been in the kitchen with a young woman in my life.
Q. 66 Then you will go further and say that the S/M reproved you on this occasion?
A. 66 He never spoke to me.
Q. 67 You did not tell the S/M that the young lady had been left behind?
A. 67 No sir.
Q. 68 And you did not tell the S/M that she had been in your room and you did not hear the trucks go?
A. 68 No sir.
Q. 69 Did you have a woman in your room?
A. 69 No sir.
Q. 70 Did the S/M speak to you about having a woman in your room?
A. 70 No sir.
Q. 71 Following this event you made a report in writing?
A. 71 Yes sir.
Q. 72 Have you a copy of that with you.
A. 72 No sir.
Q. 73 Have you a copy in your possession?
A. 73 No sir we are not allowed copies of our reports. It would be in Headquarters, Field Security.
Q. 74 Had you ever been to Binstead? before this night 20 Sept. 42?
A. 74 Yes sir, I had been there before on duty.
Q. 75 Had you ever been there on a Sunday night?
A. 75 I can't say sir.
Q. 76 The Public houses are resorted to by personnel of this O.R.U.?
A. 76 Yes sir.
Q. 77 How many occasions have you been there?
A. 77 Scores of times.
Q. 78 Have you been there on a pay night?
A. 78 Yes sir.
Q. 79 And there are more troops there than on other nights?
A. 79 Yes sir.
Q. 80 You said there was nothing that you could do to stop these men, from going up, is that correct?
A. 80 Yes sir.
Q. 81 And that you didn't approach any of the sergeants?
A. 81 No sir.
Q. 82 Did you suggest to Hopkinson that he might get hold of the other sergeants and see what he could do?
A. 82 I told him to stay in the Pub in case there was a disturbance.
Q. 83 You couldn't do anything?

CROSS-EXAMINED BY DEFENDING OFFICER:

Q. 1 What is your name?
A. 1 William Gross Lefebvre.
Q. 2 When are you V.W. Lefebvre?
A. 2 I used those initials in civilian life.
Q. 3 Not for security reasons?
A. 3 No sir.
Q. 4 I understand you to say that when you got into the truck, it was too dark for you to see who was there?
A. 4 Yes sir.
Q. 5 Where you able to find Sgt. Hopkinson?
A. 5 Yes sir, I found him by his voice.
Q. 6 He was the only person in the truck that you knew?
A. 6 He is the only person I can name. I recognized his voice.
Q. 7 He is the only person you can name?
A. 7 No sir, I can name Sgt. McInnis, Knox, McAdam and a few others.
Q. 8 And you can only give these names to the Court that you have given, by recognizing their voices?
A. 8 Yes sir.
Q. 9 It was too dark for you to see anybody else in the truck?
A. 9 Yes sir.
Q. 10 How many minutes after this alleged conversation with the Sgt. Major that you went to the truck?
A. 10 Just two or three minutes.
Q. 11 That is the conversation you say that you had with him on the bench when the lady was present?
A. 11 Yes sir.
Q. 12 You say that the truck stopped and picked some other men up do you know at what point the truck stopped?
A. 12 I would know the direction the truck went. We were still in the camp grounds.
Q. 13 Was the truck overloaded?
A. 13 It was when we left.
Q. 14 More than the proper number in the truck?
A. 14 Yes sir.
Q. 15 Who was i/c of the truck?
A. 15 I don't know.
Q. 16 Did anybody appear to be i/c of it?
A. 16 Not that I could see.
Q. 17 As senior N.C.O., would it not be your duty to prevent this truck being overloaded?
A. 17 A man in my position would have had no chance of interfering with what was going on.
Q. 18 I am talking now of the truck when it was within the lines of Martinique Camp?
A. 18 Yes sir.
Q. 19 There ~~was~~ were in this truck, five other sergeants, did you suggest to them, that they should take the proper steps?
A. 19 No sir.
Q. 20 Didn't you think of suggesting to these sergeants that they should do their duty?
A. 20 There was a lot of things I had to keep to myself.
Q. 21 Who stopped the truck?
A. 21 The driver naturally.
Q. 22 Who was the driver?
A. 22 I don't know.
Q. 23 What was the number of this truck?
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A. 25 I don't know his name.
Q. 26 If it was too dark to see the faces of any of the men, in the truck, how do you expect the Court to believe that you saw a blackjack?
A. 26 He showed me the blackjack right to my face.
Q. 27 And you took no steps to find out who it was?
A. 27 No sir, I was scared.
Q. 28 Did you not notice this man so you would know him again?

A. 28 If I see him again I am sure I would recognize him.
Q. 29 You had not heard anything about going to the gypsy camp during the day?
A. 29 No sir.
Q. 30 The first word you heard was before you left?
A. 30 Yes sir.
Q. 31 You told the Court that these men were storming the Pub, what was the word that you used?
A. 31 Trying to break into the Pub, or words to that effect.
Q. 32 Have you never heard a man rattle the door of a Pub trying to get in just before closing time?
A. 32 Yes sir, I have.
Q. 33 And you call that breaking in?
A. 33 No sir.
Q. 34 You say that the men rushed into the Pub, you were one of them weren't you?
A. 34 Yes sir.
Q. 35 You acted the same as the other men did you not?
A. 35 No sir.
Q. 36 What was the difference?
A. 36 I didn't barge my way in.
Q. 37 How were you dressed?
A. 37 Crash helmet, pistol, and leather coat.
Q. 38 Anybody else with helmets on?
A. 38 Yes sir, the sergeant from the Transport Office.
Q. 39 You say that you told a man who produced an identity card that he would not be harmed?
A. 39 Yes sir.
Q. 40 You knew that he would not be harmed?
A. 40 Yes sir, he was an old man and I knew the boys wouldn't harm him.
Q. 41 In the Public House there was a man who was a leader, who was he?
A. 41 I don't know sir.
Q. 42 Did you ask his name?
A. 42 I couldn't sir.
Q. 43 You were there for the purpose of getting information?
A. 43 Yes sir.
Q. 44 Did you take the names of any men that night?
A. 44 All names, I had were in my mind.
Q. 45 When the men went up to the gypsy huts and caravans, you went with them?
A. 45 Yes sir.
Q. 46 You acted in the same manner as the others?
A. 46 No sir.
Q. 47 You didn't wish to be conspicuous and draw attention to yourself?
A. 47 I remained behind but went along with them.
Q. 48 There were many other men who remained behind and went along with the crowd?
A. 48 I was behind all of them.
Q. 49 Did you look behind?
A. 49 Yes sir, I looked all over
Q. 50 You also say that when this man Hayes, was the only person you can name and he was the first person who seemed to take the iniative?
A. 50 Yes sir, there were a lot of other fellows like that.
Q. 51 This fellow had no difficulty in leading the men away?
A. 51 No.
Q. 52 There was nothing ~~to~~ of interest there and anybody who made a suggestion would be followed?
A. 52 I can't answer that sir, I don't know.
Q. 53 It is a fact that nothing of interest was going on ~~after a half-hour-time~~?
A. 53 After a half hour time it did sir.
Q. 54 And any suggestion was immediately picked up?
A. 54 Mine wasn't sir. Hayes was a boxer and well-known in the unit.
Q. 55 When you got back to the lorries they were left where you left them before?

A. 55 About the same place.
Q. 56 Did you see Sgt. Wood?
A. 56 No sir at no time.
Q. 57 Did you go back to the Public House for Sgt. Hopkinson?
A. 57 Yes sir.
Q. 58 You have had words on quite a number of occasions with the Sgt.-Major?
A. 58 Not many sir.
Q. 59 Have you mentioned them all?
A. 59 Yes sir, since this affair in Binstead.
Q. 60 Do you recollect an occasion after the dance in which the S/M found you in the kitchen?
A. 60 No sir.
Q. 61 Do you say that you were never in the kitchen after a dance?
A. 61 I had a written authority to go in the kitchen any time.
Q. 62 The ~~information I wish~~ occasion I wish to draw you attention was about 0230 hours after a dance had been held and you were in the kitchen?
A. 62 I can't recollect that.
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A. 63 Not that I can remember.
Q. 64 You asked the S/M at 0230 hours after the trucks had gone how you were going to get her home?
A. 64 I still can't remember.
Q. 65 You understand that I'm referring to one particular occasion when you were in kitchen with a young woman and the S/M came in?
A. 65 No sir, I have never been in the kitchen with a young woman in my life.
Q. 66 Then you will go further and say that the S/M reproved you on this occasion?
A. 66 He never spoke to me.
Q. 67 You did not tell the S/M that the young lady had been left behind?
A. 67 No sir.
Q. 68 And you did not tell the S/M that she had been in your room and you did not hear the trucks go?
A. 68 No sir.
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A. 69 No sir.
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A. 70 No sir.
Q. 71 Following this event you made a report in writing?
A. 71 Yes sir.
Q. 72 Have you a copy of that with you.
A. 72 No sir.
Q. 73 Have you a copy in your possession?
A. 73 No sir we are not allowed copies of our reports. It would be in Headquarters, Field Security.
Q. 74 Had you ever been to Binstead? before this night 20 Sept. 42?
A. 74 Yes sir, I had been there before on duty.
Q. 75 Had you ever been there on a Sunday night?
A. 75 I can't say sir.
Q. 76 The Public houses are resorted to by personnel of this O.R.U.?
A. 76 Yes sir.
Q. 77 How many occasions have you been there?
A. 77 Scores of times.
Q. 78 Have you been there on a pay night?
A. 78 Yes sir.
Q. 79 And there are more troops there than on other nights?
A. 79 Yes sir.
Q. 80 You said there was nothing that you could do to stop these men, from going up, is that correct?
A. 80 Yes sir.
Q. 81 And that you didn't approach any of the sergeants?
A. 81 No sir.
Q. 82 Did you suggest to Hopkinson that he might get hold of the other sergeants and see what he could do?
A. 82 I told him to stay in the Pub in case there was a disturbance.
Q. 83 You couldn't do anything?

A. 83 No sir.
Q. 84 Do you think that all the sergeants of this unit are held in the same disrepute as you are?
A. 84 I wouldn't say that sir.
Q. 85 Did it not occur to you that Hopkinson might have got the men to go?
A. 85 We all went down with one purpose.
Q. 86 You say that the S/M asked you if you had gone to "F" Group?
Av-86 and you had quite a few words about obeying the order?
A. 86 I explained to the Sgt.-Major.
Q. 87 The S/M took the attitude that if you got an order while you were in this unit, you had to obey it?
A. 87 I told the S/M I had 18 units to look after and I received calls ~~them~~ from them nearly every day.
Q. 88 So you objected to the S/M speaking to you in such a loud voice?
A. 88 I didn't object to him.
Q. 89 He was taking the attitude, he had given you an order and that you had not carried it out?
A. 89 That's right sir.
Q. 90 But you were taking the position that he had no right to give you orders?
A. 90 No sir, I was avoiding going to "F" Group when I didn't have to go there.
Q. 91 You were hedging the S/M as you were hedging me?
A. 91 No sir.
Q. 92 The fact remains that the S/M took the fact that you should obey his order?
A. 92 Yes sir.
Q. 93 You did not agree then that the S/M had any right to give you any order?
A. 93 He did his job in giving me the order but if there was a message he should have given me the message and I would have been responsible whether I reported to "F" Group or not.
Q. 94 The next occasion you say that the S/M shouted something across the mess when there was about a hundred persons there?
A. 94 Yes sir.
Q. 95 And that was the occasion that you told him that you would obey Camp Orders but not him?
A. 95 I told him quietly outside that I would obey Standing Orders. I told him I was here for rations and quarters only and would obey camp orders.
Q. 96 You appeared before me when I was endeavouring to investigate in the unit, you refused to give me any information of any kind?
96 Yes sir.
97 All I wanted to know was how you came to ride on our truck?
97 Yes sir, I had orders from my own Headquarters.
98 In your report, did you not say that a large number of men from this unit had gone armed to attack the Gypsy camp or words to that effect?
99 The report I made out was based on what I saw, what I heard, what I was told and what I assumed.
So there were many things in your report that you had heard and that you assumed?
Yes sir, that's the way we do things.
Did you in your report, differentiate between what you had seen, what you had heard or what you had assumed?
No sir.
If it was so dark when you left this camp, you could not see how is it that you could see so well when you got to Binstead?
In the village, doors were opening and the village was more lighted than it was here.
Were there any Marines in Binstead?
There were a few. I would say about half a dozen.
I think you told my learned friend this morning that the Provosts arrived just as you were leaving?
They arrived ~~in~~ a few minutes previous to our leaving the Gypsy camp. They drove up to get the numbers of the trucks and drove back into the village.
This is what they had told you?

A. 104 Yes sir.
Q. 105 Did you put the vehicle numbers in your report?
A. 105 No sir.
Q. 106 Have you ever been in recreational transport in this unit before?
A. 106 No sir, this was the only occasion.
Q. 107 After leaving the sergeants mess did this truck go to the front of the Transport Office in this unit?
A. 107 Not that I know sir.
Q. 108 You were in the truck weren't you?
A. 108 Yes sir, but I didn't think it went there.
Q. 109 Do I understand you to say that the truck went from the sergeants mess and out of the area?
A. 109 It went out by the back way. I judge that by the sense of direction.
Q. 110 You say that the truck didn't stop again in front of the Transport Office?
A. 110 If it did, I do not know.
Q. 111 Were you sitting next to Hopkinson in the truck going to Binstead?
A. 111 We were in there all packed and I was standing up.
Q. 112 Were you talking to Hopkinson in the truck?
A. 112 Yes sir, I was, and I had a cigarette.
Q. 113 What did you light the cigarette with?
A. 113 I believe I got a light from somebody else.
Q. 114 You were not so crowded that you couldn't smoke?
A. 114 No sir, I could smoke by holding the cigarette up.

EXAMINED BY PROSECUTOR:

Q. 115 Was it a particularly dark night?
A. 115 It was very dark at the beginning.
Q. 116 Was the truck covered?
A. 116 ~~Was it darker in the truck than outside?~~ Yes sir.
Q. 117 Was it darker in the truck than outside?
A. 117 Yes sir.
Q. 118 These roads you were travelling on, what were they like?
A. 118 The roads were dark with the brush along the side.

_____ Sgt.
(W.G. Lefebvre)

B.95044 Pte. Waller, G.F., No. 1 C.O.R.U., was duly sworn.

PROSECUTOR:

Q. 119 You are B.95044 Pte. Waller, G.F., No. 1 C.O.R.U.?
A. 119 Yes sir.
Q. 120 On 20 Sept. 42, were you a member of that unit?
A. 120 Yes sir.
Q. 121 What was your job?
A. 121 Driver for Colonel Bailey.
Q. 122 Where were you on Saturday night?
A. 122 Binstead.
Q. 123 Was there anything happen at Binstead concerning you?
A. 123 Yes sir. There was a fight and I got kicked in the fight -between the Marines and gypsies.
Q. 124 Did you report this to anyone?
A. 124 No sir.
Q. 125 On the evening in question, 20 Sept. 42, ~~wer~~ where were you?
A. 125 I was in camp part of the time. I went to Binstead with a bunch of fellows later on.
Q. 126 For what purpose?
A. 126 There had been a general discussion.
Q. 127 A general discussion where?
A. 127 In camp on Sunday 20 Sept. 42.
Q. 128 When?
A. 128 After supper.
Q. 129 Where did this discussion take place?
A. 129 Among the boys in our hut.
Q. 130 As a result of the discussion was anything done?

A. 130 After supper sunday night, the discussion took place between the boys in front of the gym and the transport.
Q. 131 Any N.C.O's?
A. 131 I couldn't say. Two trucks were to go to Binstead.
Q. 132 Did you go in one?
A. 132 Yes sir.
Q. 133 How many men went to Binstead?
A. 133 About forty or fifty.
Q. 134 How many were there when you got to Binstead?
A. 134 Between 75 and a 100.
Q. 135 Do you know who made arrangements as to the transport?
A. 135 No sir.
Q. 136 Do you know R.S.M. Smith?
A. 136 Just by seeing him around camp.
Q. 137 Did you see him around camp that afternoon?
A. 137 No sir.

Q. 138 CROSS-EXAMINED BY DEFENDING OFFICER:
When you say there was a general discussion, this discussion
A. 138 was just among the few men that you know of?
Q. 139 Yes sir.
A. 139 It was not discussed in the whole camp?
Q. 140 No sir, just my hut. There's about 19 men in our hut.
A. 140 When were you in the gym?
Q. 141 I was outside the gym.
A. 141 You passed the gym to go to your hut, is that it?
Q. 142 Yes sir.
A. 142 And you talked to some men there?
Q. 143 No sir.
A. 143 How many men were there?
Q. 144 About a hundred.
A. 144 What time was this?
Q. 145 Between 1900 and 1930 hours.
A. 145 That is the discussion that you are talking about?
Q. 146 Yes sir.
A. 146 You went in one of the trucks yourself?
Q. 147 Yes sir.
A. 147 How many men were in the truck?
Q. 148 About 25 men.
A. 148 Who was the driver of the truck you went in?
Q. 149 Pte. Demcker.
A. 149 Did you pay anything?
Q. 150 No sir.
Have you on previous occasions said that you did pay some-
A. 150 thing?
Q. 151 No sir.
A. 151 Do you remember appearing before me and making a statement?
Q. 152 Yes sir.
A. 152 And on that occasion did you say that you ~~did~~ had paid 6d?
Q. 153 No sir, I don't believe I did.
A. 153 What was Sgt. Wood doing?
Q. 154 Collecting money.
A. 154 Did he get 6d from you?
Q. 155 No sir.
You say that you did not say on the occasion I took the
A. 155 evidence, that you didn't think you gave 6d?
Q. 156 Not to my recollection.
A. 156 Did you see any men carrying sticks, or pipes?
Q. 157 No sir.
A. 157 You were around there until the trucks came back?
Q. 158 No sir, I was around for about an hour and went in the Pubs.
A. 158 Was there any shouting or yelling?
Q. 159 Yes sir, some of the men were singing.
A. 159 Have you ever been to Binstead on any other occasion?
Q. 160 Yes sir.
A. 160 Frequently?
Q. 161 Yes sir, several times.
A. 161 Is it not common for the men to go there?
Q. 162 Yes sir, they go to dances there.
A. 162 Is it not a common thing for men going to dances to sing?
Yes sir.

Q. 163 Was there anything different from any other occasion?
A. 163 No sir.
Q. 164 Which Pub did you go into?
A. 164 The one on the right hand side.
Q. 165 Was Sgt. Hopkinson there?
A. 165 I couldn't say sir.
Q. 166 Was anybody playing the piano?
A. 166 Not that I know of sir.
Q. 167 Was there any disturbance when you came out of the Pub?
A. 167 No sir, there was not.
Q. 168 Were there any Marines there?
A. 168 There were at least 50 men before we got there.
Q. 169 You mean more Marines came later you think?
A. 169 They must have because there must have been at least 100 or 125 Marines.
Q. 170 On the first week-end after payday, are there not more men up there than on any other day?
A. 170 Yes sir, there are. They go up there every week-end. Dances are held every week.
Q. 171 Walking through the fields, how far is it to Binstead?
A. 171 About three miles and five or six by road.
Q. 172 How did you get there on Saturday night?
A. 172 Pte. Dencker came to the New Inn where I was with Pte. Prodeahl and asked if we would go to Binstead, so we got in the S/W.
Q. 173 At what hour did you become involved in a fight?
A. 173 They had just started to close the Pubs.
Q. 174 Did you get a drink at Binstead?
A. 174 No sir.
Q. 175 What happened on your coming out?
A. 175 On coming out of the Pub I had just got to the top step when I was tripped and I fell down four steps to the ground and before I could get up a whole mob was onto me and I was kicked in the groin. It was the first time anything like this had ever happened to me. I didn't see who these people were because it was too dark. I don't think any of the other fellows were attacked.
Q. 176 Did any incident such as this take place on Sunday night?
A. 176 No sir.
Q. 177 Can you account for what happened on Saturday night?
A. 177 No sir, I can't. When we got in the Pub, we heard that there had been a fight with the Marines and gypsies and that's why we couldn't be served any beer.

EXAMINED BY PROSECUTOR:

Q. 178 Why did you go to Binstead on Saturday night?
A. 178 I just went with the boys because they wanted enough boys for what happened on Saturday night.
Q. 179 Did you go the gypsy camp at the back?
A. 179 No sir, I did not.
Q. 180 The men standing at the gym, only part were able to go on the truck?
A. 180 Yes sir.
Q. 181 The evidence you told Major Miller at the Inquiry, was not true, why did you not tell the truth?
A. 181 Sgt. Scully told me before I went in to see Major Miller, to say I was going to a dance at Bentley.
Q. 182 What time do the Pubs close at Binstead?
A. 182 2200 hours.
Q. 183 Where were you from 1930 hours to 2200 hours on Sunday night?
A. 183 I was between camp and Binstead on Sunday night.
Q. 184 And you were also in Binstead?
A. 184 Yes sir.
Q. 185 Were there as many Marines there as O.R.U., men as there were on Saturday night?
A. 185 On Saturday night there weren't more than a dozen Marines but on Sunday there was a bunch.
Q. 186 How many O.R.U. men were there on Saturday night?
A. 186 Just six of us.
Q. 187 You said there was no disturbance?

187

A. 187 No sir.
Q. 188 What do you mean by disturbance?
A. 188 I imagine fighting or trying to cause a fight.
Q. 189 Those who were there, were they ready for a fight?
A. 189 They were all "het" up.

CROSS-EXAMINED BY DEFENDING OFFICER:

Q. 190 On Saturday night, you didn't see any O.R.U., personnel7
~~A. 190~~ other than yourselves you went up with, is that correct?
A. 190 Yes sir.
Q. 191 And that was just at closing time?
A. 191 Yes sir.
Q. 192 If and when you go to Binstead from this camp, can you stay until closing time and get in before "lights out"?
A. 192 No sir. You can walk from Binstead to camp in 45 minutes and we usually leave just after 2100 hours to get in before "lights out".

EXAMINED BY COURT:

Q. 193 Was there a collection made for recreational transport?
A. 193 Yes sir.
Q. 194 For what purpose?
A. 194 To pay for the recreational transport.

_____ Pte.
(G.F. Waller)

D.108038 Sgt. Sinden, G.F., No. 1 C.O.R.U., was duly sworn.

EXAMINED BY PROSECUTOR:

Q. 195 You are D.108038 Sgt. Sinden, G.F., No. 1 C.O.R.U.?
A. 195 Yes sir.
Q. 196 Do you know the accused R.S.M. Smith?
~~A. 196 Do you know C.S.M. Magill?~~
A 196 Yes sir.
Q. 197 Do you know C.S.M. Magill?
A. 197 Yes sir.
Q. 198 Do you know Sgt. Lefebvre?
A. 198 Yes sir.
Q. 199 Were you present on an occasion in the sergeants mess when there was some discussion between the accused and Lefebvre?
A. 199 Yes sir.
Q. 200 Will you tell the Court about it?
A. 200 It was a night sometime in September, I don't remember the date. I was sitting in the mess with Magill and Lefebvre and the R.S.M., walked in and started a discussion with Lefebvre and Magill interrupted and said a discussion of this sort should not be discussed in the sergeants mess, but should be discussed elsewhere. Shortly afterwards, the R.S.M., departed. Lefebvre stayed in the mess.
Q. 201 What was the conversation about?
A. 201 I don't know.
Q. 202 Were there any names brought into it?
A. 202 No sir.

The President made a statement to the accused provided for in Note 2 R.P. 40.

DEFENDING OFFICER:
The accused will call witnesses as to facts and will give evidence himself on oath.

D.82163 R.S.M. Smith, G. No. 1 C.O.R.U., was duly sworn.

EXAMINED BY DEFENDING OFFICER:

Q. 203 You have been acting as R.S.M. for how long?
A. 203 Since 19 Dec. 41. I actually took over the job 4 Feb. 42.
Q. 204 And until these charges were laid, continued as such?

A. 204 Yes sir.
Q. 205 You have heard the evidence given by Col. Bailey as to a report you made to him on the morning of Sept. 20 ~~Sept.~~ 42
A. 205 Yes sir.
Q. 206 Following your discussion, did you receive any orders from Col. Bailey or directions?
A. 206 In future I was instructed to make sure that transport was not misused and pay particular attention to the transport for the sergeants mess dances.
Q. 207 There had been a sergeants mess dance the night before?
A. 207 Yes sir, and I reported to the Colonel.
Q. 208 There was some mention of a Marine being killed, just tell the Court what that was?
A. 208 From members of the mess, I heard there was a Marine killed somewhere around the gypsy camp near Binstead on 19 Sept. 42. There were certain boys who had been up there and they were a little upset about the whole thing and then I understood they were pretty peeved about it and they were liable to go up there and see what it was all about on Sunday but that was all. There was no estimate as to who was going or anything else.
Q. 209 Had you any reason to think that any men were really going?
A. 209 No sir, just a discussion amongst members of the mess.
Q. 210 Were you on duty all that day?
A. 210 I was on duty as R.S.M. until supper time at 1630 hours and then I handed over to C.S.M. Turley to take over from me and after the band concert which was held in the mess after supper I went out of camp reporting to my orderly sergeant and my orderly officer which I always do before I leave camp.
Q. 211 When did you leave?
A. 211 About 1900 hours.
Q. 212 How do you fix that time?
A. 212 I got the bus for Headley Down which leaves at about 1919 hrs., and leaves from the Fire Station in the village of Bordon. It is just the other side of the cross-roads.
Q. 213 How did you go from the mess to the bus halt?
A. 213 I walked with my lady friend.
Q. 214 You left here in ordinary time to catch that bus?
A. 214 Yes sir.
Q. 215 Did you catch it?
A. 215 Yes sir.
Q. 216 Sgt. Lefebvre has given evidence that he had a conversation where you were accompanied by a lady sitting on a seat just before 2000 hours, is that possible?
A. 216 No sir.
Q. 217 Why not?
A. 217 I was in Headley Downs having left camp about 1900 hours.
Q. 218 Before you left the camp irrespective of time, did you have any conversation with Sgt. Lefebvre as he ~~as~~ has said?
A. 218 No sir.
Q. 219 Were you speaking to him at all on that Sunday?
A. 219 I don't remember if I was talking to him at dinner time between 1200 and 1300 hours but I didn't talk to him in the evening.
Q. 220 You heard what Lefebvre said about your asking him if he was going to a party, what do you say as to that?
A. 220 No sir, I didn't ask him if he was going to a party.
Q. 221 Did you mention party to him in any way on that day?
A. 221 No sir.
Q. 222 You heard Lefebvre say what you said to him, "If you don't know, it's hush", did you say ~~as~~ that or anything like that?
A. 222 No sir, there was no conversation like that at all.
Q. 223 Lefebvre continued and said that you said to him, "The boys are going to Binstead to raid the hop pickers"?
A. 223 No sir.
Q. 224 Was there any discussion between you and him about the hop-pickers?
A. 224 No sir, there was no discussion whatsoever.
Q. 225 Lefebvre further says that while you were talking to him, he

saw the boys edge to the door and you pulled out your watch and said, "it's 3 minutes to 8, what do you say to that?

A. 225 It is not true, sir.

Q. 226 Had you during the Sunday either before or after your conversation with the Colonel, heard or learned of anything which called for any action on your part?

A. 226 Yes sir, in the afternoon, I heard the word from amongst the members in the mess that a party was being organized or thinking about going to Binstead and it was then that I told Sgt. Scully who was the Transport Sergeant, that no trucks or men should go to the gypsy camp.

Q. 227 You say that you had heard a rumour in conversation?

A. 227 Yes sir.

Q. 228 Did you hear anything more than that?

A. 228 No sir.

Q. 229 When did you return to camp on this Sunday night?

A. 229 Between 2330 and 2359 hours.

Q. 230 And you were away from the time that you left at 1900 hours?

A. 230 Yes sir, until I returned about 2330 hours.

CROSS-EXAMINED BY PROSECUTOR:

Q. 231 How long have you been in the army?

A. 231 Since about January 1939.

Q. 232 You have been Permanent Force?

A. 232 No sir, Black Watch.

Q. 233 How long have you been in Ordnance?

A. 233 Since 19 Dec. 41. I was with the Black Watch at the beginning of the war and then I transferred to the Ordnance and came over with the Mobile Laundry and transferred here 19th December 1941.

Q. 234 As S/M, are you not on duty all the time?

A. 234 Yes sir.

Q. 235 On 20 Sept. 42, you became aware that there had been an incident at Binstead the night before in which hop pickers and Marines were involved?

A. 235 Yes sir.

Q. 236 You also became aware that members of your unit knew about that incident and were upset about it?

A. 236 On Sunday, yes sir.

Q. 237 And you also became aware that they were planning what you called a "party" to go to Binstead, is that right?

A. 237 Yes sir.

Q. 238 Did you know what they were talking about?

A. 238 Yes sir.

Q. 239 And there was some transport going to be used according to their plans was there not?

A. 239 Yes sir.

Q. 240 You reported the matter to the colonel very properly?

A. 240 Yes sir, just that they were thinking about the party.

Q. 241 And you told that to the Colonel?

A. 241 Yes sir.

Q. 242 Therefore you reported it to him as it was your duty to do?

A. 242 Yes sir and then we talked about recreational transport.

Q. 243 What did the Colonel say to you when you told him about the feeling of the troops?

A. 243 He told me to tell the party that transport was not to be used for that purpose.

Q. 244 Did he not also tell you that there was not to be a party for any such purpose?

A. 244 No sir.

Q. 245 I think the Colonel said if the transport was used, he would break their necks?

A. 245 No sir, he didn't say that.

Q. 246 Now you have used the word "party" what do you picture?

A. 246 I don't know.

Q. 247 You knew there was a plan on foot about them going to the gypsy camp that night?

A. 247 I don't know sir.

Q. 248 Did you know just about when they might go?

A. 248 No sir.

Q. 249 Why did you not stay in that evening to see that they did not go?
A. 249 I didn't think it was necessary.
Q. 250 Why didn't you think it was necessary?
A. 250 Because I didn't know that the party was going.
Q. 251 You had intimation that it might go?
A. 251 Yes sir, from rumours.
Q. 252 Did you as S/M ever act on a rumour to head-off something that might happen in a unit?
A. 252 No sir. If we went by rumours in this camp we would go crazy.
Q. 253 Do you go on suspicions?
A. 253 No sir.
Q. 254 What do you go on?
A. 254 On discipline and facts.
Q. 255 You took the rumour seriously enough to report it to the Colonel?
A. 255 Yes sir.
Q. 256 And he took it seriously enough to tell you that no transport would be used and ~~x~~ no men to go?
A. 256 Yes sir.
Q. 257 And I think it was generally understood that the purpose for ~~the~~ which they were going would not be approved?
A. 257 No sir.
Q. 258 The plan was to go down into the gypsy camp and do violence to the gypsies for what they had done the night before?
A. 258 I didn't know what they were going to make reprisals for the
Q. 259 Had you any suspicions? If they went, they were going to the gypsy camp for.
A. 259 Marine who was supposed to have been killed?
Q. 260 And that's something you wouldn't have them do?
A. 260 No sir, I wouldn't.
Q. 261 Nothing happened before you left camp?
A. 261 No sir.
Q. 262 Why did you leave camp with this on your mind?
A. 262 Because I though it was all finished with.
Q. 263 What caused you to think that?
A. 263 I didn't see anything to make me think otherwise?.
Q. 264 Had you any positive proof that it was finished?
A. 264 No sir.
Q. 265 Did you speak to the orderly sergeant about the matter?
A. 265 No sir.
Q. 266 Did you speak to the orderly officer about the rumours you had heard?
A. 266 No sir.
Q. 267 The Colonel had told you to see to it that nothing occurred?
A. 267 He said he didn't want anything to happen.
Q. 268 You however, told Sgt. before going?
A. 268 Yes sir.
Q. 269 How long before?
A. 269 About 1645 hours.
Q. 270 What did you tell him?
A. 270 Don't go to the gypsy camp and don't take the trucks.
Q. 271 Had you any idea that Scully might go to the camp?
A. 271 No sir.
Q. 272 Why would he go to the gypsy camp for reprisals?
A. 272 I had heard a rumour around supper time that they were thinking about going to the gypsy camp. I told Scully, being transport sergeant, that he should not take any of our trucks and the men must not go.
Q. 273 There two trucks outside the door?
A. 273 I don't know what these trucks were for but when I heard that the trucks might be used I told Scully that they must not be used.
Where was the Colonel at that time?
Q. 274 I don't know sir.
A. 274 Was he in camp?
Q. 275 I couldn't tell you sir.
A. 275 Wouldn't you know?
Q. 276 No sir.
A. 276 As you know now, the Colonel was out of the camp that evening?
Q. 277

A. 277 Yes sir.
Q. 278 Where was it that you saw Sgt. Scully and told him not to use transport?
A. 278 He was outside the door on the road standing with another sergeant, Sgt. Knox.
Q. 279 Was Scully dressed for riding a motorcycle?
A. 279 No sir, I couldn't tell you.
Q. 280 What time did you have your evening meal?
A. 280 Sunday supper was at 1630 hours.
Q. 281 Did you have your supper at 1630 hours?
A. 281 Just a few minutes after.
Q. 282 And you left the camp shortly after 1900 hours?
A. 282 Yes sir.
Q. 283 Is it not possible that you got the 2018 hour bus and not the 1918 hour bus?
A. 283 No sir.
Q. 284 Did you not on another occasion say it was a 2018 hour bus?
A. 284 Yes sir.
Q. 285 Why did you tell them it was a 2018 hour bus?
A. 285 At that time I told the Court to the best of my knowledge.
Q. 286 Why did you say on that occasion that you left the camp at 2020 hours with the girl friend?
A. 286 Because it was daylight and the blackout that evening was 1940 hours.

(Admitted and agreed that blackout for 20 Sept. 42 was at 1940 hours as shown on unit D.O. Part I #256).

Q. 287 You figured it out since, you must have been wrong in your first statement because you left before it got dark?
A. 287 Yes sir, I have the lady friend with me and she remembers.
Q. 288 You have of course discussed the matter to the lady?
A. 288 Yes sir.
Q. 289 When you told Sgt. Scully that he was not to go to the gypsy camp or not to allow the use of the trucks, what did he say?
A. 289 He said, "O.K. S/M" and smiled.
Q. 290 Did you then follow it up and impress on him that it was no smiling matter?
A. 290 No sir.
Q. 291 And the smile was just his usual way?
A. 291 Yes sir.
Q. 292 And did Knox smile?
A. 292 I didn't pay no particular attention to Knox.
Q. 293 Did Knox say on another occasion when you told him that they just looked at me and smiled?
A. 293 Yes sir.
Q. 294 Did Knox smile at you when you made that statement?
A. 294 Yes sir.
Q. 295 Is it his usual way to smile?
A. 295 Yes sir.
Q. 296 Do all the N.C.O.s smile when you give them an order?
A. 296 No sir.
Q. 297 Do you mean to tell us that Scully has that manner of smiling?
A. 297 All he said was "O.K. S/M".
Q. 298 What about Knox smiling, didn't that put you on your guard?
A. 298 No sir.
Q. 299 Was it usual for Knox to be smiling when you gave an order?
A. 299 I didn't have much to do with that man sir, he didn't belong to this unit.
Q. 300 Do you remember giving a statement to Capt. Creasy of the D.A.P.M's office?
A. 300 Yes sir.
Q. 301 Did you tell him the truth?
A. 301 To the best of my ability sir.
Q. 302 And you made a statement to Major Miller?
A. 302 Yes sir, a verbal one, not a written one.
Q. 303 When was that occasion you gave the time as 2020 hours when you left the camp with your lady friend?
A. 303 Some little time ago.
Q. 304 I think you've already told us that you didn't inform the

ø orderly officer or the orderly sergeant of what was brewing?
A. 304 No sir.
Q. 305 And that is all that you did then pursuant to the C.O's intimation to you that he doesn't want our boys to get mixed up with the troubles the Marines had with the gypsies?
A. 305 That's right sir.
Q. 306 And pursuant to that all you did was to tell Scully that he was not ~~go~~ to go and transport was not to go or any of the men?
A. 306 Yes sir.
Q. 307 Did you tell Scully to tell the men not to go?
A. 307 No, he was not take any of the men in transport or go himself.
Q. 308 You say that you didn't know definitely that they would go but you did know that there were some plans discussed?
A. 308 Yes sir, I had heard about it.
Q. 309 When you were out of camp, I believe you told us C.S.M. Turley was acting in your place?
A. 309 Yes sir.
Q. 310 Did you tell him that anything was in the air about the gypsies?
A. 310 No sir.
Q. 311 You said something about a band concert that evening?
A. 311 Yes sir, right after tea. It was between 1730 and 1800 hours.
Q. 312 Was there anything particular that you had to get to Headley Downs?
A. 312 No sir, I was taking the lady friend home.
Q. 313 What was the last bus that you could have taken to Headley Downs?
A. 313 The 2115 hour bus.
Q. 314 Ther's a bus every twenty minutes past the hour?
A. 314 Yes sir.
Q. 315 You have heard Sgt. Sinden testify here in regard to conversation which took place in the sergeants mess between you and Lefebvre, was there such a conversation?
A. 315 Yes sir.
Q. 316 Interrupted by Magill?
A. 316 I don't remember Magill butting in.
Q. 317 Sinden has said that Magill's interruption was to the effect that things like that were not to be discussed in the mess?
A. 317 Yes sir, that's right. I wouldn't contradict that. That ~~ev-ning~~ evening I was in the mess and I walked along to Lefebvre and called him aside. I said, "Did you go as one of the boys that night and then squeal on them". He said, "I'm not speaking". I then said, "Well if you went as one of the boys and then squealed,on them, they ought to take it out of your hide or words to that effect.
Q. 318 You felt very strongly on the matter?
A. 318 No sir.
Q. 319 You didn't think it was right of him to do that?
A. 319 If he went on duty, yes sir.
Q. 320 Why would you discuss the matter at all?
A. 320 It was discussed between him and I.
Q. 321 Why?
A. 321 I felt he might be one of the party. I was not in favour of the party at all.
Q. 322 But since the party took palce weren't you glad that someone was there to keep order?
A. 322 No sir.
Q. 323 Having gotten out of hand as it did, you think he shouldn't have gone along?
A. 323 If he went on duty it was different. When I spoke to him we were alone because I pulled Lefebvre aside.
Q. 324 The conversation was not a friendly one between you and Lefebvre?
A. 324 No sir.
Q. 325 Why did you call this a party?
A. 325 When a group of men get together it's a party.
Q. 326 You wouldn't call it a raid would you?
A. 326 No sir.
Q. 327 Lefebvre says that you asked him if he was going on the party?
A. 327 No sir, never at all.

Q. 328 He says you asked him shortly before 2000 hours?
A. 328 No sir, I was out of the camp. I didn't speak to him at all.
Q. 329 Can suggest any reason why Lefebvre should say you did and that you suggested the party?
A. 329 Ican't, no sir.
Q. 330 I suggest to you S/M knowing that these boys were going on a raid to contact these gypsies, you left the camp, not wanting to see it happen?
A. 330 No sir.
Q. 331 And that all that you were concerned about was to see that no transport was used for the purpose?
A. 331 No sir. I felt sure that none of them were going and I told the only one that I thought might have any bearing on it would be Sgt. Scully, whom him being transport sergeant. I didn't know anyone was going.
Q. 332 You had reason to suspect it?
A. 332 From rumours in the mess?
Q. 333 Knowing what you know now and looking back, was there something you should have done which you overlooked?
A. 333 After this all happened, if I had known that the thing was going to happen I would have had the whole camp C.B'd.
Q. 334 You had this information at that time, that some one was either injured or killed the night before at Binstead?
A. 334 Yes sir.
Q. 335 You had the information that the boys had that information?
A. 335 Yes sir.
Q. 336 That they were incensed about it?
A. 336 Yes sir.
Q. 337 That they might if they could get away with it, have it in mind to go down to the gypsy camp?
A. 337 I didn't definitely know that. There was a rumour.
Q. 338 Just enough rumour for you to go the transport sergeant and ~~tell~~ say that you are not to take any men or trucks?
A. 338 That's right sir.

EXAMINED BY DEFENDING OFFICER:

Q. 339 Do you know how often the buses run to Headley Downs?
A. 339 Not all day sir. I know they run twenty minutes past the hour.
Q. 340 You told the Court that you had an engagement with this lady who is that?
A. 340 Mistress Battersby.
Q. 341 When did you make your engagement with her for this Sunday evening?
A. 341 Saturday afternoon 19 Sept. 42.
Q. 342 The learned ~~counsel~~ prosecutor has said "when you knew what was cooking", did you know that anything was cooking?
A. 342 I didn't know anything definite was cooking.
Q. 343 Did you hear anything whether rumour or otherwise which led you to think at all that the men of the unit were going to Binstead?
A. 343 No sir.
Q. 344 When you left the camp with Mrs. Battersby, what was the state of the light?
A. 344 Just turning dark.
Q. 345 Would you convey to the Court just what that means in relation to the blackout period?
A. 345 We could see quite clearly.
Q. 346 And what is the condition of light when blackout commences?
A. 346 It was dull just about as light as it is now.

_____ R.S.M.
(G. Smith)

Mrs. J.L. Battersby, "The Beacon", Carlton Road, Headley Downs, was duly sworn.

EXAMINED BY DEFENDING OFFICER:

Q. 347 You know the accused R.S.M. Smith?

A. 347 Yes.
Q. 348 I understand that on a Sunday in September you were a guest for tea and a band concert at the sergeants mess?
A. 348 Yes.
Q. 349 What day was that?
A. 349 20 Sept. 42.
Q. 350 When did you arrive here?
A. 350 At 1500 hours.
Q. 351 When did you first see the R.S.M.?
A. 351 At the bus halt at the fire station.
Q. 352 And you came back to camp with him?
A. 352 Yes.
Q. 353 And were a guest at the sergeants mess?
A. 353 Yes.
Q. 354 You had tea there?
A. 354 Yes.
Q. 355 After the tea, listened to the band concert?
A. 355 Yes.
Q. 356 After the band concert what did you do?
A. 356 We got ready to leave the camp to go to my home,
~~Q. 357~~ And caught the 7:19 bus?.
Q. 357 Have you any idea how long it took you to walk to the bus halt?
A. 357 About 15 minutes.
Q. 358 Were you with the R.S.M. all the time he was in the mess?
A. 358 Yes, all the time.
Q. 359 Do you know a Sgt. Lefebvre?
A. 359 Yes, he had been introduced to me and I knew him several weeks before 20 Sept. 42.
Q. 360 Did you on this Sunday, hear any conversation between the R.S.M. and Lefebvre?
A. 360 None whatever.
Q. 361 Was there any conversation in your presence?
A. 361 None.
Q. 362 Did Lefebvre come and sit on the bench on which you and the R.S.M., were sitting?
A. 362 Definitely not.
Q. 363 You have told the Court that you caught the 7:19 bus, why ~~did~~ do you say that was the bus that you caught?
A. 363 I wanted to get home reasonably early to spend the evening with my family. The concert was over ~~and~~ at half past six and we got ready right away to go to the bus.
Q. 364 What was the state of light as you left the sergeants mess?
A. 364 It was quite light outside.
Q. 365 Was it anywhere near the blackout period?
A. 365 No, it was daylight.
Q. 366 Can it be that you and the R.S.M., were still in the Sgts., mess at 5 minutes to 8?
A. 366 No, that's impossible.
Q. 367 Lefebvre has stated that after this conversation with the R.S.M., in your presence, the R.S.M., looked at his watch and said "it's 5 minutes to 8"?
A. 367 No, definitely not.
Q. 368 And Lefebvre further says that the R.S.M., said "the boys are going to raid the hop pickers at Binstead?
A. 368 He never approached the R.S.M., at all.

CROSS-EXAMINED BY PROSECUTOR:

Q. 369 You live at Headley Downs?
A. 369 Yes.
Q. 370 And you live with your family there?
A. 370 Yes.
Q. 371 Your own family I presume?
A. 371 Yes.
Q. 372 You were invited to the sergeants mess by R.S.M. Smith, for tea and band concert?
A. 372 Yes.
Q. 373 No particular plans?
A. 373 No.
Q. 374 Are your children grown up?
A. 374 Yes, the boy is the youngest - 14 yrs. old.

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Q. 375 You weren't worried about them?
A. 375 I told them I would be home early.
Q. 376 How long does it take you to get home?
A. 376 About twenty minutes bus ride.
Q. 377 Did you have a pleasant afternoon?
A. 377 Yes.
Q. 378 Did you have a drink?
A. 378 No.
Q. 379 What time was the band concert over?
A. 379 Near 1830 hours.
Q. 380 What time was blackout time that day?
A. 380 I don't remember.
Q. 381 Did you have conversation with any of the other sergeants in the mess?
A. 381 Only in the mess when we were having tea. There are usually other couples in to tea.
Q. 382 Did you have any conversation with any others?
A. 382 Not that I can recall.
Q. 383 Do you recall any sergeant talking to the R.S.M.?
A. 383 No, I don't remember.
Q. 384 This bench you were sitting on, there is room for more than two?
A. 384 I am not sure if it was a bench.
Q. 385 You have discussed this matter with the R.S.M.?
A. 385 Yes, since he went up after the inquiry.
Q. 386 He told you it was a serious matter?
A. 386 Yes.
Q. 387 The question of time was discussed between you and the R.S.M.?
A. 387 No he never mentioned any time.
Q. 388 What was the discussion about between you and the R.S.M.?
A. 388 He just mentioned casually that he had had to give a statement.
Q. 389 He didn't mention the question of time?
A. 389 No time was mentioned at all.
Q. 390 Did he ask you what time you had left?
A. 390 No.
Q. 391 How did he know what you had to say on the matter?
A. 391 I don't know, We had discussed it quite recently.
Q. 392 What was the discussion recently?
A. 392 He asked me if I remembered the time and I said, "yes," I did, we took the 1919 hour bus.
Q. 393 What did he say to that?
A. 393 I don't recall.
Q. 394 Did he tell you on a previous occasion that he had said it was 2020 bus?
A. 394 Yes.
Q. 395 You knew how important this matter of time was?
A. 395 Not at the time, only when you started to question me on it now.
Q. 396 Do you keep a diary?
A. 396 I do occasionally.
Q. 397 Did you make any entries on this occasion?
A. 397 No I didn't.
Q. 398 You say that you did not have a drink that Sunday afternoon or is it that you don't remember?
A. 398 I'm sure ~~I didn't have a drink~~ we didn't have a drink.
Q. 399 Who do you mean by "we"?
A. 399 If the R.S.M., has one, I do.
Q. 400 Are you prepared to swear that the R.S.M., never had one?
A. 400 I couldn't swear if he had one when I wasn't there.
Q. 401 On leaving the sergeants mess did you go straight to the bus?
A. 401 Yes.
Q. 402 You didn't speak ~~to~~ or talk to anyone?
A. 402 The R.S.M., spoke to some men standing near the truck outside the sergeants mess.
Q. 403 He walked away from you at the moment to speak to them?
A. 403 Yes.
Q. 404 Do you remember what he said?
A. 404 Remember the Colonel's orders.

Q. 405 Did you understand what he was talking about?
A. 405 No.
Q. 406 Did you discuss the matter with him afterwards?
A. 406 I don't remember disucssing it.
Q. 407 Or later on the way home?
A. 407 I don't remember.

EXAMINED BY DEFENDING OFFICER:

Q. 408 You were asked if you had a drink, what is your particular drink?
A. 408 Port wine.
Q. 409 The mention of Port wine, does it bring any reason why you didn't have a drink on this particular afternoon?
A. 409 No.
Q. 410 You did hear that there was a dance in the sergeants mess the night before?
A. 410 Yes.
Q. 411 Was any reason given as to why you didn't have a drink?
A. 411 No.

(Mrs. J.L. Battersby)

Lieut. C.F. Hogan, No. 1 C.O.R.U., was duly sworn.

EXAMINED BY DEFENDING OFFICER:

Q. 412 You were orderly officer on Sunday 20 Sept. 42?
A. 412 Yes sir.
Q. 413 You know R.S.M. Smith?
A. 413 Yes sir.
Q. 414 Did he report to you as duty officer that he was leaving the camp?
A. 414 He did sir.
Q. 415 When and where?
A. 415 I was in the Adjutant's office and I couldn't state the exact hour but I know it was not dark outside and he reported to me that he was going out of camp, and mentioned a S/M who was taking over. I can't just recall the name.

CROSS/EXAMINED BY PROSECUTOR:

Q. 416 You say that you don't remember the name of the S/M who was taking over the duties as Sgt.-Major?
A. 416 No.
Q. 417 You were in the orderly room at the time?
A. 417 In the Adjutant's office.
Q. 418 You say before dark, long before?
A. 418 I couldn't say ~~long~~ how long, it was not dark.
Q. 419 Did you see him go out of the camp?
A. 419 No sir, I didn't leave the office.

-EXAMINED BY COURT:

Q. 420 Was there any conversation between you and the R.S.M., about a possible trip to Binstead?
A. 420 No sir.

(C.F. Hogan) Lieut.

D.117293 Pte. Chamberlend, H.S. No. 1 C.O.R.U., was duly sworn:

EXAMINED BY DEFENDING OFFICER:

Q. 421 You are Mess waiter in the sergeants mess?
A. 421 Yes sir.
Q. 422 Do you remember Sunday 20 Sept. 42?
A. 422 Yes sir.
Q. 423 How is it that you remember that particular Sunday?
A. 423 I am batman for R.S.M. Smith.
Q. 424 And since then you have heard something about it?
A. 424 Yes sir.

Q. 425 You are also batman for R.S.M. Smith?
A. 425 Yes sir.
Q. 426 Did you see the R.S.M., on the evening of that Sunday?
A. 426 Yes sir, after supper about 1900 hours.
Q. 427 Did you have occasion to try and see him again?
A. 427 I tried to see R.S.M. Smith again around 1930 hours but he was out of the camp.
Q. 428 Where did you look for him?
A. 428 I looked around the mess and in his room.

~~CROSS-EXAMINED BY P~~

DEFENDING OFFICER:
I now propose to ask this witness certain questions dealing with a matter about which I questioned the witness, Sgt., Lefebvre, particularly to ~~a question~~ an incident in the kitchen late at night after a sergeants mess dance. I would cite Steven & Townsend Digest of Evidence page 132, article 114 and particularly para 2.

(Read to Court)

PROSECUTOR:
I suggest that to allow the question would open a collateral issue which is not relative to the matters at issue. The R.S.M., has made an answer which would be contradicted by this witness if the Defending Officer gets the answer he apparently expects to get.

PRESIDENT:
The Court has read para 116 page 104 M.M.L., and is of opinion that under the terms of that paragraph, the question should not be allowed.

CROSS-EXAMINED BY PROSECUTOR:
Q. 429 You are now the R.S.M's batman?
A. 429 Yes sir and also mess waiter.
Q. 430 You are the R.S.M's batman?
A. 430 Yes sir.
Q. 431 Did you discuss the matter with the R.S.M., the evidence you are going to give at this case?
A. 431 No sir.

DEFENDING OFFICER:

Mr. President and Members of the Court. The charge is that the R.S.M., knowing a disturbance and a breach of the peace was about to be created, neglected to prevent the said disturbance. It is essential for the prosecution to prove:

(1) that a breach of the peace was about to be created.
(2) that the R.S.M., knew that a disturbance was about to be created.
(3) that he neglected to prevent the said disturbance.

Starting backwards there was no said disturbance. There was no harm done by anybody to anybody. It is true quite a number of men went to Binstead, but unless there was a disturbance, ~~xxxx~~ the accused cannot be guilty of knowing a disturbance to the peace was about to be created. The R.S.M., has, in a very stolid and forthright manner, as is his habit always, as I think the Court might infer from his general demeanour and appearance, quite frankly tells the Court that he had heard certain rumours which turned out to be false and that the other rumours did not greatly disturb him and he did not believe that our men would do anything, but, as a precaution, he told the transport sergeant that no trucks must

go out to the gypsy camp but he didn't do anything else. I assume from a remark that he made, that the Prosecuting Officer will suggest, that the whole camp should have been C.B'd, but there was nothing to anticipate any trouble; there was no trouble and if there had been anything to the knowledge of the R.S.M., quite obviously, he would have told you so. It would be quite possible to call witnesses if it was general knowledge or that he should have known but it is clear that there was nothing that put him in a position that it was a neglect ~~to~~ of Good Order and Military Discipline to do other than he did. The accused must be tried on the charge as it is here worded; "knowing that a disturbance and a breach of the peace was about to be created by the personnel of No. 1 C.O.R.U.".

The most that he had were vague rumours, but he didn't believe and nobody believed, that a disturbance would be created. The evidence shows that the village of Binstead is frequented by personnel of this unit and certain personnel of this unit were there that night, but nothing occurred that night that should not have occurred. The R.S.M., it is true, said that vehicles must not be taken; that vehicles were taken is a matter that this Court is not concerned with at the moment and therefore, it has not been shown that such a disgraceful state of affairs was known to the R.S.M. There was nothing that he could have done, but as I sawy, there was no disturbance and therefore, the charge must fail.

PROSECUTING OFFICER:

There was a disturbance and a breach of the peace. Scores of men, if not hundreds, estimated at from one hundred to three hundred, gathered together with missiles in their hands, blackjacks, sticks, stones, running and shouting with a definite object of hunting out the gypsies for an incident the night before.

The fact is that they went out there, there was a general hubbub, women were crying, no violence actually occurred is not due to the men; the gypsies were not there. That is the only reason that appears to me. There was no actual fight. There was a determined attempt to find them. On the night before, a Saturday night, there was about six O.R.U., soldiers in Binstead and a few Royal Marines. On a Sunday night there were scores and hundreds of them in the town. It was an unusual situation accompanied by shouting, running, pushing their way violently into a Pub.

Now, as to whether the R.S.M. knew. He knew enough of what was about to take place so as to be so apprehensive as to mention to the Colonel. The information he gave to the Colonel was to warn that he didn't want a thing to happen as far as his boys were concerned. The R.S.M., was apprehensive enough to tell the Transport Sergeant that no transport should be used and that he himself was not to go to the gypsy camp. Why he did not go further on the basis of what he knew, we do not know. We can only conclude, that he was in a hurry and so neglected to do it; now he considers he should have taken further steps or else he was neglectful in carrying out his duties. What other inference can you draw that he knew something was about to take place, something he didn't approve of, something the Colonel didn't want ~~to~~ his men to take part in. His attitude as stated by himself after the event, Lefebvre was a bit of a squealer and if he went on the party, he should not have gone and squealed on the boys. He was quite put out by Lefebvre coming back with a report. He draws distinction of whether Lefebvre went there

for fun or on duty. Consider the mentality of the accused to think that Lefebvre would not go except on duty. If the accused was frank and honest in the manner throughout, the last word the R.S.M., should have used to Lefebvre was, "to squeal". That's a very significant phrase coming from the mouth of the accused himself. Lefebvre's evidence: He said, "Are you going on a party?" and Lefebvre says, "What party?" and he says, "Hop pickers".

By a 1920 hour bus for Headley. On a previous occasion, he said it was a 2020 hour bus. It is only on talking it over with the lady friend that it was a 1920 hour bus and there are several factors which make it a "cooked-up story".

The Orderly Officer says it was quite light when the R.S.M., said he was leaving the camp. Mrs. Battersby said they left the mess, speaking only to Scull and Knox as they went out of the camp and if the R.S.M., spoke to the Duty Officer, he di so sometime before he went out and not when he went out. We need not quibble about time. Lefebvre who was on duty and except for the batman's evidence and I need not comment on that, why should Lefebvre falsify evidence. Certain things occurred on certain times. He is not interested whatsoever in the matter. Lefebvre would not assist in hanging a brother soldier. I ask you to accept Lefebvre as a man who is doing his duty and made a report and in cross-examination, was not shaken. I have no malice or criticism towards the batman or lady friend. There again you have the evidence of Lefebvre, and particularly the evidence of the accused himself plust the discrepancy in the defence which arises out of the evidence of the Orderly Officer and Mrs. Battersby who cancelled each other off and failed the defence when they tried to establish the fact that he left the mess at 1900 hours. The exact words of the R.S.M., as to what instructions he got from the C.O., "no vehicles or troops to go and fight gypsies". Did he know then that there was a fight coming up with gypsies? Those are the instructions and are based on his evidence. Apart from speaking to Scully and Knox, the Orderly Officer was not told anything about this and Knox and Turley who took over, was not told about this, of course, I and I submit, the major neglect was that he went outside camp knowing of this. It is a matter of creditably of witnesses and I suggest that you should not have much trouble in believing some witnesses and disbelieving others.

THE COURT RE-ASSEMBLED AT 0930 HOURS, 9TH Jan. 43, MEDICAL CERTIFICATE OF THAT DAYS DATE WAS LAID BEFORE THE COURT

THE COURT IS CLOSED TO CONSIDER ITS FINDING.

THE COURT RE-OPENS:-

President:- Have you any evidence to produce as to the particulars of service and statement of character of the accused ?

The prosecutor, with the consent of the Defending Officer, produced A.F.B. 29b and M.F.M. 6 relating to the accused, without formal proof thereof, and same were accepted by the court.

By the President to the accused:-

Q:- Do you wish to call any witnesses as to character ?

A:- Yes, sir.

Q:- Do you wish to make a statement in mitigation of punishment ?

A:- Yes, sir.

Q:- Does your defending officer intend to speak on your behalf ?

A:- Yes, sir.

1ST WITNESS AS TO CHARACTER:- Major H. HAMER, 1 CORU, having been duly sworn, is examined by the defending officer.

Q116:- You know Sergeant-Major Smith. Tell the court how long you have known him, and what is his general reputation as a man and a soldier.

A116:- I have known him for the last 25 years. He was with the Black Watch, with which I was associated .. He has at all times shown good qualities, and I am astonished to find him in this position today. I knew him in the militia, where he gave good service, that is since 1919, the organization of the Black Watch. He then took over as RSM of the holding unit at Nova Scotia, and was doing very good work there. As long as I have known him, he has had an exemplary character.

Q117:- Tell the court in what service you first knew him ?

A117:- I first knew him in the position of sergeant in France during 1914-17-18. At that time his service was more than average, as shown by his record and decoration. He has a service medal with two bars.

Q118:- Has he served with you in this war ?

A118:- No, he was with the holding unit at Nova scotia, but I visited him there, at Aldershot, Nova Scotia.

THE PROSECUTOR DECLINES TO CROSS-EXAMINE THIS WITNESS.

2ND WITNESS AS TO CHARACTER:- Major. H.A. SEELY 1 CORU, having been duly sworn, is examined by the defending officer:-

Q119:- You are officer commanding the administrative wing at 1 CORU ?

A119:- Yes.

Q120:- Do you know Sergeant-major Smith ?

A120:- I have known him since 1917. I first knew him as a sergeant in the 42nd battalion, C.F. Black Watch, then as a company sergeant-major. Regarding my association between 1916-40, I met him on occasion at reunions. He came to me in the summer of 1940, and asked me to bring him overseas. I decided he was the man I wanted as my sergeant-major. When the unit I was commanding moved to the field, sergeant-major Smith was left here. Throughout the entire time I have known him I considered him a model of honesty and manhood. I have never heard any slur against his character either in military or civilian life.

CROSS-EXAMINED BY THE PROSECUTOR

Q121:- Was sergeant-major Smith your sergeant-major ?

A121:- Yes, he was sergeant-major of 1 CORU.

Q122:- Have you had anything to do with him during the last few months ?

A122:- Only as administrative officer.

RE-EXAMINED BY THE DEFENDING OFFICER

Q123:- As administrative officer, would you see the sergeant-major every day, or practically every day ?

A123:- Yes, practically every day.

STATEMENT IN MITIGATION OF PUNISHMENT BY THE ACCUSED

Sir, I truthfully say that I have done my duty, and not until my words with S/t. Lefevre in the mess was my name brought into this trial, other than enquiry. If this court finds me guilty, and punishes me, I will accept and endure it.

STATEMENT IN MITIGATION OF PUNISHEMENT BY
THE DEFENDING OFFICER

The court must have observed from his demeanour and behaviour throughout the character of the man he is. The main fact that the court has seen fir on the evidence before it to find him guilty of neglect, that fact alone, to a man of his tempermanent and disposition and record, is alone a tremendous punishment, and I am sure the court will keep that in mind.

The court, under R.P. 71, considered it desirable, in the interest of justice, to post-pone consideration of any sentence to be awarded in this series of trials, until the trials of all the accused persons have been completed.

SUMMARY OF EVIDENCE in the case of No.D82163 R.S.M. Smith, G.
No.1 Canadian Ordnance Reinforcement Unit.
By direction of the Commanding Officer the Summary of Evidence is taken on oath.

1st Witness for the Prosecution — Lieut.-Col., H.M. Bailey, O.C. No.1 C.O.R.U. having been duly sworn states:-

"During a conversation with R.S.M. Smith on the morning of Sunday, 20 Sep 42, he stated that there had been a fracas at Binstead the previous evening. I asked him if any of our men had been implicated, and he replied in the negative, but stated that, they were incensed about it, and I said we would see that our men did not become mixed up in the Marine's troubles.
I then went on to question the R.S.M. about the transport that had been used for the Sergeants Dance on the Saturday evening, and told him to warn the Sergeants at lunch that they must account very strictly for all transport used for the Sergeants' Dances."

The accused did not wish to cross-examine this witness.

(Harold M. Bailey) Lt.-Col.,
Commanding Officer,
No.1 Cdn. Ordnance Reinf. Unit.

2nd Witness C-55 Sgt. Lefebvre, W.B., No. 1 Cdn Field Security Section, previously No. 12 Cdn Feidl Security Section, having been duly sworn, states:-

"I was on duty in Bowdon area on the 20th of Sept 42 and went into the Sergeant's Mess in Martinique Barracks at approximately 1945 hours. I was beside R.S.M. Smith and a lady friend of his, when R.S.M. Smith asked me if I was going to a party and I asked him where the party was, and he asked me if I knew anything about the party, and when I said "No Sir", he told me "I am not supposed to tell you about it then, itis a thing which is to be kept quiet". I mentioned that I eas interested in a party and would like to go. R.S.M. Smith looked at his watch and said it was three minutes to eight, and the boys weregoing to raid the hop-pickers at Binstead. Sometime later I was in the Sgt's Mess at No. 1 C.C.R.U. when R.S.M. Smith walked into the Mess at No. 1 C.C.R.U. stood in the middle of the floor and asked me if I had been to my Group to give a statement. I told the R.S.M. it was a personal matter. He then asked me why I went to Binste -d , and I told him that was a personal matter also and not to be discussedin front of an audience. He then asked me if I had gone as one of the boys or if I wnt on duty. I then told him that if I went as one of the boys, I would be foolish to tell him, and if I had gone on duty, I still would not tell him. I then repeated that it was a matter which should be taken up privately Then R.S.M. Smith said if he knew that I had gone on duty to sneak on the boys that I ought to be beaten up and run out of the camp. I then told the R.S.M. that I was surprised at the attitu -e he, as R.S.M. of the camp, had taken, and I told him that he ought to have prevented and incident like Binstead from happening He then told me that the Col. of the unit knew and had told R.S.M. Smith that the raid was going on but told him to tell the men not to use transport or ord to that effect. It was at that time that S/M MacGill jumped up and said "You're putting us on a spot SGT/Maj please discuss this elsewhere".

I wne to Binstead on the evening of 20th September 42 and while there saw men of No. 1 C.C.R.U. with sticks and clubs creating a disturbance.

The accused does not wish to cross-examine this witness.

W B Lefebvre Sgt.
(W.B. LEFEBVRE)

3rd Witness. L-27080 Sgt Hopkinson, R.F.J., No. 1 C.C.R.U., having been duly sworn, states;/

"On the evening of 20th September 1942 I proceeded in a 1 C.C.R.U vehicle upon instructions from Sgt Lefebvre to within approximately one mile of Binstead. During the trip the men in the vehicle with me discussed the purpose of the trip and their intent was to square accounts with the Gypsies for injuries they had inflicted on a soldier of 1 CC.R.U. the previous evening.
We walked from the trucks towards Binstead approximately 50 strong in small groups, as the men approached Binstead they broke into a run and there was considerable shouting. While I was in Binstead that evening I saw several men carrying clubs and sticks.

The accused does not wish to cross-examine this witness.

R.F.J. Hopkinson Sgt.
(R.F.J. HOPKINSON)

4th Witness

B-95044 Pte Waller, G.F., No 1 C.O.R.U., having been duly sworn, states:-

"During theday on the 20th September 1942 it was clear from discussions amongst the men 1 C.O.R.U. that many of them were planning to go up to Binstead that evening prepared to fight the Gypsies if there was any trouble. I went along that evening the vehicles from this unit were parked about a mile out of Binstead and about fifty of us walked into Binstead in small bunches spread over approximately 25 yards of the roadway. During my stay in Binstead upon looking out of the pub I noticed there were approximately a hundred men (Marines & Ordnance) in groups of half a dozen or so standing about the streets.

The accused does not wish to cross-examine this witness.

G F Waller Pte.
(G.F. WALLER)

5th Witness.

D-108038 Sgt. Sinden, G.F., No. 1 C.O.R.U., having been duly sworn, states:-

"I was present in the Sgt's Mess on an occassion folloing Sept 20th 1942 Sgt Lefebvre and ~~xxxxx~~ C.S.M. McGill were also present R.S.M. Smith entered the Mess and carried on a discussion with Sgt Lefebvre I was not able to make out the subject of the discussion but after a short while C.S.M. McGill made a statement to the Sgt Major to the effect that that subject should not be discussed in the Mess. Shortly after the Sgt Major left.

The accused does not wish to cross-examine this witness.

G F Sinden Sgt.
(G.F. SINDEN)

The accused having been duly cautioned in accordance with R.P.4(2).

"Reserves his defence".

Certified that R.P.4 (C) (D) (E) (F) and (G) have been complied with.

Taken down by me in the presence and hearing of the accused this 6th of January 1943 at Bordon, Hants.

W W Burrows Lieut.
(W.C. BURROWS) Lieut.

No. D.82163 Name Smith, G. Sqn., Battery, or Company 1 CORU Corps R.C.O.C.

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Date of enlistment 17/5/40 | G.C. Badges | Service or Proficiency Pay | Sheet No. | Signature O.C. Company, etc. | Character

M.F.M. 6
A.F.B. 122
17SM—7-41 (1215-30)
H.Q. 1771-39-1033

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				THIS SOLDIER HAVING COMPLETED TWO YEARS SERVICE WITHOUT A NEW CONDUCT SHEET UNDER C.A.R.O. (O) 2084 17 May 42.		REGIMENTAL ENTRIES IS HEREBY GRANTED			

Certified True Copy
(R.G. BURROWS) Lieut.
5 Jan 43.

ARMY FORM B.206.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D.82163	R.S.M.	George Smith	No. 1 C.O.R.U.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced to court with this statement but not entered in the proceedings.

† See para. 827, K.R., 1940.

* The numbers should be stated opposite the number of entries in the conduct sheets, provided that the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instructions.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For	NIL	times	NIL	times.
For	NIL	times	NIL	times.
For	NIL	times	NIL	times.
For	NIL	times	NIL	times.
For	NIL	times	NIL	times.

Number of instances of gallantry or distinguished conduct, 3

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

[illegible]

3. The accused is not under sentence at the present time, *or* [illegible]

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and Nil days in military custody, making a total of Nil days, of which Nil days were spent in hospital.

5. The present age of the accused according to his [illegible] attestation paper is 44 yrs. 1 month 11 days

6. The date of his [illegible] attestation specified in his [illegible] attestation paper is 17 May 40

7. [illegible]

8. [illegible]

9. [illegible]

10. The accused is in possession of, [illegible] entitled to (*state any military decoration or reward*) Military Medal and two bars, General Service & Victory Medals Long Service Decoration & Bar.

11. (*If the accused is a warrant officer.*) The accused [illegible] a warrant officer last held the regimental rank of W.O. II from enlistment

12 [illegible]

(T) A2280 W1/1805/144 125,000 5/41 A.A.F.W.Ltd. Gp.698

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D.82163	R.S.M.	George Smith	No. 1 C.O.R.U.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 877, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, precedence being given to the most serious offences in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge-sheet discloses more than one entry for demonstration must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For	NIL	times	NIL	times.
For	NIL	times	NIL	times.
For	NIL	times	NIL	times.
For	NIL	times	NIL	times.
For	NIL	times	NIL	times.

Number of instances of gallantry or distinguished conduct, 3

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

[illegible]

3. The accused is not under sentence at the present time, *or* [illegible]

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and Nil days in military custody, making a total of Nil days, of which Nil days were spent in hospital.

5. The present age of the accused according to his attestation paper is 44 yrs. 1 month 11 days

6. The date of his attestation specified in his attestation paper is 17 May 40

7. [illegible]

8. [illegible]

9. [illegible]

10. The accused is in possession of, *or* is entitled to (*state any military decoration or reward*) Military Medal and two bars, General Service & Victory Medals Long Service Decoration & Bar.

11. (*If the accused is a warrant officer.*) The accused [illegible] he was made a warrant officer last held the regimental rank of W.O. II from enlistment

12 [illegible]

(P.) [illegible] W.3.13052/144 125,000 6/41 A.&E.W.Ltd. Gp.498

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. D.82163 Rank R.S.M. Name George Smith of No. 1 C.O.R. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted
		NIL		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 30th day of December 1942

J. A. Stiles

(J. A. STILES) Lieut.

13 The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

In the rank of A/C.S.M. Date of Promotion, 12/Jan. 7/// 4 Feb 42

In the rank of A/R.S.M. years to date.

In the rank of years

(Instructions—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck out, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph completed accordingly.*)

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 8th and 9 Jan and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
3. ~~The interpreter~~ The shorthand writers
4. The officers under instruction)

*Omit if not applicable.

were duly sworn.

Signed this 9th day of January 1943.

President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 762 M.M.L. 1929.

~~I certify that the terms of Article 70 of this have been complied with.~~

~~Signed this day of~~

~~*President of the Court Martial.~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~*I direct that the soldier named in the margin be [illegible] committed to prison or detention barrack until further [illegible]~~

Signed this 12 day of Jan 1943

J. P. ARCHAMBAULT, Brigadier.
Confirming Officer
Commanding "F" Group,
Can. Reinforcement Units.

Promulgated and extracts taken in the case of D 82163 CSM (A/RSM) George Smith

(a) (Dated) 12 January 1943 (Signed) [illegible] Maj. G.C.

Promulgated and extracts taken in the case of D82163 CSM (A/RSM) George SMITH

(Dated) 6 August 1943 (Signed) [illegible] Maj. G.C. [illegible]

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

A-5 2.38.125. Gp.459

TTT-296

CPL SMITH G

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K53653 Cpl George SMITH - 1 CIRU - Seaforth of C

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 40	Not Guilty	Not Guilty	H Jardine Lieut-Col President
2nd AA Sec 40	Not Guilty	Not Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) .....(1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ..... days, of which ..... days were spent in hospital.(2)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

(Sgd) ..... (Sgd) ..... President. (RP 45, 50.)
Judge-Advocate, if any. Date awarded.
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 758-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

(Sgd) .....

Date ..... Commanding ..... Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160a TTT-296

CPA66 (To Item of AFA2) 40/P.W.B./1668 (50/01) 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig CSN Gostling, ED Comd "A" QF CRU dated 14 AUG 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 108, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K53653	Cpl	George	SMITH	1 CIRU Seaforth of C

PROCEEDINGS REVIEWED 25 Aug 44
D H Matheson Capt
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 16 Aug 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Creations do NOT include all relevant fms, BDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A93, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet [X] attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 14 00 hours trial commences.(1)

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial. ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ..... as interpreter? Ans .....~~
~~The Interpreter is sworn.~~ ~~Do you object to ..... as shorthand writer? Ans .....~~
~~The shorthand writer is sworn.~~(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No Sir.(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 98, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, viz:

President	MAJOR	C H JARDINE	2 CIRU
Member	Capt	K S Crabtree	1 CIRU
Member	Lt	R C Parsons	1 CIRU
~~Judge-Advocate, if any~~			
Prosecutor	Major	B M McLean	1 CIRU
Defending Offr	Capt	D C Lee	1 CIRU

Questions by President: Is the Prosecutor a lawyer? Ans No Sir Is the Defending Offr a lawyer? Ans No Sir
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 32.)

A8. The accused K53653 Cpl SMITH, G. before arraignment makes(s) (no) ~~not~~ plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposal, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) ~~not~~ arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does ~~not~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 1. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "D"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (*i*) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (*ii*) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60*(*C*) ; *powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60*(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP 60*(*C*), *87*(*C*), *91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87*(*C*), *92*(*B*), *and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17*(*E*) *fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 15(B) fn 5 para 3 ; MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D6 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D6 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(C).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D6 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans N.D. S.F. .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (~~no~~) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the 1st & 2nd charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s) ~~but~~ allowed on the 1 & 2 charge(s), and that accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty of the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10 ; see RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 40(A) fn 1, 86(C). Treat the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.
Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(1)
(*1. AA 54(2) (d), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans .....
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(*1. MFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1-para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans .....(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 64, 128, 182, RP 46-50, 69, 118, 119(A)(B), KR Can 308, 330, 563-566, Overseas RO 309, 2122, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 64(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest on Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

C-H-A-R-G-E S-H-E-E-T

The accused, K-53653 Corporal George SMITH, Seaforth Highlanders of Canada, on the strength of No. 1 Canadian Infantry Reinforcement Unit, an Soldier of the Canadian Army Overseas, is charged with:--

FIRST CHARGE
SEC 40
ARMY ACT

When on Active Service, conduct to the prejudice of good order and military discipline,

in that he,

In the Field, on the 6th day of August 1944 instructed M-16927 Cpl Cooks, E.G., N.C.C. in charge of Unit Transport to supply him with ambulance, Vehicle No. A-1205957, "stating, "the medical officer wants to use it", or words to that effect, well knowing such statement to be false.

SECOND CHARGE
SEC 40
ARMY ACT

When on Active Service, Conduct to the prejudice of good order and military discipline,

in that he,

In the Field, on the 6th day of August 1944, improperly and without authority took and used a Canadian Vehicle Number A-1205957, thereby incurring expense to the public in the amount of Three shillings and Sixpence, value of petrol consumed.

H. Sharp ..Colonel
(H. Sharp) Commander,
1 Cdn. Inf. Reinf. Unit.

In the Field,

12th day of August 1944.

To be tried by Field General Court Martial.

(G S N Gostling) Brig
Comd
"A" Gp Cdn Rft Units
C A

Field
14 Aug 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K53653	Cpl		George	SMITH	1 CIRU Seaforth of C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~s~~ named above as the accused, being subject to military law, has ~~have~~ committed the offence(s) set forth in the Charge Sheet~~s~~ attached and on (*date*) 14 Aug 44 endorsed by me, ~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~.

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~s~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I hereby appoint as Judge Advocate at the said Court an Offr or Person, to the reader I believe~~ ~~at~~ at) hereto.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate at the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
MAJOR	C H JARDINE		2 CIRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by OC 1 CIRU	
Lt	to be detailed by OC 1 CIRU	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	to be detailed by OC 1 CIRU	

~~JUDGE ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

In England

(Country.)

Date 14 Aug 44

(Signed personally. RP 105 fn 2.)

(C S N Gostling)

Brigadier

(Rank.)

Commanding "A" Gp Cdn Rft Units C A (C)

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 557

I certify that I have this morning examined

No. K 53653 Cpl. Smith G.

Of A. Wing 1 C.R.U. and in my opinion he

is ~~unfit~~ fit to undergo Trial by Court Martial.

Station Whitchurch

Date 16 Aug 44

A.G. Stevenson Capt
Medical Officer

Opening address by Prosecutor.

On evening of 6 Aug the accused is alleged to have gone to Unit Transport office and told N.C.O in charge that the M.O would want the ambulance and asked him if he had a driver. ~~He explained that his own driver was away~~. I shall call the M.O to state that he did not require the ambulance. On the 2nd charge I shall call the dispatcher from Transport to show that on the telephone request from the F.A.P. he dispatched the ambulance to the F.A.P. I shall call the N.C.O who drove the ambulance to detail the journey the ambulance took under Cpl Smiths instruction and also question the M.O. as to the scope of Cpl Smiths authority and finaly the Unit T.O. to give evidence as to the value of petrol consumed by the ambulance on this journey

First witness for Prosecution M16927 Cpl. Cocks E.D. having been duly sworn states:-

(Witness identifies accused)

I am the dispatcher for the Transport I was on duty nite of 6 Aug Cpl Smith came to me and asked me if I would have a driver available in case of emegency and I told him at the time I did not have one. Then he rode away and in 5 mins time the phone rang and there was a request for an ambulance immediatel which I sent to the F.A.P. and in those 5 mins the Cpl. storeman came in so I asked him to take the ambulance up to the F.A.P I sent the ambulance to F.A.P. and driver was to report to Cpl. Smith

The driver was Cpl Rife and the ambulance was despatched at 19:30

Q ue 1. Did Cpl Smith say to you that the M.O ~~wanted to~~ may want to use the ambulance?

Ans. Yes Sir.

Que 2. ~~When you~~ You sent vehicle ~~If~~ at what time?

Ans. 19:30

Que 3. What time was ambulance booked in.

Ans. 23:30

Witness cross examined by defending officer

Q ue 1. Are you positive the time you dispatched the ambulance was 19:30?

Ans. Approximately

Re examination by prosecution

Q ue 1 Did you believe ~~that M O wanted to use the ambulance~~ from statements made to you by Cpl Smith. that M O wanted to use the ambulance?

Ans Yes

Witness questioned by court

Q ue 1. Who phoned you for ambulance on the night of 5 Aug.

Ans. I dont know.

Q ue 2. What did they say to you on phone.

Ans. They said - could you send ambulance immediately to the F.A.P which I did

Q ue 3. Is that usual procedure in this Unit

Ans. This was first time I had to dispatch an ambulance so I dont know if it is the correct procedure

Certified R.P. 83 B complied with

2nd witness for the prosecution K 85354
Cpl Rife W.N. having been duly sworn
states. (Witness identifies the accused)

I am corporal storeman and the stores are in the garage where I sleep. I was at the garage and Cpl. Cox the duty corporal approached me and asked me if I would take the ambulance to the RAP and report to Cpl. Smith. I did this and was told by Cpl. Smith that a civilian had told him there had been an accident on the Mansfield road. We proceeded to the Mansfield rd. and carried on to roughly 3½ miles beyond Market Warsop. We made enquiries on the way but were unable to find out where there had been an accident. We then turned around came back to Market Warsop. I had had no dinner that nite so I asked Cpl Smith to stop at the Canteen for something to eat. He went inside while I stayed in the vehicle when he came out again I went in and had my dinner. After that we returned to camp

Cmn. What time did you return to camp.

Ans. 23:30 approximately

No questions by defending officer

Certified R.P. 83B complied with

3rd witness for the prosecution Capt. A. C. Stevenson Medical Officer R.C.A.M.C. on strength of 1 C.I.R.U. having been duly sworn states (Witness identifies accused)

~~Approximately 21.30 hrs I received~~

I looked for my ambulance in view of a call I had received and was informed that it was out. I obtained another vehicle and proceeded on my call. I had issued no instruction for the ambulance to be moved. I asked the man in the F.A.P about the ambulance he said it was out. I checked with the other M.O. and she had not ordered it. I was in camp that evening at the officers mess. My staff is informed when I leave camp I received no message from Cpl Smith regarding the ambulance. The ambulance may be moved without my authority when I can not be contacted.

Witness cross examined by defence.

Que 1 Is Cpl. Smith capable of administering first aid and taking the ambulance out in case of emergency.

Ans. He is.

Que 2. Are these among his duties

ans. They are part of his duties.

Que 3. Does Cpl Smith sleep in the F.A.P.

Ans He does

Que 4. Why does he sleep there

Ans. To be on duty.

Que 5. Since your arrival in Wellbeck has Cpl. Smith been in the habit of leaving the camp after duty

Ans. I do not know. He has always been available when I call him.

Que 6. On the nite of 6 Aug did you receive a phone call around 19:30 hrs.

Ans I received no phone call

Que 7. Have you any knowledge of a phone message coming in to the mess for you which you did not recive?

Ans. I know of one definitely

Que 8 ~~to the phone in the~~ Did you lay a charge against Cpl Smith

Ans. I did not.

Que 9. Had you any intention of laying a charge against Cpl Smith

Ans. No

Que 10. Why

Ans. I did not doubt his veracity.

~~Cross~~ 11 ~~After que~~

~~Re examination by Pros~~

~~Did you receive a telephone call~~

Question by Court.

Que 1 Is this vehicle to be used for civilian purposes.

Ans. In an emergency I would not refuse it

Certified R.P. 83 B complied with

Fourth witness for Prosecution Capt A.E. Bell having been duly sworn in states:

(Witness identifies accused.)

I am the T.O. at 1 C I R U I have checked mileage and amount of petrol used by ambulance no. A 120 3957 as accurately as possible. The ticket is made out for the day and all the trips are put on it for the one day. I asked Cpl. Rife how far he had gone on the night trip with Cpl. Smith. He said approximately 20 miles. The ambulance is getting 10.5 miles to the gallon. The value of petrol is 0-1-10 per gallon making the value of the petrol consumed approx 0-3-6

Certified R.P. 33B complied with

Defending offier submits that the evidence for the prosecution does not establish a prima facie against the accused on the first and second charge

Address by defending offier:

The accused is before this court on two charges: 1. making a statement knowing it to be false and 2. improperly and without authority taking and using a W.D vehicle. Before the accused can be convicted on either of these charges the prosecution must prove beyond reasonable doubt two things. First, that the accused made a false statement, 2nd. that he took and unlawfully used without authority a W.D. vehicle. The only evidence

regarding the false statement which the prosecution has introduced is the evidence of Cpl. Cox who stated in his evidence that Cpl. Smith informed him that the F.A.P. driver was on pass and did he have a driver as the M.O. might wish to use it. On the question of improperly using the vehicle without authority, the evidence of Cpl Rife the witness for the prosecution has shown that the vehicle was used for proper purposes on the night in question and the M.O. has stated in evidence that should he be unobtainable the said vehicle might be used without his authority. I submit that the prosecution on the facts have failed to prove his case on either of the charges in any way let alone beyond reasonable doubt and would ask the court to dismiss the charges for lack of evidence

Address by prosecuting officer

The evidence I have produced is quite clear, there was no doubt in Cpl Cox's mind from the statements made by Cpl Smith that he was sending the ambulance for the use of the M.O. Equally the M.O. has stated that Smith did not get in touch with him that evening and therefore any statement whatever by Smith which caused Cox to infer that the M.O wanted the vehicle must have been false. The evidence of Cpl. Rife scarcely shows that the use of the ambulance for four hours whilst he and Smith had a meal was a proper use for what is undoubtedly the most vital surgical vehicle in the comp.

the M.O. has stated quite plainly that he was in the mess, and in view of the fact that there was a telephone another man in the F.A.P. and an ambulance all available as means of contacting the M.O. Capt Smiths failure to obtain the M.O. is authority can only be explained by the fact that he knew the use to which he intended to put the ambulance was not proper

I therefore submit sir that he has two very serious charges to answer and that without going into the question of reasonable doubts the evidence thus is such that he must produce a reasonable defence

The submission is allowed and the accused is dismissed from both charges.

SUMMARY OF EVIDENCE

In the case of K-53653 Cpl. George SMITH, Seaforth Highlanders of Canada, on the strength of 1 Canadian Infantry Reinforcement Unit.

By the direction of the Commanding Officer, this Summary of Evidence is taken on oath.

FIRST WITNESS FOR THE PROSECUTION.

M-16927 Cpl. Cocks, E.G., Canadian Infantry Corps, on the strength of No. 1 Canadian Infantry Reinforcement Unit, having been duly sworn states:

I am No. M-16927 Cpl. Cocks, E.G., employed in the Transport Section of No. 1 Canadian Infantry Reinforcement Unit. On the night of 6th August 44, I was duty N.C.O. At about 1930 hours, Cpl. Smith came to me and asked if I had a driver for the ambulance as his own driver was away. He stated that the Medical Officer might want to use it. I informed him that I didn't have one then. A few minutes later a telephone call came from the F.A.P. saying to have the ambulance report to Cpl. Smith. I got Cpl. Rife, our Cpl. Storeman, to drive the ambulance and he reported to Cpl. Smith at about 1945 hours. The ambulance did not return until approximately 2330 hours. I have been instructed to provide a driver for the ambulance on demand from the F.A.P. I assumed that Cpl. Smith was acting on the Medical Officers instructions. Ambulance number of above vehicle is A-1205957.

The accused declines to cross-examine this witness.

M16927 .....
(E.G. Cocks)

SECOND WITNESS FOR THE PROSECUTION.

K-85354 Cpl. Rife W.N., Canadian Infantry Corps, on the strength of 1 Canadian Infantry Reinforcement Unit, having been duly sworn states:

I am No. K-85354 Cpl. Rife, W.N. Cpl. Storeman in the Transport Section No. 1 Canadian Infantry Reinforcement Unit. At about 1945 hours on the 6th of August, 44, Cpl. Cocks, the duty N.C.O., instructed me to take the ambulance to the F.A.P. and pick up Cpl. Smith. Cpl. Smith told me there had been an accident on the Mansfield road which had been reported to him by a civilian. We proceeded about 7½ miles towards Mansfield and saw no accident. We decided to turn around and come back to Market Warsop. We made enquiries but no one knew of an accident. We stopped at the W.V.S. canteen and Cpl. Smith went into the canteen. When he came out I went in and had tea. We then came back to camp arriving at about 2330 hours.

The accused declines to cross-examine this witness.

K-85354 .....
(W.N. Rife)

SUMMARY OF EVIDENCE

In the case of K-53653 Cpl. George SMITH, Seaforth Highlanders of Canada, on the strength of 1 Canadian Infantry Reinforcement Unit.

By the direction of the Commanding Officer, this Summary of Evidence is taken on oath.

THIRD WITNESS FOR THE PROSECUTION.

Capt. A.C. Stevenson, Medical Officer, Royal Canadian Army Medical Corps, on the strength of 1 Canadian Infantry Reinforcement Unit, having been duly sworn states:

I am Capt. A.C. Stevenson, Medical Officer at No. 1 Canadian Infantry Reinforcement Unit. On the night of the 6 August 1944, at about 2100 hours I found the ambulance was not available. I had issued no instructions for it to move nor had Capt. McLeod, the other Medical Officer. Cpl. Smith would know if I were to leave camp as the staff is always informed. He is authorized to move the ambulance in an emergency only if the Medical Officer cannot be contacted. I received no message from him that the ambulance was required. He should not have attended an accident without making an effort to contact me.

The accused declines to cross-examine this witness.

A.C. Stevenson Capt
(A.C. Stevenson)

FOURTH WITNESS FOR THE PROSECUTION.

Capt. G.E. Bell, The North Shore Regiment, on the strength of No. 1 Canadian Infantry Reinforcement Unit, having been duly sworn states:

I am Capt. G.E. Bell, Transport Officer, No. 1 Canadian Infantry Reinforcement Unit. I have checked the distance covered by the ambulance between 1945 and 2330 hours on the night of the 6 August 1944, and I estimate the value of petrol consumed at 3 shillings and sixpence.

Ambulance is getting 10.5 miles per gallon.
Estimated distance approx. 20 miles.
Estimated value of petrol 3 shillings sixpence.
Value of petrol one shilling tenpence per gallon.

the accused declines to cross-examine this witness.

G.E. Bell Capt
.....
(G.E. Bell)

SUMMARY OF EVIDENCE

In the case of K-53653 Cpl. George SMITH, Seaforth Highlanders of Canada, on the strength of 1 Canadian Infantry Reinforcement Unit.

By the direction of the Commanding Officer, this Summary of Evidence is taken on oath.

The accused was cautioned as follows "Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The Accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of three pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4(c), (d), (e) and (f) have been complied with.

B.M. McLean .....Major.
(B.M. McLean) Officer detailed to take the Summary of Evidence.

In the Field

10th day of August, 1944.

LIST OF WITNESSESS

In the case of K-53653 Cpl. George SMITH, Seaforth Highlanders of Canada, on the strength of 1 Canadian Infantry Reinforcement Unit.

FIRST WITNESS FOR THE PROSECUTION.	M-16927	Cpl. Cocks, E.G.
SECOND WITNESS FOR THE PROSECUTION	K-85354	Cpl. Rife, W.N.
THIRD WITNESS FOR THE PROSECUTION		Capt. A.C. Stevenson.
FOURTH WITNESS FOR THE PROSECUTION		Capt. G.E. Bell.

I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at 1 CIRU, In the Field, preliminary to my Court Martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court Martial.

Signed at 1 CIRU
In the Field,
this 13 day
of Aug 1944

G. Smith Gnr

I hereby request that the convening Officer appoint an officer to represent me at my trial.

I desire the services of Lieut Mac Kenzie if he is available.

CERTIFICATE FOR WAITING MEMBER

In the case of K.53653 Pte. Gagnon, Lucien 1 CIRU
I hereby certify that there were no objections to the Members who constituted the Court which tried the a/m soldier by Field General Court-Martial. The Waiting Member Lieut V Lemieux was therefore permitted to withdraw.

In the Field.
16 Aug 44

.....Major.
President.

LIST OF OFFICERS FOR INSTRUCTION

In the case of K 53653 Pte. Gagnon, Lucien 1 CIRU
The following Officers attended the a/m Field General Court-Martial for instruction:-

Lieut V Lemieux
" DA Hay

.....Major.
President.

In the Field.
16 Aug 44

1H-102.

Spar. Smith. S.C.

(31)

2

RECORDED AT CMHQ IN AB 160

CPA96 (In lieu of AFAB) 40/P & R/1698 (6144) 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of ... Comd ... dated ...

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.

PROCEEDINGS REVIEWED

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) ... on (*date(s)*) ...

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns to RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At ... hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.

A5. President to accused: Do you object to ... as interpreter? Ans ...

The Interpreter is sworn.(1) Do you object to ... as shorthand writer? Ans ...

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans ...(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	...	...	...
Member	...	...	...
Member	...	...	...
Judge-Advocate	...	...	...
Prosecutor	...	...	...
Defending Offr	...	...	...

Questions by President: Is the Prosecutor a lawyer? Ans ... Is the Defending Offr a lawyer? Ans ...(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ... before arraignment make(s) (no) (a) plea ...(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 117), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is (no) amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form ...

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, K.98579 ~~PTE~~ A/Cpl. Gerald Charles SMITH, Royal Canadian Engineers, No. 1 Canadian Engineer Reinforcement Unit, a soldier of the Canadian Army (Overseas) is charged with:-

FIRST CHARGE (A-A Sec 64) WHILE ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he

In the field, on 3 Nov 44, at approximately 1545 hours at Guillemont Barracks, No. 1 Canadian Engineer Reinforcement Unit, was improperly in possession of Army Rations, namely four pounds of butter, one tin of syrup, and approximately one pound of bulk tea, public property.

(G.H. WHYTE) COLONEL
Commanding Officer
No 1 Cdn Engr Rft Unit
Canadian Army (Overseas)

In the Field
9 Nov 44

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(A B Connelly) Brig
Comd B Gp
Cdn Rft Units

11 Nov 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
¥ 98579	Gnr.	A/Cpl	Gerald Charles	SMITH	1 CERU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 11 Nov 44 endorsed by me, (~~his/her/their~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable that the said person(s) should be tried by a Field General Court-Martial for the reason that~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. (~~And I hereby appoint Captain ..... a Field Officer of the Canadian Army to act as Prosecutor.~~)
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	E M Miller ED	HQ-RU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	to be detailed by	1 CERU
Lieutenant	to be detailed by	1 CERU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 11 Nov 44

A B Connelly
(A B Connelly)
(Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Commanding HQ 8 Gp Cdn Rft Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

Edn. (8.44) Forms 527

I certify that I have this morning examined

No. H. 98579 Cpl. Smith. C. G.

of ....."C" C. E. R. A. .... and in my opinion he

is ~~unfit~~ fit to undergo trial by Court Martial.

Station ..Field.....

Date ..14.-.11.-.44.....

.....
Medical Officer.

CASE OF

K.98579 Snr (A/Cpl) SMITH GC 1 CSRU

PROSECUTION

FIRST WITNESS

K.75448 Cpl LUSCOMBE, RC, 1 CSRU, having been duly sworn, states:

I am the Security Cpl 1 CSRU. At approx 1645 hrs 3 Nov, acting on instrs I went to the West Gym of 1 CRU in order to make a search for rations. We searched the sqn room first. I went to Spider 5 where I saw the accused whom I now recognise. I told him he was wanted at the gym on an inspection and he replied "what for? - I have only got a pound of butter in my box". On arriving there I went into the instrs room to get Lt Hughes and as I was coming in the door I saw the accused talking to Sjt Rasmond. I asked the accused if he would open his box and he opened it with a key which he got from the instrs room. He put his hand in the box and pulled out a pound brick of butter.

Q. Is it one of the bricks of four I now show you?
A. It's one of them, Sir, but I can't say which one, they all look alike to me. Underneath a sliding shelf I found 3 more pounds of butter exactly the same as the first one he pulled out. I now produce the four pounds of butter.

BUTTER HANDED EXHIBIT "A" BY THE COURT.

(Witness continues)

Also there was a box of tea and this is the box of tea.

BOX OF TEA HANDED EXHIBIT "B" BY THE COURT.

(Witness continues)

Also a tin of Golden Syrup and this is the tin.

TIN OF SYRUP HANDED EXHIBIT "C" BY THE COURT.

Q. What did you do with these articles?
A. We locked them up in the RSM's office.

Q. Was there any other food or rations?
A. No, no rations outside of what has been produced.

Q. Was Cpl Smith alone in the Spider?
A. No, he was talking to L/Cpl Meaker.

CROSS-EXAMINED

Q. What led you to suspect this?
A. Instrs from Col Wurie.

Q. Did you ever take tea in the gym?
A. I've had a cup of tea there, Sir.

Q. What other things were in the box?
A. A tin of Jelly from Canada and some other things I can't remember.

QUESTIONS BY THE COURT:

Q. You say that the accused produced one of these pounds, Ex. "A", can you tell which one of them it was?
A. They were all the same.

Q. What did he say?
A. He just passed the butter and said "here", nothing else.

Q. Can you identify Exhibits "A", "B", and "C"?

CASE OF

K.88579 Gnr (A/Cpl) SMITH GC 1 CBRU

PROSECUTION

FIRST WITNESS

K.75443 Cpl LUSCOMBE, HC, 1 CBRU, having been duly sworn, states:

I am the Security Cpl 1 CBRU. At approx 1845 hrs 8 Nov, acting on instrs I went to the West Gym of 1 CBRU in order to make a search for rations. We searched the sgt mess first. I went to Spider 5 where I saw the accused whom I now recognize. I told him he was wanted at the gym on an inspection and he replied "what for? - I have only got a pound of butter in my box". On arriving there I went into the instrs room to get it Hughes and as I was coming in the door I saw the accused talking to Sit Ravenod. I asked the accused if he would open his box and he opened it with a key which he got from the instrs room. He put his hand in the box and pulled out a pound brick of butter.

Q. Is it one of the bricks of four I now show you?
A. It's one of them, Sir, but I can't say which one, they all look alike to me. Underneath a sliding shelf I found 3 more pounds of butter exactly the same as the first one he pulled out. I now produce the four pounds of butter.

BUTTER MARKED EXHIBIT "A" BY THE COURT.

(Witness continues)

Also there was a box of tea and this is the box of tea.

BOX OF TEA MARKED EXHIBIT "B" BY THE COURT.

(Witness continues)

Also a tin of Golden Syrup and this is the tin.

TIN OF SYRUP MARKED EXHIBIT "C" BY THE COURT.

Q. What did you do with these articles?
A. We locked them up in the IRO's office.

Q. Was there any other food or rations?
A. No, no rations outside of what has been produced.

Q. Was Cpl Smith alone in the Spider?
A. No, he was talking to L/Cpl Beaker.

CROSS-EXAMINED

Q. What led you to suspect this?
A. Instrs from Col Woods.

Q. Did you ever take tea in the gym?
A. I've had a cup of tea there, Sir.

Q. What other things were in the box?
A. A pk of Jello from Canada and some other things I can't remember.

QUESTIONS BY THE COURT.

Q. You say that the accused produced one of these pounds. Q. "A", can you tell which one of them it was?
A. They were all the same.

Q. What did he say?
A. He just passed the butter and said "there", nothing else.

Q. Nothing else?
A. No.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH MJ 68(B).

ACCUSED WITNESS

G.16034 Cpl GOWER, KKG, 1 CSHU, having been duly sworn, states:

I recognize the accused. I was at the West Gym 1 CSHU at 1545 hrs 3 Nov in company with Sjt Raymond and Cpl Luscombe in search of rations. The first I saw of the accused was when he came in to open up his bk box which Cpl Luscombe requested him to do. The accused opened up his box without any objection and after he had done this he picked out a block of butter and handed it to Luscombe, saying he had the pound of butter. Then Cpl Luscombe proceeded to search his box and picked out 3 different pounds of butter the same size as the one that was first picked out. Then he picked out a ration pack of tea and a tin of syrup.

Q. Do you recognize Exhibits "A", "B" and "C"?
A. Yes.

CROSS-EXAMINED

Q. Where did Cpl Smith go to get the key?
A. I couldn't say, I never left the West Gym all the time.

QUESTIONS BY THE COURT:

Q. Did the accused leave the room to get the key?
A. As far as I can remember, I saw the accused go in and open the box with a key.

Q. Where did the Cpl get the other three pounds?
A. It looked to me as if it was from underneath a few articles in the locker.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH MJ 68(B).

THIRD WITNESS

1.24316 Sjt RAYMOND, JA, 1 CSHU, having been duly sworn, states:

I recognize the accused. At 1545 hrs 3 Nov I accompanied ~~him~~ Cpl Luscombe and Cpl Gower on a search of the West Gym 1 CSHU authorized by Sol Govts. We were looking for army rations. We made a complete search of the gym, rooms, lockers, boxes, in the presence of the physical trg offr and some of the IT staff. Shortly after the search was completed ~~xx~~ there was one box to be opened which was the box of the accused. The accused came in and walked up to us and made the statement that there was a pound of butter and some tea in his box. I did not ask him anything, he just made the statement to us. I suggested that he had better open his box and Cpl Luscombe in turn told him to open the box, which he did by unlocking the box. Cpl Luscombe then turned the box out and the first item he found was a pound of butter and the next article was a bag of tea and on further search of the box under a shelf he produced 3 more pounds of butter and a can of syrup. I observed the production of the articles from the box.

Q. Any diff between the 3 pounds of butter and the one first produced?
A. No.

Q. Any other rations found?
A. No.

Q. Can you identify Exhibits "A", "B", and "C"?

A. They are similar to the ones that came out of the box.

Q. What did you do wit these articles?

A. Cpl Luscombe took charge of them, and in my presence took them to the ADC's office.

CROSS-EXAMINED

Q. Where did the accused go to get the key?

A. I don't know.

Q. You yourself didn't search the box?

A. No.

IN OPEN COURT

IN OPEN COURT IT IS UNNECESSARY TO DULLY WARN MP 63(2).

It is stipulated, SGD, I CERT, having been duly sworn, states:

I recognize the accused. At 1645 hrs 3 Nov I was in the Seat Gym I CERT. I was present while Cpl Luscombe was conducting a search of the gym. Cpl Smith is an instructor in the gym and keeps some of his personal effects there.

Q. Were you present when Cpl Luscombe asked the accused to open the box?

A. Yes.

Q. What was said?

A. Cpl Smith admitted having some butter and ten in the box and mentioned having it from home.

Q. How did he open his box?

A. He unlocked it. I couldn't say where he got the key.

Q. One key?

A. I don't remember.

Q. Can you say which pound of Exhibit "A" was removed?

A. No, I could not say.

CROSS-EXAMINATION

QUESTIONS BY MEM COURT:

Q. Was there other food in the box other than that which was removed?

A. I didn't touch anything, but it looked to me like there were some small tea bags. I've never saw any over here that do not come from parcels.

IN OPEN COURT IT IS UNNECESSARY TO DULLY WARN MP 63(2).

It is stipulated, SGD, att as Messing Offr, I CERT, having been duly sworn, states:

I am Messing Offr at J CERT. Ex "A" is issue butter issued by the Messing Offr at J CERT. Ex "B" is an issue ration tea. I examined the tea and it is the tea issued by the army, and exhibit "C" is similar to the

syrup issued by the ASC for consumption in the Army.

Q. Why do you say that this is Army butter?
A. On the label on the last line is marked "Only for His Majesty's Forces", and that is the kind of butter that is issued in rations.

CROSS-EXAMINED

Q. Isn't it possible that the tea and syrup might be procured from some other source?
A. It can be bought in the civilian market on points.

Q. Could it not be sent from Canada?
A. I'm not in a posn to say. I believe the tea could be analyzed and XXXXX if it is Army tea it could be so proven.

Q. What brand of tea and syrup could be obtained from civilian stores?
A. The syrup could, I'm not sure about the tea.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH R 83(8).

WITH CONSENT:

Lt JD McKichan, 1 CIBU, having been duly sworn, states:

Q. Did you have a conversation with the accused on 3 Nov?
A. Yes.

Q. Tell us what?
A. I read a short call from the AIB, and he asked me to go down to the AIB cells and take a statement from the accused if the accused wanted to give one. I talked to a sergeant and told him that I'd like to take a statement from him if he wanted to give me one. I talked the whole question over with him before I took the statement. Before I took the statement Cpl Lazenbie came down and explained to the accused he could not promise him anything but it might be to his advantage to make a statement and in his statement to tell us where these rations had come from. I then warned the accused using the warning used for a Summary. I also administered the oath to the accused and took the following statement from him.

PRESIDENT TO DEF OFFR:

Have you any objections to the admission of this statement?

DEF OFFR: I object to the statement as it was obvious they were trying to [illegible] the accused to give info to convict other people.

PROSECUTOR: If the Defence objects to this statement I am not going to urge that it should be admitted.

PRESIDENT: Under these circumstances the statement will not be admitted.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH R 83(8).

THE PROSECUTION IS CLOSED

D E F E N C E

The accused, having been duly sworn, states:

I am a Cpl PT instructor at the West Gym 1 CERU and I've been there a yr. Before I was on the staff it was a custom to have tea and toast in the morning, afternoons and sometimes in the evenings and this bx box belonged to one of the instructors who went out on draft. He left the box in the gym and as the stuff was kept in the box before he went away we went on doing so. There was a lock which belonged to the gym with 2 keys. One was lost and I took charge of the other one which was kept on my shelf in the instructor's room. The box was in the sqpt room. There used to be quite a few come down for tea and everyone knew where the key was and where the food was kept. When I was approached by Luscombe on 5 Nov he asked me to open my box and I told him there was a pound of butter in there which I know was there. I didn't say anything about the tea to him. We proceeded to the gym where xxxxxxxxxx I told Sjt Raymond I had some tea and butter in the box. I then went into the other room and got the key off the shelf and then I went and opened the box and on the top was a pound of butter. I picked the pound of butter up and Cpl Lusombe took it off me. There was also food from Canada in the box and tea bags and the pound of butter I mentioned to him was not there as one of the fellows had used it already. He put me in arrest and took me over to dtn.

Q. Anyone else keep things in that box?
A. Yes, cigs and watches and anything they got from home. All the gym staff knew where I kept the key and had free access to it. I had a wrist watch in the box and went to London on a pass one weekend and when I came back the watch was gone. There was 4 other instructors in the gym at the time and I was pretty sure of their honesty so I figured that somebody else outside the staff had taken the watch.

Q. Any of this food that was kept in the box taken out of camp?
A. No, it was used only for teas in the gym.

CROSS-EXAMINED

Q. When the search was being conducted the box was considered yours?
A. Yes.

Q. Was this a general place for you to be leaving your watch if everybody had access to the box?
A. Yes.

Q. Was this food issued from the Kitchens?
A. It was scrounged around, Sir.

Q. When you came over with the Cpl did you have the key at the time?
A. No, it was on the shelf in the gym.

QUESTIONED BY THE COURT:

Q. Did you report the loss of your watch?
A. Yes to Cpl Luscombe. I was on a course at the time I lost it, that was the 28th of Sep and I found the watch was missing about 10 mins before I was going on course. I reported the loss first to Lt Hogg and he told me to report it to Cpl Luscombe. Luscombe was on leave at the time and when he returned I reported it to him.

Q. Always keep a key on the shelf?
A. Nearly always, Sir, once in a while I kept it in my pocket.

Q. When it was on the shelf it was in your gym trousers?
A. Yes.

Q. When did you last open this box before the search on 3 Nov?
A. 30 Oct, or 31st, it was on a payday. It was on a Tuesday.

Q. There were you from then until Nov?
A. 1 CLRU.

Q. Never in the gym?
A. Yes.

Q. But never in your box?
A. No.

Q. Any teas or snacks served during that period?
A. Yes.

Q. When did you get this parcel from Canada?
A. About a week before the third Nov.

Q. Was the lock put on this box before you took it over?
A. Yes.

Q. Who was the senior there with you who had the key?
A. At that time it was Sjt Coleman, but he has gone on draft, and now it is Sjt Taylor.

Q. Does he use this key?
A. Yes, he has also there.

Q. And takes them out without ref to you?
A. Yes.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO CONTINUE WITH HIS EVIDENCE.

ACCUSED TESTIFIED

It LH Capstick, 1 CLRU, having been duly sworn, states:

About a yr ago I became connected with the Gym as coach of the basketball team and in that capacity I found it necessary to drop around to the gym in the morning to talk over games and to arrange practices. On practically every occasion I was given a cup of tea and a piece of buttered toast. I noticed often that it was the custom of the PT staff to have toast and tea there and marmalade. I did not attempt to stop this practice because I was given to understand that it was a custom in most units for PT staff to have tea. Cpl Smith whom I now recognize joined the staff about Feb of this yr. After that time rations that had been brought into the gym were brought in by the other members of the PT staff. Eventually the accused was contributing his share of the rations to the gym.

TO CROSS-EXAMINATION

QUESTIONS BY THE COURT:

Q. What do you mean by the expression the accused contributing his share of the rations - the butter that you saw taken from the box was ration butter?
A. Yes, obviously they would not send butter like that in a parcel from Canada, Sir.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO CONTINUE WITH HIS EVIDENCE.

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SIXTH WITNESS

S.27878 A/1/Cpl THOMPSON, JE, 1 CANU, having been duly sworn, states:

I am a PT instructor in the West Gym 1 CANU.

Q. Did you ever use a BK box from which army rations were taken?
A. Yes, whenever I got a parcel from home, or when I was anything like that, I also locked up my valuables in this box.

Q. Did the accused ever have any butter sent to him from home?
A. Yes, between 2-3 wks ago he had a parcel and I know for certain there was at least one parcel of butter in it.

NO CROSS-EXAMINATION

QUESTIONS BY THE COURT:

Q. In what form was this butter?
A. As far as I can see it was in a can, Sir.

Q. How do you know it was butter?
A. It had the label.

Q. Saw the can opened?
A. No.

Q. Ever see anyone else other than the accused and yourself open this box?
A. Yes, practically every member of the PT staff.

Q. When the accused was there.
A. Sometimes when he was there and other times when he was not.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO CONSIDER SITH AC 95(1).

S.46645 A/L/Cpl BUTTERS, JE, 1 CANU, having been duly sworn, states:

I know the accused and I am a PT instr at 1 CANU West Gym. I have used a BK box there which rations were taken from. I used to put my extra in it and whatever I got from home in a parcel. We used to have tea in the morning and afternoon. The boy was sent in Cpl Smith's office, and other people besides the Cpl and I used the box.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO CONSIDER SITH AC 95(1).

SEVENTH WITNESS

S.27878 A/1/Cpl THOMPSON, JE, 1 CANU, having been recalled, on his former oath is asked the following questions by the Def Offr through the Court:

Q. When you took over as Sports Offr did you find it the custom to make tea in the Gym?
A. Yes, in the mornings, afternoons and evenings. They would brew some tea, make up some tinned soups they had and bread and jam. It was an established custom and I didn't think it should be interfered with as it had been going on for 2-3 yrs.

Q. Was any of this food ever taken out of the gym to your knowledge?
A. No, not to my knowledge.

Know where it came from?

A: No, no definite knowledge of where it came from, Sir.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RCM 803(b).

THE DEFENCE IS CLOSED

STATEMENT BY THE DEFENCE ON THE FINDING

(NONE ATT)

STATEMENT BY THE PROSECUTING OFFR ON THE FINDING

Witnesses have been brought fwd that removed and were present when the exhibits as now before this Court were removed from the accused's box in the mess Gym. With regard to the box itself, when the search was made it was considered as the accused's box. The accused also was apparently in the habit of leaving valuable personal property in this box and considered it to be his box.

THE COURT IS CLOSED FOR THE FINDING

THE COURT IS REOPENED

(NONE ATT)

PLEA IN EXTENUATION

(NONE ATT)

SUMMING UP BY THE PRISONER ON THE FINDING

I have shown that this box in which tea things were kept in the gymnasium, was not, as it was alleged, the property of the accused - but rather a community chest to which all members of the gymnasium staff kept eatables and valuables; and moreover, I have shown that the eatables were brought by every member from their parcels sent from home. All members of the gymnasium staff had access to this box and knew where the key was left. Besides this, there was another key which had been lost some time before and might be in the hands of any person. The butter found, as shown, was undoubtedly Government butter but the tea and syrup might have been given by civilians to members of the staff. It is known practise in the Army in England, if possible for men to take tea in the mid-morning, and it is done in many other places in No. 1 CCRU besides the gymnasium. Thus it is not surprising for the accused on being posted to the gymnasium, to fall into the habit of taking tea, since this source was in full going. Any guilt that may be found to lurk not to the accused alone, but to other members of the gymnasium staff and to all visitors who dropped in for a occasional tea. This, I am aware, appears to include half the personnel of No. 1 CCRU. The accused has now been in detention for 10 days on purely circumstantial evidence. It has been in no way proved that rations were actually in the possession of the accused, and on these grounds I ask that he be acquitted.

C O P Y

BGHQ 5-6-2/748
14 Dec 44.
AGL/JW

17

"F."

HQ CDN RFT UNITS

Comd "B" Group,
C.R.U.

14 Nov 44.

F.G.C.M. - 14 Nov 44.
K-98579, Spr (A/Cpl) SMITH, G.C., 1 CERU.

1. Under RP 44 (C) the Court has adjourned sine die, and refers to the Convening Officer.

2. The Court finds that the articles, rations "public property", listed in the Particulars of the Charges were in a locker used by the Accused, the key of which was accessable to, and used by most of the personnel of the gymnasium at Guillemont Bks.

3. The Court finds that food was kept in this locker, put in by different members of the gymnasium staff, and used for snacks and that numberous personnel, including officers and NCOs of the unit, partook of them and that this was a recognized custom of long standing in No 1 CERU.

4. There is no evidence of sale or of any use of these rations other than for snacks.

5. The Court is of opinion that the accused is no more to blame for this custom than any of the others concerned.

6. The Court is in doubt as to whether taking all the circumstances into consideration, the accused is guilty of "conduct to the prejudice" if no others are charged, and whether the Court should find him "Guilty".

(Sgd) E.M. Miller
(E.M. Miller) Major,
President, F.G.C.M.

COPY TO: Col IC Adm

CERTIFIED TRUE COPY OF
DOCUMENTS IN MY POSSESSION.

.....
(A.G. Lister) Capt,
SC "B" Gp, Cdn Rft Units.

C O P Y

BGHQ 5-6-2/748
14 Dec 44.
AGL/JW

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CONFIDENTIAL

BGHQ 5-6-4/748
16 Nov 44.

Major E M Miller
HQ CRU

FGCM - 14 Nov 44.
K-98579, Spr (A/Cpl) Smith, G.C.

1. Ref your letter 14 Nov 44.

2. After reviewing the evidence there is no doubt that there was a custom of having snacks in the Gym but the amount of Government rations involved, namely four pounds of butter, represent 224 man day rations of this commodity and is considered out of all proportion to what is required by small staff of the gymnasium for snacks. Such abuse of this custom cannot be condoned and there is no evidence that offrs condoned this practice to extent it was being carried out. Further investigation is being carried out by CO 1 CERU in this regard which indicates that rations are being misappropriated but it is difficult to secure all necessary proof in all cases to bring to trial. A Cpl Cook at 1 CERU who committed an offence of stealing rations on 19 Oct was reduced to ranks and awarded 74 days detention by FGCM held on 6 Nov 44.

3. Please proceed with case as though others would be dealt with in their time, as enough evidence becomes available.

(Sgd) A.B. Connelly
(A.B. Connelly) Brig
Comd "B" Gp
Cdn Rft Units

JKMF/RES
DRLS/POST/R

CERTIFIED TRUE COPY OF
DOCUMENTS IN MY POSSESSION.

.....

(A.G. Lister) Capt,
SC "B" Gp,
Cdn Rft Units.

CHARACTERX WITNESSES

Lt. HUGHES T.S. X 1 CERU, having been duly sworn, states:

When I first ran into the accused when trying out for the Unit track team, and since I knew I was going to be sports officer four months ago, the accused is a very good worker, and the best NCO in the gymnasium; the only person to be relied upon. In my dealings with him, I found he was a very good worker. I found that at any time when I told him to do anything, He did it exactly as I told him, and quite often he would take hold of work himself, showing initiative and a willingness to help. Whenever he said anything, it was true and correct in all cases, so far as I know. As far as I am concerned, his honesty was beyond reproach.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B)

Lt. CAPSTICK, T, 1 CERU, having been duly sworn, states:

When the accused came into the gymnasium, he had finished his advanced training as a Spr. and I am quite satisfied that his ability as a soldier is exemplary while connected with the P.T. staff. I found him hard-working and reliable. He did what he was told and when he was told. I never found any fault with his work around the gymnasium. I have never found any reason to doubt his honesty, anything he said he would do, he did. For a year he has never done anything to make me doubt his honesty. I have heard other officers refer to the accused as the hardest working NCO in the gymnasium; they would prefer him to any other NCO in the gym. I found him quite reliable and honest.

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(b)

PLEA IN MITIGATION

[redacted]

FIRST CHARACTER WITNESS Lt. Hughes, T.S.
SECOND CHARACTER WITNESS Lt. Ca patick,

I am greatly surprised to find that Cpl Smith has been found guilty. His crime sheet shows three minor charges in four years, one for four days stoppages of pay, reduced to one day on discovery that the Sgt. to whom he was insubordinate was drunk at the time. He was one day AWL. He was 14 days C.B. for being out of bounds in London.

His record is exemplary. He is guilty of scrounging, a most common army practice, which we all do to some extent. Moreover, he is taking the rap for a number of persons, since, obviously, others shared in the spoil and helped procure it. The reasons for this arrest was because they were looking for someone taking food out of the camp. This definitely did not happen in this case.

I ask you to be most lenient in this most deserving case.

Sheet 1 destroyed 19-7-42.

No. K 98579 Name SMITH; G.C. Sqn., Battery, or Company — Corps R.C.E. Date of enlistment 19/7/40 G.C. Badges 1 Service or Proficiency Pay 10 Oct 42

M.F.M. 6 (A.F.B. 122)

Date of last entry in Company Conduct Sheet: Nil — No. and date of last drunk: Nil — Period not reckoning towards freedom from extra fine: Nil — Sheet No. 1 — Signature O.C. Company, etc.: D.Aitkens, Major. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	7 Nov 42	Pte		Conduct to the prejudice of good order and Military Discipline:- In that he when approached by a Sr.NCO used abusive language AA 40	Sjt.MacPherson	Forf 1 dys pay FR&I 149 (1)b	7 Nov 42	Major C.L. Armstrong	
Field	30 May 43	Pte		WOAS AWL from 2359 hrs 30 May 43 to 1300 hrs 31 May 43(Absent 13 hrs 1 minute) AA Sec 15 (1)	Sjt.L.J. MacDonnell	2 Dys Fd.Pun with forf of pay	31 May 43	Major C.L Armstrong	Forfs 1 dys pay FR&I 149 (1)a
Dec 18 1943 checked with MFM 4 D.I.Douglas,Capt.									
Field	19 Jan 44	Spr		AA 15(3) WOAS beyond the limits fixed by CHU Order #77 without a pass. Apprehended in London by civil police at 1200 hrs 19 Mar44	Doc.	14 Dys C.B.	22 Mar 44	G.H.WHYTE Colonel	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
				Sheet reviewed in accordance with CARO 2084		- 1 Jun 44.		D.Aitkens, Major.	
				CERTIFIED TRUE COPY D.S. MITCHELL, Major, RCE Adjutant, No.1 C.E.R.U.					

SUB FOR ARMY FORM B.196 (WAR).

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martial only).

Number.	Rank	Name	~~Regiment~~ UNIT (or as the case may be)
K-98579	A/Cpl	SMITH,	No. 1 Cdn Engr Rft Unit

NOTE:- The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entry for drunkenness or absence, as the case may be, should be stated seperately. Any recognized special acts of well-entry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :--

For A.A.15(1) ..... 1 .....times.

For A.A.15(3) ..... 1 ..... times.

For A.A.40 ..... 1 ..... times.

For .... times.

Date of first entry in Field Conduct Sheet 7 Nov 42

Date of last entry in Field Conduct Sheet 19 Jan 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the schedule overleaf.

~~3. The accused was born in the district of Penetanguishene in the Province of Ontario on the 26th day of October 1919.~~ NIL

4. The accused has been awaiting trial on the present charges ~~for~~ .....

~~during the present period of his service~~ 10 days in military custody, i.e., ~~.....~~ NIL

~~.....~~ NIL 10 days in close arrest; ~~and~~ NIL

~~.....~~ days in open arrest.

Strike out if not applicable.

5. The present age of the accused is 26 10/12 Yrs

6. The date of his ~~attestation~~ ~~.....~~ is 19 Jul 40

~~enlistment~~

7. The service which the accused is allowed to reckon is 4 4/12 Yrs

8. The accused is in possession of G.Y.G.W. 4 Class

9. (If the accused is a warrant officer or N.C.O.) The accused has served continuously, without reduction, to the present date - Date of Promotion.

In the substantive rank of A/L/Cpl 26 Apr 44

~~In the war substantive rank of .....~~

In the acting rank of .....

*State the military decorations (if any) held by accused.

INSTRUCTION... If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be ruled through.

3/49

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OF CIVIL CRIME.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing extract is correct to the best of my knowledge and belief.

Signed this 14th day of Nov 44

(D.S. MITCHELL) Major
Admin Offr.
No. 1 C.E.P.U.

Summary of Evidence

In the case of K-98579 A/Cpl. Gerald Charles SMITH, R.C.E., No.1 Cdn.Engr.Rft.Unit,Canadian Army (Overseas),a soldier of the Canadian Army (Overseas).

By direction ofthe Commanding Officer the evidence is taken under oath.

FIRST WITNESS: K-75443 Cpl.Luscombe,R.C.,R.C.E.,No.1 C.E.R.U.,having been duly sworn,states:-

"I, K-98579 Cpl.Luscombe,R.C.,am security N.C.O. of No.1 Cdn. Engr.Rft.Unit. On instructions from Lt.Col.H.G.J.Woods I, accompanied by Sgt.Raymond and Cpl.Gower of the Regimental Police of No.1 C.E.R.U.,visited the west gym at approximately 1545 hrs,3 Nov.44 for the purpose of searching for Army Rations. We searched the equipment room first,going through all the cupboards and boxes,with the exception of two barrack boxes,as their owners were not present at the time. We then searched the instructors room,going through all cupboards,boxes,and kit bags. L/Cpl.Meeker,the owner of one of the barrack boxes,came into the gym and I asked him if he would mind opening his barrack box for an inspection. We found no rations in his box. As Cpl. Smith had not returned,I went to Spider 7 room 5 and saw Cpl. Smith there. He was talking to L/Cpl.Meeker. I asked him to come to the gym,as we were having an inspection. He said "What for? I've only got one pound of butter in my box." We proceeded to the gym. Cpl.Smith went into the equipment room and I went to the instructors room. I asked Lt.Hughes if he would step into the equipment room while Cpl.Smith opened his box. As I walked into the equipment room I noticed Cpl.Smith talking to Sgt.Raymond. I asked Cpl.Smith to open his box,which he did, handing me a 1 pound brick of butter. I then commenced to search the box myself. Underneath a drawer in the box I found three pounds of butter,a bag of tea,and a can of syrup. I placed Cpl. Smith under close arrest and Cpl.Gower escorted him to the Detention Barracks. Sgt.Raymond and I took the butter,tea,and syrup to Command Post,and had it locked away in the R.S.M's office. I now produce them as evidence."

(Marked as Exhibits A1,A2,A3,A4;B;C)

Question; Was someone watching Cpl.Smith's barrack box while you were locating him?

Answer; Yes,Sgt.Raymond and Cpl.Gower.

Question by the accused; Was there any tea in the box besides what you found in the ration bag? (Pointing to Exhibit C)

Answer; I didn't notice any.

The accused does not cross-examine the witness further.

R C Luscombe

K-75443 Cpl. Luscombe,R.C.

SECOND WITNESS: G-15035 Cpl.Gower,K.K.B.,R.C.E.,No.1 C.E.R.U.,having been duly sworn,states;-

I am G-15035 Cpl.Gower,K.K.B.,of the Regimental Police of No.1 C.E.R.U. I proceeded to the west gym at approximately 1545 hrs.3 Nov.44,in company with Sgt.Raymond and Cpl.Luscombe for the purpose of making a search of said premises for rations. The rooms,equipment boxes,and barrack boxes were examined and upon Cpl.Luscombe requesting Cpl.Smith to open his barrack box,he did so quite willingly. Cpl.Luscombe proceeded to search the barrack box,taking out clothes and other articles,also taking out three pounds of butter,a tin of syrup,and a ration bag full of tea. I overheard Cpl.Smith remarking,when the box was first opened,that he had one pound of butter,which he took out himself and gave to Cpl.Luscombe.

Question: Who told you to search the gym?

Answer: Command Post phoned Unit Detention,and told the NCO who answered the phone to tell Cpl.Gower and Sgt.Raymond to report to Cpl.Luscombe at Command Post for the purpose of conducting a search.

Question: Do you recognize these articles (pointing to Exhibits A1,A2,A3,A4;B,and C) as the ones taken from Cpl.Smith's box?

Answer: I do.

The accused declines to cross-examine the witness.

K.K.B. Gower.
G-15035 Cpl.Gower,K.K.B.

THIRD WITNESS: M-54316 Sgt.Raymond,J.A.,R.C.E.,No.1 C.E.R.U.,having been duly sworn,states:-

I, M-54316,Sgt.Raymond,J.A.,NCO i/c Unit Detention,1 C.E.R.U., was present at a search of the west gym of No.1 C.E.R.U. at 1545 hrs. 3 Nov.44,in company with Cpl.Luscombe and Cpl.Gower. We made a complete search of the west gym. This search included all rooms in the gymnasium building,and all kit of personnel employed,and lockers and boxes used for storing equipment and used by personnel. When Cpl.Smith arrived he informed me that there was a pound of butter and some tea in his box. He was asked to open his box by Cpl.Luscombe,which he did quite willingly. I was standing beside Cpl.Luscombe and saw some food in the box. When this food was removed,I saw that it consisted of four pounds of "National" butter,a ration bag full of tea,and a two pound can of syrup. Cpl.Smith was placed under close arrest by Cpl.Luscombe.

Question: Did you find any other rations anywhere else in the gym?

Answer: No,sir.

Question: Why was this search of the gym made?

Answer: To my knowledge the search was made by Cpl.Luscombe on the authority of Lt.Col.H.G.J.Woods,for the purpose of looking for Army rations.

Question: Do you identify these (pointing to Exhibits A1,A2,A3, A4,B,and C) as the articles which were taken from Cpl.Smiths box by Cpl.Luscombe?

Answer: I recognize the exhibits,sir,as the articles taken from Cpl.Smith's box.

J.A. Raymond
M-54316 Sgt.Raymond,J.A.

The accused declines to question the witness.

FOURTH WITNESS: Lt.T.S.Hughes,R.C.E. No.1 C.E.R.U.,having been duly sworn,states:-

I am Lt.T.S.Hughes,sports Officer,No.1 C.E.R.U. I was present in the west gym on 3 Nov.44,when Cpl.Smith opened his barrack box and handed Cpl.Luscombe one pound of butter and said that he also had some tea,which he mentioned as having been received from home. Cpl.Luscombe looked through the box and took out three more pounds of butter, a small bag full of tea,and a tin of golden syrup.

Question: Did Cpl.Luscombe take these articles with him?

Answer: Yes.

Question: Do you recognize Exhibits A1,A2,A3,A4,B and C as the articles taken from the box by Cpl.Luscombe?

Answer: They appear to be the same.

Question: Do you know why the search of the gym was carried out?

Answer: I asked Cpl.Luscombe why he was searching the gym and he said it was on Lt.Col.Woods instruction.

Question: For what purpose?

Answer: Cpl.Luscombe said, "I'm looking for lots or things"

The accused declines to question the witness.

T S Hughes
Lt.T.S.Hughes,R.C.E.

FIFTH WITNESS: Lt. J.D.McKichan,R.C.E.,No.1 C.E.R.U.,having been duly sworn,states:-

I present a statement made to me under oath by Cpl.Smith at 1800 hrs. 3 Nov.44. Cpl.Smith was cautioned before making this statement.

Lt.J.D.McKichan,R.C.E.

(The statement was attached to the proceedings as Exhibit D, and was read to the accused,who had no further statement to make.)

The accused declines to question the witness.

SIXTH WITNESS
for the prosecution

Lt. H.R. FERGUSON, R.C.A.S.C., messing officer, No. 1 C.E.R.U., having been duly sworn states:-

I am, Lt. H.R. FERGUSON, R.C.A.S.C. messing officer, No. 1 C.E.R.U. I examined exhibits A-1, A-2, A-3, A-4, - B & C, and in my opinion the butter (ex A-1,2,3,4,) is similar to that issued and used as rations in the army. In my opinion Exhibit B is similar to the issue from Army Service Corps and Exhibit C, in my opinion is similar to the tea issued by Army S.C.

The accused declines to question the witness.

H.R. Ferguson Lt.
(H.R. FERGUSON) Lt., RCE
R.C.A.S.C.

The accused was cautioned as follows:-

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say, or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement or give evidence. Hereserves his defence.

I certify that the foregoing summary of evidence consisting of four pages was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4(C)(D)(E)(F) and (G) have been complied with.

O.B. Millar Lt.
(O.B. MILLAR) Lt., RCE
Officer detailed to take the Summary of Evidence.

In the field
Nov 44

I certify the above to be a true copy of the original Summary of Evidence.

O.B. Millar Lt.
(O.B. MILLAR) Lt., RCE
Nov 44

Appendix "D"

3 Nov 44

K-98579 Cpl. G.C. Smith, having been sworn and duly warned stated:- After returning from canoe around the end of September I found a gold watch missing from my box. I reported this to the Sports Officer who told me that I had better report it to the security police. I went to see Cpl. Luscombe found that he was on leave, and so waited until I saw him to report it. This would be around the 22 Oct 44. My box was locked while I was away and the keys were in my black gym trousers on a shelf in the office. This was where I used to have my trousers before I went on canoe.

This afternoon about 1615 hours Cpl. Luscombe came and told me that they wanted to look in my box, so I went over to the gym. Before opening my box, I told Cpl. Luscombe that there was a pound of butter in my box. This was a pound of butter packed in a tin which I had received from Canada. A few days ago I told Sgt/Cpl. Meakes that I had this pound of butter and that if he wanted it he could have it. I did not know whether he had taken it or not, as I had not looked in my box since pay day. When I opened my box the pound of butter, the bag of tea, and tin of sugar were taken from the box. I have absolutely no idea where these articles came from.

Q - Have you any idea who might have put these articles in your box?

A - I have no idea.

Q - Had anyone else known where you left your keys?

A - Just the gym staff as far as I know.

Q - Have you any idea where these rations might have come from?

A - No, sir.

Q - Have you ever known rations to be brought around the gym previous to this, except for food received from Canada?

A - Never except for the time that a pound of rotten bacon was found in the shower room, which Cpl. Luscombe knows about.

Q – Have you any idea where this bacon might have come from?

A – No, sir.

Witness
J. M. [illegible]
Lieut.

G. C. Smith
Cpl. G. C. Smith
K-98579

14 Nov 44

Received from Court (Maj Miller)
4 Pds National Butter
1 tin Syrup
1 bag (ration) tea

Exhibits A B & C in case of K98579. Pte Dmitz G.G

K L Digby Lt.
No 1 CERU.

LIST OF EXHIBITS

FOR THE PROSECUTION:

Exhibit A1 - 1 lb.brick of "National" butter.

Exhibit A2 - 1 lb.brick of "National" butter.

Exhibit A3 - 1 lb.brick of "National" butter.

Exhibit A4 - 1 lb.brick of "National" butter.

Exhibit B - Tin of Syrup.

Exhibit C - Ration bag filled with tea.

Exhibit D - Statement made under oath by the accused.

FOR THE DEFENCE

APPLICATION FOR DEFENDING OFFICER.

I, K-98579 A/Cpl. G.C.SMITH, desire to have Capt.B.A.K.Smiley, R.C.E., or, if he is not available, Capt. R.C.Garrett, R.C.E., represent me at my forthcoming trial.
If neither of these two officers is available, I desire to have an Officer, appointed by the Convening Officer, represent me at my forthcoming trial.

G C Smith
K-98579 A/Cpl.G.C.Smith.

LIST OF WITNESSES.

THE PROSECUTION:

(1) K-75443 Cpl.Luscombe,R.C.,R.C.E.,No.1 C.E.R.U.

(2) G-15035 Cpl.Gower,K.K.B.,R.C.E.,No.1 C.E.R.U.

(3) M-54316 Sgt.Raymond,J.A.,R.C.E.,No.1 C.E.R.U.

(4) Lt.T.S.Hughes,R.C.E., No.1 C.E.R.U.

(5) Lt.J.D.McKichan,R.C.E.,No.1 C.E.R.U.

FOR THE DEFENCE:

Pin here. Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No.(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the former, but the accused is (are) found Not Guilty on the latter charge(s), and that, accordingly, the trial will proceed on the ..... charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. [illegible]. Do you intend to call witnesses on your behalf? Ans. No.

Ans. No. Are they witnesses as to character only? Ans. No.
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) ~~The finding(s) of the Court is (are) recorded in Part I of the Schedule.~~ The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1) The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(7) (b), RP 45, 120(A). 2. AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are embodied by using Record Form E below. (See documents [illegible])

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans. No.
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~original~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. MFB 255 or AFB 296. 2. MFM 8. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. No.
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and other Sds, if any~~.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A)(b), KR Can 308, 330, 563-566, Overseas RO 3019, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : K98579 Sapper (A/L) Edward Charles Smith, R.E.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A.H. 40	Not Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for Not ..... beginning on (date) ..... (1)

(If insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 19 days, of which Nil days were spent in hospital.(2)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

Two (2) years Detention for Twelve (12) days

(Sgd) ..... Judge-Advocate, Army. 23 Nov 44 Date awarded. (Sgd) ..... President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1) A.H.

(1. AA 57A. Delete if not used.)

(Sgd) A.H. Connelly Brig

Date 23-Nov-44 Commanding B Hump CRU Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKED. (RP 52, KR Con 576, 577.)

Accused ..... Date. ..... Signature of Offr.

2/Lt E.C. Smith #98579 29 Nov 44 W.A. Mallon Capt.

ENTERED PART II ORDERS DATE 29 Nov 44 OFFICER i/c RECORDS No. 1 Cdn. Engineers' Holding Unit C.A.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

OFFICER i/c RECORDS No. 1 Cdn. Engineers Holding Unit C.A.

II·42 PTE SMITH G.F.
II·43 PTE EDWARDS C.A.

JOINT TRIAL

Correspondence to be PINNED here.

II-42
II-43

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A. Order convening the Court.

On Active Service, this Seventeenth day of JUNE, 1943

Whereas it appears to me, the undersigned, an officer in Command of FOURTH CANADIAN INFANTRY BRIGADE, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

*[I am unable to appoint:—
*(1. Three Officers to form the Court.)
*(2. A Field Officer as President.)
for the following reasons, namely:—]

Offrs under instruction:

Lieut. A.J. WATERS, R.Regt.C.
D.S. PRATT, "

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	G.E. Thornton	Scots Fusiliers attd Essex Scot.

Members.

Rank.	Name.	Regiment.
Capt or Lieut	to be detailed by OC Essex Scot	
Capt. or Lieut	to be detailed by OC R Regt C	
Waiting Member	Capt or Lieut to be detailed by OC R Regt C	

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed J.C. Page (J.C. PAGE) D.S.O.
Commanding 4 Cdn. Inf. Bde.
Convening Officer.

A.2.
A. 14 Thursday

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B.55513 Pte. Gordon, Franklin, SMITH, 1 Bn The Royal Regiment of Canada, a soldier of the Canadian Army Overseas, and B.55173 Pte. Clinton, Anson, EDWARDS, 1 Bn The Royal Regiment of Canada a soldier of the Canadian Army Overseas are jointly charged with.	FIRST CHARGE Conduct to the Prejudice of Good Order and Military Discipline; (See Charge Sheet Att)	Guilty	Guilty. Each To undergo detention for a period of Six Months and each To be placed under Stoppages of pay in the amount of £ 7-14-4 being the cost of damage Occasioned to Vehicle CM 116409 19 June 43 E.H.T. Thornton Maj.	21 June 43 Confirmed J.E. Lager Brigadier

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer *(to be recorded on separate sheet if necessary)*:—

(Signed) J.E. Lager (J.E. LAGER) Brigadier — *Commanding* 4 CDN INF BDE
(Signed) E.H.T. Thornton Maj. — S.F.H.C. a.a. E.S.R. — *President.*
Convening Officer (*c*)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 19th day of June, 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) N/A
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 19th day of June 1943.

E.H.T. Thornton Maj.
President of the Court Martial.

C. Certificate in case of death sentence.

* See footnote (*b*) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 370 of 1918 have been complied with.~~

~~Signed this~~ ~~day of~~ ~~19~~ .

N/A

~~President of the Court Martial.~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~)

J.E.L.

Signed this 21 day of ~~June~~ 1943,

J.E. Lager
Confirming Officer. Brig.

Promulgated and extracts taken in the case of B 55513 Pte SMITH, F.

(*a*) (Dated) 21 June 43 (Signed) E.H.T. Thornton Maj.

Promulgated and extracts taken in the case of B 55173 Pte EDWARDS, A. C.S.

(Dated) 21 June 43 (Signed) E.H.T. Thornton Maj.

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

O/L. 4726C/1607 50 M. 1/43 K.(L.)33852(2) Gp. 698/3

CHARGE SHEET

The Accused, No. B.55913 Pte. Gordon Franklin Smith, 1 Bn. The Royal Regiment of Canada, a soldier of the Canadian Army Overseas, and B.55175 Pte. Clinton Anson Edwards, 1 Bn. The Royal Regiment of Canada, a soldier of the Canadian Army Overseas, are jointly charged with:

FIRST CHARGE — Conduct to the Prejudice of Good Order and Military Discipline
Army Act
Sec. 40.

in that they

In the Field, on the 6 Jun 43, were improperly in possession of M.D. vehicle CM.11e8109, using said M.D. vehicle for their own use without a proper authority, and occasioning damage thereto to the extent of £15/18/8.

[illegible Nicholls]
Lieut-Colonel, Commanding,
1 R. HVY. C., CANADIAN ARMY

TO BE TRIED BY FOOM.

[illegible]
Brig.
Comd. 4 Can. Inf. Bde.

18 Jun 43

"B2"

C. H. Thornton-Kemsley

MEDICAL OFFICER'S REPORT

I certify that I have examined this morning
and that he
No. 3555/3 Pte. Smith G.F.
of 1 K. Regt. C is in a Good state of health,
and Physically fit to undergo Trial by Court martial.

Tyshe Capt
Medical Officer

Station In the Field

Date 19 June 43.

"A"
C.M. Thursday

M. F. B. 246

"A"
C.M. Thursday

MEDICAL OFFICER'S REPORT

I certify that I have examined this morning
No. D 55513 Pte. SMITH G.E.
and that he
of 1 K. Regt. C. is in a Good state of health,
and Physically fit to undergo Trial by Court martial.

H Tyslie Capt
Medical Officer

Station On the Field

Date 19 June 43.

M. F. B. 246

"A"

MEDICAL OFFICER'S REPORT

I certify that I have examined this morning No. B 55173
Pte Edwards C.A of 1 M. MTR. B, and he is in a Good
state of health, and Physically Fit to undergo Trial by Court
Martial.

Medical Officer

Station Inv Ht Field
Date 19 June 42.

"A"
C.A.F.

A

Proceedings for General and District Courts-Martial

Proceedings on the 16th day of June 43 by order of Brigadier J.E. Sayer Commdg. 3 Inf. Bde. Court-Martial held at in the field dated the 17th day of June

President, Major C.H. Thornton. S.F. of C., att. Essex Scot.

Members, Capt. J.E. Fauconnet Coy. Fus. R. Essex Scot
Lieut. E.A.H. Clifford, R. Regt. C.

Trial of* B-55513 Pte. Gordon Franklin Smith, B-55173 Pte. Clinton Anson Edwards } 1 Can R. Regt C.A.(O)

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ ~~is not available~~ D.A.T.

~~to serve owing to~~ , ~~waiting member takes his place as a member of the Court~~ C.I.T.

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† Capt. J.W.J. Hunter, ~~Adjt~~ R.R.R. 1 Can R. Regt C.

Counsel‡ or defending officer† Lieut. B.W. Rich, R. Regt C.

At 0840 o'clock the Trial commences.

The order convening the Court is read, and is marked A2 signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. No

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

(1)

C.H. Thornton Maj

Mil. Form B. 271
10M—9-39 (3132)
H.Q. 1772—39-254

CAT The President, members ~~and judge-advocate~~ are duly sworn.

The following officers under instruction are duly sworn.

Lieut. A.J. Waters, R. Rgt C.
" D.S. Beatty, " "

Charge-Sheet

Instruction.
If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused ~~is~~ are arraigned upon each charge in the above-mentioned charge-sheet.

Question to B55513 Pte Gordon Franklin Smith
CAT Are you guilty or not guilty of the [~~first~~] charge against you, which you have heard read?

Question to the accused.

Answer. Guilty

Question to B55173 Pte Clinton Orson Edwards
CAT ~~Are you guilty or not guilty of the charge against you, which you have heard read?~~
Are you guilty or not guilty of the second charge against you, which you have heard read?

Question. CAT

Guilty.

Answer.

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~

Question. CAT

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~

Question. CAT

Answer.

The accused having pleaded Guilty to the charge, the provisions of Rule of Procedure 35 (B) are here complied with.

Instruction.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for General and District Courts-Martial

Proceedings of a Field General Court-Martial held ~~at~~ in the Field
on the 16th day of June 1943 by order of
Brigadier J.E. Soper Commanding 4 Cdn. Inf. Bde.
dated the 17th day of June 1943

Major C.H. Thornton. President.
S.F. of C. ~~ot. Essex Scot~~
Capt. J.E. Farncomb
Cdn. Fus. Regt. ~~Essex Scot~~ Members.
Lieut. E.A.H. Clifford,
R. Regt. C.

~~Judge Advocate.~~ C.A.F.

Trial of* B-55513 Pte. Gordon Franklin Smith } 1 Cdn. R. Regt C.
B-55172 Pte. Clinton Anson Edwards } C.A.O.)

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ ~~is not available~~ C.A.F.
~~to serve owing to~~

~~, waiting member takes his place as a member of the Court.~~ C.A.F.

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† Capt. J.D.J. Hunter. ~~Capt.~~ C.A.F. R.C.R. & R.Regt C.

Counsel‡ or defending officer† Lieut. B.W. Rich. R. Regt C.

At 0940 o'clock the Trial commences.

The order convening the Court is read, and is marked A 2 signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. No

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

C.H. Thornton Maj

Mil. Form B. 271
10M—9-39 (2132)
B.Q. 1772—39-224

CC

Proceedings on Plea of Guilty

*To be struck out in case no plea of "Not Guilty" has been proceeded with.

~~*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" is read to him again.]~~ read.

The accused B.55513 Pte. Gordon Franklin Smith and B.55173 Pte. Clinton Anson Edwards, 1 Bn. R. Regt C. are found guilty of the charge.

*The summary (~~of allotment~~) of evidence is read, marked "C", signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Yes

Answer. The accused in mitigation of punishment ~~says~~ CAT.

~~has~~ hands in a written statement, which is read, marked "D", signed by the President, and attached to the proceedings.]

Instruction.

* If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

C.H.T. Thornton Maj.

DD

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

No

Answer.

Evidence as to character.

E

~~Finding~~*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

~~The Court is closed for the consideration of the finding~~ O.M.F

~~The Court find that the accused~~ C.M.F

Proceedings on Conviction *before Sentence*

*When the Court is already open this sentence will be struck out.

~~The Court being re-opened, the accused is again brought before~~ it. O.M.F

Evidence of character, &c.

Capt J.W.J. Hunter, R.Y.R. a/f. R. Rifle is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes, I produce M.F.S.M. & Good Conduct Badge for AFB 296.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked "E", signed by the President, and annexed to the proceedings.

Question by the President.

C.M.F Are the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes

Cross-examined by the accused. NOT

(Instruction.—If by reason of the nature of the service of the accused in a department, corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.)

Question to the accused.

Do you wish to address the Court? *Answer.* No

The Court is closed for the consideration of the sentence.

F

Sentence

Sentence.

The Court sentence the accused, B. 55513 Pte. Gordon Franklin Smith and B-55173 Pte. Clinton Cuson Edwards, 1 Bn. R. Regt. C., each to undergo detention for a period of six months and each to be placed under stoppages of pay in the amount of £7.14.4 being half the cost of damage occasioned to Vehicle CM. 116609.

A.H. Thornton Maj.

Statement of Pte G. F. Smith. Page One.

I enlisted in Feb 1941 and came overseas in October 1942. I have always been very friendly with Pte. Edwards and we both liked the army very much.

When we moved under canvas the training became much harder and there was little to amuse us in the hours when we were not on parade.

On the night of June 6th there not being any show in camp, Pte Edwards suggested that we go to the Pub at East Dean and have a glass of beer before going to bed. A few of our comrades came along and we had a merry time. When the beer ration was exhausted we were forced to turn to bitters and I am afraid we consumed more of these than we should have.

All I know is that I reached out completely and did not come to for some time when I found myself pinned underneath a gap. Pte Edwards and some civilians turned the car over and helped us out and we were taken to the hospital.

I am mortally ashamed of the whole evening and can only realise it on the past that I had very little to drink before joining the army. When others have urged me to have a drink I have not.

"D" Coy Thurlestone

Page two.

Statement of Pte Smith

been very strong and I have always regretted what happened afterwards. I have always enjoyed soldiering and dearly regret this serious set on my military career. I shall do everything I can to atone for it. Fortunately nobody was seriously injured in the accident and it is only a question of paying for the damage which we have done. This I will cheerfully bear.

I hope the Court will take a lenient view of our misdemeanour and give us another chance. I have had paid off for our crime I have been under detention for a month and actively doing my bit towards winning the war and I am sure my country will yet have reason to be proud of me.

I ask the Court please consider my plea and give me a chance. I will not be making a mistake as I am determined to do everything in my power to re-establish myself and I hope the Court will give me this chance.

Pte Smith F.

"D"

C.H.T. Thomson Maj

Statement of Pte Edwards 16 June 1943

"I Pte Clinton Anson Edwards wish to make the following statement in mitigation of the punishment which this honourable court is about to mete out to me.

I enlisted in the Canadian army on 6 August 1940 and was finally sent overseas in October 1942. I am married and have a wife living in Canada and 2 children aged 3 and 9.

My Canadian service was spent mostly in Camp Shilo Manitoba and Newfoundland. Both these places do not offer much in the way of amusement and we had practically to make our own fun. There was very little beer available and consequently we could get nothing to drink except local home brew which was plentiful. I had my first drink of home brewed alcohol in North Bay and its effects were rather devastating. After one or two drinks I suffered a complete black out. I did things which I afterward profoundly regretted and of which I had no knowledge at the time or afterwards. My friends told me that I was completely berserk and looked like a wild man.

I have taken this raw alcohol at various times and unfortunately have

"D"
CH Thornton Maj

developed a great craving for it. It seems to be something which I am unable to fight off, much as I would like.

On the night of 6 June 1973 Pte Smith and I with some friends went to the public house at East Dean close by the camp. We had been training rather hard and feeling fit and it seemed the occasion for a celebration in a small way. We drank a few glasses of beer and being a bit and engaged in quite a bit of friendly banter. It was all in good fun and as far as we knew there was quite harmless. As the evening wore on we met more of our friends and toasts were exchanged and we were having a jolly time. Then the beer began to run out. So we turned to drinking bitters. I had never before had this drink but it was pleasant to take and all in all I believe we had about 10 rounds. So you can well imagine the effect was catastrophic. The effect on me was the same if not worse than any of the home brew I had tasted in Canada. I lost all consciousness of the passing of time. I have a faint recollection of bits of a mild ride down dark roads, of screaming brakes and then a crash

C.E. Thurston

Statement of Pte. Edwards Page three

and after that complete darkness. When
I came to I was lying by the road
and I coved out a FEET upside down
with Pte. Smith underneath. I staggered
over and with the help of 2 civilians
we managed to get Smith clear
and ~~[illegible]~~ Bens and phoned the police
and an ambulance took us to the
hospital.

That is my story. I admit it is
not a credit to me and the only
excuse I can offer is that I actually
did not know what I was doing nor did
I realize the consequences. I only hope
this court will realize how sorry I am
for the damage I have caused. Fortunately
no one but ourselves was hurt. I
only hope that this court will
be as lenient a view as possible of our
misdemeanor. We cannot undo the
past but we can pay for the damages.
My wife and young children will
suffer for our conduct and I cannot
tell how sorry I am that this should be
but I can only plead with the court
a chance to make it up and to square myself in their eyes
and in the eyes of the Canadian Army.

Pte. Edwards A.D.C.

E. H. Thornton

SUSSEX POLICE FORCE

Chichester Division
Bosham Station

7th June 1943

EXHIBIT 'A'

SUBJECT:- Accident - Cut Mill, Bosham,
6th June, 1943.

Sir,

I beg to report that at 12 midnight on Sunday, 6th June, 1943, I was called to the scene of an accident at Cut Mill Corner, Bosham, which had occurred at about 11.45 p.m. on 6th June, 1943.

The vehicle concerned in the accident was a Jeep - war No. C.M.11c0109, the two occupants, both of whom were injured being Pte. Doris Gordon Elkin and Pte. 59175 Clinton Anson Hawkins, both of the Royal Regt of Canada, stationed at Goodwood.

The vehicle mounted the pavement on the south side of the road at the apex of the corner, made an intermittent tyre impression diagonally across the road for a distance of 90 yards, then turned over and made scars marks on the road surface for a distance of 20 yards, coming to rest on the north side of the road, upside down.

Smith was not in a fit condition to be interviewed. I now presume she questioned him about the accident and he replied "I guess the corner was too steep, and just rolled over. The Jeep was taken from our camp, I'll tell you that straight."

The two injured men were taken to the C.C.S. Hospital at the C/C Royal Regt of Canada was informed by telephone.

I respectfully suggest that a copy of this report be forwarded to The C/C The Royal Regt of Canada, Goodwood, for his information.

"F.G. Rhodes"

The Supt. of Police, CHICHESTER.

Our Ref: Bosh/117.

Forwarded to: The Officer Commanding, The Royal Regiment of Canada, Canadian Forces Overseas.

(Sgd) Superintendent of Police.

"C"

Certified true copy
J. Hawkhead Capt Adjt
R. Regt C.

SUMMARY OF EVIDENCE IN THE CASE of - B.55513 Pte. Gordon Franklin Smith and B.55173 Pte. Clinton Anson Edwards, both of the 1 Bn. The Royal Regiment of Canada, soldiers of the Canadian Army Overseas.

The accused are informed of their rights.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS for the Prosecution - Mr. Reginald Howell, 4 School Cottage, Bosham, having been duly sworn, states:-

"I am Mr. Reginald Howell, 4 School Cottage, Bosham. My brother and I were walking along the Emsworth-Chichester road. At the corner near Cutmill we saw a Jeep approaching us from Chichester direction. It seemed to swerve and I heard a scream of brakes. The next thing I saw was the Jeep upside down on the North side of the road. The time would be about 2325 hrs. One of the occupants was thrown clear. My brother and I lifted the Jeep up and helped to remove the other soldier. We accompanied these soldiers, who were Canadians, to Cutmill House and there phoned the police and ambulance."

R F Howell
.....
Reginald Howell,
4 School Cottage, Bosham.

The accused decline to cross-examine.

SECOND WITNESS for the Prosecution - P.C. 177, Frederick George Wood, Police Constable, Bosham.

A written statement of this witness, purporting to be signed by him, has been read to the accused, and is included in this summary attached as exhibit 'A'. Having regard to the expense and loss of time involved, the attendance of this witness cannot, in my opinion, be readily procured.

The accused do not demand attendance of this witness for cross-examination.

"C"
C.O. Thursday

THIRD WITNESS for the prosecution - Capt. E.J.H. Ryall, Tpt. Offr., 1 Bn. The Royal Regiment of Canada, having been duly sworn, states:-

"I am Capt. E.J.H. Ryall, Tpt. Offr., 1 Bn. The Royal Regiment of Canada. For some time prior to the accident on the 6th of June 43, and pursuant to orders, all the Jeeps in the Bn. were grounded, and the Brigadier's authority is required to move any of these vehicles. During the week prior to the accident, all the Unit fitters were concentrating on Jeep repair jobs. Consequently the majority of vehicles had keys in them. As the vehicles were grounded it was considered unnecessary to remove ignition keys as is normally the case with vehicles when they return from any run. The keys were therefore in the locks."

"As soon as I was informed of the accident involving Willis Jeep No. CM.116619, I went with the Unit R.C.O.C. Sgt. fitter to the scene of the accident at Cutmill Corner, Bosham, Sussex. The vehicle had been put up on its side by the local constable and was leaning against a hedge. I had it towed out on the road, started it up and drove it back to the Unit. At a later date I went to Borden to get at first hand the prices of parts to be replaced through damage to the vehicle. These prices were obtained from the Willis Co. price book."

"The following is a list of the parts to be replaced, of their catelogue prices and an estimate of the labour involved in effecting such repairs:

Body Handle, outside body rear	A.2389	/ 2/ 8
Windshield frame & glass assembly complete	A.2226	5/ 7/ 4
Steering gear assembly	A.1839	2/ 2/ 5
Steering wheel	A. 535	17/ 11
Top assembly complete	A.3216	3/14/ 11
Windshield foot thumb screw	A.2214	1/ 7
Labour, 24 hrs @ 3/-		3/12/ -
		£13/15/ 8

E.J.H. Ryall Capt.
(E.J.H. Ryall) Capt.
Tpt. Offr., 1 Bn. R. [illegible]. C.

The accused decline to cross-examine.

D.C.
E.H. Thurlow

The accused, B.55173 Pte. EDWARDS, C.A., having been duly cautioned in accordance with R.P. 4(e) says:

"I wish to give evidence under oath."

The accused, B.55173 Pte. EDWARDS, Clinton Anson, 1 Bn. THE ROYAL REGIMENT OF CANADA, having been duly sworn, states:

"During the evening of 6 Jun 43 I was at East Dean drinking. Afterwards, we came back to the lines and evidently stole a Jeep. I remember nothing until the time of the accident. I do not remember whether I was knocked out of the Jeep, or what happened. This was the first I remember from the time I was at East Dean. After I came to, I helped lift the Jeep off Smith with two civvies, and went to a house and notified the police. We were then removed by ambulance to the hospital."

C. A. Edwards .....
(B.55173 Pte. EDWARDS, C.A.)

The accused, B.55513 Pte. SMITH, G.F., having been duly cautioned in accordance with R.P. 4(e) says:

"I wish to give evidence under oath."

The accused, B.55513 Pte. SMITH, Gordon Franklin, 1 Bn. THE ROYAL REGIMENT OF CANADA, having been duly sworn, states:

"The first I can remember about the evening of 6 Jun 43, in connection with the accident, was being in East Dean with Edwards. I do not remember taking the Jeep out of transport lines, but can remember parts of riding down the road in the Jeep. I have no recollection of the accident, the first thing I knew was when I woke up in the hospital."

Gordon F. Smith .....
(B.55513 Pte. SMITH, G. F.)

Certified that R.P.4. complied with
In the Field
15 Jun 43

C
Lt

(H.W.G. Hunter) Capt.
Officer detailed to take the Summary

No. B58173 Name EDWARDS, C.A. Sqn., Battery, or Company "A" Corps Algonquin Regt. Date of enlistment 6 AUG 40 G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 172) 125M—7-41 (1219-20) H.Q. 1772-39-1652

Date of last entry in Company Conduct Sheet 29/9/41 No. and date of last drunk 9-5-41 Period not reckoning towards freedom from extra fine Sheet No. 2 Cont'd Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
SMILH CAMP	16/9/41	PTE.		INSUBORDINATION: BANDYING WORDS WITH NCO. (AA 16(4))	Sgt. LOUGHRAN, E.				
" "	16/9/41	"		ABSENCE WITHOUT LEAVE - 17 HRS 15 MINS (AA 15(1))	DOLMATHEY	7 DAYS C.B.	17-9-41	LT. COL. STEWART	FORFEITS 1 DAY PAY.
					Sgt. YAUGHAN, E.				
" "	16/9/41	"		CONDUCT TO PREJ. G. MIL. DISC. — DRUNK (AA 15)	DOLMATHEY	STOPPAGE 2.00	19-9-41	LT. COL. STEWART	
" "	1/10/41	"		A.W.O.L. FROM REVEILLE PARADE	CPL. LANGLOIS	7 DAYS C.B.	1-10-41	CAPT. SHARP	1 DAY FORFEITED
CHIPMAN	19.8.41	"	4	DRUNKENNESS	CHAP. MAJ. SHERIDAN	10 DAYS FORFEITURE	20.8.41	LT. COL. STEWART	
				DISOBEYING STANDING ORDERS RE LIBELLOUS	"	14 DAYS DETENTION	"	"	
NORTH SYD.	2.9.41	"		CONDUCT TO PREJUDICE - RESOLUTIONS RE VISCOUNT	CLN. MITCHELL	168 HRS DET.			
CHIPMAN	24.9.41	"		DR. TEMP. DEMN. CAUSING DISTURB.	CPL. DUNSTALL	STOPPAGE 17.50	25.9.41	LT. COL. STEWART	
	24.9.41	"		A.W.O.L. 4 DAYS	DALEY & HALES	14 DAYS DET.	8.10.41	" "	FORF. 14 DAYS PAY
ST. JOHNS	6.2.42	"		CIVIL CONVICTION - OFFENCE CANTON TAX		FORFEITS 10.00	11.3.42	CIVIL CONV. RET.	
				SALE OF ALCOHOLIC LIQUORS ACT.					

ORIGINAL SHEET DESTROYED 6.2.42

No. B58173 Name PTE. EDWARDS, C.A. Sqn., Battery, or Company Corps THE ALGONQUIN REGT. C.A.(A). Date of enlistment 6 AUG. 40 G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 172) 125M—7-41 (1219-20) H.Q. 1772-39-1652

Date of last entry in Company Conduct Sheet 6-1-42 No. and date of last drunk (1) 7-11-41 Period not reckoning towards freedom from extra fine Sheet No. 2 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
PT. ARTHUR	18.11.41	PTE.		ABSENCE WITHOUT LEAVE 2 DAYS (AA 15)	CPL. GRIFFIN	7 DAYS C.B.	22-11-41	LT. COL. STEWART	FORFEITS 2 DAYS PAY.
					PTE. BLACKBURN			LT. COL.	
PT. ARTHUR	1.11.41	"	(1)	DRUNKENNESS (AA 15)	Sgt. CHAPMAN	REPRIMANDED			
PT. ARTHUR	1.11.41	"		DISOBEYING A LAWFUL COMMAND (AA SEC 10)	Sgt. CHAPMAN	14 DAYS C.B.	5.11.41	LT. COL. STEWART	
PT. ARTHUR	17.10.41	"		ABSENCE WITHOUT LEAVE 1 DAY 15 HRS (AA SEC 15)	CPL. DUNCAN	14 DAYS DETENTION WITH 7 DAYS	18.10.41	LT. COL. STEWART	FORFEITS 7 DAYS PAY.
PT. ARTHUR	16.12.41	"		ABSENCE WITHOUT LEAVE 16 DAYS (AA SEC 15)	SGT. HAUGHT	7 DAYS C.B.	8.1.42	LT. COL. STEWART	FORFEITS 16 DAYS PAY.
ELPHINSTN	20 FEB 41	"	(2)	DRUNKENNESS 2ND OFFENCE	SGT. HAUGHT	7 DAYS C.B.	6 MAR 41	CAPT. CRAWLEY	
					SGT. HUGHES	FINED $5.00			
BOAT HARBR.	5 MAR 41	"		STRIKING HIS SUPERIOR OFFICER (AA 8(2))	PTE. HAMEL, W.		7 MAR 41	LT. COL. STEWART	
					PTE. HENDRICKSON				
					Sgt. PETRIE				
BOAT HARBR.	5 MAR 41	"		GO NOT TO THE PREJUDICE OF G.O. & M.J. (AA 40)	DITTO	21 DAYS DETENTION			

No. [illegible] Name Smith, L. Sqn., Battery, or Company "E" Corps A/G. R. of A.A. Date of enlistment 9 FEB 41 G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 172) 125M—7-41 (1219-20) H.Q. 1772-39-1652

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 2 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
PORT ARTHUR	1 MAY 41	PTE		A.W.O.L. 16 DAYS	Sgt. WILSON	168 HRS DET.	17 MAY 41	LT. COL. STEWART	16 DAYS FORFEITURE
SMITH CAMP	2 JULY 41	"		A.W.O.L. 18 HRS 10 MINS	CPL. FRONTENAC	14 C.B.	24 JULY 41	LT. COL. STEWART	14 DAYS "
SMITH CAMP	18 AUG 41	"		A.W.O.L. 3 DAYS 23 HRS	Sgt. CHANTRIER	7 C.B.	25 AUG 41	O.C. "E" COY	4 DAYS " 3 DAYS 7 DAYS
SMITH CAMP	25 SEPT 41	"		A.W.O.L. (3 DAYS) "DAMAGE TO BED" - REMAND BARRACKS	Sgt. CHANTRIER	14 C.B.	1 OCT 41	LT. COL. STEWART	1 DAY FORFEITURE
SMITH CAMP	25 SEPT 41	"		REFUSING TO GIVE NAME AFTER GIVEN ORDERS	Sgt. CRAWFORD	14 C.B.	26 SEPT 41	LT. COL. STEWART	
SMITH CAMP		"		FURNISHING 24 HRS PASS TO [illegible]					
SMITH CAMP	8 AUG 41	"		A.W.O.L. (3 DAYS)	PTE. MCKINNEY	7 C.B.	10 AUG 41	LT. COL. STEWART	
NEWGATE CAMP	29 MAR 41	"		"A.W.O.L. 2 DAYS" "RETURNING CIVILIAN CLOTHES"	CAPT. BATTEN, BOMB.	1ST DEGR. DET.	1 APR 41	MAJOR, TAIT	1 DAY FORFEITURE
LESTER FIELD	3 MAR 41	"		SEC. 40	CPL. BOLTON	7 C.B.	3 MAR 41	CAMP COMD.	
BATHURST	13 JAN 41	"		SEC. 40 - DRUNKENNESS ON PARADE	PTE. TOUGH	REPRIMANDED	15 JAN 41	LT. MOORE	
BATHURST	29 JAN 41	"		A.W.O.L. 9 HRS.	Sgt. CROSS	7 DAYS C.B.	29 JAN 41	LT. MOORE	1 DAYS PAY
BATHURST	15 FEB 41	"		SEC. 11 LEFT CAMP WITHOUT PERMISSION	LT. STEWART	28 DAYS DET.	16 FEB 41	LT. COL. STEWART	
				ABSENTATION TAKE WITHOUT PERMISSION					

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witness	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
FIELD	26.1.43	PTE.		FURLOUGH TO VOL 42 T.W.1.16.1.43 EMBARK: T.W.1.A.14.57.9 A.19 SEC.24(4) UNAUTH. WILFULLY DAMAGING PUBLIC PROPERTY ENTRUSTED TO HIS CARE IN THAT HE AT 2320 HRS. 26.1.43 WAS PARTY TO THE DAMAGE DONE TO HIS SLEEPING QUARTERS	Cpl. LEATHLEY L. Sgt. CHAPMAN J.	9.9.43 STOPPAGE OF PAY		AT. Col. FH. ARCHBALD.	PAYED UNDER STOPPAGE OF PAY 9/4/43 UNDER A.R. 158(2) C.R.O. 2.9.43
FIELD	28.1.43	"		A.M. SEC.15(2) FAILING TO APP. PARADE PROMPTLY AT PLACE OF DUTY. PRES. AM SEC.15(1) AWOL FR. 1330 HRS 28.1.43 TO 1350 HRS 29.1.43 AM SEC.24(4) WILFUL DAMAGE TO PROPERTY	Sgt. HARRISON (Pte)	2 DAYS F.P. STOPPAGES OF 4-5-0d.	30/1/43	MAJOR A.M. YOUNG B/C.	

Certified true copy:

[illegible]

(Substitute for AFB 296 or MFB 35)

STATEMENT OF CHARACTER AND PARTICULARS OF SERVICE OF THE ACCUSED

No. B.55513 Pte. SMITH, Gordon Franklin, Unit, 1 Bn THE ROYAL REGIMENT OF CANADA.

Age: 23 MARRIED OR SINGLE: Single. NO. OF DEPENDENTS: Nil

DATE OF ATTESTATION: 9 Feb 41

No. of days spent in close arrest (to date of trial)_____

CIVIL Nil MILITARY 12 HOSPITAL Nil TOTAL 12

(a certified true copy of M.F.M. 6 must accompany this form.)

(Officer i/c Records)

(F.D. Fairhead) Capt.
Adjutant
1 R. REGT. C., CDN. ARMY

Dated at In the Field

This 19th day of June 1943.
(to be dated and signed as of day of trial)

"E"

(Substitute for AFB296 or MFB 595)

STATEMENT OF CHARACTER AND PARTICULARS OF SERVICE OF THE ACCUSED

No. B.55173 Pte. EDWARDS, Clinton Anson, 1 Bn THE ROYAL REGIMENT OF CANADA.

Age: 27 MARRIED OR SINGLE: Married NO. OF DEPENDENTS: Three (3)

DATE OF ATTESTATION: 6 Aug 40

No. of days spent in close arrest (to date of trial)_____

CIVIL Nil MILITARY 12 HOSPITAL Nil TOTAL 12

(a certified true copy of F.F.M. 6 must accompany this form.)

(Officer i/c Records)

(per A.G. Kaufman) Capt.
adjutant
1 R. ROY. R., CDN. ARMY

Dated at In the Field

This 19th day of June 1943.

(to be dated and signed as of day of trial)

"E"
Lt Thornton Maj

TTT-234 Case #2.

Pte. Smith, G. F.

See I I-42 for 1st case.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused :

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	GUILTY	GUILTY	
2nd	GUILTY	GUILTY	
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 79 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

2 YEARS' IMPRISONMENT WITH HARD LABOUR.

(Sgd) ..... Judge-Advocate, if any. 10 JUN 44 Date awarded. (Sgd) ..... President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 8, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is : Confirmed

I direct ~~that the accused be not committed to prison or detention barracks until further notice~~.(1) Blair

(1. AA 57A. Delete if not used.)

Date 13 Jun 44 (Sgd) A Weldon Brig Commanding 2 Cdn Inf Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. B55513 PTE SMITH, GF Date. 12 JUNE 44 Signature of Offr. JJ Blair Major.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 1TT2346

CPA86 (In lieu of AFA3) 40/P & R/1698 (2864)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig T. G. Gibson Comd 2 C I B dated .....

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or conformed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number. (a) Prmnt R. (b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B55513 Pte	Gordon Franklin	Smith	2 Edmn R

PROCEEDINGS REVIEWED

REVIEWING OFFICER, JAG BRANCH, C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ..... on (date(s)) .....

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At ..... hours trial commences.

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(1)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused : Do you object to ..... as interpreter ? Ans .....~~

The Interpreter is sworn.(1) Do you object to ..... as shorthand writer ? Ans .....

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ? Ans NO.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Maj	E. D. FULTON	Seaforth R.
Member	Capt	R. W. POTTS	APC Lt.
Member	Lt	J. W. D. LEWIS	APC Lt.
Judge-Advocate			
Prosecutor	Lt	E. L. MERLAND	2 Edmn R.
Defending Offr	Lt	J. R. KOENSGEN	APC Lt.

Questions by President : Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Qs p 3.)

A8. The accused B55513 Pte SMITH, GF before arraignment make(s) (no) ~~plea~~ plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 24, 112. See para 1 of Instrs p 2. 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 3. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, cte, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (*i*) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (*ii*) *to record the pleas as the findings of Court. After deciding between* (*i*) *and* (*ii*), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans No. (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ~~draft~~ charge(s). The accused is (are) so informed, ~~and he (they)~~ ~~is/are(s)~~ his (their) plea(s) on charge(s). ~~Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex X, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2 (1).
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such part only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans .....
Do you intend to call witnesses on your behalf? Ans .....
Are they witnesses as to character only? Ans .....
(*1. RP 115. 2. RP 40(A), see 60(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 495. Evidence for accused as to his character should, if in his interest, be given before the Finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(1)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character ?(1) Ans No
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3)
(*1. MFB 305 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes.
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or deal with anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 40, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 13E, 18Z, RP 46-50, 48, 116, 119(A), KR Can 303, 330, 5&3-Sent. Overseas RO 339, MML p 80, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. Where already under sentence of imprisonment or detention see AA 44(3)(b), 68(1), KR Can 504. 2. RP 50. As to retention from Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIO

L Edmn R 5-4
9 Jun 44

Reviewing Officer,
1 Cdn Div.

DELAY REPORT - FGCM
B55513 Pte Smith, G.F.
B43321 Pte Parker, V.

1. Herewith sequence of events leading to assembly of m/n.

2.

6 Apr 44	-	m/n soldiers reported to unit.
8 Apr 44	-	case investigated by Adjt. (Capt E.H. Pritchard)
12 Apr 44	-	letter written to 2 Bn 1 CBRD to obtain details of escape of m/n soldiers.
19 Apr 44	-	answer received from 2 Bn 1 CBRD. This information received was not satisfactory and it was decided that a further effort be made to obtain the details.
24 Apr 44	-	unit was preparing for and moving to the CERCEMAGGIORE trng area, arriving 27 Apr 44.
1 May 44	-	the Adjt, Capt E.H. Pritchard, went to AVELLINO to receive evidence from Sgt Irving.
4 May 44	-	Summary of Evidence taken.
10 May 44	-	unit moved to LUCERA for intensive tank trng.
13 May 44	-	Application for FGC'sM submitted to 2 CIB.
17 May 44	-	Applications returned by 2 CIB to unit Pmr in X Echelon which at that time was a considerable distance from the unit.
24 May 44	-	Pmr brought the Applications to unit F Echelon. This was his first contact with the unit since leaving CASERTA area due to X Echelon being such a great distance from the unit. At this time the unit was in action and on the move. The former Adjt who had the case in hand, and the new Adjt was forward the entire time and out of contact with the unit orderly room.
7 Jun 44	-	Applications having been amended were submitted to 2 CIB. The following day FGC'sM were convened.

3. There has been an unusual amount of difficulty in obtaining complete evidence in this case. In addition the unit has been on the move or in heavy action during most of the period in question. Such exigencies account for the delay.

Capt & Adjt
for (H.P. Bell-Irving) Lt-Col
Commanding The Loyal Edmonton Regt

CHARGE SHEET

The accused, B55513 Private Gordon Franklin SMITH, of The Loyal Edmonton Regiment, a soldier of the Canadian Army Overseas, On Active Service is Charged With:-

When On Active Service

FIRST CHARGE — ABSENTING HIMSELF WITHOUT LEAVE

Sec 15 (1) Army Act

in that he

in the Field, absented himself without leave from 1200 hrs 19 Feb 44, until apprehended by the C.M. Police at Naples 0730 hrs 23 Feb 44.

When On Active Service

SECOND CHARGE — ABSENTING HIMSELF WITHOUT LEAVE

Sec 15 (1) Army Act

in that he

in the Field, when under close arrest absented himself without leave from 2300 hrs 9 Mar 44, until surrendering himself to Capt E.R.Pritchard at 1100 hrs 6 Apr 44.

In the Field
Date 7 Jun 44

(J.R.Stone) Major
A/Comd, L Edmn R.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
Date 8 Jun 44

(T.G.Gibson) Brig.
Comd, 2 Cdn Inf Bde.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/PAM/1697 (2003)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B55513	Private	GORDON FRANKLIN	SMITH	L.Edmn R.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 5 June 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial", and

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	K.D. Fulton (Must be named. RP 106.)	R.H. of C (Unit.)

MEMBERS.

Capt	R.W. Potts	P.P.C.L.I.
Lieut (Rank.)	J.W.D. Lewis (Named or detailed. RP 106.)	P.P.C.L.I. (Unit.)

WAITING MEMBER.

Lieut (Rank.)	A.H. McMullen (Named or detailed, if any. RP 106.)	R.H. of C (Unit.)

JUDGE-ADVOCATE.

(Rank.)	n/a (Must be named, if any. RP 106.)	(Unit.)

Active Service in the Fd

Italy (Country.)

8 Jun 44

(T.G. Gibson)
(Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Commanding 2 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for notes and notes for use on trial.)

MEDICAL CERTIFICATE
(KR (can) para 557)

This is to certify that I have of this date examined No .B55513..... Rank ..Private.... Name .SMITH, G.E.. of The Loyal Edmonton Regiment, and in my opinion he is fit/~~unfit~~ to undergo trial by Court Martial.

In the Field
Date 10/5/44.

(R.M. Levine) Capt
Medical officer i/c,
The Loyal Edmn R.

Adopted in Nigeria 1. June 1944

6-5513

Pte Smith D.F.

Joined Army Feb 41
served in Canada Newfoundland and England
Joined his Regt in Dec
at Aldershot
During the past two years
in the Army Pte Smith
has on several occasions
got in to his credit but
he has not been on a
charge in the past year
till the last offence.
This shows he tried to
be a good soldier
Pte Smith was awarded
seven days confined to barracks
and forfeited

4

[illegible] Guard along with
[illegible] settlers were sent to [illegible]
[illegible] before the 12 Battalion
for the purpose of a rest
During this time he was
kept on fatigues while
the remainder were sent to
work

The procedure used by
the Hitlers was to round
up accused persons
[illegible] were said to be desired
and search them.
The accused were told to [illegible]
[illegible] and put
on [illegible]

[illegible] the above facts
be considered by the Court
in mitigation of sentence

Exhibit "X"

SUMMARY OF EVIDENCE in the case of B55513 Private Gordon Franklin SMITH, of The Loyal Edmonton Regiment, a soldier of the Canadian Army AAI.

By Order of the Commanding Officer, evidence is taken on oath.

1st Witness

M31060 a/Cpl Ingram, G. of The Loyal Edmonton Regiment, having been duly sworn states; as follows:

I am M31060 a/Cpl Ingram, G. ~~xfxx~~ a member of "C" Coy The Loyal Edmonton Regiment. Pte Smith is a member of No.13 Pl, as am I. On the 17 Feb 44, before noon, Pte Smith was sent on L.O.B. for 48 hrs. Pte Smith has not been with the platoon since.

The accused declines to cross examine the witness.

(Signed) G. Ingram a/Cpl M31060

2nd Witness

B40579 L/Cpl Dorschner, R.J. of The Loyal Edmonton Regiment, having been duly sworn states, as follows:

I am B40579 L/Cpl Dorschner, R.J., a member of C Coy The Loyal Edmonton Regiment. Pte Smith, G.F., is a member of 3 Section. On the 17th Feb 44 at about 1500 hrs, Pte Smith was sent LOB to ORTONA. He has not been back with the pl since then.

The accused declines to cross examine the witness.

(Signed) R.J. Dorschner L/Cpl B40579

3rd Witness

Capt E.H. Pritchard of The Loyal Edmonton Regiment, having been duly sworn states as follows:

I am Capt E.H. Pritchard, Adjt of The Loyal Edmonton Regiment. I present as evidence a certificate purporting to be signed by A.E. Hobbs Capt, certifying that B55513 Pte Smith, G., was apprehended at NAPLES at 0730 hrs 23 Feb 44. I do further testify that B55513 Pte Smith, G.F., whom I recognize as the accused, surrendered himself to me at 1100 hrs ~~XX~~ 6 Apr 44.

The accused declines to cross examine the witness

(Signed) E.H. Pritchard Capt

Capt E.H. Pritchard, The Loyal Edmonton Regiment, having been recalled states as follows:

I present as evidence a certified true copy of a letter signed by K57118 Sgt Irving, S.W. which states that on the night of 9 Mar 44 between 2200 and 2300 hrs, B55513 Pte Smith, G.F. escaped from lawful custody. Due to the exigencies of the service, the presence of Sgt Irving is not practicable.

The accused does not demand the present of this witness.

(Signed) E.H. Pritchard Capt

The accused was cautioned as follows:

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement.

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence of the accused on the 5 May 44 and that Rules of Procedure 4 (c)(d) (e)(f) and (g) were complied with.

(L.V. McGurran) Capt
Officer Taking Summary

5 May 44
In the Field

Summary of Evidence in the case of B 55513
Pte Smith, Gordon Franklin, of the Loyal Edmonton Regiment
a Soldier of the Canadian Army AAF

By order of the Commanding Officer evidence is taken on oath

1st Witness M 31060 A/Sgt Ingram, R., the Loyal Edmonton Regiment having been duly sworn states as follows.

I am M 31060 A/Sgt Ingram of a member of the Loyal Edmonton Regiment. Pte Smith is a member of #13 Pl, as am I. On the 17 Feb 44 Pte Smith was absent on L.O.B. for 45 hours. Pte Smith has not been with the platoon since.

E. Ingram
M 31060 Sgt Ingram R.

2nd Witness B 40579 Sgt Donachuk, R.J. of the Loyal Edmonton Regiment having been duly sworn states as follows

I am B 40579, Sgt Donachuk, R.J. a member of C Coy to Loyal Edmonton Regiment. Pte Smith is a member of #3 Section On the 17 Feb 44 at about 1500 hrs Pte Smith was absent L.O.B. 5 Orders. He has not been back with the platoon since then.

He accused declines to cross examine the witness

R.J. Donachuk
B 40579 Sgt Donachuk, R.J.

Capt E.H. Pritchard of the Royal Edmonton Regiment having been duly sworn states as follows:

Witness

I am Captain E.H. Pritchard - adjutant of the Royal Edmonton Regiment. I present as evidence a certificate purporting to be signed by H.E. Hobbs, Capt certifying that B 55513 Pte Smith H.F. was apprehended at Naples at 0730 hrs 23 Feb 44. Job fourth to Staff Sgt B 55513 Pte Smith H.F. whom I recognize as the accused surrendered himself to me at 1100 hrs 6 April 44.

The accused declines to cross-examine the witness

E.H. Pritchard Capt

Capt E.H. Pritchard Royal Edmonton regiment having been recalled states as follows: I present as evidence a certified true copy of a letter signed by K 57115 Sgt Irving D.H. which states that on the night 9 March 44 between 2200 & 2400 hrs B 55513 Pte Smith H.F. escaped from lawful custody. Due to the exigencies of the service the presence of Sgt Irving is not practicable.

The accused does not demand the presence of this witness

E.H. Pritchard Capt

The accused was cautioned as follows:

Do you wish to make any statement or to give evidence you need not if you do so you are warned that anything you say may be taken down in writing and may be given in evidence.

The accused declines to make a statement

I certify that the foregoing summary of evidence consisting of two pages was taken down by me in the presence of the accused on the 5 day of May 44 and the rule of procedure 4 (c)(d)(e)(f) and (g) were complied with

Dated 5 May 44

Lieut R.S.O.R.R. [illegible]

B.55515 PTE. SMITH G.

ROYAL EDMONTON REGT. NAPLES

23 FEB 44 0/30

RECEIPT

No B55513 Rank Pte

Name Smith C Coy.

Unit ~~4 Bty~~ Loyal Edmonton Regt.

was handed over to me by the Military Police on 23: 2: 1944.

at 0800 hrs.

He was ~~drunk~~ / sober. I detained him.

Sgd 4688443 D White Sgt.

Unit 5 LAA L.R.E. Det. III Corps Coy.

Date 23/2/44.

This half to be retained by MP.

3147/e

CHARGE 28/2/44

A.F.A.W. (2) Army Form B 252
(See King's Regulations)

29th Royal Edmonton Canadian Regiment
"C" Battery / Squadron / Troop or Company

CHARGE against No. B 55513 Rank Private

Name Smith G.

Place Date of Offence

OFFENCE W.O.A.S. ABSENT FROM ? UNTIL APPREHENDED BY THE MILITARY POLICE AT THE HEADQUARTERS 606th ARMAMENT MAINTENANCE BN., U.K. ARMY AT ABOUT 0730 HRS ON THE 25 FEB 44.

Names of Witnesses:— R77833 L/Cpl F Price, 111th Provost Company, C.M.Police
R98161 L/Cpl N Cowland, 111th Provost Company, C.M.Police
7688413 Sgt F White, 510th I.M. Pioneer Company, C.M.Police
W.O. I/C Guard. STATEMENT ATTACHED

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

STATEMENT OF EVIDENCE IN THE CASE OF
No. B. 55513 PTE. SMITH G.
"C" COMPANY
39TH BN. THE LOYAL EDMONTON REGIMENT

Sd. At NAPLES on the 23RD FEBRUARY 1944 at about 0730 HOURS I visited the HEADQUARTERS 606TH ARMAMENT MAINTENANCE BATTALION, U.S. ARMY where I saw the above named soldier.

I asked him if he was in possession of a leave pass. He replied "No. I am about a week absent".

I arrested and conducted him to the MILITARY POLICE GUARD ROOM where I obtained his particulars for report, verified same from his PAY BOOK, and handed him over to the N.C.O. I/C GUARDROOM to be detained.

NAPLES
23 FEBRUARY 1944

H. Poirier Sgt
III PROVOST COMPANY

REMARKS

Sd. I have read over and corroborate the above statement

NAPLES
23 FEBRUARY 1944

A. P. Gowland Capt
III PROVOST COMPANY

COPY

COPY

STATEMENT OF K57118 SGT IRVING S.W.

Escape of Soldiers under close arrest.

On the morning of 9 Mar 44 I was placed in charge of an escort, (comprosed of the u/m personnel) to conduct a draft of 14 soldiers under close arrest who were being forwarded from 2 Bn to 4 Bn for onward transmission to their respective Field Units.

ESCORT

K58618	Pte	BOBB, R.	SEAFORTH OF CAN
K53689	Pte	BROWN, J.	"
K53970	Pte	BUCKLEY, W.N.	"
K11262	Pte	HANKINES, J.D.	"
K49132	Pte	HILL, A.J.	"
B93567	Pte	MC GHEE, B.	"
K42807	Pte	ROSS, M.C.	"
B52694	Pte	WALSH, L.G.	"

On the night of 9 Mar 44 on arriving at the stopping place for the convoy, I reported to the convoy comd and was instructed to bed the prisoners down with my men. Eight of the prisoners made off between the hours of 2200 and 2300 on 9 Mar 44. The following 8 men escaped:

A38202	Pte	LAMKA, J.J.	R.C.R.
A68149	Pte	ORON, D.	"
A59422	Pte	KEECH, W.N.	"
B64780	Pte	ST ARNAUD, R.A.	"
B66777	Pte	TUCKER, D.	SEAFORTH OF CAN
B43321	Pte	PARKER, V.	L EDMN R
B55513	Pte	SMITH, G.E.	"
B111994	Pte	STANLEY, R.	"

(Sgnd) S.W. Irving Sgt K57118

In The Field
11 Mar 44

CERTIFIED TRUE COPY

(E.H. Pritchard) Capt & Adjt
The Loyal Edmonton Regiment

LIST OF EXHIBITS
Prosecution

EXHIBIT 'A'	Certificate of apprehension by 111th Provost Coy, CMPolice.
EXHIBIT 'B'	Statement by Sgt Irving. Escape of soldier under close arrest.

Exhibit "B"

No. B333/3 Name SMITH G.F. Sqn., Battery, or Company "C" Corps A.I.F. C.H.A. Date of enlistment 9 FEB 14 G.C. Badges Service or Proficiency Pay

M.F.M. 6
(A.F. B.122)
40/P & /6136 (2905)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
FOLKESTONE	1 MAY 14	PTE		A.W.L. 16 DAYS	SGT WILSON	168 HRS DET	17 MAY 14	LT COL STEWART	16 DAYS FORF
SHEERNESS	2 JUNE 14	PTE		A.W.L. 16 DAYS 16½ HRS	CPL PRENTICE	14 C.B.	2 JUNE 14	LT COL STEWART	14 " "
SHEERNESS	16 AUG 14	PTE		A.W.L. 3 DAYS 2½ HRS	SGT CARUTHERS	7 C.B.	18 AUG 14	D.O. 'C' COY	14 " "
SHEERNESS	3 SEPT 14	PTE		A.W.L. 13 DAYS REMAIN 10 CELL BREAKING BAD	SGT CARUTHERS CPL PRENTICE	14 C.B.	17 SEP 14	LT COL STEWART	14 DAYS FORF 1 DAY PAY
SHEERNESS	3 SEPT 14	PTE		REFUSING TO RUN TO MARCH AT DOUBLE	SGT CARUTHERS	14 C.B.	28 SEPT 14	LT COL STEWART	
SHEERNESS		PTE		THROUGH 23 SET NA CW # 24712					
SHEERNESS	3 NOV 14	PTE		A.W.L. 13 HRS	A/SGT MCLEAN	7 C.B.	18 NOV 14	LT COL STEWART	
NIGARA CAMP	27 JUNE 15	PTE		A.W.L. 22½ HRS ESCORTING CUSTODY	SGT SWAN CPL SWAN	14 DAYS DET	1 FEB 15	MAJ. TROY	1 DAY FORF
LEVERS HILL	3 MAR 15	PTE		SEC NO.	L/CPL DUBOIS	3 C.B.	3 MAR 15	CAPT. MAC P.	
BETTWS	13 JUNE 15	PTE		SEC NO UNSHAVEN ON PARADE	MAJ. TENCH	3 SUSPENDED	13 JUN 15	LT MAYER	
BETWS	27 JUNE 15	PTE		A.W.L. 7½ HRS	SGT CRAGG	7 DAYS C.B.	27 JUN 15	" "	
BETWS	13 JUNE 15	PTE		SEC.H. ATT. ENTRY FROM WITHOUT PERMISSION	LT SHELDON	28 DAYS DET	14 JUL 15	LT COL STEWART	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of entry (where any) with total	By whom awarded	Remarks
[redacted]	[redacted]	[redacted]		A.A. SEC. 15 NEGLECTING TO OBEY 28 CAMP ORDER. CHANGING BUTTONS UNIFORM.	CPL. DENNIS, H.	2 DAYS C.B.	3-12-43	MAJ. C.O. HARRISON	
PTE. J.	26-2-43	PTE.		A.A. SEC. 24(a) WILFULLY DAMAGING PUBLIC PROPERTY, CAMP AT 2320 HRS 26-1-43	CPL. LEFOLEY, L. SGT. CHAPMAN, J.J.	3 DAYS STOPPAGE OF PAY			
PTE. J.	27-2-43	PTE.		A.A. SEC. 24(a) WILFULLY DAMAGE TO PROPERTY - A.A. SEC. 15(1) - TAKING A MOTOR CAR CONTRARY TO ORDERS (1) A.W.L. FROM 1330 HRS 27/2/43 TO 1330 HRS 28/2/43	[redacted] SGT. HARRISON	21 DAYS F.P.	30-3-43	MAJ. A.C. YOUNG	
PTE. D.	12-3-43	PTE.		A.A. SEC. 15(1) A.W.L. FROM 2330 HRS 12-3-43 TO 0330 HRS 13-3-43	SGT. HARRISON	FINE 2 DAYS PAY.			
PTE. D.	6-4-43	PTE.		A.A. SEC. 15(1) A.W.L. FROM 2330 HRS 6-4-43 TO 0330 HRS 7-4-43	SGT. HARRISON	FINE 2 DAYS PAY.	8-4-43	MAJ. A.C. YOUNG	
				A.A. SEC. 15(1) A.W.L. FROM 2330 HRS 12-3-43 TO 0330 HRS 13-3-43	SGT. HARRISON	FINE 2 DAYS PAY.	15-4-43	MAJ. A.C. YOUNG	
				A.A. SEC. 15(1) A.W.L. FROM 2330 HRS 6-4-43 TO 0330 HRS 7-4-43	SGT. HARRISON	FINE 2 DAYS PAY.	15

Exhibit "A"

ARMY FORM B.206.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B55513	Private	SMITH, Gordon Franklin	The Loyal Edmn R.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	* Within last 12 months.	*Since Enlistment.
For Absent without leave	N/L times	8 times.
For ~~Absent without leave~~ Conduct to the Prejudice	N/L times	2 times.
For ~~Conduct to the Prej.~~	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct.

or

There are XX entries in the conduct sheets of the accused.

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not attested to the proceedings.

† See para. 677, K.R., 1940.

* The question herein stated should correspond with the number of entries in the conduct sheets, prisoner being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

2. The accused has XX been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, ~~XXXX

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B55513 Rank Private Name SMITH, G.F. of L Edmn R. Regiment (or as the case may be).

(*INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted
F.G.C.M.	19 Jun 43	Conduct to the Prej., act Sec 40. A.A. Was improperly in pos ession of W.D. Veh C.M.166109, using said veh without proper authority and causing damage to the extend of £15/10/8	6 months Detention Brig J.E.Sager. Cond, 4 C.I.B.	

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 10 day of JUNE 44

(J.V. Mc[illegible]an) Capt & Adjt

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present day.

In the rank of ..... Date of Promotion .....

In the rank of ..... years, ...

In the rank of ..... years .....

(Instruction—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be answered through, except that on the offer of a trial by field general court-martial the information may be collected from such sources as are available, and the paragraphs concerned amended accordingly.)

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : .....

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 403 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

[illegible] (1) beginning on (date)

At present undergoing sentence of [illegible]

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 79 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

2 years imprisonment with hard labor.

(Sgd) ..... Judge-Advocate, if any. 10 June 44 Date awarded. (Sgd) "W.D. Fulton" Maj President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is : Confirmed

I direct that the accused be not required to perform [illegible] until further orders.(1) TGG

(1. AA 57A. Delete if not used.)

(Sgd) "T.G. Gibson" Brigadier

Date 13 June 44 Commanding 2 Cdn Inf Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Date. 15 June 44 Signature of Offr. "G.F. Blair" Maj

Accused.

B 55513 Pte SMITH G.F.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

TTT-234

Certified True Copy (D.M. OWEN) Lieut

CFA86 (To [illegible] of AFA51) 40/P & B/1898 (4038)

FIELD GENERAL COURT-MARTIAL 4/38B

Convened by Order of Brig T.G. Gibson Comd 2 Cdn Inf Bde dated .....

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B 55513	Pte.		Gordon Franklin	SMITH	L Edmn R.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ..... on (date(s)) 10 June 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At ..... hours trial commences.

A4. The Prosecutor informs the Court that accused elected to be tried by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial at [illegible] days notice, contrary to his election.(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to ..... as interpreter ? Ans .....

..... as shorthand writer ? Ans .....

The interpreter is sworn.(1) Do you object to [illegible] ?

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 58(B). If objection, see procedure AA 31, RP 15, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	W.D.Fulton	Seaf of Can
Member	Capt	R.N. Potts	PPCLI
Member	Lieut	J.W.D.Lewis	PPCLI
Judge-Advocate			L Edmn R.
Prosecutor	Lieut	E.L. Herland	PPCLI
Defending Offr	Lieut	J.R. Koensgen	PPCLI

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 85 (B) and fn 2 were not followed. See DI p 3.)

"EDF" A8. The accused B 55513 Pte SMITH G.F. before arraignment make(s) (no) (a) plea. (3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental Fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

"EDF" A10. The Court (~~is advised as to~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to pleas when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No .....(5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 3 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. Statement, if any, recorded per Notes.)

"EDP" B3. The Court considers the proper(s) and pleas(s) of Guilty and finds the accused guilty of the charge(s) to which he has pleaded Guilty, his (their) plea(s) of Guilty to Not Guilty and finds him (them) not guilty of the charge(s) to which he has pleaded Not Guilty.(1)

(1. Each finding must be stated in complete and unambiguous terms. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex X , initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*E*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

"EDP"

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. Under B5 such paras only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here. Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

"EDP" D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP* 39(*B*), 60(*A*) (*B*), 90. 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*), 114. *KR Con* 55. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*E*) (*F*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 7. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D6.)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans .....

Do you intend to call witnesses on your behalf ? Ans .....

Are they witnesses as to character only ? Ans .....

(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP* 114, 115, 116. *For procedure see notes on back of Convening Order, CF* 495. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up for the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA* 34(3) (*d*), *RP* 45, 120(*A*). 2. *AA* 34(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1) Ans No .....

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 27(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 162(3) (*g*) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3)

(1. *MFB* 253 *or MFB* 294. 2. *MFM* 6. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes .....(2)

(1. *RP* 27(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 27(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA* 34(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)

(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-52, 69, 148, 119(*A*), *KR Con* 308, 330, 563-566. *Overseas RO* 309, 2323, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 4(13), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(*B*), 68(*1*), *KR Con* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 547. *As to assembly and disposal of record after trial see lessors on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

"EDF"

L. Elmn R. 5-4
9 June 44

Reviewing Officer,
1 Cdn Div.

DELAY REPORT - FOCM
B 99513 Pte Smith G.F.
B 43321 Pte Parker V.

1. Herewith sequence of events leading to assembly of m/n.

2. 6 Apr 44 - m/n soldiers reported to unit.
8 Apr 44 - case investigated by Adjt. (Capt E.H. Pritchard)
12 Apr 44 - letter written to 2 Bn 1 CMRD to obtain details of escape of m/n soldiers.
19 Apr 44 - answer received from 2 Bn 1 CMRD. This information received was not satisfactoryand it was decided that a further effort be made to obtain the details.
24 Apr 44 - unit was preparing for and moving to the CHRCHMARSICHE trng area, arriving 27 Apr 44.
1 May 44 - The Adjt, Capt E.H. Pritchard, went to AVELLINO to receive evidence from Sgt Irving.
4 May 44 - Summary of evidence taken.
10 May 44 - unit moved to LUCERA for intensive tank trng.
13 May 44 - applica ion for FOC'sM submitted to 2 CIB.
17 May 44 - applications returned by 2 CIB to unit Rear in X Echelon which at that time was a considerable distance from the unit.
24 May 44 - Pnr brought the Applica ions to unit Y Echelon. This was his first contact with the unit since leaving CAMPOBASSO area due to X Echelon being such a great distance from the unit. At this time the unit was in action and on the move. The former Adjt who had the case in hand was evacuated, and the new Adjt was forward the entire time and out of contact with the unit orderly room.
7 Jun 44 - Applicarions having been amended were submitted to 2 CIB. The following day FOC'sM were convened.

3. There has been an unusual amount of difficulty in obtaining complete evidence in this case. In addition the unit has been on the move or in heavy action during most of the period in question. Such exigencies account for the delay.

Sign undecifable Capt& Adjt
for (H.F.Bell-Irving) Lt-Col
Commandin The Loyal Edmonton R.

CHARGE SHEET

"EDF"

The accused, S 55513Pte Gordon Franklin SMITH of the Loyal Edmonton Regiment, a soldier of the Canadian Army Overseas, On Active Service is charged with;

First Charge
AA Sec 15 (1)

When On Active Service

ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, absented himself without leave from 1200 hrs 19 Feb 44 until apprehended by the C.M. Police at Naples 0730 hrs 23 Feb 44.

Second Charge
AA Sec 15 (1)

When On Acrive Service

ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, when under close arrest absented himself without leave from 2300 hrs 9 Mar 44 until surrendering himself to Capt E.R. Pritchard at 1100 hrs 6 Apr 44.

In the Field

Date 7 June 44

"J.R. Stone"
(J.R. Stone) Major
A/Comd, 1 Edmn Bde.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Fi ld

Date 8 June 44

"T.G. Gibson"
(T.G. Gibson) Brig
Comd,
2 Cdn Inf Bde.

"207"

FIELD GENERAL COURT-MARTIAL

CFAO5 (In lieu of AFA3)
40/PAM/1007 (2062)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appnt, A/rank or A/appnt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B 55513	Pte.		Gordon Franklin	SMITH	L Edmn R.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 8 June 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr;)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint~~ (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereon.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 186(E). Delete if none appointed)

"T65"

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	H.D. Fulton	Deaf U. of C.

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	R.W. Potts	PPCLI
Lieut	J.W.D.Lewis	PPCLI

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	A.H. McMullen	Deaf U. of C

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
	N/A	

On Active Service in the Fd

in Italy (*Country.*)

"T.G. Gibson"
C.G.Gibson (*Signed personally. RP 105 fn 2.*)

Brig (*Rank.*)

Date 8 June 44

Commanding 2 Cdn Inf Bde.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

"EDF"

MEDICAL CERTIFICATE
(AR (can) para 577)

This is to certify that I have of this date examined No B 55513 Rank Private Name Smith G.F. of The Loyal Edmonton Regt, and in my opinion he is fit to undergo trial by Court Martial.

"R.M. Levine" Capt.

In the Field

Date 10 June 44

(R.M. Levine) Capt
Medical Officer i/c
The Loyal Edmonton R.

"BDF" 1. June 10-44

"E07"

ADDRESS IN MITIGATION

M 55513 Pte Smith, G.F.

Joined the army Feb 41. Served in Canada, Newfoundland and England. Joined his Regt in Dec at Ortona.

During the first two years in the army, Pte Smith was in continual trouble. It is to his credit that he has not been on a charge in the past year till this last offence. This shows he tried to be a good soldier.

He has been in close arrest for 79 days during which time he was employed.

2.

Pte Smith, along with six others was sent to L.O.B. at Ortona on 17 Feb 44 for the purpose of a rest. During this time he was kept on fatigues while the remainder were sent to rest.

The procedure used by the holding units to send back accused personnel leaves much to be desired and invites trouble. The accused were told to bed down without any blankets or kit.

I submit the above facts to be considered by the court in mitigation of sentence.

Exhibit "X"
"EDF"

SUMMARY OF EVIDENCE in the case of B55513 Pte Gordon Franklin SMITH, [redacted] Loyal Edmonton Regiment, a soldier of the Canadian [redacted]y AAI.

By Order of the Commanding Officer, evidence is taken on oath.

1st Witness

M31060 a/Cpl Ingram, G. ~~xxxxxxx~~ of the Loyal Edmonton Regiment, having been duly sworn states: as follows:

I am M31060 a/Cpl Ingram, G. a member of "C" Coy The Loyal Edmonton Regiment. Pte Smith is a member of No.13 Pl, as am I. On the 17 Feb 44, before noon, Pte Smith was sent on L.O.B. for 48 hrs. Pte Smith has not been with the platoon since.

The accused declines to cross examine the witness.

(Signed) G. Ingram a/Cpl M31060

2nd Witness

B40579 L/Cpl Dorschner, R.J. of the Loyal Edmonton Regiment, having been duly sworn, states as follows:

I am B40579 L/Cpl Dorschner, R.J., a member of C Coy The Loyal Edmonton Regiment. Pte Smith, G.F. is a member of 3 Section. On the 17th Feb 44 at about 1500 hrs, Pte Smith was sent LOB to ORTONA. He has not been back with the pl since.then.

The accused declines to cross examine the witness.

(Signed) R.J. Dorschner L/Cpl
B40579

3 Witness

Capt E.H. Pritchard of the Loyal Edmonton Regiment, having been duly sworn states as follows:

I am Capt E.H. Pritchard, Adjt of the Loyal Edmonton Regiment. I present as evidence a certificate purporting to be signed by A.E. Hobbs Capt, certifying that B55513 Pte Smith, G., was apprehended at NAPLES at 0730 hrs 23 Feb 44. I do further testify that B55513 Pte Smith, G.F. whom I recognize as the accused surrendered himself to me at 1100 hrs 6 Apr 44.

The accused declines to cross examine the witness

(Signed) E.H. Pritchard Capt

Capt E.H. Pritchard, The Loyal Edmonton Regiment, having been recalled states as follows:

I present as evidence a certified true copy of a letter signed by M57118 Sgt Irving, S.W. which states that on the night of 9 Mar 44 between 2200 and 2300 hrs, B55513 Pte Smith, G.F. escaped from lawful custody. Due to the exigencies of the service, the presence of Sgt Irving is not practicable.

The accused does not demand the present of this witness.

(Signed) E.H. Pritchard Capt.

The accused was cautioned as follows:

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement.

I certify that the foregoing Summary of Evid nce consisting of two pages was taken down by me in the presence of the accused on the 5 May 44 and that Rules of Procedure 4 (C)(d)(e)(f) and (g) were complied with.

5 May 44
In the Field

(L.V. McCurran) Capt
Officer Taking Summary.

No B 55513 Name SMITH G.F. Sqn, Battery, or Company C Corps RCA "A" Date of enlistment 19 Feb41 GC Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc

MFM 6 (AFB 122) 40/PAS/136 (3438)

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
		Pte							
Port Arthur	1 May41			AWL 16 days.	Sgt Wilson	168 hrs det	17May41	LtCol Stewart	16 d forf
Shild Camp	2 Jul41	"		AWL 15 days 16½ hrs	Cpl Prentvich	14 d C.B.	21 Jul41	Lt Co Stewart	14 " "
Shild Camp	16 Aug41	"		AWL 3 days 2½ hrs	Sgt Clouthier	7 d C.B.	18 Aug41	O.C "C" Coy	4 " "
Shild Camp	15 Sep41	"		AWL 15½ hrs damage to Cell Brandish SMs	Sgt Clouthier	14 d C.B.	17 Sep41	LtCol Stewart	14 " "
Shild Camp	25 Sep 41	"		Refusing to route march	Documentary Sgt Clouthier	4 day C.B.	26 Sep41	Lt Col Stewart	
Shild Camp	9 Nov 41	"		AWL 13 hrs	C/C. McLean	7 d C.B.	10 Nov41	Lt Col Stewart	
Niagara C.	27 Jan42	"		AWL 22½ hrs	Sgt Crazy Col Burrin	14 d detn	1 Feb 42	Maj Troy	1 day forf

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Lester Fd	2 Mar42	Pte		Sec 40	Cpl Burls	3 day C.B.	3 Mar42	Capt MacD	
Botwood	13Jun42	"		Sec 40 Unshaven on parde	L/S Tough	Admonished	15 Jun42	Lt Mayer	
Botwood	29 Jun42	"		AWL 9½ hrs	Sgt Cragg	7 day C.B.	29 Jun42	Lt Mayer	1 day forf
Botwood	15 Jul42	"		Sec 11 Left guard house without permission.	Lt Shellon	28 day Detn	16 Jul 42	Lt Col Stewart	
Field	1 Dec42	"		AA Sec 11 Neglecting to obey a camp order. Greatcoat buttons unshined.	Cpl Donald	7 day C.B.	3 Dec42	Maj Berranger	
Field	26 Jan 43	"		AA Sec 24(4) Wilfully damaging public property.	Cpl Lefoly	Stoppage ofp		Lt Col Nicholls	
Field	2 Mar 43	"		AA Sec 24(4) Wilfull damage to public property. AA Sec 15(2) Failing to appear at a place of parade. AA Sec 15(1) AWL 20mins	Sgt Harrison	21 days F.P.	30 Mar43	Maj Young	
Field	17 May43	"		AWL 32 hrs	SgtHarrison	5 days pay	20 May43	Maj Duncanson	
Field	6 Jun43	"		Sec 40 s.s. improper possession of S.D. veh.		6 Dpn detn	19 Jun43	Brig Sager	

SQ-135

Pt Smith-I.H.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F33589 Pte Smith G H 25 Cdn Spec Employ Coy

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 40	NOT GUILTY	GUILTY	
2nd AA 9(1)	NOT GUILTY	GUILTY	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 36, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ "JHS" ~~awaiting trial for~~ ~~"JHS"~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF BJ55 or AF B296.)

Time in confinement awaiting present trial—a total of 78 days, of which No days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF BJ55 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned without hard labor for one (1) year

(Sgd) "JHS" 5 July 45 (Sgd) "J H Stewart" Major

~~"Undergoing sentence" if any.~~ Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the finding of the Court on the first charge. I do NOT confirm the finding on the second charge. I commute the sentence to read: To undergo detention for six (6) months and I confirm the sentence as so commuted.

~~I direct that the accused be not committed to prison or detention barracks until further order.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) "W N Bostock" Brig

Date 18 Jul 45 Commanding Army Tps Area

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
F33589 Pte Smith G H	25 Jul 45	

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 - 58135

FIELD GENERAL COURT-MARTIAL

CFA66 (To be used by APA3) 40/P 26 B Issue (4000) 4/38B

Convened by Order of Brigadier W N Bostock Comd A Tps Area dated 5 July 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F33589	Pte	Gordon Henry	SMITH	25 Cdn Spec Emp Coy

CERTIFIED TRUE COPY

W. B. Bale Maj.

DJA

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) GERMANY on (date(s)) 5 JULY

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fms ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A65, for oaths and instrs on how to record addresses, evidence, etc. which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 62-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1045 hours trial commences.

A4. ~~The Prosecutor produces~~ a Medical Certificate that accused is fit ~~is~~ to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.

A5. President to accused: ~~Do you object to~~ [illegible] as interpreter? Ans

~~The Interpreter is sworn.(1) Do you object to~~ as shorthand writer? Ans

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	J H STEWART	21 CDN SPEC EMP COY
Member	CAPTAIN	M J DORAN	17 CDN SPEC EMP COY
Member	CAPTAIN	A L GOLDSMITH	21 CDN SPEC EMP COY
~~Judge Advocate~~			
Prosecutor	LIEUT	T A WILLIAMS	25 CDN SPEC EMP COY
Defending Offr	CAPTAIN	G W C NELSON	25 CDN SPEC EMP COY

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
8Jul45 (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Div p 3.)
jwb

A8. The accused F33589 Pte Smith G H before arraignment make(s) (no) (a) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such pleas, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 102. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A66 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without asthy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MAML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 37(*E*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement,(1) and the Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 27(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. N.A.(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (a) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(2) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(3)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB: *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. Swear Statement Do you intend to call witnesses on your behalf? Ans. Yes Are they witnesses as to character only? Ans. Yes(1)
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1. 84(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1) Or, The President announces that the accused is found Not Guilty of all charges and is to be released forthwith. And that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*d*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *Del alternative pronouncement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans. No
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 165(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. Y and Ex. Z respectively.(3)
(1. *MFB* 213 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Con* 158. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. No
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 27(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(*d*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dictated and signed by him and the J.A., if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its grouping, is to be awarded to cover all charges on all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 48-50, 68, 118, 119(*A*), *KR Con* 308, 330, 563-566. *Overseas NO* 309, 3323, *MML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(*B*), 68(7), *KR Con* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see insetrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

F33589 Pte Smith G H on strength of 25 Cdn Special Employment Coy, a soldier of the Canadian Army O/S.

IS CHARGED WITH

1ST CHARGE
AA SECT 40

While on Active Service, conduct to the prejudice of Good Order and Military Discipline.

in that he

In the Field, on 16 April 45 said to B70193 Sgt Brown, K W, his superior officer, "I would rather be placed on charge than work in the kitchen" or words to that effect, well knowing that he had been detailed for kitchen fatigue.

2ND CHARGE
AA SECT 9(1)

While on Active Service, disobeying in such a manner as to show a wilful defiance of authority, a lawful command given to him personally by his superior officer in the execution of his office,

in that he

In the Field, on 26 May 45, when ordered personally by L10081 Sgt Beresowski, J W, in the execution of his office, to go to work, did not do so, stating at the same time that he was not going.

"G W C Nelson" Capt
(G W C Nelson) Capt
A/Officer Commanding
25 Cdn Special Emp Coy

In the Field
19 June 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

"W N Bostock"
(W N BOSTOCK) Brig
Comd A Tps Area, First Cdn Army

Field
27 Jun 45

"JHS"

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F33589	Pte		Gordon Henry	SMITH	25 Cdn Spec Employment Coy

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 27 JUN 45 endorsed by me, (~~or by an offr of my staff for me~~), " To be tried by Field General Court-Martial ". "WNB"

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~) "WNB"
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ "WNB"
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~ "WNB"
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
MAJOR	J H STEWART		21 Cdn Spec Emp Coy

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
CAPTAIN	M J DORAN		17 Cdn Spec Emp Coy
Captain	A L GOLDSMITH		21 Cdn Spec Emp Coy

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
LIEUT	J G MACKAY		17 Cdn Spec Emp Coy

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Holland (*Country.*)

"W N Bostock" (*Signed personally. RP 105 fn 2.*) Brigadier (*Rank.*)

Dat 27 Jun 45

(W N Bostock)
Commanding A Tps Area, First Cdn Army
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS "JHS"

4/38A CFAMS (Tp Sec) (AFA 2) 60-T-R-E/1697 (6145)

(*See overleaf for oaths and notes for use on trial.*)

"JHS"

MEDICAL OFFICER'S CERTIFICATE

(KR(Can)Para 587)

I certify that I have this day examined F33589 Pte Smith G H

and in my opinion he is fit/~~unfit~~ to undergo trial by Court Martial.

Station In the Field

Date 5 July 45

"I C Rubin" Capt (Sgd)
Medical Officer
(I C Rubin) RCAMC
Unit

CHARGE I F33589 PTE SMITH G H

FIRST WITNESS FOR THE PROSECUTION: 970193 Sgt Brown K E, CIC attached to 25 CSEC sworn states:

During the month of April 1945 I was employed as a section commander with 25 CSEC. I recognize the accused as F33589 Pte Smith G H. He was in my section. On the morning of 16 April 45 at approximately 0800 hrs I had given the name of Pte Smith G H to my corporal as kitchen fatigue. He was not expected on my section parade that morning as he was detailed for kitchen fatigue. When I saw Pte Smith on my section parade I asked him why he had not reported to the kitchen as he had been detailed for that duty. He replied that he would rather be placed on charge than report to the kitchen for duties. I then placed Pte Smith under open arrest.

Cross Exam:

Q1 Did Pte Smith attempt to explain to you why he did not like to work in the kitchen?

A He did make an attempt.

Q2 Would you please explain this attempt?

A2 Four men, including Pte Smith, came to me to complain about kitchen fatigue.

Q3 Was this before or after the aforementioned parade?

A3 This was before the parade.

Q4 Can you tell me the reason given by Pte Smith?

A4 I can not remember.

Q5 Did you order him to report to the kitchen yourself, previously.

A5 I won't state that I definitely ordered Pte Smith to report but I told the party, which included Pte Smith, that the MO was the only one who could excuse them.

Q6 Did Pte Smith complain on medical grounds?

A6 I think he was complaining about the smell of the cooking food.

Q7 Did you, personally, detail Pte Smith to be on kitchen fatigue that day?

A7 No sir.

Exam by Court:

Q1 Did you order him to go back to the kitchen after he had been on parade?

A1 No sir.

Q2 When did Pte Smith tell you that he would sooner be charged than do kitchen fatigue?

A3 On the section parade.

RP 83 (b) complied with.

1ST WITNESS FOR THE DEFENCE: B4735 TPR PRICE C H CAC, attach 25 CSEC having been duly sworn, states:

Pte Smith, whom I recognize as the accused, served with me in Louvain, Belgium with 25 CSEC. He worked in the kitchens with me but had to be removed because he was always feeling ill. He was given light jobs to do.

Cross Examine:

Q1 Did Pte Smith serve in same section with you?

A 1 No sir.

Q2 How many times did Pte Smith work with you in the kitchen?

A2 Once that I know of

Q3 Who ordered Pte Smith away from the kitchen at that time?

A3 It was one of the company sergeants.

Q4 Do you know why that sergeant took Pte Smith away from the kitchen?

A4 Because Pte Smith was feeling sick at the time.

Exam by court

RP 83 (b) complied with.

SWORN STATEMENT OF ACCUSED

F33589 PTE SMITH G H CIC attached 25 CSEC, sworn, states:

On the morning that I was detailed 16 Apr 45 the section corporal told me I was on kitchen fatigue for that day. I told the corporal

I couldn't work in the kitchen because I got sick. He told me that I would have to see Sgt Brown. Another man and myself saw Sgt Brown. The other man Gnr Pawsey, stated his complaint and the sergeant got mad and told us to get out of the room and not to bring the damn complaints to him. I left the room and went down on parade where Sergeant Brown asked me why I did not report to the kitchen. I told him I could not work in the kitchen because I could not stand it. Sgt Brown told me that if I did not go I would be put on charge. I told him that I would rather be put on charge than work in the kitchen.

Examine by court:

Q1 Did Sgt Brown tell you that the MO was the only one that could excuse you?

A1 No sir.

Q2 Did you make any attempt yourself to see the MO to get excused from kitchen fatigue?

A2 No sir.

Q3 What do you mean by the statement that you "can't stand" to work in the kitchen?

A3 They have blowers going in the kitchen and the fumes make me sick with a head-ache.

Q4 On previous occasions when kitchen fatigue made you sick did you report to the MO?

A4 No, because the other times the sergeant did not make me report to the MO.

Q5 Had you ever been on sick parade for that particular complaint?

A5 No sir.

Q6 How often have you been taken out of the kitchen on account of sickness?

Q7 Once, before.

A7 RP 83 (b) complied with.

CHARGE II F53589 PTE SMITH G H

I10081 SGT BERESOWSKI J W on the strength of 25 CSEC sworn states:

I am Sgt Beresowski in charge of Guard Room and Regimental Police of 25 CSEC. On the 25th day of May I paraded the men in custody at 1730 hrs for work. They all started to work with the exception of Pte Smith, Pte Massey, Gnr Briscoe. I then gave them a direct order, which was definitely refused. I also gave a separate order to each of the men in question. This order included the accused, whom I here recognize as Pte Smith. Pte Smith replied that he did not have to work, as he was not yet undergoing sentence. I then diemissed the soldiers in question to the guard room.

Cross Examination by Defence:

Q1 Is it correct that Pte Smith, who was awaiting trial was housed in the same room as those undergoing sentence?

A Yes

Q2 Is it true that Pte Smith was made to work the same hrs and do the same kind of work as personell undergoing sentence?

A Yes

Q3 Was this extra work a punishment in that it wa s carried out after the rest of the coy had completed its daily duties?

A This work was carried out as per guard room standing orders, 25 CSEC.

Q4 Do these standing orders differentiate between personell awaiting trial and those undergoing sentence?

A No

Q5 App how much longer after supper were men in custody required to work?

A They were required to work until 2100 hrs.

Cross Examination by Court

Q On an average how much work did the men do after supper?

A The men worked on an average of 1½ hrs per night. There were nights when they did not work at all.

RP 83 (b) complied with.

(Statement by accused)

F33589 PTE SMITH G H ON the strength of 25 CSEC, sworn, states:

From Pte Smith of 25 CSEC, I asked Sgt Beresowski to have me paraded before the CO. This was about a week before the 26 May 45. I was paraded before the major, and asked the major if I was doing FP or awaiting Court Martial, and said that I did not mind doing a normal day's work, but I did not like working after supper. The Major said that if the sgt wanted me to work I would have to work.

Cross Examination by Prosecutor

Q On the 26th of May were you on the parade that Sgt Beresowski called, and you refused to go to work when he told you do so?

A Yes

Cross Examination by court:

Q1 How much extra work did you do?

A We did on the average of two hrs a night.

Q After being paraded to the major, and after you had been told what to do on what grounds did you refuse to go to work?

A I did not feel that I had to do that extra work because I was awaiting trial by Court Martial, and not doing Field P.

RP 83 (b) complied with.

SUMMING UP FOR THE PROSECUTION

The charge on which the accused is before this Court Martial is:

1. (Disobeying) 2(in such a manner asto show wilful defiance of authority) 3(a lawful command) 4(given him personally) 5(by his superior officer) 6(in the execution of his office).

Five of these points are directly proven by the evidence which you have heard. The only one on which there is any question is whether or not the command given was a lawful command.

KR(Can) Sec 452 (d) says in effect that care will be taken that soldiers awaiting trial are not required to do more work than they would have to do if they were not in custody. But the question of whether a lawful command was given or not is a different Question. If the command had been given during ordinary duty hours there would have been no doubt that it was lawful, therefore, I think it is up to the court to decide whether or not it was lawful in these particular circumstances. Would it have been a lawful command if given to a soldier not in custody? I leave it to the military knowledge of this court-martial to decide.

DEFENCE SUMMARY CHARGE II

F33589 Pte Smith G H

Facts brought out by Sgt Beresowski's evidence

1. Personnel under sentence and awaiting trial were
(a) Housed in same room (Contrary to KR Can 611)
(b) Made to work the same hours and do the same work (Contrary to KR Can 452 (d))
(c) Made to do work which was a punishment in that it occured after recognized working hours for the rest of the company except those undergoing FP (Contrary to KR Can 452 (d)).
(d) Were ordered to work after supper on Sat 26 May 1945 despite the fact that the rest of the company, except those in custody, ceased working at noon, as is the unit custom(Contrary to KR Can 452 (d)).
(e) The order, therefore, was unlawful because it was an order which would have resulted in work which is admittedly a punishment reserved for men undergoing FP. (Contrary to KR Can 452 (d)).

Therefore we believe not guilty.

"G H C Nelson" Capt
25 CSEC

PLEA FOR MITIGATION CHARGE II

R55589 Pte Smith G H

The accused has served in the Cdn Army for almost 2 yrs and to date has only one entry on his MFM 6.

He undoubtedly felt in each instance a feeling of being wronged and after asking for redress in the case of being paraded before the major and receiving none, he felt worse.

I don't feel that any evidence has been brought forth to prove spite or deliberate hardness in the accused and I feel the accused was definitely wronged as in KR Can 452 (d).

He has been in custody a considerable period of time and has, indeed, served FP judging by his treatment while awaiting trial.

I trust the court will use considerable good judgment and leniency in this case.

"G W C Nelson" Capt
25 CSEC.

"EX "G" "JHS"

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martial only)

Number	Rank	Name	Regiment (or as the case may b
F33589	Pte	Smith G H	25 Cdn Spec Emp Coy

NOTE.- The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the Proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

* Strike out if not applicable

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the Accused, exclusive of convictions by a court martial or a civil court:-

A A Sect 40 ..... One ..... times

For .... times

For .... times

last entry 31 Jan 45

For ~~last entry 31 Jan 45~~ .... times

For .... times

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

3.* The accused at the present time is under sentence for .....N/A.....

beginning on the .....N/A..... day of .....N/A.....

4. The accused has been awaiting trial on the present charges for ..... days in civil custody; and for ..78.. days in military custody, making a total of ..78.. days of which ..10.. days were spent in hosp.

19 Apr 45
Close arrest 78 days

5. The present age of the accused is 20 years 5 mth

6. The date of his attestation is 31 Aug 43

7. The service which the accused is allowed to reckon is 1 year 10 months

8. The accused is in possession of #
CVSM & Clasp

State the military decorations (if any) held by accused.

9. (If the accused is a warrant officer or NCO). The accused has served continuously, without reduction, to the present date -

	Date of Promotion
In the substantive rank of N/A	.....
In the war substantive rank of N/A	.....
In the acting rank of N/A	.....

INSTRUCTION - If any matter in any of the above [illegible] Regimental

Army Form [illegible]

Ex "Z" "JHS"

No. F33589 Name Smith G H | Sqn, Battery, or Company | Corps | Date of enlistment | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 60/PAM/128 (5418)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No L | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order (separating with title)	By whom awarded	Remarks
Field	31Jan45	Pte		WOAS Failing to comply with an order given to him by his superior officer AA Sec 40	CSM Raistrick "	For 15 days pay FRMI 149(2)	1 Feb 45	Maj.ED McRae ED	

Certified true copy of the original documemt

"G W C Nelson" Capt
Officer having custody of
Regimental Books.

(PTO)

"EX "G" "J4G"

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martial only)

Number	Rank	Name	Regiment (or as the case may b
F33589	Pte	Smith C H	25 Cdn Spec Emp Coy

NOTE.- The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the Proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

* Strike out if not applicable

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the Accused, exclusive of convictions by a court martial or a civil court:-

For A A Sect 40 ..... One times

For .... times

For 1st entry 31 Jan 45 .... times

For .... times

2. Previous convictions of the accused by a court martial or by civil court are set out in the Schedule overleaf.

3.* The accused at the present time is under sentence for .....N/A.....

beginning on the ....N/A..... day of N/A.....

4. The accused has been awaiting trial on the present charges for ..... days in civil custody; and for ..78.. days in military custody, making a total of ..78.. days of which ..10.. days were spent in hosp.

19 Apr 45
Close arrest 78 days

5. The present age of the accused is 20 years 5 mth

6. The date of his attestation is 31 Aug 43

7. The service which the accused is allowed to reckon is 1 year 10 months

8. The accused is in possession of #
CVSM & Clasp

State the military decorations (if any) held by accused.

9. (If the accused is a warrant officer or NCO). The accused has served continuously, without reduction, to the present date -

	Date of Promotion
In the substantive rank of N/A	
In the war substantive rank of N/A	
In the acting rank of N/A	

INSTRUCTION - If any matter in any of the above

Army Form [illegible]

SCHEDULE OF CONVICTIONS BY A COURT - MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and place of trial	Charges upon which convicted	Sentence of Court	Punishment remitted or sentence suspended
		NIL		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 5th day of July 1945

"G W C NELSON" Capt

No. P33589 Name Smith G H | Sqn, Battery, or Company: Ex "Z" "JHS" | Corps | Date of enlistment | OC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 80/PAS/136 (5419)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	31Jan45	Pte		WOAS Failing to comply with an order given to him by his superior officer AA Sec 40	CSM Raistrick "	For 15 days pay PR&I 143(2)	1 Feb 45	Maj.ED McRae ED	

Certified true copy of the original document

"G W C Nelson" Capt
Officer having custody of
Regimental Books.

(PTO)

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F 33589 Pte Smith G.H. 25 Cdn Spec. Employ. Coy.

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 40	Not Guilty	Guilty	
2nd AA 9 (1)	Not Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present ~~under sentence~~ for 6 M.S. beginning on ~~(date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 78 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be Imprisoned - Without hard labour - for one (1) year.

(Sgd) [illegible] Judge Advocate, if any. 5 July 45 Date awarded. (Sgd) J.A.Stewart Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the finding of the Court on the first charge. I do not confirm the finding on the Second Charge. I commute the Sentence to read "To undergo detention for Six (6) Months" and I confirm the Sentence as so Commuted.

~~I direct that the accused be released from detention barracks until further orders.~~ (1. AA 57A. Delete if not used.)

(Sgd) [illegible]

Date 18 Jul 45 Commanding [illegible] Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
F-33589 Pte. Smith G.H.	25 July 45.	

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT GMHQ-IN AS 160. 59-135

RECEIVED 1 AUG 1945 JAG BRANCH G.M.H.Q.

CPA86 (1) (Edn. of 1943) 40/P & R Forms (1944)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brigadier W.N. Bostock Comd A. Tps. Area dated 5 July 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
F 33589	Pte.	Gordon Henry	Smith	25 Cdn Spec Employment Coy.

PROCEEDINGS REVIEWED, COMMDG [illegible] Capt J. Rutherford Capt, Actg 43 REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Germany on (date(s)) 5 July 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant finn RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF AF5, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1015 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ [illegible] as interpreter? Ans ~~No Sir~~

The Interpreter is sworn.(1) ~~Do you object to~~ [illegible] as shorthand writer? Ans ~~No Sir~~

The shorthand writer is sworn.(2)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No Sir (2)

(1. RP 110. 2. If on objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J.A.S Stewart	21 Cdn Spec Employment Coy
Member	Captain	M.J. Doran	17 Cdn Spec Employment Coy
Member	Captain	A.L. Goldsmith	21 Cdn Spec Employment Coy
~~Judge Advocate~~			
Prosecutor	Lieut	L.A. Williams	25 Cdn Spec Employment Coy
Defending Offr	Captain	H.W.C. Nelson	25 Cdn Spec Employment Coy

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dir p 3.)

A8. The accused F 33589 Pte Smith G.H. before arraignment make(s) (no) ~~no~~ plea(s). (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or on bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in All rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 62; when several accused so be tried separately see RP 71(C), and use separate copies of CF 88s to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 2 A E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p ■ 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*I. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. .....(5)
(*I. RP 37(E). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*I. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*I. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(*I. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to 8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*I. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*I. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Fill here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. No .....(1)
(*I. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) opening address.(1)
(*I. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*I. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*I. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. Sworn Statement. Do you intend to call witnesses on your behalf ? Ans. No. Are they witnesses as to character only ? Ans. No.
(*I. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*I. RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*I. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1) D9. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*I. AA 54(3) (6), RP 45, 120(A). 2. AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1) Ans. No
(*I. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statements(s) as to Character and Particulars of Service(2), and certified true copy (copies) of Conduct Sheet(s)(3), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 4 and Ex 5 respectively.(4)
(*I. AFB 255 or AFB 296. 2. MAM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. [illegible] .....(2)
(*I. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*I. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*I. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 40, 44 and its generation, is to be awarded as to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-52, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(f), 68(1), KR Con 564. 2. RP 30. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

THIS IS TO CERTIFY THAT I HAVE THIS DAY EXAMINED
F-33589 Pte. Smith G.H., AND THAT HE IS FIT TO UNDERGO
TRIAL BY COURT MARTIAL.

In the Field.
5 July 45.

(T.C. Rubin) RCAMC. Capt.

CHARGE SHEET

F-33589 Pte. Smith G.H. on strength of 25 Cdn. Special Employment Coy., a soldier of the Canadian Army Overseas.

IS CHARGED WITH

FIRST CHARGE.
A.A. Sect 40

While on Active Service, conduct to the prejudice of Good Order and Military Discipline.

in that he

In the Field, on 16 April 45 said to B-70193 Sgt. Brown, K.W., his superior officer, " I would rather be placed on charge than work in the kitchen" or words to that effect, well knowing that he had been detailed for kitchen fatigue.

SECOND CHARGE
A.A. Sect 9(1)

While on Active Service, disobeying in such a manner as to show a wilful defiance of authority, a lawful command given to him personally by his superior officer in the execution of his office,

in that he

In the Field, on 26 May 45, when ordered personally by L-10081 Sgt. Beresowski, J.W., in the execution of his office, to go to work, did not do so, stating at the same time that he was not going.

(G.W.C. Nelson) Capt.
A/Officer Commanding
25 Cdn. Special Emp. Coy.

In the Field.
19 June 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(W.H. Bostock) Brig
Comd A Tps Area, First Cdn Army

Field
27 Jun 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 67(5).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F-33589	Pte		Gordon Henry	SMITH	25 Cdn Spec Employment Coy

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 27 Jun 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ (AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~ (RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
MAJOR	J H STEWART		21 Cdn Spec Emp Coy

MEMBERS.

CAPTAIN	N J DORAN		17 Cdn Spec Emp Coy
CAPTAIN	A L GOLDSMITH		21 Cdn Spec Emp Coy
(Rank.)	(Named or detailed. RP 106.)		(Unit.)

WAITING MEMBER.

LIEUT	J G MACKAY		17 Cdn Spec Emp Coy
(Rank.)	(Named or detailed, if any. RP 106.)		(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)		(Unit.)

On Active Service in the Fd

in Holland (Country.)

Dat 27 Jun 45

(Signed personally, ~~RP 105 (n 2)~~)

(W N Bostock)

Brigadier (Rank.)

Commanding A Tps Area, First Cdn Army

Convening Officer

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A CFA 98 (1st Supp. of AFA 5) 40/P & S/1601 (6143)

CHARGE I F 33589 PTE SMITH G.H.

First witness for the prosecution.

B 70193 SGT. BROWN K.F. C.I.C. attached G 25. C.S.E.C. sworn, states:-

During the month of April 1945 I was employed as a section commander with 25 C.S.E.C. I recognise the accused as F. 33589 Pte Smith G.H. He was in my section. On the morning of 16 April 45 at approximately 0800 hrs I had given the name of Pte Smith G.H to my corporal as kitchen fatigue. He was not expected on my section parade that morning as he was detailed for kitchen fatigue. When I saw Pte Smith on my section parade I asked him why he had not reported to the kitchen as he had been detailed for that duty. He replied that he would rather be placed on charge than report to the kitchen for duties. I then placed Pte Smith under open arrest.

Cross-Exam

Q1 Did Pte Smith attempt to explain to you why he did not like to work in the kitchen.

A1 He did make an attempt ...

Q2 Would you please explain the attempt.

A2 Four men, including Pte Smith, came to me to complain about kitchen fatigue.

Q3 Was this before or after the aforementioned parade.

A3 This was before the parade.

Q4 Can you tell me the reason given by Pte Smith

A4 I can not remember.

J.H.S.

Q 5. Did you order him to report to the kitchen yourself, personally.

A 5. I won't state that I definitely ordered Pte Smith to report but I told the party, which included Pte Smith, that the M.O. was the only one who could excuse them.

Q 6. Did Pte Smith complain on medical grounds.

Q 6. I think ~~they were~~ he was complaining about the smell of the cooking food.

Q 7. Did you, personally, detail Pte Smith to be on Kitchen fatigue that day.

A 7. Yes, sir.

Exam by Court

Q 1. Did you order him to go back to the kitchen after he had been on parade

A 1. No, sir.

Q 2. When did Pte Smith tell you that he would sooner be charged than do kitchen fatigue

A 2. On the kitchen parade

R.P. 43(B) complied with

CHARGE I F 33569 PTE SMITH G.H.

First witness for the Defence

B 4735 TPR PRICE C.H. C.A.C. - attach 25 C.S.E.F.

having been duly sworn, states:-

I wrote Smith, whom I recognise as the accused, served with me in Tournai, Belgium with 25 C.S.E.F. He worked in the kitchens with me but had to be removed because he was always feeling ill. He was given light jobs to do.

Cross-Examined.

Q.1. Did Pte Smith serve in same section with you

A.1. no. Sir

Q.2. How many times did Pte Smith work with you in the kitchen

A.2. Once that I know of

Q.3. Who ordered Pte Smith away from the kitchen at that time

A.3. It was one of the company sergeants.

Q.4. Do you know why that sergeant took Pte Smith away from the kitchen.

A.4. Because Pte Smith was feeling sick at the time.

Exam By Court

R.P. 63(B) complied with.

JMS

CHARGE 2 F 33589 PTE SMITH G.H

Sworn Statement of Accused

F 33589 PTE SMITH GH C.I.C. attached 25 C.S.H.C. Sworn. States.

On the morning that I was detailed. 16 Apr 43 - the section corporal told me I was on Kitchen fatigue for that day. I told the corporal I couldn't work in the kitchen because I got sick. He told me that I would have to see Sgt Brown. Another man and myself saw Sgt Brown. The other man - Gnr Bussey - stated his complaint and the Sergeant got mad and told us to get out of the room and not to bring the damn complaints to him. I left the room and went down on parade where Sergeant Brown asked me why I did not report to the kitchen. I told him I could not work in the kitchen because I could not stand it. Sgt Brown told me that if I did not go I would be put on charge. I told him that I would rather be put on charge than work in the kitchen.

Examn by Court

Q. Did Sgt Brown tell you that the M.O was the only one that could excuse you.
A. No Sir.

Q. Did you make any attempt yourself to see the M.O. to get excused from Kitchen fatigues
A. No Sir.

JHH

Q 3. What do you mean by the statement that you "can't stand" to work in the kitchen.

A 3. They have blowers going in the kitchen and the fumes make me sick with a head-ache.

Q 4. On previous occasions when kitchen fatigues made you sick did you report to the M.O.

A 4. No, because the other times the sergeant did not make me report to the M.O.

Q 5. Had you ever been on sick parade for that particular complaint.

Q 6. No sir.

Q 7. How often have you been taken out of the kitchen on account of sickness

A 7. Once before

R. P. ¶ 3. (B) complied with

CHARGE II F. 23559 PTE. SMITH C.H

4/10081 Sgt Borsowski J.W. on the 25th day of May 25 C.S.E.C. sworn states

I am Sgt Borsowski in charge of Guard Room, and Regimental Police of 25 C.S.E.C. On the 25th day of May I paraded the men for custody at 1730 hrs. for work. I lay all charges to work until the exception of Pte Smith, Pte Massey, Gnr Briscoe I then gave them a direct order, which was definitely refused. I also gave a separate order to each of the men in question. This order included the accused, whom I now recognize as Pte Smith. Pte Smith replied that he did not have to work, as he was not yet undergoing sentence. I then dismissed the soldiers in question to the guard room.

Cross Examination by Defence

Questions by Prosecutor

Question

(1) Is it correct that Pte Smith, who was awaiting trial was housed in the same room as those undergoing sentence

Answer

Yes

Question

(2) Is it true that Pte Smith was made to work the same hrs. and do the same kind of work as personnel undergoing sentence

Answer

Yes

(3) Question

Was this extra work a punishment in that it was carried out after the rest of the day had completed its daily duties

Answer

This work was carried out as per guard room standing orders, 25 C.S.E.C.

(4) Question

Do these standing Orders differentiate between personell awaiting trial and those undergoing sentence

Answer

No

Question by Prosecution
Question

App. How much longer after supper were men in mine body required to work.

Answer

9 hrs were required to work until 2100 hrs.

Question by Court Cross Examination by Court

Question

On an average how much work did the men do after supper

Answer

The men worked on an average of 1½ hrs per night. There were nights when they did not work at all. —

RP 83(E) complied with

JHS

Q.H. 11
Pte. Smith

Statement by accused
F/33589 Pte Smith C.R. on the strength of 25 C.S.E.C.
Sworn states

From Pte Smith 5725 C.S.E.C. I asked Sgt Berezowski to have me paraded before the C.O. ~~this was about~~ this was about a week before the 26 May 45. I was paraded before the Major, and asked the Major if I was doing F.P. or awaiting Court Martial and said that I did not mind doing a normal days work, but I did not like working after supper. The Major said that if the Sgt wanted me to work I would have to work.

Cross Examination by Prosecutor

Question
Q On the 26th of May were you on the parade that Sgt Berezowski called and you refused to go to work when he told you do so
Answer
Yes

Question
Q

Cross Examination by Court
Question
Q How much extra work did you do
Answer
We did on the average of two hrs a night

Question
After being paraded to the major, and after you had him told what to do on what grounds did you refuse to go to work

Answer
I did not feel that I had to do extra work because I was awaiting trial by Court martial, and not doing Field P.

R.P. 92(2) COMPLIED WITH

JAS

Summing Up for the Prosecution

The charge on which the Accused is before this Court-Martial is (1)disobeying (2) in such a manner as to show wilful defiance of authority (3) a lawful command (4) given him personally (5) by his superior officer (6) in the execution of his office.

Five of these points are directly proven by the evidence which you have heard The only one on which there is any question is whether or not the command given was a lawful command.

K.R.(Can) Sect 452(d) says in effect that care will be taken that soldiers awaiting trial are not required to do more work than they would have to do if they were not in custody. But the question of whether a lawful command was given or not is a different question. If the command had been given during ordinary duty hours there would have been no doubt that it was lawful. therefore. I think it is up to the court to decide whether or not it was lawful in these particular circumstances. Would it have been a lawful command if given to a soldier not in custody? I leave it to the military knowledge of this Court-Martial to decide.

J.H.S.

Defence Summary. CHARGE 15

F-33589 Pte. Smith G. H.

Facts brought out by Sgt. Beresowskie evidence.

1. Personnel under sentence and awaiting trial were.

(a) Housed in same room.
(Contrary to K.R. Can 611)

(b) Made to work the same hours and do the same work (Contrary to K.R. Can 452 (d))

(c) Made to do work that was a punishment in that if accused after recognized working hours for the rest of the Company except those undergoing F.P. (Contrary to K.R. Can 452 (d)).

(d). Were ordered to work after supper on Sat. 26 May 1945 despite the fact that the rest of the company, except those in custody, ceased working at noon, as is the unit custom (Contrary to K.R. Can 452 (d)).

(e) The order, therefore, was unlawful because it was an order that would have resulted in work that is admittedly a punishment reserved for men undergoing F.P.
(Contrary to K.R. Can. 452 (d))

Mahon Capt.
Z.D.C.S.E.C.

He belies Not Guilty;

Plea For Mitigation CHARGE II

F-33589 Pte Smith, G.H.

The accused has served in the Cdn. Army for about 2 yrs and to date has only one entry on his M.F.M. 6.

The undoubtedly felt in each instance a feeling of being wronged and after asking for redress in the case of being paraded before the Major and receiving none, he felt worse.

I don't feel that any evidence has been brought forth to prove spite or deliberate hatred in the accused & I feel the accused was definitely wronged as in K R Can 452(d).

The boy has in custody a considerable period of time & has indeed, served his pudgment by his treatment while awaiting trial.

I trust the Court will use considered pudgment & leniency in this case.

Thank you Capt
25 Cdn Sec.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	Rank.	Name.	Regiment (or as the case may be).
F-33589	Pte	Smith G.H.	25 Cdn.Spec.Emp.Coy.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, precedence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.A. Sect 40 — One times.

For _____ times.

For _____ times.

For _____ times.

Date of first entry in Field Conduct Sheet 31 Jan 45

Date of last entry in Field Conduct Sheet 31 Jan 45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. The accused at the present time is under sentence for N/A

beginning on the N/A day of N/A

4. The accused has been awaiting trial on the present charges for _____ days in civil custody; and for 78 days in military custody, *viz.*, NIL days in open arrest, 78 days in close arrest; of which ~~NIL~~ 10 days were spent in hospital.

19 Apr 45
close arrest
78 days.

5. The present age of the accused is 20 Years 5 Months

6. The date of his attestation is 31 Aug 43

7. The service which the accused is allowed to reckon is 1 Year 10 Months

8. The accused is in possession of† CVSM & Clasp.

9. *If the accused is a warrant officer or N.C.O.*: The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of N/A	
In the war substantive rank of N/A	
In the acting rank of N/A	

*State cut if not applicable.

†State the military decorations or medals held by accused.

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(*23672) W1.30732/3761 $2,000 9-44 A.& E.W.Ltd. Gp.698

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		NIL		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 5 TH day of July 1945.

MFM 6
(AFB 122)
81/HQS/156 (3458).

No F-33589 Name Smith G.H. | Sqn, Battery, or Company | Corps | Date of enlistment | GC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	31 Jan 45	Pte		WOAS: Failing to comply with an order given to him by his superior Officer A.A.Sec 40	C.S.M. Raistrick W.	Forfs 15 Days pay FR&I 149 (2)	1 Feb. 45	Major D. MacRae E.D	

Certified true copy of the Original Document.

Officer having custody of Regimental Books.

(PTO)

Summary of Evidence in the case of F-33589 Pte. Smith, G.H. on the strength of 25 Cdn. Special Emp. Coy, a soldier of the Cdn. Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on Oath.

FIRST WITNESS
for the prosecution

L-22473 Cpl. Pichette, W.W., on strength of 25 Cdn. Spec. Emp. Coy, a soldier of the Cdn. Army Overseas, having been duly sworn, states asfollows:- On the morning of 16 April 45, about 0730 hrs, I warned Pte. Smith, whom I now recognize to report to the kitchen for duty. Pte. Smith [redacted] complained of this duty, and I told him to report to Sgt. Brown. That same morning on parade at 0830 hrs Sgt. Brown warned Pte. Smith to report to the kitchen and Pte. Smith said he would sooner be placed on charge than go to the kitchen.

The Accused declines to cross-examine this witness.

W.W. Pichette
(W.W. Pichette) Cpl. L22473

SECOND WITNESS
for the prosecution

B-70193 Sgt. Brown K.E., on strength of 25 Cdn Special Emp. Coy, a soldier of the Cdn. Army Overseas, having been duly sworn, states as follows:-
At approx. 0730 hrs 16 April 45 I gave Cpl. Pichette the names of four men from my sec. to be detailed for kitchen fatigues. The name of Pte. Smith, whom I now recognize, was one of these, on Section Parade at 0830 hrs. Pte. Smith was present. At this time I asked him why he wasn't at the kitchen. He told me that he would rather be placed on charge, than work in the kitchen. I then placed Pte. Smith under Open Arrest.

The Accused declines to cross-examine this witness.

K.E. Brown
(K.E. Brown) Sgt. B70193

The Accused declines to cross-examine this witness.

The Accused does not wish to call any witnesses at this time.

The Accused was cautioned as follows: Do you wish to make any statement, or to give evidence on oath? You are not obliged to say anything, or give evidence unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence.

The Accused declines to make a statement and reserves his Defence.

I certify that the foregoing Summary of Evidence consisting of 2 pages was taken down by me in the presence and hearing of the Accused, and that Rules of Procedure 4 (c)(d)(e)(f)(g) have been complied with.

T.A. Williams Lieut.

(T.A. Williams) Lieut.
Officer detailed to take the Summary of Evidence.

In the Field.
1 May 45

Summary of Evidence in the case of F-33589 Pte Smith G.H. on strength of 25 Cdn.Special Emp.Coy., a soldier of the Cdn.Army Overseas.

By direction of the Commanding Officer, this summary of Evidence is taken on Oath.

FIRST WITNESS
for the Prosecution

L-10081 Sgt Beresowski J.W. on the strength of 25 Cdn. Special Emp.Coy., a Soldier of the Canadian Army Overseas having been duly sworn states as follows:-
I am the Sgt in charge of 25 Cdn.Special Emp.Coy Guard Room and the Regimental Police, at approximately 1730 hrs 26 May 45, I called a parade of all soldiers in custody for the purpose of cleaning out around the immediate vicinity of the Guard Room Barracks inside the compound, such as putting the tools they had used during the day in proper order and picking up a bit of wood which had been left scattered around the compound. When the parade was lined up I gave an order as to what was to be done. All went to work with the exception of Pte. Massey, Gnr. Briscoe, and Pte. Smith, whom I now recognize. I asked them what the trouble was and the answer was that th they were not going to work. I asked Pte. Smith first and he answered that he was not under sentence and that he was not going to work, so I gave him a direct order: "This is your order. Go to work." These were my exact words. He replied that he was not going. I asked him if he understood or not that it was an order and he answered "Yes." I said:"Are you disobeying this order,"and he answered"Yes." These questions and answers were in the presence and hearing of Pte. Massey and Gnr Briscoe. The three of them were side by side on parade as they had fallen in that way. I then asked Pte Massey and Gnr Briscoe if they understood the order. Both answered "Yes." Pte Massey said that as far as the Army was concerned he was still innocent and did not have to go to work. I then dismissed the three of them to the Guard Room Barracks.

The Accused declines to cross examine this witness.

J.W. Beresowski

(J.W.Beresowski) Sgt. L-10081.

SECOND WITNESS
for the Prosecution

H-40958 A/Cpl Cadotte L.J. on the strength of 25 Cdn Special Emp Coy a soldier of the Cdn.Army Overseas having been duly sworn states as follows:-
I am Corporal in charge of the Regimental Police of 25 Cdn.Special Emp.Coy.
On the 26 May 45 at approximately 1730 hrs Sgt Beresowski called a parade of all soldiers under sentence or awaiting trial to pick up the tools they had been using during the day. I was present at that parade. The Sgt gave them their orders to go and pick up the tools and put them away, all but three of them moved away to obey the order. Pte Massey, Gnr Briscoe and Pte Smith whom I now recognize remained standing there and did not obey the order. The Sgt went to Pte Smith and said "You will pick those tools up. Thats an order I'm giving you" or words to that effect. Pte Smith said " I'm going to disobey this order. I am not going to work after supper" or something like that. He also said" What are you going to do about it? Put another charge in. It aint worth a damn. It won't stick, or words to that effect. The Sgt asked if I heard that remark, and I said yes. Then the Sgt went to Pte Massey and Gnr Briscoe. He said he was giving them an order to go and pick up the tools. Pte Massey said that he was going to disobey the order, he

J.W.B.

wasn't going to work after supper, he wasn't sentenced. Gnr Briscoe said that he refused the order also.

The accused declines to cross examine this Witness.

L.J. Cadotte
(L.J. Cadotte) Cpl. H-40958.

THIRD WITNESS
for the Prosecution

B-145870 Cdm Slaght G.P. 25 Cdn.Special Emp.Coy a soldier of the Canadian Army Overseas having been duly sworn states as follows:-
I am a member of the regimental police of 25 Cdn.Spec. Emp.Coy. At approximately 1730 hrs 26 May 45, I attened a parade which had been called of all soldiers in curtody. Sgt Beresowski of the regimental police was in charge. The men on parade were ordered by the Sgt to clean up around the Guard Room Barracks and pile up some wood at the back. Everyone went to work except Pte Massey, Gnr Briscoe, and Pte Smith whom I now Recognize. They refused to go to work. The Sgt asked them if they knew what they were doing, that they were refusing to obey an order, and they said "Yes". He asked each one seperately and all of them answered "Yes".

The accused declines to cross examine this witness.

G.F. Slaght
(G.F. Slaght) B-145870

The accued was duly cautioned as follows:
Do you wish to make any statement or to give evidence upon Oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say ,or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make any statement and reserves his defence.

Certified that this summary of evidence consisting of 2 pages, was taken down by me in the presence and hearing of the accused on 28 May 45 and that Rules Of Proceedure 4 (c) (d) (e) and (f) were complied with.

J.A. Williams Lieut
Officer detailed to take the Summary of Evidence.

IN THE FIELD
28 MAY 45.

I desire that an Officer be assigned as Defending Officer, to represent me at my Trial.

1 May 45.

(G.H. Smith) Pte. F33589

G.H. Smith F33589

4K33.
Pte (L/Cpl). Smith G.H.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K-50311 Pte (L/Cpl) G H Smith, 1 Cdn Med Regt Pl RCASC.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	NOT GUILTY	GUILTY	OF THE CHARGE EXCEPT that he did not desert CAF Canada "Attached to the Frontier to the Field Force"
2nd	NOT GUILTY	GUILTY	
3rd	NOT GUILTY	GUILTY	
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ~~beginning on (date)~~ (1) N/A

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 8 days, of which Nil days were spent in hospital.(2)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for 90 120 days. WPB

(Sgd) Andre Des Rosiers Capt (Sgd) W J Baillie Maj

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567 577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1) CBR

(1. AA 57A. Delete if not used.)

Date 19 Dec 44 (Sgd) C B Brewer Lt Col

Commanding C RCASC 1 Cdn C Tps

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
K-50311 Pte Smith, G.H. 1 Cdn Med Regt (1) RCASC	28 Dec 44	Addison Capt Adjutant 2 Cdn Reception Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 6 JAN 1945 HEADQUARTERS C.M.H.Q.

RECORDED AT CMHQ IN AB 160 4/K-33

FIELD GENERAL COURT-MARTIAL

CFA&R (To face of AFA) 40/J & S. 1868 (Con) 4/38B

Convened by Order of Lt-Col Whelpton E W Comd 1 Cdn Corps Adm Area dated 13 Dec 44

ACCUSED.

(As to the trial of two or more charged jointly, see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K-50311	Private	Lance-Corporal	George Hubert	SMITH	1 Cdn Med Regt Pl RCASC

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) 15 Dec 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 2F-147

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 1300 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~not~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to J28658 Cpl DF McLeod interpreter? Ans

The Interpreter is sworn.(1) Do you object to HQ 1 Cdn Corps as shorthand writer? Ans NO

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(3). If objection, see procedure AA 51, RP 23, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	W J Baillie	31 Cdn Corps Tps RCASC
Member	Captain	F R Plourde	2 Cdn Spec Emp Gp
Member	Lieutenant	M V Longworth	7 Cdn A/Tk Regt RCA
Judge-Advocate	Captain	AFL DesRosiers	Hq 1 Cdn Corps
Prosecutor	Captain	P J Ivey	81 Cdn Arty Coy RCASC
Defending Offr	Captain	A L Cambell	5 Cdn Med Regt Pl RCASC

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. Lists of offrs under instr will be returned separately with proceedings for information of Govt Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 33.)

A8. The accused K-50311 Pte(L/Cpl) G H Smith before arraignment make(s) (no) (~~a~~) plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in All rank and name of the accused making the plea.)

A9. The accused is ~~not~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~not~~) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 30, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is cleared and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS. MPJ

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty to* [illegible] *thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or his authy complies with para 2(I) above by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.[2]

(*1. RP* 35 *fn* 2. *2. MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).[1] If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]

President to accused: Do you wish to make a statement? Ans.....[5]

(*1. RP* 37(*B*). *2. RP* 37(*D*) *fn* 6. *3. RP* 35(*B*) *fn* 3 *para* 3; *MML p* 54 *para* 47. *4. See para* E3 *of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.[1] The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.[1]

(*1. RP* 25(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.[1]

(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charge(s) on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]

(*1. RP* 37(*A*) (*E*).)

C2. The charge(s) on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No.....[1]

(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (~~no~~) opening address.[1]

(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.[1]

(*1. RP* 39(*C*), 114, *KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. ~~The Prosecution is closed (:) The Defending Offr submits that there is no case for the Prosecution (does not~~ establish a prima facie case against the accused on the.....charge(s).[1] The Court is re-opened, and the President announces that the submission is closed, and considers the submission.[2] The Court is (~~not~~) satisfied that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on (~~the~~) charge(s).[3]

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. *4. Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn, and you will not be subject to cross-examination.[3] But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.[4] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. Sworn Evidence. Do you intend to call witnesses on your behalf? Ans. Yes. Are they witnesses as to character only? Ans. No.

(*1. RP* 115. *2. RP* 40(*A*), *see* 80(*D*). *3. RP* 40 *fn* 10. *4. RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1]

(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* 895. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.

(*1. RP* 42, 117(*A*). *See Notes in Part I of Schedule. 2. RP* 44(*E*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.[1] (~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated: Part I of the Schedule is dated and signed.~~)[2]

(*1. AA* 54(2) (*d*), *RP* 45, 120(*A*). *2. AA* 54(2), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?[1]

Ans. Call Witnesses as to Character.

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service[1], and certified true copy (copies) of Conduct Sheet(s)[2], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. B and Ex. C respectively.[3]

(*1. MFB* 355 *or MFB* 296. *2. MFM* 6. *3. RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?[1] Ans. Yes. Sentenced to Prison and [illegible]

(*1. RP* 37(*C*), 46(*D*). *2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the question of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]

(*1. AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.[2]

(*1. When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty: RP* 48. *As to sentences see AA* 44, 138, 182. *RP* 46-50, 69, 118, 119(*A*), *KR Con* 308, 330, 563-566, *Overseas RO* 309, 2323. *MML p* 86, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), 68(7), *KR Con* 564. *2. RP* 52. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see inserts on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, K-50311 Pte (L/Cpl) George Hubert SMITH, 1 Cdn Med Regt Pl RCASC, a soldier of the Canadian Army Overseas, is charged with:-

First Charge
Section 8(2)
Army Act.

WHEN ON ACTIVE SERVICE, STRIKING HIS SUPERIOR OFFICER

in that he

In the Field in ITALY at approximately 2100 hours, on 7 Dec 44, struck with his fist in the face, L-7270 Cpl E T Carson of 1 Cdn AGRA Postal Detachment, whilst in his quarters in the Field Post Office.

Second Charge
Section 24(4)
Army Act.

WHEN ON ACTIVE SERVICE, WILFULLY INJURING PUBLIC PROPERTY

in that he

in the Field in ITALY at approximately 2100 hours, on 7 Dec 44, whilst in the Field Post Office at 81 Cdn Arty Coy Maintenance Area, did wilfully break one (1) Lamp, pressure, parafin, Tilley, public property.

Third Charge
Section 40
Army Act.

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field in ITALY at approximately 2100 hours on 7 Dec 44 did improperly force an entry into the 1 Cdn AGRA Field Post Office building at 81 Cdn Arty Coy Maintenance Area by smashing down the door.

(W C R Sergent) Captain
A/Officer Commanding
81 Cdn Arty Coy RCASC.

In the Field
9 Dec 44.

To be tried by Field General Court Martial.

(E W Whelpton) Lt-Col
Comd 1 Cdn Corps Adm Area

In the Field
13 Dec 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
K-50311	Private	L/Cpl	George Hubert	SMITH	1 Cdn Med Regt Pl RCASC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 13 Dec 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	W J Baillie		31 Cdn Corps Tps Coy RCASC

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Captain	To be detailed by HQ 2 Cdn Spec Emp Gp		
Capt or Lieut	To be detailed by OC 7 Cdn A/Tk Regt RCA		

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lieut	To be detailed by OC 81 Cdn Arty Coy RCASC		

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
Captain	A P L DesRosiers		ADJA 1 Cdn Corps

On Active Service in the Fd

in ITALY (Country.)

(E W Whelpton) Lt-Col. (Signed personally. RP 105 fn 2) (Rank.)

Date 13 Dec 44

Commanding 1 Cdn Corps Adm Area
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (Para 1 to Dec of AFAS 80-7 & 8/1945) (See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

K.R. (Can.) Para 557

A2

I certify that I have this morning examined No. K50311 L/Cpl. Smith, G.H. of 1 Med Regt Pl, RCASC and in my opinion he is fit ~~unfit~~ to undergo trial by court-martial.

Station Arezzo

Date 15 Dec 44

[signature] Capt
Medical Officer

FGCM proceedings in the case of K-50311 Pte (L/Cpl) Smith, 1 Cdn Med Regt Pl RCASC

First Witness for the prosecution:- C-21439 Cpl Bouchier, L P, 1 Cdn AGRA Postal Detachment, being duly sworn, is examined by the prosecution:

Q-1 Will you identify yourself to the court?
A-1 I am C-21439 Cpl Bouchier, L P, 1 Cdn AGRA Postal Det.

Q-2 Will you describe to the court the events of the evening of 7 Dec 44?
A-2 On the night of 7 Dec 44 at about 2100 hours L/Cpl Smith forced his way into the post office by breaking down the door. The hinges were broken off. There was a chair thrown from one room to the other breaking the Tilley pressure lamp . The pressure lamp fell on my bed setting fire to my tunic. There was a couple of chairs broken and a table. I was outside when this thing started by came inside while it was going on. I was at the door when it started.

Q-3 Did you actually see the accused strike the door or attempt to break it down?
A-3 When it was broken down I could not see who did it but the door was smashed. When the door was smashed Cpl Smith and Pte Heinrichs came into the room. There was nobody else with them at that time. I saw them burst into the room.

Q-4 Had you seen the accused and Pte Heinrichs previous to the time they broke down the door?
A-4 Yes they had been there earlier. When they were in previous to that Cpl Carson was talking to them. Pte Heinrichs pulled a knife at that time. He was threatening everybody with the knife.

Q-5 Did you hear the conversation between Cpl Smith and Cpl Carson at that time?
A-5 The conversation was between Cpl Carson and Pte Heinrichs. It was he who had been threatening everybody.

Q-6 Did Cpl Carson order L/Cpl Smith and Pte Heinrichs out of the PO?
A-6 He was trying to get them to leave peacefully but I did not hear him order them out. The accused had been drinking but he was not drunk. I could tell that he had a few drinks -- I can't say why. It is possible he had not had a drink at all I can't say I smelled his breath. I would say there were normal. They had mentioned drinking so I presumed they had had a few drinks. There wasn't anything else about their face or appearance or the way they walked that would lead me to think they had been drinking.

Q-7 During the fight that followed did you see L/Cpl Smith or Pte Heinrichs throw a chair and break the lamp?
A-7 I can't say who threw the chair. It must have been one or the other. Ther was only the two of them. The rest of the fellows had gone out.

Q-8 Were you threatened in any way at all by L/Cpl Smith?
A-8 I didn't have anything to do with them at all.

XX'd by the Defence

Q-9 On the night in question you were in the quarters of the postal department?
A-9 That is right sir. There were eight others besides myself in the room. We were having a little party or or less. We had some friends of ours in which we do sometimes and we had a few bottles of beer that we were drinking between us. We had about two bottles apiece. It was the beer

we had saved from several issues. We had no vino to drink there. Ther was no drunk. I believe there is a place where you can buy vino a few doors from the PO.

Q-10 You were there the whole evening?
A-10 Yes.

Q-11 Is it true that in the first instance when Cpl Smith came into the postal quarters that he knocked on the door and was admited?

A-11 No, Smith and Heinrichs walked in by themselves with a couple of other people. They did not knock and were not admitted.

Q-12 Then Cpl Smith came through the door three times that evening. The first time the door was not locked and they walked in? Did they have a drink with anybody in there?

A-12 Sufferin handed one of them a bottle of beer and he had a drink out of it.

Q-13 You say you did not see the chair thrown, but they must be the ones who threw the chair, yet there were eight or nine other people there?

A-13 When the fight started the other people ran out through the other room in the postoffice. As you enter the quarters there is a counter. The lamp was hanging over this counter. The accused was outside this counter and the party was going on beyind the counter. The party had been going on on both sides until the fight started, then we all went beyind the counter.

Q-14 You say that Pte Heinrichs had a knife and was threatening some people. Did you also see Pte Nicols who was at the party with you pick up a gun and threaten Cpl Smith?

A-14 No, I did not see that. I saw Pte Heinrichs with the knife but I did not see anybody pick up a gun. I though I was the only one there with a gun.

Q-15 Do you not all have weapons in your quarters?
A-15 Yes. I believe I would have seen Pte Nicols pick up a gun if he had done so.

Q-16 A soldier threw a chair and then everybody but the accused and Pte Heinrichs disappeared from the room?
A-16 Yes, that is right. I was the last to leave the room, I am sure of that.

Questioned by the JA

Q-17 You live in the same building as the post office. Does one have to go into the post office to get into your quarters?

A-17 No. There is an entrance from the rear directly into our quarters.

Q-18 At what time did the accused first come to the building th that night?

A-18 About 9:30.

Q-19 What entrance?
A-19 The back entrance. The door was open at that time. They came in the door but there was not trouble at that time. We asked on of the lads with them if he would take them away. They went out but they came back after they had gone about 24 yards away from the house. When they came back the door was open. Cpl Carson had opened the door and he was struck at the time. I did not see Cpl Carson struck but I saw marks on his eye. His left eye. That was the second time they were there.

Q-20 Did they come in?
A-20 Yes, they came in and stayed for 15 or twenty minutes. A fight started. Pte Heinrich threatened a couple of the chaps with a knife. Cpl Carson was in the fight, with Cpl Smith and Pte Heinrichs. The fight did not last long because the light was broken at that time. Everybody went out after the light was broken. Cpl Smith and Heinrichs left. Everybody had gone, there was only Pte Nichols and myself left. I was the last to leave. I saw the accused again when they pushed in the door after that. That was about ½ hour after. They broke in the door of the rear entrance. The door was closed and bolted then. After the fight had started on the second visit and the room was cleared I was the last to leave. I only went into the post office part. Nichols was there and we came back in and bolted the door and went back into the post office. There is an entrance between our room and the post office. There is no door. It is just an adjoining room. They broke the hinges off the door the third time in. I can't say for sure which one of them was the first in the room. At that time I picked up my rifle and as they started to break the door in I moved into the other part of the PO.

Q-21 How do you know it was them if there was no light?
A-21 I saw them as they were coming in. I saw them by the light of the candle which I had lit. Both Cpl Smith and Pte Heinrichs came in. I don't know who came in first. They both seemed to come in together.

Q-22 What did they do inside?
A-22 They went into the PO and from the conversation which took place between them I understood that they realized they were in a post office and decided to get out. They had gone through our part of the house and into the post office.

Q-23 Did you fire any shots?
A-23 They went outside by themselves. I fired one shot after with the armed guard who came.

Q-24 Do you remember anything about the accused condition when he came back the third time?
A-24 No, I can't because it was very dark. His speach appeared to be quite normal. I do not remember seeing him walk before but I imagine it was his normal gait.

In the opinion of the Court and the JA it is not considered necessary to comply with RP 83(B).

THE WITNESS WITHDRAWS.

Second Witness for the Prosecution: H-51931 Pte N Stephens, 1 Cdn Med Regt PI RCASC, being duly sworn is examined by the prosecution:

Q-25 Will you identify yourself to the court?
A-25 I am H-51931 Pte N Stephens, 1 [illegible] RCASC,

Q-26 Will you tell the court what happened on the night of 7 Dec 44 with regard to your activities.
A-26 I was down to vist the boys at the FPO, when at about 8:30 in the evening L/Cpl Smith and Pte Heinrich walked into the building. They just walked in. They did not force their way. Cpl Carson, Pte Conley, and I can't remember who else were there. There were about seven or eightof us in all. I can't say the exact lot.

They came in and talked to Cpl Carson about coming into the room. Cpl Carson did not want them there. He asked Pte Girard if he would take them out. They left and Cpl Carson went out behind them a few seconds later. After two or three seconds Cpl Carson came back in through the door. He seemed to be pushed through the door. I did not see what happened. All I could make out was that he had been pushed through the door. L/Cpl Smith and Heinrichs came in and I saw them talk for a few minutes. I saw L/Cpl Smith lift the chair and break the lamp. Cpl Carson was pushed in. L/Cpl Smith and Heinrichs had followed right beyind him. The only thing I saw when they came in was L/Cpl Smith lift the chair and break the lamp. After the lamp was broken Cpl Carson came with me and he asked me to get Cpl Mader. I got Cpl Mader and I took over his guard from him. Cpl Mader went away with Cpl Carson. I stayed on guard and did not go back to the PO at all. I have been down to the post office before this particular night. I go down about twice a week and I have never saw anything unusual happen there previously.

XX'd by the Defence

Q-27 The first time Cpl Smith and Pte Heinrichs came into the room did they knock on the door or did they just walk in?

A-27 They just walked in. The door wasn't locked.

Q-28 Did you see them have a drink with anybody.

A-28 No. I do not think it would be possible for them to have a drink without me seeing them.

Q-29 You recall Pte Girard who came in with the two of them had been requested to ask them to leave?

A-29 Yes. They left and a few minutes later Cpl Carson followed them out.

Q-29 A few minutes later Cpl Carson and the two of them came in again. Was that the time the door was broken?

A-29 No. On that occasion the door was just closed, not latched.

Q-30 How did carson get in them?

A-30 He just came in when the door came open when he came up against it. The door wasnIt broken at all.

Q-31 Before Girard, Smith and Heinrichs came in what were you people doing in the PO?

A-31 We were just spending the evening. Just a quiet evening with a game of cards. We had a glass of beer or two. We all brought some beer with us. We did not have any vino in the room. We had our beer from two, possibly three, issues. We would have had two or three bottles of beer appiece to drink that evening.

Q-32 In the facas in the postal quarters you said you saw
A- Cpl Smith throw a chair. Do you know of any reason why he might have done that?

A-32 No.

Q-33 Did you see Heinrich with a knife.

A-33 No.

Q-34 Did you see Nichols with a gun?

A-34 No.

Questioned by the JA

Q-35 Did you see a fight in there?
A-35 No. There was not fight while I was there. Just Cpl Carson being pushed through the door. [illegible] just before the lamp was broken.

In the opinion of the Court and the JA it is not considered advisable to comply with RP 83(B).

THE WITNESS WITHDRAWS.

Third Witness for the Prosecution: B-84586 Pte H Nichols, 1 Can Med Regt Pl RCASC, being duly sworn, is examined by the prosecution:

Q-36 Will you identify yourself to the court?
A-36 I am B-84586 Pte H Nichols, 1 Can Med Regt Pl RCASC.

Q-37 On the night of 7 Dec 44 will you tell the court where you were, what you were doing and what you saw?
A-37 On the evening of 7 Dec I went up to the postal corps to visit Cpl Carson and Cpl Boucher. We all sat there talking. Cpl Boucher was talking about fishing and hunting. I heard somebody say "What the hell do they want here" and I looked up and saw Cpl Smith and Pte Heinrichs. They went out and Cpl Carson followed out behind them. Cpl Carson came back, being pushed back into the room. I saw him push the door back and bolt it. I then heard Cpl Smith and Pte Heinrichs say "Lets break it down" and then "Are you ready", and then they broke the door down. Pte Heinrich and L/Cpl Smith came into the room. Pte Heinrich started an argument with Pte Conley. I got the argument stopped and Pte Heinrich started to argue with Cpl Carson. Pte Heinrich struck Cpl Carson. I stepped in between them and Pte Heinrich pulled out a knife. I turned around and backed into the other room. I picked up a rifle in the next room and told them to get the hell out of there. L/Cpl Smith picked up a chair knocked the light out with the chair and walked away down the alley. I picked up my flashlight and Cpl Boucer and I went to try and look for Cpl Carson. We went into the post office then we came back. I went up into the lodges -- it is an old theatre -- and I heard them come into the main part of the post office. They realized they should not be there and said "Let's get out of here" so they turned about and went out. I came down and Cpl Bouchier and I went to the station to look for Cpl Carson.

Q-38 When they came back the third time how did they get in?
A-38 They had broken the door the previous time they were in and it had not been closed from that time.

Q-39 How many times did they enter the PO?
A-39 Three times. The first time they just came in. The second time they charged the door and came in. The third time the door was open and they just walked in.

Q-40 Did you see any conversation between Cpl Carson and L/Cpl Smith?
A-40 No that I saw sir. I did not see any conversation between them. When they were out the door the first time they may have had a conversation but I can't say what was going on.

XX'd by the Defence

Q-41 On this night in question besides yourself and Cpl Carson and Cpl Boucher were there any other people in the post office?

A-41 Yes, there were a total of nine of us. I am sure of that.

Q-42 Why were they there?

A-42 We had a party on there. Just a get together. We all had a couple of bottles of beer. We were not drinking vino or anything else. We had been saving up our beer issues.

Q-43 When Heinrich and Smith were outside after the first entrance did anybody else go out with them?

A-43 Cpl Carson went out after them. I don't think there was anybody else went out with him.

Q-44 You said an argument took place outside and Cpl Carson came back in and bolted the door? Are you sure that all three of them did not come back in together.

A-44 No, Cpl Carson came in alone.

Q-45 Did it not appear to you that Cpl Carson had been pushed and then all three of them came in together?

A-45 No.

Q-46 When they came back into the room did you see anything other than an argument between Heinrich and Conely?

A-46 No.

Q-47 Did you see Heinrich with a knife?

A-47 Yes.

Q-47 You picked up a rifle?

A-47 Yes. At that time Cpl Smith picked up a chair and broke the light. Previous to this I had turned around and walked into the other room. I was scared of the knife. I picked up a gun which happend to be there in the room.

Q-48 Is it not possible that Cpl Smith would be frightened by this gun?

A-48 Yes, that is why I picked up the rifle.

Q-49 So that seeing that it was dangerous Smith threw a chair and broke that light?

A-49 That is possibly right.

No re-x'm

Questioned by the JA

Q-50 The first time the two men came that night were you in the PO part of the building or in the billets?

A-50 In the billets.

Q-51 They came into the room where you were?

A-51 Yes, they came in there and stayed for I would say five or ten minutes. They came into the outer room of the billets.

Q-52 Why did they go?

A-52 I can't say.

Q-53 What condition were they in?

A-53 As far as I could see they were in good condition. I did not hear them talk. I did not pay much attention to them.

Q-54 How long was it they came back after they went out?
A-54 About 5 minutes I would say.

Q-55 What happened the second time they came back?
A-55 That was the time that Pte Heinrichs started the argument with Pte Connley. That was the time that Heinrich also struck Cpl Carson. The lamp also got broke at that time.

Q-56 How many times was Cpl Carson hit?
A-56 Only onee by Pte Heinrichs.

Q-57 Where was the lamp?
A-57 Hanging up by the archway over the counter. I was near the lamp. It was right over my head. They had been in the room about two or three minutes. I picked up the rifle and it was just a matter of second before the lamp was broken.

Q-58 Were you hit by the chair?
A-58 No the chair hit the lamp.

Q-59 Did you hear the sound of broken glass?
A-59 It broke the lamp right in two. I did not pay much attention to it.

Q-60 Did you see Cpl Carson after that fight?
A-60 No, not that night.

Q-61 Did you noticed anything peculiar about the accused that night?
A-61 No I did not notice anything different in him than on any other night. I knew L/Cpl Smith before this occasion.

FourthWitness for the Prosecution: A-59907 Pte G R Edwards, 1 Cdn AGRA Postal Detachment, being duly sworn, is examined by the prosecution:

Q-62 Will you identify yourself to the Court?
A-62 I am A-59907 Pte G R Edwards, 1 Cdn AGRA Postal Det.

Q-63 Will you tell the court what you know of the events of the evening of 7 Dec 44?
A-63 On the night of 7 Dec 44 nine of us were enjoying an evening in the post office in our billets. We had approx two or three bottles of beer per man. Cpl Carson had gone out to have a leak and when he came back in he forgot to look the back door to the billets. In the meantime L/Cpl Smith and Pte Heinrichs walked in. After they came in Pte Girard walked in. Cpl Carson had a talk with Pte Girard and Girard got Pte Heinrichs and L/Cpl Smith outside. After they had gone outside Cpl Carson want outside and called Girard over and wanted to know what the score was. I am not sure what was said. The next thing I know was that Cpl Carson had received a blow by one of the two. I saw him as he was coming back in pushed in the door by someone. I do not know who it was After that Conley picked up a bottle and hit Pte Henrichs over the head when he came into the room. I am positive of that. After L/Cpl Smith and Heinrichs got into the room things happened fast.

Q-64 Tell me what happened from the time they and Cpl Carson were outside?
A-64 They were outside. The door was open. Somebody hit Ed Carson pushing him into the room. Just as L/Cpl Smith and Heirich came in Conley hit Heinrich on the head with an empty beer bottle. Heinrich said he was going to get somebody for this for Conley hitting him on the head with the bottle. L/Cpl Smith came into the room with Heinrich. After that I do not know what happened insofar as Smith is concerned.

Q-65 What happened in the room?
A-65 After they were both in the room, regarding L/Cpl Smith, I do not know what he was doing. There was a general mix-up. I was in the back room where I could not see the tilley lamp was broken. I saw a chair come through from the other room and strike it. After that I went outside with Cpl Carson and I can't remember if there was anyone else with us or not. We went up to Cpl Hostedars room.

Q-66 Were you in a fight with L/Cpl Smith or Heinrich at that time?
A-66 Somebody hit me. I was hit twice. I was down on the bed and somebody kicked me in the testicals and I passed out then. I do not know who it was. I was hit twice -- on the cheek and on the nose.

Q-67 What happened in Cpl Hostedar's room?
A-67 After Cpl Mader walked in he was followed by L/Cpl Smith and Pte Heinrichs. There was a general mix-up. Cpl H was lying on the bed. Heinrich and Carson went at it again.

Q-68 Did you notice anything peculiar about L/Cpl Smith?
A-68 I noticed that both L/Cpl Smith and Heinrich hit Cpl Carson in that room.

XX'd by the Defence

Q-69 To go back to the Post Office. You state that you had all two or three bottles to drink? Bottles of beer?
A-69 That is right.

Q-70 L/Cpl Smith and Heinrichs came in while this party was going on?
A-70 Yes. The door was shut but it wasn't locked.

Q-71 They had a drink when they come in the first time?
A-71 Yes they did. Sufferin gave them a drink from a bottle which was sitting on the counter. Just one drink. A little while later Smith and Heinrich left. Cpl Carson followed them shortly

Q-72 They stayed out for a few minutes. How did they come back in?
A-72 Cpl Carson was hit through the door followed by Heinrich and L/Cpl Smith followed Heinrich. I am positive of that.

Q-73 Is it not possible that Cpl Carson walked in under his own steam and bolted the door?
A-73 Not that I can recall, sir.

Q-74 When you went up to Cpl Mader's room there was another general scuffle, in which you were hit and kicked?
A-74 Yes. I do not know who hit me. I do not know who kicked me.

Q-75 In the summary of evidence you gave evidence that Pte Heinrichs hit you? Is that right? Did Pte Heinrich strike you?
A-75 To be frank with you I do not know. I do know that a soldier hit me.

Q-76 When this was taken you were sure it was Pte Heinrichs?
A-76 I have thought it over since. I thought it over after and I realized that I had said that Pte Heinrichs had struck me. I do not know who kicked me in the testicles.

Q-77 You state that you saw L/Cpl Smith and Pte Heinrichs both strike Cpl Carson? Where was that?
A-77 In Cpl Mader's room. It was before I was struck.

Q-78 You do not know who struck you?
A-78 There was a general mix-up. It might have been anybody who struck me. There were a lot of fellows in the room.

no re-x'm

Questioned by the JA

Q-79 Where is Cpl Mader's room?
A-79 It isn't in the same building as the PO. It is about 200 yards away.

Q-80 During the time that you were in the PO building was this back door bolted at any time?
A-80 If it was I was in the other room at the time and did not see it. I can't say.

Q-81 How often did the accused and Heinrichs go into that back room, that night?
A-81 Only twice that I know of. The first time when the latch was left open and the second time. The second time was when the lamp was broken.

Q-82 Is it after that that you were in Cpl Mader's room?
A-82 Yes, Cpl Carson and I were in there. Cpl Mader was on guard and he came into the room followed by Heinrichs and Smith. L/cpl Smith and Heinrichs walked in and Heinrichs said he was going to get Conley. Conley was also with us.

Q-83 Who was in the room?
A-83 There was in the room, myself, Cpl Carson, Conley, the accused and Heinrich and Cpl Hostedar.

Q-84 When did Cpl Mader come into the room?
A-84 Just after Carson, Conley and Myself were talking to Cpl Hostedar. Mader came in followed by Smith and Heinrichs.

Q-85 What happened then?
A-85 Pte Heinrichs went after Conley for hitting him over the head and from there I can't tell you exactly what happened, but I do know that I was hit twice and kicked in the testacles Cpl Carson was hit by L/Cpl Smith and Pte Heinrichs. I can't say who hit him first. It was before I was hit. It must have been because I was knocked out. L/Cpl Smith hit Carson with his fist. He hit him on the left eye. As far as I know he hit him once. Heinrich hit him also. I do not know where Heinrich hit him. He was just about to hit Carson when I turned around so I do not know where he did hit him.

In the opinion of the Court and the JA it is not considered necessary to comply with RP 83(B).

THE WITNESS WITHDRAWS.

Fifth Witness for the Prosecution: L-7270 Cpl E T Carson, I Cdn AGRA Postal Detachment, being duly sworn, is examined by the prosecution:

Q-86 Will you identify yourself to the Court?
A-86 I am L-7270 Cpl E T Carson, HQ i/c 1 Cdn AGRA Postal Det.

Q-87 On the night of Dec 7 will you tell the court where you were and what you were doing?
A-87 I was in my billet and we were having a party. There were nine of us. At approx 2100 hours there was a knock at the door. I went to the door. Pte Heinrichs and L/Cpl Smith came in. Pte Heinrichs had a drink. I do not remember Smith having a drink. Pte Sufferin gave them the drink.

Q-88 What happend after that?
A-88 They left and the door was ajar. There was some talk outside. I went out to see what the trouble was. I spoke to L/Cpl Smith and asked him what the trouble was. I was hit. We came inside.

Q-89 Describe how he hit you?
A-89 I asked him what the trouble was and he just hit me.

Q-90 Who hit you?
A-90 L/Cpl Smith. He hit me on the left eye.

Q-91 What happened after you came back in?
A-91 I don't know. I don't remember anything more about it. I was dazed from the blow. From there I was taken up to Cpl Mater's room to explain to him and L/Cpl Smith and Pte Heinrichs followed Mater up and into the room. I then tried to explain to the boys that I did not know either of them but it did not do any good and I was hit again by L/Cpl Smith. I do not remember anything more after that.

Q-92 Were you hit by anybody else besides Cpl Smith?
A-92 Not that I know of.

Q-93 Can you explain why Cpl Smith might have hit you?
A-93 I have no idea at all.

Q-94 Either the first or the second time?
A-94 I do not know his object at all.

Q-95 Did you provoke him in any way?
A-95 No, I don't think so. I approached him like I would anybody else.

Q-96 When L/Cpl Smith and Heinrichs came to the PO the first time was their behaviour normal?
A-96 Yes, I think it was normal.

Xx'd by the Defence

Q-97 On this perticular night in the PO in your statement in the S of E you stated "At approx 2100 hours 7 Dec the accused and P Pte Heinrichs came to the front entrance of our billets. They knocked and we let them in." What door is that.
A-97 That is the one leading out onto the street.

Q-98 What you call the front door is actually the back door to your billets?
A-98 That is right.

Q-99 You say when L/Cpl Smith and Pte Heinrichs came to the door the first time they knocked on the door and walked in? Nobody let them in?
A-99 I am not quite sure sir.

Q-100 You are quite sure that somebody knocked on the door?
A-100 Yes. I believe they knocked on the door anfwere let in.

Q-101 When they were in Pte Heinrichs had a drink with Sufferin and shortly after that they left. Did anybody go with them?
A-101 No, nobody in the party at all. The two of them left together. That is to the best of my knowledge.

Q-102 They they were outside and you went out to see what the trouble was?
A-102 Yes, as there was some talk outside.

Q-103 The fact that there is talk outside does not necessarily mean there is trouble does it?
A-103 No, sir.

Q-104 Did you call Smith when you went outside or did you just go up to him?
A-104 I can't say. I approached him and asked him what the trouble was but I got no answer -- that is verbally.

Q-105 In the summary you have stated "Shortly afterwards they went outside and stood there talking; I went outside to see what the trouble was. I don't know what words were actually said, but the accused and Pte Heinrick cameb back inside, the accused hitting me in the face." Where were you hit? Was it when you were outside or when you came back into the room?
A-105 Just as I entered the billets.

Q-106 When you were hit what happened to you?
A-106 I was dazed. I fell back onto the door.

Q-107 When you came back in did the other two come with you?
A-107 They followed me in.

Q-108 You did not come in and lock the door?
A-108 No, that marched right in.

Q-109 During the course of the evening what did you have to drink?
A-109 Approx two bottles of beer. I had two bottles.

Q-110 During the fight that arose as you came back in did you see a knife in Heinrichs hand?
A-110 No.

Q-111 Did you see a rifle in Nichols Hands?
A-111 No.

Q-112 Did you see anybody throw a chair?
A-112 No.

Q-113 Were you in the room?
A-113 Yes, but I was "out".

Q-114 Did you happen to see abybody hit Heinrichs with a bottle on the head?
A-114 No.

Q-115 You said that when Cpl Smith and Heinrichs came into the room there was just the two of them? Are you quite sure?
A-115 Yes.

Q-116 When you went out after them did you not see Girard with them?
A-116 No Girard was already outside.

Q-117 You did not see Girard Come in with them?
A-117 No.

Q-118 You missed quite a bit that night?
A-118 Yes, I did.

Q-119 Did you at any time that night bolt the door?
A-119 I never bolt it.

Q-120 Was the door bolted to your knowledge?
A-120 Yes, the second time I understand it was bolted.

Q-121 Did you see it bolted?
A-121 No.

Q-121 Did you see the door later on that night?
A-121 Yes, when I came back. That was approx 1230. The two hinges were broken off and the latch was broken.

In the opinion of the Court and th JA it is not considered necessary to cooply with RP 83(B).

THE WITNESS WITHDRAWS.

Sixth Witness for the Prosecution: F-77257 Cpl V B Mader, 1 Cdn Med Regt Pl RCASC, being duly sworn, is examined by the Prosecution:

Q-122 Will you identify yourself to the court?
A-122 I am Tpt Cpl 81 Cdn Asty Coy MA.
Q-123 Will you describe what happened on the night of 7 Dec 44?
A-123 At approx 2115 hours pte Stephen came up to me while I was on guard at the MA and asked me to go to my room to settle some trouble. I went over to my room. Cpl Smith and Pte Heinrichs came into the room and took over. There was a struggle between Pte Heinrichs and myself. L/Cpl Smith stood back and more or less guarded Pte Heinrichs.

Q-124 What started the row in the room when they came in?
A-124 Pte Heinrichs claimed somebody hit him down at the PO.

Q-125 Did you see L/Cpl Smith involved in this brawl which took place?
A-125 Yes, I only saw him hit the fellow who is in the hospital now.

No x'm

Questioned by the JA

Q-126 Were you in the room when Pte Heinrichs came up together with the accused?
A-126 Yes, there was myself, Cpl Hostedar, Cpl Carson, Pte Edwards, Pte Conley. That is about all.

Q-127 You say there was a scuffle? Who was it between?
A-127 Between Pte Heinrichs and myself first of all. I went to get Sgt Glover and when I came back there was a number of lads lying on the floor. Cpl Carson and Pte Edwards were lying on the floor. Fists were flying and they were up and down -- up and down.

Q-128 What condition was the accused, Smith?
A-128 I wouldn't actually say he was his normal self. He seemed to be fighting mad. I would not say it was normal for him to be fighting mad. He had had a brawl previous to that time and that must have roused him up. That is all I know.

Q-129 How was his speech?
A-129 Normal I would say. He had been drinking. I know he had been drinking because he told me so when I was taking him home.

In the opinion of the Court and the JA it is not considered necessary to comply with RP 83(B).

THE WITNESS WITHDRAWS.

THE CASE FOR THE PROSECUTION IS CLOSED.

DEFENCE

First Witness for the Defence: The accused, being duly sworn is examined by the Defence:-

Q-130 Will you tell us exacty what you did from the time you had your dinner on the night of 7 Dec 44.?

A-130 After dinner we left camp and I went down to the village of CERVIA with Pte Heindrichs. We went to an Italian house and there we purchased from them two bottles of vino bianco. We drank that and we went out and met another party the we had met the previous night before and we went to their house with them and we had two more bottles or red wine. We went to another house where we purchase a bottle of marsala. It was too sweet so we got a bottle of vino rosso to mix with it. We mixed the bottle of vino rosso with it. It was a better drink. One of the other chaps had another bottle of cognac and we mixed them together. When we drank that we started on down to where some of our other chums were having a spaggetti su supper. Some way we went to the door of the post office and knocked and they let us in. When we got in their we heard somebody say "What the hell do they want here" We went out and we stopped to have a leak. Somebody came out and said "Which one is Smith". I said I was. He said something to me. I don't remember what it was. I guess I did not like it and I hit him. I remember him going through the door. Pte Heinrich went through the door and Pte Conley hit him with a bottle. A free for all started. I remember Pte Nicols pulling a rifle and saying "Get out of here or put up your hands". I threw the chair and it hit the lantern. The light went out and then we went out. We went down to the MA and when we got there Pte Heinrichs was looking for Conley at the time. We were both pretty mad. We got down and found Conley and there was a little croud there Cpl Mader was there and took us home in the truck.

Q-131 Do you remember when you in the first time? Did abybody give either you or Heindrichs a drink?

A-131 Yes, one party did. I did not pay much attention. I thought it was Pte Conley who gave him a drink. I did not have a drink myself. I do remember Heinrichs having a drink.

Q-132 When you through the chair were you trying to wilfully break the lamp?

A-132 No, when I threw the chair I was thinking only of hitting Nicols as he had a gun. I was thinking only of Nicols.

Q-133 When Cpl Carson came out the first time did you know it was Cpl Carson and that he was an NCO?

A-133 No, This person said something I did not like and the fight started.

Q-134 Previous to this night did you know Cpl Carson by sight?

A-134 I amy have seen him before. I may have seen him around the post office but that is all.

Q-135 Was there any light at that time?

A-135 No, there was no light.

No xx'n by Prosecution

Q-136 Questioned by the JA

Q-136 Did you go to Cpl Mader's room?
A-136 Yes, sir.

Q-137 Did you see Cpl Carson there?
A-137 I cant say because I did not know who was there.

Q-138 Did you strike anybody there?
A-138 I do not remember. There were fists going. Mine were going and I do not know if mine connected or not.

Q-139 Have you some kind of recollection of the events of what happened when you struck the man outside the door.
A-139 I remember Pte Heindricks pushing me back and going in. I saw Pte Conley hit him with the bottle.

Q-140 After you threw the chair what did you do?
A-140 The light went out. There wasn't a thing we could see or hear so we went out.

Q-141 Did you go back to the place?
A-141 We went down to the other place and we explained to the Cpl down there. He said he would come back with us. The door was open and there wasn't a soul around. We went down to the MA for Cpl Mader.

Q-142 Did you break the door down?
A-142 Not that I know of. The only time I noticed the door was when this party hit it and went through.
Q-143
When you went back the door was open?
A-143 Yes, it wasn't bolted in any way. It was loose so we walked right in.

In the opinion of the Court and the JA it is not considered necessary to compoy with RP 83(2).

THE WITNESS WITHDRAWS.

Second Witness for the Defence:- E-81774 Pte R E Conley, 1 Cdn Med Regt Pl RCASC, being duly sworn, is examined by the defence.

Q-144 Will you identify yourself to the Court?
A-144 I am E-81774 Pte R E Conley, 1 Cdn Med Regt Pl RCASC.

Q-145 On the night of Dec 7 what were you doing?
A-145 We were having a party in the PO.

Q-145 What kind of a party?
A-145 We were drinking beer. I had two bottles of beer. I was sitting drinking the beer and L/Cpls Smith and Pte Heinrichs came in. They talked for a while and went back out. They were talking kind of loud. Cpl Carson went out to talk to them. They came back in fighting. Cpl Carson came in first followed by Heinrichs. They came in and were fighting inside. I hit Pte Heinrichs with a beer bottle, to protect myself in trying to helpt Cpl Carson. Fists were going and this was the first thing I though of.

Q-146 After this -- after you hit Pte Heinrichs what happened.
A-146 Cpl Carson got hit a few times and then the light went out. I then went out to the road with Cpl Carson. We went to Cpl Mader's room. We went there to tell a Cpl Hostedar about the fight. Then Pte Heinrichs and Cpl Smith came in. A fight started there.

Q-147 Who started the fight there?
A-147 I don't know. They came in and I went into the corner and I did not see anything at all. I got out of the room. I did not get in the fight at all.

Q-148 Is there more than one door in the room?
A-148 There is only one way out.

Q-149 Where did you go then?
A-149 I went up the tracks and stayed out in the field for a while. I could hear shooting starting so I stayed right up there. I came back about ½ past two.

Q-150 Was there any mention when they came in the room who they were after or why?
A-150 Not that I know of sir.

No xx'm

In the opinion of the Court and the JA it is not considered necessary to comply with RP 83(B).

THE WITNESS WITHDRAWS.

Third witness for the Defence:- D-121973 Pte R Girard, 1 Cdn Med Regt Pl RCASC, being duly sworn is examined by the defence:

Q-151 Will you identify yourself to the court?
A-151 D-121973 Pte R Girard, 1 Cdn Med Regt Pl RCASC.

Q-152 Will you tell the court what happened as far as you know on the evening of 7 Dec 44?
A-152 On the evening of 7 Dec 44 I met L/Cpl Smith and Pte Heinrichs When I was with them they had some cognac, some marsala and some red wine. I do not know how they drank it. Whether they drank it separately or mixed it up. They were drinking while I was with them. I was just sitting at a table at a place and they came up and sat with us. I went down to the postal quarters with them. When we first went in Cpl Carson called me aside to speak to me. He asked me if I wanted to take them out of the house. I spoke to Cpl Smith and Pte Heinrichs and we got out of the house. After we got out Cpl Carson came out of the house. He came out and asked us a question. Then Smith went up to him and said something. I don't know what they were talking about. I walked away then. I do not know what happened after that.

No xx'm

In the opinion of the Court and the JA it is not considered necessary to comply with RP 83(B).

THE WITNESS WITHDRAWS.

Summing up by the Defence Officer

In summing up this case I would just like to bring a few small points to the attention of the court with regard to the various and very varied statements that have been made by the witnesses today.

For instance, the matter of whether or not Cpl Smith and Pte Heinrichs broke down the door or whether they did not. Whether or not a[illegible]on witness stated Cpl Carson came back in and bolted the door and then it was broken down or whether as two or three other witnesses stated that all came in at approximately the same time while the scuffule was going on with Cpl Carson leading and followed by Heinrich and than L/Cpl Smith.

I would also like to bring to your attention the fact that both at the postal quarters and and Cpl Mater's room particularly at the postal quarters that they there had been considerable drinking and that they have admitted to drinking two or three bottles of beer. I leave it to your descretion as to whether or not these young men could drink that amount of beer and be absolutely sober.

In the matter of the evidence of Pte Edwards his evidence does not hang together with his statement in the summary of evidence. In the summary he states Pte Heinrichs struck him and in his sworn statement before this court he states that he doesn't know who did it. All his evidence seems to be very very vague.

The evidence of Cpl Carson is extremely vague throughout. He says that Smith and Heinrichs when they first came in knocked at the door. Other people stated that they did not knock they walked in. Cpl Carson stated at one place that he was vague because he had been hit and did not remember but his memory is a[illegible] vague as to what happened before. I think it was quite possible that Carson was not able to drink the amount of beer that he had consumed up to that time.

As for the accused, Cpl Smith, himself, I should like the court to bear in mind like everybody else in this case he had been drinking very heavily as set out in his own evidence. I know that drunking is no excuse but I ask you to take it into consideration.

The second charge, that of breaking a pressure lamp while it was broken, it certainly was done under duress. When Heinrichs pulled a knife, Nichols pulled a gun and threatened the accused and it looked as if there might be some very very serious consequences. Cpl Smith threw the chair at private Nichols and as a result the light went out. Everybody scattered and nobody was seriously hurt. Had he not done this it is quite possible that somebody might have been seriously hurt.

I ask you to remember those points when you consider whether or not L/Cpl Smith is Guilty or Not guilty of one or all of these charges.

Summing up by the Prosecution

The defence has summed up the case for L/Cpl Smith. The prosecution says this. L/Cpl Smith is an NCO and he rests his defence on the first and second charges on the fact the he was drunk. His conduct throughout as adduced from the evidence of the witnesses brought by the prosecution did not indicate any signs of drunkeness and not abnormal signs except the smell of alcohol on his breath.

He admits to striking as he says someone, some unknown person which turns out to Cpl Carson. I leave it to you to decide whether or not Cpl Smith did or did not know at the time that it was Cpl Carson.

With reference to the second charge of breaking the lamp it has not bearing whether the chair was intended to hit the lamp or whether it was meant to hit Pte Nicols. Granted L/Cpl Smith was fighting mad but it is no excuse for wilfully damaging or property.

The third charge is probably a little weak but there is evidence that the door was broken. Witnesses have stated that while they did not actually see the accused break the door he and Heinrichs had followed in when the door had been broken down.

A2

Summing up by the JA

It is my duty as JA to advise the court on points of law. The function of the court on the other hand is to act as a fact finding body. You are complete masters of the facts arising out of the evidence you have heard before this court and if I have at any time during the course of the trial or if I should at any time during the course of this summing up express any opinion on the facts of the case I must ask you to disregard that opinion. You should however, accept my advice on points of law and should not disregard such advice except for very weighty reasons.

There are three charges in this case. The first is under AA Sec 8(2). To justify a finding of guilty on such a charge it is up to the prosecution to bring evidence fi[illegible] and that he was his superior office. I would like to bring your attention to fn 3 to AA Sec 8(2). Reads ----------. In this case its is charged that the accused struck in the face Cpl Carson of 1 Cdn AGRA Postal Detachment with his fist whilst in the quarters in the FPO. It will be up to you to decide whether or not the accused knew Cpl Carson and knowing when he hit him that he was his superior officer.

The second charge is a charge under AA Sec 24(a) of wilfuly injuring public property. It is up to the prosecution to establish that the accused and not some other person broke the lamp in question and again it is up to the prosecution to prove that if the accused did break the lamp that it was not purely accidental. The defence has mentiondd it at the person holding the rifle and not at the lamp. It will be up to you to decide whether or not he was justified in throwing the chair when he did throw it. It is also up to you to decide whether throwing a chair at a person and hitting a lamp constitutes wilful damage. Bearing in mind that a person is presumed to intend the natural consequences of his acts, it will be up to you to decide whether this is a case where in doing something wilfully if something was done say against a person and instead injuring something else, that it is wilful.

The third charge is that he improperly forced an intry . It is a charge under section 40 of the army act for improperly forcing an entry into a FPO by smashing down the door. You have heard the evidence in relation to this charge and it is entirely up to you to decide whether that evidence supports that charge or not.

It is a well know principal of British justice that a person is presumed to be innocent until he has been proven guilty and the onus is on the prosecution at all times to establish beyond a reasonable doubt not only that an offence has been committed but that the accused is connected with the commission of that offence. By reasonable doubt I do not mean a doubt based on fancy or imagination or speculation or a doubt arising out of undue sympathy for the accused, but a common sense doubt arising out of the evidence you have heard in this court today. It you are not satisfied beyond a reasonable doubt that the accused is guilty of the offences charged then the accused is entitled to the benefit of that doubt and must be acquited of the charges.

Evidence as to Character

First Witness as to Character: Lt F D McCaffrey, 5 Cdn Med Regt Pl RCASC, being duly sworn, is examined by the defence:

Q Will you tell the court what you know of the character of the accused L/Cpl Smith while he served with 5 Cdn Med Regt Pl RCASC?

A L/Cpl Smith came to this platoon as a rft and was with this pl for about a month. Previous to that he had been with 1 Cdn Med Regt Pl. While with us he was employed chiefly around the kitchen and at all times proved to be a most satisfactory soldier. So much so that when his transfer came through to return to his parent unit we were extremely sorry to see him go and we would be very glad to have Cpl Smith and keep him on our stright if that had been possibl During the time that he was a member of this platoon we had no trouble with him whatsoever.

No xx'm

In the opinion of the Court and the JAit is not considered necessary to comply with RP 83(B).

THE WITNESS WITHDREW.

Second Witness as to Character: Lt B D Hennesey, 1 Cdn Med Regt Pl RCASC, having been duly sworn, is examined by the defence:

Q As A/OC of 1 Cdn Med Regt Pl of which Cpl Smith is a member will you tell the court what you know of the character of Cpl Smith?

A I have been with 1 Cdn Med Regt Pl for 2½ months and in that time have found Cpl Smith to be an efficient and capable NCO. During the first two weeks in November L/Cpl Smith was my driver and in that time I found him to be a trustworthy and dependable soldier.

No xx'm

In the opinion of the Court and the JA it is not considered necessary to comply with RP 83(B).

THE WITNESS WITHDREW.

Statement in Mitigation by Defending Offr.

In addressing this court in mitigation I would like to bring to the attention of the court that this is the first crime that L/Cpl smith has been accused of in this army, and together with the character evidence of the two witnesses I would like the court to keep this in mind in considering the sentence. Bearing in mind that a man who had a clear record since coming into the army and then on one particular night gets into trouble I think should not call for too severe a punishment.

M.F.B. 355
40/P & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number K50311 Rank L/Cpl Name SMITH, G.H. Regiment (or unit) 1 Cdn Medium Regiment Platoon R.C.A.S.C.

1. The following is a fair and true summary of the entries in the ~~Service and General~~ ~~Regimental and Squadron, Battery~~ ~~Conduct sheets~~ or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
~~For~~	~~times~~	~~times~~
For	times	times
For	times	times
For	times	times
~~For~~	~~times~~	~~times~~

~~Number of instances of gallantry or distinguished conduct~~

~~or,~~

There are no entries in the conduct sheets of the accused.

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

~~2. The accused has not been previously convicted~~

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under ~~Air Force Act~~ A.F.A. 73 Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for ..... beginning on the ..... day of .....

4. The accused has been in confinement awaiting trial on the present charges, for NIL days in civil custody, and 8 days in military custody, making a total of 8 days in custody, of which NIL days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 20 yrs 10 mos

6. The date of his ~~enrolment~~ attestation specified in his ~~record of service~~ attestation paper is 19 Feb 43

7. The service which the accused is allowed to reckon towards discharge is 1 yr 9 mos & 26 dys

8. The accused is entitled to reckon 1 yr 9 mos & 26 dy service for the purpose of determining his pension, etc.

9. The accused is in possession of ~~or entitled to~~ ~~no air force~~ military decoration, ~~or air force~~ military award (~~or is in possession of or entitled to~~). State any ~~air force~~ military decoration or reward. CVSMAC - 19 AUG 44

~~10. (If the accused is a warrant officer.) He was~~ ~~advised before he was made a warrant officer that~~ ~~the regimental rank of~~ .....

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ..... Permanent Force dated ..... unit ..... dated ....., and in his regiment (or corps), the rank of

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

		Date of promotion.
In the rank of L/Cpl	22 mos years.	14 May 44 to 17 Jul 44 21 Aug 44 to Present date
In the rank of	years.	
In the rank of	years.	

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank ..... Name ..... of ..... Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 18th day of December, 1944 [illegible] Capt.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

MFM 6
(AFB 122)
40/P&R/136 (3438)

No K50311 Name SMITH, G.H. | Sqn, Battery, or Company | Corps R.C.A.S.C. | Date of enlistment 19-2-43 | GC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet: N/A | No and date of last drunk: N/A | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	Certified	Nil		entries from available documents in my custody (MFM 14)					

(W.O.R. Sergeant) Captain
A/O.C. 81 Fdn Artillery Coy RCASC

(PTO)

SUMMARY OF EVIDENCE

in the case of

K50311 L/Cpl George Hubert Smith, 1 Cdn Med Regt Pl RCASC., a soldier of the Canadian Army placed on active service.

The Commanding Officer directs that the evidence be taken on oath.

First Witness

C21439 Cpl Bouchier, L.P., 1 Cdn AGRA Postal Detachment, having been duly sworn, states:-

I am C21439 Cpl Bouchier, L.P., 1 Cdn AGRA Postal Detachment. At approximately 2230 hrs on the 7th Dec 1944 the accused and Pte Heinricks forced their way into our quarters which are part of the M.A. Post Office, breaking down the door to do so. There was an argument and a fight started. I saw a knife in Pte Heinricks hand. During the fight a chair was thrown, knocking down the gas pressure lamp. This fell on my bed setting fire to my tunic. Everyone left then except Pte Nichols and I. Approximately 15 or 20 minutes later, the accused and Pte Heinricks returned accompanied by six or eight men. When they reached the door the other men, realizing that it was a Post Office, left, but the accused and Pte Heinricks again forced the door and passed through our quarters into the large room we use for the Post Office. I was in there but they did not see me. I heard them say, "this is the main Post Office, lets get out of here" I saw them again at the corner of the Post Office after the guard had been called out. I ordered them to halt and fired one shot in the air. There were several rounds fired from a tommy gun and everyone scattered. I saw the accused and Pte Heinricks at the M.A. later on when they were being taken to their unit. That is all I know of the case, Sir.

QUESTION 1 - Would you say that the accused was drunk?

ANSWER 1 - He had been drinking but he definitely was not drunk.

The accused declined to cross-examine.

.....
C21439 Cpl Bouchier, L.P.

Second Witness

M51931 Pte Stephen, N., 1 Cdn Med Regt Pl RCASC., having been duly sworn, states:-

Sir, I am M51931 Pte Stephen, N. I was spending the evening of the 7 Dec at the Post Office quarters. At Approximately 2100 hrs the accused and Pte Heinricks came in. I was in the next room and I don't know if the door was damaged or not. They went outside and Cpl Carson went out to talk to them. All of a sudden he seemed to be pushed back through the door and I went back into the next room. As I went out I looked back and saw the accused break the lamp with a chair. Cpl Carson and I went up to the M.A. and I got Cpl Mader who was Guard Cpl and told him Cpl Carson wanted to see him. I took over from Cpl Mader and he went upstairs. Shortly after, the accused and Pte Heinricks came along and asked me where all the boys were. I told them they were in Cpl Mader's room and they went up. That is all I know of the case, Sir.

The accused declined to cross-examine.

.....
M51931 Pte Stephen, N.

Third Witness

B84586 Pte Nichols, H., 1 Cdn Med Regt Pl RCASC., having been duly sworn, states:-

Sir, I am B84586 Pte Nichols, H. On the evening of 7 Dec., I went to the Post Office to visit Cpl Carson and Cpl Bouchier. I was sitting in the back room talking to Cpl Bouchier and then walked into the second room. While there, I heard someone say, "what the hell do they want? I then saw the accused and Pte Heinricks in the next room. Someone spoke to them and they went outside. Cpl Carson then went out and was talking to them. Cpl Carson came back inside and closed and bolted the door. I then heard someone outside say, "let's break it down" and the accused and Pte Heinricks came through the door together, knocking it from its hinges. There was an argument started and Pte Heinricks struck Cpl Carson in the face. I tried to stop them and Pte Heinricks drew out a knife. I went back to the next room and picked up a rifle, thinking to scare them. The accused picked up a chair and threw it at the lamp, knocking it down. When it was dark, everyone left, except Cpl Bouchier and I. Cpl Bouchier and I got a flashlight and went to look for Cpl Carson. We were unable to find him and went back to the Post Office. I heard the accused and Pte Heinricks coming back so we went into the main Post Office. They came through our quarters into the big room and I heard them say, "this is the main Post Office, let's get out of here" That is all I know of the case, Sir.

QUESTION 1 - Would you say they were drunk?

ANSWER 1 - I would say that they definitely were not drunk.

The accused declined to cross-examine.

H. Nichols
.....
B84586 Pte Nichols, H.

Fourth Witness

A59907 Pte Edward, G.B., 1 Cdn AGRA Postal Detachment., having been duly sworn, states:-

Sir, I am A59907 Pte Edward, G.B. At approximately 2000 hrs 7 Dec., there were several of us in the Post Office quarters. The accused and Pte Heinricks walked in. They went out shortly afterwards and Cpl Carson also went outside. Someone hit Cpl Carson and in the fight someone threw a chair, knocking over the lamp. As it was dark, I went outside and with Cpl Carson went up to the M.A. We went into Cpl Mader's room and shortly after Cpl Mader came in followed by the accused and Pte Heinricks. There was a bit of scuffling and Pte Heinricks struck me on the mouth, knocking me onto a bed. I saw both the Accused and Pte Heinricks strike Cpl Carson. Then someone kicked me in the testicles and I passed out. That is all I know of the case, Sir.

The accused declined to cross-examine.

G. B. Edward
.....
A59907 Pte Edward, G.B.

Fifth Witness

L72?0 Cpl Carson, E.T., 1 Cdn AGRA Postal Detachment, having been duly sworn, states:-

Sir, I am L72?0 Cpl Carson, E.T. At approximately 2100 hrs 7 Dec the accused and Pte Heinricks came to the front entrance of our billet. They knocked and we let them in.

Shortly afterwards they went outside and stood there talking. I went outside to see what the trouble was. I don't know what words were actually said, but the accused and Pte Heinricks came back inside, the accused hitting me in the face. I don't know what happened in the billets after that. We went up to the M.A. to Cpl Mader's room, and sat down to explain what had happened. Cpl Mader, the accused and Pte Heinricks came in the room. I tried to explain to the accused that I had nothing against either of them, but he again struck me. The last I remember was being on the bed. That is all I know of the case, Sir.

QUESTION 1 - Were the accused and Pte Heinricks drunk?

ANSWER 1 - I would'nt say they were.

The accused declined to cross-examine.

L.D. Carson
L7270 Cpl Carson, M.T.

Sixth Witness

F77257 Cpl Mader, V.B., 1 Cdn Med Regt Pl RCASC., having been duly sworn, states:-

Sir, I am F77257 Cpl Mader, V.B. On the night of the 7 Dec I was on Guard at the M.A. At approximately 2115 hrs, Pte Stephen came to the M.A. and asked me to go upstairs, as the accused and Pte Heinricks were causing a disturbance and Cpl Carson wanted to see me. I went upstairs and tried to talk to the accused and Pte Heinricks and have them go back to their unit. Pte Heinricks struck me, knocking me to my knees. I got up and he hit me again. We finally got them quietened down. Sgt Glover told me to put them under arrest. I finally got them out and into a truck and took them back to their lines. That is all I know of the case, Sir.

QUESTION 1 - Would you say they were drunk?

ANSWER 1 - They were drinking, but I would'nt say they were drunk.

The accused declined to cross-examine.

V.B. Mader
F77257 Cpl Mader, V.B.

QUESTION TO THE ACCUSED:

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

ANSWER BY ACCUSED:

I have nothing to say.

I certify that Rules of Procedure 4 (C) (D), (E) and (F) have been complied with.

Taken down by me in the presence of the accused in the Field, this 8th day of December, 1944.

J.M. Snowball
(J.M. Snowball) Capt
Officer Commanding
2 Cdn Med Regt Pl RCASC

3229. Fla. Smith, G. L.
No. 1 b. l. 14 cl.

10/8/1909

Correspondence to be PINNED here.

Army Form A.3. A 322

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

On Active Service, this 18th day of April, 1941.

A. Order convening the Court.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS, CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; [redacted]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

[redacted]

President.

Rank.	Name.	Regiment.
Major	A.E. Forte	No.1 Cdn. Arty Hldg Unit

Members.

Rank.	Name.	Regiment.
Captain	E. Partington	No.1 RCASC Hldg Unit
Lieutenant	E.H.C. Leather	No.1 Cdn Arty Hldg Unit
Lieutenant	T.W. MacDonald	No.2 Cdn Arty Hldg Unit

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed L. [illegible] Brigadier

Commanding Cdn Base Units, Cdn Army.

Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
D-71190 PTE. SMITH,G.F. (H & P E reinforcement) No.1 Cdn Inf Hldg Unit.	First Charge A.A. Sec 15 (1) as per charge sheet	GUILTY	GUILTY TO UNDERGO DETENTION FOR A PERIOD OF 120 DAYS.	Confirmed L

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) L. F. Page. Brigadier (Signed) H E Fortmajor
Commanding Cdn Base Units,Cdn Army. *President.*
Convening Officer (*e*)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 21st day of April, 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—
1. The members of the Court
2. The witnesses
*(3. The ~~interpreter~~ Court Stenographer
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 21st day of April 1941.

H E Fortmajor
President of the Court Martial.

C. Certificate in case of death sentence.

~~I certify that the terms of s.A.C.I. 570 of 1918 have been complied with.~~

* See footnote (b) on page 762 M.M.L. 1929

Signed this day of 19

President of the Court Martial.

D.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences. Confirmation

~~I direct that the soldier named in the margin be not committed to prison until further orders.~~ L

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 21st day of April 1941.

L. F. Page. Brigadier
Confirming Officer

Promulgated and extracts taken in the case of D-71190 Pte. SMITH G.F. (HPE.

(*a*) (Dated) Apr.22/41 (Signed) L W Blackwell Lieut.-Col. No. 1 Cdn. Inf. Hldg. Unit.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE-SHEET

The accused, No. D-71190 Pte. SMITH, G.F., (The Hastings & Prince Edward Regiment), on the strength of No. 1 Canadian Infantry Holding Unit as a reinforcement, a soldier of the Canadian Army (Overseas), is charged with:-

First Charge
Sec. 24(1) Army Act

When on active service, absenting himself without leave--

in that he

at Camp 101, Witley, Surrey, absented himself without leave from about 2200 hours on the 26th February 1941, until his surrender to the civil police at Notting Hill Gate, at 0900 hours on the 7th April 1941.

L.W.W. Black
(L.W.W. Black) Lt-Col.
Cmdg. Officer
No. 1 Cdn. Inf. Holding Unit

Witley, Surrey,
9th April 1941.

To be tried by Field General Court Martial

L.H.B.
Brigadier
Commanding Cdn Base Units.

rdon, Hants
e 11 day of April 41.

4 months Detention

MEDICAL OFFICER'S CERTIFICATE

I certify that this day I have examined No. D-71190 Pte. SMITH, G.F., and find him fit to stand trial by Court-Martial.

Lt. Col. [illegible]
Medical Officer,
No. 1 Cdn. Inf. Holding Unit

Witley, Surrey.
21st April 1941.

D-71190, Pte. Smith, G.F., No. 1 Cdn. Inf. Holding Unit, tried by Field General Court-Martial at Witley, Surrey, on the 21st day of April, 1941.

The order convening the Court, the charge-sheet and the summary of evidence are laid before the Court.

Prosecutor - Lieut. F.S. Weatherston
Defending Officer - Lieut. M.H.B. Cockin

At 1000 hours the Trial commences.

The names of the President and members of the Court are read over in the hearing of the accused and they severally answer to their names.

Q1 - Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?
A1 - No, sir.

The president and members are duly sworn

Q2 - Do you object to M-15577 Sgt. Stanley Fidler, The Edmonton Regiment, C.M.H.Q., acting as Court Stenographer?
A2 - No, sir.

The Court Stenographer is duly sworn.

The charge-sheet is signed by the President and annexed to the proceedings.

The accused is arraigned upon each charge in the above mentioned charge-sheet.

Q3 - Are you guilty or not guilty of the charge against you, which you have heard read?
A3 - Guilty, sir.

R.P. 35(B) is complied with by the Court.

Q4 - Do you wish to make any statement in mitigation of punishment?
A4 - No, sir.
Q5 - Do you wish to give evidence yourself or to call any witnesses as to character?
A5 - (Defending Officer) The accused would like to give evidence himself but in order to expedite matters I don't think it will be necessary for him to give his evidence on oath.

First witness for the defence, D-71190, Pte. Smith, G.F., not being sworn, is examined by the defending officer.

Q6 - Will you tell the Court when you joined the C.A.S.F.
A6 - On the 13th November, but before that I was with the Royal Victoria Rifles and then transferred to the Signal Corps when they were demobilized and from there I went to the Hastings & Prince Edward Regiment.
Q7 - Did you go to France with the regiment?
A7 - Yes, sir, until they returned to England.
Q8 - While you were s.w.l. can you state anything that you did during that time?
A8 - One incident was when the Cafe de Paris was hit. I was around at the time and helped in a little way of getting people back and all that sort of thing and we had to take our first aid things out of our pockets. I was in Lyons Corner House when it happened.
Q9 - You gave help, is that right?
A9 - Yes, sir.
Q10 - How long have you been on the strength of the holding unit?
A10 - Since last August.
Q11 - Did you behave yourself before that?
A11 - I was nine months in the service at home without a crime and when I got overseas I just went haywire.

Q12 - What are your intentions in the future?
A12 - I think I don't care how long a sentence I get so long as I can get out sometime and I am willing to soldier and I didn't come overseas to fool but to do my bit for my King and Country.

Q13 - How old are you?
A13 - Nineteen. I lived in an orphanage, more like a home, for fifteen years. I have two other brothers in the Black Watch and another serving in the 5th ack ack. I would like to get a transfer to be with my brothers in the Black Watch. I have gone down to see them about getting a transfer but they couldn't do anything about it. I think if I can get a transfer it will make a better soldier out of me.

Lieut. F.S. Weatherston, No. 1 Cdn. Inf. Holding Unit, is duly sworn.

Q14 - Have you any evidence to produce as to the character and particulars of service of the accused?
A14 - Yes, sir, A.F.B. 296 and a certified extract of entries on the accused's M.F.M. 2 as the M.F.M. 6 is not available.
Q15 - Is the accused the person named in the statement which you have heard read?
A15 - Yes, sir.
Q16 - Have you compared the contents of the above statement with the regimental books?
A16 - Yes, sir.
Q17 - Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summery of those entries?
A17 - Yes, sir.

The accused declines to cross-examine.

Q18 - Do you wish to address the Court?
A18 - (Defending Officer) I would ask the Court to consider the extreme youth of the accused in this case and remember his upbringing in an orphanage or home. Until coming to the holding unit he had a good character. I feel convinced he will turn over a new leaf and I would like you to take into consideration the statement he has made on this occasion.

The Court is closed for the consideration of the sentence.

SUMMARY OF EVIDENCE

In the case of D-71190 Pte. Smith, G.F., (Hast. & P.E.), No. 1 Cdn. Inf. Hldg. Unit.

The Commanding Officer directs that the evidence shall be taken under oath.

1st Witness -- C-5296 L/Cpl. Cooper, A.H., Hast. & P.E. Company, No. 1 Cdn. Inf. Holding Unit, having been duly sworn, states:

On the night of 26th February 1941 I was Duty Corporal of No. 6 Platoon, Hastings & Prince Edward Company. I called the roll at approximately 2200 hours and Pte. Smith, G.F., was absent, and was still absent at Reveille, 27th February 1941, and to the best of my knowledge is still absent. Pte. Smith, G.F., is a member of No. 6 Platoon.

C-5296 Cooper, A.H. L/Cpl.

(The accused declines to cross-examine this witness)

2nd Witness -- Lieut. David Iver, Officer i/c Records, No. 1 Cdn. Inf. Holding Unit, having been duly sworn, states:

I am Officer in charge of Records, No. 1 Cdn. Inf. Holding Unit, and as such produce the following documents in evidence:

1. Certificate showing surrender of D-71190 Pte. Smith, G., to civil police at 0900 hours on the 7th April 1941, signed by S. Newman, S-37-F, in charge of Notting Hill Police Station and Capt. V.Harriss Goad, D.A.P.M., Cdn. Military Police, London Area.

2. Army Form B-252 signed by L/Cpl. E.E. Desmarais, Cdn. Provost Corps, showing that D-71190 Pte. Smith, G.F., was given into his custody.

3. Copy of Record of Declaration of a Court of Inquiry assembled at Camp 101, Witley, on the 29th March 1941, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. D-71190 Pte. Smith, G.F. (H.& P.E.).

These documents refer to No. D-71190 Pte. Smith, G.F., whom I now recognize.

David Iver Lieut.

(The accused declines to cross-examine this witness)

The accused is duly cautioned and declines to make any statement. (R.P. 4(e)).

Certified that Rules of Procedure No. 4 (c), (d) and (e), have been fully complied with.

H.M. Howell Lieut.
Officer taking Summary.

Witley, Surrey,
9th April 1941.

Statement of the Service of No. ..... Rank ..... Sheet No. .....

M.F.M. 1 & 2(a)
REV. & 8/10

Name .....

REPORT Date	REPORT From whom received	Record of Promotions, Reductions, Transfers, Casualties, Reports, etc. (Continuation of Folio 2, M.F.M. 1 or M.F.M. 2)	Rank Shown	Effective Date	Unit	Place	Authority Part II D.O. No. Can. List, etc.	Authority Dated
		Adm. 15th Gen. Hosp.	Pte.	6-9-40	1.CIHU	Bordon	D.O. #155	20-10-40
		T.O.S. #1 CIHU on adm. to 15th Gen Hosp 10-11-40) apprehended by R.C.M.P.	"	6-9-40	"	"	156	22-10-40
		A.W.L. 5-11-40) Held for C.M.	"	14-10-40	"	"	169	7-11-40
		Forfeits 23 days pay)Total	"					
		A.W.L. as above Awarded 28 days detn)51 days	"	11-11-40	"	"	173	12-11-40
		Remission of 7 days pay	"	20 Sept 40	#1 CIHU	"	D.O. 193	5 Dec 40
16 Dec 40	#1 CIHU	A.W.L. from 0700 hrs	"	15 Dec 40	#1 CIHU	Bordon	Part II D.O. No.199	16 Dec 40
4 Feb 41	#1 CIHU	F.G.C.M. Awarded 42 days detent. A.W.L. from 0700 hrs 15 Dec 40 to 2245 hrs 2 Jan 41 (18 days 15½ hrs) Forf. 19 days pay under F.R.& I. 149(1)A Forf. 42 days pay under F.R.& I.149(1)B Forf. 11 days pay under F.R.& I.149(1)C Total forfeiture 72 days pay.	"	14 Jan 41	#1 CIHU	Witley	Part II D.O. No.25	4 Feb 41
27 Feb 41	#1 CIHU	Absent from 0800 hrs	Pte	26 Feb 41	#1 CIHU	Eng.	Part II D.O. No.44	27 Feb 41
6 Mar 41	#1 CIHU	Absent after the 8th day	"	26 Feb 41	#1 CIHU	"	Part II D.O. No.51	6 Mar 41
28 Mar 41	#1 CIHU	Absent after the 21st day	"	26 Feb 41	#1 CIHU	"	Part II D.O. No.69	28 Mar 41
3 Apr 41	#1 CIHU	S.O.S. No. 1 CDN. INFANTRY HOLDING UNIT	"					
		deserter - Deficiencies of kit £12-5-5½	"	29 Mar 41	#1 CIHU	Eng.	Part II D.O.No.75	3 Apr 41

Certified true copy of entries on the original M.F.M. 2 and M.F.M. 1 & 2 (a) of No. D-71190 Pte. Smith, G.

Witley, Surrey,
16th April 1941.

David Ivor, Lieut.
David Ivor, Lieut.,
Officer i/c Records,
No. 1 Cdn. Inf. Holding Unit.

Statement of the Service of No. D-71190 Rank Pte. Sheet No. ...

M.F.M.1.A.58 10/F.A.8/40

Name SMITH, George

REPORT Date	REPORT From whom received	Record of Promotions, Reductions, Transfers, Casualties, Reports, etc. (Continuation of Form E.W.F.W. 1 or M.F.W. 2)	Rank Struck	Effective Date	Unit	Place	Authority Part II D.O. No. Can. Lett. etc.	Dated
29 Aug			Rfn.	28 Aug	V.R.C.	Lachine	R.O. 3	29 Aug
2 Nov		1st Corps Cigs #T/M #2 Coy	Sgmn.	3-11-39	R.C.C.S.	Montreal	R.O. 68 65/39	3 Nov
		Transferred to #3 Line #1 Coy	"	12-12-39	R.C.C.S.	Montreal	Pt. 105/39	12-12-39
		Transferred to #2 Line Sec #1 Coy	"	16-12-39	R.C.C.S.	Montreal	Pt. 108/39	15-12-39
		Reported to Barriefield Conc.Camp	Sigmn	17/12/39	1 Corps Sig	Brfield	Pt II 36/39	17/12/39
29-1-40		S.O.S. 1st Corps Sigs., C.A.S.F. on transfer to I.T.C., M.D. 5, (Draft from Mast. & P.E. Regt'l Depot).	Sigmn	29-1-40	1st Corps Sigs.	Barrifield	Part II #29	d/29-1-40.
30-1-40		T.O.S. CI(R)TC	"	30-1-40	"	Quebec	D.O. No.23 Pt.2	6-2-40
11-5-40	C.I(R).T.C.	Ceases to be attached to C.I(R).T.C.	"	11-5-40	"	"	" " 107-	11-5-40
		T.O.S. H. & P.E.R.	Pte.	12-5-40	H.&P.E.R.	Aldershot	#123	25-5-40
		Embarked Plymouth	"	13-6-40				
		Dis " Brest	"	14-6-40	"	Fld	14	1-8-40
		Re " Brest	"	16-6-40				
		Dis " Plymouth	"	17-6-40				
		A.W.L. from 1600 hrs 7-7-40 (21 days)	"	7-8-40	"	"	15	2-8-40
		A.W.L. 1600 hrs.	"	7-7-40	H.& P.E.R.	Field	D.O.#12	26-7-40
		S.O.S. - held by Ct.of Inq. as deserter	"	29-7-40	"	"	20	6-9-40
		Disch. from C.M.C.	"	13-9-40	1.CIHU	Bordon	127	15-9-40
		From 7-7-40) Close From 15-8-40 A.W.L. to 15-8-40) Arrest to 20-9-40						
		Forfeits 76 days pay) Total forfeiture Awarded 28 " detn) 104 days	"	29-9-40	"	"	140	29-9-40

Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at Camp 101, Witley, on the 29th day of March, 1941, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. D-71190 Pte. Smith, G.F. (H.& P.E.).

DECLARATION.

The Court declare that D-71190 Pte. Smith, G.F., illegally absented himself without leave from 2000 hours on 26 Feb. 1941, that he is still absent; and that on 26 Feb. 1941 he was deficient and that he is still deficient of the following articles of kit:

			2½	Greatcoat	2	8	6
Ration bag		10	7½	Comb		1	2
Haversack		7	0	Dressing, F.F.			4
Helmet, steel		2	3	Fork			6
Tins, mess		13	6	Housewife		6	9
Cape, anti-gas			8	Jacket, sweater		3	4
Wallet, " "				Knife clasp & Lany.			8½
Ground sheet		10	0	Table knife			5½
Respirator, Comp.	1	0	7½	Razor		10	0
Anklets		3	11	Shirt, flannel			4
Boots, Prs. 2	2	5	0	Spoon		1	4
Braces		1	6	Towel		2	6
Brasses, button			2	B.D. Blouse	1	2	6
Brushes, boot			8½	B.D. Trousers	1	0	6
" , button				Drawers Cell.		2	2
" , polishing		1	2	P.T. Shorts		1	11
" shaving		2	1	P.T. Vest		1	7
" tooth		1	2				
Cap, F.S.		0	5½				
		2	2		£	12	5 5½

Names of President and Members

President - Capt. M.C. Upper (R.H.L.I.)

Members - Lieut. R.M. Dillon (R.C.R.)
Lieut. A.J. Redick (H.& P.E.)

Signature of Commanding Officer "L.W.W. Black" Lt-Col.

CERTIFIED TRUE COPY.

David Ivor, Lieut.

Signature of Officer having custody of the Original Record.

(12043) W.L.24113/1022 75,000 10/39 A.& E.W.Ltd. Gp.698 Forms/B115/56
(18443) W.L.42/731/700 250,000 1/40 "

EXH.B

Army Form B -
(See King's Regulations)

CHARGE

#1 Inf. Holding Unit.

Regiment
Battery
Squadron
Troop or
Company

CHARGE against No. D-71190 Rank Pte.

Name Smith, G.

Place London.

Date of Offence 7-4-41.

OFFENCE W.O.A.S. Absent without leave from 09.00 26/3/41 ...until he surrendered to the civil Police at Notting Hill Police Stn. at about 09.00 hrs. on the 7-4-41.

D.A.P.M.
CANADIAN MILITARY POLICE
LONDON AREA.

Names of Witnesses:— L/Cpl. Desmarais, Canadian Provost Corps.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

To whom awarded

Adjutant.

P.T.O.

Statement of **EVIDENCE** in the case of

D-71190 Pte. Smith, G.
#1 Inf. Holding UNit.

Sir,

At London on the 7-4-41 at about 09.30 hrs. I was on duty at C.P.C.H.Q. when acting on instruction I proceeded to Notting Hill Police Stn. where I found the a/m soldier. He ad surrendered himself to P.C. 564 "P" Stack, J. at Notting Hill police Stn. at abou 09.00 hrs. on the 7-4-41 as being A.W.L. He was turned over to me and I escorted him t to C.P.C.H.Q. where I turned him over to the N.C.O. i/c cells to be detained.
Certificate in accordance with Sec. 163 (1) (m) is attached.

London
7-4-41

E E Desrosiers L/Cpl.
Canadian Provost Corps.

I hereby certify that the hereon signed witness cannot be readily procured (R.P.4(g)).

Lieut.
Officer taking Summary.

REMARKS

EXHIBIT 1

CERTIFICATE IN ACCORDANCE WITH SECTION 163 (1)(m) of the ARMY ACT.

I certify that the person whose description is given below was ~~arrested (or~~ surrendered) at Notting Hill Gate at 9am on the 7th day of April, 1941.

Regimental particulars of officer or soldier reffered to above.

No. D. 71190
Rank Private
Name George SMITH
Unit 1st Canadian Infantry Holding

Description.

Age 19
Height 5-10½
Complexion Fresh
Hair Light Brown
Eyes Blue
Marks

Signature of officer of police in charge of police station where the above named person was taken or placed in custody, on arrest or surrender.

Surrendered to P.C. 584'F' John STACK. Notting Hill Station F. Division.

In charge of [signature] 37F
NOTTING HILL Police Station

[signature] D.A.P.M.
CANADIAN MILITARY POLICE
LONDON AREA.

STATEMENT as to CHARACTER & PARTICULARS of SERVICE of ACCUSED

D-71190 Pte. SMITH, G. (H.& P.E.), No. 1 Cdn. Inf. Hldg. Unit

1. The following is a fair and true summary of the entries in the regimental conduct sheet of the accused, exclusive of convictions by a court-martial or a civil court, and of cases in which trial has been dispensed with:

	Within last 12 months	Since Enlistment
Absent without leave	3 times	3 times

Number of instances of gallantry or distinguished conduct:

2. The accused is not under sentence at the present time.

3. The accused has ~~not~~ been previously convicted by a Court-Martial ~~or a civil court,~~ but has not been previously convicted by a civil court.

4. The accused has been in confinement, awaiting trial on the present charges, for no days in civil custody, and 15 days in military custody, making a total of 15 days in custody, of which no days were spent in hospital.

5. The present age of the accused according to his attestation paper is 21 years.

6. The date of his attestation specified in his attestation paper is 1st September 1939.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 19½ months.

8. The accused is entitled to deferred pay or gratuity in respect of 19½ months' service.

9. The accused is entitled to reckon 19½ months' service for the purpose of determining his pension, etc.

10. The accused is in possession of or entitled to no military decoration or military reward.

SCHEDULE

of convictions by a court-martial or a civil court and of cases in which trial has been dispensed with of the accused.

By proceedings of a Field General Court-Martial convened by Brig. L.F. Page, Cmdg. C.B.U., C.A. (Os), D-71190 Pte. Smith, G.F., was charged under Sec.15(1) of the Army Act for absenting himself without leave from 0700 hours on the 15th December 1940 to 2245 hours on the 2nd January 1941 (18 days 15½ hours) and was found guilty and sentenced to undergo detention for 42 days commencing on the 14th January 1941. Finding was duly confirmed and promulgated.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

David Ivor, Lieut.

David Ivor, Lieut.,
Officer i/c Records,
No. 1 Cdn. Inf. Hldg. Unit

Witley, Surrey,
21st April 1941.

5 Jun - 78
5 Jun - 79

Tpr. Smith, W.O.
Tpr. Miller, J.C.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : L.102588 Tpr SMITH GO 3 CAGRU AND
R-161096 Tpr MILLER JC 3 CAGRU

Charge. (Insert "alternative" where applicable.)	Plea. BY EACH (See Instrs p 2.)	Finding. ON EACH (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 40	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 26 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

The accused L102588 TPR SMITH G.O. 3 CAGRU to forfeit all Ordinary Pay for a period of Forty Five (45) days
The accused R/161096 TPR MILLER J.C. 3 CAGRU to forfeit all ordinary pay for a period of Thirty (30) days 31 MAY 45

(Sgd) [illegible] President. (RP 45, 50.)
Judge-Advocate, if any. Date awarded.
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Finding and sentence confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1) (Sgd)
(1. AA 57A. Delete if not used.)

Date 2 June 45 Commanding E Mtp & R.U.
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
L102588 TPR SMITH. G.O.	4 JUNE 45	[illegible]

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 5M-78-39
REF'D ... 27 JUN 1945 JAG (Overseas)
CFA96 (1st Rev) (Replaces AFA81) 10-VP & S-1898 (40-703)

FIELD GENERAL COURT-MARTIAL 4/38B

Convened at Ste Marie Tr RUTHERFORD Comd "B" Gp CRU dated 29 May 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L.102588	Pte	Gordon Orville	SMITH	3 CAGRU
AND R-161096	Pte	John Clayton	MILLER	3 CAGRU

PROCEEDINGS REVIEWED
27 June 45
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL. (FOR SMITH, file)

Held in the Fd in (country) ENGLAND on (date) 31 May 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr,~~ if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95. For oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes", As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused ~~is~~ (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused ~~is~~ (are) brought before the Court. At 11.00 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused ~~is~~ (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : ~~Do you object to~~ as interpreter ? Ans
~~The Interpreter is sworn (1). Do you object to~~ as shorthand writer ? Ans
~~The shorthand writer is sworn.~~ (1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO - BY EACH

(1. RP 102. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 31, RP 25, 76, 78, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Lt-Col	DE BATHE	H. QRS
Member	Capt	FL CHARKINSEAU	1 CAGRU
Member	Lt	HS GUNDERSON	2 CAGRU
~~Judge Advocate~~			
Prosecutor	Maj	WE DUNBAR	3 CAGRU
Defending Offr	Lt	ND HARVEY	3 CAGRU

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 83.)

A8. The accused before arraignment makes (no) ~~a~~ plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposed, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused ~~is~~ (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the charge(s) and sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO - SIR Reg EALH (5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) changes(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charge(s) on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D6 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Fix here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*), *114, KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans ..... Do you intend to call witnesses on your behalf ?

Ans ..... Are they witnesses as to character only ? Ans .....

(1. *RP 115.* 2. *RP* 40(*A*), *see* 80(*C*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA* 54(2) (*d*), *RP* 45, 120(*A*). 2. *AA* 54(2), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans NO - SIR Reg EALH

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to the soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)

(1. *MFB 355 or MFB 296.* 2. *MFM 6.* 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Reg Earlr Conduct only by Defence NOTE - AT [illegible](2)

(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the J.A. if any~~(2).

(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 46. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 336, 343-366, *Overseas AO* 309, 2323, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(3), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), 68(1), *KR Can* 364. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, L.102588 Tpr. Smith, Gordon, Orville, and B.161096 Tpr. Miller, John Clayton, on the strength of 3 Canadian Armoured Corps Reinforcement Unit, soldiers of the Canadian Army Overseas, are charged with:-

FIRST CHARGE
A.A 40

WHILST ON ACTIVE SERVICE, AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that they,

at approximately 2230 hrs, on 4 May 45, were concerned in the firing of tracer ammunition at THURSLEY COMMON without authority.

(R.E.A. Morton) A/Colonel
Commanding 3 C.A.C.R.U.
Canadian Army England

In the Field
25 May 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

(T J RUTHERFORD) Brig
Comd
"E" Gp CRU

IN THE FD.,
28 MAY 45.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L-102588	Tpr		Gordon Orville	SMITH	3 CACRU
B-161096	Tpr		John Clayton	MILLER	3 CACRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 28 MAY 45 endorsed by me, (or by an offr of my estb for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (And that it is not practicable to delay the trial for reference to a superior qualified offr.)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Lt.-Col	D L REDMAN, VD		HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by OC 1 CACRU	1 CACRU
Lt	to be detailed by OC 2 CACRU	2 CACRU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ENGLAND (Country.)

Date 28 May 45

(Signed personally. RP 105 fn.) (Rank.)

(T J RUTHERFORD) Brig

Commanding "E" GP CRU Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

Medical Officers' Certificate
K.R.(Can) para 557.

I certify, that I have this morning examined:-

Regt'l No. L102586 Rank IPR. Name SMITH. G.D.

of 3 C A C R U. (unit) and in my opinion he is

~~Unfit~~ Fit to undergo trial by Court Martial.

#(cross out one N/A and initial)

Station: IN THE FIELD.

Date (of Court Martial) 31 May 45.

Sgd. [signature] (Rank)
Unit
Medical Officer, RCAMC.

Medical Officers' Certificate
KR(Can) para 557.

I certify that I have this morning examined:-

Regt'l No. B161096 Rank TPR Name MILLER, J.C.

of 3CACRU. (unit) and in my opinion he is

Fit / ~~Unfit~~ to undergo trial by Court Martial.

#(cross out one N/A and initial)

Station: IN THE FIELD Sgd ..... (RANK)

Date (of Court Martial) 31-May-42 Unit Medical Officer, RCAMC.

"3 C.A.C.R.U.
31 May, 1945.

PLEA IN MITIGATION

Mr. President and Gentlemen,—

The accused have pled guilty to an act to the prejudice of good order and military discipline. They have freely admitted to the firing of ammunition without authority.

However, on the night of 1st/2nd May 4th, their last night at the "C" Group Summary School, which I can assure you from personal experience is a dreary place, they had spent 2 or 3 hours in the Red Lion and had consumed 7 or 8 pints of beer. This doubtless produced in them a certain levity of spirit, which they, being human, wished to communicate to those around them. You have seen men in similar circumstances in public places doing strange things.

The accused found themselves in possession of rifles and tracer ammunition — not unusual, since nearly every man at this school carries several rounds in his pockets, left there and forgotten, since so much of it is handled each day.

Here was an excellent device for making a noise and sending bright lights flying through the night sky, and they proceeded ~~to~~ with what to them was only a little harmless "celebrating". For them there was no further significance in the firing of the weapon. I should like to remind the court that all the ammunition was fired into the sky.

I should further like to inform the court that Pte Smith is involved in some very troubling domestic difficulties. When a man is worried about something which is almost completely beyond his control, and when he suddenly has an opportunity to forget it temporarily and give vent to good spirits, he is usually more demonstrative than another. This is

E.D.M.

borne out by the fact that Tpr. Smith did all the firing, while Tpr. Miller's enjoyment of the occasion was of a more passive nature.

I do not intend this to be an excuse for their conduct, but I hope the court will take it into account when determining the extent of their punishment, and regard the offence in its true form as an exuberant frolic rather than as an act of deliberate malice. They have already suffered considerably for their few moments of thoughtless pleasure, during 2 days close arrest awaiting trial.

Tpr. Smith has volunteered for service with the Canadian Far East Force, and from what I have learned of his ability as a tankman, is admirably suited to do so.

Tpr. Miller has expressed a preference for service with the Army of occupation and his conduct and training show that he will be able to discharge his duties in this role very effectively.

Both of these men have but recently left Canada with the intention of serving our country to the best of their ability wherever the needs of the country and the dictates of conscience should direct them. They cannot do this in detention.

I trust that the court will acknowledge that the interests of justice and the furthering of our cause will best be served if these men are removed from active participation in the war for the least possible time, and will act accordingly.

It would indeed be a shame to treat the accused criminals on account of one careless moment of exuberance.

SUMMARY OF EVIDENCE

In the case of L.102588 Tpr. Smith, G.O. and B.161096 Tpr. Miller, J.C., on the strength of 3 Canadian Armoured Corps Reinforcement Unit, soldiers of the Canadian Army Overseas.

FIRST WITNESS for the prosecution

B.146839 Tpr. Doran, E.J., on strength of 3 CACRU, a soldier of the Canadian Army Overseas, having been duly sworn, states:

"On the night of 4 May 45 I went to the Red Lion Public House at Thursley with the accused, whom I now recognize. We sat and drank beer until 1030 hrs and then set for camp. I stopped to relieve myself in some bushes by the side of the road and when I came out the accused had gone. I looked around for them, did not see them and went on towards camp. I had started to cross the common when my attention was attracted to two figures walking towards me, one of whom was carrying a rifle, the other was in more of a shadow and I could not see if he was carrying anything. I could not recognize them. When I saw them I stepped into the shadow because I had heard earlier in the evening that two of the chaps were going out with live ammunition which they intended to shoot off. I was not told who they were and when I saw these two I decided they might be the people concerned and did'nt want them to start shooting at me. I watched from the shadow to see if the chaps would change their course but they kept coming so I went back right into the bushes and lay on the ground where I could not see them and where they could not see me. There was the sound of conversation between them and what I took to be a third person or persons and then the sound of firing. I am not sure whether the firing began before the talking or afterwards. They were firing tracer and fired altogether some twenty or thirty rounds. When they stopped firing the party dispersed and presently I got up and went back to the hut. There were several people in the hut when I got back and we began a general conversation about the shooting. After we had talked for awhile, I noticed that Smith and Miller had come into the hut, though I did not see them come in. Tpr Smith joined in the conversation and from his remarks, the exact words of which I can't remember, I gained the impression that he had done the shooting. After I had got into bed Smith left the hut and I noticed his rifle and suggested to Tpr. Andow, who slept below me, that he should hide the rifle because I was afraid that he might decide later in the night to start shooting in the hut. Andow hid the rifle and when Smith came back he did'nt notice it was gone as far as I remember. Shortly after this Sgt Black came in and asked to see Smith's rifle, which he could'nt find. After Sgt Black had gone out Tpr. Andow gave Smith back his rifle, ~~a few minutes later~~, what Smith did with it I don't know. Sgt Black came back a few minutes later and put the accused under arrest. When Smith was getting his blankets the rifle was found under his palliase".

B.146839 Tpr. Doran, E.J.

The accused declines to cross-examine this witness.

SECOND WITNESS For the Prosecution

K.2057 Tpr. Andow, C.J., on strength of 3 CACHU, a soldier of the Canadian Army Overseas, having been duly sworn, states:

"On approximately 4 May this year I was at "E" Gp Crew Comds Crse. That evening I went over to the Salvation Army Canteen. I left at approximately 2200 hrs and started to walk back to camp with a number of people whose names I do not know. As I was walking along my attention was attracted to two men, both of whom had rifles. These men were firing tracer ammunition. They were firing into the air and I went up to them with the idea of getting them to stop or expend their ammunition. When I came up close to them I saw they were Tprs. Smith and Miller, whom I now recognize. They both had rifles but I don't remember whether Miller was firing or not. They fired a few more rounds and then stopped. They then walked away and I went back to camp. They had mentioned jokingly that they were going to shoot the mail clerk, so I thought I had better warn him just in case if he walked that way, they may have tried to scare him. I then went over to the kitchen for a cup of tea and was talking with the cook and Sgt Black. I then went to the hut and Tprs Smith and Miller were there. We were discussing the shooting and presently Smith went out and Tpr. Doran who was there said to me, "You had better hide their rifles before they start shooting here", so I got Smith's rifle and handed it to Doran who stuck it behind our bed. Then Sgt Black came in and Asked to see the rifles of Smith and Miller. Smith could'nt find his but the Sgt Looked at Miller's rifle and went out. We thengave Smith back his rifle and then we told them they were a couple of fools. A little while later Sgt Black and another Sgt came and told them to get their bed clothes and come with them".

Tpr. C. Andow.
K.2057 Tpr. Andow, C.J.

The accused declines to cross-examine this witness.

THIRD WITNESS For the Prosecution

B.135296 Cpl Crump, G.R., on strength of 3 CACHU, a soldier of the Canadian Army Overseas, having been duly sworn, states:

"One night in the early part of May I went to the Salvation Army Canteen near the HQ of the Crew Comds Crse at Thursley. I came in between 2100 hrs and 2200 hrs. I came in with a bunch of other fellows and sat chewing the fat with them and a Sgt was there. While we were talking Tpr. Smith and Tpr. Miller came in carrying their rifles. They started to talk about scaring the hell out of Doran by firing off their rifles Doran was there and they were kidding him. They were still joking back and forth and Miller was getting into bed when Sgt Black came in and I think there was an officer with him. He asked to see Miller's rifle and then he asked Tpr. Smith for his rifle and Smith could'nt find it. Sgt Black left then and Smith finally got his rifle from near Pillier and Doran's bed. Sgt Black came back in about 10 minutes and told Miller and Smith to get dressed; take their blankets and rifles and come with him. Smith rolled up his blankets and palliase and his rifle was under the palliase.

Cpl. Geo. Crump.
B.135296 Cpl Crump, G.R.

The accused declines to cross-examine this witness.

FOURTH WITNESS
For the
Prosecution

M-103967 Sgt Black, N.A., on strength of 3 CACRU, a soldier of the Canadian Army Overseas, having been duly sworn, states:

"At approximately 2220 hrs, 4 May 45, I was returning to the camp from the canteen. As I entered the camp I heard a number of shots and looking up saw tracer going over the camp. Just then I met Sgt Godfrey who told me the clerk in the Orderly Room had telephoned that some one was firing on the upper range. I got the Cpl of the Guard and we went up on the range, searched very carefully and found no one. We returned to camp and began to check all the huts to see if anyone had just come in with a rifle. We heard in one of the huts that Tprs Smith and Miller, whom I now recognize, as the accused, had been up on the range at the approximate time the rounds had been fired. We went to their hut and found them in, I asked the accused to see their rifles and Tpr. Miller's rifle on examination was clean and had not recently been fired. Tpr. Smith could not find his rifle. I asked Smith for the number of his rifle and he gave it to me. We left the hut, went through the remainder of the huts and again heard that Smith and Miller had been seen on the range. Deciding to place them under close arrest on suspicion, we went back to the hut and placed them under close arrest. I told them to bring their blankets and palliases with them and when Tpr. Smith rolled up his palliase, his rifle was underneath it. On examination, the rifle had recently been fired."

N a Black Lt
M.103967 Sgt Black, N.A.

Hearsay

The accused declines to cross-examine this witness.

This rifle is shown to the accused, marked by me as Exhibit "A" for the prosecution and attached to the Summary.

R.L. Magill, Capt
Officer detailed to take
the Summary of Evidence

FIFTH WITNESS
For the
Prosecution

Capt. W. Baldwin, on strength of 2 CACRU, an officer of the Canadian Army Overseas, having been duly sworn, states:

"on Sat, 5 May 45, at approximately 0900 hrs, Major Blanchard, the O.C. "B" Group Gunnery School asked me to go up on top of the hill in the vicinity of the range on Thursley Common, to see if I could find any evidence of firing having taken place the night before. Accompanied by B-146839 Tpr. Doran, E.J., I went up on to the hill, and asked him if he could show me approximately where the firing took place from. After being shown, I looked around and found twenty four (24) empty cartridges of .303 calibre, tracer. I took these empty cases to Major Blanchard, and they have been submitted as evidence."

W Baldwin Capt.
Capt. W. Baldwin

The accused declines to cross-examine this witness.

These cartridges are shown to the accused, marked by me as Exhibit "B" for the prosecution and attached to the Summary.

R.L. Magill, Capt.
Officer detailed to take
the Summary of Evidence

SIXTH WITNESS
For the
Prosecution

B/X50097 L/Cpl Robitaille, J.A., on strength of 2 CACRU, a soldier of the Canadian Army Overseas, having been duly sworn, states:

"At approximately 2220 hrs, 4 May 45, while on duty at "G" Gp Gunnery School Orderly Room, I heard shots being fired. I did'nt pay much attention to the first few shots fired, but as the firing continued, I looked out through the window and saw tracer going overhead from the direction of the upper range. I phoned the Medical Inspection Room and the phone was answered by Sgt Godfrey. I informed him of the firing and he contacted Sgt Black, who investigated the matter. I then went up to the upper range but found no one in the area".

J. A. Robitaille
B.50097 L/Cpl Robitaille, JA

The accused declines to cross-examine this witness.

The accused were cautioned as follows:

"Do you wish to make any statement or to give evidence on oath. You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence".

The accused decline to give evidence on oath or to make statements.

The accused do not wish to call any witness for the defence.

I certify that the foregoing Summary of Evidence consisting of four(4) pages was taken down by me in writing in the presence of the accused and that Rules of Procedure 4 (c) (d), (e), (f) and (g) were complied with.

M.L. Magill, Capt
Officer detailed to take
the Summary of Evidence

Ex A

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
L.102588	Tpr.	Smith, G.O.	3 CACRU

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AWL AA 15 (1) Six times.

For A.A. 40 Two times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 12 Jan 43

Date of last entry in Field Conduct Sheet 15 May 45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

~~3. The accused has been awarded the following decorations :—~~ Nil

~~Nil~~

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for ~~28~~ 26 days in military custody, *i.e.*, Nil days in open arrest, ~~28~~ 26 days in close arrest; of which Nil days were spent in hospital. as of 31 May 45

5. The present age of the accused is 21 yrs

6. The date of his attestation is 2 Nov 42

7. The service which the accused is allowed to reckon is 2 yrs 6 months 23 days

†State the military decorations (if any) held by accused.

8. The accused is in possession of† CVSM & Clasp

~~Nil~~

~~Nil~~

~~Nil~~

~~Nil~~

EX B SMITH

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(P.S.O.72) W1.30721/3751 30,000 9-44 A.& E.W.,Ltd. Gp.698

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
D.C.M.	Camp Borden Ont 31 Aug 43	AWL A.A. 15 (1) from 0600 hrs, 15 Jun 43 until surrendering himself at Kenora at 2200 hrs, 7 Aug 43 (Absent 1 month, 23 days 16 hours)	60 days detention	

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this Lt. 31st day of MAY 43

ADJUTANT 3 C.A.(R.C.) CAPT.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	Rank.	Name.	Regiment (or as the case may be).
B.161086	Tpr.	Miller, J.C.	3 CAGRU

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers here stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.A. 15 (1) Three times.

For A.A. 40 One times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 11 Sep 44

Date of last entry in Field Conduct Sheet 4 Apr 45

2. ~~The following convictions by a court martial or civil court are recorded against the accused.~~ Nil.

*Strike out if not applicable.

~~3. The accused is at the present time under stoppages for~~ Nil.

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for ~~89~~ 269 days in military custody, *i.e.*, Nil days in open arrest, ~~89~~ 26 days in close arrest; of which Nil days were spent in hospital. As of 31 May 45

5. The present age of the accused is 19

6. The date of his attestation is 27 Apr 44

7. The service which the accused is allowed to reckon is 1 yr 29 dys

†State the military decorations to which held by accused.

8. The accused is in possession of† N/A

~~9. The accused's character is~~ Nil.

~~10. The accused has previously undergone imprisonment~~ Nil.

~~11. The accused has previously undergone detention~~ Nil.

~~12. The accused has previously undergone penal servitude~~ Nil.

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

ET B (Miller JC)

(76107) W1.30722/0701 35,000 9/44 A.& E.W.Ltd. Gp.698

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 31ST day of MAY 45

ADJUTANT 3 C.A.R.U.

NL. 102568 Name SMITH, Gordon Orville

Date of last entry in Company Conduct Sheet | Sqn, Battery, or Company | Corps CAC | Date of enlistment 2 Nov 42 | GC Badges | Service or Proficiency Pay

No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No One | Signature OC Company, etc

MFM 6 (AFM 122) 40/PERS/126 (3438)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order (interesting with trial	By whom awarded	Remarks
Prince Albert Sask	10 Jan 43	Pte		Sec 15(1) A.A. AWL from 2359 hrs 3 Jan 43 to 2246 hrs 10 Jan 43 (Absent 6 dys 22 hrs 59 mins)	A/Cpl Nelson N.A.	10 days C.B. 7 days pay AA 46 (2d)	12 Jan 43	F. Thompson Lt-Col	Forf 7 days pay under FRAI
Prince Albert Sask	5 Feb 43	Pte		Sec 15 (1) A.A. AWL from 0600 hrs 3 Feb 43 to 1159 hrs 5 Feb 43 (Absent 1 dy 5 hrs 59 min)	Cpl Campbell R.D.	7 dys C.B.	5 Feb 43	J.H. Reed Major	Forf 2 days pay under FRAI
Camp Borden Ont	15 JunTpr 43			Tried by DCM on a charge of being AWL from 0600 hrs 15 Jun 43 until S.O.S. 14 Jul 43. T.O.S. on surrendering himself at Kenora at 2200 hrs 7 Aug 43	Documentary	Cost of App. $28.99 60 days Detn	31 Aug 43	D.C.M.	Forf 113 days pay under FRAI

(719)

(Cont'd)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden	6 Dec 43	Tpr		Sec 15 (1) A.A. AWL from 0615 hrs 6 Dec 43 to 0200 hrs 7 Dec 43 (Absent 19 hrs 45 min's)	Documentary	Admonished	7 Dec 43	H.T. Gilmore Maj	Forf 1 days pay under FRAI
Camp Borden	13 May 44	Tpr		Sec 15 (1) A.A. AWL from 2200 hrs 13 May 44 until 0730 hrs 15 May 44 (Absent 1 day 9 hrs 30 min's)	Documentary	7 days C.B.	15 May 44	N.H. Mac-waulay Lt-Col	Forf 2 days pay under FRAI
Camp Borden	29 Sep 44	Tpr		Sec 40 A.A. "Neglect to the prej. i.e. failed to have rifle in clean condition	Tpr Butrick Documentary	3 days C.B.	29 Sep 44	C.E. Nettleton Capt	
Camp Borden	25 Nov 44	Tpr		Sec 15 (1) A.A. AWL from 2200 hrs 25 Nov 44 to 0545 hrs 27 Nov 44 (Absent 1 dy 7 hrs 45 min's)	Documentary	Admonished	27 Nov 44	W.W. Tofts Lieut	Forf 2 dys pay under FRAI

M.F.M. 6
(A.F.B. 127)

No. L.102588 Name SMITH, Gordon Orville Sqn., Battery, or Company [illegible] Corps C.A.C. Date of enlistment 2 Nov 42 G.C. Badges [illegible] Service or Proficiency Pay [illegible]

Date of last entry in Company Conduct Sheet [illegible] Period not reckoning towards freedom from extra fine [illegible] Sheet No. Two Signature O.C. Company, etc. [illegible] Character [illegible]

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden	18 Jan 45	Tpr		Sec 15 (1) A.A. AWL from 0600 hrs 18 Jan 45 to 1815 hrs 23 Feb 45	Documentary	28 days Detn	27 Feb 45	J.D. Oliver Major	Forf 27 days pay under FR&I
Field	15 May 45	Tpr		A.A. Sec 40 - WOAS conduct to the prejudice - refused to work when ordered to so so by Provost Sgt.	Sgt Forbes G.B. Cpl Guerard R.J.	Forf 4 days pay FR&I 149 (2)	15 May 45	CES Walls Lt-Col	

"CERTIFIED TRUE COPY"
Held in my custody

(G. Doans) Capt
A/Adjt 3 CACRU

(P.T.O.)

No. B.161096 Name MILLER, J. C. Sqn., Battery, or Company | Corps C.A.C. | Date of enlistment 27 Apr 44 | Badges N/A | Service or Proficiency Pay | M.F.M. 6 (A.F. B.122) 40/T & E/5136 (2965)

Date of last entry in Company Conduct Sheet | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No. one | Signature O.C. Company, etc. ??????

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order (in connexion with trial	By whom awarded	Remarks
				Criminal sheet destroyed after 6 months services 27 Oct 44 date of last entry 15 Oct 44. 1944					
Camp Borden	5 Sep	Tpr.		Sec.15(I) AA AWL from 2200 hrs 5 Sep until surrendering at 0245 hrs 11 Sep 44 (Absent 5 days 4 hours 45 mins)	Documentary	14 days Detn.	11 Sep	Lt.Col F.H. Collins	Forft 6 days pay.
Camp Borden	15 Oct	Tpr		Sec.40 AA Conduct to the prej.etc at 1900 hrs 15 Oct was found beyond the limits fixed by Reg't Fire Picquet Patrol Order after mounting on Reg't Fire Picquet	Sgt.Coomber L/C Bussey	10 Days CB 3 Days pay	20 Oct	Lt.Col F.H. Collins	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden	2 Mar 45	Tpr		AWL from 0200 hrs. 2 Mar. 45 until 1600 hrs. 2 Mar. 45. Absent 16 hrs.	Documentary	7 days C. B.	2 Mar 45	F. H. Wheeler Major	Forfts 1 days pay under FR&I 149(1) A
Field	3 Apr 45	Tpr		A.A.Sec.15(1) - WOAB AWL fm 2230 hrs 3 Apr 45 to 2330 hrs 3 Apr 45 (Absent 1 hr)	Sgt Jennings H. G.	7 days C. B.	4 Apr 45	J. G. Perrigard Major	

CERTIFIED TRUE COPY from Document held in this Office.

(W. Dobbs) Capt.
Adjt 3 CACRU

We, L.102588 Tpr. Smith, G.C and B.161096 Tpr. Miller, J.C. ~~Do not~~ do desire the services of an officer to defend us at our forthcoming trial by Field General Court Martial.

We desire the services of Any available if this officer is available.

L.102588 Tpr. Smith, G.C.

B.161096 Tpr. Miller, J.C.

LIST OF EXHIBITS

In the case of L.102588 Tpr. Smith, G.C. and B.161096 Tpr. Miller, J.C., on strength of 3 CACRU, soldiers of the Canadian Army Overseas.

For the Prosecution	Exhibit "A"	- Rifle belonging to L.102588 Tpr. Smith, G.C.
	Exhibit "A"	- Twenty-four(24) empty cartridges of .303 calibre, tracer.
For the Defence	NIL	

LIST OF WITNESSES

In the case of L.102688 Tpr. Smith, G.O. and B.161096 Tpr. Miller, J.C., on strength of 3 CACRU, soldiers of the Canadian Army Overseas.

For the Prosecution

1.	B.146839 Tpr. Doran, E.J.	- 3 CACRU
2.	K.2057 Tpr. Andow, O.J.	- 3 CACRU
3.	B.135296 Cpl Crump, G.R.	- 3 CACRU
4.	M.103967 Sgt Black, N.A.	- 3 CACRU
5.	Capt. W. Baldwin	- 2 CACRU
6.	M.350097 L/Cpl Robitaille, J.A.	- 2 CACRU

the Defence

NIL

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B.161096 Tpr John Clayton Miller, 3 CACRU AND
L.102588 Tpr Gordon Orville Smith 3 CACRU

Charge. (Insert "alternative" where applicable.)	Plea. By each (See Instrs p 2.)	Finding. On each (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 40	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 26 days, of which NIL days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

The accused L102588 Tpr GO SMITH to forfeit all ordinary pay for a period of Forty-Five (45) days.
The accused B161096 Tpr JC MILLER to forfeit all ordinary pay for a period of Thirty (30) days.

(Sgd) ..... 31 May 45 (Sgd) D.L. REIMAN Lt-col
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(1), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Finding and sentence confirmed

~~I direct that the accused be not committed to [state or threaten] Appendix until further ordered.~~ "TJR"
(1. AA 57A. Delete if not used.)

(Sgd) T.J. Rutherford Brig

Date 7 June 45 Commanding E Sp CRU
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B161096 Tpr MILLER J.C.	11 JUNE 45	[signature]

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 A 5M-79 78
RECEIVED 27 JUN 1945 JAG BRANCH C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CPA66 (To use in CAFAB) 40-P & B (1868 Vol 60) 4/38B

Convened by Brig TJ Rutherford Comd "E" Sp CRU dated 29 May 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see RP 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/rank or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.161096	Tpr		John Clayton	MILLER	3 CACRU
AND					
L.102588	Tpr		Gordon Orville	SMITH	3 CACRU

PROCEEDINGS REVIEWED AND APPROVED BY JAG BRANCH C.M.H.Q.
A true copy of the original proceedings as compared with the
14 June 45 [signature] CAPT
OFFICER IN CHARGE OF RECORDS
REVIEWED

COPY OF PROCEEDINGS OF TRIAL. (for MILLAR file)

Held at Bd in (country) ENGLAND on (date) 31 May 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 33, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused ~~is~~ (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused ~~is~~ (are) brought before the Court. At 1100 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused ~~is~~ (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ ..... as interpreter? Ans .....
~~The Interpreter is sworn.~~(1) ~~Do you object to~~ ..... as shorthand writer? Ans.
~~The shorthand writer is sworn.~~(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans NO - 2IC - NO EACH
(1. RP 110. 2. If no objection, waiting number retires. RP 66(B). If objection, see procedure AA 31, RP 25, 71, 98, MML p 742.)

A7. The President, Members, ~~JAs, if any, and Offrs under instr, if any~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-col	D.L. REIMAN	R. CRU
Member	Capt	F.J. SEARGEANTSON	1 CACRU
Member	Lt	H.S. GUNNERSON	4 CACRU
~~Judge-Advocate~~			
Prosecutor	Maj	WE DUNBAR	3 CACRU
Defending Offr	Lt	JD HARVEY	3 CACRU

Questions by President: Is the Prosecutor a lawyer? Ans NO. Is the Defending Offr a lawyer? Ans NO.(2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused ..... before arraignment make(s) (no) ~~a~~ plea .....
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 150, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RQ cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused ~~is~~ (are) arraigned (separately) on all charges in the charge sheet.(1) The accused ~~does~~ (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A86 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MAML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO-SIR BY EACH (5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MAML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his~~ (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) ~~change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty (Are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans (2)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is re-opened, and the President announces that the submission is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. Do you intend to call witnesses on your behalf ? Ans. Are they witnesses as to character only ? Ans
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 84(*C*). *Note the further opportunity in para* E3 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 108(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(7) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(7), *RP* 45, *117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO-SIR BY EACH
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copies of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB* 255 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment 1(3) Ans ~~BY HIS OFFR~~ NOT AT ALL (4)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or with anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 40. *As to sentences see AA* 44, 128, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Con* 308, 330, 563-566. *Overseas RO* 309, 2323, *MAML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MAML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(*B*), 68(*f*), *KR Con* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, L.102588 Tpr. Smith, Gordon, Orville, and B.161096 Tpr. Miller, John Clayton, on the strength of 3 Canadian Armoured Corps Reinforcement Unit, soldiers of the Canadian Army Overseas, are charged with:-

FIRST CHARGE
A.A. 40

WHILST ON ACTIVE SERVICE, AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that they,

at approximately 2230 hrs, on 4 May 45, were concerned in the firing of tracer ammunition at THURSLEY COMMON without authority.

(R.E.A. Morton) A/Colonel
Commanding 3 C.A.C.R.U.
Canadian Army England

In the Field
25 May 45

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

(P.J. RUTHERFORD) Brig
Comd
"R" Gp CRU

IN THE FD.,
26 MAY 45.

D.L.R.

FIELD GENERAL COURT-MARTIAL

(CFA96 (In lieu of AFA3)
40/PAM/1697 (2HQ)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L-102586	Tpr	Gordon Orville	SMITH	3 CACRU
B-161096	Tpr	John Clayton	MILLER	3 CACRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, ~~xx~~ (have) committed the offence(~~x~~) set forth in the Charge Sheet(~~x~~) attached and on (date) 28 MAY 45 endorsed by me, (~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~). " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~xxxxxxxxxxxxxxxxxxxx

Medical Officers' Certificate
KR(Can) para 557.

I certify that I have this morning examined:-

Regt'l No. L-102588 Rank Tpr Name SMITH GO, of 3 CACRU (unit)

and in my opinion he is fit to undergo trial by Court martial.

Station: IN THE FIELD

Date (of Court Martial) 31 May 45

Sgd:- C.P.Haywood Capt.
Unit
Medical Officer, RCAMC.

CERTIFIED TRUE COPY OF ORIGINAL.

DLR

Medical Officers' Certificate
KR(Can) para 557.

I certify that I have this morning examined:-

Regt'l No. B.161096 Rank Tpr Name MILLER JC of

3 CACRU (unit) and in my opinion he is fit to under go

trial by Court Martial.

Station: IN THE FIELD

Date (of Court Martial) 31 MAY 45

Sgd:- C.F.Haywood, Capt.
Unit
Medical Officer, RCAMC.

DLR

CERTIFIED TRUE COPY OF ORIGINAL.

#3 C A C R U

31 May, 1945.

PLEA IN MITIGATION

Mr.President and Gentlemen:-

The accused have plead guilty to an act to the prejudice of good order and military discipline. They have freely admitted to the firing of ammunition without authority.

However, on the night of May 4th, their last night at the "E" Group Gunnery School, which I can assure you from personal experience is a dreary place, they had spent 2 or 3 hours in the Red Lion and had consumed 7 or 8 pints of beer. This doubtless produced in them a certain levity of spirit, which they, being human, wished to communicate to those around them. You have seen men in similar circumstances in public placed doing strange things.

The accused found themselves in possession of rifles and tracer ammunition - not unusual, since nearly every man at this school carries several rounds in his pockets, left there and forgotten, since so much of it is handled each day.

Here was an excellent device for making a noise and sending bright lights flying through the night sky, and they proceeded with what to them was only a little harmless "celebrating". For them there was no further significance in the firing of the weapon. I should like to remind the court that all the ammunition was fired into the sky.

I should further like to inform the court that Tpr Smith is involved in some very troubling domestic difficulties. When a man is worried about something which is almost completely beyond his control; and when he suddenly has an opportunity to forget it temporarily and give vent to good spirits, he is usually more demonstrative than another. This is borne out by the fact that Tpr Smith did all the firing, while Tpr Miller's enjoyment of the occasion was of a more passive nature.

I do not intend this to be an excuse for their conduct, but I hope the court will take it into account when determining the extent of their punishment, and regard the offence in its true form as an exuberant frolic, rather than as an out of deliberate malice. They have already suffered considerably for their few moments of thoughtless pleasure, during 26 days close arrest awaiting trial.

Tpr Smith has volunteered for service with the Canadian Far East Forces, and from what I have learned of his ability as a tankman, is admirably suited to do so.

Tpr Miller has expressed a preference for service with the Army of Occupation and his conduct and training show that he will be able to discharge his duties in this role very effectively.

Both of these men have but recently left Canada, with the

6-3

/over D-4

intention of serving our Country to the best of their ability wherever the needs of the country and the dictates of conscience should direct them. They cannot do this in detention.

I trust that the court will acknowledge that the interests of justice and the furtnering of our cause will best be served if these men are removed from active participation in the war for the least possible time, and will act accordingly.

It would indeed be a shame to treat the accused as criminals on account of one careless moment of exuberance.

CERTIFIED TRUE COPY OF ORIGINAL.

SUMMARY OF EVIDENCE

In the case of L.102588 Tpr. Smith, G.O. and B.161096 Tpr. Miller, J.C., on the strength of 3 Canadian Armoured Corps Reinforcement Unit, soldiers of the Canadian Army Overseas.

FIRST WITNESS
For the prosecution

B.146839 Tpr. Doran, E.J., on strength of 3 CACHU, a soldier of the Canadian Army Overseas, having been duly sworn, states:

"On the night of 4 May 45 I went to the Red Lion Public House at Thursley with the accused, whom I now recognize. We sat and drank beer until 1030 hrs and then set for camp. I stopped to relieve myself in some bushes by the side of the road and when I came out the accused had gone. I looked around for them, did not see them and went on towards camp. I had started to cross the Common when my attention was attracted to two figures walking towards me, one of whom was carrying a rifle, the other was in more of a shadow and I could not see if he was carrying anything. I could not recognize them. When I saw them I stepped into the shadow because I had heard earlier in the evening that two of the chaps were going out with live ammunition which they intended to shoot off. I was not told who they were and when I saw these two I decided they might be the people concerned and did'nt want them to start shooting at me. I watched from the shadow to see if the chaps would change their course but they kept coming so I went back right into the bushes and lay on the ground where I could not see them and where they could not see me. There was the sound of conversation between them and what I took to be a third person or persons and then the sound of firing. I am not sure whether the firing began before the talking or afterwards. They were firing tracer and fired altogether some twenty or thirty rounds. When they stopped firing the party dispersed and presently I got up and went back to the hut. There were several people in the hut when I got back and we began a general conversation about the shooting. After we had talked for awhile, I noticed that Smith and Miller had come into the hut, though I did not see them come in. Tpr Smith joined in the conversation and from his remarks, the exact words of which I can't remember, I gained the impression that he had done the shooting. After I had got into bed Smith left the hut and I noticed his rifle and suggested to Tpr. Andow, who slept below me, that he should hide the rifle because I was afraid that he might decide later in the night to start shooting in the hut. Andow hid the rifle and when Smith came back he did'nt notice it was gone as far as I remember. Shortly after this Sgt Black came in and asked to see Smith's rifle, which he could'nt find. After Sgt Black had gone out Tpr. Andow gave Smith back his rifle, ~~a few minutes later~~ what Smith did with it I don't know. Sgt Black came back a few minutes later and put the accused under arrest. When Smith was getting his blankets the rifle was found under his palliase".

B.146839 Tpr. Doran, E.J.

The accused declines to cross-examine this witness.

SECOND WITNESS For the Prosecution

K.2057 Tpr. Andow, O.J., on strength of 3 CACRU, a soldier of the Canadian Army Overseas, having been duly sworn, states:

"On 4 May this year I was at "g" Gp Crew Comds Crse. That evening I went over to the Salvation Army Canteen. I left at approximately 2200 hrs and started to walk back to camp with a number of people whose names I do not know. As I was walking along my attention was attracted to two men, both of whom had rifles. These men were firing tracer ammunition. They were firing into the air and I went up to them with the idea of getting them to stop or expend their ammunition. When I came up close to them I saw they were Tprs. Smith and Miller, whom I now recognize. They both had rifles but I don't remember whether Miller was firing or not. They fired a few more rounds and then stopped. They then walked away and I went back to camp. They had mentioned jokingly that they were going to shoot the mail clerk, so I thought I had better warn him just in case if he walked that way, they may have tried to scare him. I then went over to the kitchen for a cup of tea and was talking with the cook and Sgt Black. I then went to the hut and Tprs Smith and Miller were there. We were discussing the shooting and presently Smith went out and Tpr. Doran who was there said to me, "You had better hide their rifles before they start shooting here", so I got Smith's rifle and handed it to Doran who stuck it behind our bed. Then Sgt Black came in and asked to see the rifles of Smith and Miller. Smith could'nt find his but the Sgt Looked at Miller's rifle and went out. We then gave Smith back his rifle and then we told them they were a couple of fools. A little while later Sgt Black and another Sgt came and told them to get their bed clothes and come with them".

K.2057 Tpr. Andow, O.J.

The accused declines to cross-examine this witness.

THIRD WITNESS For the Prosecution

B.135296 Cpl Crump, G.R., on strength of 3 CACRU, a soldier of the Canadian Army Overseas, having been duly sworn, states:

"One night in the early part of May I went to the Salvation Army Canteen near the HQ of the Crew Comds Crse at Thursley. I came in between 2130 hrs and 2200 hrs. I came in with a bunch of other fellows and sat chewing the fat with them and a Sgt was there. While we were talking Tpr. Smith and Tpr. Miller came in carrying their rifles. They started to talk about scaring the hell out of Doran by firing off their rifles. Doran was there and they were kidding him. They were still joking back and forth and Miller was getting into bed when Sgt Black came in and I think there was an officer with him. He asked to see Miller's rifle and then he asked Tpr. Smith for his rifle and Smith could'nt find it. Sgt Black left then and Smith finally got his rifle from near Fillier and Doran's bed. Sgt Black came back in about 10 minutes and told Miller and Smith to get dressed; take their blankets and rifles and come with him. Smith rolled up his blankets and palliase and his rifle was under the palliase.

B.135296 Cpl Crump, G.R.

The accused declines to cross-examine this witness.

FOURTH WITNESS For the Prosecution

M-103967 Sgt Black, N.A., on strength of 3 CACRU, a soldier of the Canadian Army Overseas, having been duly sworn, states:

"At approximately 2220 hrs, 4 May 45, I was returning to the camp from the canteen. As I entered the camp I heard a number of shots and looking up saw tracer going over the camp. Just then I met Sgt Godfrey who told me the clerk in the Orderly Room had telephoned that some one was firing on the upper range. I got the Cpl of the Guard and we went up on the range, searched very carefully and found no one. We returned to camp and began to check all the huts to see if anyone had just come in with a rifle. We heard in one of the huts that Tprs Smith and Miller, whom I now recognize, as the accused, had been up on the range at the approximate time the rounds had been fired. We went to their hut and found them in, I asked the accused to see their rifles and Tpr. Miller's rifle on examination was clean and had not recently been fired. Tpr. Smith could not find his rifle. I asked Smith for the number of his rifle and he gave it to me. We left the hut, went through the remainder of the huts and again heard that Smith and Miller had been seen on the range. Deciding to place them under close arrest on suspicion, we went back to the hut and placed them under close arrest. I told them to bring their blankets and palliases with them and when Tpr. Smith rolled up his palliase, his rifle was underneath it. On examination, the rifle had recently been fired."

M. a Black Sgt
M.103967 Sgt Black, N.A.

The accused declines to cross-examine this witness.

This rifle is shown to the accused, marked by me as Exhibit "A" for the prosecution and attached to the Summary.

M.L. Magill, Capt
Officer detailed to take the Summary of Evidence

FIFTH WITNESS For the Prosecution

Capt. W. Baldwin, on strength of 2 CACRU, an officer of the Canadian Army Overseas, having been duly sworn, states:

"on Sat, 5 May 45, at approximately 0900 hrs, Major Blanchard, the O.C. #g= Group Gunnery School asked me to go up on top of the hill in the vicinity of the range on Thursley Common, to see if I could find any evidence of firing having taken place the night before. Accompanied by B-146839 Tpr. Doran, E.J., I went up on to the hill, and asked him if he could show me approximately where the firing took place from. After being shown, I looked around and found twenty four (24) empty cartridges of .303 calibre, tracer. I took these empty cases to Major Blanchard, and they have been submitted as evidence."

W Baldwin Capt.
Capt. W. Baldwin

The accused declines to cross-examine this witness.

These cartridges are shown to the accused, marked by me as Exhibit "B" for the prosecution and attached to the Summary.

M.L. Magill, Capt.
Officer detailed to take the Summary of Evidence

SIXTH WITNESS for the Prosecution

R/250097 L/Cpl Robitaille, J.A., on strength of 2 CACHU, a soldier of the Canadian Army Overseas, having been duly sworn, states:

"At approximately 2220 hrs, 4 May 45, while on duty at "g" Op Gunnery School Orderly Room, I heard shots being fired. I did'nt pay much attention to the first few shots fired, but as the firing continued, I looked out through the window and saw tracer going overhead from the direction of the upper range. I phoned the Medical Inspection Room and the phone was answered by Sgt Godfrey. I informed him of the firing and he contacted Sgt Black, who investigated the matter. I then went up to the upper range but found no one in the area".

J A Robitaille
R.250097 L/Cpl Robitaille, JA

The accused declines to cross-examine this witness.

The accused were cautioned as follows:

"Do you wish to make any statement or to give evidence on oath. You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence".

The accused decline to give evidence on oath or to make statements.

The accused do not wish to call any witness for the defence.

I certify that the foregoing Summary of Evidence consisting of four(4) pages was taken down by me in writing in the presence of the accused and that Rules of Procedure 4 (c) (d), (e), (f) and (g) were complied with.

W.L. Magill, Capt
Officer detailed to take the Summary of Evidence

Exhibit DLR

CERTIFIED TRUE COPY OF ORIGINAL.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
L.102588	Tpr	Smith, G.O.	3 CACRU

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AWL AA 15(1) Six times.

For A.A. 40 Two times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 12 Jan 43

Date of last entry in Field Conduct Sheet 15 May 45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

3. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for 26 days in military custody, *i.e.*, Nil days in open arrest, 26 days in close arrest; of which Nil days were spent in hospital. as of 31 May 45

5. The present age of the accused is 21 yrs

6. The date of his attestation is 2 Nov 42

7. The service which the accused is allowed to reckon is 2 yrs 6 months 23 days

†State the military decorations of which held by accused.

8. The accused is in possession of† CVSM & Clasp

Ex B Smith

D.L.R.

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(T.S.W.T.) W.L.30/751/5/10. 80,000 F.44 A.A. & S.W. Ltd. Gp.s/60

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
D.C.M.	Camp Bordon Ont 31 Aug 43	AWL A.A.15(1) from 0600 hrs, 15 Jun 43 until surrendering himself at Kenora at 2200 hrs, 7 Aug 43 (Absent 1 month, 23 days 16 hours)	60 days detention	

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 31st day of May 45

(Sgd) G.Dower, Capt.,
Adjutant, 3 CACRU.

CERTIFIED TRUE COPY OF ORIGINAL.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B.161096	Tpr.	Miller, J.C.	3 CAC RU

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, promulgation being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded in the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.A.15(1) Three times.

For A.A.40 One times.

For .... times.

For .... times.

Date of first entry in Field Conduct Sheet 11 Sept 44

Date of last entry in Field Conduct Sheet 4 Apr 45

2. [redacted]

*Strike out if not applicable.

*3. [redacted]

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for 26 days in military custody, *i.e.*, Nil days in open arrest, 26 days in close arrest; of which Nil days were spent in hospital. as of 31 May 45

5. The present age of the accused is 19

6. The date of his attestation is 27 Apr 44

7. The service which the accused is allowed to reckon is 1 yr 29 dys

Strike the useless portions off and hold by accused.

8. The accused is in possession of: N/A

9. [redacted]

Ex B Miller
DLR

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(78871) Wt.30721/3701 20,000 8/44 A.& E.W.Ltd. Gp.698

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 31st day of May 45

(Sgd) G. Dower, [illegible]

No. L102586 Name SMITH, Gordon Orville | Sqn, Battery, or Company | Corps CAC | Date of enlistment 2 Nov 42 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/PAM/130 (2418)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No Two | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Bordon	18 Jan 45	Tpr		Sec 15(1) AA AWL from 0600 hrs 18 Jan 45 to 1615 hrs 23 Feb 45	Documentary	28 days Detn	27 Feb 45	J.D.Oliver Major	forf 27 dys pay under FR&I
Field	15 May 45	Tpr		A.A. Sec 40 - WOAB conduct to the prejudice - refused to work when ordered to do so by Provost Sgt.	Sgt Forbes G.B. Cpl Guerard R.J.	Forf 4 days pay FR&I 149 (2)	15 May 45	WES Wells Lt-Col	

"CERTIFIED TRUE COPY"
Held in my custody

(Sgd) G.Dower, Capt.
(G.Dodds) Capt.
A/Adjt 3 CACRU

(PTO)

No. L102586 Name SMITH, Gordon Orville | Sqn, Battery, or Company | Corps CAC | Date of enlistment 2 Nov 42 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No One | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Prince Albert Sask	10 Jan 43	Pte		Sec 15(1) A.A. AWL from 2359 hrs 3 Jan 43 to 2245 hrs 10 Jan 43 (Absent 6 dys 22 hrs 59 min's)	A/Cpl Nelson R.A.	10 days C.B. 7 days pay AA 46 (2d)	12 Jan 43	F.Thompson Lt-Col	Forf 7 dys pay und FR&I.
Prince Albert Sask	5 Feb 43	Pte		Sec 15(1) AA AWL from 0600 hrs 3 Feb 43 to 1159 hrs 5 Feb 43 (Absent 1 dy 5 hrs 59 min)	Cpl Campbell R.J.	7 dys CB.	5 Feb 43	J.H.Reed Major	forf 2 dys pay under FRI
Camp Bordon Ont	15 Jun 43	Tpr		Tried by DCM on a charge of being AWL from 0600 hrs 15 Jun 43 until S.C.S. 14 Jul 43. T.O.S. on surrendering himself at Kenora at 2200 hrs 7 Aug 43.	Documentary	Cost of app. $28.99 60 dys detn.	31 Aug 43	D.C.M.	forf 11 3 dys pay under FR I

(Cont'd)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Bordon	6 Dec 43	Tpr		Sec 15(1) AA AWL from 0615 hrs 6 Dec 43 to 0200 hrs 7 Dec 43 (Absent 19 hrs 45 min's)	Documentary	Admonished	7 Dec 43	H.T. Gilmore Maj	Forf 1 dys pay under FR&I
Camp Bordon	13 May 44	Tpr		Sec 15(1) AA AWL from 2200 hrs 13 May 44 until 0730 hrs 15 May 44 (Absent 1 day 9 hrs 30 min's)	Documentary	7 days C.B.	15 May 44	N.H.Macaulay Lt.-Col	Forf 2 dys pay und FR&I
Camp Bordon	29 Sep 44	Tpr		Sec 40 AA "Neglect to the prej." i.e. failed to have rifle in clean condition.	Tpr Butrick Documentary	3 days C.B.	29 Sep 44	C.E.Nettleton Capt	
Camp Bordon	25 Nov 44	Tpr		Sec 15(1) AA AWL from 2200 hrs 25 Nov 44 to 0545 hrs 27 Nov 44 (Absent 1 dy 7 hrs 45 min's)	Documentary	Admonished	27 Nov 44	W.W.Tofts Lieut.	Forf 2 dys pay under FR&I

3/17 MFM 6 (AFB 122)

No. B161096 Name MILLER, J.C. | Sqn, Battery, or Company | Corps C.A.C. | Date of enlistment 27 Apr 44 | GC Badges | N/A | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No One | Signature OC Company, etc ????????

Place	Date of offence	Rank	Cause of detention-ment	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispens-ing with trial	By whom awarded	Remarks
	Original sheet destroyed after 6 months services 27 Oct 44 date of last entry 15 Oct 44.								
Camp Bordon	1944 5 Sep	Tpr.		Sec.15(1) AA AWL from 2200 hrs 5 Sep until surrendering at 0245 hrs 11 Sep 44 (Absent 5 days 4 hrs 45 mins)	Documentary	14 days detn.	11 Sep 1944	Lt.Col F.N. Collins	For 6 dys pay.
Camp Bordon	15 Oct 44	Tpr		Sec.40 AA Conduct to the prej.etc. at 1900 hrs 15 Oct was found beyond the limits fixed by Reg't Fire Picquet Patrol Order after mounting on Reg't Fire Picquet	Sgt.Coomber L/C Bussey	10 days GB 3 days pay	20 Oct 44	Lt-Col F.N.Collins	

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Bordon	2 Mar 45	Tpr		AWL from 0200 hrs. 2 Mar 45 until 1800 hrs 2 Mar 45 (Absent 16 hrs)	Documentary	7 days CB	2 Mar 45	F.H.Wheeler Major	Forf 1 dys pay under Fn&I149(1)A
Field	3 Apr 45	Tpr		A.A.Sec 15(1) - WOAS AWL from 2230 hrs 3 Apr 45 to 2330 hrs 3 Apr 45 (Absent 1 hr)	Sgt Jennings R.G.	7 days CB	4 Apr 45	J.G.Perrigard Major	

CERTIFIED TRUE COPY from Document held in this officer.

(Sgd) G.Dodds,
(G.Dodds) Capt.
Adjt 3 CaCHU

LIST OF EXHIBITS

In the case of L.102588 Tpr. Smith, G.O. and B.161096 Tpr. Miller, J.C., on strength of 3 CACRU, soldiers of the Canadian Army Overseas.

For the Prosecution	Exhibit "A"	- Rifle belonging to L.102588 Tpr. Smith, G.O.
	Exhibit "A"	- Twenty-four (24) empty cartridges of .303 calibre, tracer.
For the Defence		NIL

We, L.102588 Tpr. Smith, G.C and B.151006 Tpr. Miller, J.C. ~~Do not~~ do desire the services of an officer to defend us at our forthcoming trial by Field General Court Martial.

We desire the services of Any available if this officer is available.

L.102588 Tpr. Smith, G.C.

B.151006 Tpr. Miller, J.C.

/LIST OF WITNESSES

In the case of L.102588 Tpr. Smith, G.O. and B.161096 Tpr. Miller, J.C., on strength of 3 CACRU, soldiers of the Canadian Army Overseas.

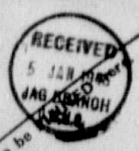
For the Prosecution

1.	B.146839 Tpr. Doran, E.J.	-	3 CACRU
2.	K.2057 Tpr. Andow, O.J.	-	3 CACRU
3.	B.135296 Cpl Crump, G.R.	-	3 CACRU
4.	M.103967 Sgt Black, N.A.	-	3 CACRU
5.	Capt. W. Baldwin	-	2 CACRU
6.	M.350097 L/Cpl Robitaille, J.A.	-	2 CACRU

For the Defence

NIL

4M - 119.
Pte. Smith. G.R.



RECORDED AT CMHQ IN AB 160. 4/M/119

Correspondence to be

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this seventh day of December, 19 44.

Whereas it appears to me, the undersigned, an officer in Command of 3 Parachute Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * ~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* ~~[I am unable to appoint—~~

~~*(1. Three Officers to form the Court.)~~

~~*(2. A Field Officer as President)~~

~~for the following reasons, namely—]~~

*Omit if not applicable.

*Omit when Convening Officer is a Commanding Officer or is of Field Rank.

Rank.	*President.* Name.	Regiment.
Major	R.E. Gosnbe, MC.	Herefordshires.
Rank.	***Members.*** **Name.**	**Regiment.**
A Capt	To be detailed by OC 1(Gdn) Para Bde	
A Subaltern	To be detailed by OC 9 Para Bn	

*Signed

Brigadier,
Commanding 3 Parachute Brigade.
Convening Officer.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B-138256 Pte SMITH G.R. 1(Gdn) Para Trg Coy	AA Sec 9(1) WOAB disobeying in such a manner as to show a wilful defiance of authority a lawful command given personally by his superior officer in the execution of his office.	NG	G Discharge on the limit for 18 days	Confirmed J.H.H. BRIGADIER COMD. 3 PARACHUTE BRIGADE

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) No

(Signed) R.P. Coombe Major
Deputy Judge Advocate, [illegible]
President.

(Signed) _____
Commanding 3 Parachute Brigade,
Convening Officer (e)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (If necessary) to be PINNED here.

I certify that the above Court as
day of Dec. , and duly
the Schedule, and that the plea, finding,
of each such person were as stated in the third
of that Schedule.

I also certify that :—

*Omit if not applicable.

1. The members of the Court
2. The witnesses
*3. ~~The Interpreter~~
*(4. The officers under instruction)

were duly sworn.

Signed this 14 day of Dec 1944

R.P. Coombe Major
President of the Court Martial.

C.

Certificate in case of death sentences.

*See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what Confirmation I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless total forfeiture, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

Signed this 17 day of December 1944

J.H.H. Butterfield
Brig and B Parachute Brigade Confirming Officer.

Promulgated and extracts taken in the case of B.138256 Pte Smith G.R. 1 Gdn at Para Trg Coy

(a) (Dated) 18 Dec 44 (Signed) _____

Promulgated and extracts taken in the case of

(Dated) _____ (Signed) _____

Promulgated and extracts taken in the case of

(Dated) _____ (Signed) _____

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B-130256 Pte SMITH G.E. 1(Gdn) Para Trg Coy	AA Sec 9(1) WOAS disobeying in such a manner as to show a wilful defiance of authority a lawful command given personally by his superior officer in the execution of his office.	NG	G 6 months detention for 6 days	Confirmed 17.12.44 BRIGADIER, COMD. 3 PARACHUTE BRIGADE.

*Question to be asked of accused, if he pleads not guilty [R. of P. 39 (A)] :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?" No

Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) _____ (Signed) R.S. Coombe Major

Brigadier, _____ President.
Commanding 3 Parachute Brigade, Confirming Officer (d)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 14 day of Dec. , and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

*Omit if not applicable

1. The members of the Court
2. The witnesses
*(3. ~~The Interpreter~~)
*(4. The officers under instruction)

were duly sworn.

Signed this 14 day of Dec. 1944.

R.S. Coombe Major
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 702 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this _____ day of _____ 19 .

_____
President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded. the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~)

Signed this 17 day of December 1944.

_____ Brigadier
Cmd 3 Parachute Brigade Confirming Officer.

Promulgated and extracts taken in the case of B.130256 Pte Smith G.E. DWOSR Coy

(a) (Dated) 18 Dec 44 (Signed) _____

Promulgated and extracts taken in the case of

(Dated) _____ (Signed) _____

Promulgated and extracts taken in the case of

(Dated) _____ (Signed) _____

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(3000) Wt.30303/1 40,000 12/44 A.& A.S. Gp.698

A. R. Coutts Maj.

CHARGE SHEET

The accused B 138256 Pte SMITH, G.R., 1st Cdn Para Trg Unit, Canadian Army Overseas, a soldier of the Canadian Army Overseas placed on Active Service is charged with:

Charge

AA Sec. 9(1)

When on Active Service
Disobeying in such a manner as to show a wilful defiance of authority a lawful command given personally by his superior officer in the execution of his office

in that he

at Ringway did refuse to continue Parachute Ground Training when ordered to do so by Lt D. FIRLOTTE

D. J. Wilkins Maj

18 Nov 44
Carter Barracks
Bulford, Wilts.

(D. J. WILKINS) Maj.
Commanding Officer.
1st Cdn Para Trg Unit.

To be tried by FGCM

7 Dec 44.

Brig,
Comd 3 Para Bde.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL

Held in the Field on the 14th day of Dec 1944

- - - - - - - - - - - - - - - - -

The members detailed are :-

	Rank	Name	Regt	Detailed by
1.	Capt.	R.E. Harrison	1 Can. Para Bn	O.C. 1 Can. Para. Bn.
2.	Lieut.	R.O. Blair	9 Bn. Para Regt.	O.C. 9 Bn. Para. Regt.

(NB - See AF 100(c). These names must not be written by President on Page 1 of AF A3)

Trial of :- B-138256 ..... Pte. Smith G.R. .....Unit 1 Can. Para. Tpt. Coy.

x Prosecutor Lt. R.B. Grant. .....Defending Officer Lt. R.C. Curtin

Offrs under Instruction:- None/see list marked "

1. The accused answers to his name and number
2. The convening order is read in his presence
3. The accused is asked whether he objects to trial by the President or any members and he answers ..... no .....
4. The President and members are sworn
5. ~~The Judge Advocate~~, the officers under instruction, the Shorthand Writer, ~~the Interpreter~~ are sworn.
6. The Charge Sheet annexed to the Convening Order is signed by the President Marked 'A' and attached to the proceedings
7. The accused is arraigned on the charge(s) in Exhibit 'A'
8. The accused having pleaded guilty to the .../.....Charge(s) the requirements of AF 122(b) is complied with
9. ~~The accused's answer to the question at the foot of page 2 of AF A3~~ is .....
10. The prosecutor makes ~~no~~/the attached opening address marked "
11. The evidence for the prosecution is recorded on sheets attached to AF A.
12. The prosecution is closed
13. The accused is informed of his rights in accordance with AF G(2) and para 2 on page 664 of the Manual of Military Law.
14. The accused makes the following answers to the following questions:-
(a) Do you wish to give evidence as a witness on oath? ans.....No.....
(b) Do you intend to call any witnesses in your defence? ans.....No.....
(c) Are they witnesses as to character only? .....
15. The Defending offr makes the opening address recorded on sheet " " (He is only entitled to make an opening address if the answers to the questions in 14 are yes - yes - no).
16. The evidence for the defence is recorded on sheets " 2 " attached.
17. The Defence is closed
18. Speeches. prosecutor marked " B ". Defending officer marked " C ". (There record the closing speeches of the prosecutor and the Defending offr in the order indicated in AF G(c). Having been recorded they should be attached in that order.)
19. The Court is closed to consider the Findings which is entered on page 2 of AF A3.
20. The Court is re-opened and the Findings of Not Guilty are read in open court.
x 21. ~~The provisions of AF G(b) and (c) are complied with~~
x 22. ~~The accused is found guilty of the charges mentioned in the~~ the finding is entered on page 2 of AF A3.
x 23. ~~The Finding of Evidence in full is~~ " " signed by the President and attached to the proceedings.

x Insert rank, name, unit and "barrister" or "Solicitor" if such be the case.

x If the accused pleads guilty to all charges, numbers 8, 21, 22 & 23 only are used before the finding
If the accused pleads Not Guilty to all charges, all paras except 8, 21, 22 and 23 are used
If the accused pleads Guilty to one or more and Not Guilty to one or more charges all the paragraphs are used.

To sheet 2.

Sheet 2

AFTER FINDING

(If there is a finding of guilty the President announces that the findings of the Court on charges ..... will be promulgated in due course and asks the prosecutor if he has any evidence as to character)

EVIDENCE OF CHARACTER

24. Lieut. R.B. Grant, 1 Cdn Para Bn

sworn states :-

MFM 6

I produce a certified copy of AF B.122 marked " X " and extract from same marked " X1 " and attested relating to the accused when I recognise.

25. The accused is asked the following questions :-
Do you wish to call witnesses as to character or to address the Court in mitigation of sentence or answer .....no.....

26. The accused calls witnesses to character recorded on sheet marked " / "

27. The ~~accused's~~/Defending Officer's statement in mitigation is recorded on sheet marked " Y "

The Court is closed to consider sentence.

Statement in Mitigation

awaiting trial 37 days.

are to convey to them efforts of transferring

MEDICAL OFFICER'S REPORT

I certify that No. B 138256 Pte. SMITH G.R.
of I CPTU is in a GOOD state of health,
and FIT to undergo Trial by Court martial.

Medical Officer

Station Bulford Wilts.

Date 14 Dec. 44

M. F. B. 246

Officers under Instruction.

F. M. Chapman

Extract of the Statement in the C.O.S. of the D/O. asking for the A.O. for the ~~accused~~ D. O. and the accused on oath. The Court returns the plea to be of N.G.

accused does not want an adjournment.

Prosecution

1st witness. No. R. 13. Private I. Can. Para Trg Unit C.M.P. sworn states:-

at Ringway on 7.11.44 at approx 0800. the accused did not fall in both parades of the grade. After parade was dismissed owing to the inclement weather accused to fall in to continue his training for para descent.

He refused very orders 3 times during the day. While both NCO's were explaining my reasons of the order.

Cross examined:

He did not mention any thing about his nerves nor the night, before or after the jumps

No re examination

2nd witness. No. 13472 Sgt Humphreys I.M. I. Can. Para Trg Unit sworn states:

At Ringway on 7.11.44 the accused fell out of the Parade. He ordered Cadet Shenk, Some Arnet, Some Private was standing by parade. He asked accused what was wrong.

After telling Lt Private that he - the accused did not like continue training, Lt Private ordered him before us to continue training for para descent. He refused this order "he lie". I marched him M.I.R. The Guard Room.

He was warned 3 times.

Cross examined

Date He did not mention this after his arrest he could not sleep before or after the early jumps.

No re examination.

3rd witness.

Lieut I.C. Wilson Adj. I. Can para Trg Unit sworn states:-

accused documents are in my charge.

He was taken on strength of 11 Bde Para Trg Centre School on 9.6.44. On that date he was granted parachutist pay. On 2.9.44 he qualified as parachu

Shortly after arriving in England in March 1916 he was sent to Derby to prepare for training Bristol Battalion.

Court martial

accused knew that he was OR part in training for artillery and 9 months.

"On by D.O" Did you know that accused being to transfer from 1st Can para unit that he received no satisfaction as to why he could not go.

"He did not put any application through my office"

for prosecution

Close of prosecution

Defence.

13. 138256 Pte Smith G.R. the accused stated:-

I put in changes my name to Smith. I wanted to come overseas, my application was not approved. I went to Aldershot after arriving I tried to get out during the [illegible] Battalion. My army at Ben Shaul again during Mr Daniel. He gave me the days to think it over. Mr Daniel has not seen him again after that. My explanation has been given truly & I have nothing to add to my previous [illegible] I have to go back to my unit.

Cross examined

by Lt Colonel after Mr Daniel was for Prosecution. Mr Daniel said he would send for me. This during him I went to Derby to the next day.

no re-examination

Close of the defence.

Prosecution closing address [B]

Serious case in Command.
Careful man.

Defending officer closing address [C]

Tried to transfer back.
Found to other Commands.
Sincere desire to go to action.

X, Alberta.

B-130256 Pte SMITH, D.R. 1st CDN PARA TRG UNIT

AA Sec 15 3 3

AA Sec 10 1 1

37 37

10 yrs 0 mos

5 Jan 43

Canadian Volunteery Service Medal

I hereby certify that the foregoing schedule of [illegible] and discharges is a true copy from the Regimental Books in my charge.

Dated at [illegible] this [illegible] day of Dec. 1944.

Asst Adjt 1st CDN Para Trg Unit.

SUMMARY OF EVIDENCE B. A. Courtemanche

In the case of

B 138256 Pte Smith G.R., 1 Cdn Para Trg Unit a soldier of the Canadian Army Overseas, placed on Active Service

While on Active Service, disobeying in such manner as to show a wilful defiance of authority, a lawful command given personaly by his superior officer in the execution of his office.

THE COMMANDING OFFICER DIRECTS THE EVIDENCE BE TAKEN ON OATH

First Witness: Lieut R.B. Villotte, 1 Cdn Para Trg Unit, CAO having been duly sworn states:

I am Lieut R.B. Villotte, 1 Cdn Para Trg Unit. On 7 Nov. 44 while attending a parachute conversion course at Ringway, England. I was in charge of a group of other ranks who were also attending the same course. The class fell in on the morning parade and then B138256 Pte Smith G.R. fell out at the end of the parade. I ordered Pte Smith G.R. to return to his section and continue ~~parachute~~ training for the purpose of making a parachute descent, saying, "Pte Smith ~~[redacted]~~, return to your section and continue your training for the purpose of making a parachute descent." Pte Smith G.R. replied, "No sir." I repeated this order twice more to make sure it was understood and also explained to him that his refusal would mean that he would be placed on charge, but received the same reply as before. I then placed Pte Smith G.R. under close arrest and he was paraded to the guard room.

(SIGNED)

(R.B. VILLOTTE) LIEUT
1 Cdn Para Trg Unit, CAO

The accused declines to cross-examine this witness.

Second Witness:- K 73492 Sgt Humphreys, E M, 1 Cdn Para Trg Unit CAO, having been duly sworn states:-

I am K 73492 Sgt Humphreys, E M, 1 Cdn Para Trg Unit On 7 Nov 44 I was present on parade when B 138256 Pte Smith G R was ordered by Lieut R L Fielstra to continue training for the purpose of making a parachute descent.

The order was given three times and each time Pte Smith G R replied "No Sir". There could be no doubt in Pte Smith's mind as to the meaning of the order given to him.

He was then placed under close arrest and paraded to the guard room.

(SIGNED) ~~D H Humphreys Sgt~~
(E M HUMPHREYS) Sgt
1 Cdn Para Trg Unit CAO

The accused declines to cross-examine this witness.

Third Witness:- S/Ldr A Goldberg, Medical Officer, RAF Station, Ringway.

A Medical Inspection Report purporting to be signed by this witness has been read to the accused and is attached to this summary

In my opinion the attendance of this witness cannot readily be procured.

The accused does not demand the attendance of this witness for cross-examination.

Medical Inspection Report marked "A" attached.

~~T C Wilson Lieut~~
(R C WILSON) Lieut
1 Cdn Para Trg Unit, CAO

Fourth Witness:- Lieut T C Wilson, Adjt 1 Cdn Para Trg Unit CAO having been duly sworn states:-

I am Lieut T C Wilson, Adjt of the 1st Cdn Para Trg Unit I am responsible for keeping certain documents of B 138256 Pte Smith G R who was taken on strength of A 35 Para Trg Centre, Canada on 9 Jun 44 Daily Order # 138. He began to draw Parachutists pay from that date. He qualified as a parachutist on 2 Sept 44 Daily Order # 211. Shortly after arriving in England, on 4 Nov 44 he was sent on a Conversion Course held at the Para Trg School, Ringway for the purpose of learning the British methods of jumping.

(SIGNED) T C Wilson Lt
(T C WILSON) Lieut
Adjt 1st Cdn Para Trg Unit CAO

The accused declines to cross-examine this witness

Question to the accused :- Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

Answer :- The accused, B138256 Pte Smith G.R. having been duly sworn states :-

I refused to jump because I was too nervous. I couldn't eat or sleep before or after a jump.

(Sd) G R Smith

(G R SMITH) Pte.
1 Cdn Para Trg Unit. CAO

I certify that rules 4 (c), (d), (e), and (f) have been complied with.

Taken down by me in the presence of the accused at Carter Barracks, Bulford Camp this 16th day of November 1944

R B Grant

(R B GRANT) Lieut
1 Cdn Para Trg Unit. CAO

LIST OF EXHIBITS IN THE CASE OF

B-138256 Pte Smith G.H.

EXHIBIT "A" Medical Inspection Report purporting to be signed by S/Ldr A Goldberg, RAF, Medical Officer, Ringway.

J. E. Palmer

(J.E. Palmer) Lt.,
Asst Adjt Lancashire Fusn Trg Unit.

20 Nov 44.
Carter Barracks,
Salford, Lancs.

STATEMENT BY THE ACCUSED

I, B-138256, Pte Smith, G.R., desire to have an officer assigned to defend me at my trial by Court Martial.

29 Nov 44,
Carter Barracks,
Bulford, Wilts.

G.R. Smith
B-138256 Pte Smith, G.R.,
1st Cdn Para Trg Unit.

RR-28
PTE SMITH G.R.

CORRECTION

This document has been rephotographed to assure legibility

MEDICAL OFFICER'S REPORT

I certify that No. B 138256 Pte. SMITH G.R.

of I CPTC is in a GOOD state of health,

and FIT to undergo Trial by Court martial.

Medical Officer

Station Bulford Wilts.

Date 14 Dec. 44

M. F. B. 246

BM—8-41 (702)
H.Q. 1773-39 400

Officers under Instruction.

Lt. M. Chagnon.

Sentence of the Shortening in lieu S. of S. & the D.O. order for the A.C. for the ~~accused~~ D.O. B. put the accused on oath the Court returns the plea to be one of N. G.

accused does not want an adjournment.

Prosecution

1st witness. H. R. B. Frobisher 1. Can. Para Trg Unit C.P.O. shown & asks:-

At Pengway on 7.11.44 at approx 0800. the accused did not fall in with parades. I the sgt. After parade was dismissed owing to the inclement I was ordered accused to fall in to continue his training for para descent.

He refused very often 3 times during day to do it. There was no unsatisfactory behaviour of the man.

Cross-examined.

He did not mention any thing about his nerves nor ~~he might~~, before, or after jumps

No re-examination

2nd witness. K. 78492 Sgt Humphreys P.M. 1. Can. Para Trg Unit shown & asks:-

At Pengway on 7.11.44 the accused fell out of the Parades. He asked Cpl Plumb, Lance Corpl. Frobisher was absenting by parade, He asked accused what was wrong.

After telling Sgt Frobisher that he - the accused did not like continuation training, Sgt Frobisher warned him liable to continue training for para descent. He refused then stated "he lie". I marched him P.M.I.R. & Regimental Pm.

He was warned 2 times.

Cross-examined

Fact He did not mention this after his arrest he should not sleep before or after the training jumps.

No re-examination

3rd witness.

Lance L. C. Gibson Army 1. Can para Trg Unit shown & asks:-

accused documents are in my charge.

He was taken on strength of 19 Bde Para Trg Centre Shilton on 9.6.44. As that date he was granted parachutist badge. On 29.9.44 he qualified as parachutist

Shortly after arriving in England on 4.11.40 he was sent by Ship way for purpose of examining British methods.

Cross examined.

accused knew through any O/R part in transfer for sanction and records.

"Known by D.O" Did you know that accused being transfer from 1. Com para unit that he received no sanction as to stay in Country or no.

"He did not put any application those my file"

No re-examination

Close of Prosecution

Defence.

B. 13826 Pte Smith G.R. the accused never claimed I/part changed my name in Shiloh. I came to Come overseas, he did not apply become out. Back at Aldershot after arrest I tried to get out during the ~~[illegible]~~ in army at Bov I tried again during Mr Arnel. He gave us 2/46 days to think it over, he did not see him again after the first interview has been given by it is not any to get no 3 para Bde. I want to go back Army and Regt.

Cross examined

Very Pt Connor after Mr Arnel was for Pinkville. Mr Arnel said he would send for us. Questioning him I went to Army in the next 3/4 days.

No re-examination

Close of the defence.

Prosecution Closing address. B

Witnesses are in Command

Can not town.

Defending Officer Closing address C

Tried to train for battle.

Forced to do duty Commando.

Sincere desire to go into action.

X, Allowances

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Regiment (or as the case may be)

Name

B-138256 Pte SMITH G.B. 1st CDN PARA TRG UNIT

AA Sec 15 3 3

AA Sec 40 1 1

37 37

10 yrs 8 mos

8 Jan 43

Canadian Volunteer Service Medal

I hereby certify that the foregoing schedule of [illegible] is a true copy from the Regimental Books in my charge.

Dated this [illegible] day of Dec. 1944.

Asst Adjt 1st Can Para Trg Unit

SUMMARY OF EVIDENCE B. M. Coombs Major

In the case of

B 138256 Pte. Smith G.R. / Cdn. Para Trg Unit a soldier of the Canadian Army Overseas, placed on Active Service While on Active Service, disobeying in such manner as to show a wilful defiance of authority, a lawful command given personaly by his superior officer in the execution of his office.

THE COMMANDING OFFICER DIRECTS THE EVIDENCE BE TAKEN ON OATH.

First Witness: Lieut R.B. Firlotte, / Cdn Para Trg Unit, CAO. having been duly sworn states:

I am Lieut R.B. Firlotte, / Cdn Para Trg Unit. On 7 Nov. 44 while attending a parachute conversion course at Ringway, England. I was in charge of a group of other ranks who were also attending the same course. The class fell in on the morning parade and then B138256 Pte Smith GR fell out at the side of the parade. I ordered Pte Smith GR to return to his section and continue ~~parachute~~ training for the purpose of making a parachute descent, saying, "Pte Smith, return to your section and continue your training for the purpose of making a parachute descent." Pte Smith GR replied, "No sir." I repeated this order twice more to make sure it was understood and also explained to him that his refusal would mean that he would be placed on charge, but received the same reply as before. I then placed Pte Smith GR under close arrest and he was paraded to the guard room.

(sworn)

R.B. Firlotte Lieut

(R.B. FIRLOTTE) LIEUT
/ Cdn Para Trg Unit, CAO.

The accused declines to cross-examine this witness.

Second Witness:- K 73492 Sgt Humphreys, T.M., 1 Cdn Para Trg Unit CAO., having been duly sworn states:-

I am K 73492 Sgt Humphreys, T.M., 1 Cdn Para Trg Unit. On 7 Nov 44 I was present on parade when B 138256 Pte Smith G.R. was ordered by Lieut R.P. Pielsticker to continue training for the purpose of making a parachute descent.

The order was given three times and each time Pte Smith G.R. replied, "No Sir". There could be no doubt in Pte Smith's mind as to the meaning of the order given to him.

He was then placed under close arrest and paraded to the guard room.

(SIGNED) T.M. Humphreys Sgt.
(T.M. HUMPHREYS) Sgt.
1 Cdn Para Trg Unit CAO.

The accused declines to cross-examine this witness.

Third Witness:- S/Ldr A. Goldberg, Medical Officer, RAF Station, Ringway.

A Medical Inspection Report purporting to be signed by this witness has been read to the accused and is attached to this summary.

In my opinion the attendance of this witness cannot readily be procured.

The accused does not demand the attendance of this witness for cross-examination.

Medical Inspection Report marked "A" attached.

R.G. Grant
(R.G. GRANT) Lieut.
1 Cdn Para Trg Unit, CAO.

Fourth Witness:- Lieut T.C. Wilson, Adjt 1 Cdn Para Trg Unit CAO having been duly sworn states:-

I am Lieut T.C. Wilson, Adjt of the 1st Cdn Para Trg Unit. I am responsible for keeping certain documents of B 138256 Pte Smith G.R. He was taken on strength of A 35 Para Trg Centre, Canada on 9 Jun 44 Daily Order # 138. He began to draw Parachutists pay from that date. He qualified as a parachutist on 2 Sept 44 Daily Order # 211. Shortly after arriving in England, on 4 Nov 44 he was sent on a Conversion Course held at the Para Trg School, Ringway for the purpose of learning the British method of jumping.

(SIGNED) T.C. Wilson Lt
(T.C. WILSON) Lieut.
Adjt 1st Cdn Para Trg Unit, CAO.

The accused declines to cross-examine this witness.

Question to the accused :- Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

Answer :- The accused, B138256 Pte Smith G.R. having been duly sworn states :-

I refused to jump because I was too nervous. I couldn't eat or sleep before or after a jump.

(SIGNED)

G.R. Smith

(G.R. SMITH) PTE.

1 Cdn Para Trg. Unit, CAD.

I certify that rules 4 (c). (d). (e). and (f) have been complied with.

Taken down by me in the presence of the accused at Carter Barracks, Bulford Camp this 16th day of November 1944

R.B. Grant

(R.B. GRANT) Lieut

1 Cdn Para Trg Unit. CAD.

LIST OF EXHIBITS IN THE CASE OF

B-138256 Pte Smith G.R.

EXHIBIT "A" — Medical Inspection Report purporting to be signed by S/Ldr A Goldberg, RAF, Medical Officer, Ringway.

29 Nov 44,
Carter Barracks,
Bulford, Wilts.

(J.E. Palmer) Lt.,
Asst Adjt 1st Cdn Para Trg Unit.

STATEMENT BY THE ACCUSED

I, B-138256, Pte Smith, G.R., desire to have an officer assigned to defend me at my trial by Court Martial.

G.R. Smith
B-138256 Pte Smith, G.R.,
1st Cdn Para Trg Unit.

29 Nov 44,
Carter Barracks,
Bulford, Wilts.

RR-28
PTE SMITH G.R.

RR 28

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this TWENTY SIXTH day of AUGUST, 1945.

Whereas it appears to me, the undersigned, an officer in Command of FOURTH CANADIAN INFANTRY BRIGADE, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * ~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* ~~[I am unable to appoint~~ ~~Three Officers to form the Court.]~~ ~~A Field Officer as President.]~~ ~~for the following reasons, namely~~

*Omit if not applicable.

UNDER INSTRUCTION

Lt Gravel G.A. - General List
Lt Gibson C.D. - RHLI

Lt G.A. Ponsford, HQ 4 Cdn Inf Bde, is appointed Judge Advocate.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.		
Rank.	Name.	Regiment.
Major	F.A. WANSBOROUGH	Essex Scot
	Members.	
Rank.	Name.	Regiment.
One Capt or Lt to be detailed by OC Essex Scot		
One Capt or Lt to be detailed by OC RHLI		
WAITING MEMBER One Capt or Lt to be detailed by OC RHLI		

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed J.E. Lance (J.E. LANCER) Brigadier
Commanding 4 CDN INF BDE
Convening Officer.

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
P40219 Private Godfrey Roy SMITH, Royal Hamilton Light Infantry, a soldier of the Canadian Army (Active	FIRST CHARGE A.A. Sec. 15(1) ABSENTING HIMSELF WITHOUT LEAVE SECOND CHARGE A.A. Sec. 16(1) ABSENTING HIMSELF WITHOUT LEAVE (SEE CHARGE SHEET ATTACHED)	guilty guilty	Part I. On 1 of the charges 180 days detention and loss of seniority #3-12-7 27 Aug 43 F/Lt ambrose major	Confirmed 30 Aug 43 J.E. Rager Brigadier

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :— [redacted]

(Signed) J.E. Rager (J.E. RAGER) Brigadier — *Commanding Officer (c)*
(Signed) F/Lt ambrough major — *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 27th day of Aug, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The Interpreter~~) F/Lt
*(4. The officers under instruction)
were duly sworn.

*Omit if not applicable.

Signed this 27th day of Aug 1943

F/Lt Ambrough major
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (*b*) on page 782 M.M.L., 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this ____ day of ____ 19__ .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~) J.E.R. J.E.R.

Signed this 30 day of Aug 1943

J.E. Rager Brigadier
Confirming Officer.
Comd 4 Cdn Inf Bde

Promulgated and extracts taken in the case of F/No 19 Pte Smith, G.R.
(a) (Dated) 30 Aug 43. (Signed) F/Lt Seaman (R.J. McLaughlin) Comm'd Officer

Promulgated and extracts taken in the case of
(Dated) ____ (Signed) ____

Promulgated and extracts taken in the case of
(Dated) ____ (Signed) ____

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

Group W1-46/6/50 20 000 2-43 A.& E.W. Ltd. Gp.680

CHARGE SHEET

The accused F40219 Pte. Godfrey Roy SMITH 1st Bn
Royal Hamilton Light Infantry, a soldier of the Canadian
Army Overseas, is charged with:

FIRST CHARGE
Section 15 (1)
ARMY ACT

ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field, absented himself without leave from 2359 hrs, 1 Aug 43 until 2200 hrs, 12 Aug 43.

Total absence: 10 days, 22 hrs, 1 minute.

SECOND CHARGE
Section 15 (1)
ARMY ACT

ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field, while under open arrest, absented himself without leave from 0900 hrs, 14 Aug 43 until apprehended at 2100 hrs 20 Aug 43 in Edinburgh by the Cdn Provost Corps.

Total absence: 5 days, 12 hrs.

Expenses incurred in return to unit in the sum of $3-12-7.

In the Field
26 Aug 43

(J. G. Rockingham) Lt-Col.,
Comd 1 Bn R.H.L.I., Cdn Army A.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
24 Aug 43
26 Aug 43

J. E. Lager Brig
Fourth Canadian Infantry Brigade

*All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for General and District Courts-Martial

Proceedings of a Field general Court-Martial held at in the field
on the 27th day of August 1943 by order of
Brigadier J. E. Lager ED Commanding 4 Cdn Inf Bde
dated the 26th day of August 1943

President.
Major F A Armstrong Essex Regt.
Members. Capt W. C Stockdale Loyal Edmonton Regt
Lt. G R. Reid R H K I

Officers Reserve under instruction
Lt J A. Grant General List attached R H K I
Lt C. D Gibson - R H K I

Lt G A Rowsford, Judge Advocate.

Trial of* F40219 Private Wrapping Roy Smith - R H K I

The order convening the Court, the charge-sheet and the summary (first or abstract) of evidence are laid before the Court.

The Court satisfy themselves that is not available to serve owing to FHW

, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† Lieut W. D Parker R H K I

FHW Counsel or defending officer† Lt A.C Eagle Regt Edmonton attached R H K I

At 10.40 o'clock the Trial commences.

The order convening the Court is read, and is marked X signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. No. sir

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

F A Armstrong major
A G Rowsford Lt

CHARGE SHEET

The accused F40219 Pte. Godfrey Roy SMITH 1st Bn Royal Hamilton Light Infantry, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
Section 15 (1)
ARMY ACT

ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field, absented himself without leave from 2359 hrs, 1 Aug 43 until 2200 hrs, 12 Aug 43.

Total absence: 10 days, 22 hrs, 1 minute.

SECOND CHARGE
Section 15 (1)
ARMY ACT

ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field, while under open arrest, absented himself without leave from 0900 hrs, 14 Aug 43 until apprehended at 2100 hrs 20 Aug 43 in Edinburgh by the Cdn Provost Corps.

Total absence: 6 days, 12 hrs.

Expenses incurred in return to unit in the sum of £3-12-7.

In the Field
26 Aug 43

(J.M. Rockingham) Lt-Col.,
Comd 1 Bn R.H.L.I., Cdn Army O.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
24 Aug 43
26 Aug 43

.....
Fourth Canadian Infantry Brigade

- Medical Certificate -

This is to certify that I have examined No: ...E.4[illegible]... Rank: ...Gr...

Name: ...Scott...R... on ...22.Oct..... 1943: , and find him

fit undergo Trial by Court- martial.

...[signature]..... Capt.

Medical Officer / R.A.M.C.I.

*All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for General and District Courts-Martial

Proceedings of a Field general Court-Martial held at in the field
on the 27th day of August 19 43 by order of
Brigadier J E Lager ED Commanding 4 Cdn Inf Bde
dated the 26th day of August 1943

President.
Major F A Cranston Edmonton Regt
Members. Capt W. C. Stockdale Loone Scots (Queens own Cameron Highlanders of Canada)
Lt. G R. Reid R H L I

Hiles
~~Exchanges~~ under instruction
Lt J A. Gravel - General List
attached R H L I
Lt C. D Gibson - R H L I

Lt G A Rowford, Judge Advocate.

Trial of* F40219 Private Geoffrey Roy Smith - R H L I

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that is not available to serve owing to

, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† Lieut W. D Parker R H L I

~~Counsel~~ or defending officer† Lt A C Hogle Argyle & Sutherland attached R H L I

At 10.46 o'clock the Trial commences.

The order convening the Court is read, and is marked X signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. No . sir

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

J Rhoades major
A A Rowford Lt.

B

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn.

Lt Dravel G.B. General Duties with assoc R.A.C.S
Lt Gibson C.D. R.A.C.

Charge-Sheet

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

Instruction.
If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read?

Question to the accused.

Guilty sir

Answer.

Are you guilty or not guilty of the second charge against you, which you have heard read?

Question.

Guilty sir

Answer.

Are you guilty or not guilty of the third charge against you, which you have heard read?

Question.

Plead

Answer.

Are you guilty or not guilty of the fourth charge against you, which you have heard read?

Question.

Plead

Answer.

The accused having pleaded Guilty to both charges the provisions of Rule of Procedure 35 (B) are here complied with.

Instruction.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

Abandoned by Judge Advocate

CC

Proceedings on Plea of Guilty

*To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused
is found guilty of

*The summary (or abstract) of evidence is read, marked "A",
signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

yes sir I do

Answer. The accused in mitigation of punishment says:—

[or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]

I was in 9 pl 'A' coy and getting along fairly well – I had been in the army 3 years when came of Pay I came on, last January I was 30 hours late from leave and lost my appointment pay I was put up and must Pick, On account of having a new officer in my platoon every few weeks I could not get settled.

Instruction.

* If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

J Pte Wanbrough
Wagon
L/A Sanford Lt

Do you wish to give evidence yourself or to call any witnesses as to character? *Question to the accused.*

yes C. S. M. Nolan *Answer.*

Evidence as to character.

C. S M Nolan (Pte RHLI) on being duly sworn says
Smith has always been a good reliable soldier
in the coy until he went A.W.L

Remanded to
Guard Room
[illegible]

E

Finding*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused

Proceedings on Conviction *before Sentence*

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Prosecutor Lt W B Parker RNLI is duly sworn.

Evidence of character, &c.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* yes see F 3a 6 and 7a / F 3 3 5

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked "C", signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* yes

Observation.—If by reason of the nature of the service of the accused in a department, corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Cross-examined by the accused.

The accused declines to cross examine

Question to the accused.

Do you wish to address the Court? *Answer.* No

The Court is closed for the consideration of the sentence.

H H Waight Capt
R H Warden Major

F

Sentence 149219 Pte Godfrey Roy Smith

The Court sentence the accused to 180 days detention Sentence.
~~and cash of apprehension~~ £3-12-7.

G.A. Smyth Lt.

F.H. Kenotrough
Major

29 Aug 43

SUMMARY OF EVIDENCE

In the case of F40219 Pte. Godfrey Roy SMITH 1st Bn Royal Hamilton Light Infantry, a soldier of the Canadian Army Overseas.

THE ACCUSED IS INFORMED OF HIS RIGHTS

THE C.O. DIRECTS THAT THE EVIDENCE BE TAKEN ON OATH

FIRST WITNESS FOR THE PROSECUTION
B59774 Pte. Sagle, O.R., 1st Bn R.H.L.I., sworn, states:

"As acting coy Orderly sergeant, "A" Coy, R.H.L.I., I checked the tent of F40219 Pte. Smith, G.F.at 2359 hrs, 1 Aug 43. Pte. Smith was not in his tent. As a result I marked Pte. Smith absent without leave on my reveille report, as I checked on him in the morning and he was still missing."

THE ACCUSED DECLINES TO CROSS-EXAMINE

'B59774 Pte. Sagle, O.R.'

SECOND WITNESS FOR THE PROSECUTION
B37263 Sgt. Trumphour, L.H., 1st Bn R.H.L.I., sworn, states:

"Sir, I was battalion orderly sergeant on 12 Aug 43 . Pte. Smith reported in to me at the guard house at 2200 hrs that date. Pte.Smith was placed under open arrest."

THE ACCUSED DECLINES TO CROSS-EXAMINE

'B37263 Sgt. Trumphour, L.H.'

THIRD WITNESS FOR THE PROSECUTION
B36577 C.S.M. Nolan, J.J., 1st Bn R.H.L.I., sworn, states:

"Sir, as C.S.M. of "A" Coy, R.H.L.I., I verify that Pte. Smith is a member of that coy. I know that he was continually absent from 2359 hrs, 1 Aug 43 until he returned at 2200 hrs, 12 Aug 43.

THE ACCUSED DECLINES TO CROSS-EXAMINE

'B36577 C.S.M. Nolan, J.J.'

FOURTH WITNESS FOR THE PROSECUTION
Capt. D.J. McLennan, A/Adjutant, 1st Bn R.H.L.I., sworn, states:

"I present: Certificate of Apprehension purporting to be signed by O.C. No. 6 Provost Coy, Cdn Provost Corps (attached as exhibit "A") Certificate of costs of return, purporting to be signed by O.C. No. 6 Provost Coy, Cdn P rovost Corps (attached as exhibit "B"), both of which relate to the accused, whom I recognize."

THE ACCUSED DECLINES TO CROSS-EXAMINE

'D.J. McLennan Capt.'

FIFTH WITNESS FOR THE PROSECUTION
B37473 Cpl. Jenner, F.E.A., 1st Bn R.H.L.I., sworn, states:

"Sir, On 14 Aug 43 I was corporal in charge of fatigues in No. 1 Kitchen. On that date Pte. Smith had been on kitchen fatigue and helped with breakfast at 0530 hrs. He was supposed to report

FIFTH WITNESS (cont.)

at the kitchen again at 0900 hrs but he failed to do so. I looked around for him, but he wasn't in camp so I reported him absent to Sgt. Trumphour as of 0900 hrs, 14 Aug 43. Pte.Smith was at the time under open arrest, on a previous charge of absence without leave.

THE ACCUSED DECLINES TO CROSS-EXAMINE

'B37473 F.E.A. Jenner Cpl. '

SIXTH WITNESS FOR THE PROSECUTION
G48741 L/Cpl. Keeling, G.N., No. 6 Cdn Provost Corps:

A written statement of this witness' evidence, purporting to be signed by him, has been read to the accused, and is included in this summary (attached as Exhibit "C"). Having regard to the exigencies of the Service, the attendance of this witness, cannot, in my opinion, be readily procured. The accused does not demand the attendance of this witness for cross-examination.

'Capt. S.F. Sharpe,
Offr detailed to take the Summary

SEVENTH WITNESS FOR THE PROSECUTION
B37029 L/Cpl. Gateman, H.W., No. 6 Cdn Provost Corps:

A written statement of this witness evidence, purporting to be signed by him, has been read to the accused, and is included in this summary (attached as Exhibit "D"). Having regard to the exigencies of the Service, the attendance of this witness, cannot, in my opinion, be readily procured. The accused does not demand the attendance of this witness for cross-examination.

'Capt. S.F. Sharpe,'
Offr detailed to take the Summary

EIGHTH WITNESS FOR THE PROSECUTION
B36577 C.S.M. Nolan, J.J., 1st Bn R.H.L.I., sworn states:

"Sir, Pte. Smith is a member of "A" Coy, R.H.L.I., and I certify that he has been absent from the coy from 0900 hrs 14 Aug 43 until he was brought back under close arrest on 22 Aug 43."

THE ACCUSED DECLINES TO CROSS-EXAMINE

'B36577 C.S.M. Nolan, J.J.'

THE ACCUSED, HAVING BEEN DULY CAUTIONED IN ACCORDANCE WITH R.P. 4 (E) says:-

"I do not wish to say anything"

F40219 Pte. Smith, C.R.'

THE ACCUSED DOES NOT WISH TO CALL WITNESSES IN HIS DEFENCE AT THIS POINT.

Certified that R.P. 4 complied with
In the Field
25 Aug 43

'Capt. S.F. Sharpe'
Offr detailed to take the Summary

Summary of Evidence in the case of F40219 Pte Godfrey Roy Smith, 1st Bn RHLI, a soldier of the Canadian Army Overseas.

The accused is informed of his rights
The CO directs that the evidence be taken on oath.

First Witness for the Prosecution

B 59774 Pte Eagle OR, 1st Bn RHLI, sworn states:
In: On 1/CQS A Coy RHLI I checked the list of F40219 Pte Smith J R at 2359 hrs 12 Aug 43. Pte Smith was not on his list. As a result I marked Pte Smith AWL on my Reveille report, as I checked on him in the morning, and he was still missing.
The accused declines to cross-examine.

B.59774 Pte. Eagle O R

Second Witness for the Prosecution

B 37263 Sgt Trumpbour LH, 1st Bn RHLI, sworn states:
In: I was his orderly sergeant on 12 Aug 43. Pte Smith reported in to me at the guard house at 2200 hrs that date. Pte Smith was placed under open arrest.
The accused declines to cross-examine

B37263 Sgt Trumpbour L.H.

Third Witness for the Prosecution

B36577 CSM Nolan SS, 1st Bn, RHLI, sworn states:
In: On CSM of A Coy, RHLI, I verify that Pte ~~Jones~~ Smith was a member of that Coy. I found that he ~~has been~~ was continually absent from 2359 hrs 12 Aug 43 until he returned at 2210 hrs 12 Aug 43.
The accused declines to cross-examine

B36577
CSM. Nolan

Fourth Witness for the Prosecution

Capt D S Sherman, adjutant, 1st Bn RHG, sworn states:

Present: Certificate of attendance purporting to be signed by OC No 6 Provost Coy, (Maj Provost Corps (attached as exhibit "A")

Certificate of Court of Inquiry, purporting to be signed by OC No 6 Coy (Maj Provost Corps (attached as Exhibit "B")

both of which relate to the accused, whom I recognise.

The accused declines to cross examine.

Fifth Witness for the Prosecution. D S Sherman Capt.

B37473 Cpl James F.E.A., 1st Bn RHG, sworn states:

On 14 Aug 43 I was corporal in charge of fatigues in No 1 kitchen. On that date the Guard had been in kitchen fatigues, and helped with breakfast at 0530 hrs. He was supposed to report at the kitchen again at 0900 hrs but he failed to do so. I looked around for him, but he was not in camp, so I reported him absent at light inspection on 0900 hrs 14 Aug 43. The Guard was at the time under open arrest, in a person charge of NCO.

The accused declines to cross-examine.

B37473
F.E.A. James Cpl.

Sixth Witness for the Prosecution

6 HH741 L/Cpl Hosking G.H. No 6 Provost Coy Corps:

A written statement of the witness endorsed, purporting to be signed by him, has been read to the accused, and is included in the summary (attached as Exhibit "C")

Having regard to the exigencies of the service the attendance of the witness cannot, in my opinion be readily procured.

The accused does not demand the attendance of the witness for cross-examination.

Capt D Sherman
Officer detailed to take [illegible]

Samuel Wilson to the Prosecution

B 87029 L/Cpl Paterson H.M. No 6 Edn Pro Corps

A written statement of this witness's evidence, purporting to be signed by him, has been read to the accused, and is included in this summary (attached exhibit "C") having regard to the response of the accused to the reading of this statement, I consider, in my opinion the accused does not demand the attendance of this witness for cross-examination.

Capt S Hilliard
Offr detailed to take Summary

Eighth Witness for the Prosecution

B 36577 CSM Nolan J.T. 1st Bn R.H.A., sworn states:

Sir: Pte Smith was a member of A Coy, R.H.A., and I certify that he has been absent from the Coy from 0700 hrs 14 Aug 43 until he was brought back to the Bn under close arrest on 22 Aug 43

The accused declines to cross-examine.

B36577
CSM Nolan J.T.

The accused, having been duly cautioned in accordance with R.P. 4(E) says:

I do not wish to say anything

7402577 Pte Smith W. R.

The accused does not wish to call witnesses in his defence at this point

Certified that R.P. 4 complied with
in the field
25 Aug 43.

Capt S Hilliard
Offr detailed to take Summary

I want the services of a defending officer. Name
appreciate if the CO named detail an officer to
be my defending officer

740219
Pvt Smith L. R.

In the field
25 Aug 43.

CERTIFICATE TO ACCORDANCE WITH I.C. 2727 of 30 SEP 43

I CERTIFY that No F-40219 Rank Pte Name Smith G.R.

Unit "A" Coy R.H.L.I. 2nd.Div.

at 2100 (Hour) on 20 August 43 (Date) was arrested at Edinburgh (Place)

arrest he was wearing (Military Uniform) or (Civilian Clothes).

Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was first committed.

(Strike out part inapplicable).

Edinburgh
20 Aug.43

EXHIBIT "A"

Capt

Capt

Expense Voucher Re—

Ref: K.R. & O. (Can) 539

Reg. No. F 40219 Rank Pte. Name Smith, A R Unit R&HA

The following expenses were incurred in apprehending and returning the NPN Soldier to his ~~Unit from~~ London from Edinburgh

Date	Particulars	Amount		
22 Aug 44	Escorts return fare from LONDON To Edinburgh (Cpl Parker)			
	Prisoners single fare to LONDON From Edinburgh	1	6	2
	Prisoners fare from To Edinburgh	1	10	4
	Escorts & Prisoners expenses for Bed, Meals, Bus fares (Cpl Parker)		5	11
	Total £	3	2	5

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

EXHIBIT "B"
Capt S Hoare

Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London, Ont.

CAPT. R.N.D. O.A.P.M. LONDON AREA

Capt.

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. F40219 Rank Pte Name Snell, G.R. Unit R.H.L.I.

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars ½ Portion	Amount		
22 Aug 43	Escorts return fare from LONDON To Chichester		5	1
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Chichester		5	1
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		10	2

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

Exhibit "B"
Capt ST Sharp

Officer Issuing Railway Warrant and Expense monies Capt.
No. 6 Area Provost Company, Canadian Provost Corps, London.

Army Form B 252
(See King's Regulations)

RGE

R.H.L.I. 2nd Div.

Regiment
Battery
Squadron
Troop or
Company

A. Coy.

Rank Pte.

CHARGE against No. 40210

Name Smith G.B.

Place Edinburgh Date of Offence 20 Aug. 42

OFFENCE V.O.A.S. was A.W.L. when checked by Con. Provost Corps at about 2100 hrs. 20 Aug. 42 on Leith St.

[signature]
CAPT.
(W. Ftns) D.A.P.M.
LONDON AREA

Names of Witnesses:—

L/Cpl. Keeling G.M. # 6 Coy Con. Provost Corps

L/Cpl. Geteman # 6 Coy Con. Provost Corps

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

EXHIBIT "C"
Capt S.T. Hart

By whom Awarded

Adjutant.

P.T.O.

CH

Statement of **EVIDENCE** in the case of
F-40219 Pte. Smith "A" Coy H.Q.L.I. 2nd. Div.

Sir:-
At Edinburgh at about 2100 hrs. 20 Aug.43 I was on duty on Leith Walk where I saw the s/m soldier. I approached him & requested his particulars.

He produced his N.B.M.1 & 2 but could not produce a leave pass. He admitted being A.W.L.

I escorted him to Barrier Gate Guard Room where he was turned over to N.C.O.i/c to be detained pending the arrival of escort.
A receipt was obtained for his live body.

Edinburgh
20 Aug.43

G.M. Keeling L/Cpl.
G.48741 Keeling G.M.

Sir:-
I have read over & corroborate the above statement.
Edinburgh
20 Aug.43

H.M. Gateman L/Cpl.
B-87029 Gateman H.M.

EXHIBIT "C"
Capt S.T. Chapple

REMARKS

M.F.B. 358
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number F 40219 Rank Pte. Name SMITH, G.R. Regiment (or unit)
1st Bn Royal Hamilton Light Infantry

1. The following is a fair and true summary of the entries in the ~~CONDUCT~~ Regimental and Squadron, Battery or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~OF THE ARMY~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

Within last 12 months — Since enlistment or appointment

For A.W.L. one time — one time
For ..... times ..... times
For ..... times ..... times
For ..... times ..... times
For ~~CONDUCT SHEET/REGIMENTAL/SQUADRON/BATTERY~~ or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted or,

~~PREVIOUS CONVICTIONS TO BE PROVED BY EXTRACT FROM THE RECORD OF SUMMARY TRIALS BY THE OFFICER COMMANDING THE UNIT OR BY A CERTIFICATE SIGNED BY THE ADJUTANT~~

3. The accused is not under sentence at the present time.

or,

~~THE ACCUSED WAS SENTENCED TO IMPRISONMENT FOR~~

4. The accused has been in confinement awaiting trial on the present charges, for nil days in ~~CIVIL~~ civil custody, and 7 days in military custody, making a total of 7 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his record of service is 24

6. The date of his ~~ENLISTMENT~~ attestation specified in his record of service is 20 Mar 1940

7. ~~THE SERVICE OF THE ACCUSED IS GIVEN IN THE MARGIN~~

8. ~~THE ACCUSED HAS NO~~

9. The accused is in possession of or entitled to no ~~MILITARY~~ military decoration, or ~~MILITARY~~ military reward ~~EXCEPT~~

~~POSSESSION OF OR ENTITLED TO~~

10. ~~IF THE ACCUSED IS A COMMISSIONED OFFICER THE ACCUSED HAS NOT BEEN GUILTY OF ANY DISGRACEFUL CONDUCT~~
~~THE REGIMENTAL RANK OF~~

11. [illegible]

12. [illegible]

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Act, and of cases in which trial has been dispensed with of accused. Number ..... Rank .....

Name ..... of ..... Unit

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
Nil				

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 27th day of August 1943 W.D. McLennan)
Capt & A/Adjt 1 Bn R.H.L.I.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

[illegible] Major

CERTIFIED TRUE COPY

No. F 40219 Name PTE. SMITH, G.R. Sqn., Battery, or Company NA. Corps C I C Date of enlistment 21 MAR 40 G.C. Badges Service or Proficiency Pay

M.F.M. C (A.F.B. 122) 17554—7-41 (1219-39) H.Q. 1572-39-1653

Date of last entry in Company Conduct Sheet N/A No. and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No. 1. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
FIELD	28 JAN 43	PTE		AA SEC 15(1) ABSENTING HIMSELF WITHOUT LEAVE FROM 2359 HRS 28 JAN 43 TO 0600 HRS 30 JAN 43 ABSENT (1 DAY 6 HRS)	CPL COOPER C.S.M. WILCOX	6 DAYS F.P. 2	1 FEB 43	LT. COL. J.J. HURLEY.	FORF 2 DAYS PAY TOTAL 8 DAYS PAY.

Certified True Copy

Capt & Adjt

P.T.O.

56-110

Kfw. Smith, G.W.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A 106134 Rfn George William SMITH, QOR of C, 1 Cdn Disciplinary Centr

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	Guilty	Guilty	
2nd AA Sec 15(1)	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for [illegible] (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 21 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for twenty months

(Sgd) ..... 5 Mar 45 (Sgd) P.S.Oslen Major

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

CONFIRMED

I direct that the accused be ~~XX~~ committed to prison or detention barracks until further notice.(1)

(1. AA 57A. Delete if not used.)

Date 5 Mar 45 (Sgd) O.W.Hugman Lt Col

A/ Commanding 2 CDN BASE RPT EKIT GP

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
A106134 Rfn SMITH GW	22 Mar 45	A Hood Lt Col Comdg. 1 Cdn Disciplinary Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

Reviewed 16 Apr 45
JAG Branch CMHQ

Recorded at CMHQ in AB 160 50-110

FIELD GENERAL COURT-MARTIAL

CFA68 (To Upon of AFA31) 40/P & R 16598 (E)(44) 4/38B

Convened by Order of Brig G.S.M.Gostling,ED Comd 2 CBRG dated 2 Mar 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Appt.	Full Christian Names.	Surname.	Unit.
A 106134	Rfn	George William	SMITH	QOR of C, att 1 Cdn Decip, Centre

PROCEEDINGS REVIEWED
J.R.Miquelon Capt
REVIEWING OFFICER
JAG BRANCH CMHQ
17 Apr 45

PROCEEDINGS REVIEWED
W.P.Teylor Major 31 Mar 45
DJA 1 Cdn Sec 1 Ech HQ 21 A Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date) 3,5 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 26/56

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER APPEARS IN ITALICS FOR GUIDANCE. WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 895, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At ..... hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~are~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elects to be tried by a General Court of Less Size, summary by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~Prisoner is present.~~ Do you object to ~~Lt~~ as Prosecutor? Ans ~~XXXXXXXXX~~
~~The Prosecutor is sworn.(1)~~ Do you object to ~~XXXXXXXX

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (RP 37(A).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii)*, Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.[2]

(1. *RP 35 fn 2.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).[1] If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]

President to accused: Do you wish to make a statement ? Ans Nil.[5]

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers no accused's statement (1) a plea of Guilty to any accused charge (the charge(s) (the charge(s) is (are) changed to Not Guilty and the plea(s) of Guilty to the charge(s) is (are) recorded accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty ✓ (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.[1]

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.[1]

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....[1]

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.[1]

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.[1]

(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.[1] The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).[2] The Court is closed, and considers the submission.[3] The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).[4]

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)

NB: *If trial proceeds, accused must be allowed great laxitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn, and you will not be subject to cross-examination.[3] But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.[4] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans .....

Do you intend to call witnesses on your behalf ?

Ans .....

Are they witnesses as to character only ? Ans .....

(1. *RP 115.* 2. *RP 40(A), see 60(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1]

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 84(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.

(1. *RP 43, 117(A).* 2. *RP 44(A).* *See Notes in Part I of Schedule.*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.[1]

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.[2]

(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character ?[1]

Ans No

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service[1], and certified true copy (copies) of Conduct Sheet(s)[2], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.[3]

(1. *AFB 255 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?[1] Ans Yes in mitigation of punishment

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.[2]

(1. *Where several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and as provided, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2322, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. Where accused already under sentence of imprisonment or detention see AA 44(18), 58(7), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, A 106134 Rfn George William SMITH, QOR of C, attached to 1 Cdn Disiplinary Centre, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15(1)AA

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT
LEAVE
in that he
in the Field, absented himself without leave from 0900 hrs 12 Dec 44 until 1145 hrs 7 Jan 45.
(Absent 26 days 2 hrs 45 min).

SECOND CHARGE
Sec 15(1) AA

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT
LEAVE
in that he
In the Field, absented himself without leave from 0600 hrs 23 Jan 45 until apprehended at 2030 hrs 12 Feb 45.
(Absent 20 days 14 hrs 30 min).

Dated in the field
1 Mar 45

A.C.Hood Lt Col
OC 1 Cdn Disiplinary Centre

To be tried by Field General Court Martial

In the field
2 Mar 45

GEN Gostling Brigadier
Comd 2 Cdn Base Hft Gp

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
A106134	Rfn		George William	SMITH	OR of C 1 Cdn Disciplinary Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 2 Mar 45 endorsed by me, ~~or by an offr of my staff (or me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~[and that it is not practicable to delay the trial for reference to a superior qualified offr.]~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ (AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint the Judge-Advocate named the Offr mentioned hereunder.~~ (RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	F.J.Oosten, RCA	ast 2 Cdn INTD

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	to be detailed by OC 13 CSR Bn	13 CSR Bn
Lieutenant	to be detailed by OC 10 CSR Bn	10 CSR Bn

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

In Belgium (Country.)

Dat 2 Mar 45

GSM Costling (Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Commanding 2 Cdn base Rft Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICERS REPORT

I certify that No A106134 Rfn SMITH GW of 1 Cdn Disc Cen. is in a good state of health, and able to undergo trial by Court Martial.

XXXXXXXXX Capt
Medical Officer

Station 1 Cdn Disc Centre
Date 3 Mar 45

(KR(CAN) Para 55)
(CMHQ CL 173)

I certify that this day I have examined A106134 Rfn SMITH GW and in my opinion he is fit to undergo Trial by Court Martial

Station 1 Cdn Discip Centre
Date 5 Mar 45

XXXXXXXXX Capt
Medical Officer
1 Cdn Discip Centre

STATEMENT IN MITIGATION
BY SMITH

The biggest reason I went away was because I hadn't had a leave for over a year and that I have a crippled Mother and 5 younger brothers and sisters at home. My Father left when I was 12 years old. I thought that if I was killed over here there would be nobody to support them.

I arrived in England in Feb 44, and in France on 23 Jul 44. My catagory is A. I am sigle.

The statement was read over to Smith

Exhibit A

Summary of Evidence in the case of A106134 Rfn SMITH GW 2OR of C attached to 1 Cdn disciplinary Centre, a soldier of the Canadian Army Overseas.

Charges - Absense without leave (2charges)

By directions of the CO the evidence is taken on Oath.

The following documents are read over to the accused, marked as exhibits and are attached to the proceedings.

Exhibit A - Certified true copy of Extract from Pt 11 Order No 5 dated 21 Jan 45.

Exhibit B - Certified true copy of Extract from Pt 11 Order No 7 dated 28 Jan 45

Exhibit C - Certified true copy of Extract from Pt 11 Orxder No 11 dated 11 Feb 45

Exhibit D - Certificate of apprehension dated 15 Feb 45.

Q Do you wish to make a statement or to give evidence on oath? You are not obliged to to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A I have nothing to say.

The accused does not call any witness's.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that RP 4 (c)(d)(e) (f) and (g) have been complied with.

W.D.Hungerford Capt
Officer detailed to take
Summary of Evidence

Dated in the field
1 Mar 45

Exhibit "A"

PART II ORDER EXTRACT FORM

QOR/1 (A.5c)
22 Feb 45

Extracts from Unit THE QUEENS OWN RIFLES OF CANADA
Part 11 Order No 5 Dated 21 Jan 45

ABSENT WITHOUT LEAVE
AWL from 0900 hrs 12 Dec 44 Still absent 0900hrs 20 Dec 44
(8th day) Still absent 0900 hrs 3 Jan 45 (22nd day)
A106134 Rfn SMITH GW

Certified to be a true extract from the regimental books and documents in my custody

----------Capt
Officer IC records
Cdn Sec GHQ 2 Echn 21 A Gp

Exhibit "B"

PART II ORDER EXTRACT FORM

OR/I (A.5c)
22 Feb 45

Extracts from: Unit THE QUEENS OWN RIFLES OF CANADA
Partll Order No 7 Dated 28 Jan 45

ABSENT WITHOUT LEAVE

AWL from 0900 hrs 12 Dec 44 Ret from AWL 1145 hrs 7 Jan 45
A106134 Rfn SMITH GW

Certified to be a true extract from the regimental books and documents in my custody

_____ Capt
Officer IC records
Cdn Sec GHQ 2 Ech 31 A Gp

PARTII ORDER EXTRACT FORM

Exibit "C"

QOR/I (A.5c)
22 Feb 45

Extracts from: Unit THE QUEENS OWN RIFLES OF CANADA
Part 11 Order No 11 dated 11 Feb 45

ABSENT WITHOUT LEAVE

AWL from 0600 hrs 23 Jan 45 Still absent 0600 hrs 31 Jan 45
(8th day)
A106134 Rfn SMITH GW

Certified to be a true extract from the regimental books and documents in my custody

Officer Ic records
Cdn Sec GHQ 2 Echn 21 A Gp

Exhibit "D"

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 Apr 42

I certify that No A106134 Rfn SMITH GW, "A" Coy, QUEENS OWN RIFLES 3 Cdn Div was arrested at Brussels at 2030 hrs on 12 Feb 45 and that at the time of his arrest he was wearing Military Uniform.

Signature of the Provost Marshal, Assistant Provost Marshal or other officer or the Commanding Officer of the portion of His Majesties Forces or the officer warrant officer or no-commissioned officer in charge of the detachment of the Canadian Provost Corp, Canadian Army into whose custody the above named person was taken on arrest.

J.Tweedle A/Capt
OC 2 Cdn L of C Provost Coy

Xiix Field
13 Feb 45

Statement as to Character and Particulars of Service of Accused

ARMY FORM B.296 (WAR)

(For Use at Trials by Field General Courts-Martial only)

Number.	Rank.	Name.	Regiment (or as the case may be).
A106134	Rfn.	SMITH George William	2nd of C. 1 Cdn Disc Cen.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, precedence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

For AA (40) ..... 1 ..... times.

For .... times.

For .... times.

For .... times.

Date of first entry in Field Conduct Sheet 6 Apr 1944

Date of last entry in Field Conduct Sheet .....

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for No beginning on the -------- day of ----

4. The accused has been awaiting trial on the present charges for No days in civil custody; and for 21 days in military custody, i.e., No days in open arrest, 21 days in close arrest; of which No days were spent in hospital.

5. The present age of the accused is 20

6. The date of his attestation ENLISTMENT OR CURRENCY REVISED is 27 Feb 43

*State the nature of any document produced by accused.

7. The service which the accused is allowed to reckon is .....

8. The accused is in possession of *

9. (If the accused is a warrant officer or NCO.) The accused has served continuously, without reduction, to the present date—

Date of Promotion.

In the substantive rank of .....

In the war substantive rank of .....

In the acting rank of .....

INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

12479/2867 30,000 5/44 Sir.423 T.Lts. Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and Place of Trial	Charges upon which convicted	Sentence of the Court	Punishment remitted or sentence suspended
		NIL		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 5th day of Mar 1945

J.M.Dinh. Capt
Admin Offr. 1 Cdn Disciplinary Centre

No A106134 Name SMITH GW | Sqn, Battery, or Company | Corps CIC | Date of enlistment 17 Feb 40 | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Badges

MFM 6
(AFB 122)
W/P&S/105 (3434)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witness	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
		Rfn		AA 40		28 days Forf of pay under PRAI 149(2)	6 Apr 45		

Duplicate created from MFM 4 on 22 Feb 45 Record of Conduct in Canada not available
"PENSION" Capt
Officer I/C Records "O"
Can Sec 2 Eqn HQ 21 A Gp.

Certified to be a true copy of entry 6 in my possession
J.K. Dibb Capt
Adjtn Offr
1 Can Disciplinary Centre

(PTO)

LIST OF WITNESSES

N/A

LIST OF EXHIBITS

"A" Certified true copy of Extract from Ptll Prder No 5 dated 21 Jan 45.

"B" Certified true copy of Extract from Pt 11 Order No 7 dated 28 Jan 45

"C" Certified true copy of Extract from Pt 11 Order No 11 dated 11 Feb 45

"D" Certificate of apprehension dated 13 Feb45

I, A106134 Rfn SMITH GW, hereby certify that I have received one copy of Charge Sheet and one copy of Summary of Evidence free of charge on 1 Mar 45

A106134 Rfn SMITH GW

4S-117

Pte Smith G.W.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-156163 Pte ~~SMITH~~ George William

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1) JC

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 22 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of 18 months.

(Sgd) ..... Judge-Advocate, if any. 15 Jan 45 Date awarded. (Sgd) "J.Campbell" Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 739-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I Confirm

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1) WJM

(1. AA 57A. Delete if not used.)

(Sgd) "W.J. Mogill" Brig.

Date 17 Jan 45

Commanding 5 Cdn Inf Bde

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B-156163 Pte Smith, W.G.	18 Jan 45	A/A.F.D. 1 Bn Black Watch(RHR) of C.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

45-117

FIELD GENERAL COURT-MARTIAL

CPA96 (2n Rev of APA96) 40/P & S. 1698 (8144) 4/388

Convened by Order of W.J. Mogill Brig. Comd 5 Cdn Inf Bde dated 15 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apprnt, A/R or A/Apprnt.	Full Christian Names.	Surname.	Unit.
B-156163	Pte	George William	SMITH	R.H.C.

CERTIFIED TRUE COPY

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland Cdn Sec G.H.Q. 2 Echn. 21 Army Gp on (date(s)) 15 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 17/1447

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 45, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1125 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.

A5. President to accused: ~~Do you object to~~ ~~as interpreter?~~ Ans ~~The Interpreter is sworn.(1) Do you object to~~ ~~as shorthand writer?~~ Ans ~~The shorthand writer is sworn.(1)~~ JC JC

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J.Campbell	Calg Highrs
Member	Capt	I.J. Coady	Calg Highrs
Member	Capt.	G.D. Preston	R.H.C.
Judge-Advocate			
Prosecutor	Capt	A.J. Powers	R.H.C.
Defending Offr	Capt	E.J. Lewis	R.H.C.

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Cmdr Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 1 were not followed. See Dil p 3.)

A8. The accused B-156163 Pte Smith, G.W. before arraignment make(s) (no) (a) plea JC (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and Finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. JC

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s) and call witnesses as to character and make an address in mitigation of punishment.(2) JC

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4) JC

President to accused: Do you wish to make a statement? Ans. Nil.(5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3; *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court examines the accused's statement (?). The Court decides (not) to advise accused to change his~~ JC
~~(their) plea(s) of Guilty to Not Guilty on~~ charge(s). The accused is (are) so informed, and he (they) JC
~~change(s) his (their) plea(s) on~~ charge(s). Part I of the Schedule is amended accordingly. JC
(1. *Court may be closed to consider the statement.* ~~*Delete whole or part not used.*~~)

B4. ~~On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records findings of~~ JC
~~Guilty in Part I of the Schedule.~~(1) JC
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) be use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1) JC
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(1) The Court is closed, and considers the submission.(2) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

JC

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. .....
Do you intend to call witnesses on your behalf? Ans. .....
Are they witnesses as to character only? Ans. .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The Court is re-opened.
The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2)
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. Nil
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 27(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true ~~copy (copies)~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex Y and Ex Z respectively.(3) JC
(1. *MFB 255 or AFB 295.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Nil JC
(1. *RP 27(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 27(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44. 128, 182, RP 44-50, 69, 118, 119(A), KR Can 308, 330, 343-346, Overseas AO 309, 2323, MML p 80, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1) (b), 98(1), KR Can 364.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispatch of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

Charge against B-156163 Pte George William SMITH, 1st Bn The Black Watch (RHR) of Canada, a soldier of The Canadian Army Active Force is charged with:

FIRST CHARGE
Sec 15 (1)
Army Act WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field at 2200 hrs 16 Oct 44, did absent himself without leave until surrending to American Provost at DIJON at 2200 hrs 13 Dec 44.
(Absent 58 days)

In the Field
14 Jan 45 "A.G. Stevenson" Maj.

A/Officer Commanding
1st Bn The Black Watch (RHR) of C.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field
14 Jan 45 "W.J. Megill" Brig.

Comd 7 Cdn Inf Bde.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-156163		Pte	George William	SMITH	R.H.C.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 14 Jan 45 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Py Offr as President, for the reason I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint an Judge Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

WJM

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	J. Campbell	Calg Highrs

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	I.J. Crosy	
Capt.	H.D. Preston	Calg Highrs
		R.H.C.

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt.	T.E. Larkin	R.H.C.

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Active Service in the Fd		

Holland

(Country.)

14 Jan 45

"W.J. English"

(Signed personally. RP 105 fn 2.)

Brig.

(Rank.)

Commanding 5 Cdn Inf Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

I hereby certify that I have this day examined B-156163 Pte. SMITH, G.W. and in my opinion he is fit to undergo trial by Court Martial.

Date 15 Jan 45

W.C. Fisher Capt RCAMC
Medical Officer.

SUMMARY OF EVIDENCE

In the case of B-156163 Pte Smith, G.W., of 1st Bn The Black Watch (RHR) of Canada, a soldier of the Canadian Army Active Force, is charged with an offence under Army Act, Sec 15 (1).

The Commanding Officer directs that the evidence be taken under oath.

FIRST WITNESS FOR THE PROSECUTION D-81041 CSM Young, J.P. 1st Bn The Black Watch (RHR) of Canada, sworn states:

On the 16 Oct 44 at 2200 hrs it was reported to me that Pte Smith was absent from his quarters. I inspected his quarters and found that he was not there. He remained absent until handed over to the Canadian Provost Corps at 1500 hrs 21 Dec 44.

The accused declines to cross examine.

"J.P. Young"
(D-81041 CSM Young, J.P.)

SECOND WITNESS FOR THE PROSECUTION: Documentary evidence purporting to be signed by F-21329 Cpl Power R.A. #6 L of C Pro Sec.

I certify that in my opinion, the attendance of F-21329 Cpl Power R.A. No. 6 L of C Provost Section is, owing to exigencies of the service, (in case of military witnesses), expence or loss of time involved or illness, not ready procurable, a written statement of his evidence signed by him has bee read over to the accused, and is attached hereto as Exhibit "A".

I do not require the attendance of F-21329 Cpl Power R.A. for the purpose of cross examination.

"R.S.Lewis" Capt
Officer detailed to take Summary

You have heard the evidence for the prosecution. Do you wish to make any statement, solemn declaration or give evidence on oath or to call any witnesses for your defence? You are not obliged to disclose your defence at this time unless you wish to do so. Any evidence you give will be taken down in writing and may be given in evidence at any future hearing of these charges.

A-1 I surrendered to the American Provost at Dijon, on 13 Dec 44, at 2200 hrs. They turned me over to the Canadian Provost at Paris, on or about 20 Dec 44.

"G.W. Smith"
(B-156163 Pte Smith, G.W.)

Q-2 Do you wish to call any witnesses at this time?

A-2 No, not at this time.

Rules of procedure 4 (C) (D) (E) (F) (G) have been complied with. I certify that the foregoing summary of evidence consisting of one page was taken down by me in writing in the presence and hearing of the accused this 10th day of January 1945.

"R.S. Lewis" Capt.
Officer detailed to take Summary

Black Watch of Canada

1st Bn.

CHARGE AGAINST B-156163 Pte SMITH, G.W.

PLACE

DATE OF OFFENCE

OFFENCE W.O.A.S. was A.W.O.L. from his unit from .....until handed over to the Canadian Provost Corps, the D.A.P.M. office Paris, about 1500 hrs, 21 Dec 44.

Names of Witnesses

F-21329 Cpl Powers, R.A. No. 2 Cdn L of C Provost

STATEMENT OF EVIDENCE

In the case of B-156163 Pte Smith, G.W.,1st Bn Black Watch of Canada

Sir: At Paris at about 1500 hrs on the 21 Dec 44 I was on duty at the D.A.P.M. Office, where the A/M soldier was escorted as having surrendered to the American Military Police, at Dijon.

Statement of Evidence att.

Paris,
21 Dec 44.

"R.A. Power"
(F-21329) Cpl. Power, R.A.)
No. 6 Cdn L of C Prov Sec.

Certified true copy of original statement.

W.S. Duffield Capt & Adjt.
1st Bn The Black Watch (RHR) of C.

No B-156168 Name SMITH G.W. | Sqn. Battery or Company | Corps CIC | Date of enlistment 9-4-43 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/7485/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				CERTIFIED TRUE COPY AS PER REGIMENTAL DOCUMENTS IN MY POSSESSION. "E.S. Duffield" Capt & Adjt. Officer i/c Records, (RHR)					

(PTO)

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be)*
7-156163	Pte	SMITH, G.W.	1 R.W.C.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION. — If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	* Since Enlistment.
For	Nil times	Nil times
For	times	times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

~~particulars of the convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and cases in which trial has been dispensed with under section 53 of the Army Act are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, *or* ~~The sentence at the present time is under section [illegible] of the Army Act.~~

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 22 days in military custody, making a total of 22 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record~~ attestation paper is 20

6. The date of his ~~conviction~~ attestation specified in his ~~record~~ attestation paper is 9 Apr 43

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is

8. The accused is entitled to deferred pay or gratuity in respect of 1 9/12 service.

9. The accused is entitled to reckon service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or is in possession of or entitled to (state any military decoration or reward)*. N/A

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of dated and in his regiment (*or corps or department*) the rank of dated

W1.5707/189 20M. 5/40 P. Ltd. T15-1.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B-156163 *Rank* Pte *Name* SMITH G.W. of 1 R.H.C. Regiment (or as the case may be)

(INSTRUCTION.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 12 day of January 1945

"g.S. Duffield" Capt & Adjt.
1st Bn The Black Watch (RHR) of Canada.

15. The accused has served as a non-commissioned officer commendably, without reduction, to the present date.

In the rank of ... years.

In the rank of ... years.

In the rank of ... years.

Date of Promotion

CONVICTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the particulars must be stated in the form of a trial by civil or regimental court, and the witnesses must be collected from time to time as are available for the purpose of proving the matters alleged.

B-156163 Pte SMITH, G.H.

Was 20 yrs old on the 15 Feb 44, single, he is an eldest son, Home Brantford, Ont., prior to joining up was learning trade as Steam fitter and rove Trucks.

Joined Active Service, April 43, Artillery Ack Ack, was re-allocated Infantry 15 July 44, and after 13 days training came to France joined the Black Watch at Brettville and served with a Rifle Platoon in action, says that he is washed up and does not feel any better about going back into action.

I DO WISH TO HAVE AN OFFICER APPOINTED BY MY COMMANDING OFFICER TO DEFEND ME AT MY TRIAL BY FIELD GENERAL COURT MARTIAL.

NAME OF OFFICER IF AVAILABLE ..Capt.B.S..Lewis.#.....

"G.W. Smith"
B-1-6163 Pte Smith, G.W.

WITNESS: "W.J. Skippond" Lt.
1 st En The Black Watch
(RHR) of Canada.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : B-156163 Pte SMITH George William

Charge. (Insert " alternative " where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1) JC

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 22 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo detention for a period of 18 months.

(Sgd) ..... 15 Jan 45 (Sgd) "J.Campbell" Major

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

I Confirm

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1) WJM

(1. AA 57A. Delete if not used.)

(Sgd) "W.J. Magill" Brig.

Date 17 Jan 45 Commanding 5 Cdn Inf Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B-156163 Pte Smith, W.G.	18 Jan 45	A/ADJT. 1 Bn Black Watch(RHR) of C.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

45-112

CPA&S (To lieu of AP&S) 40/P & S/1000 (8144) 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of W.J. Magill Brig. Comd 5 Cdn Inf Bde dated 15 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-156163	Pte	George William	SMITH	

CERTIFIED TRUE COPY

PROCEEDINGS ATTENDED Date 8 Dec 45 Capt 21 Army Gp

Can. SIG G HQ 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) Holland on (*date(s)*) 15 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 17/147.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A93, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1125 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused : ~~Do you object to~~ ~~or interpreter ? Ans~~ JC

~~The Interpreter is sworn.(1) Do you object to~~ ~~or shorthand writer ? Ans~~ JC

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	J.Campbell	Calg Highrs
Member	Capt	I.I. Coady	Calg Highrs
Member	Capt.	S.B. Preston	R.H.C.
Judge-Advocate			
Prosecutor	Capt	A.I. Powers	R.H.C.
Defending Offr	Capt	B.C. Lewis	R.H.C.

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See 2c p 3.)

A8. The accused B-156163 Pte Smith, G.W. before arraignment make(s) (no) ~~plea~~ plea JC (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to this para. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~not~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. JC

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2) JC

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement ? Ans. No JC (5)

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~ JC JC JC

(*1. Court may be cleared to consider the statement. Delete whole as post not used.*)

B4. ~~On the charge(s) to which the plea(s) of Guilty is (are) now changed the President records findings of Guilty as in Part I of the Schedule(1).~~ JC JC

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1) JC

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)

(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB: If trial proceeds, accused must be allowed great latitude in making his defence and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither. JC

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Do you intend to call witnesses on your behalf ?

Ans. ..... Are they witnesses as to character only ? Ans. .....

(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1. 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(6).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP 43, 117(D). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(*1. AA 54(2) (d), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans. No JC

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex Y and Ex Z respectively.(3) JC

(*1. MFB 253 or MFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes (2)

(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. 2. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 89, 118, 119(A), KR Con 308, 330, 563-566, Overseas AO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(7), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

Charge against B-156163 Pte George William SMITH,
1st Bn The Black Watch (RHR) of Canada, a soldier of
The Canadian Army Active Force is charged with:

FIRST CHARGE
Sec 15 (1)
Army Act WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field at 2300 hrs 16 Oct 44, did absent himself
without leave until surrending to American Provost at
DIJON at 2200 hrs 13 Dec 44.
(Absent 58 days)

In the Field
14 Jan 45 "A.G. Stevenson" Maj.

A/Officer C ommanding
1st Bn The Black Watch (RHR) of C.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field
14 Jan 45 "W.J. Megill" Brig.

Comd 5 Cdn Inf Bde.

FIELD GENERAL COURT-MARTIAL

Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23.

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets RP 87(B).

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.) see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

ACCUSED.

Number.	(a) Frmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-156163		Pte	George William	SMITH	R.H.C.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 14 Jan 45 endorsed by me, ~~(or by an offr of my staff for me)~~ " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~[and that it is not practicable to delay the trial for reference to a superior (qualified) offr.]~~

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)		(Unit.)
Major	J. Campbell (*Must be named. RP 106.*)	Calg Highrs

MEMBERS.

(Rank.)		(Unit.)
Capt	I.J. Coady	Calg Highrs
Capt.	H.D. Freeston (*Named or detailed. RP 106.*)	R.H.C.

WAITING MEMBER.

(Rank.)		(Unit.)
Lt.	T.R. Larkin (*Named or detailed, if any. RP 106.*)	R.H.C.

JUDGE-ADVOCATE.

(Rank.)		(Unit.)
	(*Must be named, if any. RP 106.*)	

On Active Service in the Fd

in Holland (*Country.*)

"W.J. Megill" (*Signed personally. RP 105 fn 2.*) Brig. (*Rank.*)

Dat 14 Jan 45 Commanding 5 Cdn Inf Bde Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(*See overleaf for oaths and notes for use on trial.*)

I hereby certify that I have this day examined B-156163 Pte. SMITH, G.W. and in my opinion he is fit to undergo trial by Court Martial.

Date 15 Jan 45 "R.G. Fisher" Capt RCAMC
Medical officer.

SUMMARY OF EVIDENCE

In the case of B-156163 Pte Smith, G.W., of 1st Bn The Black Watch (RHR) of Canada, a soldier of the Canadian Army Active Force, is charged with an offence under Army Act, Sec 15 (1).

The Commanding Officer directs that the evidence be taken under oath.

FIRST WITNESS FOR THE PROSECUTION D-81041 CSM Young, J.P. 1st Bn The Black Watch (RHR) of Canada, sworn states:

On the 16 Oct 44 at 2200 hrs it was reported to me that Pte Smith was absent from his quarters. I inspected his quarters and found that he was not there. He remained absent until handed over to the Canadian Provost Corps at 1500 hrs 21 Dec 44.

The accused declines to cross examine.

"J.P. Young"
(D-81041 CSM Young, J.P.)

SECOND WITNESS FOR THE PROSECUTION: Documentary evidence purporting to be signed by F-21329 Cpl Power R.A. #6 L of C Pro Sec.

I certify that in my opinion, the attendance of F-21329 Cpl Power R.A. No. 6 L of C Provost Section is, owing to exigencies of the service, (in case of military witnesses), expence or loss of time involved or illness, not ready procurable, a written sta ment of his evidence signed by him has bee read over to the accused, and is attached hereto as Exhibit "A".

I do not require the attendance of F-21329 Cpl Power R.A. for the purpose of cross examination.

"R.S.Lewis" Capt
Officer detailed to take Summary

You have heard the evidence for the prosecution. Do you wish to make any statement, solemn declaration or give evidence on oath or to call any witnesses for your defence? You are not obliged to disclose your defence at this time unless you wish to do so. Any evidence you give will be taken down in writing and may be given in evidence at any future hearing of these charges.

A-1 I surrendered to the American Provost at Dijon, on 13 Dec 44, at 2200 hrs. They turned me over to the Canadian Provost at Paris, on or about 20 Dec 44.

"G.W. Smith"
(B-156163 Pte Smith, G.W.)

Q-2 Do you wish to call any witnesses at this time?

A-2 No, not at this time.

Rules of procedure 4 (C) (D) (E) (F) (G) have been complied with. I certify that the foregoing summary of evidence consisting of one page was taken down by me in writing in the presence and hearing of the accused this 10th day of January 1945.

"R.S. Lewis" Capt.
Officer detailed to take Summary

Black Watch of Canada

1st Bn.

CHARGE AGAINST B-156163 Pte SMITH, G.W.

PLACE

DATE OF OFFENCE

OFFENCE W.O.A.S. was A.W.O.L. from his unit from .....Until handed over to the Canadian Provost Corps, the D.A.P.M. office Paris, about 1500 hrs, 21 Dec 44.

Names of Witnesses

F-21329 Cpl Powers, R.A. No. 2 Cdn L of C Provost

STATEMENT OF EVIDENCE

In the case of B-156163 Pte Smith, G.W., 1st Bn Black Watch of Canada

Sir:

At Paris at about 1500 hrs on the 21 Dec 44 I was on duty at the D.A.P.M. Office, where the A/M soldier was escorted as having surrendered to the American Military Police, at Dijon.

Statement of Evidence att.

Paris,
21 Dec 44.

"R.A. Power"
(F-21329 Cpl. Power, R.A.)
No. 6 Cdn L of C Prov Sec.

Certified true copy of original statement.

"W.S. Duffield" Capt & Adjt.
1st Bn The Black Watch (RHR) of C.

No B-156162 Name SMITH G.W. | Sqn, Battery or Company | Corps CIC | Date of enlistment 9-4-43 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial with trial	By whom awarded	Remarks
				CERTIFIED TRUE COPY AS PER REGIMENTAL DOCUMENTS IN MY POSSESSION. "W.S. Duffield" Capt & Adjt. Officer i/c Records, (RHR)					

(PTO)

ARMY FORM B.296

Statement as to Character and Particulars of Service of Accused.

Number	*Rank*	*Name*	*Regiment (or as the case may be)*
P-156163	Pte	SMITH, G.V.	1 R.H.C.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

* The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION. — If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months	* Since Enlistment
For	Nil times	Nil times
For	~~.....~~ times	~~.....~~ times
For	~~.....~~ times	~~.....~~ times
For	~~.....~~ times	~~.....~~ times
For	~~.....~~ times	~~.....~~ times

~~Number of instances of gallantry or distinguished conduct~~

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 75 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time. ~~or~~ The accused at the present time is under sentence for ~~beginning on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for nil days in civil custody, and 22 days in military custody, making a total of 22 days, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~record sheet~~ attestation paper is 20

6. The date of his ~~enlistment~~ attestation specified in his ~~record sheet~~ attestation paper is 9 Apr 43

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is .....

8. The accused is entitled to deferred pay or gratuity in respect of 1 9/12 service.

9. The accused is entitled to reckon ..... service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*). N/A

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of .....

12. (*In the case of an officer.*) The accused holds in the army the rank of ....., dated ....., and in his regiment (*or corps or* department) the rank of ..... dated .....

Wt.5503/1319 20M. 5/44. P. Ltd. T.S.5.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B-156163 *Rank* Pte Name SMITH G.A. of 1 B.H.C. Regiment (or as the case may be)

(INSTRUCTION—A verbatim extract from the regimental books, stating there convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 12 day of January 1945

"S.S. Duffield" Capt & Adjt.
1st Bn The Black Watch (RHR) of Canada.

13. The accused has served as a non-commissioned officer commendably, without reduction, to the present date.

Date of Promotion:

To the rank of ..... years.

To the rank of ..... years.

To the rank of ..... years.

(INSTRUCTION—If any name in any of the above paragraphs cannot be traced from the regimental books the paragraph must be struck through, except that in the case of a man who has served with the Expeditionary Force the information may be inferred from rank known or are available and the paragraph entered provided accordingly.)

H-156163 Pte SMITH, G.W.

Was 20 yrs old on the 1st Feb 44, single, he is an eldest son, Home Brantford, Ont., prior to joining up was learning trade as Steam fitter and rove Trucks.

Joined Active Service, April 43, Artillery Ack Ack, was reallocated Infantry 15 July 44, and after 13 days training came to Platoon joined the Black Watch at Brattville and served with a Rifle Platoon until wounded, says that he is washed up and does not feel any better about going back into action.

H-156163 Pte SMITH, G.W.

Was 20 yrs old on the 15 Feb 44, single, he is an eldest son, Home Brantford, Ont., prior to joining up was learning trade as Steam fitter and rove Trucks.

Joined Active Service, April 43, Artillery Ack Ack, was re-allocated Infantry 15 July 44, and after 13 days training came to France joined the Black Watch at Brettville and served with a Rifle Platoon in action, says that he is washed up and does not feel any better about going back into action.

I DO WISH TO HAVE AN OFFICER APPOINTED BY MY COMMANDING OFFICER TO DEFEND ME AT MY TRIAL BY FIELD GENERAL COURT MARTIAL.

NAME OF OFFICER IF AVAILABLE .."Capt.D.S..Lewis."....

"G.W. Smith"
B-1 6163 Pte Smith, G.W.

WITNESS: "J. Skippond" Lt.
1 st Bn The Black Watch
(RHR) of Canada.

EE 79

PTE SMITH H

EE-79

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 19th day of May, 19 43

Whereas it appears to me, the undersigned, an officer in Command of 1 Canadian Corps R.C.A.M.C., on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~* and that it is not practicable to delay the trial for reference to a superior qualified officer.~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers ~~hereunder named~~ appointed or detailed hereunder.

* Omit if not applicable

~~* I am unable to appoint:~~

~~* [illegible] Officers to form the Court~~

~~* A Field Officer as President~~

~~* Three Officers having more than one year's seniority~~

~~for the following reasons, namely:—~~

27 June 43

President.

Rank.	Name.	Regiment.
Major	R.G. Storms	1 Cdn Corps Tps M/S R.C.O.C.

Members.

Rank.	Name.	Regiment.
Captain	P.A. Peterson	44 Cdn Gen Tpt Coy, RCASC.
~~Captain~~ Lieut.	O.A. Zala	31 Cdn G.T. Coy, RCASC.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

Signed E. A. McCusker

Commanding (E.A.McCusker) Brigadier D.D.M.S. 1 Cdn Corps. *Convening Officer.*

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
L-8153 Private Henry SMITH 47 Cdn Gen Tpt Coy (Inf Div) R.C.A.S.C.	First Charge. A.A. Sec 40	Guilty	Guilty	
	Second Charge A.A. Sec 41	Not Guilty	Not Guilty	
	Third Charge A.A. Sec 40	Guilty	Guilty	22 May 43 I confirm the finding of the Court but remit (25) days detention. G.G. McCusker.
	(as per charge sheet attached)		Sentenced to undergo detention for a period of twenty five (75) days [illegible] may President 21 May 43.	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (*a*).)—"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— no.

(Signed) G.G. McCusker. (Signed) [illegible] Major
(G.E.A.McCusker) Brigadier — President.
Commanding D.D.M.S. 1 Cdn Corps. — *Convening Officer* (*e*)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 21st day of May 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. The officers under instruction)

* Omit if not applicable.

were duly sworn.

Signed this 21st day of May 19 43.

[illegible] Major
President of the Court Martial

C. Certificate in case of death sentences.

* See footnote (*b*) on page 764 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this [illegible] day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences. G.G.McC.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or having such authority, recommends suspension.

*(~~I direct that the soldier named in the margin be not committed to prison until further orders.~~)

Signed this 22 day of May 19 43

G.G. McCusker.
Confirming Officer
D.D.M.S. 1 Cdn Corps

Promulgated and extracts taken in the case of L8153 Pte Smith, H.

(*a*) (Dated) 23 May 43 (Signed) [illegible] Major

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible]

W.J. Storms major President B 2.

CHARGE SHEET

The accused L8153 Pte. Henry SMITH, of 47 Cdn.Gen. Tpt.Coy. (Inf.Div.)R.C.A.S.C. a soldier of the Canadian Army Overseas, While On Active Service, is charged with:-

FIRST CHARGE
SECTION 40
ARMY ACT

Neglect to the prejudice of Good Order and Military Discipline,

in that he,

In the Field, on or about the 7th day of May 1943 neglected to carry out his orders to deliver a despatch from his O.C. to C.,R.C.A.S.C. 3rd Div. and was found in premises 28A the Broadway, Haywards Heath at or about 2359 hrs. when he should have been engaged in the delivery of said message.

SECOND CHARGE
SECTION 41
ARMY ACT

Committing a Civil offence that is to say common assault,

in that he,

In the Field, on the 7th day of May 1943 on Broadway Street, Haywards Heath, did assault G3556 Pte. Lewis, J.H. by kicking him in the testacles.

THIRD CHARGE
Section 40
Army Act

Neglect to the prejudice of good order and military discipline, in that he, in the Field, on or about 7 MAY 43, did leave unattended a Canadian Govt motorcycle entrusted to him, in the rear of Haywards Heath Building Society, Haywards Heath, a public place, without properly immobilizing the said motorcycle. time.

19 May 43

(G. Gibb) Major,
Officer Commanding
47 Cdn.Gen.Tpt.Coy.,
(Inf.Div.)R.C.A.S.C.

To be tried by Field General Court-Martial.

T.C. McCusker
(T.A. McCusker) Brigadier
D.D.M.S. 1 Cdn Corps.

In the Field
19 May 43.

Exhibit A I

MEDICAL CERTIFICATE (N.B. Commanding Officer Maj President

I certify that I have this morning examined No. L8163 Pte.

Smith, H. of 47 Gdn.Gen.Tpt.Coy.(Inf Div) R.C.A.S.C. and, in my opinion,

he is fit to undergo trial by Court-Martial.

Station Field

Date 21 May 43

D Woodington Capt
Medical Officer

Storms
may

A

Army Form A 44

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at Field

on the 21st day of May 1943 by order of

Brigadier E. A. McBuster D.S.O. M.C.
1 Canadian Corps

Commanding

dated the 17th day of May 1943

President.

Major R.G. Storms
10dn. Corps Troops W/S R.C.O.C.

Members.

Captain P.M. Peterson 44 Cdn Gen Tpt Coy R.C.A.S.C.

Lieutenant G.A. Zala 31 Cdn. C.T. Coy R.C.A.S.C.

N/A, Judge Advocate.

Trial of*

L-8153 - Private Henry Smith.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that N/A is not available to serve owing to , waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lieut J.R. Danahor 47 Gen Tpt Coy RCASC

Counsel‡ or defending officer† Lieut S.C. MacArthur 47 Gen Tpt Coy R.C.A.S.C.

At 10.45 o'clock the Trial commences.

The order convening the Court is read, and is marked signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.*

No.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q4274. Wt. W7162/676. 25,000 pds. 6/42. E. & S., Ltd. Gp6/7/11. Forms A 44/5.

B

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn.

Lieut G.S. Weatherall 1 Cdn MAC
Lieut L.G. Cohen. 41 Cdn Gen Tpt Coy RCASC
Lieut R.K. Buhr. 1 Cdn. Corps Sig's R.C.C.S.

Charge-Sheet.

Instruction. *If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.*

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Answer. Guilty

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Answer. Not Guilty

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

Answer. Guilty

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

Answer. N/A

The accused having pleaded Guilty to 1st and 3rd charges, the provisions of Rule of Procedure 35 (B) are here complied with.

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A)) Question.

*Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No.

The prosecutor makes an opening address [hands in a written address which is read, marked , signed by the President, and attached to the proceedings.] (no opening address handed in or made

The prosecutor proceeds to call witnesses.

First witness for prosecution. 4 3556 Pte Lewis S.H. 47 Gen Trpt Coy R.C.A.S.C.

being duly sworn, is examined by the prosecutor.

On the 7th May 1943 I was on guard and it was my duty to stop and inspect all vehicles leaving the camp. During my tour of duty I saw a motorcycle going out of camp through the field north of my point of duty - I could not identify the driver - In attempting to locate this motor cycle I met Pte Smith H. and he asked me to go up to a house on Broadway Street and I refused and Pte Smith kicked me in the testacles and walked away. I did not strike Pte Smith either before after this incident.

The Defending Officer examines the witness. There were no witnesses to the attack.

by Pte Smith and it was not
necessary for me to attend
sick parade the next morning

The prosecution does not desire
to question witness further

Witness is questioned by the Court.

The motorcycle upon leaving camp
was crossing a field approximately
two hundred yards from my point
of duty. I did not know for sure
that it was Pte Smith's motorcycle which
crossed the field. When kicked by
Pte Smith I was not severely hurt.
I was not doubled up and ~~the~~ any
pain was gone in about five
minutes. I did not report that
the motorcycle had gone over the
field and I went down town to
Haywards Heath on my own not
on instructions to locate a motor
cycle.

Certified that Rule 83(6) has been
complied with

D

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. yes

Question. Do you intend to call any other witness in your defence?

Answer. no

Question. Is he a witness as to character only? *Answer.* n/a

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says†

[~~hands in a written address which is read, marked~~ , ~~signed by the President and attached to the proceedings.~~]

Instruction.

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, see Instructions to the Court above.)

D 2

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

"L 8153 Pte Smith H.
The accused elects to give evidence on oath and ~~is~~ duly sworn ~~as~~
States

When I met Pte Lewis on 7th May 1943 it was not on Broadway street it was up the lane going towards 28A Broadway - Upon meeting Pte Lewis I said good night and he replied and I kept on walking No other words passed between us at this time but later on I saw him at 28A Broadway in company with Lieut Brew and Constable Roberts. I met Pte Lewis first on 7 may 43 at approximately ten minutes to twelve.

The prosecution declines to question the accused.

Certified that Rule 83(6) has been complied with

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge s to which he has pleaded "Guilty" are read to him again.]

The accused is found guilty of 1st and 3rd Charges

†The summary (or abstract) of evidence is read, marked CCI signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. The accused in mitigation of punishment says:— yes

(or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.)

The defense would like to point out that in the summary of evidence which has been read there is considerable evidence which is not revelent and not proven and regarded by the defense as hearsay such as the motorcycle crossing the field. The accused has pleaded guilty to the charges and desires the Court to ignor any references to such hearsay evidence.

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

in determining punishment.
Satisfied that Rule 83 (b) has been complied with.

RJS

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused. RJS

Answer. Yes.

no.

Evidence as to character.

RJS.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused

Guilty of 1st and 3rd charges as read. The finding on the second charge was kept in open court.

Proceedings on Conviction before Sentence.

*When the Court is already open this sentence will be struck out. Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

Lieut & Adjt Foster 47th Bgt Coy is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* yes

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked E I, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* yes

Cross-examined by the accused. Accused does not desire to cross examine witness.

[Instruction.—If by reason of the nature of the service of the accused in a detachment corps, or otherwise, the Court is of opinion that it would be unjust that any exceptional punishment in addition to that to be awarded by the Court be prevented from by the absence of the Court or the like, and the Court must therefore state the nature and amount of that additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.* No

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused L 81053 Pte Smith H. Sentence.
47 Cdn Gen Tpt. Coy (Any Div) RCASC
to undergo detention for a period
of seventy five days.

[signature]
major
President

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused

Guilty of 1st and 3rd charges as read. The finding on the second charge was kept in open court.

Proceedings on Conviction before Sentence.

*When the Court is already open this sentence will be struck out. Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

Lieut & Qr. Foster 47th Bgt Coy RCA SC is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* yes

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked E1, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* yes

Question

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* yes

[Instruction.—If in respect of the habits of the service of the accused in a determining matter of character the finding of the Court ought, under all the circumstances, to affect the punishment to be awarded by the Court the prosecutor may call the attention of the Court to the fact, and the Court must inquire into the history and character of the accused previously.]

Cross-examined by the accused. Accused does not desire to cross examine witness.

Question to the accused.

Do you wish to address the Court? *Answer.* No

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused L 81573 Pte Smith H. Sentence.
47 Cdn Gen Tpt. Coy (Inf Div) RCASC
to undergo detention for a period
of seventy five days.

[signature]
major
President

CCI

SUMMARY OF EVIDENCE

in the case

L8153 Pte. Henry SMITH

By direction of Major G. Gibb, Officer Commanding, 47 Cdn.Gen.Tpt. Coy., (Inf.Div.)R.C.A.S.C., the Summary of Evidence is taken on oath, commencing at 0930 hrs. and ending at 1110 hrs. 18 May 43.

1st Witness
Robert Walker, Police Constable #139, Haywards Heath, Sussex.

Robert Walker, Police Constable having been duly sworn states:-

At 1150 P.M. on the 7 May 43 as a result of information received I went to the rear of the Haywards Heath Building,Society Offices in the Broadway, Haywards Heath, where I saw Harley-Davidson Motorcycle bearing a Canadian Number. I examined the motorcycle and came to the conclusion that it was not immobilized. I kept observation until 1215 A.M. 8 May 43 when Lieut. Drew arrived. In Company with him I went to 28A The Broadway, whereupon knocking, the door was opened by a young lady. As a result of further inquries concerning the owner of the vehicle, we were asked to enter the house where I saw another soldier and another female. In answer to further questions, knowledge of the owner was at first denied, but upon opening a door I saw another soldier who is now present here and from there onwards Lieut.Drew took command.

The witness is questioned by the accused.

Q. 1. Did you try to start the Harley-Davidson ?
A. 1. No.
Q. 2. How did you know it wasn't immobilized?
A. 2. I found that the points, spark plugs, and sparking leads and ignition were in order.
Q. 3. Was there anything in the points?
A. 3. There was nothing in the points when I first examined them machine but I placed a piece of paper between them.
Q. 4. Was the high tension wire disconnected?
A. 4. By my brief examination the machine appeared to be in a condition ready to be started.
Q. 5. What time did you say you arrived at the house?
A. 5. 12.15 A.M.
Q. 6. What was the approximate time that I left?
A. 6. Approximately 12.30 to 12.35 A.M.

Robert Walker 139.
(Robert Walker)Police Constable

2nd Witness
Lieut.Drew of 47 Cdn.Gen.Tpt.Coy.,(Inf.Div.)R.C.A.S.C.

Lieut.A.J. Drew, having been duly sworn states:-

On the 7 May 43 I was on duty in Company Orderly Room as Orderly Officer. One of our Camp Guards reported to me by telephone from Haywards Heath Police Station at approximately 2300 hrs. that one of our Motorcycles was down there and that the Police had it in charge. The guard Pte. Lewis informed me that he knew who the D.R. was and where he could be found. I immediately drove down to the Police Station and went with a Police Sergeant and another Policeman to the back of Haywards Heath Building Society on Broadway where we found our motorcycle. It had been immobilized by two Policemen already on the scene. Lewis then took us to the house where Pte. Smith was said to be, namely 28A The Broadway. We asked for Smith and after several denials as to his presence, were told to come up stairs. I questioned Smith as to what duty he was supposed to be on and he showed me an envelope containing a despatch from Major Gibb on"Scheme Welsh" to C.,R.C.A.S.C. 3rd Div. In reply to my question as to when he received the despatch he said it was around 1630 hrs that day. When I inquired what he was doing in this house at 2400 hrs. he said C.,R.C.A.S.C. had moved and he had now to go to Crawley Hants. but he could not locate the place on the map.

He had a route sheet and a map marking his route all the way to Winchester, but said it was too late for him to drive as there would be no one out at that time of the night from whom he could ask directions. Pte. Smith had been in the Company lines earlier in the evening and had every opportunity to check the location of Crawley. This town was at the western end of his route and was on that portion of the map which he had folded under to make it fit his map case. I pointed out to Smith that he was still on duty, that he had lost 6 hrs. 30 mins. travelling time, and that his job was not done until his despatch had been delivered. He said he knew his job was not done but that the despatch was not very important. I ordered him to dress and get back on his motorcycle, at the same time telling him he was under open arrest. It was approximately 2400 hrs. when he finally left the house.

The witness is questioned by the accused.

Q. 1. How do you come to the conclusion that I lost six and a half hours of time?
A. 1. You were in our lines a approximately 1700 hrs. and you were in Haywards Heath until 0030 hrs, during which time you could have been delivering your despatch. If you had of left the lines at 1700 hrs, you could have travelled to 0030 hrs.

Q. 2. How do you know that I was in Camp at 1700 hrs.?
A. 2. You ate in camp and I believe Pte Lewis will bear that out.
Q. 3. How do you know I spent from 1700 hrs until 0030 hrs. in Haywards Heath?
A.3. I do not know where I spent the time but you didn't spend it in the proper place, since you had an undelivered despatch in your possession?
Q. 4. Did Pte. Lewis report to you at 1700 hrs. that I was in camp?
A. 4. No.

(A.J. Drew) Lieut.

3rd Witness
G3556 Pte. Lewis, J.H. of 47 Cdn.Gen.Tpt.Coy.,(Inf.Div.)R.C.A.S.C.

G3556 Pte. Lewis, J.H. having been duly sworn states:-

At approximately 2030 hrs. on the 7 May 43 while on guard I saw a bike leave the lines. I didn't know who was riding it. After I came off guard at 2230 hrs. I went down town (Haywards Heath). I went to look for the bike and I saw Smith crossing Broadway Street. He said come on up to the house". I said "I am not going up" Then he kicked me in the nuts. I met a Civilian Policeman and he went with me and we found the bike behind the Haywards Heath Building Society Offices,. The Policeman then phoned the Company Headquarters and I talked to the Orderly Officer, Mr. Drew. I then waited for Mr Drew to arrive. I then accompanied Mr Drew and the two Policeman to the house where I believed Smith to be. I went in the house and saw Smith. Mr Drew told me to wait outside and when he came out we went back to camp.

The witness is questioned by the accused.

Q.1 How can you prove the time that you saw a Motorcycle leav ethe lines?
A.1 I said approximately 8.30 or 9.00 O'Clock P.M.
Q.2. What time did you see me on Broadway Street?
A.2. Just after I left Smith I met the Policeman. It was then 20mins after 11 P.M.
Q.3. Did you leave Broadway Street when you saw me?
A.3. No.
Q.4. Are you sure I was on Broadway Street and not up the lane?
A.4. Yes.
Q.5. Can you prove I was on Broadway Street and not up the lane?
A.5. No.
Q.6. What time did you arrive at the house with Mr Drew and the Policeman?
A.6. I don't remember.
Q.7. How long after you arrived did I come out of the house and take my bike?
A.7 Approximately 15 minutes after I came out.

4th Witness

L8072 Pte. Bergin, M.J. of 47 Cdn.Gen.Tpt.Coy.(Inf.Div.)R.C.A.S.C.

L8072 Pte. Bergin, M.J. having been duly sworn states:-

On the 7 May 1943 I visited a lady friend at 38A The Broadway, Haywards Heath. I arrived there about eleven o'clock P.M. At approximately twelve o'clock Pte. Smith arrived at the house. About five minutes later Mr Drew arrived along with two Policeman and Pte. Lewis. Mr Drew and the Policeman talked with Smith and about fifteen minutes later Pte Smith left the house.

The accused declines to cross-examine the witness.

M.J. Bergin

(M.J. Bergin)Pte.

The accused was warned in accordance with Rule of Procedure 4(e) and declined to make a statement.

I certify that the foregoing Summary of Evidence was taken down by me in writing in the presence of the accused, and that Rules of Procedure 4(c), (d), (e) and (f) have been complied with.

J.R. Danaher

(J.R. Danaher) Lieut.
Officer Taking Summary of Evidence

Exhibit E 2.

No. L.6153 Name Smith, H. Sqn., Battery, or Company — Corps R.C.A.S.C. Date of enlistment 9/5/41 G.C. Badges — Service or Proficiency Pay — Character

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. — Signature O.C. Company, etc.

M.F.M. 6 (A.F.B. 122)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order (Confirming) with date	By whom awarded	Remarks and Dates of Entries in Red Ink
Field	On 9 Nov.41	this soldier completed six months service and the previous sheet on which there were no entries was destroyed on 10 Nov.41 Auth: M.O.319							
Field	31/7/42	Pte.		Sec.15(1)A.W.L.from 1300 hrs. 31 Jul 42 to 1500 hrs. 11 Aug.42 Time absent 11 days 3 hrs.	L/Cpl. Constable	14 days C.B. 14 days pay FRI.149(2)	12 Aug.42	Major G. Gibb	Forfs.12d.p. FRI.149(1)(a)
Field	29/9/42	Pte.		Sec.15(1)A.W.L.from 1300 hrs. 29 Sep.42 to 0955 hrs. 19 Oct. 42 Time absent 19 days 21 hrs. 55 mins.	Sgt.Douglas Sgt.Ryder	28 days F.P.	20/10/42	Major G. Gibb	Forfs.28 D.F. FRI.149(1)(a) Forfs.28 D.F. FRI.149(1)(b) Total 48 D.F.

(G.S. Foster) Lieut.
Officer i/c Regt'l Books

E I

M.F.B. 355
22M—5-41 (572-31)
H.Q. 1772-39-622
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
L8153	Pte.	Henry SMITH	47 Cdn.Gen.Tpt.Coy. (Inf.Div.)R.C.A.S.C.

1. The following is a fair and true summary of the entries in the ~~[illegible]~~ or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~[illegible]~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For Sec. 15(1) A.A.	2 times	2 times
For	times	times
For	times	times
For	times	times
For	times	times

~~[illegible]~~

or,

~~[illegible]~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act Air Force Act A.F.A. 73 and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

~~[illegible]~~

day of

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in ~~[illegible]~~ civil custody, and 9 days in military custody, making a total of 9 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is attestation paper is

6. ~~[illegible]~~

7. The service which the accused is allowed to reckon towards discharge is Duration

8. The accused is entitled to reckon 2 yrs. service for the purpose of determining his pension, etc.

9. ~~[illegible]~~ military military military

10. ~~[illegible]~~ the regimental rank of

11. [illegible] unit

dated [illegible]

dated [illegible]

12. [illegible] present date:—

Date of promotion.

In the rank of N/A years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused, Number Rank Unit Name of Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
	N/A			

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 21 day of May 1943

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked E I signed by the president, and annexed to the proceedings.

(G.S. Foster) Lieut.
Officer i/c Regt'l Books

5-J-60

Pb Smith H.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused :

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... beginning on (date) .....
(I. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 31 days, of which Nil days were spent in hospital.(1)
(I. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo detention for a period of 60 days.

(Sgd) ..... 1 May 45 (Sgd) George B Ken Major
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)
(I. AA 57A. Delete if not used.)

Date 2 May 45 (Sgd) ..... BRIG.
Commanding COMD 2 CDN. BASE RFT. CP.
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
165828 PTE HARRY SMITH	6 MAY 45	..... Lt-Col. Comdg, 1 Can Disciplinary Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 180, 31-65

RECEIVED 15 MAY 1945 JAB BRANCH C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CFA80 (To take the place of AFA3) 40/P 36 (1/1/44) (5010)

4/38B

Convened by Order of Lt Col J. Runcie A/Comd 2 CBRG dated 28 April 45

ACCUSED.

(As to the order of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) oppmt, A/rank or A/oppmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R. or A/Appmt.	Full Christian Names.	Surname.	Unit.
K 65828	Pte	HARRY	SMITH	K.S.H. (1 Can Inf Bde) CIC

PROCEEDINGS REVIEWED
2 May 45
REVIEWING OFFICER, JAB BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED J. A. Con. 1 Tech. 2 May 45 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 1 May 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Omissions do NOT include all relevant fmns HQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(I. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1745 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~
(I. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused :~~ Do you object to ..... as interpreter ? Ans .....
~~The Interpreter is sworn.(1)~~ Do you object to ..... as shorthand writer ? Ans .....
~~The shorthand writer is sworn.(1)~~
(I. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?
Ans No.(2)
(I. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	G. B. K. Cox	CAC
Member	Major	R. E. Lefroy Seaforth HC	
Member	Lt.	A. J. Thompson CIC	2 CBRG
Judge-Advocate			
Prosecutor	Lt.	H. R. Neville Fus MR	10 CBRG
Defending Offr	Lt.	M. Racicot R Regt	10 CBRG

Questions by President : Is the Prosecutor a lawyer ? Ans Yes Is the Defending Offr a lawyer ? Ans No.(1)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Di p 2.)

A8. The accused K 65828 Pte Smith H before arraignment makes(s) (no) ~~at plea~~ (1)
(I. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in the rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(I. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF 88A to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is cleared and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CBRG W.D. P 138

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*ii*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or ~~JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. No.(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 ~~to D8~~ inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*ii*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*E*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. .....

Do you intend to call witnesses on your behalf? Ans. .....

Are they witnesses as to character only? Ans. .....
(1. *RP* 115. 2. *RP* 60(*A*), *see* 60(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*d*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans. No.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true ~~copy~~ (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 162(2) (*g*) (*b*), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB* 255 *or MFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes, in mitigation, all as exhibit D.(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything there or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas RO* 309, 2323, *MML p* 90, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Exhibit F 182

MFB 246

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 55)
(CMHQ CL 173)

I certify that I have this day examined Pte Smith H (Rank) (Name) K62226 (No.) and in my opinion he is fit ~~unfit~~ to undergo trial by Court-Martial.

Station 1 Cdn Disciplinary Centre

Date [illegible]

[illegible] (Medical Officer) (Sgd)

Unit ~~1 Cdn Disciplinary Centre~~

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23.
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets RP 87(B).
As to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K-65828	Pte		Harry	SMITH	48 Highrs of Canada, att 1 Cdn Disciplinary Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has committed the offence set forth in the Charge Sheet attached and on (*date*) 28 Apr 45 endorsed by me, "~~[illegible]~~" To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence should be tried by an ordinary General Court-Martial ; ~~[illegible]~~
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person, and to consist of the Offrs appointed or detailed hereunder.

4. ~~[illegible]~~
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. ~~[illegible]~~
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

Major (*Rank.*) G E H COX (*Must be named. RP 106.*) CAC att 1 Cdn Disciplinary Centre (*Unit.*)

MEMBERS.

Major A E LEFROY Seaforth Highrs att 1 Cdn Disciplinary Centre

Lieut (*Rank.*) A J TE HIPSON (*Named or detailed. RP 106.*) CIC 2 CBR Bn (*Unit.*)

WAITING MEMBER.

(*Rank.*) (*Named or detailed, if any. RP 106.*) (*Unit.*)

JUDGE-ADVOCATE.

(*Rank.*) (*Must be named, if any. RP 106.*) (*Unit.*)

On Active Service in the Fd

in BELGIUM (*Country.*)

Date 28 Apr 45

(J Roberts) (*See AA 105 fn 2.*) Lt-Col (*Rank.*)

A/Commanding 2 CDN BASE RPT GP Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(*See overleaf for oaths and notes for use on trial.*)

4/38A (FAGS (TD Unit) 1st AP A3)
40/P & S/1067 (695)

CHARGE SHEET

The accused, K-65828 Pte H arry SMITH, 48th Highlanders of Canada, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, absented himself without leave from 1600 hrs 28 Mar 45 until surrendering himself at 2130 hrs 30 Mar 45.

(Total absence: 2 days 5 hrs 30 minutes)

Remanded for Summary of Evidence

In the Field
24 Apr 45

(J M Medhurst) Lt col
Commanding
1 Cdn Disciplinary Centre

Remanded for Field General Court-Martial

In the Field
24 Apr 45

(J M Medhurst) Lt col
Commanding
1 Cdn Disciplinary Centre

To be tried by Field General Court-Martial

In the Field
28 Apr 45

(J Runcie) Lt Col
A/Comd
2 Cdn Base Rft Cp

Exhibit A CMB

Summary of Evidence in the case of K-6588 Pte SMITH H 48 Highlanders of Canada, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas.

Charge- Absence without leave

By direction of the CO the evidence is taken on oath.

The following documents are read over to the accused marked as exhibits and are attached to the proceedings.

Exhibit "A" - Certified true copy of extract from Part 11 Order No. 26 dated 23 Apr 45

Exhibit "B" - Certificate of surrender dated 30 Mar 45.

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so but anything you say or any evidence you give will be taken down in writing and may be used in evidence.

A. I have nothing to say

The accused does not call any witness.

I certify that the foregoing summary of evidence consisting of one page was taken down by me in the presence of the accused and that RP 4(C)(D)(E)(F) and (G) have been complied with.

Maurice Rousseau Capt
(Maurice Rousseau) Capt

Officer detailed to take Summary of Evidence

Dated in the Field
24 Apr 45

Exhibit A

PART II ORDER EXTRACT FORM

TO: Officer Commanding
No. 1 Disciplinary Centre
~~Cdn Army Overseas~~

09/20/- 48 Highrs/1(A5c)
25 Apr 19 45

EXTRACTS FROM: UNIT 48 Highlanders of Canada
Part II Order No. 86 dated 23 Apr 45

ABSENT WITHOUT LEAVE

AWL from 1600 hrs 28 Mar 45

A104238	Pte	RAINES	P.J.
K65629	Pte	SMITH	H.

~~The following documents are~~ ~~attached~~ Please acknowledge receipt on attached duplicate.
~~required~~ Please forward same

Certified to be a true extract from the regimental books and documents in my custody.

Officer i/c Records C,
Cdn. Sec. 2 Base HQ 21 A Gp.

Originating Clerk's Initials
/GEB

for
Officer in Charge
Canadian Section, GHQ, 2nd Echelon

1/70

Exhibit B

M. Rouillard Capt

CERTIFICATE OF SURRENDER UNDER ARMY ACT SECTION 163 (4) (a).

I, ...f Blenkharn H... certify that No. K.6.5.8.4.8... Rank. Pte... Name. B.H.J.H. ...H..... of (Unit). 48 Highlanders of Canada, Regt. 1st Cdn Div. surrendered himself to No. 11.4.8.7.76... Rank. Lt/Col... Name. C.O.A.J. ...M.A..... of (Unit). 120 Provost Coy. C.M.P. Soest..... at ...Brussels..... on ...11.30... hrs. on ...30th... March 1945..... as a Prisoner of War without loss. He was dressed in ~~khaki~~ uniform clothes.

Date. 30 March 1945

Signature... f Blenkharn H.....

Officer Commanding.....

Unit.

COMMANDING 120 PROVOST COY. G.H.Q.

CORPS OF MILITARY POLICE

NOTES

1. If the surrender was made to an Officer this certificate MUST be signed personally by his Commanding Officer.
2. If the surrender was made to an Officer this certificate may be signed either by that officer or by his Commanding Officer.
3. In no circumstances may it be signed by one officer 'for' another, or by anyone who does not hold commissioned rank.
4. In no circumstances should the place of surrender be described as 'in the field'. The actual place of surrender must be stated, or if officially is experienced in describing the place, the map reference should be given.

LIST OF WITNESSES

N/A

LIST OF EXIBITS

Certified true copy of extract from Part II Order No 26 dated 23 Apr 45	"A"
Certificate of surrender dated 30 Mar 45	"B"

I, K-65828 Pte Smith H, acknowledge having received one copy of the Summary of Evidence and one copy of the Charge Sheet free of charge on 24 Apr 45.

H. Smith.

K-65828 Pte Smith H

Plea for mitigation of Sentence Exhibit D

K-65828 - Pte Smith, W. 6/12

The accused was a member of the Parachute for 20 months in England when he was categorized part of the corps one month before D-Day, after making 19 jumps with them. The esprit de corps of that unit and being accustomed to its easy living and devil may care attitude towards life, necessary for the success of the airborne troops, gave him the costly habit of taking a few drinks. His CO's will bear that out when you notice the charges of drunkenness and short absence.

You are faced with another of these charges of 2 days A.W.L. Will his service be of more service in a detention camp or in the field. He is most anxious to get back to his unit, with whom he fought in Italy.

He has committed an offence and is ready to serve his punishment. Should he punished to such an extent as to eliminate all chances of his serving with his unit?

Thus I call for attention of the Court to time spent in confinement (31 days) which is more than enough for such a short absence (2 days). For the above reasons I ask the Court to be extremely lenient in its sentence.

Lt. Lavicount Jr.
For the Defence.

In the Field
Belgium, May 4th.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D65828	Pte	SMITH H	48 Highlanders

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For 15(1)	7	17	times.
For 19	1	3	times.
For 40	1	4	times.
For 10(4) 9(2) & 22	1	2	times.
	2(es. 1)	4(c each)	

Date of first entry in Field Conduct Sheet 28Aug42

Date of last entry in Field Conduct Sheet 27Feb45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for NIL

beginning on the N/A day of N/A

4. The accused has been awaiting trial on the present charges for No days in civil custody; and for 31 days in military custody, *i.e.*, No days in open arrest, 31 days in close arrest; of which No days were spent in hospital.

5. The present age of the accused is 22 years 10 months old

6. The date of his attestation ~~enlisting up for military service~~ is 1-8-42

7. The service which the accused is allowed to reckon is

†State the military decorations (if any) held by accused.

8. The accused is in possession of: G.V.S.M. with bl clasp

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of ////	
In the war substantive rank of ////	
In the acting rank of ////	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

[27803] W1.24939/2456 24,000 7/44 A.& E.W.Ltd. Gp.698 Forms/B.296(War)/3

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
FGCM	Canada 31Jan43	No record of offence or AA Sec	automatic forf. 17 days pay FR&I 149(1)(o) 28 days detn	4 days remission awarded 11 Feb 43

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 1 May 45 day of

[signature] Major

No K65828 Name SMITH H | Sqn, Battery, or Company | Corps CIC | Date of enlistment | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 80/PAM/150 (5413)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Canada	28-8-42	Pte		AA 19 Drunkenness(1st off)		14 days CB & forf 14 dys py	28-8-42		
Canada	11-2-43	Pte				28 days detn			
Canada	31-1-43	Pte		FGCM		auto forf 17dys py 149(1c)			
Canada	1-4-43			4 days remission of 28 days det awarded 11 Feb 43					
Canada	1-1-43	Pte		AA 15(1) AWL 4 days 2 hrs		tot forf 10 dys 1-1-43 pay: awd forf 1¢ dys pay			
						for off under AA 40 and ordered to pay $50.00			
						damage to truck	10-1-43		
				AA Sec 15 AWL 1 day 18 hrs 29 min		Awd 3 dys CB and forf 2 dys pay	18-6-43		

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
UK	17-8-43			AA Sec 15(1)		Forf 5 days pay			
				AA Sec 15(1)		Summary for pay (10 days)&Auto forf 1 dys py 17-8-43			
UK	27-12-43	Pte		AA 10(4), AA 19, AA 9(2), AA22 & 2 Ors AA 15(1)		Awd 28 days FP and forf 30 days pay 27-12-43			
UK	20 Jul44	Pte		AA Sec 15(1) 2 chgs, AA 40		forf 11 dys pay			
UK	30-8-43	Pte		AA Sec 15(1) AWL		forf 6 dys pay awarded 7 dys detn & forf 7 dys pay	26-7-44		
UK	27-5-44	Pte		(1) AA 10(4),(2)AA 19(3), (3) AA 9(2), (4) AA 22, (5) AA 15(1) AWL from 0615 hrs 25 Apr 45 to 1445 hrs 25 Apr 45.(Abs 8 hrs 30 mins)		Awd 10 dys CB & forf 10 dys pay 149(2) forf 1 dys pay FRA1 149(1a) -30-8-43			

Exhibit "C" ABC

No. X 65828 Name Smith H Sqn, Battery, or Company | Corps | Date of enlistment | GC Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc

3/17 MFM 6 (AFB 122) 40/PAS/136 (5412)

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order (dissentient) with trial	By whom awarded	Remarks
UK	15Jun 44	Pte		(2) AWL from 1630 hrs 25 Apr 45 to 1420 hrs 26 Apr 45(21 hrs 50 min) AA 15(1) AWL from 1000 hrs 15Jun 44 to 2110 hrs 18 Jun 44(3 dys 11 hrs 10 min)		Awd 28 dys FP & A forf 28 dys pay forf 28 days pay 149(2) forf 2 dys pay forf 2 dys pay FR&I 149 (1a) 27 Apr 45 forf 4 dys pay 149(2) & forf 4 dys py 149(1a) 20-6-45			
	27Jul 44	Pte		AA 15(1) AWL from 0600 hrs 27Jul 44 to 2135 hrs 23 Aug 44(27 days 13 hrs 35 mins)		Awd 28 days FP stopp of pay £1-12-7, forf 56 days pay 27 Jul 44			

(P750)

By L.H.C. 6102

3/17 MFM 6
(AFB 122)
40/PAD/136 (5413)

No. 65828 Name Smith H | Sqn, Battery, or Company | Corps | Date of enlistment | GC Badges | Service or Proficiency Pay | Character

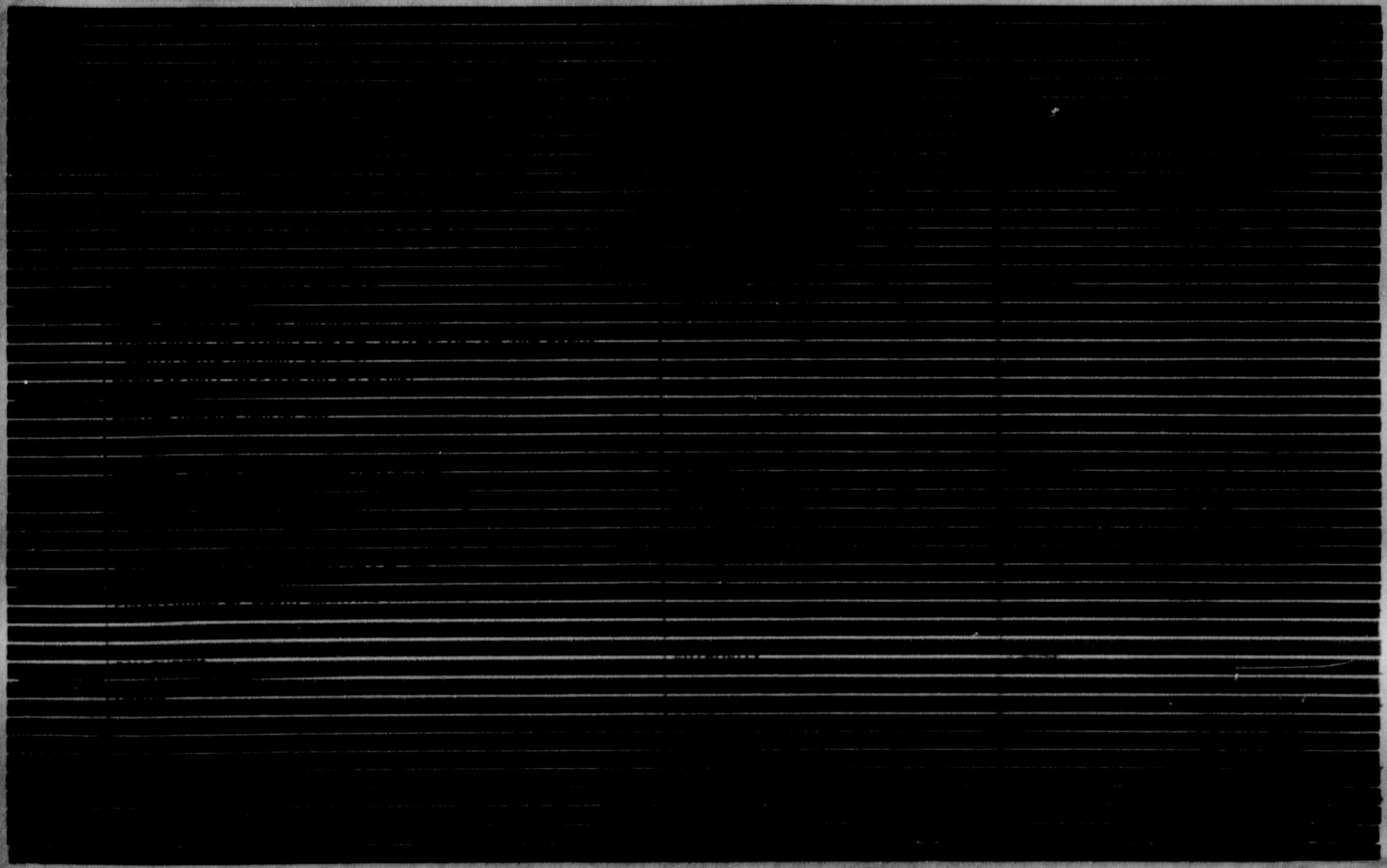
Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 3 | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial with (Col	By whom awarded	Remarks
UK	27-7-44	Pte		AA 15(1) AWL from 0600 hrs AWL 7th day at 0600 hrs still AWL (22nd day) 0600 hrs AA 15(1)		28 days FP total forf 56 days pay & stop. pay £1-12-7	25-8-44		
UK	7Dec44	Pte		AA 40 & AA 15(1) AWL 5 hrs		28 dys det & forf 28 days pay forf 28 days pay 149(2)			
NWE	27-2-45	Pte		15(1) (1) AWL from 1400 hrs 21 Feb 45 to 0700 hrs 22 Feb 45(17 hrs) (2) AWL from 1700 hrs 25 Feb 45 to 2200 hrs 25 Feb 45(Abs 5 hrs)		Awd 14 dys FP & A forf 14 dys pay Forf 14 dys pay FR&I 149(2) & 1 dys pay FR&I 149(1a)	27-2-45		

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Duplicate created from MFM 4 Record of Conduct in Canada prior to TOS Cdn Army Overseas not available					
				"J KNIGHT" Lt Officer ic REcords C Cdn Sec 2 Ech HQ 21 A Gp					
				Certified true copy of MFM 6 in my possession					
				Mabel Raiva Major					

CAOF-1-138 Pete Smith H.



SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : .....

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	Space for use as required for further charges, accused charged jointly, special findings, etc.
1st	~~Do~~	Guilty	Guilty	
2nd		Guilty	Guilty	
3rd		Guilty	Guilty	
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for N/A beginning on (date) N/A (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 12 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court : To forfeit all ordinary pay for a period of sixty days. (60)

8 April 46 (Sgd) L.H. Bowerman Major President (RP 45, 50.)

(Sgd) ..... Judge-Advocate, if any. Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(2)) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(2). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 57, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is : I confirm the findings on the first and second charges. I do not confirm the finding on the third charge. I confirm the sentence.

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) A Henderson Lt-Col

Date 11 April 46 A/ Commanding 2/3 Cdn Inf Bde CAOF Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
K-65829 Pte Smith, H	11 APR 1946	

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160, CAOF-1-138

FIELD GENERAL COURT-MARTIAL

CFA96 (To Heu of AFA3) 40 (P) At 8/1808 (2864)

Convened by Order of Lt Col S Henderson, Comd 3 Cdn Inf Bde dated 8 April 46

RECEIVED APR 26 1946 JAG BRANCH C.M.H.Q.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank and (b) apptmt, A/ronk or A/apptmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

Number	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
K-65829	Pte	Harry	Smith	Hqn Sect RC

PROCEEDINGS REVIEWED

PROCEEDINGS OF TRIAL

held at 3 Cdn Inf Div (CAOF) in (country) Germany on (date) 16 Apr 46

PROCEEDINGS REVIEWED 26 Apr 46 C.H. Tait, Maj. REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See basis of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(B), RP 96 fn 1. For effect see KR Can 562(c). Delete, if not applicable.)

A5. President to accused : Do you object to N/A as interpreter ? Ans N/A

The Interpreter is sworn.(1) Do you object to N/A as shorthand writer ? Ans N/A

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(3). If objection, see procedure AA 51, RP 25, 71, (B) MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	L H Bowerman	3 Cdn Inf Bde Lond
Member	Capt	G F Tellier	3 Cdn Inf Bde Lond
Member	Capt	G Ouellet	3 Cdn Inf Bde Lond
Judge-Advocate	N/A	N/A	~~Pte~~ Hqn Sect RC
Prosecutor	Capt	D C Cuthew	H/Qn Sect RC
Defending Offr	Capt	T J McNamara	H/Qn Sect RC

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 99 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused ..... before arraignment make(s) (no) (a) plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), (OB), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposition, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB record and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~adjourns and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form E.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(D), and of witnesses see RP 85-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~as JA if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. Nil. (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (~~his~~ plea(s) of Guilty to Not Guilty on 5 charge(s). The accused is (~~are~~) so informed, and he (~~they~~) changes/~~change~~ his (~~their~~) plea/~~s~~ on 5 charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereof proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

File Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)*

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. .....
Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 40(A) fn 1, 42(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 42, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (a), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. Yes
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (b), and (ii) they purport to refer to (a) soldier/~~s~~ having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB 255 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 66 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes (2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and also Part II, if any.~~(2)
(1. *When several accused tried separately see RP 70(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 343-346, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 344.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, K.65828 Pte Harry SMITH, 4 Cdn Scot R CAOF, a soldier of the Canadian Army Overseas is charged with

FIRST CHARGE
Sec 40
Army Act

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field, in Germany on 25 Mar 46 improperly discharged his service rifle in his quarters.

SECOND CHARGE
Sec 19
Army Act

WHEN ON ACTIVE SERVICE DRUNKENNESS

in that he

in the Field, in Germany on 25 Mar 46 while under open arrest was drunk.

THIRD CHARGE
Sec 10(4)

WHEN ON ACTIVE SERVICE BREAKING OUT OF QUARTERS

in that he

in the Field, in Germany on 25 Mar 46 when under close arrest having been confined to a cell, broke out of his cell.

In the Field
4 Apr 46

(G.W. Temlinson) Major
A/Officer Commanding
4 C Scot R (CAOF)

To be tried by F.G.C.M.

In the Field
5 Apr 46

(L.S. Henderson) Lt-Col
A/Comd
2/8 Cdn Inf Bde (CAOF)

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/FMS/1697 (S1959)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K-65828	Private	Harry	SMITH	4 C Scot R CAOF

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~s~~ named above, ~~are~~ the accused, being subject to military law, has ~~have~~ committed the offence(s) set forth in the Charge Sheet~~s~~ attached and on (*date*) 5 Apr 46 endorsed by me, ~~are~~ to be tried by Field General Court-Martial ".

~~XXXX

DB

I hereby certify that I have this day examined K-65828 Pte SMITH, H. and that he is fit/~~unfit~~ to undergo trial by Court-Martial.

C.H. Vipond Capt

(C.H. VIPOND)CAPT
RMO,
4 C Scot R (CAOF)

In the Field,
8 Apr 46

Ex A. RJB Page 1

Summary of Evidence 29 Mar. 1946

In the case of K 65 828 Pte Smith H. "C" Coy 4 Canadian Scottish Regiment C.A.O.T. charged with
(1) Conduct to the prejudice of good order and military discipline A.A. 40.
(2) Drunkenness A.A. 19.
(3) Breaking out of Quarters A.A 10 (4)

First Witness: Lieut. M.T. Thurgood having been duly sworn states: "I am Lieut. M.T. Thurgood, "C" Coy 4 Canadian Scottish Regiment C.A.O.T. At or about 0130 hrs 26 Mar. 46 whilst asleep at Maisonniel Arenal I was awakened by two loud noises that sounded like someone kicking a door. Believing this to be one guard waking another, I paid little attention. I again heard two more shots and a noise like breaking glass. I then got out of bed to investigate. Arose from my room I found K 65 828 Pte Smith H. in his room in pajamas. The room was full of steam and water and his mirror was broken. On examination of the room I found three bullet holes. one in the back board of the mirror, one in the wall and one in the broken steam pipe. Since all the windows were closed I knew the shots were fired in his room. After questioning Pte Smith he admitted he was responsible for the rounds being fired. I found on the floor three shell casings and one in the rifle. I examined the rifle and found it to have been recently fired. I then placed Pte Smith under open arrest because we had no guard room and charged him with an offence under A.A. 40.

M. T. Thurgood Lt.

The accused declines to cross examine this witness

~~Second~~ Witness. K 47699 C.S.M. Halliwell W. "B" Coy 4 Canadian Scottish Regiment C.A.O.T. having been duly sworn states. I am C.S.M. Halliwell W. 4 Canadian Scottish Regiment C.A.O.T. At 1645 hrs on 26 Mar 46. I and another Sgt. were sitting in the Sgts. Mess. Pte Smith entered the mess. He was standing by the bar talking to one of the Sgts. I asked him to leave the mess. Pte Smith came over to my table, seeing that he was under the influence of liquor at this time, and failing to respond to my order, to leave the mess. I ordered Sgt. Daniels to place him under arrest. Sgt. Daniels then placed him under arrest and removed him from the mess.

W Halliwell.

The accused declines the cross examine this witness

~~Second~~ Witness: SKS 7277 Sgt. Daniels C.G. R.P. Sgt 4 Canadian Scottish Regiment C.A.O.T. having been duly sworn states: I am Sgt. Daniels C.G. R.P. Sgt. 4 Canadian Scottish C.A.O.T. At 1645 hrs on 26 Mar 45. I was sitting with C.S.M. Halliwell in the Sgts. Mess when the accused Pte Smith came into the Sgts mess C.S.M. Halliwell requested the accused to get out of the mess. The accused did not say anything and did not make any move to leave the mess. Sgt Major Halliwell then ordered him to leave the mess. The accused said something to the effect of Take it easy. C.S.M. Halliwell then ordered me to place the accused under close arrest, which I did. During the time Pte Smith was in the mess he was under the influence of liquor. The accused was no trouble to me when I placed him under arrest. I took him

Fifth Witness: K608847 L/Cpl. Mc Millan R.A. R.P. Cpl. 4 Canadian Scottish C.A.O.T. having been duly sworn states: I am L/Cpl. Mc Millan R.A. R.P. 4 Canadian Scottish C.A.O.T. At approximately 2030 hrs of 28th Mar. 46 I was called from the show and told by L/Cpl. Mc Clelland that Pte Smith had escaped from the cell and was in the canteen. He wanted me to help him arrest Pte Smith. I went by myself as he had to go back on the gate. When I went down Pte Stedham was down stairs also. Pte Smith was a little bit drunk but not too bad. I told him he had better come back to his cell which he did without any resistance. The cells are not very secure. The doors are wooden and not very strong.

K. A. Mc Millan

The accused declines to cross examine the witness.

Sixth Witness: K2290 Pte Stedham D.F. R.P. 4 Canadian Scottish C.A.O.T. having been duly sworn states: I am Pte Stedham D.F. R.P. 4 Canadian Scottish C.A.O.T. I was on duty as R.P. on 28th Mar 46. from 1530 hrs to 2230 hrs. At approximately 1645 hrs I was on my way up to my room which is above the cells and I saw Sgt. Daniels putting Pte Smith into the cell. I then went to supper and came back to my room as I was on duty until 1730 hrs. At approx. 2030 hrs I was summoned out to the gate and when I came back about five minutes later, the guard commander told me that there was a noise downstairs. I went down below to the cell and found that Pte Smith had gone and the cell door was broken. The bottom panel was broken. I then went upstairs and telephoned L/Cpl. Mc Clelland at the gate and advised him of this. I then went

upstairs to look for Sgt. Daniels but I couldnt find him. I then went to the picture show. and asked for R.P.'s. About four R.P.'s came to the door and Told them Smith had escaped. About 20 45hrs L/Cpl. McClelland phoned me and told me Smith was in the canteen. I went to the canteen with L/Cpl. McMillan to arest Smith. Pte Smith was under the influence of liquor but gave us no trouble when we took him back to the cells and L/Cpl. McMillan put Smith in his cell while I proceeded to my duties upstairs. L/Cpl. McMillan placed Smith in the same cell from which he had escaped. At about 2220 hrs. I went downstairs to the cells again to see if any men wanted to go to the lavatory and found out that Pte Smith had gone again. I told L/Cpl. McClelland again that Pte Smith had escaped. ~~again.~~ ~~I then went upstairs and~~ ~~told Sergeant~~ L/Cpl. McClelland disarmed Smith in his room and took him downstairs and locked him in another cell. I went with McClelland.

Pte D. J. Stedmore

The accused declines the cross examine this witness.

The accused was cautioned as follows:-
"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so. But whatever you say or any evidence you give will be taken down in writing, and may be given in evidence."
The accused declines to make any statement.

I certify that the foregoing Summary of Evidence was taken down by me in the presence of the accused and that A.P. 4 (c)(d)(e) (f) and (g) have been complied with.

In the Field in Germany
28th March 1946.

G.W. Tamlinson Major
4 L. Scot R.

GWT.

K-65828 Pte Smith H. 4 C Scot R (CAOF)

A.A. Sec. 15(1)	13
A.A. Sec. 40	3
A.A. Sec. 9(2)	2
A.A. Sec. 10(A)	1
A.A. Sec. 19	1
A.A. Sec. 22	1

16 Jun 43

25 Feb 45

Da

n/a

Da

Da

12 12

NO No No

33 years 271 days

1 Aug 42

3 years 111 days

1939-45 Star
Italy Star
France & Germany Star
Defense Medal C.V.S.M. & Clasp

Da

Da

Da

I hereby certify that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 5th day of Apr 46

(T.U. O'NEIL)LT
4 C Scot R (CAOF)
Officer having custody of Regimental Books.

No. K65828 Name SMITH H. Sqn, Battery, or Company Corps CIC Date of enlistment Sheet No. Badges Signature OC Company, etc Service or Proficiency Pay

SUPPLEMENTARY SHEET / NO DOCUMENTS AVAILABLE THIS COMPANY

Date of last entry in Company Conduct Sheet | No. and date of last drink | Period not reckoning towards freedom from extra fine

3/17 MFM 6 (AFB 122) 40/P&S/136 (7010) Clothes

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field	18Jun 44	Pte		Sec 15(1)AA. AWL from 1000 hrs 15 Jun 44 to 2110 hrs 18 Jun 44 Absent 3 days 11 hrs 10 mins	Cpl Kennett Cpl Quillan	Forf 4 days pay FR&I 149(2)	20Jun44	Col RW Frost	Forf 4 days pay FR&I 149 (1)(a)
Field	5Jul 44	Pte		(1)Sec 15(1)AA. AWL from 2230 hrs 28 Jun 44 until 0045 hrs 29 Jun 44. Absent 2 hrs 45 mins.	Documentary	Forf 8 days pay FR&I 149(2)	5 Jul44	Col RW Frost	Forf 3 days pay FR&I 149 (1)(a)
				(2)Sec 15(1)AA. AWL from 0900 hrs 30 Jun 44 to 1300 hrs 2 Jul 44 Absent 2 days 4 hrs	CSM Sheam S/Sgt Gerdon J.D.				
Field	28Jun 44	Pte		AA Sec 40 Cond to the Prej.etc. in that he at Headley village on 28 Jun 44 was concerned in creating a disturbance	Documentary	7 days detention	20 Jul44	J.N.Medhurst Lt-Col	Forf 7days pay FR&I 149 (1)(b)

(P350)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	26Aug 44	Pte		Sec15(1)AA AWL from 0600 hrs 27 Jul 44 to 2135 hrs 23 Aug 44 Absent 27 days,15hrs,35mins.	Sgt B.C. Burton Documentary	28 days F.P. Ferf of 28days pay Steppages of pay in amt of £1.12.7 3days C.B.	26Aug44	B.R. Ker Col	Ferf 28 days pay FR&I 149(1)(a)
Field	21Nov 44	Pte		A.A.Sec.15(1)WOAS AWL from 2200 hrs 21 Nov 44 until 2300 hrs 21 Nov 44.	K1744 Sgt Smalley J.S.		22Nov44	Capt.K.S. Murdock	

Cert True Copy
In the Field
5 Apr 46
Officer having custody of original

(T.U. O'Neil) Lt
A C Scot R (CAOF)

No. K65828 Name Smith H.

Supplementary Sheet # 2

Date of last entry in Company Conduct Sheet	No. and date of last drunk	Sqn, Battery, or Company	Corps	Period not reckoning towards freedom from extra fine	Date of enlistment	Sheet No.	GC Badges Signature OC Company, etc	Service or Proficiency Pay	3/17 MFM 6 (AFB 122) 40/P&S/136 (7010) Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	28Nov 44	Pte		(1) AA Sec 15(1) AWL from 1330 hrs 28 Nov 44 until apprehension 1830 hrs 28 Nov 44 Absent: 5 hrs (2) AA Sec 40. Creating a disturbance in the town of Avelline	Documentary	28 days F.P. 28 days pay FR&I 149 (2)	7 Dec 44	Lt-Col R.W. Lent	
Field	21Feb 45 25Feb 45	Pte Pte		AA Sec 15(1)AWL 17 hrs AA Sec 15(1)AWL 5 hrs	Documentary Sgt Collins L/Cpl Carr	14 days F.P. with conj award of pay	27 Feb45	Lt-Col D.A.MacKenzieDSO	ferf 1days pay FR&I 149(1)(a)

Cert True Copy
In the Field
5 Apr 46
Officer having custody of original

(T.U. O'Neill) Lt
4 C Scot R (CAOF)

(PTO)

3/17 MFM 6
(AFB 122)
40/P.S.S. 126 (7010)

No. K65828 Name Smith H. Sqn, Battery, or Company Corps 1st C.P.B. Date of enlistment 1Aug42 GC Badges Service or Proficiency Pay Character

Date of last entry in Company Conduct Sheet: nil | No. and date of last drunk: nil | Period not reckoning towards freedom from extra fine: nil | Sheet No. 2 | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE(S).	Name of Witness	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
	Granted T.W. A215320 proceeding on Furlough 2nd May 43								
Camp Shilo	16/6/43	Pte		AWL from 0530hrs 16/6/43 to 2359 hrs 17/6/43 1 day 18 hrs 29 mins	L/Cpl McIsaac R.M.	Forf 2dy pay 3 days C.B.	17/8/43	Capt R.MacDonald 21/c "B"Coy 1CdnParaBn	
Field	15/8/43	Pte		AWL from 2359 hrs 15 Aug 43 until 1710 hrs 16 Aug 43	Documentary	Forf 1dy pay		LtCol GFP Bradbrooke	
Field	29/8/43	Pte		AWL from 2359 hrs 29 Aug 43 until 1050 hrs 30 Aug 43. Absent 10 hrs 51 mins.	L/Cpl Evans	Forf 1dy pay 10 days C.B.	31/8/43	Sum forf 5 days pay LtCol GFP Bradbrooke	
Carter Barracks Field	22/11/43	Pte		WOAS Sec 9(2) Refused to double on march when ordered to do so.	L/Cpl Lajeie	2 days C.B.	22Nov43	Sum forf 10 days pay Maj D.H. Tayler	
	26/12/43	Pte		WOAS AA 40 Fired rifle indiscriminately	RSM Clark	28 days pay	27 Dec43	LtCol GFP Bradbrooke	

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	25Apr44	Pte		(1)WOAS AWL from 1630 hrs 25Apr44 until apprehended at 1420 hrs 26 Apr44. AWL 21hrs 50mins. Cost of Apprehension £1/0/2. In ~~Guinea~~ Close Arrest from 1420 hrs 26 Apr 44. A.A. 15(1) (2)WOAS AWL from 0615 hrs until 1445 hrs 25 Apr 44. AA 15(1) (3)WOAS Breaking out of BksAA10(4) (4)WOAS Disobeying a lawful command given by his superior officer. AA9(2) (5)WOAS Drunkenness A.A.19 (6)WOAS When in lawful custody attempting to escape. A.A. 22	CSM Blair Decumentary	28 days F.P. 28 days pay To pay cost of apprehension £1/0/2.	27 Apr44	Lt.Col. GFP Bradbrooke	A.F. 2 days Close Arrest 1 days pay

Cert True Copy sgd C.E.Fuller
O.C. "B" Coy 1 Can Para Bn CA

Cert True Copy
of the Field
Apr 46
Officer having custody of original

(T.U. O'Neil) Lt
4 C Sect R (CAOF)

AB

STATEMENT BY THE ACCUSED K 65828 Pte. Smith H. 4 C Scot R (CAOF).

I render a plea of Guilty on the three charges against me because I realize that I have done wrong. For these things that have happened, I know that I must be punished, and what I have to say now is not offered as an excuse for my actions but rather to place before you the full picture of the circumstances by which I am surrounded. My Army record in the past has not been good, but since transferring to this unit I have done my best to avoid trouble. Up until this time I have managed quite well, and now this has happened. I want to tell you of my private affairs and of things that have happened in the recent past which I think you will find have a bearing on this.

Before leaving for Italy in October 1944 I met a Miss Kathleen Cunningham in England. While I was there we went together steadily, and while I was in Italy and Northwest Europe we corresponded regularly. Finally in England again in December '45, while at Convalescent Depot, I asked her to marry me and she accepted. I obtained all the necessary papers just before being posted back to the Continent, and so decided to make application to the Army through my own unit for permission to marry. Unfortunately all my kit was lost in Calais, and on my arrival here I had to start collecting the necessary papers again. It was in February that I received a letter from Kathleen telling me she was pregnant. She was fearful that her father would find out and pleaded with me to come for the marriage as soon as possible. I have tried to be papient while my application was going through, but the anxiety and worry I have detected in her letters has been a great strain on me. Finally I was told I could leave at last, and on the evening of the 24th of March as I was preparing to leave we had a party to celebrate the coming occasion. I guess I was a little drunk when I came home, but as I recall it I was sitting in bed and had part of a bottle left. It is hard to explain what passes through a man's mind but I think but realize how happy I was maybe it will explain part of my actions. I had a few more drinks and I can't remember firing the first shot, and can't explain why I fired the other [redacted] I was happy and drunk the folly of this action did not strike me at all, at the time. It was the next morning, when I appeared before my Company Commander, and found out that my leave was cancelled and that I was to appear before the C.O., that I realized what I had done. I seemed to lose my head and felt utter despair, for it seemed to me that now I had spoiled my only chance of helping out the girl whom I think most of in the world. My weakness for drinking became my one recourse, and I set in my room drinking. What happened that evening as far as I can remember is clearly given in the evidence submitted by those who are concerned in this matter. From the point of view of sobriety I was not responsible for my actions, and in fact I can't remember them too well, but on thinking it over I meant no harm to anyone but as a result did harm only to myself. My one thought now is that I have done wrong, and I want to pay for it, but if it is within your mercy and power I would plead with you to let my marriage take place whatever else happens.

Signed K 65828 Pte Smith, H. H. Smith

STATEMENT AS TO CHARACTER OF THE ACCUSED BY K 40158 Cpl MacKay D.A., 4 C Scot R.

I have known the accused Pte Smith for some nine months past, and know him to be honest, and in my experience, reliable. In any job that I have assigned him to do he has done his very best to carry out his task. During our association he has also become my friend, and through this I know that a great many things are troubling him. Since his return from England, he has become noticeably worried regarding his private affairs. These things he has done, I know do not reflect his true character, but are due to a nervous tension and strain brought on by worry. It is not my place to tell you of his troubles, which are of a purely personal nature; but may I again say they are serious and must cause this man no end of worry.

Signed D. A. Mackay

K 40158 Cpl. MacKay, D.A.

Statement of Character of the Accused

by M 51027 CSM Kruper S.

I have known the accused, Pte Smith, H., for the past 5 or 6 months and during this time have found no fault with his conduct or soldierly bearing. He always carried out his duty as best as he was able and was at no time a detriment to his company. He has a weakness for drinking, but this did at no time lead to any trouble while in my company. Outside of a noticeable sign of uneasiness at times, Pte Smith carried out his duties as a soldier should.

(S Kruper) CSM
"C" Coy 4 C Scot R (CASF)

Padre's Statement:

K65528 - Pte. Smith, N., is engaged to a lady in England. While under medical care over there he got papers together in readiness for asking permission to marry, but these papers were lost when his kit was stolen at Calais when he was returning to this Battalion. He began to gather papers again, which meant a month's delay, and during this time he was under great worry and depression caused by the knowledge that his fiancée was in a serious situation. He put in his papers through and early in March and was amazed when the permission came through, and a privilege leave, in only eight days. It was the celebration after this unexpected turn of events which lead to

the cancellation of his leave, after which he got down to the serious drinking which floored his in his present circumstances.

Pte Smith is not a bad man but a weak one. He is undoubtedly very much in love. I would suggest that his treatment now may either make or break him, and I do hope that he may have the opportunity of marrying at an early date.

J. L. Rand, Hon Capt.
Chaplain (P)
4 C Sect R. (CHOF)

PLEA IN MITIGATION IN THE CASE OF K 65328 PTE. SMITH, H., BY THE DEFENDING OFFICER, CAPTAIN T.J. MCNAMARA, 4 C SCOT R (CAOF)

The court has heard the character witnesses and has been told the full story by the accused. It is not necessary for me to point out the trouble the accused finds himself in for that I feel, is obvious from the evidence that has been presented before you. It is my own thought however, that if depression, sorrow and extreme mental anguish are punishment to a man for his wrongdoing, then the accused, Pte Harry Smith, has already paid for his mistakes a great deal more than we can realize. I would ask the court when it considers sentence, that it bear in mind that on its decision rests the fate, not of one person, but of two.

To confirm the accused's statement in my own mind, I have approached our Unit Padre, H/Captain J. Rand who is familiar with the personal matters to which the accused has referred. His knowledge and view of this case confirm the honesty of this man's statement and its details, and also are important to the extent that with the courts permission I introduce him as a witness on behalf of the accused, within the meaning of Rules of Procedure Section 37 (F).

(Padre Rand is called/is not called.)

In conclusion I wish to express my own genuine pity for the accused and ask that if it be possible his punishment be of a kind does not interfere with his marraige taking place as soon as possible.

Harry Thomas Capt.

I desire to have an officer
assigned by the Convening Officer
to represent me at the trial.

In the Field
4 Apr 46

H. Smith
K-65828 Pte SMITH, H.

GG-59

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

On Active Service, this 9th day of June, 1943.

Order convening the Court.

Whereas it appears to me, the undersigned, an officer in Command of 1 Canadian Corps R.C.A.M.C., on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

~~*I am unable to appoint~~
~~(a) Three Officers to form the Court.)~~
~~(a) A Field Officer as President.)~~
~~for the following reasons, namely~~

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	J.W. Wilkinson	7 Cdn A/Tk Regt, RCA.

Members.

Rank.	Name.	Regiment.
Captain	J.D. Wood	44 Cdn Gen Tpt Coy RCASC
Lieutenant	N.H. Regan	1 Cdn M.A.C. RCASC.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed E. A. McCusker
(E.A.McCusker) Brigadier
Commanding D.D.M.S. 1 Cdn Corps
Convening Officer.

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
L-8153 Private Henry SMITH 47 Cdn Gen Tpt Coy (Inf Div) R.C.A.S.C.	Charge Section 15(1) Army Act (as per charge sheet attached)	not guilty ~~guilty~~ guilty	guilty ~~guilty~~ guilty special finding that the accused surrendered to the civil police Sentenced to undergo 28 days detention to run concurrently	~~Sentenced to undergo~~ 90 days detention. ~~To undergo stoppage of~~ 90 days pay (under F.R.I. 149 (1)) ~~To undergo stoppage of~~ 7/- p.d. for 9-2 for Cost of apprehension. ~~To undergo stoppage of~~ $25.05 cents make good the loss & ~~be found sufficient~~. Confirmed Pompound 211 Pars

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) T.A. McCusker (Signed) Jamieson Maj.
[T.A.McCusker] Brigadier — D.D.M.S. 1 Cdn Corps
Commanding / *Convening Officer* (*c*) — *President*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the eleventh day of June 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The Interpreter~~) Stenographer
*(4. The officers under instruction)

*Omit if not applicable.

were duly sworn.

Signed this 17th day of June 1943.

Jamieson Maj
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (*b*) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further~~ orders.)

Signed this 17th day of June 1943.

211 Pars. Brigadier
C.Cdr.C.A. 1 Cdn Corps
Confirming Officer.

Promulgated and extracts taken in the case of

(*a*) (Dated) 19 June 43 (Signed) [illegible] Major,
67 Cdn. Gen. Tpt. Coy. (Inf. Div.) R.C.A.S.C.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] 30,000 1-43 A.S.E.W.,Ltd. Gp.698

CHARGE SHEET

The accused L.6153 Pte. HENRY SMITH, of 47 Cdn.Gen. Tpt.Coy.(Inf Div) R.C.A.S.C. a soldier of the Canadian Army Overseas, While on Active Service, is charged with:-

FIRST CHARGE
SECTION 15 (1)
ARMY ACT

While on Active Service, Absenting himself without leave,

in that he

In the Field, whilst undergoing detention did absent himself without leave at approximately 0330 hours, 30 May 43, until being apprehended by Civil Police at 1210 hours, 3 Jun 43. Absent 4 days, 8 hours and 40 minutes.

(G. Gibb) Major
Officer Commanding,
47 Cdn.Gen.Tpt.Coy.(Inf Div)
R.C.A.S.C. C.A.(O/S)

Field,
7 JUN 43

To be tried by Field General Court-Martial

(E.A.McCusker) Brigadier
D.D.M.S. 1 Cdn Corps.

Field,
9 JUN 43.

MEDICAL CERTIFICATE (K.R. (Can) 557) (D)

I certify that I have this morning examined No. I-81857

Pte. Smith, H of HQ Coy Can Gen Tpt Coy and, in my opinion,
(Inf Div) H.C.A.S.C.

he is fit to undergo trial by Court-Martial
~~unfit~~

Station Field

Date 11 June 43

Medical Officer

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

Army Form A 9.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field Court-Martial held at

on the 11th day of June 1943 by order of

Commanding

dated the 9th day of June 1943.

President.

Members.

Trial of* 28153 Pte. Harry Smith , Judge Advocate.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that N/A is not available to serve owing to

N/A , waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,†

Counsel‡ or defending officer†

At 1430 o'clock the Trial commences.

The order convening the Court is read, and is marked A , signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* Nil

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q6276. Wt. W7948/26/78. 25,000 pds. 6/43. E. & E., Ltd. G6/2111. Forms A 9/55.

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn.

Charge-Sheet.

Instruction.
If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read?

Question to the accused.

Answer.

Are you guilty or not guilty of the second charge against you, which you have heard read?

Question.

Answer.

Are you guilty or not guilty of the third charge against you, which you have heard read?

Question.

Answer.

Are you guilty or not guilty of the fourth charge against you, which you have heard read?

Question.

Answer.

The accused having pleaded Guilty to charge , the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

Instruction.

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A)) Question.

*Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No

The prosecutor makes an opening address [hands in a written address which is read, marked N/A, signed by the President, and attached to the proceedings.]

The prosecutor proceeds to call witnesses.

First witness for prosecution. as in attached sheets.

being duly sworn, is examined by the prosecutor.

PROSECUTION

First Witness - Duly called and sworn in:
L/Cpl. Irving of No 47 Gen Tpt Coy RCASC

Q. Tell the Court exactly what you know of this case.

A. Sir, at approx. 0330 hrs, 30 May 43, Pte. Black reported to me that Ptes Cook and Smith were gone. I went and looked in the guard room and saw that the back door was open, I then woke up the Cpl. i/c of the guard room and reported to the Orderly Officer. I came back to the guard room and I looked around at the back. There was a hole in the wire where it appeared the men had gone through.

Q. Do you recognize the accused, Ptes. Cook, ~~and Smith~~ as the man being held in the guard room in preperation of being sent to detention.

A. Yes, sir.

DEFENCE

Q. Are you permanently employed as L/Cpl in charge of the guard.

A. No, sir.

Q. How often do you act.

A. It is indefinite, sir. It may be two weeks or a month before I get it again.

Q. Would you describe the guard room to the court.

A. It is a tin hut, blocked off at one end.

Q. How far is the wire at the back door, away from the door.

A. A man can move around between the door and the wire.

Q. Had you inspected the wire before that time.

A. No sir.

Q. How was the door locked.

A. It was nailed with three nails.

Q. Had you previously inspected it.

A. No, Sir.

Q. Where were the rest of the guard.

A. In another hut, sir.

Q. Was there somebody awake at all times.

A. Yes, sir.

QUESTIONED BY THE COURT

Q. Were Ptes Smith and Cook undergoing sentence at the time of escape.

A. Yes, sir.

SECOND WITNESS FOR PROSECUTION

P.C. Harold Turner - duly called and sworn in:

Q. Will you tell the court you story of what happened when you arrested the accused.

A. I am temporary constable, Harold Turner. On 3 Jun 43, at 0010 hrs I was on Hill Top when I saw two soldiers pass me. I stopped them and asked if they were Cdns. They said "yes". I then asked them what unit they belonged to and asked for their passes. They had no passes and said they belonged to RCASC. One was wearing white canvas shoes and I thought it peculiar, we had a description of Pte. Cook. I said to one "you are Cook", and he said he was. I told them to come along with me back to the police station. They came without any trouble.

Q. Do you recognize the accused man here in court.

A. Yes, sir.

DEFENCE

Q. Did you recognize Cook from description given.

A. Yes, sir.

Q. Did you ask Smith to come also.

A. No, sir, he came along of his own accord.

QUESTIONED BY THE COURT

Q. You knew that there were two men wanted.

A. Yes, Pte. Cook had been seen in the vicinity in company with another soldier.

Q. Would you say that Pte. Smith was apprehended or surrended.

A. Well, I asked them to come along to the police station, Pte. Smith trailed along with Pte. Cook

Q. What method did you use to get in touch with their unit.

A. Through C.I.B.

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness ?

Answer. Nil

Question. Do you intend to call any other witness in your defence ?

Answer. Yes

Question. Is he a witness as to character only ? *Answer.* Yes

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence ?

Answer. The accused in his defence says†

[hands in a written address which is read, marked

signed by the President and attached to the proceedings.]

As in attached sheets

Instruction.

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court above.)

STATEMENT OF DEFENDING OFFICER

I submit that under R & P 56 the accused Pte. Smith surrendered himself rather than being apprehended and that a special finding be brought into that effect.

DEFENCE - In mitigation
Character Witness

Pte. Smith - brother of accused brought in and duly sworn:

Q. Would you give information on your brother as to type of person he is or was during his life.

Q. How far did he go in school?

A. grade 4

Q. How did he do

A. He was very backward.

Q. How long did it take him to reach 4th grade?

A. 6 years.

- 3.

Q. What did you both do before joing up.

A. We worked on my father's farm.

Q. What type of farm was it.

A. A grain farm, near Prince Albert, Sask.

Q. How did you find things.

A. Pretty tough.

Q. How about his life in the army?

A. In Canada he had a little trouble through drink, but I was always able to keep him in hand. We were always together.

A. In England we became separated and he got worse.

Q. How were his reactions to his friends.

A. He was very easily lead and influenced.

E

Finding.*

**To be struck out except in cases where trial has taken place on a plea of "Not Guilty."*

The Court is closed for the consideration of the finding.

The Court find that the accused

Guilty of 1st charge.

Proceedings on Conviction *before Sentence.*

**When the Court is already open this sentence will be struck out.*

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

Lieut G. S Foster RCASC is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked B & C, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes.

[Instruction.—If in respect of the service of the accused on a subsequent occasion, or otherwise, the finding of the Court requires him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Cross-examined by the accused.

Question to the accused.

Do you wish to address the Court? *Answer.* no

The Court is closed for the consideration of the sentence.

F

Sentence.

Sentence.

The Court sentence the accused
to undergo 10 5 days detention
to run concurrently

C O P Y

SURREY CONSTABULARY

Station or Section .Caterham Hill.. Division ..OXTED.....

Date ...5.6.43.....

Subject Matter	Name ....Harold TURK.....
re Arrest of Cooke & Smith - escaped from Detention Bks.	Address ...c/o Police Station, Caterham.....
	Age .38.yrs.. Occupation..Temporary Constable.....

States:-

"I am a temporary Constable stationed at Caterham Hill. At 12.10 p.m. on the 3rd.June 1943, whilst on duty in Hilltop Lane, Chalden, I saw two soldiers walking towards the cross roads.
I stopped them and asked to see their A.B.64's and they both replied, "We haven't got one".
I then said to one of them, "What is your Unit". He replied "R.C.A.S.C.". I then said,"You are Cooke" and he replied, "Yes". I then told them I would arrest them and take them to the Police Station.
I accompanied them to Sgt. Morton's house in Court Road, Caterham, where the second man said his name was Smith. Neither man offered any resistance and I later handed them over to the Oxted C.I.D.

Signed:- Harold Turk,T.C.326..

CERTIFIED TRUE COPY

G.S. Foster

(G.S. Foster) Lieut.
Officer i/c Regt'l Books.

SUMMARY OF EVIDENCE

In the case of

L.6153 Pte. HENRY SMITH

By direction of Major G. Gibb, Officer Commanding, 47 Cdn.Gen.Tpt.Coy.(Inf Div) R.C.A.S.C., the Summary of Evidence is taken on oath, commencing at 0930 hours, 7 Jun 43, and completed at 1000 hours, 7 Jun 43.

1st Witness
L18211 L/Cpl. Irving, H.M.

L18211 L/Cpl. Irving, H.M. of 47 Cdn.Gen.Tpt.Coy.(Inf Div) R.C.A.S.C. having been duly sworn states:-

I was the L/Cpl. on the Detention Guard on 30 May 43 with Cpl. Ouderkirk, I was on guard from 0001 hours until 0400 hours. At approximately 0330 hours the guard, Pte. Black, T., reported two prisoners were missing. I looked into the Detention Room and found that Pte. Cooke and Pte. Smith were missing. I awoke Cpl. Ouderkirk and then reported to the Orderly Officer. I then searched around the back of the Guard Room and found a hole in the danert wire large enough for a man to crawl through. I found no trace of Pte. Cooke or Pte. Smith.

H. H. Irving
L18211 L/Cpl. Irving, H.M.

The accused declines to cross examine the witness.

2nd Witness
Lieut. G.S. Foster

Lieut. G.S. Foster of 47 Cdn.Gen.Tpt.Coy.(Inf Div) R.C.A.S.C. having been duly sworn states:-

I am Administrative Officer for the 47 Cdn.Gen.Tpt. Coy.(Inf Div) R.C.A.S.C. I wish to submit this document from the Surrey Constabulary relating to the arrest of Pte. Smith, H. as evidence.

G.S. Foster
Lieut. G.S. Foster

The accused declines to cross examine the witness.

The accused L.6153 Pte. Smith, H. is warned in accordance with Rule of Procedure 4(e) and declines to make a statement.

I certify that the foregoing Summary of Evidence was taken down by me in writing in the presence of the accused, and that Rules of Procedure 4 (c),(d),(e) and (f) have been complied with.

A. Armstrong Lt
(A.K. Armstrong) Lieut.
Officer Detailed to take Summary.

No. I-6153 Name Smith, H | Sqn., Battery, or Company | Corps R.C.A.S.C. | Date of enlistment 9 May 41 | G.C. Badges | Service or Proficiency Pay | (B) M.F.M. 6 (A.F.B. 122) 40/P&S/136 (2637)

Date of last entry in Company Conduct Sheet 3/2 | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
On Nov 9, 1941 this soldier completed six months service and the previous sheet on which there were no entries was destroyed on 10 Nov 41. Auth: R.O. 329.									
Field	31 Jul 42	Pte.		Sec. 15 (1) A.A., A.W.L. from 1200 hrs. 31 Jul 42 to 1500 hrs 11 Aug 42. Absent 11 days 3 hrs	L/Cpl Constable	14 days C.B. 14 d.p. FRI 149(2)	12 Aug 42	Major G. Gibb	Forf 12 d.p. FRI 149(1)(a)
Field	29 Sep 42	Pte.		Sec. 15 (1) A.A., A.W.L. from 1200 hrs 29 Sep 42 to 0955 hrs 19 Oct 42. Absent 19 days, 21 hrs, 55 mins.	Sgt. Douglas Sgt. Ryder	28 days F.P. Forf 28 d.p. FRI 149(1) (b)	30 Oct 42	Major G. Gibb	Forf 30 d.p. FRI 149(1)(a)
Field	7 May 43	Pte.		Sec. 40 A.A. 1st Charge Sec. 41 A.A. 2nd Charge Sec. 40 A.A. 3rd Charge 1st and 2nd Charge Guilty	Documentary	60 days Detn 60 days pay FRI 149 (1)(b)	21 May 43	F.G.C.M.	FORF 6 days pay FRI 149 (1)(c)(i).

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

O.C. Depot

Certified True Copy

(G.S. Foster) Lieut.
Officer i/c Regt'l Books.

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 206

(C)

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
L8155	Pte.	Smith, H.	47 Cdn.Gen.Tpt.Coy.,(Inf.Div.) R.C.A.S.C.

1. The following is a fair and true summary of the entries in the ~~Regimental and General Conduct sheets~~ Regimental and Squadron, Battery or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	Sec.15(1)(a)	2 times	2	times
For	~~Sec.40~~	~~times~~	~~2~~	times
For	~~Sec.41~~	~~1~~ times	~~1~~	times
For		times		times

~~Number of instances of gallantry or distinguished conduct~~

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

~~2. The accused has not been previously convicted~~

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under ~~Air Force Act~~ Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement. Sec.40, 41, Convicted by F.G.C.M.

3. ~~The accused is not under sentence at the present time~~

or,

The accused at the present time is under sentence for 90 days beginning on the 21 May 45 day of

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 9 days in military Air Force custody, making a total of 9 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 21 years

6. ~~The date of the accused's enlistment as stated in his record of service~~ attestation is attestation paper

7. The service which the accused is allowed to reckon towards discharge is Duration

8. The accused is entitled to reckon 2 yrs service for the purpose of determining his pension, etc.

9. ~~The accused is in possession of or entitled to be in possession of, a good conduct, or long service and good conduct~~ military ~~possession of or entitled to). State any other decoration or reward.~~ military

10. ~~If the accused is a warrant officer:~~ ~~The accused before he was made a warrant officer was paid~~ Air Force the regimental rank of

No. J-6155 Name Smith, H | Sqn., Battery, or Company | Corps R.C.A.S.C. | Date of enlistment 9 May 41 | G.C. Badges | Service or Proficiency Pay | (B) M.F.M. 6 A.F.B. 122) 40/P & S/136 (2637)

Date of last entry in Company Conduct Sheet x/a | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
On Nov 9, 1941 this Soldier completed six months service and the previous sheet on which there were no entries was destroyed on 10 Nov 41. Auth: R.O. 319.									
Field	31 Jul 42	Pte.		Sec. 15 (1) A.A., A.W.L. from 1300 hrs, 31 Jul 42 to 1500 hrs 11 Aug 42. Absent 11 days 3 hrs	L/Cpl Constable	14 days C.B. 14 d.p. FRI 149(2)	12 Aug 42	Major G. Gibb	Forf 12 d.p. FRI 149(1)(a)
Field	29 Sep 42	Pte.		Sec. 15 (1) A.A., A.W.L. from 1200 hrs 29 Sep 42 to 0955 hrs 19 Oct 42. Absent 19 days, 21 hrs, 55 mins.	Sgt. Douglas Sgt. Ryder	Forf 28 d.p. FRI 149(1) (b)	30 Oct 42	Major G. Gibb	Forf 30 d.p. FRI 149(1)(a)
Field	7 May 43	Pte.		Sec. 40 A.A. 1st Charge Sec. 41 A.A. 2nd Charge Sec. 40 A.A. 3rd Charge	Documentary	50 days Detn 50 days pay FRI 149 (1)(b)	21 May 43	F.G.C.M.	FORF 6 days pay FRI 149 (1)(c)(i).
				1st and 2nd Charge Guilty					

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with Trial	By whom awarded	Remarks
				O.S. Orderly					

Certified True Copy

(G.S. Foster) Lieut.
Officer i/c Regt'l Books.

M.F.B. 355
22M—5-41 (372-2)
H.Q. 1772-20-620
A.F.B. 256

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(C)

Number	Rank	Name	Regiment (or unit)
L6155	Pte.	Smith, H.	47 Gdn.Gen.Tpt.Coy.,(Inf.Div.) R.C.A.S.C.

1. The following is a fair and true summary of the entries in the ~~Conduct sheets~~ Regimental and Squadron, Battery or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been disposed with.

	Within last 12 months	Since enlistment or appointment
For Sec.15(1)	2 times	2 times
For Sec.40	~~xxx~~ times	2 times
For Sec.41	1 times	1 times
For	times	times
~~Number of instances of gallantry or distinguished conduct~~	times	times

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

~~2. The accused has not been previously convicted~~

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under ~~Air Force Act~~ Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement. Sec.40, 41, Convicted by F.G.C.M.

3. ~~The accused is not under sentence at the present time~~

or,

The accused at the present time is under sentence for 90 days beginning on the 21 May 45 day of

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 9 days in Air Force military custody, making a total of 9 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 21 years

6. ~~The date of the enlistment quoted in the record of service~~ attestation is attestation paper

7. The service which the accused is allowed to reckon towards discharge is Duration

8. The accused is entitled to reckon 2 yrs service for the purpose of determining his pension, etc.

9. ~~The accused is in possession of or entitled to be in possession of the good conduct, or long service good conduct~~ military ~~or has been awarded the~~ military ~~good conduct or long service medal.~~

10. ~~If the accused is a warrant officer:~~ ~~For period before he was made a warrant officer he held~~ Air Force the regimental rank of

11. ~~(In the case of an officer.)~~ The accused holds in the Royal Canadian Air Force the rank of ..... Permanent Force dated .....

..... unit dated ....., and in his regiment (or corps), the rank of .....

12. ~~The accused has served as a non-commissioned officer continuously without reduction to the~~ present date:—

In the rank of ..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—~~If any matter in any of the above paragraphs cannot be stated from the Regimental books, the~~ paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number L/2455 Rank Pte. Air Force Unit

Name Smith, H. of 47 Cdn.Gen.Tpt.Coy., R.C.A.S.C. Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	21 May 45 Field	Sec. 40 S.O.41	75 days detention	25 days

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 11 day of June 45

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) read, marked ..... signed by the president, and annexed to the proceedings.

(D.J. Foster) Lieut. A.G.D.
Officer i-c Regt'l Books

GG·59 (case # 2)

PTE SMITH H.

See EE·79 for 1st case

S'H-138

Cpl. Smith, H.H.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B 54336 Cpl Smith H. A. 4 Cdn Armd Bde Coy RCASC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 153, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (3)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of Nil days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

to be reduced to the ranks;

(Sgd) J. K. Kudd Lieut 19 Feb 45 (Sgd) C. R. Waller, Major.
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 547-577. Accuseds require no confirmation and cannot be revised: AA 54(1). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be attested before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be ~~not~~ committed to prison or ~~detention barracks~~ until further orders.~~ (1. AA 57A. Delete if not used.)

Date 21 Feb 45 (Sgd) J. F. Foulkes Maj Gen
Commanding 2 CDN CORPS (ARMD) DIV
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B 54336 Cpl SMITH, H.A. 4 Cdn Armd Bde Coy	27 Feb 45	[illegible] 4 Cdn Armd Bde

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AD 160 54-38

FIELD GENERAL COURT-MARTIAL

CPA96 (To Issue of APA81) 40/P W S/1698 (4000) 4/38B

Convened by Order of Lt Col J H Pocock Comd RCASC 4 Cdn Armd Bde dated 17 Feb 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed and (b) appmt, A/rank or A/oppmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B 54336	Cpl	Harold Archibald	Smith	4 Cdn Armd Bde Coy RCASC

REVIEWING OFFICER, AAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 19 Feb 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 22/124-

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OF JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF AA95, for oaths and duties on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 52, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (not) amenable to military law, and each charge discloses an offence.(4)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (not) brought before the Court. At 1400 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~not~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by (his CO).(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.

A5. ~~President to accused: Do you object to~~ as interpreter? Ans

~~The interpreter is sworn.(1) Do you object to~~ as shorthand writer? Ans

~~The shorthand writer is sworn.(2)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans NO Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 58(B). If objection, see procedure AA 51, RP 23, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	C. R. Waller	10 Cdn Armd Bde Coy RCASC
Member	Capt	W. G. Ross	10 Cdn Armd Bde Coy RCASC
Member	Capt	J. R. Chisholm	HQ RCASC 4 Cdn Armd Div
Judge-Advocate	Lieut	J. K. Kudd	Actg HQ 4 Cdn Armd Div
Prosecutor	Capt	A. M. Hay	4 Cdn Armd Bde Coy
Defending Offr	Capt	C. J. Delaney	12 Cdn Inf Bde Coy Canadian Infantry

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 85 (B) and fn 2 were not followed. See [illegible])

A8. The accused B 54336 Cpl Smith H. A. before arraignment make(s) (no) ~~objection~~ plea.

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), (GE), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in lieu of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references as fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~not~~ arraigned ~~severally~~ on all charges in the charge sheet.(1) The accused does ~~not~~ object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF AA6 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D + E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(H), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans .....(5)
(1. RP 37(B). 2. RP 37(D) fn 4. 3. RP 15(B) fn 4 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans No Sir (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (~~no~~) (his) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 91(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).~~(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans Make a Statement on Oath Do you intend to call witnesses on your behalf? Ans No Sir. Are they witnesses as to character only? Ans No Sir
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf. A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1. 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 43(A).)

D8. The President announces the finding(s), ~~if any, not guilty~~, and states to the accused that the finding(s) of the Court on the FIRST charge is (are) subject to confirmation, will be promulgated later.(1) ~~The President announces that the accused is found Not Guilty on all charges and as to the reasonable further time that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.~~(2)
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty surrounding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans No Sir
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex Y and Ex Z respectively.(3)
(1. MFB 355 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) of Conduct Sheet(s), and in mitigation of punishment?(1) Ans ~~No Sir~~ My Defending Officer No Sir (2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the question of punishment. RP 46 fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishments or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 363-366, Overseas AO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused B54336 Cpl Harold Archibald SMITH, 4 Cdn Armd Bde Coy RCASC, a soldier of the Canadian Army Overseas, is charged with -

First Charge Sec 20 (2) Army Act — WHEN ON ACTIVE SERVICE WITHOUT REASONABLE EXCUSE ALLOWING TO ESCAPE A PERSON COMMITTED TO HIS CHARGE.

In that he, in the field at approx 2100 hrs 2 Feb 1945, when conducting to NETD at Ghent, Belgium, C12565 Pte St.Pierre, P.P., 4 Cdn Armd Bde Coy RCASC a person committed to his charge, without taking reasonable means to prevent it, permitted the escape of the said person.

15 Feb 45

(C.M.Longbotham) Major
Officer Commanding
4 Cdn Armd Bde Coy RCASC

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

17 Feb 45.

(JM Pocock) Lieut.-Colonel,
CRASC, 4 Cdn Armd Div.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(6).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 14, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names. Surname.	Unit.
B54336	Cpl	Harold Archibald SMITH	4 Cdn Armd Bde Coy RCASC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(~~s~~) attached and on (date) 17 Feb 45. endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached here.~~
(AA 49, RP 104(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 104(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	C. R. WALLER (Must be named. RP 104.)	10 Cdn Inf Bde Coy RCASC (Unit.)

MEMBERS.

Capt	W. G. ROSS	10 Cdn Inf Bde Coy RCASC
Capt (Rank.)	J. R. CHISHOLM (Named or detailed. RP 104.)	HQ RCASC 4 Cdn Armd Div. (Unit.)

WAITING MEMBER.

Capt (Rank.)	J. N. GORDON (Named or detailed, if any. RP 104.)	HQ RCASC 4 Cdn Armd Div. (Unit.)

JUDGE-ADVOCATE.

Lieut (Rank.)	J. K. KIDD (Must be named, if any. RP 104.)	Att HQ 4 CDN ARMD DIV. (Unit.)

On Active Service in the Fd

in HOLLAND (Country.)

Dat 17 Feb 45.

(JM Pocock) (Signed personally. RP 105 fn 2.)

Lt.-Col. (Rank.)

Commanding RCASC, 4 Cdn Armd Div.

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 66 (In lieu of AFA 3) 60-P-B-1601 (6143)

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICERS CERTIFICATE

I certify that I ha ve this morning examined

No B-54336 Cpl Smith, H. A.

of 4 Cdn Armd Bde Coy RCASC 4 Cdn Armd Div

and in my opinion he is fit / unfit to undergo trial by Court-Martial.

Station In the Field

Date 19 February 45 J Sparling Lieut Captain

Medical Officer

No. FIRST WITNESS FOR THE PROSECUTION

Capt J. R. Wilson - 4 Cdn Armd Bde Coy. Having been duly sworn states:- I am adjt of 4 Cdn Armd Bde Coy. Cpl Smit the accused whom I now recognize is the Regt police Cpl. Committal papers were made out in the case of Pte St Pierre & after preparing the papers Cpl Smit was handed the papers on St Pierre & was instructed to take St Pierre to #3 N.E.T.D at Ghent. When Cpl Smit reported back after being to Ghent the committal papers were returned to my office. On today the summary of Evidence on Cpl Smit I cautioned him according to R.P. 4 and he made the following statement which I now present to the Court marked Exhibit A)

Defending Officer does not object to the statement being present as an exhibit.

Cross Exam I told Cpl Smit to take the prisoner to Ghent visit the papers & hand the prisoner & the papers over to #3 N.E.T.D. Cpl Smith left after lunch about 1500 hrs & I intended that he be in Ghent that same day.

Re Exam None

Court None.

R.P 83 (B) Complied With

The SECOND WITNESS

(2) M36174 pte Smith I. G. - 4 Cdn armd Bde Coy RCASC. having been duly sworn states: -

We were going to Ghent until Pte Pierre + stopped at Brasschat. I went to look some food when I came back I learned the prisoner escaped. Cpl Smith + myself then looked for the prisoner St Pierre for two hours we couldnt find him so we had a L/Cpl sent us going TO U.K. so we lost him to H 3 Cdn W.E.F.D. From then we went to get leave personnel at Paris. On the Way back we stopped at Brasschat + Cpl Smith reported the escape to the C.M.P's. Then we came Home + reported the matter. On the Way to Ghent Pte Sweeney + Cpl Penfold + myself were in the back. Cpl Smith was in front seat + Cpl Penfold had Working to do with guarding the prisoner. St Pierre Was allowed to dismount from the truck it Was 2100 hrs + quite dark. I was allowed to go to get rations cooked. Cpl Smith detailed me to go.

Cross Examined:

We had trouble on the road + stopped in Sidney. We stopped twice before Brasschat. The prisoner on the two occasions did Not get out of the vehicle. When we stopped the 2nd time St Pierre escaped we were on the London Route a large church beside us the Vehicle Was in the open and I was away from the Vehicle cooking for fifteen minutes. It was very dark you couldnt see 20 feet but probably at ten feet you could.

RE-EXAM NONE

COURT NONE

RP. 83(B) Complied With

FIRST WITNESS FOR THE DEFENCE

B54336 Cpl Smith H1 - 4 Cdn Armd Bde Coy RCASC
4 Cdn Armd Div. having been duly sworn
states :- We were proceeding through
to NIEUPORT in light at about 14 30 hrs We
left. The lorry developed trouble + was
stopped on the Way which delayed us
considerably. We reached Brasschaat
at approx 2100 hrs. I stopped + decided
We would have Supper. I went around
the back of the truck. Pte Smith J.
St Pierre HKpl Serpell got out. Pte
Smith J. went to Fet the rations Cpl
Serpell, St Pierre + myself were
standing at the back corner of the
lorry. The driver was checking
the Vehicle We were chatting Waiting
for Smith J. Return St Pierre Walked
to the left hand corner of the Vehicle
+ when he went around the corner
I followed him When he bolted I
was unable to see him on account
of the darkness. I proceeded around
the truck to see if he went to
the front but he disappeared. Smith
J. came back + told him about it
+ the two of us looked for two
hours for him We couldnt find him
we went to Cpl Hunt the Cpl.
+ on to Brussels + on returning
Next day I reported the escape to
the MPs I returned to Coy lines
+ reported it to Adjt.

Cross E remarked:

He said "I permitted Smith to go to
cook rations + I was responsible for
St Pierre. I could easily see what
St Pierre was doing When he was ready
the Wadd of the truck away.

R. Examd - We were standing six feet behind the Vehicle & St Pierre disappeared around the left hand corner of the truck I was behind the truck & saw him edge over followed & then he bolted. Without Handcuffs I intended to get the prisoner to Ghent that night.

Cross by Court. He said I did not use handcuffs on the prisoner I knew that Pte St Pierre was to undergo 15 months detention before He left. I was Not told to use handcuffs. St Pierre was about four feet from me when we were standing & then he edged over & bolted. I knew I was in charge of the prisoner. He was not handcuffed when I took him out of the guard room I did not handcuff him as I was on course at S.C. Provost Corps in England a year ago that War informed Not to handcuff prisoners who were S.O.S. Unless they were really bad actors.

RP 83(B) Complied With

Prosecutor's Closing Address

Capt. Nelson has produced evidence that Cpl. Smith had St Pierre in his custody. Cpl. Smith allowed St Pierre to descend from the vehicle although it was very dark and in spite of the fact that the R.P. private, Pte. Smith D. had gone off to look for food. At the time of the escape Cpl. Smith was solely responsible for the safe custody of St Pierre.

Closing address of defence

The prosecution failed to produce witness to prove the accused might have been negligent in anyway and thereby occasioning the escape of Pte St Pierre, the soldier under Cpl. Smiths custody.

Cpl. Smith gave evidence upon oath and stated that he did take reasonable precautions, before Pte St Pierre escaped, by parking the vehicle in an open space so that the prisoner could not escape into building or bushes adjacent to the road. At the time the prisoner escaped Cpl Smith took reasonable precautions by not letting the prisoner more than 10 or 12 feet from him.

Two witnesses have appeared before the court and have stated that it was a very dark evening, under the circumstances it was very easy for Pte St. Pierre to escape.

The accused gave evidence as to why the prisoner was not handcuffed.

From the evidence submitted by the prosecution it is impossible to find the accused guilty of without a reasonable defence.

Sum Up Beg J A

In reaching a finding on a charge it is necessary for the court to examine the charge & decide whether the particulars of the charge have been proved. If not the accused should be found Not Guilty. If the court decides they have been proved then they must decide whether these proved particulars go to make up the Statement of the charge.

First charge In connection with the Attention is invited to Page 446 MM 2 Sub Sec (2) also foolnotes 2, 3, & 4. Also Ch VII para 43 (Heads of Charges to Court.) The members of the court may use their regimental knowledge to assist them in coming to a finding on the charge.

As to the Credibility of Witnesses that is entirely a Matter for the court to decide. You may believe a part of the testimony of one Witness & wholly disbelieve the rest of it. One principle of British justice which follows us wherever we go is that every man is innocent Until proved guilty. It is up to the prosecution throughout to prove the guilt of the prisoner beyond a reasonable doubt. Reasonable doubt has been defined as such a doubt as would make a reasonable man in the conduct of his own business and in a Matter of some importance to him pause & ponder. Hamlet. To seriously consider whether the thing he intends to do is right & just. But if any Members of the Court entertain such a doubt they are bound by law to interpret that doubt in favour of the accused.

Mr President are there any further Matters on which you wish Mr [illegible] to advise the Court A No

Mr Prosecuting Officer are there any further Matters on which you wish Mr [illegible] to advise the Court? A No

Mr Defending Officer are there any further Matters on which you wish Mr [illegible] to advise the Court? A No

Exhibit (A)

The accused was warned as follows,-

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The Accused - I desire to make a statement under oath.

The Accused B-54336 Cpl Harold Archibald Smith, 4 Cdn Armd Bde Coy R.C.A.S.C., sworn states,-

I am, B-54336 Cpl. Smith, H.A., Regtl Police Corporal 4 Cdn Armd Bde Coy R.C.A.S.C., while proceeding to Ghent on 2 Feb 1945 with C-12565 Pte. St.Pierre soldier under sentence, we had trouble with the vehicle, the fuel line seemed to be flooded and the trouble developed shortly after we started on our way. On arrival at Brasschat we decided to stop for something to eat-that was at approx 2100 hrs. We all got out of the vehicle and Pte. Smith, I., went to look for a place to eat and then I noticed that St.Pierre had disappeared. We looked around the area but it was very dark and we could not find him. We then proceeded on our way to Ghent where we had to take L/Cpl Glenfield who was returning to England. We then went to Brussels where we were to pick up leave personnal for return to the unit. On our return through Brasschat I notified the CMP of St.Pierre's disappearance as I was unable to locate their H.Q. the previous night. I then reported back to Coy H.Q. and reported to the adjutant.

Cpl. H.A. Smith

I certify that R.P. 4 has been complied with.

Taken down by me in the presence and hearing of the accused, in the Field, this 3rd day of Feb 1945.

J.H. Wilson, Capt.

Officer taking Summary of Evidence

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B54336	Cpl	Smith Harold Archibald	4 Cdn Armd Bde Coy RCASC

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the numbers of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For N I L ..... times.

For N I L ..... times.

For N I L ..... times.

For N I L ..... times.

Date of first entry in Field Conduct Sheet N I L

Date of last entry in Field Conduct Sheet N I L

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. ~~The accused stands present charged under sentence for~~

~~beginning on the~~ day of

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for N I L days in civil custody; and for 15 days in military custody, *i.e.*, 15 days in open arrest, Nil days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 29 years

6. The date of his attestation ~~taking on the active strength~~ 27-5-42

7. The service which the accused is allowed to reckon is 2 yrs 9 mos

8. The accused is in possession of† CVSMC

†State the military decoration (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of Cpl	21 Oct 44
In the war substantive rank of	
In the acting rank of	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(21114) W.4670/949 100,000 4/45 A.& E.W.Ltd. Gp.698 Forms B.296/W.of/2
(22489) W1.23/266/1879 60,000 9/42

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 19 day of February 1945

W.(C.M.Longbotham) Major
OC 4 Cdn Armd Bde Coy RCASC

Exhibit 2 cbw

No B54336 Name Smith, H.A. | Sqn. Battery or Company | 4 Cdn Armd Bde Coy RCASC (Corps) | Date of enlistment | 27-5-42 | OC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/136 (3438)

Company Conduct Sheet Date of last entry in | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc | Character

Fine	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
	27-11-42			Sheet one destroyed no enteries					

Certified true copy

(J.R.Wilson) A/Lieut Capt

(P10)

SUMMARY OF EVIDENCE

in the case of

B-54336 Cpl Harold Archibald Smith., a soldier of the Canadian Army Overseas,-

CHARGE

First Charge WHEN ON ACTIVE SERVICE WITHOUT REASONABLE EXCUSE ALLOWING TO
Sec 20 (2) ESCAPE A PERSON COMMITTED TO HIS CHARGE.
Army Act.

The Commanding Officer directs that the evidence be taken on Oath.

FIRST WITNESS M-36174 Pte.Smith, I., 4 Cdn Armd Bde Coy R.C.A.S.C. sworn states,

I am M-36174 Pte.Smith, I., Regt'l Police 4 Cdn Armd Bde Coy RCASC, shortly after we left the Coy lines on 2 Feb 45 for Ghent where we had to take Pte.St.Pierre, The vehicle developed trouble in the fuel line, the driver stopped twice to fix it, when we got to Brasschat the driver stopped to check the vehicle once again. And we were hungry as it was getting late so I went off to make arrangements to get our rations heated or get something else to eat. I was gone about fifteen minutes and when I returned I was told that St.Pierre had disappeared, so I walked around the area trying to locate him but did not have any success. We carried on the hunt for St.Pierre for approx two hours. We then proceeded on our journey as we also had to deliver L/Cpl Glenfield who was returning to England via NETD. After dropping L/Cpl Glenfield at NETD we proceeded to Brussels Brussels where we had to pcik up personnel who was returning from leave. On our way back we stopped at Brasschat thinking St.Pierre might still be in that area not being able to find him, Cpl Smith reported to the CMP we then came back to Coy H.Q. Cpl Smith reported into the adjutant.

I Smith
Pte. Smith, I.

The accused declined to cross-examine

SECOND WITNESS M-56161 Pte.McCracken, G.W., 4 Cdn Armd Bde Coy R.C.A.S.C. sworn states,

I am, M-56161 Pte. McCracken, G.W. Driver 4 Cdn Armd Bde Coy RCASC. On 2 Feb 45 shortly after we left the Coy lines on our way to Ghent my truck developed trouble, I stopped along the way and cleaned out the fuel lines. We then proceeded as far as Brasschat and stopped there to get something to eat. Pte.Smith went looking for some tea and I was checking my vehicle when Cpl Smith told me St. Pierre had disappered, we started a search for him but could not find him. After about two hours we proceeded on our way to Ghent to deliver L/Cpl Glenfield who was proceeding to England through NETD. After delivering L/Cpl Glenfield we went into Brussels where we had to pick up leave personnel for return to the Coy. On the morning of the 3rd of Feb we started back to our Coy. On our way back we stopped at Brasschat and had another look around for St. Pierre but could not find him so Cpl Smith reported to the CMP. We then returned to the Coy lines a nd I reported into Sgt Cronk at my Pl H.Q.

J.W. McCracken
Pte.McCracken, G.W.

The accused declined to cross-examine.

(2)

The accused was warned as follows,-

Do you wish to make any statement upon oath? You are not obliged to evidence unless you wish to do so, b or any evidence you give will be take may be given in evidence.

The Accused - I desire to make a statemen

The Accused B-54336 Cpl Harold Archibald Smi Armd Bde Coy R.C.A.S.C., sworn states,-

I am, B-54336 Cpl. Smith, H.A., Regtl Police Cor Cdn Armd Bde Coy R.C.A.S.C., while proceeding to G 2 Feb 1945 with C-12565 Pte. St.Pierre soldier unde sentence, we had trouble with the vehicle, the fuel seemed to be flooded and the trouble developed shortly after we started on our way. On arrival at Brasschat w decided to stop for something to eat-that was at approx 2100 hrs. We all get out of the vehicle and Pte. Smith, I., went to look for a place to eat and then I noticed that St.Pierre had disappeared. We looked around the area but it was very dark and we could not find him. We then proceeded on our way to Ghent where we had to take L/Cpl Glenfield who was returning to England. We then went to Brussels where we were to pick up leave personnal for return to the unit. On our return through Brasschat I notified the CMP of St.Pierre's disappearance as I was unable to locate their H.Q. the previous night. I then reported back to Coy H.Q. and reported to the adjutant.

Cpl. H.A. Smith

I certify that R.P. 4 has been complied with.

Taken down by me in the presence and hearing of the accused, in the Field, this 3rd day of Feb 1945.

J.E. Wilson, Capt.

Officer taking Summary of Evidence

FF 148 (case #2)
GNR SMITH H. 6.
See T-80 for 1st case.

The accused was warned as follows,-

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The Accused - I desire to make a statement under oath.

The Accused B-54336 Cpl Harold Archibald Smith, 4 Cdn Armd Bde Coy R.C.A.S.C., sworn states,-

I am, B-54336 Cpl. Smith, H.A., Regtl Police Corporal 4 Cdn Armd Bde Coy R.C.A.S.C., while proceeding to Ghent on 2 Feb 1945 with C-12565 Pte. St.Pierre soldier under sentence, we had trouble with the vehicle, the fuel line seemed to be flooded and the trouble developed shortly after we started on our way. On arrival at Brasschat we decided to stop for something to eat-that was at approx 2100 hrs. We all get out of the vehicle and Pte. Smith, I., went to look for a place to eat and then I noticed that St.Pierre had disappeared. We looked around the area but it was very dark and we could not find him. We then proceeded on our way to Ghent where we had to take L/Cpl Glenfield who was returning to England. We then went to Brussels where we were to pick up leave personnal for return to the unit. On our return through Brasschat I notified the CMP of St.Pierre's disappearance as I was unable to locate their H.Q. the previous night. I then reported back to Coy H.Q. and reported to the adjutant.

H.A. Smith
Cpl. H.A. Smith

I certify that R.P. 4 has been complied with.

Taken down by me in the presence and hearing of the accused, in the Field, this 3rd day of Feb 1945.

J.R. Wilson, Capt.

Officer taking Summary of Evidence

FF-148 (case #2)
GNR SMITH H. 6.
See T-80 for 1st case

B-10030 Gnr. Smith, W.C.
No. 1 CARU

FF-148

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this 20th day of May, 1943.

Whereas it appears to me, the undersigned, an officer in Command of "C" Group, Cdn Reinforcement Units, Cdn Army Overseas, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

*[I am unable to appoint:—

*(1. Three Officers to form the Court.)

*(2. A Field Officer as President.)

for the following reasons, namely:—]

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Lt-Col.	D.L. REDMAN V.D.	H.Q., C.R.U.

Members.

Rank.	Name.	Regiment.
A Major	from	1 C.E.R.U.
Captain	R.F. PAGER, RCA	1 C.A.R.U.
	Waiting Member	
Lieutenant	W. MOORE, RCA	2 C.A.R.U.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Brigadier

Commanding "C" Group, Cdn Rft Units.

Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B-10030 GNR. SMITH, Harley, Charles R.C.A. No. 1 C.A.A.U.	First Charge A.A. sec 13(1)	Not Guilty	Guilty Sentence To undergo detention for a period of sixty (60) Days. 26th May 1943 WMS	Confirmed [illegible]

See charge sheet attached.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— Answer – No.

(Signed) J Stewart Brigadier (Signed) [illegible] President.
Commanding "C" Group, C.R.U.
Convening Officer (*e*)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 26th day of May 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
3. ~~The interpreter~~
4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 26th day of May 1943

President of the Court Martial.

* See footnote (*b*) on page 762 M.M.L. 1929.

C. Certificate in case of death sentences.

~~I certify that the terms of A.C.I. 570 of 1918 have been~~ complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~)

Signed this 27th day of May 1943.

Confirming Officer.
J. C. STEWART, Brigadier,
Commanding "C" Group,
Can. Reinforcement Units.

Promulgated and extracts taken in the case of B10030 GNR. SMITH. Harley Charles.

(*a*) (Dated) 28 May 1943. (Signed) W.G. Grimsley COL
CO.-I C.A.R.U.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused, B-10030 Gunner Harley Charles SMITH, Royal Canadian Artillery, on the strength of No. 1 Canadian Artillery Reinforcement Unit, a soldier of the Canadian army (Overseas) is charged with: WHEN ON ACTIVE SERVICE,

FIRST CHARGE
SEC 15 (1)
ARMY ACT.

ABSENTING HIMSELF WITHOUT LEAVE

in that he, at St. Lucia Barracks, Bordon, Hants., absented himself without leave from No. 1 Canadian Artillery Reinforcement Unit from 1400 hrs 23 March 1943 until surrendering himself at the Guardroom, No. 1 Canadian Artillery Reinforcement Unit at 1250 hrs 13 May 1943. Costs of apprehension nil. (Absent 50 days, 22 hrs., 50 minutes)

Dated at Bordon, Hants., this
14th Day of May 1943.

Colonel, R.C.A.,
(T.H. HUSGRAVE)
Commanding Officer,
No. 1 Canadian Artillery Reinforcement Unit.
Canadian Army Overseas.

To be tried by Field General Court Martial

Brigadier
Commanding 10th Group, Can Reinforcement Units
Convening Officer

Bordon, Hants.
25 May 43.

MFS 246

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 557

I certify that I have, this morning, examined

No. B.100330 GNR. SMITH. H.C.

of No.1 Cdn Arty Reinf Unit and in my opinion he

is ~~unfit~~ fit to undergo Trial by Court Martial.

Station FIELD

Date MAY 26TH/43

D. Cameron, Capt.
Medical Officer
No.1 Cdn Artillery Reinforcement Unit.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT Quebec Barracks Bordon Hants
ON THE 26 DAY OF May 1943

The accused. B.100 306 Gnr Smith H.C. Unit. 1 C.A.R.U.

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 & 23.

The accused is brought before the Court.
The Medical Certificate is presented to the Court.
The order convening the Court is read by the President and the accused having been asked, stated that he had no objection to the president or any member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President. A/Col. D.L. Redman Unit. H.Q. C.B.U.

Members. Major E.J. Durnin Unit. 1 C.E.R.U.

Capt. R.F. Parker Unit. 1 C.A.R.U.

The officers under instruction are duly sworn:-

8 officers Sworn IN: Unit.

Unit.

Prosecutor. Lieut. E.J. Morgan Unit. 1 C.A.R.U.

Defending Officer. Lieut. J.E. Corbett Unit. 1 C.A.R.U.

The charge sheet is signed by the President and the accused is arraigned.
~~The accused pleads~~ guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B)
The Summary of Evidence is read.
The Prosecutor is sworn and produces MFB 355 and MFM 6. AFB 296
The Court complies with R.P. 46(B).

Pursuant to R.P. 37 THE ACCUSED:-

(a) makes a statement in mitigation of punishment
(b) calls witnesses as to character
(c) calls witnesses in mitigation of punishment
(d) addresses the Court by his Defending Officer

The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE AND ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER

Proceedings follow on loose sheets

(OVER)

Trial of B 10030 Pte Smith H. C

Page 1

The accused when arraigned pleaded not guilty to the charge

The President asked the question under R.P. 39 A. The answer of Deputy Offce is recorded after that question on Page 2 of AFA 3.

First witness for Prosecution

C 908 Ex's & Lloyd I C A R A being duly sworn states

I am a clerk in the office of H'quarters I C A R A. I submit a F.B 115 The Declaration of a Court of Inquiry held 15th April 1943 with respect to the absence without leave of the accused whom I now recognize.

Marked Ex 1 by the Court

The Deputy Offce declined to cross-exam

2nd witness for Prosecution

L 35085 Bdr J D Irvine being duly sworn states

I am a member of the Reg. Police of I C A R A. I now recognize the accused. He surrendered to me at this guard room at 1250 hrs 15 May 1943 He said he had been absent. He was sober and properly dressed. It is the custom in this unit that any absentee returning should report in and surrender himself at the guard-room.

The Deputy offce declined to cross-exam

End of case for Prosecution

The President advised the accused under note 2 R.P. 40.

(OVER)

The Adjutant officer said that the accused would not give evidence or make a statement

1st witness for defence

P 7429 R.S.M. McCarton U.R. being duly sworn states. I am R.S.M. of this unit

I received a letter from Turner Smith addressed to me a few days after the accused went A.W.L.

Letter marked Ex 2. by court

Letter read by witness to court.

2nd witness for defence

Major Procter J. I.C.A.R.C. being duly sworn states

I have seen Ex 2. I wrote to the accused in reply on Mar 30th 43 I produce herewith a copy of my reply.

marked Ex 3 by the court

Letter read by witness to court.

Telegram referred to in Ex 3 is produced by witness it is dated 23 March 1943

Marked Ex 4 by court

witness said the leave referred to in Ex 3 would be a pass until 7th April 1943.

Cross examined by Prosecutor

The pass was made out immediately upon receiving the telegram

3rd witness for accused

P 7026 R.S.M. Hayden V.C. being duly sworn states

Page 3

I have known the accused since 1939. when he was 10th Med. Bty. He was Batman to Major McCordick for some time. I pass him to be trustworthy and an honest man. I continued to know him until Sept 1942.

4th witness for defence

The accused was duly sworn

I produce a letter dated 7th May 1943 given to me by Sr Matron of Queen Charlotte's Hospital

Letter marked Ex 5 by Court.

I also produce a further letter from Sr Kinsh dated 19th May 1943

Letter marked Ex 6 by Court

Defending Officer declines to cross-examine

The defending officer summed up. His address in writing is attached.

The Prosecutor addressed the Court and pointed out that the necessary facts in support had been proved and said that accused had been in the army long enough to know how to get a pass under the extenuating circumstances. He pointed out that accused stayed away 8 weeks after his wife was discharged from Hosp. Accused on receipt of Ex 2 should have then sent his kit and got a pass.

End of case for defence.

Court is closed to consider finding

OVER

The court is reopened.
The Prosecutor produces m 7 m 6 and m 7 B 355 with respect to the accused.
R P 46 B is complied with
The Deputy officer returned in pursuance to his statement before the finding but added that the accused has been 13 days awaiting trial and will lose 67 days while a W. L. although the circumstances were most extenuating.
C A O R O 3262 was complied with.
The court adjourned to consider its sentence.

On the 13th of March 43 the Accused's wife was delivered of a daughter. The Accused received a pass from Saturday noon until Sunday noon to go and see his wife and child but did not apply for special leave on compassionate grounds as he wanted to try and obtain leave when his wife was able to leave the hospital so that he might take her home ~~and~~ help to establish her there and make arrangements to find someone to help her. To find when she would be able to leave the hospital he went there on the morning of March 23rd about seven o'clock. To his consternation he was told that his wife was desperately ill and that the hospital authorities had tried to keep to come ~~and~~ once.

He went immediately to a Wing Office to try and obtain a pass but as it was still only about 7.30 there was no one around. He waited around for some time and finally

when he saw the eight o'clock train come along he was under such a mental strain that he boarded it having no other consideration in his mind than that his wife, ~~he had so~~ urgently needed him as she was very sick. He knew that she had no one else to call as she was estranged from her family due to domestic difficulties.

For two days the accused's wife was seriously at death's door and then gradually she recovered. As the danger receded the accused was able to turn his mind to his other troubles and he sought to regularise his position.

To do this he wrote a letter to R.S.M. Wharton whom he thought would do the best he could for him. That letter is Exhibit 2

For a few days he received no reply Exhibit 3 and the thing that struck him immediately was the phrase "until you produce a letter from a doctor stating that your presence is necessary owing to your wife's dangerous

illness". We consulted the Resident Medical Officer at the Hospital who assured him he would give him such a letter which I produce as Exhibit 5 and which was a simplified letter upon request in another letter Exhibit 6.

Since I have pointed it out to him the learned rabbis that according to the last sentence of the letter sent to him by the D.C. "A" Wing Exhibit 3 he should have immediately mailed the Doctor's letter Exhibit 5. As you can see from the accused's letter he is not a home conducting a correspondence and he neglected this point. We ~~did~~ thought retain

We continued to reside at 78 Lansdale Road and after his wife's return from the hospital (5 Apr 43) he practically never left the place except to do some necessary shopping.

We imagined that everything could be settled satisfactorily at his Unit by producing the Doctor's letter which he knew he could obtain

But on or about the 11th of May his wife received a letter from the Dependents Allowance Board stating that since her husband had been absent more than 21 days he was struck off strength and her allowance would cease.

His wife immediately wrote to the Board stating the circumstances of the case and the accused armed with the Doctor's letter Exhibit 5 and a Birth Certificate made his way back to his Unit, walking a great deal of the way as he was without funds, and reported in to the Guard Room at 1 C.A.P.O. at 12.50 hrs 13 May 43.

The accused joined the Army on the 4th of Sept 1939 and arrived in this country on Dec 19th 1939. He came over with the 1st Field Regt and served with them until towards the end of 1940 a great deal of the time as Battery Commander. In March 1940 he received a severe blow as his wife died in Canada.

He gradually recovering from this he married his present wife on 16 Oct 1941. He was told

by his B.C. ~~[illegible]~~ Maj. G.E. McCordick for whom he was batman at the time that permission had been granted but due to the Unit going on manoeuvres at the time there was some slip up and it did not appear in Orders. He expected some delay before his allowance came through but when a couple of months elapsed and no money came he began to make enquiries and found eventually that he had not officially received permission. By this time Maj. McCordick had returned to India so there was more difficulty in clearing the matter up and it was nearly a year before his wife obtained any money.

This was a year of constant worry and anxiety about money and one of their children was seriously ill in London 1942.

Is it any wonder then that suddenly hearing that his wife's condition was dangerous he acted upon his first impulse and did what any of us who are husbands and fathers would do, go to her with the utmost

speed. It would seem that if at any time between the sending of the letter on the 30th March and the 13th of April, at which time he was absent 21 days, another letter had been sent to him warning him of the growing seriousness of his case or if any Officer, Padre or Social Worker had taken an interest in his case and visited him at Tonedale Pk where he was at all times we would not be assembled here to-day at some cost to the Government, the accused would not have had to have pay and would not be facing a Court Martial.

EXHIBIT "A" in the case of

B-10030 Gnr. SMITH, H.C.

Army Form B 115

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier

RECORD of the Declaration of a Court of Inquiry assembled at No.1 C.A.R.U. on the Fifteenth of April 19 43, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. H-10070 Gnr. Smith, H.C.

DECLARATION.

1. The Court declare that H-10070 Gnr. Smith, H.C., of "A" Wing, No.1 Canadian Artillery Reinforcement Unit, illegally absented himself without leave at 1400 hrs 23 March 1943, and that he has been absent for a period of more than 21 clear days and that he is still absent on this date.

2. The Court do further declare that his remaining kit has been checked against the Normal Issue as laid down in CARO(O) 1956 and CARO(O) 2120 and found it to be deficient in the amount of £10-2-8 Vocabulary price and in the amount of £7-12- 0 Unexpired wear value

as per attached list, marked Appendix "A".

Signed at Bordon, Hants., this 15th day of April 1943.

Names of President and Members

PRESIDENT Captain F.A. Oliver, R.C.A.

Members: Lieut. W.S. Armstrong, R.C.A.

Lieut. W.R. Brown, R.C.A.

Signature of Commanding Officer

(T.H. MUSGRAVE) Colonel,
Commanding Officer,
No.1 Cdn Arty Reinf Unit.

CERTIFIED TRUE COPY.

Signature of Officer having custody of the Original Record.

(10954) WL55/62/1355 120,000 1/41 A.& E.W.Ltd. Gp.466 Forms/B115/57.

APPENDIX "A"

DEFICIENCES.

Clothing and equipment of H-10030 Gnr. Smith, H.C., No. 1 C.A.R.U.

ARTICLE	NUMBER	VOCABULARY PRICE	UNEXPIRED WEAR VALUE
Bottles water	1	£00- 6- 9	£00- 5- 1
Carriers water bottle	1	3- 3	2- 5
Straps web supporting	2	2- 2	1- 7½
Battle dress blouse	1	1- 7- 8	1- 0- 9
Battle dress trousers	1	1- 7-11	1- 0-11
Braces	1	1- 6	1- 1½
Brushes button	1	0- 8	0- 6
Brushes hair	1	1- 1	0-10
Caps comforter	1	1- 1½	0-10
Caps F.S.	1	3- 8	2- 9
Great coat	2	3-17- 0½	2-17- 9½
Drawers	1	10- 6	7-10
Dressing 1st Field	1	1- 1	0-10
Jacket sweater	1	6- 9	5- 1
Shirts flannel	2	18- 4	13- 9
Shirts woollen	2	10- 2	7- 7½
Shorts P.T.	2	3-10	2-10½
Vests P.T.	2	3- 0	2- 3
TOTAL::::::::::::::::::::::::::::::::::::		£16- 6- 6	£ 7-14-10½

Sgnd C.S. Harris
(H-5001) C.S. HARRIS

CERTIFIED TRUE COPY
/GEW.

(F.H. CLARKE) Major,
Administrative Major,
No.1 Cdn Arty Reinf Unit, R.C.A.

R S M. Whanlon
Dear Sir: E & V

I am terribly sorry I have to bother you but it is a case of having Doc. Sm the wing office there is a telegram from the hospital asking me to come there at once.

My wife had a very bad heart attack and as I had called the hospital on the phone when the telegram arrived. I was crazy & left with out a pass. Could you please get a pass for me & mail it to me.

You can get it to telegram and read it.

My wife is now abed better but the hospital think I should stay a while longer and I have got to move from this house as there is so many stairs for my wife to climb when she does get out of hospital.

Sir I would appreciate any thing you can do for me.

BA0030 H. C. Smith.
78 Lonsdale Rd.
Barnes.
SW13

I need a pass until the 7th of April.

ADMINISTRATIVE WING
NO. I C.A.R.U
Canadian Army England

A/W 5-4-0

30 March 1943.

B-10030 Gnr. Smith, H.C.,
78 Lonsdale Road,
Barnes, LONDON, S.W. 13.

EX3

APPLICATION FOR LEAVE:

1. Your letter to the R.S.M. requesting leave should have been addressed to your Officer Commanding. Your pass and transportation to the station were waiting for you in "A" Wing Office had you taken the trouble to enquire.

2. I have no authority to grant you leave until 7 April 43 unless and until you produce a letter from a doctor stating that your presence is necessary owing to your wife's dangerous illness. If you forward such a letter at once your leave will be granted; otherwise you will be A. W. L.

(J. W. [illegible]) Major, R.C.A.,
Officer Commanding "A" Wing,
No. 1 C.A.R.U.
Canadian Army England.

W.

Charges to pay

£ s. d.

RECEIVED

POST OFFICE

No.

TELEGRAM

OFFICE STAMP

12 58 PM

Prefix 25

Time handed in.

Office of Origin and Service Instructions.

Words.

From

To

m

PRIORITY H C SMITH B 10030 GUNNER 1 CANADIAN ARMY FIELD PO ENGLAND = CANRECORDS W 3 [illegible]

WE NOT WELL COME IMMEDIATELY = MATRON QUEEN CHARLOTTES HOSPITAL +

Fo

at B 10030

words telephone "TELEGRAMS ENQUIRY" or call, with this form iries should be accompanied by this form and, if possible, the envelope.

B or C
C

QUEEN CHARLOTTE'S HOSPITAL

OUT-PATIENT DEPARTMENT

7/5/43

Ex 5

The CO

Dear Sir

This is to certify that
Driver to his wife confined
Queens Harley Smith B10030
presence has required at home
from March 23rd until May 8th
Yrs truly

[illegible]
Mid. Offr

Attendg. R.T.O.

QUEEN CHARLOTTE'S MATERNITY HOSPITAL
GOLDHAWK ROAD W6
TEL. RIVERSIDE 2471

1/[illegible]/43

Dear Sir

Herein is enclosed a medical report on Mrs Joan Smith.
Normal delivery of live female child on 13/3/43.
Puerperium uneventful except for
Short attack of hyperpyrexia
28/3/43.
On that day patient suddenly collapsed with symptoms suggesting acute pulmonary infarction. Her condition was critical & her husband was urgently sent for. Her condition remained critical for three days but after that
[illegible] gradually improved.
It was decided to discharge her on 5/4/43 provided [illegible]
she could be adequately [illegible]
[illegible] at home.

Re 2 would the R.M.O. in charge ~~[illegible]~~ think it advisable that her husband should remain at home for 3 weeks at least and probably more. There are I understand certain home difficulties connected I think also contributing to the R.M.O's decision

Yrs sincerely

M A Kinloch

Asst parish R.M.O.

Summary of evidence in the case of B-10030 Gunner Harley Charles SMITH, on strength of No. 1 Canadian Artillery Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the summary of evidence is taken on oath.

FIRST WITNESS for the prosecution

C-906 Gunner D. LLOYD on a strength of No. 1 Canadian Artillery Reinforcement Unit, a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:

I am C-906 Gunner D. LLOYD, a clerk on staff of "A" Wing, No. 1 Canadian Artillery Reinforcement Unit

I produce a certified true copy of a Record of the Declaration of a Court of Inquiry into the Illegal Absence of B-10030 Gnr. Smith, H.C., which is marked exhibit "A" and is attached to the Summary of Evidence.
The accused declines to cross examine this witness.

D. Lloyd
(C-906 Gnr. D. LLOYD)

SECOND WITNESS for the prosecution

L-35085 Bdr. J.I. DEVINE, on strength of No. 1 Canadian Artillery Reinforcement Unit, a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:

I am L-35085 Bdr. J.I. DEVINE of the Regimental Police, No. 1 Canadian Artillery Reinforcement Unit. At approximately 1250 hrs 13 May 1943, B-10030 Gunner SMITH, H.C. surrendered himself to me at the Guardroom of No. 1 Canadian Artillery Reinforcement Unit. He was sober and properly dressed.

The accused declines to cross examine this witness.

J. I. Devine
(L-35085 Bdr. J.I. DEVINE)

The accused was cautioned as follows: Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say, or any evidence you give will be taken down in writing and may be given in evidence.

I certify that the foregoing summary of evidence consisting of one page was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (C), (D), (E), (F) and (G) have been complied with.

H. Moore
(H.C. MOORE) Lieut., H.C.A.
No. 1 C.A.R.U.

STATEMENT OF ACCUSED IN ACCORDANCE WITH R.P. 14 (B)

I, B-10030 Gnr. SMITH, H.C., No. 1 Canadian Artillery Reinforcement Unit, Canadian Army Overseas, desire to have an Officer to represent me at my trial by Court-martial.

H C Smith

(B-10030 Gnr. H.C. Smith)

LIST OF EXHIBITS.

Exhibit "A" - - - - - Army Form B-115 with Appendix.

No. B-10030 Name SMITH, H.C. | Sqn., Battery, or Company | Corps R.C.A. | Date of enlistment 4 Sep 39 | G.C. Badges | Service or Proficiency Pay N/A

M.F.M. 6 (A.F.B. 122) 1935—7-41 (315-20) H.Q. 1751-35-1652

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No. 1 | Signature O.C. Company, etc. R.P. DUMMOND Major | Character Good

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	8-10-40	Gnr.		WOAS AWL 2359 hrs 8-10-40 to 1200 hrs 7-10-40	RSM Gilchrist	14 days C.B. auto forf 2 days pay	9-10-40	Lt.-Col. Tremain	
Field	23-8-41	Gnr.		absent without leave from 0600 hrs 23-8-41 to 2200 hrs 24-8-41.	TBSM Dryden Sjt. Sandiford	7 days C.B.	25-8-41	John T Woolley Capt. R.C.A.	Ffts 2 days pay
Field	8-1-42	Gnr.		WOAS AWL from 1200 hrs 30-12-41 to 1630 hrs 8-1-42 (Total 6 days 4 hrs 30 mins) Sec. 15(1) A.A.	L/Sjt. Gardiner	14 days C.B. Ffts 14 days pay	26-1-42	Lt.-Col. T.M. Medland	Ffts 7 days pay
Field	14-7-42	Gnr.		AWL from 1200 hrs 14-7-42 to 1200 hrs 15-7-42 Total 1 day	Bdr. MacLeay	Ffts 2 days pay	16-7-42	Maj. Murdock	Ffts 3 days pay PR&I 149
Field	29-7-42	Gnr.		AWL from 2359 hrs 29-7-42 to 1930 hrs 17-8-42 Total 18 days 19 hrs 31 mins Sec 15(1) A.A.	Documentary	18 days F.P. 18 days pay Cost of apprehension 10/2	29-8-42		19 days pay under PR&I 149 (1)(a)

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	1-11-42	Gnr.		AWL from 2359 1-11-42 to 2100 hrs 25-11-42 Total 23 days 21 hours	Documentary	60 days detn 60 days pay FRAI 149(1)(b)	30 Nov 42	F.G.C.M.	24 days pay FRAI 149(1)(b) 4 days pay while under close arrest
				RELEASED FROM DETENTION BARRACKS H DOWN ON 8 JAN 43 SENTENCE HAVING EXPIRED. REMISSION RANNED UNDER RULES FOR DETENTION BARRACKS AND MILITARY PRISONS 20 DAYS. COMMANDANTS INITIALS----J.A.				
Field	21-1-43	Gnr.		WOAS Conduct to the prejudice of good order etc. lighting fires in block contrary to Regt'l Order No. 9 d/9-1-43	BSM Collard.A.	5 days C.B.	22-1-43	D.J. Snell Major	

Certified a true copy as of 21 May 1943.

W.W. Hadley Captain, R.C.A.,
A/Officer Commanding "A" Wing,
No. 1 C.A.R.U.

M.F.B. 355
(ZM—5-41 (372-3)
H.Q. 1772-99-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Name SMITH, H.C. (XXXXXXXX unit)

Rank Gnr. No. 1 C.A.R.U.

Number B-10030

1. The following is a fair and true summary of the entries in the Conduct sheets Regimental XXXXXXXXXXXXXX of the accused, exclusive of convictions by a Court-Martial or a Civil Court, XXXXXXXXXXXXX

No. B-10030 Name SMITH, H.C. Sqn., Battery, or Company Corps R.C.A. Date of enlistment 4 Sep 39 G.C. Badges Service or Proficiency Pay N/A M.F.M. 6

Date of last entry in Company Conduct Sheet N/A No. and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No. 1 Signature O.C. Company, etc. R.P. DUNCONDX Major Character Good

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	6-10-40	Gnr.		WOAS AWL 2359 hrs 6-10-40 to 1200 hrs 7-10-40	RSM Gilchrist	14 days C.B. auto forf 2 days pay	9-10-40	Lt.-Col. Tremain	
Field	23-8-41	Gnr.		absent without leave from 0600 hrs 23-8-41 to 2200 hrs 24-8-41.	TBSM Dryden Sjt. Sandiford	7 days C.B.	25-8-41	John T Woolley	Ffts 2 days pay
Field	8-1-42	Gnr.		WOAS AWL from 1200 hrs 30-12-41 to 1630 hrs 8-1-42 (Total 8 days 4 hrs 30 mins) Sec. 15(1) A.A.	L/Sjt. Gardiner	14 days C.B. Ffts 14 days pay	26-1-42	Capt. H.C.A. Lt.-Col. T.M. Medland	Ffts 7 days pay
Field	14-7-42	Gnr.		AWL from 1200 hrs 14-7-42 to 1200 hrs 15-7-42 Total 1 day	Bdr. MacLeay	Ffts 2 days pay	16-7-42	Maj. Murdoch	Ffts 3 days pay
Field	29-7-42	Gnr.		AWL from 2359 hrs 29-7-42 to 1930 hrs 17-8-42 Total 18 days 19 hrs 31 mins Sec 15(1) A.A.	Documentary	18 days F.P. 18 days pay Cost of apprehension 10/2	29-8-42		PR&I 149 19 days pay under PR&I 149 (1)(a)

(P.T.O.)

M.F.M. 6
A.F.B. 122
175M—7-41 (1212-20)
H.Q. 175-M-1652

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	1-11-42	Gnr.		AWL from 2359 1-11-42 to 2100 hrs 25-11-42 Total 23 days 21 hours	Documentary	60 days detn 60 days pay FR&I 149(1)(b)	30 Nov 42	F.G.C.M.	24 days pay FR&I 149(1)(b) 4 days pay while under close arrest
Field	21-1-43	Gnr.		RELEASED FROM DETENTION BARRACKS H DCVN ON 8 JAN 43 SENTENCE HAVING EXPIRED. REMISSION EARNED UNDER RULES FOR DETENTION BARRACKS AND MILITARY PRISONS 20 DAYS. COMMANDANTS INITIALS----J.A. WCAS Conduct to the prejudice of good order etc. lighting fires in block contrary to Regt'l Order No. 9 d/9-1-43	BSM Collard,A.	8 days C.B.	22-1-43	D.J. Snell Major	

Certified a true copy as of 21 May 1943.

W.W. Mackay Captain, R.C.A.,
A/Officer Commanding "A" Wing,
No. 1 C.A.R.U.

M.F.B. 355
22M—5-41 (372-S)
H.Q. 1772-99-620
A.F.B. 39C

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number B-10030 Rank Gnr. Name SMITH, H.C. [redacted] unit) No. 1 C.A.R.U.

1. The following is a fair and true summary of the entries in the [redacted] Regimental [redacted] Conduct sheets [redacted] of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For 16 (1) A.A.	4 times	6 times
For 40 A.A.	times	1 time

[redacted]

Number of instances of gallantry or distinguished conduct Nil

[redacted]

Nore.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

[redacted]

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 75 are set out in the Schedule annexed to this statement.

[redacted]

3. The accused is not under sentence at the present time.

[redacted]

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 13 days in military custody, making a total of 13 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his attestation paper is 43 years, 358 days

[redacted]

8. The accused is entitled to reckon 4 years service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no military decoration, or military reward

[redacted]

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number B-10030 Rank Gnr.,
Name SMITH, H.C. of No. 1 C.A.H.U. Unit

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
Field General Court Martial	30 November 1942 England	15 (1) A.A.	60 days detention	20 days

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 26th day of May, 1943

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked [illegible] by the president, and annexed to the proceedings.

(T.H. MUSGRAVE) Colonel, R.C.A.,
Commanding Officer No. 1 C.A.H.U.

COUNTER NUMBER 584398

HOUR 15-55-

OPERATOR'S INITIALS R.D.

RELIEVING OPERATOR _____

80 T

Fort Smith, N C.

801.

Correspondence to be PINNED here.

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this TWENTY-SEVENTH day of NOVEMBER, 1942.

Whereas it appears to me, the undersigned, an officer in Command of Royal Canadian Artillery, 1st Canadian Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

*[~~I am unable to appoint :—~~

*(~~1. Three Officers to form the Court.~~)

*(~~2. A Field Officer as President.~~)

~~for the following reasons, namely :—~~]

65

President.

Rank.	Name.	Regiment.
Major	M.Y. McLean	1 Cdn A Tk Regt.

Members.

Rank.	Name.	Regiment.
Capt	W.E. Scott	3 Cdn Fd Regt
Lieut	J.P. Doddridge (Waiting Member)	1 Cdn A Tk Regt
Lieut	S.C. Lenkie,	3 Cdn Fd Regt

Notes.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be inserted. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

*Signed (A.B.D. Tremain) Brigadier
Commanding C.R.A. 1st Canadian Division
Convening Officer.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B10030 Gunner Smith, Harley Charles, 2 Cdn Fd Regt R.C.A.	First Charge Sec 15(1) Army Act	Guilty	Guilty Ninety days Detention 30 Nov. 1942. M. Y. McLean Major.	Confirmed The finding & the sentence. J.B. Gruman Brigadier Confirmed The finding & the sentence but mitigate the sentence to 60 days detention. J.B. Gruman Brigadier

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) J.B. Gruman Brigadier (Signed) M. Y. McLean Major
Commanding Officer (e) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings

I certify that the above Court assembled on the THIRTIETH day of November 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*~~(3. The interpreter)~~ N/A
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this Thirtieth day of November 1942.

M. Y. McLean Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

Signed this 3rd day of Dec. 1942.

J.B. Gruman
Confirming Officer Brigadier

Promulgated and extracts taken in the case of B10030 Gnr Smith H.C.

(*a*) (Dated) 2 Dec. 42 (Signed) [illegible] Lieut.-Col.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

A.

CHARGE SHEET

The Accused No B10030 Gnr. HARLEY CHARLES SMITH, Regimental Headquarters, 2 Cdn Fd Regiment, a soldier of the Canadian Army, Overseas, While on Active Service,

is charged with,

M. J. McLean Major

FIRST CHARGE

S. c. 15(1)
A.A.

ABSENCE WITHOUT LEAVE

in that he,

in the Field, was absent without leave from 2359 hrs 1 Nov 42 until 2100 hrs 25 Nov 42. Total time absent 23 days and 21 hrs.

Dated in
the field
26 Nov 42

H. Hague
.....Lt.-Col.
(H.H. Hague) C.O.,
2 Canadian Field Regiment.

To be tried by Field General Court-Martial.

28 hours n.d.

.....Brig.
(A.E.D. Tremaine)
C.R.A., 1 Canadian Division

/frs.

A.1.

I have satisfied myself that none of the officers detailed as members of the Court have previously served upon any Court of Inquiry respecting the matters forming the subject of the charge(s) before the Court Martial.

M. J. McLean Major

(Signature of the President)

B.

Form "A"

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD IN THE FIELD ON THE 30th DAY OF November 1942.

Trial of No. B10030 Gnr. Smith; Harley, Charles.

Prosecutor: Lieut. E.H.A. Larson

Defending Officer: Lieut. J.G. Wismer

Officers under instruction: Lieut. J.S. Mulkerns.

1. The order convening the Court is read in the presence of the accused.

The accused is asked the following question:
"Do you object to be tried by the President or any Members of the Court whose names you have heard read over?"

Answer: No.

3. The President, Members, ~~Judge Advocate~~, Officers under Instruction, ~~Shorthand Writer and Interpreter~~ are duly sworn.

4. (a) The accused answers to his name and number, and is duly arraigned on the charges.
(b) The accused having pleaded guilty to the First charge(s) R.P. 35(B) is complied with.

5. The accused is asked the question at the foot of page 2 of A.F.A. 3, and his answer is recorded beneath the question. N/A

6. The Prosecutor makes (no) (~~the following~~) opening address:

SUMMARY OF EVIDENCE
in the case of
B10030 Gnr. HARLEY CHARLES SMITH
a soldier of 2 Canadian Field Regiment
Canadian Army Overseas

F

M.J. McLean Major

Upon order of Lt-col. H.M. Hague, Commanding 2 Canadian Field Regiment, the evidence is taken on oath.

FIRST WITNESS

Capt. G.A. Eaton, Adjutant 2 Canadian Field Regiment, having been duly sworn, states:

"I am adjutant of 2 Canadian Field Regiment. The Accused Gnr. Smith, whom I recognize was granted leave until 1200 hrs 25 Oct 42. He did not return at this time, and on Tuesday, 27 Oct 42, I received a telegram purporting to be from No B10030 Gnr. Smith, the accused which I produce as Exhibit "A" to this Summary , asking for an extension of leave for 72 hrs. No reply was made to this telegram, and as Smith was not back by 1200 hrs Wednesday, 28 Oct 42, I reported his absence to the Provost Corps.

At approximately 1430 hrs Friday 30 Oct 42, I received a telephone call from Gnr. Smith the accused, who stated that he had been picked up by the Provost Corps and requested an extension of his leave until Sunday giving as a reason the fact that his wife was ill and could not be left alone and that he could not obtain the services of a woman to look after her until Sunday 1 Nov 42. After speaking to the Commanding Officer, I granted him compassionate leave until 2359 hrs 1 Nov 42.

The Accused did not return at that time, and has been reported absent daily from that time until Wednesday 25 Nov 42."

The accused declines to question the witness.

Capt. G.A. Eaton
Adjt 2 Cdn Field Regiment.

SECOND WITNESS

D11580 R.S.M. Skidmore, A.E. R.S.M. 2 Canadian Field Regiment having been duly sworn states:

" I am Regimental Sergeant Major of 2 Canadian Field Regiment, Canadian Army, Overseas. No B10030 Gnr. Smith,H.C. the accused whom I recognize had been on leave expiring at 1200 hrs 25 Oct 42. He failed to report in at that time. He was granted an extension of leave until 2359 hrs 1 Nov 42. He failed to report at that time. I did not see him again until he reported in to me at 2100 hrs 25 Nov 42 at R.H.Q. Billet. Gnr. Smith, the accused was marked absent on the morning roll call and tattoo roll call each morning and night between 1 Nov 42 and 25 Nov 42. He is on strength of R.H.Q. 2 Cdn Field Regt."

The Accused declines to question the witness.

(A.E. Skidmore) R.S.M.
2 Canadian Field Regiment.

F

M.J. McLean Major

The Accused having been duly warned in accordance with R.P. 4 (E), declined to make any statement.

Certified that the provisions of R.P. 4 (C) (D) (E) and (F) have been complied with.

Taken down by me in the presence of the accused In The Field 26 Nov 42.

.....Lieut.
W.H.A. Carson)
2 Canadian Field Regiment.

/frs.

Question: Do you wish to make a statement in regards to the charge.

Answer: yes.

Question: Do you wish to make thisstatement on oath.

Answer: Yes

Statement on oath of B10030 Gnr Smith, Hatley, Charles

I was married on Oct. 16th last year, and though some error of Major McCordicks permission hadn't been granted, and I couldn't receive any allowance for my wife, and we had to maintain her on my £4-10-0 a month up until September this year, she being pregnant we were both under a very serious strain, and I went home in August when she was being put out of her rooms that we had; I was home on pass & I got her a new place at 78 Longsdale Rd Barn, as the allowance hadn't come through yet at that time my return to the regiment Col Medland started to investigate the allowance. Major Hallet, sent the Auxiliary service to investigate the case and found that my statement was true. My wife was sleeping on a matress on the floor in a horrible condition. Through her not receiving the check no

assistance was given by her family. While I am home on leave on the 16th of October my wife was in bed ill. I called the doctor and he advised me the best thing to do was to try and book her up in a hospital, but at first I would have to take her to a clinic in Barnes, and as soon as she saw a lady doctor at the clinic she advised her not to be left alone at any time. I took her back home and tried to find a hospital I could book her up in, but failed owing to all hospitals being booked up until after march. My pass ran out on Sunday Oct. 25th & as I still had a lot of work to do booking up the hospital & the food offices I sent a telegram to Capt Eaton asking for an extension of 72 hours. I didn't hear from Captain Eaton & on Wednesday the Provost corps came up to the house to see if my wife was really ill & said he would report to 2nd Field Regt. that my wife was seriously ill. On Thursday the Provost corps picked me up at Barnes & I explained the case to the L/Sgt. and he suggested we phone the Regiment. We phone & got a hold of Captain Easton. Capt Eaton told the L/Sgt. to mark the extension on my pass until Nov. 1st I tried to make arrangements for a girl to come in & look after my wife; but on Sunday Morning Nov. 1st I was informed she wasn't available

and I was afraid to leave my wife alone & as I didnt
have any money to send a telegram or telephone I stayed
with her & looked after her until tuesday morning Nov 24th
& started to hitch hike my way back to Eastbourne where
I turned myself in to the R.S.M. at approximately 2100hrs.
Nov. 25th. That is all.

C.

Wm. J. McLaren Major

Form "C"

AFTER PLEADING

Capt. G. A. Eaton is sworn and states:

I produce a certified true copy of A.F.B. 122 relating to the accused. (The said copy is marked , signed by the President, and attached to the proceedings.) Capt. Eaton also produced the A.F.B. 296 relating to the Service and character of the accused.

QUESTION TO THE ACCUSED:

Do you wish to address the Court, or to call evidence as to character?

ANSWER: Yes.

The (accused) (defending officer) makes the following plea in mitigation of sentence: May it please the court, the accused has broken Military law under circumstances of particular urgency, and we ask that full account of the problems with which he was presented is taken in determining how best the ends of justice may be served.

H.

STATEMENT OF THE ACCUSED IN ACCORDANCE
WITH R.P. 14

M.J. McLean Major

I, No B100300 Gnr. HARLEY CHARLES SMITH
2 CANADIAN FIELD REGIMENT request to have
Lieut. J.D. Wismer, 2 Canadian Field Regiment
or if he be not available, such other officer
as may be appointed, assigned to represent
me at my trial by Field General Court-Martial.

H.C. Smith.
B100300 Gnr. Smith, H.C.

No. B10030 Name SMITH, H.C. Sqn., Battery, or Company H.Q.2 FA Regt RCA CASF Date of enlistment 4/9/39 G.C. Badges Service or Proficiency Pay D

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. R. P. Drummond Major | Character Good

M.F.M. 6 (A.F.B. 122) 58604 - 8-39 (1762) H.Q. 1772-45-18

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Addington	5/10/40	Gnr.		WOAS AWL 2359 hrs 5/10/40 to 1200 hrs 7/10/40	REM GILCHRIST	14 days CB Auto forf 2 dys pay	9/10/40	Lt-col. Trueman	
Addington	23/8/41	Gnr.		Absent without leave from 0600 hrs 23/8/41 till 2200 hrs 24/8/41	THOM DRYDEN Sgt. Sandiford	7 days CB	25/8/41	John Woolsey Capt RCA	forf. 2 dys pay
In The Fd	5/1/42	Gnr.		WOAS AWL from 1200 hrs 30/12/41 till 1630 hrs 4/1/42 Tot 6 dys 4 hrs 30 mins Sec 15 (1) AA	L/Sgt. Gardiner	14 days C.B. forf 14 days pay	26/1/42	Lt-col. T.M. Medland	Forf 7 dys pay
In The Fd	14/7/42	Gnr.		AWOL from 1200hrs 14/7/42 to 1200 hrs 15.7.42. Tot 1 day	Bdr. MacLeay	Forfs 2 dys pay	16.7.42.	Major Murdoch	Forf 3 dys pay

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Nature of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	29/Jul/42	Cnr.		AWL from 2359 hrs 29 Jul 42 to 1930 hrs 17 Aug 42. Tot 18 days 19 hrs 31 Mins. Sec 15 (1) AA	Documentary	18 days F.P. 18 days pay & cost of apprehension 10/2	29 Aug 42.	CW Hanna Major	19 days pay under FR&I 149 (1)(a)

M. J. McLean Major

Certified true copy of Original M.F.M. 6

.....Capt.
(G.A. Eaton) Adjt.
2nd Cdn Fld Regiment.

E. ARMY FORM B 2340.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
H100330	Gunner	Smith, Harley Charles	2 Cdn Fd Regt.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with:—

Note.—At a trial by field general court martial this summary may be completed from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not inserted in the proceedings.

† Sec para. 617, K.R., 1940.

* The numbers hereto stated should agree with the number or entries in the conduct sheets, provided that the number given in the first column is the total number of entries, and to any recognised special acts of gallantry or distinguished conduct.

Instructions.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For AWL Sec 15 (1)	3 times	2 times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

~~Number of instances of gallantry or distinguished conduct~~

~~0~~

~~Date and nature of entries in the conduct sheets of the record.~~

W. J. Patterson Major

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* ~~The accused at the present time is under sentence for~~

N.A. beginning on the N.A. day of N.A.

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and ~~one~~ FOUR ~~one~~ days in military custody, making a total of ~~one~~ FOUR days, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 43 yrs

6. The date of his ~~enrolment~~ attestation specified in his ~~record of service~~ attestation paper is 4 Sep 39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is Nil

8. The accused is entitled to deferred pay or gratuity in respect of Nil service.

9. The accused is entitled to reckon Nil service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or is in possession of or entitled to (state any military decoration or reward)*). Nil

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N.A.

12. (*In the case of an officer.*) The accused holds in the army the rank of N.A. dated N.A. and in his regiment (*or corps or department*) the rank of N.A. dated N.A.

(*[illegible]*) A.A.12602/144 125,000 6/41 A.A.E.W.Ltd. Gp.4/8

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B10030 Rank GUNNER Name SMITH H.G. of 2 Gdn Fld Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		NIL		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 30th day of NOVEMBER 1942

Capt.

Adjt. 2nd Field Regt. R.C.A. C.A.S.F.

18. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

Date of Promotion.

In the rank of ..... years ....

In the rank of ..... years ....

In the rank of H.A. years ....

(INSTRUCTION—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be obtained from such sources as are available and the paragraph completed accordingly.)

REVIEW SHEET

F.G.C.M. - Trial: B.10030 Gnr. Smith, R.C., 2 Cdn Fd Regt

Date of Trial: 30 Nov 42

President of Court: Major M.M. McLean, 1 Cdn A.Tk Regt

1. For the information of the officers asked to sign below, the following irregularities are noted :

(a) Accused should not be sworn to make a statement (R.P. 40).

(b) Name of unit omitted from minute of promulgation.

2. May these remarks and the authorities quoted be read by the following officers, signed and returned to this Headquarters.

O.C. 2 Cdn Fd Regt

Adjt 2 Cdn Fd Regt

President

A.D.J.A. 1 Cdn Div

Staff Offr for Convening Offr

Staff Offr for Confirming Offr

Jas Graham
Captain
A.D.J.A. 1 Cdn Div

4 Dec 42

40-147

Pte. Smith N. B.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: G 47292 Pte Harry Cecil Smith N Shore R

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 5(1)	Not guilty	Not guilty	
2nd	AA 9(a)	Not guilty	Guilty	
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 5 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo detention for 18 months

(Sgd) [illegible] Capt 20 Jan 45
Judge-Advocate, if any. Date awarded.

(Sgd) [illegible] Major
President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 (1).)

My decision on the finding(s) and sentence set forth in Part I is:

I vary the sentence so that it shall read 'to undergo detention for nine months' and confirm the finding and sentence so varied.

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~ (1. AA 57A. Delete if not used.)

Date 21 Jan 45

(Sgd) Jas Roberts Brig
Commanding [illegible] Inf Bde
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
G 47292 Pte Harry Cecil Smith	23 Jan 45	B A Oulton A/Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AD 100. 42-147

RECEIVED 19 MAR 45 CMHQ

FIELD GENERAL COURT-MARTIAL

CPA66 (To Illus. QF AFA31) 40/P & S/Lithos 10/44 4/38B

Convened by Order of Brig Jas A Roberts Comd 8 Can Inf Bde dated 18 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
G 47292	Pte		Harry Cecil	SMITH	N Shore R

PROCEEDINGS REVIEWED 20 Mar 45 [illegible]
REVIEWING OFFICER, JAG BRANCH, CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 19 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation on this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 69-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 537. 2. AA 46(E), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ as Interpreter? Ans

~~The Interpreter is sworn.~~(1) ~~Do you object to~~ ~~The shorthand writer is sworn.~~(1) as shorthand writer? Ans

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(E). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Brig	F F Moon	N Shore R
Member	Capt	W Gilkison	R de Chas
Member	Lt	D T A Mallonie	N Shore R
Judge-Advocate	Capt	[illegible]	HQ 3 Cdn Inf Bde
Prosecutor	Lt	J A Sutton	N Shore R
Defending Offr	Lt	H. Hopkins	N Shore R

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dir p 23.)

A8. The accused ..... before arraignment make(s) (no) objection. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 17), or as to one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposite, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned (~~Separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 2 A.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

4 Capt Que was not sworn after the prisoner was taken by him wishing [illegible]

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on the ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on the ..... charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Fix here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No.(1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (has) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not~~ establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the ~~latter charge(s).~~(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans Make a statement. Do you intend to call witnesses on your behalf ? Ans Yes. Are they witnesses as to character only ? Ans Yes.

(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E3 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, ~~The President announces that the accused is found Not Guilty on all charges and as to his personal particulars,~~ and ~~that the proceedings are accordingly terminated.~~ Part I of the Schedule is dated and signed.(2)

(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans No.

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 3. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier's having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3)

(1. *AFB 213 or AFB 2067.* 2. *Ref fn 6.* 3. *RP 46, KR Can 158. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes. Nil effs.

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, *if any.*(2)

(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 343-366. Overseas AO 109/1973, MML p 60, 737-739. As to sentences assigned for civil offences to the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(3), 98(1), KR Can 364.* 2. *RP 50. As to release from arrest for Confirming Offr see KR Can 367. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The Accused, G/47292 Pte Harry Cecil SMITH, North Shore (New Brunswick) Regiment, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
A A SEC 5 (7)

WHILE ON ACTIVE SERVICE

MISBEHAVING BEFORE THE ENEMY IN SUCH A MANNER

AS TO SHOW COWARDICE

in that he

in the field on 8 Jan 45, during an attack on the village WYLER, and when under the enemy's fire dismounted from his carrier saying " I cannot go on, shelling is too much" and ran away.

ALTERNATIVE CHARGE
A A SEC 9 (2)

WHILE ON ACTIVE SERVICE

DISOBEYING A LAWFUL COMMAND GIVEN BY HIS

SUPERIOR OFFICER

in that he

in the field, on 8 Jan 45 when ordered by Lieut R G Albert to get back in his carrier did not do so.

J.W.H. Rowley Lt-Col.

(J.W.H. Rowley) Lt-Col.
Comd North Shore (NB) Regiment.

In The Field.
13 Jan 1945.

To be tried by Field General Court Martial.

Jas A Roberts Brig
Comd 8 Can Inf Bde

15 Jan 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G 47292	Pte		Harry Cecil	SMITH	N Shore R

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person[x] named above as the accused, being subject to military law, has (~~xxx~~ committed the offence[x] set forth in the Charge Sheet[x] attached and on (*date*) 15 Jan 45 endorsed by me, (~~xxxxxxxxxxxxxxxx~~" To be tried by Field General Court-Martial ",

2. And whereas I am of opinion that it is not practicable that such offence[x] should be tried by an ordinary General Court-Martial ; ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person[x] and to consist of the Offrs appointed or detailed hereunder.

4. ~~xxxxxxxxxxxxxxxxxxxx

NORTH SHORE (NEW BRUNSWICK) REGIMENT

This is to certify that I have this day examined C/47292 Pte. Smith, H C NORTH SHORE (NEW BRUNSWICK) REGIMENT, and in my opinion they are fit to undergo trial by Field General Court Martial.

In The Field.
19 Jan 1944.

(J. McCabe, Capt) RCAMC.
MO North Shore (NB) Regiment.

1.

Prisoners.

1 W. Pos. Lt R.C. Albers N Stone R

Sworn.

Dec 6 Jan 45 I was on 12 Pl D Coy and the armour was a number of my pl. At approx 1600 hrs 6 Jan 45 we were pressing on a canine some reds to the village of HITTERD. I was in the leading carrier of my pl. The armour was riding in the same carrier which contains all of 7 Sec. Our job was to follow 10 Pl as far as a road bend and then swing off to the left to our orders and objectives. Our task was to take prisoners and destroy the enemy in the position. Road winds approx 1500 yds and return by a different route. The armour has 5 inch guns on them for close support occasions.

As we were proceeding along we stopped momentarily and I happened to turn around and saw the armour getting out of the

carrier. There was a lot of shelling going on but it was over their Party laying down a creeping barrage. There were a few enemy shells landing between 100 - 200 yds away from us. I asked Lieut where he was going and he replied that he could not go on as the shelling was too much for him. I told him if the rest of us could go through it so could he and ordered him to get back on the carrier. He made no reply and started running back. Then our own tanks and we proceeded to the attack. I saw him running towards our own lines.

X Exam The enemy wiring was not very heavy.

Exam by P.

At the point where Lieut got out of carrier we were approx 1000 yds from our objective by the road we were going. We were about 300 yds from "P" objective, the nearest enemy position.

I would judge that the enemy fire was all aimed at the remaining members of the section now wounded or killed in the attack. L/Cpl Sharp, who was the section leader is now in hospital.

At this time the enemy got out I heard nothing this by the rest of the section and the ~~enemy~~ acts of the enemy did not appear to have any visible effect on the section, who passed on to the attack both his wounded without any wavering.

R P P B B, compliments. Could adjacent unit was told to pass it to proceed to troops of L/Cpl Sharp can be found.

4.

The court resumes at 1400 hrs
on Jan 45 at an 905.

LW C 19525 L/Cpl Storey G.A. N Cdn
Pros Regt sworn.

After an about 1610 hrs 8 Jan 45
I was riding in a carrier
going into an attack. I was
sitting at the rear of the
carrier and the accused was
sitting beside me. Smith
jumped off the carrier. I
told him to get on and heard
him about to him to get
on. He did not say anything
but went to the rear. He
made an attempt
to get back on by turning
back toward the carrier.
The shells kept on dropping
and he turned away and
went back. I did not see
him after that.

X Exam Smith did turn toward the
carrier.

No Re-x am.

RP 83 (B) complied with.

H

5.

Statement by accused.

I came to the Regt on aug 6 - and came through all attacks and bombings that the Regt had until appox 2 days before the ending of the Falaise pocket when I became nervous when under shell fire as a battle exhaustion case. I was at FDS and CCRS for 2 weeks without treatment. I then came back to the Regt on the day of the raid and the noise of the carriers and the shelling caused me to become nervous and frightened, so I jumped off the carrier. I was ordered to get back on which I started to do and the carrier moved on. Being left there I did not know what to do so returned to our own lines. That is all, sir.

In By 2219/1 L/Sgt Lingley 4C. & Sam Q Evans.

I met accused the mid of August, was an exceptionally good soldier but was always nervous. He was sent out by the M.O. just before the attack on Falaise and when he came back he was transferred to another pl.

No X Exam

Exam by Pl.

he knew the any trouble with Smith and he was always willing to do his share. he was in Pl H& at one time. This usually means that the soldier is smart, clean cut and a good all around soldier.

R R 68 (B) complies with

address by Prosecution.

The crime of any deadly not premeditated. but his former he made an attempt to get on the same.

The Pros off declines to reply.

Pl. The accused is charged with an offense in relation to the enemy. Pa 4 665 and to the court and explains.

The alternation charge read and explained.

The jurors as named are sent back to the court.

The court is sworn the the accused must be given the

danger of any unsuitable
doubt which arises.

Plea of Mitigation for
G 47292 Pte Harry Earl Smith

Pte Smith is a very young man, only twenty years of age. He has been in the Army approximately two years, enlisting when only eighteen. His past record has been good. He realizes that the charges against him are very serious but to counterbalance that he has been through a lot. He came to the battalion on Aug 6th, just prior to the bombing of August 8th. That alone was enough to shake any mans nerve. That experience was followed closely by Sweeney Woods, the only show where the bn has had to retreat. All this happened during his first week with the regiment. He carried on with the bn through most of the Scheldt fighting

but was finally evacuated towards the end of the Scheldt campaign with battle exhaustion. However he was only out two weeks when he was again sent to the bn. He was still nervous and jumpy under shell fire, and I plead for the leniency of the court and ask them, when they are considering the sentence, to realize that when Pte Smith came under shell fire while riding in the carrier, that his nerve left him completely and that he jumped out, as a natural and instinctive urge to protect himself. It is also evident that the crime was not pre-meditated.

H.A. Stephen
Lieut.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
G/47292	PTE	SMITH H C	NORTH SHORE(NB)REGIMENT

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers hereto stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For N/A ..... times.

For N/A ..... times.

For N/A ..... times.

For N/A ..... times.

Date of first entry in Field Conduct Sheet N/A

Date of last entry in Field Conduct Sheet N/A

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

XXXX

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		N - I - L		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 13TH day of JANUARY 1945

J.W.H. Rowley LtCol.

(J.W.H. Rowley) Lt-Col.
Comd North Shore (NB) Regiment.

M.F.M. 6
(A.F. B.122)
40/P & /2136 (2965)

No. 647292 Name SMITH H C | Sqn., Battery, or Company | Corps C I C | Date of enlistment 25/1/43 | G.C. Badges | Service or Proficiency Pay N/A | Character

Date of last entry in Company Conduct Sheet: NIL | No. and date of last drunk: NIL | Period not reckoning towards freedom from extra fine: N/A | Sheet No. 2 | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
"SHEET NO 1 DESTROYED - 25 JUL 43" "DATE OF LAST ENTRY - NIL" "NO OF CASES OF DRUNKENNESS - NIL"									

CERTIFIED TRUE COPY
B A Dutton Capt & Adjt
13 JAN 45

(P.T.O.)

Summary of evidence in the case of C 47292 Pte Smith H.C. North Shore (New Brunswick) Regiment, CAO.

By direction of the Commanding Officer the evidence is taken on oath.

First Witness: Lieut. R.G. Albert, North Shore (N.B.) Regiment having been duly sworn states:-

I am Lieut R.G. Albert commanding 12 Platoon "D" Coy. to which Pte. Smith. H.C. belongs. At approx. 1615 hrs. 8 JAN 45 as we were proceeding on a carrier-borne raid to the village of Wyler, I happened to turn around and saw Pte. Smith getting out of the carrier in which I was riding, while we were stopped momentarily. I asked him where he was going and he replied that he could not go on as the shell-fire to our front was getting too close and we might be hit any minute. I then told him that if the rest of us could go through with it, so could he, and ordered him

back into the carrier. He made no reply but turned back and started running towards our own lines, and we then rode on.

The evidence was read back to the witness.

The accused did not wish to question the witness

~~Third~~
Second Witness: L/Cpl Storey G.A

having been duly sworn gave
evidence as follows:

At approximately 1615 hrs on 8 JAN 45
the accused jumped out of the
Carrier and I told him to get
back on and I heard
Mr. Albert also tell him.
He started to get back on
Again and turned and
went the other way back
towards starting point.
That was the last I
saw of him.

The evidence was read
back to the witness

G A Storey

The accused did not wish to question the witness

-2-

The accused was cautioned as follows:

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused does not wish to make any statement.
The accused does not call any witnesses.

I certify that the foregoing Summary of Evidence, consisting of one page, was taken down by me in the presence of the accused and that R.P 4 (c)(d)(e)(f) and 6(1)(a) have been complied with.

J Chetwynd, Lieut
North Shore (N.B) Regt

SUMMARY OF EVIDENCE IN THE CASE OF G/47292 PTE SMITH, HARRY CECIL, NORTH SHORE (NEW BRUNSWICK) REGIMENT, CANADIAN ARMY OVERSEAS.

By direction of the Commanding Officer the evidence is taken on oath.

FIRST WITNESS Lieut R G Albert, North Shore (New Brunswick) having been duly sworn, states:

I am Lieut R G Albert, commanding 12 platoon, "D" Coy North Shore (NB) Regiment, to which Pte Smith, H C belongs. At approximately 1615 hrs 6 Jan 45, as we were proceeding on a carrier-borne raid to the village of WYLER, I happened to turn around and saw Pte Smith getting out of the carrier in which I was riding, while we were stopped momentarily. I asked him where he was going and he replied that he could not go on as the shell-fire to our front was getting too close and we might be hit any minute. I then told him that if the rest of us could go through with it, so could he, and ordered him back into the carrier. He made no reply but turned back and started running towards our own lines, and we then rode on.

The Accused declines to cross-examine the witness.

(R G Albert) Lieut.

SECOND WITNESS G/19525 L/Cpl Storey, G A, North Shore (New Brunswick) Regiment having been duly sworn, states:

At approximately 1615 hrs 6 Jan 45 the Accused jumped out of the carrier and I told him to get back on and I heard Lieut Albert also tell him. He started to get back on again and turned and went the other way, back towards the starting point. That was the last I saw of him.

The Accused declines to cross-examine the witness.

(G/19525 G A Storey) L/Cpl.

The Accused was cautioned as follows;

Q.1. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A.1. I do not wish to make any statement.

The Accused does not call any witnesses.

CERTIFIED THAT RULES OF PROCEDURE 4 (C) (D) (E) (F) and (G)(13) have been complied with.

I CERTIFY THAT THE FOREGOING SUMMARY OF EVIDENCE CONSISTING OF TWO PAGES WAS TAKEN DOWN BY ME IN WRITING IN THE PRESENCE AND HEARING OF THE ACCUSED THIS 13TH DAY OF JANUARY 1945.

In The Field.
13 Jan 1945.

(J C Sutton) Lieut.
North Shore (NB) Regiment.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : .....

Charge. (Insert " alternative " where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st			
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ..... days, of which ..... days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

(Sgd) .....
Judge-Advocate, if any. Date awarded. (Sgd) ..... President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6,46(A), 51-56, 120, MML pp 739-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

Date ..... (Sgd) .....
Commanding .....
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

CFA96 (To issue of AFA81 40/P & S/1698 (40/10)) 4/38B

Convened by Order of Brig Jas A Roberts Comd 8 Cdn Inf Bde dated 15 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C-47292	Pte	(CERTIFIED TRUE COPY) Harry Cecil	Smith	N Shore R

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) Holland on (*date(s)*) 19 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 20/37

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Instrs". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.

A5. President to accused : Do you object to ..... as interpreter ? Ans .....
The Interpreter is sworn.(1) Do you object to ..... as shorthand writer ? Ans .....
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?
Ans No (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 110(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	P P Moor	N Shore R
Member	Capt	W Atkinson	R de Chaud
Member	Lieut	D J A McElwaine	N Shore R (F)
Judge-Advocate	Capt		
Prosecutor			
Defending Offr			

Questions by President : Is the Prosecutor a lawyer ? Ans ..... Is the Defending Offr a lawyer ? Ans .....(2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D/ p 2.)

A8. The accused ..... before arraignment make(s) (no) (a) plea ..... (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (AP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Instrs. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Instrs.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form .....

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.[2]

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).[1] If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]

President to accused: Do you wish to make a statement? Ans.....[5]

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 2, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.[1] The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.[1]

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex.....initialled and read aloud by the President.[1]

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by see of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....[1]

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.[1]

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.[1]

(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.[1] The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).[2] The Court is closed, and considers the submission.[3] The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).[4]

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn, and you will not be subject to cross-examination.[3] But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.[4] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans.....Do you intend to call witnesses on your behalf? Ans.....Are they witnesses as to character only? Ans.....

(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1]

(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. Cf* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.

(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.[1]

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.[1]

(1. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?[1]

Ans.....

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service[1], and certified true copy (copies) of Conduct Sheet(s)[2], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex.....and Ex.....respectively.[3]

(1. *MFR 255 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?[1] Ans.....

(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]

(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.[2]

(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 128, 182, RP 46-50, 68, 118, 119(A), KR Con 308, 330, 563-566, Overseas 140 309, 2323, MML p 66, 757-759. As to sentences assigned for civil offences by the law of England see AA 40(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(7), KR Con 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : .....

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st			
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ..... days, of which ..... days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

(Sgd) ..... (Sgd) .....

Judge-Advocate, if any. Date awarded. President. *(RP 45, 50.)*

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. *(AA 54(5), RP 120(F), MML p 760.)*

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(C). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) .....

Date ..... Commanding .....

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. *(RP 53, KR Can 576, 577.)*

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL

CPA86 (To Issue of AFA1) 40/P Jc B. 1608 (40/0)

4/38B

Convened by Order of Brig. Jas A Roberts Comd 6 Cdn Inf Bde dated 15 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G-47292	Pte	(CERTIFIED TRUE COPY) Harry Cecil	Smith	N Shore R

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) Holland on (*date(s)*) 19 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT/20/37

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER. NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A85, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 72, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted,(1) accused is (are) amenable to military law, and each charge discloses an offence.(2)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused : Do you object to ..... as interpreter ? Ans .....

The Interpreter is sworn.(1) Do you object to ..... as shorthand writer ? Ans .....

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 31, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	F P Moor	N Shore R
Member	Capt	W Atkinson	R de Chaud
Member	Lieut	D J A McElwaine	N Shore R (F)
Judge-Advocate	Capt		
Prosecutor			
Defending Offr			

Questions by President : Is the Prosecutor a lawyer ? Ans ..... Is the Defending Offr a lawyer ? Ans ..... (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused ..... before arraignment make(s) (no) (a) plea .....(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 135, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 31(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record (per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form .....

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*b*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your pleas to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)

(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.

(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)

(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 93(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans.....Do you intend to call witnesses on your behalf? Ans.....Are they witnesses as to character only? Ans.....

(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 495. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 84(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. AA 54(2) (6), RP 42, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans.....

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex..... and Ex..... respectively.(3)

(1. MFB 355 or MFB 296. 2. MFW 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans.....(2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 122(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. When several accused tried separately see RP 71 (D). Give sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SQ-102

Ft Smith N.6.P.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K45446 Pte Harvey Clifford Percival SMITH, Mantmr R

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 41	Not Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn b.)

~~At present under sentence for~~ _____ beginning on (date) _____ (1) JAB

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 18 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with hard labour for one (1) year.

(Sgd) " John A Bourne " Major — 23 July 45 — (Sgd) " D C MacDougall " Maj — President. (RP 45, 50.)

Judge-Advocate, if any. — Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date _____ (Sgd) _____ Commanding _____

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 13, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the findings and sentence set forth in Part I is:

I confirm the finding and sentence of the court.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1) DSC

(1. AA 57A. Delete if not used.) HC

(Sgd) " I B Cumberland " (I B Cumberland) Brig

Date 25 Jul 45. — Commanding Cond 5 Cdn Armd Bde — Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr
K45446 Pte Smith H.C.P.	3 Aug 45	" F C B Cumine " Capt a Adjt The Testar Regt (M)

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CPA86 (To Illus of AFA39) 40-P-36-8-43-(1001) 4/388

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig I B CUMBERLAND Comd 5 Cdn Armd Bde dated 20 Jul 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/oppmt, if any, see AA 182, 183, fns. KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K-45446	Pte	Harvey Clifford Percival	SMITH	Mantmr R (M)

CERTIFIED TRUE COPY
W. B. Bakewell

PROCEEDINGS OF TRIAL.

Held in the Fd in ~~Canada~~ U.K. ~~5 Cdn Armd Div~~ Army Gp. on (date(s)) 23 Jul 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order. CF 495, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3) JAB

(1. As to use of Summary of Evidence see RP 17 fn d. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 0915 hours trial commences. JAB

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial. ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(1) JAB

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to A Galpelmar as interpreter? Ans No sir JAB

The Interpreter is sworn.(1) ~~Do you object to the shorthand writer as interpreter?~~ ~~The shorthand writer is sworn.(1)~~ as shorthand writer? Ans _____

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No sir (2) JAB

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj	D C MacDougall	5 Cdn Armd Regt (CDMG)
Member	Capt	J O Baker	9 Cdn Armd Regt (SCO)
Member	Lieut	W S Davis	1 Cdn Armd C Regt (RCD)
Judge-Advocate	Major	J A Bourne	DJA HQ 5 Cdn Armd Div
Prosecutor	Lt	A S Webb	Westar R (M)
Defending Offr	Lt	G Wardin	Westar R (M)

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2) JAB

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (3) and fn 2 were not followed. See DI p 3.)

A8. The accused _____ before arraignment make(s) (no) (~~a~~) plea. JAB (3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(f), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 120, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. JAB

(1. RP 31, 112. See para 1 of Instrs p 2. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes. 3. RP 71(C), and use separate copies of CF 484 to record proceedings. Where more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 484 to record proceedings.)

A10. The Court (~~is cleared and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D JAB

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS. 140/1

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans NO .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).~~(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, ~~the trial~~ will proceed on the former, but the accused is (are) found Not Guilty on ~~the latter charge(s).~~(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence on yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans Give evidence on oath. Do you intend to call witnesses on your behalf ? Ans Yes. Are they witnesses as to character only ? Ans N/A .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the Finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President ~~announces the finding(s), if any, of Not Guilty, and~~ states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1) ~~i.e. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.~~(2)
(1. *AA* 54(3) (*c*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans Yes. Character witnesses.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by A.A 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "F" and Ex "G" respectively.(3)
(1. *MFR* 255 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 338. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans I will through defending Offr.(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(3), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566. *Overseas AO* 309, 1323, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1(*B*), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

"D C MacDougall" President JAB

MEDICAL OFFICER'S REPORT

I certify that I have this morning examined
K45446 Pte Smith H.C.P. and in my opinion
he is fit to undergo trial by Court Martial.

Station. In the Field.

23 July 45

"L C Stindel" Capt
R.C.A.M.C.

FIELD GENERAL COURT-MARTIAL

CFA 95 (In lieu of AFAD) 40/PAM/1697 (2468)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
K45446	Pte		Harvey Clifford Percival	SMITH	Westmr R (M)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 20 Jul 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto~~.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Maj	D C MacDougall		9 Cdn Armd Regt (SCER)

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt or Lt	(to be detailed)		1 Cdn Armd C Regt (RCD)
Capt or Lt	(to be detailed)		9 Cdn Armd Regt (RCD)

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lt	(to be detailed)		Westmr R (M)

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
Maj	J A Bourne		DJA HQ 5 Cdn Armd Div

On Active Service in the Fd

in HOLLAND
(Country.)

" T H Cumberland "
(Signed personally. RP 105 fn 2.)
(T H Cumberland) Brig
(Rank.)

Date 20 Jul 45

Commanding Comd 5 Cdn Armd Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use at trial.)

JAB

DCM

CHARGE SHEET

The accused, K45446 Pte Harvey Clifford Percival SMITH, The Westminster Regiment (M), a soldier of the Canadian Army Overseas is charged with:

First Charge
AA Sec 41

WHEN ON ACTIVE SERVICE COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, INDECENT ASSAULT, CONTRARY TO SEC 52 OF THE OFFENCES AGAINST THE PERSON ACT, 1861

in that he

In the Field in HOLLAND, on 5 July 45, indecently assaulted Jantje Holt, a girl under the age of sixteen years.

Approved (W.E. Cameron) Major DJA 5 Cdn Armd Bde

(G C Corbould DSO) Lt-col
Comd
The Westminster Regiment (M)

In the Field.
19 July 45.

To be tried by Field General Court Martial.

(I H Cumberland) Brig
Comd 5 Cdn Armd Bde

In the Field,
20 July 45.

DCM

JMB

JAB

OFFICERS UNDER INSTRUCTION

Lieut	C Eyres	2 Cdn Armd Regt
Lieut	J P Moore	5 Cdn Armd Regt
Lieut	F H Smith	3 Cdn Armd Regt
Lieut	J M Scott	9 Cdn Armd Regt

D3

First witness Prosecution: Hendrick Baving, 141 Roden, Prov of Drenthe, Holland, having been duly sworn, states through the Interpreter:

On 5 July 1945 about 1830 or 1845 hrs, I was coming from milking. My wife said something and I looked and I saw the accused cycling on a bicycle and he had Jantze Holt with him. They went down the road and turned off into a field of rye. I followed and I saw them sitting near a ditch. The accused was sitting and Jantze was sitting on his knee. The accused had his pants unbuttoned and I could see his penis. He did not use her. The pants of Jantze were down. I spoke to the girl. The accused came with Jantze on his bike. I saw them again near a cafe. The accused went inside the cafe and he came back and had a bar of chocolate in his hand. He turned the corner and gave Jantze the bar of chocolate. I again spoke to Jantze and I saw her go home. I came and spoke to her parents and she came home when I was there.

Cross examination.

I followed the soldier because my wife said there was something suspicious. Jantze is the daughter of our neighbor. They were about 100 metres off the road. I was about 6 metres from the soldier and girl. The girl was facing the soldier. When I spoke, the accused turned his head but said nothing. The girl did not cry, but laughed when she saw me. I called to Hendrichus Van der Velde who was nearby.

Re-examination

It was not possible to see where the soldier and girl were from the road.

Questioned by the Court

They were not near a road. I called Hendrichus because I was alarmed.

Questioned by JA

Jantze was sitting on the accused's knee with both her legs on the same side of the accused. Jantze's pants were beneath her knees. When I saw the accused penis it was outside of his pants. I don't know where accused's hands were. Jantze's hands rested on her own body. The accused's penis was not touching Jantze. I walked back to the main road to call Hendrichus. It was there I saw accused and Jantze on the bike again.

RF 83 (B) complied with.

Second Witness Prosecution: Jan, Holt, Beerenstraat 207, Roden, Holland, having been duly sworn is examined by the Prosecutor, through the Interpreter.

My daughter Jantze Holt was born on 5 January 1939. She is six years old.

Cross examination

My daughter tells the truth as far as I know.

No re-examination

Questioned by JA

On 5 July 45 my daughter did not tell me anything about what happened.

RF 83 (B) complied with.

Third Witness Prosecution Jantze Holt (The court decides the witness has not sufficient understanding to be sworn but understands duty of speaking the truth)

The accused pulled down my pants. Nothing else happened. We were in the field. I saw his penis. He spoke to me but I did not understand. We left the field because the accused was alarmed. We went to a cafe. Then I got a bar of chocolate. I did not tell my parents what happened.

No cross examination

Questioned by JA

I was sitting on the grass. The accused was kneeling. I did not sit on his knee. The accused's pants were unbuttoned. I saw him unbutton them when I was on the grass. That is when I saw his penis. I knew the accused before that day. Boving was there that day when this happened.

RP 83 (B) complied with.

Evidence taken pursuant to Children and Young Persons Act, 1933 sec 38 - Archbold P434, the same being not on oath

First Witness Defence The accused, having been duly sworn is examined by the defending officer.

I met Jantze Holt about 1730 on 5 July 45. We were in front of the house and she asked if she could go for a ride with me. We were riding up and down the road. We left the town of Rosen. Where we went off the road there was a side road leading to the pasture. It went for about 200 yards. She pointed down the road and said something in Dutch. I did not understand but thought she wanted to go down there. When turning around I stopped and went to the bushes for a piss. I sat down on the ground to fix my gaiters. I sat down. I was not more than 5 minutes off the main road. I did not see Hendrikus Boving. I first saw him when we returned to the main road. He did not speak to me. I again saw him next day on a identification parade. I did not notice the child take off her pants. The girl was standing behind me while I was urinating.

Cross examination

When I urinate I usually put my penis away. I did not have it out after I finished. I gave Jantze a chocolate bar because she asked me.

No re-examination

Questioned by Court

I dont know if I saw Boving or not that day. We were about ½ mile from where we started the ride. Then we turned off the main road. It was about 5 minutes from the time I left the road till I returned.

Questioned by JA

I buttoned my pants up after urinating. I did not have my penis out when sitting down. I dont know any reason why Boving would say he saw my penis. Jantze was sitting on my knee while I was buttoning my gaiters. I did not take her pants down. I did not see them down. I could see up to her knees. I fixed the gaiter while she sat on my knee.

RP 83 (b) complied with.

First Witness Prosecution: Hendrick Boving is recalled by the Court

Questioned by JA

The accused's penis was outside his pants. Jantze was sitting on his knee. The accused's penis was in erection. It was stiff. From the time I went for Hendricus Van der Velde until I saw the accused again on the road was 2 or 3 minutes. From the time I last saw the accused he left the road until I saw him sitting with Jantze was 5,6,7 minutes.

RP 83 (B) complied with.

JAB.

No Cross Exami-

The defending Offr does not wish to recall the accused.

Prosecutor's Closing Address

1. 1st witness saw pants down and accused's penis.

2. There is corroboration.

3. Consent is no defence.

Defending Offr's Closing Address

1. Boving was indefinite about details.

2. No evidence that giving chocolate was in any way improper.

3. Childs' evidence is inconsistent with other evidence. Her evidence is not reliable.

4. Not sufficient evidence to convict.

Pl
First Character Witness: Lieut R E Mannering , Wessin Regt, having been duly sworn is examined by Defending Offr.

I know the accused. Up until 3 weeks ago I was Pl Comd of accused. He came to Italy in Nov 43 with BCD, and was severely burned at Hitler Line in May 44. He returned from UK to Westmin Regt in Italy in Dec 44. He saw action until wounded again in April 4 . He was a very good soldier in and out of line. He gave no trouble. I was shocked to hear of this charge.

No cross Exam or Questions by Court or PA

RP 83 (B) complied with.

Pl
Plea in Mitigation

1. Refers to accused record.

2. Clean conduct sheet.

3. Plea for leniency.

EB

SUMMING UP BY JA

1. Duty of JA to sum up and advise the Court on the law. Court should accept advice of JA on the law.

2. Court is the sole judge of the facts.

3. Credibility of the witnesses is for the court. May believe whole of a witness' evidence or disbelieve it entirely, or may believe parts and disbelieve other parts, or may believe one witness' evidence as against another.

4. Accused is presumed to be innocent until he is proved guilty.

5. Burden of proof is on the Prosecution.

6. Accused is entitled to the benefit of any reasonable doubt in the minds of the members of the court.

7. Reasonable doubt defined.

8. Refers to AA Sec 41 and Offences against the person Act, 1861, Sec 52 (Archbold p 1032)

9. Refers to MML p 113 para 34 and Archbold p 927 on assaults generally.

10 Refers to Criminal Law Amendment Act, 1922, Sec 1 (Archbold p 1032) re consent being no defence in case of a person under 16 years.

11 Where a prosecutrix is of tender years and gives unsworn testimony, the accused may not be legally convicted unless her evidence is corroborated by other evidence. The Court is warned that such testimony is weak and inferior to sworn testimony.

12 Corroboration must be as to the fact of an offence having been committed and the implication of the accused in it.

13 Evidence of an eye witness other than the prosecutrix may, if believed, supply the necessary corroboration. The Court may convict solely on the evidence of an eye witness other than the prosecutrix if such evidence is believed. Accused's evidence may supply the necessary corroboration.

14 Refers to circumstantial evidence of girls pants being seen, and advises that circumstantial evidence must not only be consistent with the accused having done the act but inconsistent with any other rational conclusion but that the accused did the act.

15 President, Prosecutor and Defending Offr state they wish nothing further added to JA's address.

JAB

JAB

EX "F" DCM

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED JAB

(For Use at Trials by Field General Court-Martial only)

Number	Rank	Name	Regiment (or as the case may b
K45446	Pte	SMITH H.C.P.	WESTMINSTER REGT (MOTOR)

NOTE.- The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the Proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the Accused, exclusive of convictions by a court martial or a civil court:-

NIL. NIL.
For .... times

For .... times

For .... times

For .... times

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

3.* ~~The accused was~~ FCMC

~~mentioned~~ ..... FCMC

~~beginning~~ ..... say on ..... FCMC

4. The accused has been awaiting trial on the present charge for ..... days in civil custody and for ..... days in military custody, making a total of ..... days of which ..... days were spent in Hosp.

5. The present age of the accused is .....

6. The date of his attestation is 25.AUG.42.....

7. The service which the accused is allowed to reckon is .....

8. The accused is in possession of ~~NOVSM~~ & Clasp

9. (If the accused is a warrant officer or NCO). The accused has served continuously, without reduction, to the present date -

Date of Promotion

In the substantive rank of ....

In the war substantive rank of ....

In the acting rank of ....

FCBC

INSTRUCTION - If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

* Strike out if not applicable

State the military decorations (if any) held by accused.

Army Form B.296 (War)

SCHEDULE OF CONVICTIONS BY A COURT - MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and place of trial	Charges upon which convicted	Sentence of Court	Punishment remitted or sentence suspended

P.C.B.C.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 18 day of July 45

" F C B Cummins "
Capt & Adjt
THE WESTMINSTER REGT (M)

No. K45446 Name SMITH H.C.P. | Sqn, Battery, or Company | Corps CIC | Date of enlistment 25-4-42 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/FAS/136 (5413)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character EX "G"

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or if order dispensing with trial	By whom awarded	Remarks
				21 APR 43 Free of entry.					
				Certified true copy from the regimental books in my custody. 16 Jul 43.					
						DCM			
				" F C B Cummins " Capt. A/Adjt.		JAB			

(PTO)

Summary of Evidence in the case of K.45446 Pte Smith, W.C.P. of "C" Coy, The Westminster Regiment (M).

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS:

Hendrick BAVING, cattledealer, of Nr 141 Roden, province of Drente, Holland, having been duly sworn states:

"I am Hendrick BAVING, cattledealer, of Nr 141 Roden, province of Drente, Holland. On Thursday the 5th of jul 45 at about 5.45 p.m. my wife and I were at our meadow near the road Roden-Nieuw Roden. My wife drew my attention to a Canadian soldier on a bicycle, who in the company of the 6 year old daughter of Jan HOLT was leaving the main road, taking a sidepath. As this seemed suspicious to me, I followed them. When I had reached them I saw the soldier sitting near a ditch with the child on his knees. His trousers were opened and the child's pants had been pulled down. I had no impression that something more had happened so far; besides there would not have been time for that, as I had followed them at once.

I told the girl that she must return home and went back at once to fetch Hendrickus van der Velde, who was talking to my wife. On my way back however the soldier went by again, Jantje HOLT behind him WITH on the bicycle. Then my wife and I returned to Roden with our milkcart. As we passed Cafe'de Vries, we saw Jantje HOLT waiting before the house. The soldier mentioned above just came around the corner and made a sign to her. Again I told Jantje to go home, but she went after the soldier to the side of the house and came back with a bar of chocolate. After this she went home and I followed her to inform her parents.

Holt went to Dr Weggemans with his daughter. That same night Holt went to see the Burgomaster.

Next day I came to the municipal hall with my wife and Hendrickusvan der Velde on request of the Burgomaster, who took us to the Beukhann, where some soldiers were drawn up. Without the slightest hesitation we all three recognized among them the soldier we had seen the day before with Jantje HOLT. On request of the Burgomaster I pointed him out to the Lieutenant who was present.

This statement having been read by myself and signed, at Roden on 7th July 1945

H. Baving

Hendrick BAVING

B C M

SECOND WITNESS:

Jan HOLT - farmer of Heerenstraat 209, Roden, province of Drente, Holland, having been duly sworn, states:

"I am Jan HOLT, father of Jentje HOLT who is the child in this case.

On the day of Thursday 5 Jul 45 at about 1830 hrs Hendrick BAVINK came to me and told me that my daughter was with a Canadian Soldier and she was without her pants and the soldier's pants were open.

At about 1900 hrs I went with my daughter to Dr WEGEMANS who told me that she was alright and had not been touched.

The same evening at about 2130 hrs I went to the Burgomaster to have the soldier brought to justice."

The accused declines to question the witness.

J Holt
.....
Jan HOLT

The accused was warned as follows:

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you will give will be taken down in writing and may be used in evidence.

The accused declines to make a statement.

H.C.P. Smith
.....
K.45446 Pte Smith, H.C.

I certify that R.P. (c) (d) (e) and (f) have been complied with.

Taken by me in the field in the presence and hearing of the accused, this 11 day of Jul 1945.

D Morgan Capt
.....
(D.V. Morgan) Capt.

Additional Summary of Evidence in the case of K-45446 Pte SMITH H.C.P. of "C" Company, The Westminster Regiment (Motor).

The commanding officer directs that the evidence be taken onoath.

FIRST WITNESS RECALLED:

Hendrik BAVING, cattledealer of Nr 141 RODEN, Province of DRENTE, HOLLAND having been duly sworn states: through Interpreter, duly sworn

Q Was anything noticesble when you saw the soldier's trouser opened?

A "Yes, I saw his penis.

Q How far were you away?

A About seven meteres.

This statement having been read by myself and signed, at RODEN on 20 July 1945.

The accused declines to question the witness.

"H Baving"
.....
(Hendrick BAVING)

SECOND WITNESS RECALLED

Jan HOLT, farmer of Heerenstraat 209, RODEN, Province of DRENTE, HOLLAND, having been duly sworn states: through Interpreter, duly sworn.

Q How old is your daughter?

A Six years old.

Q Have you more than one daughter?

A No.

The accused declines to question the witness.

"J Holt"
.....
(Jan HOLT)

THIRD WITNESS:

Jantje HOLT, schoolgirl of 209 Heerenstraat, RODEN states not on oath., through Interpreter, duly sworn.

The soldier pulled down my pants.

Q What soldier?

A A Canadian has done it.

Q If you were to see him again would you know him?

A Yes.

Q Do you see him in this room?

A Nod ofhead and point of hand to the accused.

Q Did anything else happen?

A No.

Q Did you notice anything about the soldiers pants?

A Yes.

Q What did you notice?

A Witness starts to cry.

Q Did the soldier speak to you?

A Yes.

Q Do you remember what he said.

A. No.

The accused declines to question the witness.

The accused declines to make a statement or give evidence after question in H? 45 is read to him.

I certify that R.P. (c) (d) (e) and (f) have been complied with.

Taken by me in the field in the presence and hearing of the accused, this 20 day of July 1945.

A.E. Hebb Lieut.

(A.E. Hebb) Lieut.

LIST OF WITNESSES

1. Hendrick BAVING Nr 141 RODEN, Drente, Holland
2. Jan HOLT of Heerenstraat 209, RODEN, Drente, Holland
3. Jantje Holt, " " " " "

LIST OF EXHIBITS

Nil

I desire the convening officer to detail an officer to defend me at my forthcoming trial by Field General Court Martial

H.C.P. Smith
(HCP Smith)

I hereby acknowledge receipt of one copy of the Summary of Evidence and one copy of the Charge Sheet of my forthcoming trila by Field General Court Martial

H.C.P. Smith
(HCP Smith)

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K 45446 PTE HARVEY CLIFFORD PERCIVAL SMITH, WESTMR R

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA SEC 41	NOT GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ——— beginning on (date) ———
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 18 days, of which NIL days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

TO BE IMPRISONED WITH HARD LABOUR FOR ONE (1) YEAR.

(Sgd) [illegible] Maj/Lt. Judge-Advocate, if any. 23 JULY 45 Date awarded. (Sgd) Lt MacDougall Maj President (RP 45, 50.)
(See back of Convening Order as to assembly and dispersal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML

Date ——— (Sgd) ——— Commanding ———

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(1). Sending back finding or sentence for revision by Court: AA 54(2); RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding and sentence of the Court.

~~I direct that the accused be not committed to prison on default of fine unless ...~~

Date 25 Jul 45 (Sgd) (I H Cumberland) Brig Commanding Cond 5 Cdn Armd Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
K45446 Pte Smith, H.C.P.	3 Aug 45.	J.C. Cummins Capt & adj. 7 Cdn Westmr Regt (MR).

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 5G-105

CPA96 (1st Issue of AFA31)

FIELD GENERAL COURT-MARTIAL

13 AUG 1945 JAG BRANCH

D.J.A.G. Sec. 1 Ref. H 1 Cdn Corps 21 Army Gp

Convened by Order of Brig I H CUMBERLAND Comd 5 Cdn Armd Bde dated 20 Jul 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
K-45446	Pte	Harvey Clifford Percival	SMITH	Westmr R (MR)

PROCEEDINGS REVIEWED WITH [illegible] Capt 14 Aug 45 [illegible] JAG BRANCH

PROCEEDINGS REVIEWED D.J.A.G. Sec. 1 Ref. H 1 Cdn Corps 21 Army Gp

PROCEEDINGS OF TRIAL.

Held at THE NETHERLANDS (Country) HOLLAND on (date(s)) 23 Jul 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 36(51)

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant finn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 23, RP 56, 63-70, 72, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0715 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to A. BUICHELAAR as interpreter? Ans NO SIR

The Interpreter is sworn.(1) ~~Do you object to ... as shorthand writer? Ans ...~~ The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans NO SIR (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj	D C MacDOUGALL	5 Cdn Armd Regt (SNSH)
Member	CAPT	J.G BAKER	9 CDN ARMD REGT (SCH)
Member	LIEUT	A.S DAVIS	1 CDN ARMD REGT (RCD)
Judge-Advocate	Maj	J A Bodfrne DJA	HQ 5 Cdn Armd Div
Prosecutor	Lt	A E HERB	Westmr R (MR)
Defending Offr	Lt	G MARDIN	Westmr R (MR)

Questions by President: Is the Prosecutor a lawyer? Ans NO. Is the Defending Offr a lawyer? Ans NO. (2)

(1. RP 26, 27, 109, 111. Lists of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ——— before arraignment make(s) (no) (a) plea(s).(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 24, 25(A), 113), or in bar of trial (RP 26), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposit. the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) separately arraigned on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~(continued)~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pros to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. .....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 15(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E. 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans NO SIR. .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(2) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).~~(3) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans GIVE EVIDENCE BY OATH. Do you intend to call witnesses on your behalf?
Ans NO Are they witnesses as to character only? Ans N/D.
(1. *RP* 135. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* 495. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*E*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President ~~announces the finding(s), if any, of Not Guilty, and~~ states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1) ~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)~~
(1. *AA* 54(3) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character.(1)
Ans YES - A CHARACTER. WITNESS.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by A.A 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "F" and Ex "G" respectively.(3)
(1. *MFB* 255 *or MFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. YES, THROUGH DEFENDING OFFR. .....(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should prevent accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 7(*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 46. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Con* 308, 330, 563-566, *Overseas AO* 309, 2323, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(18), 68(1), *KR Con* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

D. MacDougall.
President

MEDICAL OFFICER'S REPORT.

K.R. (Can) Para. 557.

I certify that I have this morning examined

No K46446. Rank Pte. Name Smith N.C.P.

Unit Westminster Regt. (M)

and in my opinion he is fit ~~unfit~~ to undergo trial by Court Martial.

Station. In the Field.

Date 23 July 15

L.O. Stinson Capt
R.C.A.M.C. Capt

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
K-45446	Pte		Harvey Clifford Percival	SMITH	Westmr R (M)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 10 Jul 45 endorsed by me, ~~for by an offr of my rank or more~~, To be tried by Field General Court-Martial ";

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr for~~ (*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint: (a) Other Offrs to form the Court, (b) a Fd Offr as President (for the reasons I have)~~ attached hereto ~~)~~. (*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder. (*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Maj	D C MacDOUGALL		5 Cdn Armd Regt (SRR)

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt or Lt	(to be detailed)	1 Cdn Armd C Regt (RCD)
Capt or Lt	(to be detailed)	9 Cdn Armd Regt (RCD)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lt	(to be detailed)	Westmr R (M)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Maj	J A Bourne	HQ 5 Cdn Armd Div

On Active Service in the Fd

in HOLLAND
(*Country.*)

Dated 20 Jul 45

(Signed ~~at Comth~~, RP 105 fn 2.)
(I H Cumberland) Brig (*Rank.*)
Commanding Cond 5 Cdn Armd Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(*See overleaf for oaths and notes for use on trial.*)

4/38A (AFAAS (To take the place of AFAS 40/F & G/1807 [4001])

CHARGE SHEET

The accused, K45445 Pte Harvey Clifford Percival SMITH, The Westminster Regiment (M), a soldier of the Canadian Army Overseas is charged with:

First Charge — WHEN ON ACTIVE SERVICE COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, INDECENT ASSAULT, CONTRARY TO SEC 52 OF THE OFFENCES AGAINST THE PERSON ACT, 1861

in that he

In the Field in SCOTLAND, on 6 July 45, indecently assaulted Jantje Holt, a girl under the age of sixteen years.

(W.C. Barbould) Lieut
(O/C Carbould Det)
Coad
The Westminster Regiment (M)

In the Field.
10 July 45.

To be tried by Field General Court Martial.

(C.H. Cumberland) Brig
Comd 2 Can Armd Bde

In the Field.
10 July 45.

Approved (HR Can 500)
Lt Colonel
DJA 5 Can Armd Div

A7 Officers under instruction.

Lieut	C.	Eyres	2 Cdn armd Regt.
Lieut	J.P.	Moore	5 Cdn armd Regt.
Lieut	F.H	Smith	3 Cdn armd Regt
Lieut	J.M	Scott	9 Cdn armd Regt.

D3

First Witness Presented. Hendrick Boving, 141 Raden, Prov. of Drenthe, Holland, having been duly sworn, states through the Interpreter.

On 5 July 45 about 1830 or 1845 hrs, I was coming from milking. My wife said something and I looked and I saw the accused cycling on a bicycle and he had Jantje Halt with him. They went down the road and turned off into a field of rye. I followed and I saw them sitting near a ditch. The accused was sitting and Jantje was sitting on his knee. The accused had his pants unbuttoned and I could see his penis. It did not use her. The pants of Jantje were down. I spoke to the girl. The accused came with Jantje on his bike. I saw them again near a cafe. The accused went inside the cafe and he came back and had a bar of chocolate in his hand. He turned

D3

the corner and gave Jantje the bar of chocolate. I again spoke to Jantje and I saw her go home. I came and spoke to her parents and she came home when I was there.

Cross Examination :-

I followed the soldier because my wife said there was something suspicious. Jantje is the daughter of our neighbor. They were about 100 metres off the road. I was about 6 metres from the soldier and girl. The girl was facing the soldier. When I spoke, the accused turned his head but said nothing. The girl did not cry, but laughed when she saw me. I called to Hendrickus Van der Velde who was nearby.

Re-Examination :-

It was not possible to see where the soldier and girl came from the road.

Questioned by Court

They were not near a road. I called Hendrickus because I was alarmed.

Questioned by JP :-

Jantje was sitting on the accused's bike with both her legs on the same side of the accused. Jantje's pants were beneath her knees. When I saw the accused penis it was outside of his pants. I don't know where accused's hands were. Jantje's hands rested on her own body. The accused's penis was not touching Jantje. I walked back to the main road to call Hendrickus. It was then I saw accused and Jantje on the bike again.

(RP 93 (8) complied with)

Second Witness for Prosecution — Jan Holt, Heerenstraat 209, Roden, Holland having been duly sworn is examined by the Prosecutor, through the Interpreter.

My daughter Jantje Holt was born on 5 January 1939. She is six years old.

Cross Examination :-

my daughter tells the truth as far as I know.

No Re-Examination :-

Questioned by JA :-

On 5 July 45 my daughter did not tell me anything about what happened.

(RP 83 (B) complied with)

Third Witness Prosecution Jantjie Holtz- (The court decides the witness has not sufficient understanding to be sworn. but understands duty of speaking the truth)
The accused pulled down my pants. Nothing else happened. We were in the field. I saw his penis. He spoke to me but I did not understand. We left the field because the accused was alarmed. We went to a cafe. Then I got a bar of chocolate. I did not tell my parents what happened.

No Cross Examination :

Questioned by JA :-

I was sitting on the grass. The accused was kneeling. I did not sit on his knee. The accused's pants were unbuttoned. I saw him unbutton them when I was on the grass. That is when I saw his penis. I knew the

accused before that day. Bareng was there that day when this happened.

(RP 83 (B) complied with)

(Evidence taken pursuant to Children + Young Persons act, 1933 sec 38 – archbold P434, the same being not on oath)

D6

First Witness Defence

The accused, having been duly sworn is examined by the defending offr

I met Jantje Holt about 1930 on 5 July 45. We were in front of the house and she asked if she could go for a ride with me. We were riding up and down the road. We left the town of Roden. Where we went off the road there was a side road leading to the pasture. It went for about 200 yards. She pointed down the road and said something in Dutch. I did not understand but thought she wanted to go down there. When turning around I stopped and went to the bushes for a piss. I sat down on the ground to fix my gaiters. I sat down. I was not more than 5 minutes off the

main road. I did not see Hendrickus Baring. I first saw him when we returned to the main road. He did not speak to me. I again saw him next day on a identification parade. I did not notice the child take off her pants. The girl was standing behind me while I was urinating.

Cross Examination:-

When I urinate I usually put my penis away. I did not have it out after I finished. I gave Jantjie a chocolate for because she asked me.

No Re-Examination:

Examined by Court:

I don't know if I saw Baring or not that day. We were about ¼ mile from where we started the ride. When we turned off the main road. It was about 5 minutes from the time I left the road till I returned.

Examined by JA:-

I buttoned my pants up after urinating. I did not have my penis out when

sitting down. I don't know any reason why Baving would say he saw my penis. Jantje was sitting on my knee while I was buttoning my gaiters. I did not take his pants down. I did not see them down. I could see up to his knees. I fixed the gaiter while he sat on my knee.

(AP 83(B) complied with)

First Witness Preservation — Hendrick Baving is recalled by the Court

Questioned by JA :-

The accused's penis was outside his pants. Jantje was sitting on his knee. The accused's penis was in erection. It was stiff. From the time I went for Hendrikus Van der Velde until I saw the accused again on the road was 2 to 3 minutes. From the time I last saw the accused when he left the road until I saw him sitting with

Justice was 5, 6 or 7 minutes.

(RP 83(B) complied with)

No Cross Exam :-

The Defending offr does not wish to recall the accused.

Prosecutor's Closing address

1/ 1st witness saw pants down & accused's penis.
2/ There is corroboration.
3/ Consent is no defence.

Defending offr's Closing address

1/ Having was indefinite about details
2/ No evidence that giving chocolate was in any way improper.
3/ Child's evidence is inconsistent with other evidence. Her evidence is not reliable.
4/ Not sufficient evidence to convict.

E1

First Character Witness — Lieut R.E. Mannering, Western Regt having been duly sworn is examined by Defending offr.

I know the accused. Up until 3 weeks ago I was Pl Comd of accused. He came to Italy in Nov 43 with BCD and was

severely burned at Hitler Line in May 44.
He returned from UK to Westrons Regt in Italy in
Dec 44. He saw action until wounded again
in April 45. He was a very good soldier
in and out of line. He gave no trouble.
I was shocked to hear of this charge.

No Cross Exam or Questions by Court or TA

(RP 83 (B) complied with)

E.3

Plea in Mitigation

1 Refers to accused record
2 Clean conduct sheet.
3 Plea for leniency.

SUMMING UP BY JA

1 Duty of JA to sum up and advise the Court on the law. Court should accept advice of JA on the law.

2 Court is the sole judge of the facts.

3 Credibility of the witnesses is for the Court. May believe whole of a witness' evidence or disbelieve it entirely, or may believe parts and disbelieve other parts, or may believe one witness' evidence as against another.

4 Accused is presumed to be innocent until he is proved guilty.

5 Burden of proof is on the Prosecution.

6 Accused is entitled to the benefit of any reasonable doubt in the minds of the members of the Court.

7 Reasonable doubt defined.

8 Refers to AA Sec 41 and Offences against the Person Act, 1861, Sec 52 (Archbold p 1032).

9 Refers to MML p 113 para 54 and Archbold p 907 on Assaults generally.

10 Refers to Criminal Law Amendment Act, 1922, Sec 1 (Archbold p 1032) re consent being no defence in case of a person under 16 years.

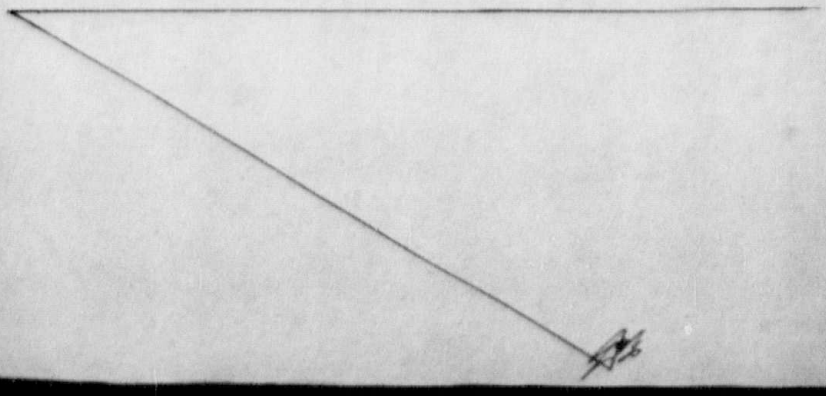
11 Where a prosecutrix is of tender years and gives unsworn testimony, the accused may not be legally convicted unless her evidence is corroborated by other evidence. The Court is warned that such testimony is weak and inferior to sworn testimony.

12 Corroboration must be as to the fact of an offence having been committed and the implication of the accused in it.

13 Evidence of an eye witness other than the prosecutrix, may, if believed, supply the necessary corroboration. The Court may convict solely on the evidence of an eye witness other than the prosecutrix, if such evidence is believed. Accused's evidence may supply the necessary corroboration.

14. Refers to circumstantial evidence of girls pants being torn, and advises that circumstantial evidence must not only be consistent with the accused having done the act but inconsistent with any other rational conclusion but that the accused did the act.

15 President, Prosecutor and Defending Offr state they wish nothing further added to JA's address.



ARMY FORM B.206.

EX "F"

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
4348116	Pte	SMITH H.C.F.	WESTMINSTER REGT (MOTOR)

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, provided being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	NIL times	nil times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

~~Number of instances of gallantry or distinguished conduct~~ NOT

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

~~Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 78 of the Army Act, are set out in the schedule annexed to this statement.~~ NOT

3. The accused is not under sentence at the present time, *or* ~~The accused at the present time is under sentence for~~ NOT

beginning on the day of

4. The accused has been in confinement, awaiting trial on the present charges, for NIL days in civil custody, and 18 days in military custody, making a total of 18 days, of which NIL days were spent in hospital.

5. The present age of the accused according to his ~~proved age~~ attestation paper is

6. The date of his ~~enlistment~~ attestation specified in his ~~proved age~~ attestation paper is 25 Apr 42

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 yrs 2 mos

8. The accused is entitled to deferred pay or gratuity in respect of 2 yrs 2 mos service.

9. The accused is entitled to reckon 2 yrs 2 mos service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, ~~no military decoration or military award~~ NOT (*or* is in possession of *or* entitled to (*state any military decoration or reward*)). CVSM & Clasp

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the substantive rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of dated and in his regiment (*or corps or department*) the rank of dated

(*16648) Wt.30240/603 15,000 12/40 A.& E.W.Ltd. Gp.698

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. [illegible] Rank Pte Name Smith, HCP of Westminster Regiment (or as the case may be).

INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted
		F.C.B.C.		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 16 day of July 1945

F.C. Rumsey Capt & Adjt
The Westminster Regt (M)

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

In the rank of [illegible] years [illegible]

In the rank of [illegible] years [illegible]

In the rank of [illegible] years [illegible]

Date of Promotion.

F.C.B.C.

(Insert here "Nil" or any matter in any of the above paragraphs cancelled by order of the regimental leader the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be obtained from such sources as are available, and the words cancelled inserted thereafter.)

No 54546 Name SMITH HCP | Sqn, Battery, or Company | Corps C I C | Date of enlistment 25 APR 42 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character Ex "G"

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				21 APR 45 Free of entry					

Certified true copy from the regimental books in my custody 16 Jul 45

R. B. Cummins Capt.

[illegible] REGIMENT ORDERLY ROOM

(PTO)

Summary of Evidence in the case of K.45446 Pte Smith, H.C.P. of "C" Coy, The Westminster Regiment (M).

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS: Hendrick BAVING, cattledealer, of Nr 141 Roden, province of Drente, Holland, having been duly sworn states:

"I am Hendrick BAVING, cattledealer, of Nr 141 Roden, province of Drente, Holland. On Thursday the 5th of jul 45 at about 5.45 p.m. my wife and I were at our meadow near the road Roden-Nieuw Roden. My wife drew my attention to a Canadian soldier on a bicycle, who in the company of the 6 year old daughter of Jan HOLT was leaving the main road, taking a sidepath. As this seemed suspicious to me, I followed them. When I had reached them I saw the soldier sitting near a ditch with the child on his knees. His trousers were opened and the child's pants had been pulled down. I had no impression that something more had happened so far; besides there would not have been time for that, as I had followed them at once.

I told the girl that she must return home and went back at once to fetch Hendrickus van der Velde, who was talking to my wife. On my way back however the soldier went by again, Jantje HOLT behind him on the bicycle. Then my wife and I returned to Roden with our milkcart. As we passed Cafe'de Vries, we saw Jantje HOLT waiting before the house. The soldier mentioned above just came around the corner and mafe a sign to her. Again I told Jantje to go home, but she went after the soldier to the side of the house and came back with a bar of chocolate. After this she went home and I followed her to inform her parents.

Holt went to Dr Weggemans with his daughter. That same night Holt went to see the Burgomaster.

Next day I came to the municipal hall with my wife and Hendrickusvan der Velde on request of the Burgomaster, who took us to the Beuklaan, where some soldiers were drawn up. Without the slightest hesitation we all three recognized among these the soldier we had seen the day before with Jantje HOLT. On request of the Burgomaster I pointed him out to the Lieutenant who was present.

This statement having been read by myself and signed, at Roden on 7th July 1945

H. Baving

Hendrick BAVING

SECOND WITNESS:

Jan HOLT - farmer of Heerenstesat 209, Roden, province of Drente, Holland, having been duly sworn, states:

"I am Jan HOLT, father of Jantje HOLT who is the child in this case.

On the day of Thursday 5 Jul 45 at about 1830 hrs Hendrick BAVINK came to me and told me that my daughter was with a Canadian Soldier and she was without her pants and the soldier's pants were open.

At about 1900 hrs I went with my daughter to Dr WEGGEMANS who told me that she was alright and had not been touched.

The same evening at about 2130 hrs I went to the Burgomaster to have the soldier brought to justice."

The accused declines to question the witness.

J. Holt

.....

Jan HOLT

The accused was warned as follows:

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you will give will be taken down in writing and may be used in evidence.

The accused declines to make a statement.

H.C.P. Smith
.....
K.45446 Pte Smith, H.C.

I certify that R.P. (c) (d) (e) and (f) have been complied with.

Taken by me in the field in the presence and hearing of the accused, this day of Jul 1945.

B.V. Morgan Capt.
.....
(B.V. Morgan) Capt.

Additional Summary of Evidence in the case of K-45446 Pte SMITH H.C.P. of "C" Company, The Westminster Regiment (Motor).

The commanding officer directs that the evidence be taken onoath.

FIRST WITNESS RECALLED:

Hendrik BAVING, cattledealer of Nr 141 RODEN, Province of DRENTE, HOLLAND having been duly sworn states: through Interpreter, duly sworn.

Q Was anything noticeable when you saw the soldier's trouser opened?

A "Yes, I saw his penis.

Q How far were you away?

A About seven meteres.

This statement having been read by myself and signed, at RODEN on 20 July 1945.

The accused declines to question the witness.

.....H. Baving.....
(Hendrick BAVING)

SECOND WITNESS RECALLED

Jan HOLT, farmer of Heerenstraat 209, RODEN, Province of DRENTE, HOLLAND, having been duly sworn states: through Interpreter, duly sworn.

Q How old is your daughter?

A Six years old.

Q Have you more than one daughter?

A No.

The accused declines to question the witness.

J Holt.
.....
(Jan HOLT)

THIRD WITNESS:

Jantje HOLT, schoolgirl of 209 Heerenstraat, RODEN states not on oath., through Interpreter, duly sworn.

The soldier pulled down my pants.

Q What soldier?

A A Canadian has done it.

Q If you were to see him again would you know him?

A Yes.

Q Do you see him in this room?

A Nod ofhead and point of hand to the accused.

Q Did anything else happen?

A No.

Q Did you notice anything about the soldiers pants?

A Yes.

Q What did you notice?

A Witness starts to cry.

Q Did the soldier speak to you?

A Yes.

Q Do you remember what he said.

A. No.

The accused declines to question the witness.

The accused declines to make a ststement or give evidence after Question in RP 4E is read to him

I certify that R.F. (c) (d) (e) and (f) have been complied with.

Taken by me in the field in the presence and hearing of the accused, this 20 day of July 1945.

(A.E. Webb) Lieut.

LIST OF WITNESSES

1. Hendrick BAVING Nr 141 RODEN, Drente, Holland
2. Jan HOLT of Heerenstraat 209, RODEN, Drente, Holland
3. Jantje Holt, " " " " "

LIST OF EXHIBITS

Nil

I desire the convening officer to detail an officer to defend me at my forthcoming trial by Field General Court Martial

H.C.P. Smith
(HCP Smith)

I hereby acknowledge receipt of one copy of the Summary of Evidence and one copy of the Charge Sheet of my forthcoming trila by Field General Court Martial

H.C.P. Smith
(HCP Smith)

62 L.

Pte. SMITH, H. F

O. H. M. S.

M. F. B. 270

621

Correspondence to be PINNED here.

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this First day of June, 1942

Whereas it appears to me, the undersigned, an officer in Command of 1 Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[I am unable to appoint:—
(1.) Three Officers to form the Court.
(2.) A Field Officer as President
for the following reasons, namely:—]

* Omit if not applicable.

PROCEEDINGS REVIEWED

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	I.S. Johnston	48 Highrs

Members.

Rank.	Name.	Regiment.
Captain	T.M. Powers	R.C.E.
Lieut	G. Norman W. Graydon	Hast & PWR
Lieut	E.B. Johnston	48 Highrs

Waiting Member.

*Signed [R.H.L. Keller] Brigadier
Commanding 1 Cdn Inf Bde
Convening Officer.

*Signature to be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
A3286, Private SMITH, H.F. The Royal Canadian Regt	(1) W.O.A.S. Absenting himself without leave in that he, in the field, on 15 Mar 42, did absent himself without leave from 1800 hrs, 15 Mar 42 until apprehended by the Civil Police at SOUTH PARK, REIGATE, at 1620 hrs, 11 May 42. (Time absent 56 days 22 hrs 20 mins). AA Sec 15(1)	Guilty	Guilty	I confirm the Finding and Sentence of the Court. H.D.G. Crl.
	(2) W.O.A.S. Losing by neglect, his equipment, clothing and regimental necessaries, in that he, in the field, on 8 Apr 42, was deficient and is still deficient, articles of kit (Total value £1-2-10) (See att charge sheet) AA Sec 24(2)	Guilty	Guilty 57 days detention and deduction from pay £1-2-10	

* Question to be asked of accused, if he pleads not guilty (R. of P. 89 (a)):—

"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"

Answer (*to be recorded on separate sheet if necessary*):— No Sir.

(Signed) H.F.L. Keller Brigadier (Signed) Wm Johnston Major
(H.F.L. Keller) (W. Johnston)
Convening Officer (c) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 8 day of June 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*~~(3. The interpreter)~~
*~~(4. The officers under instruction)~~

* Omit if not applicable.

were duly sworn.

Signed this 8 day of June 1942.

Wm. Johnston Maj 48 Highrs.
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (2) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

Signed this 9th day of June 1942

H.F.L. Keller
Confirming Officer.

Promulgated and extracts taken in the case of

(*a*) (Dated) 12 June 1942 (Signed) Kilcombe K for Maj. MacKay RCR

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

Sam Johnston Pte.

The accused, A3206 Pte. SMITH, Harry Frederick, The Royal Canadian Regiment, a soldier of the Canadian Army, is charged with:

FIRST CHARGE
Sec 15 (1) ARMY ACT

"When on Active Service, Absenting himself without leave", in that he, in the field, on 15 Mar 42, did absent himself without leave from 1800 hrs., 15 Mar 42, until apprehended by the Civil Police at SOUTH PARK, REIGATE, at 1620 hrs., 11 May 42. (Time absent 56 days, 22 hrs, 20 mins)

SECOND CHARGE
Sec 24 (c) ARMY ACT

"When on Active Service, Losing by neglect, his Equipment, Clothing and Regimental Necessaries", in that he, in the field, on 8 Apr 42, was deficient, and is still deficient, the following articles of kit (Total value £1 - 2 - 10¾)

Brushes, Shaving	1	1 - 2
Brushes, Tooth	1	5½
Combs, hair	1	2
Forks, table	1	4
Holdall	1	11
Razor	1	5½
Towels, hand	1	1 - 4
Belts, waist, W.E.	1	4 - 7
Braces, back, W.E.	1	3 - 7
Haversacks	1	10 - 7½
		£1 - 2 - 10¾

In the Field
16 May 42.

(T. Eric Snow)
Lt.-col.
Commanding, The Royal Canadian Regiment.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(H.D.L. Keller)
Brigadier
Comd 1 Can Inf Bde

10

Lac St Johns Que

MEDICAL OFFICER'S CERTIFICATE

Certified I have examined A3206 Pte. SMITH, H.F. The Royal Canadian Regiment, and find him .fit.... to undergo trial by Field General Court Martial.

ARUNDEL
6 Jun 42.

(G. G. Ferguson) Capt.
RCAMC: Att: The Royal Canadian Regiment.



Proceedings of a Field General Court Martial held in the Field on the 8th day of June, 1942.

Trial of No. A-3206 Pte. Smith H.F.

Prosecutor - Lieut. R.A. Couche

Defending Officer - Capt. A.S.A. Galloway.

Capt T.M. Porter R.C.A.P. not being available to Court consisting of ~~Lieut~~ Capt T.M. Porter R.C.A.P. President, Lieut W. Grayston Host + R.C.R. and Lieut C.B. Johnston M.C. Mbf I.S. Johnston R.C.R. Member

1. The order convening the Court is read in the presence of the accused.
2. The accused is asked the following question:- "Do you object to be tried by the President or any members of the Court whose names you have heard read over.?
   Answer:- "No, Sir."
3. The President, members are duly sworn.
4. a) The accused answers his name, number and is duly arraigned on the charges.
   b) The accused having pleaded guilty to the first charge. R.D. 35 (b) is complied with.
5. The accused is asked the question at the foot of page 2 of A.F.A. 3 and his answer is recorded beneath the question.
6. The prosecutor makes ~~no~~ his address.

P-16427 C.Q.M.S. Gray R.H., The Royal Canadian Regiment is duly sworn and states:-

"The list of shortages of equipment as read is correct, sir."

On cross examination the defending officer states that the missing articles were in possession of the defendants wife in Regina and that they could be produced but there was no way of proving the fact.

The Court adjourned while the defending officer consulted paymaster 48 Highrs of C with regard to reimbursement to the accused upon return of articles charged against him.

The Court re-assembled.

The accused was again arraigned on the second charge to which he pleaded guilty. R.P. 35 (b) was complied with.

"Do you wish to address the Court or call witnesses as to character.

2nic

~~and~~ The Defending Officer makes the following plea in Mitigation.

"I consider this in six stages. The man has a common law wife in Reigate whom he has lived with for two years and with whom he was very close. On March 11. he received a telegram from his wife "Come, baby worse. Fear pneumonia." Pte Smith obtained a 48 hour pass to see his child. The child recovered but in the meantime his wife became ill. He decided to stay and nurse his wife and thus overstayed his leave. He realized his wife was going to have another child and he knew also that if he returned to his unit he would be punished in detention and thus be unable to return when the child was born. So he stayed. However due to some domestic jealously on the part of neighbours, Pte Smith was reported to the police and apprehended when he didn't produce a pass, eight days before the child was born.

Although Pte Smith was A.W.L. it was due to domestic business and not due to trouble with the unit. The man considered it was his duty to be present with his wife and family and fully intended to return to his unit as soon as the child was born."

On ~~cross~~ questions the defending officer stated Pte Smith was not drawing allowance for his wife but was supporting her out of his own money. It was also stated that Pte Smith had kept in touch with the movement of his unit.

Lieut. R.A. Cooke of the R.C.R was duly sworn and states:-

"I produce a certified copy of A.F.B. 296 relating to the accused." (Exhibit A)

The Court adjourned.

N.B. The Court noted an error in addition in the charge sheet which should read £13.7½ but was unable to increase the charge.

Jas S. Johnston Maj
Pres.

SUMMARY of EVIDENCE

In the case of A3206 Pte. Smith, Harry Frederick, The Royal Canadian Regiment, charged with:-

FIRST CHARGE "When on Active Service, Absenting himself without leave", in that he, in the field, on 15 Mar 42, did absent himself without leave from 1800 hrs., 15 Mar 42, until apprehended by the Civil Police in SOUTH PARK, REIGATE, at 1620 hrs., 11 May 42, (Time absent 56 days, 22 hrs, 20 mins)

A. A. Sec 15 (1)

SECOND CHARGE "When on Active Service, Losing by neglect his Equipment, clothing and Regimental Necessaries", in that he, in the field, on 6 Apr 42, was deficient and is still deficient, the following articles of kit, (Total value £1 - 2 - 10½)

Brushes, Shaving	1		
Brushes, Tooth	1	1 -	2
Combs, hair	1		5½
Forks, table	1		2
Holdall	1		4
Razor	1		11
Towels, hand	1		5½
Belts, Waist, W.E.	1	1 -	4
Braces, back, W.E.	1	4 -	7
Haversacks	1	3 -	7
		10 -	7½
		£1 - 2 -	10½

A. A. Sec 24

.....

FIRST WITNESS: P16469 L/Sjt. Pendock, F. "B" Coy., The Royal Canadian Regiment, having been duly sworn, states:

At 0630 hrs., 16 Mar 42, I was Platoon Serjeant of No. 10 Platoon, and checked the roll, and found Pte. Smith, H.F. to be absent.

The accused declined to cross-examine the witness.

.....
(16469 L/Sjt. Pendock, F.)

SECOND WITNESS (Documentary as per A.F.O. 1618, Att.)

Signed certificate of War Reserve Constable No. 8, Reginald A. Tunnelly of the REIGATE Borough Police, dated 11 May 42.

"In consequence of information received W.R. Constable No. 8, Tunnelly, went to 14 Stuart Crescent, SOUTH PARK, REIGATE, where he saw and questioned Pte. Smith, H,F., and subsequently took him into custody, the soldier being unable to produce a pass. The nominal Roll of deserters was examined and particulars of Smith found therein."

THIRD WITNESS

P16427 CQMS Gray, K.H. The Royal Canadian Regiment, having been duly sworn states:-

I checked the kit of A3206 Pte. Smith, H.F. with his M.F.C. 600, and found him to be deficient the articles listed below:-

Brushes, Shaving	1	1- 2
Brushes, tooth	1	5½
Combs, hair	1	2
Forks, table	1	4
Holdall	1	11
Razor	1	5½
Towels, hand	1	1- 4
Belts, Waist, W.E.	1	4- 7
Braces, back, W.E.	1	3- 7
Haversacks	1	10- 7½
		£1 - 2- 10½

The accused declined to cross-examine the witness.

.....K.H. Gray.....
(P16427 CQMS Gray, K.H.)

The accused, Pte. Smith, H.F. of The Royal Canadian Regiment was then asked, in accordance with Rule of Procedure 4 (E)

Do you wish to make any statement or give evidence upon oath. You are not obliged to do so, but whatever you say, or any evidence you give will be taken down in writing and may be given in evidence.

In accordance with Rule of Procedure 4 (G) owing to the exigencies of the service, and the expense and loss of time involved, the accused does not demand the presence of any of the witnesses, whose evidence is shown in the summary, as "Documentary".

The accused declines to make a statement.

Certified that Rules of Prodedure 4 (C) (D) (E) (F) and (G) have been complied with.

Taken down by me in the presence and hearing of the accused this 15th day of May 1942, at ARUNDEL, Sussex.

In the Field
15 May 42

R.A. Couche
(R.A. Couche)
Officer Taking Summary.

Lieut.

File No. 18-181.

Officer Commanding
"B" Coy. R.C.Regt.
Worthing.

Re: A-3206 Pte. Smith, H.F.

1. Forwarded for your information and necessary action, please, and disposal under C.A. Routine Orders (O) No. 388 dated 29 Oct.40.

2. He has no convictions

London
13-May-42

for Capt. S. Dalton
O.C. No. 6 Coy.
Cdn. Provost Corps.

DESCRIPTIVE RETURN OF † No.A.3206 SMITH: Harry Franklin who was apprehended at 4.20.pm. at (hour) Reigate on the 11th day of May, 1942, and was committed to confinement at Reigate Police Station on the 11th day of May, 1942, as a Deserter (~~or Absentee without~~ leave) from the Bn. of the Royal Canadian Regiment, Regiment of

Age	34 years.	Height	Five feet seven inches
Complexion	pale	Hair	black. Eyes Green.
Marks	1 gold tooth in centre upper jaw.	In uniform or plain clothes	Uniform.

Probable date and place of attestation	5/10/1939 at London, Ontario, Canada.
Probable date of desertion or beginning of absence and from what place	8th April, 1942.
Name, occupation and address of the person by whom or through whose means the Deserter (or Absentee without leave) was apprehended and secured	War Reserve Constable No.8 Turrell, Reigate Borough Police.
Particulars in the evidence on which the prisoner is committed, and showing in what manner and upon what grounds he was apprehended. The fullest possible details to be given	* In consequence of information received W.R.8 Turrell, went to 14, Stuart Crescent, South Park, Reigate, where he saw and questioned Pte. SMITH and subsequently took him into custody, the soldier being unable to produce a pass. The Nominal Roll of Deserters was examined and particulars of SMITH found therein.

I DO HEREBY CERTIFY that the Prisoner has been duly examined before me as to the circumstances herein stated, and has declared in my presence that he[†] the before-mentioned Corps.

Signature
Residence
Post Town
} of Committing Magistrate.

Date of Signature

Signature of Prisoner

Signature of Informant

Or where the Prisoner confessed, and evidence of the truth or falsehood of such confession is not then forthcoming

I HEREBY CERTIFY that the above-named Prisoner confessed to the circumstances above stated, but that evidence of the truth or falsehood of such confession is not forthcoming, and that the case was adjourned until the day of for the purpose of obtaining such evidence.

Signature
Residence
Post Town
} of Magistrate.

Date of Signature

§ Care should be taken to insert Army No. and Rank.

‡ Insert "was apprehended" or "surrendered," as the case may be

* It is important for the public Service, and for the interest of the Deserter or Absentee without leave, that this part of the return should be accurately filled up, and the details should be inserted by the Justice in his own handwriting, or under his direction, by his Clerk.

† Insert "is" or "is not a Deserter" or "Absentee without leave from," or "belongs," or "does not belong to," as the case may be

Army Form O.1618.

PART II.

This portion of the Form, after the Magistrate has committed the soldier and completed the recommendations as to reward, will be handed by the Clerk of the Court to the Police, who will add overleaf a statement of any expenses incurred by them.

Apprehension of No. of

Regiment at on by

who was committed as a Deserter (or Absentee without leave) on the

RECOMMENDATION FOR REWARD.

I RECOMMEND*

Address

for a reward of

Signature of Committing Magistrate.

Date.

*The Magistrate will insert the name and address (in full) of the person for whom the reward is recommended, and the amount (5/-, 10/-, 15/-, or 20/-) which in his opinion should be granted in this particular case, having regard to the following rules :—

1. When soldiers are apprehended in uniform near their quarters it is considered that as a general rule 5/- is a sufficient reward. Not more than 10/- will be allowed in any case where the soldiers were in uniform.

2. When soldiers are apprehended in plain clothes, at a distance from their units, and after having been absent for some time, the reward may be increased to 10/- or 15/- according to the nature of the cases and the trouble incurred in apprehension. A reward in excess of 15/- will seldom be granted.

3. The reward of 20/- should be strictly reserved for cases where superior intelligence has been displayed in apprehending men in plain clothes, or under difficult or exceptional circumstances.

Rewards and expenses attendant upon apprehensions will be paid by the Command Paymaster of the Command or District in which the soldier's Unit is stationed.

4. No reward can be authorised if the Deserter or Absentee voluntarily surrendered, or if it should appear that he was in collusion with the person who apprehended him, or if the apprehended man was not a Deserter or Absentee.

The following Statement of expenses (if any) incurred by the Police and chargeable to Army Funds should be certified by a Superintendent or Officer in charge of a station.

No expenses incurred in conveying a Deserter or Absentee from the Court to prison should be charged to Army funds. Such expenses can be included in the claim made on the Prison Commissioners.

The total amount allowed on account of expenses before committal will not together with the reward exceed 40/-.

I CERTIFY that the following expenses were incurred by the Reigate Borough Police in connection with the apprehension of No.A.3206 Pte. SMITH F. H., Royal Canadian Regiment, and are payable to Chief Constable, Reigate.

NIL.	-	-	-

E. A. Atkinson Supt. (Superintendent or Officer i/c Police Station at

Date 11th May, 1942. Reigate Police Station.

AUTHORITY for the PAYMENT of a REWARD. *(For Army use only.)*

The Command Paymaster is hereby authorised to pay to being the person recommended by the Committing Magistrate, a reward of for the apprehension of

Date (O.C. Unit)
Officer Commanding.

Where no reward is authorised though one was recommended by the Magistrate, or where the reward authorised is less than that recommended, a brief explanation will be given below —

IMMEDIATE. Army Form O.1618.

PART I.

DESCRIPTIVE RETURN of a Deserter or Absentee without Leave.

INSTRUCTIONS FOR THE GUIDANCE OF MAGISTRATES.

(1) When a man is apprehended by the Civil Power as an absentee without leave, or as a deserter, if the information tendered leaves no doubt in the mind of the Magistrate that the prisoner is a soldier, this return should be completed and given to the Police to hand to the escort on arrival.

(2) To avoid delay in the arrival of the escort a telegram stating the Number, Rank, Name and Unit of the soldier should be sent by the Police, as soon as the man is committed, to the Officer Commanding the soldier's Unit. The place where the escort is required to attend should be stated, also whether the soldier *surrendered* or was *arrested*.

(3) Any recommendation for a reward should be made on Part II of this return.

(4) The Court fees chargeable for Descriptive Returns should be claimed periodically from the Command Paymaster of the Command in which the Court is situated.

(5) The stations of all Units are shown in the Monthly Army List, as are also the Depots of Corps.

In the case of doubt as to the location of a particular Unit reference should be made to the nearest O.C. Troops. Where the soldier's Unit is stationed overseas (outside Great Britain, Northern Ireland District, and the Channel Islands) the telegram for an escort should be despatched to the O.C. Depot, who will take all necessary action for its provision.

(Special Regulations [illegible] Army Council. Copyright Reserved.)

REIGATE BOROUGH POLICE.

WILLIAM H. BEACHER.
Chief Constable.
TELEPHONE No.:
REIGATE 2211-2 (two lines).

All Official Communications
Address to the
"CHIEF CONSTABLE."

Chief Constable's Office,
Court House,
Reigate.

11th May, 1942.

Dear Sir,

No.A.3206 Pte. SMITH: F. H.

With reference to the above-named soldier who was arrested in Reigate at 4.20.pm. on Monday, 11th May, 1942, for being a deserter from the Royal Canadian Regiment, and in confirmation of my telephone message of this date, I beg to forward report submitted by my officer - War Reserve Constable TURRELL, together with Certificate in accordance with Sec.16(1)(m) of the Army Act, 1881.

Yours faithfully,

Chief Constable, Reigate.

The D. P. M.,
Canadian Military H.Q.,
LONDON.

REIGATE BOROUGH POLICE.

Police Station,
Reigate, Surrey.

12th May, 1942.

ARREST - DESERTER.

No.A.3206 Pte. SMITH: F. H.,
Royal Canadian Regiment.

RECEIVED FROM THE REIGATE BOROUGH POLICE -

the body of -

No.A.3206 Pte. SMITH: F. H.,
Royal Canadian Regiment,

who was arrested by War Reserve Constable No.8 TURRELL, at 14, Stuart Crescent, South Park, Reigate, for being adeserter from his unit.

Signed:- J Gillette

Rank:- L Cpl

Date:- 12/5/42.

REIGATE BOROUGH POLICE.

William H. Beacher.
Chief Constable.

TELEPHONE No.
REIGATE 2211-2 (2 lines).

Please address to the
Chief Constable,
Criminal Investigation Dept.
REIGATE.

Chief Constable's Office,
Court House,
Reigate.

11th May, 1942.

CERTIFICATE.

IN ACCORDANCE WITH SECTION 163 (1) (m) of THE ARMY ACT, 1881.

I certify that the person whose description is given below was arrested at Reigate at 4.20.pm. on Monday, 11th May, 1942:-

Regimental particulars of soldier referred to above:-

No.A.3206.
Rank - Private.
Name - SMITH; Harry Franklin.
Unit - Royal Canadian Regiment.

Description:-

34 years.
Height - 5' 7"
Hair - Black going grey.
Eyes - Green.
Complexion - Pale.
Marks - 1 gold tooth in centre upper jaw.

Signature of officer of Police in charge of Police Station where the above-named was taken, or placed in custody on arrest.

Chief Constable, Reigate.

REIGATE BOROUGH POLICE.

Tel. No.:
Reigate 2211.

The Chief Constable,
Criminal Investigation Dept.,
REIGATE.

To W. H. Beacher, Esq.,
Chief Constable.

11th *Day of* May, 194 2.

Report from Reginald Archibald TURRELL, War Reserve Constable No.8,

SUBJECT Apprehension of Deserter - No.A.3206 Pte. SMITH F. H.

Sir,

With reference to the above matter, I beg to report that about 4.20.pm. on Monday, 11th May, 1942, in consequence of information received, I went to 14, Stuart Crescent, South Park, Reigate, accompanied by P.c.22 Ingram.

I there saw the occupier - Mrs. Pentley - and at her request entered the house where in the living room I saw a Canadian soldier.

I said, "Can I see your pass?"

He made a search of his pockets and then

said, "I must have lost it."

I said, "I have reason to believe that you are a deserter."

He replied, "No."

He produced his Pay Book giving the following particulars -

A.3206 Pte. SMITH Harry Franklin,
Royal Canadian Regiment.

I took him into custody and conveyed him to Reigate Police Station where he was seen by Sergeant 12 Nicholls.

SMITH appeared to be identical with a soldier of that name and number circulated in the Nominal Roll of Deserters dated the 7th May, 1942, issued by the Canadian Provost Corps.

At 5.20.pm. I cautioned and charged SMITH -

"For that he, at Reigate in the Borough of Reigate, at 4.20.pm. on Monday, 11th May, 1942, did absent himself from H. M. Forces, to wit, the Royal Canadian Regiment, without leave or the permission of his Commanding Officer, contrary to the Army Act, 1881."

He replied, "I have nothing to say now."

The D. P. M., Canadian Military Headquarters, Cockspur Street, London, was informed and stated an escort would be sent.

May I respectfully suggest that copy of this report be forwarded to:-

"A" The Deputy Provost Marshal,
Canadian Military Headquarters,
Cockspur Street,
LONDON.

Cont:-

for his information.

I am, Sir,

Your obedient Servant,

Reginald A. Finnally.

War Reserve Constable No.8.

Respectfully submitted and recommended as at "A".

H. A. Atkins

Inspector.

Submitted:-

Chief Constable, Reigate.

No. A3206 Name SMITH, H.F. Sqn., Battery, or Company "H" Corps R.C.R. Date of enlistment 5 Oct 39 G.C. Badges: Service or Proficiency Pay:

MFM 6 (A.F.B. 122)

Date of last entry in Company Conduct Sheet: No. and date of last drunk: Period not reckoning towards freedom from extra fine: Sheet No. Two Signature O.C. Company, etc. G.Kitching Capt Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	Sheet		(1)	destroyed by fire BREST, FRANCE, 17 June 1940					
Reigate Surrey	2/11/40	Pte		WOAS Absent without leave in that he at Reigate, Surrey, did absent himself without leave from 0900 hrs 2 Nov 40 to 0600 hrs 4 Nov 40 (1 day 21 hrs)	Cpl Howey Cpl Pendock				
Reigate	9 Nov 40	Pte		WOAS Absent without leave from 0600 hrs 9 Nov to 0600 hrs, 12 Nov 40	L/Cpl Marshello Cpl Pendock	Forf 7 days Pay	14 Nov 40	Y.R. Hodson, Maj	forf 3 days pay F.R.& I
Hove, Sussex	20 Dec 40	Pte		WOAS Absent without leave, on that he at Hove, Sussex did absent himself without leave from 1200 hrs 20 Dec 40 until 1120 hrs 9 Jan 41 Time absent 19 days 23 hrs 20 mins A.A.Sec 15(1)	L/Sjt Davis	28 days detention	10 Jan 41	R.C.Clark Major	forf 20 days pay under F.R. & I

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Upstead Surrey	18 Mar 41	Pte		A.A.Sec 15(1) Absent without Leave from 0630 hrs 18 Mar 41 to 1720 hrs 7 Apr 41	Cpl Begin L/Cpl Handforth	28 days F.P. forf 28 days pay	8 Apr 41	D.C.Spry Major	forf 21 days pay under F.R.&I.

CERTIFIED TRUE COPY

(F.Klenavic) Capt
Adjutant,
The Royal Canadian Regiment.

Exhibit A. 6
Sam S Johnston
Maj
Pres.

ARMY FORM B 206.

Statement as to Character and Particulars of Service of Accused.

Number. A3206 Rank. Pte Name. SMITH Harry Frederick Regiment (or as the case may be).

THE ROYAL CANADIAN REGIMENT

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	* Since Enlistment.
For A. A. Sec 15 (1)	Nil times	4 times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct, N.A.

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 23 of the Army Act, except as shown in the statement [illegible]

3. The accused is not under sentence at the present time, [illegible]

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 28 days in military custody, making a total of 28 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his Pay Book is 35

6. The date of his attestation specified in his Pay Book is 5 Oct 1939

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 years 246 days.

8. The accused is entitled to deferred pay or gratuity in respect of 2 years 246 days service.

9. The accused is entitled to reckon 2 years 246 days service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award [illegible]

(a) (If the accused is a warrant officer.) The accused holds [illegible]

(b) (In the case of an officer.) The accused holds in the army the rank of [illegible]
and in his regiment (or corps or department) the rank of [illegible]

(*16046) Wt.30584/602 75,000 12/40 A.E.W.Ltd. Gp.698

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. ____ Rank ____ Name ____ of ____ Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating those convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted
		The accused has not been previously tried by Court Martial		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 8 day of June 1942

A.F. Couchman Lieut

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

	Date of Promotion.
In the rank of	years,
In the rank of	years,
In that rank of	years,

(Declaration.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

REQUEST FOR DEFENDING OFFICER

If available I desire the services of Capt. A. S. A. Galloway, The Royal Canadian Regiment, to act as Defending Officer at my trial by Field General Court Martial.

Smith H.F.
(A3206 Pte. H.F.Smith)
The Royal Canadian Regiment.

In the Field
16 May 42.

FLASH NUMBER TWO

FLASH NUMBER TWO

FLASH NUMBER TWO

FLASH NUMBER TWO

FLASH NUMBER TWO

FLASH NUMBER TWO

5H-37.

Pte. Smith, N.F.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F 66743 Pte Smith H F.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA SEC 18 (2)	NOT GUILTY	NOT GUILTY	
2nd AA SEC 40	NOT GUILTY	GUILTY	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

~~Time in confinement awaiting present trial: a total of~~ ~~days~~, of which ~~days were spent in hospital~~ (1)

(1. See RP 46(A) fn 7. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

TO UNDERGO DETENTION FOR A PERIOD OF ONE HUNDRED AND TWENTY DAYS.

(Sgd) ..... 2 Apr 45 (Sgd) .....
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Not confirmed

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) J M Rockingham (J M Rockingham) Brig
Date 16 Apr 45 Commanding Comd 9 Cdn Inf Bde
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
F 66743 Pte SMITH H.F.	23 Apr 45	H. A. Procter, Major, R.C.A.M.C.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 5H-57

FIELD GENERAL COURT-MARTIAL

(AB 40, P.W. & P.O.W.)

4/388

Convened by Order of Lt-Gen A Rockingham Comd 9 Cdn Inf Bde dated 21 Mar 45

RECEIVED 8 MAY 1945 GHQ & L. of C. AMHA

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
		HERBERT FREELAND	SMITH	

F 66743 Pte

PROCEEDINGS REVIEWED BR Lodge Col 6 May 45

REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS REVIEWED DJ Sec 9 Cdn Inf Bde Date 25/4/38

To Army Gp Sec 1 Echelon HQ 21 Army Gp

PROCEEDINGS OF TRIAL.

At (place or country) Holland on (date(s)) 2 Apr 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1130 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ..... as interpreter? Ans .....

~~The Interpreter is sworn.~~(1) Do you object to ..... as shorthand writer? Ans .....

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 58(2). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT COL	J W G THOMPSON MA ED	10TH HEZRON COERS
Member	MAJOR	M L TROY ED	CIC ALGR
Member	CAPT	K F G AREN	OAC 2 Hams Coers (12 A)
~~Judge-Advocate~~			
Prosecutor	CAPT	R H BOWDEN	CIC NDMS HIGHRS
Defending Offr	LT	R P POWER	CIC NDMS HIGHRS

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. Lists of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dr p 3.)

~~A8. The accused~~ ~~(where arraignment makes) (on his plea)~~ (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), (G)), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~has heard and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*Ii*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 2, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on .....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on .....charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras D1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans N/C .....(1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans .....N/C..... Do you intend to call witnesses on your behalf ?

Ans .....N/C..... Are they witnesses as to character only ? Ans .....N/A.....

(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(6).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the 2 & 3 charge(s), being subject to confirmation, will be promulgated later.(1) ~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)~~

(1. *AA 54(2) (c), RP 43, 120(A).* 2. *AA 54(2), RP 45, 117. This alternative pronouncement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans .....N/C.....

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~Extract~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex "C" respectively.(3)

(1. *MFD 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans .....N/C.....(2)

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its powers, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 44-50, 69, 108, 119(A), KR Con 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 58(1), KR Con 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

MEDICAL OFFICER'S REPORT

I certify that No. _____

of _____ is in a _____ state of health,

and _____ to undergo Trial by Court martial.

_____
Medical Officer

Station _____

Date _____

M. F. B. 246

BSM—6-41 (792)
H.Q. 1772-89 600

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F66743	Pte		Herbert Freeland	Smith	Nth NS Highrs

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 21 Mar 45 endorsed by me, (~~or by an offr of my staff for me~~), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior quainted offr~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have~~ attached hereto.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-Col	J W G Thompson	RCA

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Major	M L Troy	CIC
Capt	K E Garen	CAC

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Germany (Country.)

Date 21 Mar 45

(Signed personally. RP 105 fn 2.)
(J M Rockingham)
Commanding 9 Cdn Inf Bde
Convening Officer.

Brig (Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for points and notes for use on trial.)

CHARGE SHEET

The accused No. F.66743 Private Herbert Freeland SMITH, of the North Nova Scotia Highlanders, attached to No 11 Cdn FDS, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Army Act
Sec 18(2)

WHEN ON ACTIVE SERVICE WILFULLY INJURED HIMSELF WITH INTENT THEREBY TO RENDER HIMSELF UNFIT FOR SERVICE

in that he

In the Field at approximately 1130 hours on 7 Mar 45, by discharging a rifle wilfully injured himself by shooting himself in the left foot with intent thereby to render himself unfit for service.

SECOND CHARGE
(Alternative)
Army Act
Sec 40

WHEN ON ACTIVE SERVICE NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

In the Field at approximately 1130 hours on the 7 March 45, so negligently handled a rifle as to cause it to be discharged and thereby injured himself in the left foot and rendered himself ~~temporarily~~ unfit for service.

H A Brooke Major,
OC No 11 Cdn FDS.

In the Field
17 March 1945

TO BE TRIED BY
FIELD GENERAL COURT MARTIAL

J M Rockingham (J M Rockingham) Brig
Comd 9 Cdn Inf Bde

In the Field
21 March 1945

D

Recorded Evidence & Proceedings

First Witness for Prosecution

G 19520 L/Cpl Frost E.M. HNSH sworn states

On 7 Mar 45 the unit was stationed on the high ground next to the Nijmegen Bridgehead. I was a Pte at that time. The accused when I recognise was in my platoon. The accused was injured that day but I did not see the accident. At approx 1130 hrs I was in my slit trench and the accused was standing behind me. I was cleaning my rifle and I heard a shot, I turned and asked the accused what happened and the accused told me he was in the pit. I asked the accused how it happened and he told me he put a round in the chamber and when he was easing the cocking piece forward it slipped from his hand. The accused was out side the slit trench and there was no shelling at the time and we were not in contact with the enemy. The accused was shot in the left foot. I had been low up until this time in A Coy and there were only approx 3 casualties during the recent action. We had not been warned of further action.

13.

Cross Examined.

The accused was always in my sight and that was approx 2 mon. The accused was a good soldier. The accused had not shown any nervousness or signs of cracking up that I noticed. The slit was approx 6' long 18" wide & 5' deep. At one end was a covered dugout joining the slits. I was sitting in the trench cleaning my rifle, the accused was to my rear and to the left. I could not see him.

By Court

I saw the accused standing when I look up after hearing the shot, the weather was clear. No one else was present. I removed the accused knot. The wound was just behind the ear. By the second shot the accused had been cleaning his weapon approx 10 mins, I did not examine the rifle and I did not notice any cleaning material. The accused was holding his rifle when I first saw him after hearing the report. I did not examine the knot.

R.P.15 (B) Complied with

D3.

Second Witness for Prosecution.

B 63513 Cpl Pinder G. S. #4 Edn Res Coy Queen's states.

Defence has no objection to this witness
Prosecution states Defence was supplied with
the name of this witness and has read a brief
on the evidence to be stated on this case.

I recognise the accused. I interviewed
the accused on the 14 March 45 with ref
to his injuries, I cautioned the accused
that he was not obliged to say anything
but anything he said would be taken
down in writing and may be
used as evidence. I have the original
statement to produce to the court.
I interviewed the accused at 11 Edn F&D
I identified myself to the accused
and informed him I was making
inquiries as to his injury. There
were no threats or inducements used
to secure the statement.

I produce the statement in the accused
own hand writing and I recognise
the signature as that of the accused.

D3

The statement consisting of two pages is in the same condition now as when signed by the accused.

Defence has no objection to the statement.

Caution, signed by accused to read to court.
Statement, signed by accused to read to court.

No Cross Examination

R.P. 83 (B) complied with.

D 6 Summing Up By Prosecution att.
Summing Up By Defence att.

2 Dec 55 MG.

The accused P 66743 Pte Herbert Rowland Smith has refused to take the stand in his own defence. The Provost witness Pte Bost also definitely prejudicial to the prosecution. The accused has given made a statement to the Provost in which he definitely states he shot himself then the first and by that statement it has definitely established the fact that he was negligent.

A Wilson
Capt.

Pte Smith has been in the army approx 2 yrs, has been under considerable shell fire. Pte, now L/Cpl Frost has given evidence that the accused has always been steady & cool under shell fire. These type men Pte Smith & L/Cpl Frost usually lived in the same dugout trench.

Remembering positions etc as demonstrated, if Pte Smith was standing behind Cpl Frost he would be endangering the Cpl by firing his rifle. If Pte Smith had wanted to do himself any harm, he could has waited for a more opportune time.

Regretable also is the fact that his Pl Comm. is not present, if he were, maybe more good could be said of this man, who according to his own Pl Leader, has always done a 1st class job.

R Power Lt
Defending Officer

EXHIBIT "A"

This is to certify that I have been warned that I am not obliged to make any Statement, but that any Statement I now make will be taken down in writing & may be given in evidence.

V66743 Pte Smith H.F.

On March 4th at approx 1.30 hrs I had been detailed to clean my Rifle. I had finished cleaning the breach took the mag off & found it replaced the mag with one round in the chamber, & then cleaned the foresight.

I then held the Rifle butt under the right arm, with the muzzle of the Rifle pointing to the ground. With my right thumb & forefinger I eased the firing piece forward & at the same time pressing the trigger with

my left index finger
I went to the bolt being on my
thumb and finger. The cocking
piece slipped from my grip the
cocking piece went forward
discharging the round already
in the chamber.
The bullet passing through my
left foot.
My comrade who was cleaning
his Rifle in the next trench
jumped up and asked me what
happened
I told him that my Rifle had
discharged accidentally and
that I was wounded in my
left foot.
He immediately applied first
aid to the wound, and then
reported the incident to the
sent R.A.P. who returned and
me moved to an F.D.S.

F66743 Pte Smith R. 4th Ft.

EXHIBIT "B"

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
F.66743	Pte.	Smith, H.F.	North Nova Scotia Highrs.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded in the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For .... times.

For .... times.

For .... times.

For .... times.

Date of first entry in Field Conduct Sheet .....

Date of last entry in Field Conduct Sheet .....

2. [illegible] by a court martial or a civil court are as follows :—

*Strike out if not applicable.

*3. [illegible]

4. The accused has been awaiting trial on the present charges for [illegible] days in close arrest, and for 14 days in military custody, *i.e.*, 14 days in open arrest, 0 days in close arrest; of which 14 days were spent in hospital.

5. The present age of the accused is 20 years

6. The date of his attestation [illegible] is 12 Mar 43

7. [illegible]

†State the military decoration (if any) held by accused.

8. The accused is in possession of† CVSM

9. [illegible]

	Date of Promotion.
[illegible]	
[illegible]	
[illegible]	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(27833) W1.24239/3404 25,000 7/43 A.& E.W.Ltd. Gp.698 Forms/B.296(War)/3

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		Nil		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this day of March 1915

M J McLennan Capt & Adjt
No 1 Nova Scotia Highlanders.
Officer having Custody of Regt'l Records.

EXHIBIT "C"

Temporary Sheet

No F66743 Name Smith, H.F. | Sqn, Battery, or Company | Corps C.I.C. | Date of enlistment 12 Mar 4? | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/136 (3488)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No one | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Certified true copy of Temporary Sheet as of 19 Mar 45. M J Heffernan Capt adjt (M.J. Heffernan) Capt. & Adjt. North Nova Scotia Highlanders. Officer having custody of the Original Temporary Sheet.					

(FTO)

SUMMARY OF EVIDENCE in the case of F.66743 Private Smith, Herbert Freeland, North Nova Scotia Highlanders, a soldier of the Canadian Army Overseas (Attached to 11 Cdn. F.D.S.)

The Commanding Officer directs that the evidence be taken on oath.

First Witness for the Prosecution

G.19520 Private Frost, E.M., sworn states:

I am G.19520 Pte. Frost, E.M., of "A" Company, North Nova Scotia Highlanders. On the 7th day of March 1943 I was in my slit trench cleaning my rifle and Pte. Smith, H.F. was cleaning his outside the slit trench. I heard a shot and turned around and asked Pte. Smith what happened. He told me his rifle went off. I asked him how it happened. He told me he put a round in the chamber and was easing the cocking piece ahead when it slipped from his fingers and went off.

Q. Where was he shot?

A. In his left foot.

(signed) Frost E.M.

The accused declines to cross-examine the witness.

Q. Do you wish to make any statement or to give any evidence on oath? You are not obliged to say anything or to give any evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be used in evidence.

A. No Sir.

The accused does not call any witnesses.

Rules of procedure 4 (C) (D) (E) (F) and (G) have been complied with.

I certify that the foregoing summary of evidence consisting of 2 pages was taken down in writing in the presence of the accused this 14th day of March, 1943.

In the Field
14 Mar 43

(signed) F.L. Monkley Lt
North Nova Scotia Highlanders
Officer i/c Summary

ADDITIONAL SUMMARY OF EVIDENCE in the case of F.66743 Private Smith, Herbert Freeland, North Nova Scotia Highlanders, a soldier of the Canadian Army, (Attached to 11 Cdn FDS)

The Commanding Officer directs that the evidence be taken on oath.

Second Witness for the Prosecution

Capt. F.D. MacKenzie, sworn states:

I am Capt. F.D. MacKenzie, 6 Cdn CCS. At approximately 1830 hrs on 7 Mar 45 Pte. Smith was admitted to 6 Cdn CCS. He was suffering from a through and through gun shot wound in the left foot between the first and second metatarsals. There was a small fracture of the second metatarsal. There was no surgical treatment necessary and he was transferred to 11 Cdn FDS.

(signed) F.D. MacKenzie Capt.

The accused declines to cross-examine this witness.

Question to the accused.

Q. Do you wish to make any statement or to give any evidence on oath? You are not obliged to say anything or to give any evidence unless you wish to do so, but whatever you say or any evidence you give will be taken dwon in writing and may be used in evidence.

A. No Sir.

The accused does not call any witnesses.

Rules of procedure 4 (C) (D) (E) (F) and (G) have been complied with.

I certify that the foregoing summary of evidence consisting of 2 pages wastaken dwon in writing in the presence of the accused this 20th day of March 1945

In the Field
20 March 1945

(signed) G.L. Monkley Lt.
North Nova Scotia Highlanders
Officer i/c Summary.

Summary of Evidence in the case of F 66743 Private Smith, Herbert Hyland, North Nova Scotia Highlanders, a soldier of the Canadian Army Overseas (attached to 11 Cdn F DS)

The Commanding Officer directs that the evidence be taken on oath.

Point Witness for the prosecution

G 19520 Private Frost, E. M. sworn states:

I am G 19520 Pte Frost, E. M. of "A" Coy North Nova Scotia Highlanders. On the 7th day of March 1945 (1 MD at approximately 1130 hrs) I was in my slit trench cleaning my rifle and Pte Smith, H. H. was cleaning his outside the slit trench. I heard a shot and turned around and asked Pte Smith what happened. He told me his rifle went off. I asked him how it happened. He told me he put a round in the chamber and was easing the cocking piece ahead when it slipped from his fingers and went off.

Q1- Where was he shot?

A1- In his left foot.

Pte Frost E M

The accused declines to cross-examine the witness.

Q. Do you wish to make any statement or to give any evidence on oath? You are not obliged to say anything or to give any evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be used in evidence.

A. No sir.

The accused does not call any witnesses.
Rules of procedure 44(c)(d)(e)(f) and (g) have been complied with.
I certify that the foregoing summary of evidence consisting of 2 pages was taken down in writing in the presence of the accused this 14th day of March, 1945

J. L. Monkley Lt.
North Nova Scotia Highlanders
Officer i/c Summary

In the Field
14 Mar 45

Additional Summary of Evidence in the case of F66143 Private Smith, Herbert Freeland, North Nova Scotia Highlanders, a soldier of the Canadian Army Overseas (Attached to 11 Cdn FDS)

The Commanding Officer directs that the evidence be taken on oath.

Second Witness for the Prosecution — Capt F.D. MacKenzie, sworn states.

I am Capt F.D. MacKenzie, 6 Cdn CCS at approximately 1830 hrs on 7 Mar 45 Pte. Smith was admitted to 6 Cdn CCS. He was suffering from a through and through gun shot wound in the left foot between the first and second metatarsals there was a small fracture of the second metatarsal. There was no surgical treatment necessary and he was transferred to 11 Cdn F DS

F.D. MacKenzie Capt.

The accused declines to cross-examine the witness.

Question to the accused.

Q. Do you wish to make any statement or to give any evidence on oath? You are not obliged to say anything or to give any evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be used in evidence.

A- No sir.

The accused does not call any witnesses.

Rules of procedure 4(c)(d)(e)(f) and (g) have been complied with.

I certify that the foregoing summary of evidence consisting of 2 pages was taken down in writing in the presence of the accused this 20th day of March 1945.

In the Field
20 Mar 45

H. L. Mowbray Lt
North Nova Scotia Highlanders
Officer i/c Summary

LIST OF WITNESSES

For the Prosecution

First Witness: G.19520 Pte Frost, E.M. Nth N.S. Highrs

For the Defence

N I L

LIST OF EXHIBITS

--N I L--

I, F.66743 Priv te Herbert Freeland SMITH, North Nova Scoti Highlanders, attached No 11 Cdn FDS, desire to have an officer assigned to represent me at my Court Martial.

Field
17 Mar 45

.....Smith..H.F.....
Signature of accused.

22.45 (Can #2)

PTE SMITH H.F.

See L-62 for pt can

22-45

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A-3206 Fte Smith, Harry Franklin - RCR - 3 CIRU.

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 14 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of One (1) year and to be put under stoppages of pay until he has made good £0-3-6 the expenses by his absent and desertion

4 Jan 44 (Sgd) [signature] Lt Col

(Sgd) ..... Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Mitigation of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Finding and Sentence confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

(Sgd) [signature] Brigadier Commander

Date 4 JAN 1944 Commanding (Can. Reinforcement Units) C.A. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
A 3206 Pte Smith Harry Franklin	6 Jan 44	[signature] Lt Col

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

FIELD GENERAL COURT-MARTIAL (CFAO6 (in lieu of AFA5) CAN/P & R/7608 (2004))

Convened by Order of Brigadier G. Francoeur Comd "D" Gp, CRU dated 3 JAN 44.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
A-3206	Fte	Harry Franklin	SMITH	3 CIRU RCR

PROCEEDINGS REVIEWED 20 Jan 44 [signature] Lt Col

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) England on (*date*(N)) 4 Jan 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any~~, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for paths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(~~s~~) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1045 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO~~.(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to~~ ~~as interpreter? Ans~~

~~The Interpreter is sworn.(1) Do you object to~~ ~~as shorthand writer? Ans~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO - SIR.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 98, MML p 742.)

A7. The President, Members, ~~JA, if any,~~ and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt Col	A 2 Redman	H Q C R U.
Member	Capt	J K Blaiklock	4 C I R U.
Member	2/Lt	D M C Shaw	4 C I R U.
~~Judge Advocate~~	2/Lt	C A Law	3 C I R U.
Prosecutor	Lt	J. E. Fleury	4 C I R U.
Defending Offr	Lt	W D Tripper	3 C I R U.
	2/Lt	J. S Till.	

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 99 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused before arraignment make(s) (no) ~~no~~ plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 109), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 136, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A95 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(E), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. NO - SIR.(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part 1 of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by son of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. ..... Do you intend to call witnesses on your behalf? Ans. ..... Are they witnesses as to character only? Ans. .....
(1. *RP ~~185~~ 114.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(2) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1) Ans. NO - SIR.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. *MFR 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. I only ask for my Defending Officer.(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(1. *When several accused tried separately see RP ~~185~~. One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RD 309, 1323, MML p 66, 737-738. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

HQ CDN RFT UNITS

4 Jan 44

To The Confirming Offr,
Cmdr, D Group

FGCM - A3206 Pte Smith, H F RCR - 3 CIRU

1 The Court could not overlook the fact that this man was absent 126 days and was apprehended and the Court gave him the normal punishment.

2 However, it is fair to say that the accused would probably not have committed this offence except for his relationship with the woman referred to in the plea of mitigation and the children which they have. The accused has a wife in Canada so that nothing can be done about his present relationship. Generally I would say that ordinarily this accused is capable of rendering reasonably good service in the army.

3 These circumstances might be considered at some future date by the Reviewing Offr.

(D L Redman) Lt-col
President, FGCM

DLR/rm

Time of Signature.....hrs

CHARGE SHEET

The accused, No. A.3206, Private Harry Franklin SMITH, The Royal Canadian Regiment, on the strength of No. 3 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:-

CHARGE
AA SEC 15 (1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, absented himself without leave from 3 CIRU, at 0900 hrs. 17 Aug 43 until apprehended at Reigate by Military Police at 1245 hrs. 21 Dec 43, thereby incurring cost of apprehension in the amount of £0/3/6. (Total time absent, 126 days, 3 hrs. 45 mins.).

J.A. McIntosh

(J.A. McIntosh) Colonel
Officer Commanding
3 Cdn. Inf. Reinf. Unit

Dated:
27 Dec 43.
In the Field.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

IN THE FIELD
3 JAN 1944

G. Francoeur

(G. Francoeur) Brigadier.
Commander,
"D" Group, Cdn Rft Units.

MM

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFAB) 40/PAM/1697 (2nd/E)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy: AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A-3206	Pte		Harry Franklin	SMITH	3 CIRU RCR

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 3 JAN 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr~~ mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-col.	D. L. Redman	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A Captain	to be detailed by CO	4 CIRU
A Lieutenant	to be detailed by CO	4 CIRU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

In England
(Country.)

Date 3 JAN 44

G Farmer Brigadier.
(Signed personally. RP 105 fn 2.) (Rank.)

Commanding "D" Group, Cdn Frt Units.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

3 CANADIAN INFANTRY REINFORCEMENT UNIT

Medical Officers Certificate
K.R.(Con) para 557.

I certify that I have this morning examined No. [illegible] Name & Rank

of #3 C.I.R.U. and in my opinion he is ~~unfit~~ fit to undergo trial

by Court Martial.

Station Aldershot.

Date 4/1/44

Medical Officer
3 Cdn. Inf. Reinf. Unit.

NOTE E-3

The accused A3206 Pte. Smith J. J. has asked me to speak on his behalf in mitigation of his sentence. He is 36 yrs of age, joined the army in Canada on the 5th of Oct 1939. He arrived overseas with the RCR's 31 Dec 1939. In the 4 yrs and 3 months he has been in the army, he has had 5 charges, four of them AWOL, the other charge of barrack damages. About a year after arriving overseas, he met a girl, who is now his common law wife, and has been for 3½ yrs. They have two children, and he is the father of these children. When he was apprehended by the civil police at Rugate on 11 May 1942, his wife was in hospital, while the daughter was born. On this his last absence, he took sick after he was home, then took sick with the flu. His common law wife asked him to return to his unit, he said that he wanted to spend one christmas with her and the children. Since he has been back he has heard from his wife, and she is being bothered by the police, who are trying to get a statement from her to the effect that she did not know he was a deserter. She receives no allowances from the government for herself or the children and he has been giving her money from his

own pay. He does not want anything to happen to her or the children, that is his only worry. He states that he gets the urge to go to his home and see her and that he can not help himself.

Yours Respectfully
G. L. Dill Lieut.

LIST OF WITNESSES

Prosecution: Capt. W.E. Thorne, CMSC, Records Officer, 3 CIRU. (DOCUMENTARY)

Capt. L.S. Grayson, D.A.P.M., London. (DOCUMENTARY)

Cpl. Gorman, B.T., #11 Cdn. Provost Coy. (DOCUMENTARY)

Defence: NIL.

CERTIFIED THAT THIS PART II ORDER IS A TRUE COPY OF THE ORIGINAL STENCIL BEARING THE NUMBER 277, DATED 24 DEC 43.

(W. E. THORNE) Captain,
Records Officer,
3 Cdn Inf Reinf Unit.

3 CANADIAN INFANTRY REINFORCEMENT UNIT
DAILY ORDERS PART II

Last Order No 276 23 Dec 43 — issued by COLONEL J.A. MCINTOSH, D.S.O., E.D. OFFICER COMMANDING — No 277 24 Dec 43

"A"

1. STRENGTH INCREASE

LIEUT P.G.A. PHILIP
GEN LIST

Having been granted the appointment of LIEUT in CDN ARMY (CDN INFANTRY CORPS GEN LIST) is TOS 3 CIRU wef 22 Dec 43 Posted as reinforcement to "H" WING (Auth: CMHQ/PHILIP P.G.A./1 (M.S.5)/d 22 Dec 43)

2. ATTACHMENTS

LIEUT R.E. WILDGUST
PERTH R

Ceases to be attached fap to PERTH R Fd Unit (REAR) wef 23 Dec 43

3. COURSES

LIEUT D.A. JACKSON
ESSEX SCOTTISH R

Returned from Special 3" Mortar Crs Ser 3 at 3 WING CTS wef 23 Dec 43

4. STRENGTH DECREASE

CAPT C.A. BRYAN
PERTH R

Ceases to be attached fap to HQ 1 CDN ARMY and is SOS to SERIAL CM 252 No 1 CDN SPECIAL DRIVERS SCHOOL wef 15 Dec 43 (Auth: CRU/406/Spec Trg Camp/1 (DAAG) d/21 Dec 43)

"B"

5. STRENGTH INCREASE

(a) B136424 PTE CANIE — R J
L & W REGT
TOS from L & W REGT Fd Unit while in Lister Duers Hosp wef 12 Dec 43

(b) B 54537 L/CPL CHARETTE — P V
ALQ R
TOS from ALQ R Fd Unit while in 13 Gen Hosp wef 17 Dec 43

(c) A 99705 SGT BEALES — T W
A 6156 SGT GAUTHIER — N J
RCR
TOS from 4 CIRU wef 24 Dec 43 Posted as reinforcements to "H" WING (Auth: CRU/408/4 Inf RU/1 (SCA) d/21 Dec 43)

(d) P 13222 S/SGT HAMILTON — J M
RCCS
TOS from 1 CSRU wef 24 Dec 43 on transfer from RCCS to CDN INF CORPS (RCR) Posted as reinforcement to "H" WING (Auth: ECH/99/18/1 Sigs RU/(A.2) & ECH/99/29/WD & NCO INC/2 d/6 Dec 43)

(e) H 40568 PTE PASIECZNIK — J
RCASC (Cook "C")(Cat "B1")
TOS from 1 CASCRU (C&B WING) wef 22 Dec 43 and is ATTACHED AS IN U.E. (Auth: CRU/408/1 C&B WING/1 (SCA) d/19 Dec 43)

(f) A 3206 PTE SMITH — H F
RCR
TOS from DESERTION wef 21 Dec 43 having been apprehended from AWL at 1245 hrs 21 Dec 43
(Held in Close Arrest)

6. ATTACHMENTS

(a) D 3208 TPR CAMPBELL — W J D
18 CDN ARM'D C REGT (12D)
Ceases to be attached fap to 4 CIRU wef 23 Dec 43

(b) A 88028 PTE DUNCANSON — K D
A 76188 PTE WILTON — M E
GEN LIST
Attached fap (TEMPORARY)(1 month) to HQ CRU wef 23 Dec 43 (Auth: CRU/A 6502 d/21 Dec 43)

7. ATTACHMENTS--CANCELLATIONS

Ref Pt II O 276 d/23 Dec 43 para 10(b) insofar as it concerns H 40568 PTE PASIECZNIK J (RCASC), is Cancelled

8. COURSES

(a) The u/m returned from CMHQ Crs 802 Ser 18 (NCO'S Carrier) at 2 (Tech) WING CTS wef 23 Dec 43:

B 59103 A/CPL BAILEY — E R — ESSEX SCOTTISH R
B 41491 CPL CRESSWELL — C L — L & W REGT

(b) The u/m returned from CMHQ Crs 809 Ser 14 (Pltn Wpns) at 3 WING CTS wef 23 Dec 43:

A 4395 SGT BAILEY — L W — HLI of C
B 41422 L/CPL MARSH — H — L & W REGT
B 41464 A/CPL MATHESON — E L — L & W REGT
P 16468 A/L/CPL REID — S W — RCR
A 36132 CPL SCHULTZ — G L — HLI of C

(c) H 8154 PTE CADY — W F — Returned from CMHQ Crs 723 Ser 25D
A116679 PTE FROESE — J — (Re t'l Water Duties) at Army School of Hygiene wef 23 Dec 43
GEN LIST

(d) The u/m returned from CMHQ Crs 303 Ser HW 33 (Pltn Wpns) at NYTHE WING wef 23 Dec 43:

A 70046 CPL ENGLISH — E — ESSEX SCOTTISH R (PE) "H" WING
B 42852 A/CPL HILL — H A — L & W REGT
B 40847 A/CPL HEMPHILL — C V — L & W REGT
B 41198 L/SGT WINTERFORD — A L — L & W REGT

(e) The u/m returned from Command Crs 902 Ser 36 (Firefighting ORs) wef 23 Dec 43:

A117100 PTE HARRISON — H A — GEN LIST
D 72275 PTE MCCABE — G J — RCR

9. PERMANENT ESTABLISHMENT

The u/m are absorbed in the (PE) 3 CIRU and posted to "A" WING wef 22 Dec 43:

G 22874 PTE CRIPPS — J R — N SHORE R — (Cat "B1")
B 64620 RFN LAPCHAK — M — QOR of C — (Cat "B2")

10. PUNISHMENTS

(a) A120196 PTE MILLER — J I — AA 15(1) AWL from 2359 hrs 22 Dec 43 to 0715 hrs 23 Dec 43 (Absent 7 hrs 16 min)
L & W REGT
Admonished on 23 Dec 43
Forfeits 1 days Pay FR&I 149(1)(a)

(b) A 59919 PTE PRENTICE — W R — AA 15(1) AWL from 2359 hrs 22 Dec 43 to 0715 hrs 23 Dec 43 (Absent 7 hrs 16 min)
PERTH R
Admonished on 23 Dec 43
Forfeits 1 days Pay FR&I 149(1)(a)

11. PUNISHMENTS--ADDENDUM

Ref Pt II O 253 d/26 Nov 43 para 8(b) insofar as it concerns A 42468 PTE REID K (GEN LIST), after "(Committed to H.M. PRISON FELTHAM)" add "(In Close Arrest from 1140 hrs 10 Nov 43 to 1000 hrs 18 Nov 43)"

12. HOSPITAL

Transfers

(a) C102060 PTE FLARO — L J — Alton Con to 2 Con — 21 Dec 43
GEN LIST

Discharges

(b) A 4512 PTE ADAM — B A — 2 Con — 23 Dec 43
GEN LIST

A117702 A/CPL JEANNETTE — D N — 2 Con — 23 Dec 43
GEN LIST — SUPER TO W.E.

A 37749 PTE SMITH — A — 2 Gen — 23 Dec 43
HLI of C

F 86688 PTE WEAGLE — A N — 8 Gen — 23 Dec 43
RCASC — ATT AS IN W.E
(Cook "C")

13. LEAVE OF ABSENCE

(a) B 3001 A/CPL COUBROUGH ✓ H M Granted 14 days P/L plus 48 hrs pass
RCR (Total - 16 days) with money allowance
in lieu of rations under FR&I(O) 789
(3) & (4) from 23 Dec 43 to 7 Jan 44

(b) A 50277 PTE SQUIRE ✓ H G Granted 7 days P/L plus 48 hrs pass
ESSEX SCOTTISH R (Total - 9 days) with money allowance
in lieu of rations under FR&I(O) 789
(3) & (4) from 23 Dec 43 to 31 Dec 43

14. ABSENCE WITHOUT LEAVE

(a) The u/m are AWL from times shown:

A 32366 PTE EVERETT W G 2145 hrs 21 Dec 43
HLI of C

A 6038 PTE HAYES D 2359 hrs 22 Dec 43
RCR

A 33678 PTE XEESO A J 2359 hrs 22 Dec 43
A 33574 PTE WADJIWAN C F 2359 hrs 22 Dec 43
RCOC S

(b) A 32042 PTE EDWARDS W D AWL from 2200 hrs 2 Dec 43 21 days
RCR Absence 2200 hrs 23 Dec 43

A 3038 PTE HASTINGS A AWL from 2200 hrs 2 Dec 43 21 day
RCR Absence 2200 hrs 23 Dec 43

15. DETENTION

The u/m are released from Headley Downs Detns Bks wef 23 Dec 43:

A103186 PTE BERGMAN C A HLI of C
C 5052 PTE CHOUINARD R PERTH R
A 50272 PTE POWELL M ESSEX SCOTTISH R

16. CIVIL IMPRISONMENT

A 68232 PTE KOOBS F W Released from HM PRISON DORCHWOOD SCRU
PERTH R wef 22 Dec 43

17. REMISSION OF SENTENCE

(a) A103188 PTE BERGMAN C A Granted 89 days Remission of Sentence
HLI of C 9 months Detention awarded on 25 Jun
(Auth: Rules for DB & MP Nos 126 & 129

(b) C 5052 PTE CHOUINARD R Granted 70 days Remission of Sentence
PERTH R 7 months Detention awarded on 6 Aug 43
(Auth: Rules for DB & MP Nos 126 & 129

18. POSTINGS

(a) B131144 PTE LAUGHLIN J P Ceases to be posted Surplus to W.E.
RCR SURPLUS TO WE ("A" Wing) and is posted as reinforceme
to "H" WING wef 23 Dec 43

(b) B 74737 PTE WIXON W Posted SURPLUS TO W.E. ("A" Wing) wef
HLI of C (Overage) 22 Dec 43

19. QUALIFICATIONS--ADDENDUM

Ref Pt II O 276 d/23 Dec 43 para 20(b) insofar as it concerns A105466
PTE WELCH A E (GEN LIST), add "AV"

20. STRENGTH DECREASE

A 3710 PTE PIPE R J SOS to 1 NETD on discharge from 10 Gen
RCR Hosp wef 20 Dec 43 (Auth: ORO 4103)

WFM

(W.E. THORNE) CAPT.,
RECORDS OFFICER,
3 CDN INF REINFORCEMENT UNIT
CDN ARMY OVERSEAS

CERTIFIED TRUE EXTRACT FROM 3 CIRU PT II O #166 d/19 Aug 43 para 10 (a)

PART II D.O. EXTRACT FORM

Records Officer 3CIRU

Extracted from:

UNIT: 3 Cdn Inf Reinf Unit

NO:	RANK:	NAME:	D.O. NO:	DATE:
A.3206	Pte	SMITH H.F. (RCR)	166	19 Aug 43

CASUALTY: The u/m are absent without leave from times shown:

A.3206 Pte SMITH H.F. RCR ----- 0900 hrs 17 Aug 43

(W.E.THORNE)Captain
Records Officer
3 Cdn Inf Reinf Unit

C. M. H. Q.
Records Office
Entered by
Date

CARD INDEX
Shows
Unit:
Date:
Final verification:

SECTION:

Where entered:

UNIT:

RECORDS 8
RCF A 8370

LIST OF EXHIBITS

Exhibit "A" Part II Order (Extract) #166 d/19 Aug 43, 3 CIRU.

Exhibit "B" Part II Order No. 277 d/24 Dec 43, 3 CIRU.

Exhibit "C" Certificate of Expenses of Return.

Exhibit "D" Statement by Cpl. B.T. Gorman.

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No A3206 Rank Pte. Name Smith, W.T. Unit 3 C.I.R.U.

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit Escort~~ London from Boxhill

Date	Particulars ½ Portion	Amount		
21 Dec. 43	Escorts return fare from LONDON To Boxhill		1	9
	Prisoners single fare to LONDON From Boxhill		1	9
	Prisoners fare from To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		3	6

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

L. Brayson Capt.

Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000/55
46(T & E-4853/1207)

CHARGE

Army Form B 252
(See King's Regulations)

3 C.I.R.U. — Regiment / Battery / Squadron / Troop or Company

CHARGE against No A-3206 Rank Pte.

Name SMITH H.F.

Place Reigate Date of Offence 21 Dec.43.

OFFENCE W.C.A.S. was absent without leave.

M B Capt. ~~Lieut.~~
Officer i/c Patrols.

Names of Witnesses :—

B-48898 Cpl. Gorman 11 Con Pro Coy.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded: Remanded to Commanding Officer

By whom Awarded

Adjutant.

P.T.O.

20188. Wt.W21374/1961. 2,000,000 10/42. K. & H., Ltd. G657/47

1398

STATEMENT OF EVIDENCE IN THE CASE OF.

A-3206 Pte. SMITH H.F.
#3 C.I.R.U.

Sir :-

At approximately 1245 hrs. 21 Dec.43.. while on duty in Reigate, I stopped at the Traffic Lights, where a Civilian Policeman informed me where I could find an A.W.L. Accompanied by P.C. Simmonds # 8, of the Reigate Civil Police Force, I went to # 14 Stewart Crescent, South Park, and placed the a/m soldier under close arrest being absent without leave. I checked his identity with his pay book.

I escorted the a/m soldier to the Guard Room at # 11 Cdn Pro Coy., and turned him over to the N.C.O. i/c of the Guard.

Bt. Gorman
Cpl.
B-18898 B.T. Gorman.
11 Cdn Pro Coy.

REMARKS

STATEMENT OF ACCUSED

I certify having received free of charge a copy of the Charge Sheet, Summary of Evidence, List of Witnesses, and a List of Exhibits.

I desire the services of an Officer to represent me at my trial.

Pte. Smith H.F.

A.3206 Pte. Smith, H.F.

SUMMARY OF EVIDENCE

In the case of Regt. number A.3206, Private Harry Franklin SMITH, Royal Canadian Regiment, on the strength of 3 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

FIRST WITNESS: Prosecution

Capt. W.E. Thorne, CMSC, Records Officer, 3 CIRU, having been duly sworn states:

I am Capt. W.E. Thorne, CMSC, Records Officer, 3 CIRU, and have custody of the regimental documents of that Unit. I hereby produce a certified true extract of the original 3 CIRU D.O. Part II No. 166, d/19 Aug 43 (hereto attached and marked Exhibit "A" to this Summary), showing A.3206, Pte. Smith, H.F. to be absent from his quarters from 0900 hrs. 17 Aug 43 until apprehended at 1245 hrs. 21 Dec 43, as shown in certified true copy of original stencil of 3 CIRU Daily Order No. 277 (Part II) d/24 Dec 43, attached hereto and marked Exhibit "B".

W.E. Thorne

(W.E. Thorne) Captain
Records Officer, 3 CIRU

The evidence is read back to the accused.

The accused declines to cross-examine the witness.

SECOND WITNESS: Capt. L.S. Grayson, D.A.P.M., London Area.

I certify that in my opinion the attendance of this witness is, owing to the exigencies of the service, not readily available or procurable, and a written statement of his evidence has been read to the accused and is attached hereto as Exhibit "C".

Frederic L. Eaton

(Frederic L. Eaton) Lt.
Officer detailed to take the
Summary of Evidence

I do not require the attendance of this witness for cross-examination.

Ex A

H.F. Smith

A.3206 Pte. Smith, H.F.

THIRD WITNESS: Prosecution

B.48898, Cpl. B.T. Gorman, No. 11 Cdn. Prov. Coy.

I certify that in my opinion, the attendance of this witness is, owing to the exigencies of the service, being employed at a distance, not readily available or procurable, and a written statement of his evidence has been read to the accused and is attached hereto as Exhibit "B".

Frederic L. Eaton Lt.
(Frederic L. Eaton) Lt.
Officer detailed to take the Summary of Evidence.

I do not require the attendance of this witness for cross-examination.

P.E. Smith H.P.
A.3206, Pte. Smith, H.P.

The accused was cautioned as follows:

"Do you wish to make any statement or to give any evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused elected to make no statement nor give any evidence on oath.

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of Evidence, consisting of two pages, was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

Frederic L. Eaton Lt.
(Frederic L. Eaton) Lieut.
Officer detailed to take the Summary of Evidence

EXA

Completed and signed
this 28th day of Dec 1943,
In the Field.

MFM 6
(AFB 122)
40/Pam5/136 (3438)

No. A3206 Name SMITH H.P. Sqn. Battery or Company Corps R.A.O.C. Date of enlistment 5-10-39 GC Badges Service or Proficiency Pay

Company Conduct Sheet Date of last entry in Nil No and date of last drunk Nil Period not reckoning towards freedom from extra fine Substituted for Dis'd List 31-12-48 Sheet No one Signature OC Company, etc M.G. Hoffman Capt Character

J.A. McPherson Lt Col.

Place	Date of offence	Rank	Cases of drunkenness	Offence	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	10-1-41	Pte.				28 dys Detn.		C.O.	22 dys FR&I (1)
	18-3-41	Pte.		AWL from 0630 hrs 18-3-41 AA 15(1) until 1720 hrs 7-4-41		28 Dys Detn.		C.O.	21 dys FR&I
	15-3-42	Pte.		AWL from 2359 hrs 15-3-42 til apprehension by Civil Police Reigate, Surrey at 1620 hrs 11-5-42		57 dys Detn.		FGCM	57 dys pay 57 dys pay 28 dys pay Total 142dys Stop £1/2/11
						Granted 19 dys Remission of Sentence.			
Field	25-8-42	Pte.		AA 15(1) AWL from 2359 hrs 25-8-42 til 0700 hrs 26-8-42 (7hrs1min)	L/Sgt. Kennedy	5 dys F.P.	27-8-42	C.O.	10 dys Pay FR&I
Field		Pte.		AA 40 Conduct to prej etc. Barrack Damages.	A/Sgt Metre A/Cpl.McCann	Stop of pay £0/10/-	23 Feb 42	Lt. Col. Clinyen	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				CERTIFIED TRUE EXTRACTS FROM [illegible] 4 in MY POSSESSION ---------- (W.E. THORNE) Captain. Records Officer 4 Can Inf Reinf Unit.	EXC	4 Jan 43		

STATEMENT AS TO CHARA
OF SERVIC

Number A.3206 Rank Private

1. The following is a fair and true summary of the e

xxxxxxxxxx conduct sheets of the accused, exclusive of convict
of summary awards under Section 47 of the Army Act and of cas
with.

	Within last 12 months		Since enlistmen
For (AA 15(1)	Nil	times	AA Sec (15)(1)
For (AA Sec 40	One	times	AA Sec 40
For		times	
For		times	

xxxxxxxxx

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
A.3206	Private	SMITH, H.F. R.C.R.	3 CIRU

1. The following is a fair and true summary of the entries in the [illegible] conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For (AA 15(1)	Nil	times	AA Sec (15)(1)	One times
For (AA Sec 40	One	times	AA Sec 40	One times
For		times		times
For		times		times

[illegible]

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

[illegible]

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 14 days in military custody, making a total of 14 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his attestation paper is Born 30 May 1907

6. The date of his attestation specified in his attestation paper 5 Oct 1939

[illegible]

8. [illegible]

9. The accused is in possession of or entitled to no military decoration, or military reward [illegible]

[illegible]

EXB

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

.....dated....., and in his regiment (or corps), the rank of

.....dated.....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

.....Date of promotion.

In the rank of.....years.

In the rank of.....years.

In the rank of.....years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number A.3206 Rank Private Unit

Name SMITH, H.F. of R.C.R. 3 CIRU Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	In the Field 13 Jun 42	A.A. 15 (1) A.A. 24 (2)	57 days Det. 57 days pay FR&I 149(1b) 57 days pay FR&I 149(1)a 28 days pay FR&I 149(1)b1)	19 days remission from detention with pay

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 4th day of December, 1942

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

(W.E. Thorne) Captain
Records Officer, 3 CIRU

50-13.

Cpl. Smith, N. J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: L12645 Cpl H.J. Smith

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A.A. Sec 19	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 1 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be reduced to the Ranks ~~and~~

~~forfeit seniority~~

(Sgd) ..... 15 June 45 (Sgd) W.J. Preston Major
Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks (for ..... further order).~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) H.W. Clarke (L.G. Clarke) Brigadier
Date 18 June 45 Commanding CRA 3 Cdn Inf Div
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
L12645 Cpl Smith, H.J.	20 Jun 45	[signature] Lieut

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AO [illegible] 30-13

FIELD GENERAL COURT-MARTIAL

CF AMS (To 2nd Echelon, A.E.F.) 40/1 & S. [illegible] 4/38B

Convened by Order of BRIGADIER L.G. CLARKE Comd RCA 3 Cdn Inf Div dated 12 June 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number. (a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L12645	Cpl	Herbert James	Smith	3 Cdn Inf Div Postal Unit

26 JUN 1945 [illegible] CMHQ

PROCEEDINGS REVIEWED

PROCEEDINGS REVIEWED

29 June 45 [illegible] Quarter Cdt. Commds

D. J. A

23 Jun 45 Gen. Staff 1 Echn HQ 21 Army Gp BRANCH JAG H.Q.

PROCEEDINGS OF TRIAL

REVIEWING OFFICER

Held in the Fd in (country) Holland on (date(s)) 15 June 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed. 33/125

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding point number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1215 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(1)~~

(1. KR Con 557. 2. AA 46(B), RP 40 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to ..... as interpreter?~~ Ans ~~.....~~

The Interpreter is sworn.(1) ~~Do you object to ..... as shorthand writer?~~ Ans ~~.....~~

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, viz:

President	Major	W.J. Preston	C.H.Q.
Member	Capt.	W.C. Sutherland	11 Can H Coy RCE
Member	Lieut	E.A. Anderson	14 Can H Regt RA
Judge-Advocate			
Prosecutor	Lieut	C.V.H. Young	7 Can Recce Regt
Defending Offr	Lieut	G.W. Rawlley	7 Can Recce Regt.

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused ..... before arraignment make(s) (no) plea(s) (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 13(2), RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such pleas, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoF cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does not) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 3

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

PAM 4 64 1-19

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans N/C .....(5)
(*1. RP 37(B). 2. RP 37(B) fn 6. 3. RP 35(B) fn 3 para 2, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement.~~(1) The Court decides (not) to advise accused to change his (their) pleas of Guilty to Not Guilty on The charge(s). ~~The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s).~~ Part 2 of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 742 paras 12-14 and p 811 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans ..... Do you intend to call witnesses on your behalf?
Ans ..... Are they witnesses as to character only? Ans .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9a.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s) being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part 2 of the Schedule is dated and signed.(2)
(*1. AA 54(3) (4), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans Lieut Willis, O/C Signal Despatch Unit
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 27(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~extract~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 255 or AFB 2186. 2. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes. I shall Hereinafter
(*1. RP 27(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 27(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(4), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-52, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas KO 309, 2123, MML p 882, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest for Confirming Offr see KR Can 367. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The Accused, No. L.12645 CPL. HERBERT, JAMES, SMITH, 3 Canadian Infantry Division Postal Unit, Canadian Postal Corps, A soldier of the Canadian Army Overseas is charged with

WHEN ON ACTIVE SERVICE DRUNKENNESS

Sec 19
Army Act

in that he

In the field, in Holland, on 30 May, 1945 was drunk

In the Field
4 June 45

(A.J. Willis,) Lieut.
Commanding,
3 Can. Inf. Div. Postal Unit

To be tried by Field General Court-Martial.

(L.G. Clarke) Brigadier
Commanding
Royal Canadian Artillery
3 Cdn Inf Div.

In the Field

Date: 12 Jun 45

Exhibit B

FIELD GENERAL COURT-MARTIAL

CFA 96 (In lieu of AFA3) 40/FAS/1697 (2068)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(5).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L.12645	Cpl.	Herbert James	SMITH	3 Cdn Inf Div Postal Unit CPC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has committed the offence set forth in the Charge Sheet attached and on (*date*) 12 Jun 45 endorsed by me, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence should be tried by an ordinary General Court-Martial; (Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person, and to consist of the Offrs appointed or detailed hereunder.

4. (AA 49, RP 106(B). Delete the whole or part, if not applicable.)

5. (AA 182F). Delete, if none appointed.)

PRESIDENT.

Major (Rank.) W.J. PRESTON (Must be named. RP 106.) CH of O (Unit.)

MEMBERS.

Captain W.C. SUTHERLAND 18 Cdn Fd Coy RCE

Lieutenant (Rank.) E.A. CLENDENAN (Named or detailed. RP 106.) 14 Cdn Fd Regt RCA (Unit.)

WAITING MEMBER.

(Rank.) (Named or detailed, if any. RP 106.) (Unit.)

JUDGE-ADVOCATE.

(Rank.) (Must be named, if any. RP 106.) (Unit.)

On Active Service in the Fd

in Holland (Country.)

Date 12 Jun 45

(Signed personally. RP 105 fn 2.)

(L.G. Clarke) Brigadier

Commanding Royal Canadian Artillery
3 Cdn Inf Div. Convening Officer.

Brigadier (Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

This is to certify that L12645 Cpl. Smith,H.J., 3 Cdn. Inf. Div. Postal Unit Cda has been medically examined and found fit to stand trial by Field General Court Martial on 15 June 45.

Lac Knight Capt
RCAMC

15 June 45

Exhibit #1

E-1.

Brief Character Witness

Lieut A.J. Willes, Officer Commanding 3 Can Inf Div Postal Unit

Having been duly sworn states:

I first met the accused 2126455 Cpl Herbert James Smith in Ottawa in 1940. In October 1942 I met him again when I took charge of 3 Can Inf Div. Postal Unit, and have had no cause for complaint against this NCO regarding his work or his character. He handles cash, postal notes and stamps

Yes X X

RP 83(b) Complied with

PLEA OF MITIGATION E-3.

On behalf of L12645 Cpl Herbert James SMITH, 3 Cdn Inf Div Postal Unit, Cdn Postal Corps.

I respectfully submit the following plea of mitigation for the Consideration of the Court.

First may I point out the good conduct, reliability and efficiency of this N.C.O. during his five and a quarter years of Active Service. Since his enlistment in April,1940 to date he has but two entries on his Conduct Sheet. Neither of these charges were of serious nature and a period of nearly three years intervened between charges. The most recent of these two charges was the result of a VE-Day escapade incurring the misuse of a W.D. vehicle for which he was severely reprimanded.

The Officer Commanding his unit commends him as a hard working and reliable N.C.O.

Never in over five years Active Service has this N.C.O. been charged with drunkeness and never during his Military Career has he been unable to fulfill his duties due to drunkeness.

His Military efficiency and reliability is further attested to in the fact theat he has served as an N.C.O. since Aug 1944 with good report

The occasion which brought about the present charge was an impromtu farewell party to a fellow soldier in a nearby unit who was leaving for repatriation to Canada. After four years of service practically side by side itis not unreasonable to bend to the temptation of a drink when parting. It is submitted that the quality of the liquor and the fact that this N.C.O. is not a habitual drinker was responsible for his action, not the quantity of the liquor consumed. The liquor in question was an issue and after two drinks Cpl Smith felt ill and together with Cpl Bryant left the party to return to their billets. The effects of the liquor rapidly became more evident and the incidents as contained in the Summary of Evidence took place under the influence of liquor.

It is also submitted that the molesting of civilians described in the Summary of Evidence was nothing more than a prank enacted under the influence of liquor. The civilians ' inability to understand the soldiers speech and actions led to a misinterpretation of those actions. The incident took place on a main road in full day-light and this fact together with this N.C.O.'s fine character discredits any thoughts of misconduct.

In summing up, it is submitted to the Court that the following points are worthy of consideration before sentence is passed:-

1. The good conduct of this N.C.O. prior to this charge.
2. His efficiency and reliability as an N.C.O. as attested to by his Commanding Officer.
3. His unquestionable honesty; in the nature of his duties he handles and is responsible for large sums of money.
4. The way in which Cpl Smith has accepted his responsibility in this case. He admits and regrets his guilt of drunkeness and instead of bitterness over arrest he has continued his work with zeal and cheerfulness whilst pending the convening of this Court.

5. That this N.C.O. under the Army's Policy will shortly be eligible for Repatriation to Canada for demobilization and that a heavy sentence would cause him a large financial loss.

In view of these facts I plead that Cpl Smith is deserving of the utmost leniency of this Court.

Respectfully submitted,

G W Routley

(G W Routley) Lt.
7th Cdn Recce Regt (17 DYRCH)

Exhibit A. WIII

SUMMARY OF EVIDENCE

Summary of Evidence in the case of,- L12645 Cpl Smith H.J. 3 Cdn Inf Div Postal Unit, a soldier of the Canadian Army Overseas.

The accused is informed of his rights.

Lieut A.J. Willis, Officer Commanding 3 Cdn Inf Div Postal Unit directs that all evidence be taken on oath.

1st Witness

144381 Major A.F. Jordan DCM 31 Group Pioneer Corps having been duly sworn states,-

At about nine o'clock on the 30 May 45 I was accompanied by Major Hurle of 308 Coy Pioneer Corps. I was approaching my Group Hq and when within 40 to 50 yds, I heard screams and shouts on the opposite side of the road. On looking over I saw two civilians being molested by two soldiers, and on approaching, the soldiers hid themselves behind a tree and the civilians came towards me and Major Hurle and by gestures and in broken English, complained of the treatment the soldiers had given them. I approached the two soldiers and asked them what they were doing there and what unit they belonged to. The accused, whom I now recognize whose speech was very incoherent gave me to understand that he belonged to the Postal Unit. I came to the conclusion that the was drunk, in that he was very unsteady on his feet, his speech was very incoherent and he smelt very strongly with drink. I told the accused to come with me which he did being very unsteady on his feet while crossing the road to my Group Hq which was 15 to 20 yds away. On arriving there I warned the accused that he was under close arrest for being drunk, improperly dressed, and assaulting a civilian. The accused was dressed in battle dress, not hat, and wearing thin soled shoes. I placed the accused in charge of RQMS Speroni 31 Group Pioneer Corps. I obtained the address of the male civilian who seemed to be suffering from shock and fear from his experience.

The accused declines to cross-examine the witness.

Signature of witness A.F. Jordan DCM Major

2nd Witness

143984 Major Mx L. Hurle Pioneer Corps having been duly sworn states,-

On May 30th about 2100 hrs I was proceeding along the ZEIST-DOORN road accompanied by Major Jordan Pioneer Corps. I heard shouts and screaming, my attention was drawn by civiliens to two soldiers with two civiliens. On approaching closer I saw a Cpl holding a civilian by the wrist and swinging him around, I saw also another soldier standing near the corporal. On approaching further, the corporal whom I now recognize, let go of the civilian and went and hid himself behind the tree together with another corporal. Major Jordan and I approached the accused and Major Jordan spoke to him. The accused was improperly dressed, in not wearing a beeddress, a belt, and his jacket was undone. He was drunk. Major Jordan ordered me to obtain an escort which I did formed by some soldiers whom I found in the vicinity. The accused together with the corporal companion proceeded to 31 Group Hq. I went and spoke to the civiliens concerned and obtained their address.

The accused declines to cross-examine the witness.

Signature of witness, [signature]
(L. [illegible]) Major

3rd Witness

13033999 RQMS Speroni of 31 Group Pioneer Corps having been duly sworn states,-

On the 30 May 45 at 2115 hrs I was instructed by Major Jordan to take two corporals into close arrest. Calling two of my own men, they were escorted into a room. When I addressed the two corporals they became slightly abusive. To save any trouble I took the two guards to an outside position. While speaking to one of the sentries and the sergeant, I heard the sound of a window opening, and going to the corner of the building I saw the two corporals running down the path. Calling to the sergeant and one sentry, I gave chase. I managed to catch one corporal on top of the wall, who I handed over to the sergeant and one sentry, and then proceeded to search the gardens and surrounding fields for the missing prisoner. Being unable to find him I returned to my HQ. I went out in a car to search for the prisoner along the road, being unable to find him I returned to HQ again where I was informed by a private Canadain soldier that a corporal was lying under a hedge in a field behind our HQ. I went out. It was the missing prisoner. He was senseless in the fact that he could not speak or stand up. I carried him back to HQ. I called to one of the sergeants to render first aid as the prisoner had cut his hand and mouth by forcing his way through a hedge. At approx 2215 hrs, I handed the two prisoners over to a provost corporal.

Q, Do you recognize the accused as the prisoner you found under the hedge?

A, Yes Sir.

The accused declines to cross-examine the witness.

Signature of witness, [signature]
(F. Speroni) RQMS

4th Witness

A. Van der Linden of Fred Hendriklaan No 49, ZIEST having been duly sworn, states,-

Last Wednesday night I was walking with my fiancee along the ZIEST-DOORN road when I saw the two soldiers come out of a little lane, and they were a little drunk. They sat down on the grass at the corner and when we passed they winked at my fiancee. We went further on and when I looked back later I saw that they were coming after us. Suddenly they were close to us and I said to my fiancee "let us go to the other side of the road" so that we may go back, perhaps when they do not see you, they will forget you". So we did that. But the two soldiers also came over to the other side. I thought now that they would catch my fiancee and I told the soldiers not to touch my fiancee. One of the soldiers caught me by the wrist but at that moment I saw two officers coming up and I said to my fiancee to go over to them. In the meanwhile I told the soldiers that two officers were coming and they let me go now.

Q, Did this happen on 30th of May?

A, Yes.

Q, Do you recognize the accused as one of the soldiers?

A, Yes, I recognize him.

Q, Do you recognize the accused as the one who caught you by the wrist?

A, No! It was not this soldier.

The accused declines to cross-examine the witness.

Signature of witness: A. Van der Linden
(A. Van der Linden)

The accused was cautioned as follows:-

Q, Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence?

A, No I do not.

The accused does not call any witnesses.

(12645 Cpl Smith R.S.)

I certify that the foregoing Summary of Evidence consisting of 3 pages was taken down by me in writing in the presence and hearing of the accused this 1st day of Jun 45 and that RP (c) (d) (e) and (f) have been complied with.

D.H. Falconer Lt.
(D.H. FALCONER) Lieut, RCA
Officer Taking Summary.

I wish at my forthcoming Field General Court Martial to have a competent officer defend me.

W.J. Smith

W.J.Smith Cpl
L 12645
3 Cdn Inf Div Postal Unit.

4 June 45

Exhibit "B"

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
L 12645	Cpl	Smith, H.J.	3 Cdn Inf Div Postal Unit

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For Mis-use of WD transport (A.A.Sec 40) ... two ... times.
For ... times.
For ... times.
For ... times.

Date of first entry in Field Conduct Sheet 19 Aug 42

Date of last entry in Field Conduct Sheet 8 May 45

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

~~3. The accused at the present time is under stoppages~~

~~4.~~ The accused has been awaiting trial on the present charges for ... Five ... days in military custody, *i.e.*, Four days in open arrest, One days in close arrest; ~~or~~

~~5. The accused has been awaiting trial on the present charges for ... days in open arrest.~~

5. The present age of the accused is 27

6. The date of his attestation is 3 Apr 40

7. The service which the accused is allowed to reckon is 5yrs, 2mos, 1day

†State the military decoration (if any) held by accused.

~~8. The accused is not entitled to wear any~~

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of ...	...
In the war substantive rank of Corporal	2 Nov 44
In the acting rank of Corporal	2 Aug 44

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(47853) Wt.24029/2404 25,000 7/43 A.& E.W.Ltd. Gp.698 Forms B.296(W) etc.2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		Nil		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 4 day of June 1945

[signature]

Exhibit C

No. L12645 Name Smith, H.J. Regn., Battery, or Company 3rd Div Postal Unit Corps Canadian Postal Corps Date of enlistment G.C. Badges Service or Proficiency Pay M.F.M. 6 (A.F. H.127) 40/P & /8136 (2665)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. R.Trotman Lieut. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Heathfield	29/6/42	Pte		W.O.A.S. at approx. 2230 hrs 29 June 42 used Can Army Vehicle CV773735 and petrol for private purposes. (A.A.Sec 40)	G.O.B.Inglis L.McLaughlin J.E.South A.R.Wirth D.Warkentin	14 days Pay	19/8/42		
Field	7/5/45	Cpl		W.O.A.S conduct to the prejudice, etc., used Cdn Army Vehicle M49382922 for private purposes. (A.A.Sec 40)	L.Michener	Severe Reprimand	8/5/45	A.J.Willis Lieut.	

CERTIFIED TRUE COPY
4 June 45 A.J.Willis Lieut

(F.T.O.)

138 M.

Pte. SMITH, HJ

O. H. M. S.

M. F. B. 270

Correspondence to be PINNED here.

L-12645 Pte H.J. Smith,
3 Div Postal Unit, C.P.C.

1381

"G" (A.P.M.'s Copy)

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this 13th day of August, 1942.

Whereas it appears to me, the undersigned, an officer in Command of 3rd Canadian Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to delay the trial for reference to a superior qualified officer~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named or appointed or detailed hereunder.

* Omit if not applicable.

*~~Where practicable appointed~~
*~~Where Officers to form the Court~~
*~~Where Field Officer as President~~
*~~Where Officers having more than one year's~~ service;

~~for the following reasons, namely:-~~

Judge Advocate: Captain R.A. Ritchie H.Q. 3 Cdn Div.

President.

Rank.	Name.	Regiment.
Major	A.M. Fordyce	17 D.Y.R.C.H. (17 Rec'ce Regt).

Members.

Rank.	Name.	Regiment.
Captain	~~C~~ E.F.G. Fraser	3 Cdn Div Sigs, RCCS.
Lieutenant	T.R. Giles	C.H.of C. (MG).

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (E.W.Haldenby) Brigadier,
Commanding 3rd Canadian Division.
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
L-12645 Private H.J. SMITH, 3rd Divisional Postal Unit, CPC.	First Charge. Section 40 Army Act.	Not Guilty	Guilty	Confirmed Ewh
	Second Charge. Section 40 Army Act.	Not Guilty	Not Guilty	
			To forfeit Cdn ordinary pay for a period of 14 days.	
			Dated in the field this 14th day of August	

* Question to be asked of accused, if he pleads not guilty (*R. of P. 39 (A)*):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) E.W. Haldenby (E.W. Haldenby) Brigadier. (Signed) A.K. Cordner Maj
Commanding 3rd Canadian Division. *President.*
Convening Officer (*e*)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 14th day of August 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. The interpreter) The Judge Advocate
*(4. The officers under instruction)

* Omit if not applicable.

* were duly sworn.

Signed this 14 day of August 1942.

A.K. Cordner Maj
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 702 M.M.L. 1929.

~~I certify that the terms of A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19~~

~~*President of the Court Martial.*~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~(I direct that the soldier named in the margin be not committed to prison until further orders.)~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 19 day of August 1942

E.W. Haldenby
Confirming Officer.

Promulgated and extracts taken in the case of L12645 Pte. SMITH H.J.

(*a*) (Dated) 4 SEPT. 1942 (Signed) R. Holman Lieut. D.C. 3rd Div. Postal Unit

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused, No L-12645 Private H.J. Smith, 3rd Divisional Postal Unit, Canadian Postal Corps, a soldier of the Canadian Army (Overseas) on active service, is charged with:

First Charge
Section 40
Army Act

Conduct to the prejudice of good order and military discipline,

in that he,

in the Field, at approximately 2230 hours on the 29th day of June, 1942, improperly used Canadian Army vehicle CV-773735 and petrol for private purposes.

Second Charge
Section 40
Army Act

Conduct to the prejudice of good order and military discipline,

in that he,

in the Field, at approximately 2230 hours on the 29th day of June, 1942, so negligently operated Canadian Army vehicle CV-773735 as to become involved in an accident damaging the said vehicle to the extent of not less than Thirty Pounds, (£30-0-0).

(C.Todd) Lieut.
Cmdg, 3rd Divisional Postal Unit,
C.P.C.

Signed in the Field,
this day of August, 1942.

To be tried by Field-General Court-Martial.

(E.W.Haldenby) Brigadier.
A/G.O.C. 3rd Canadian Division.

Signed in the Field,
this 13th day of August, 1942.

MEDICAL OFFICER'S REPORT

I certify that No. L 12645 Pte. Smith, W.T.
of Can. Postal Corps is in a Satisfactory state of health,
and able to undergo Trial by Court martial.

Medical Officer

J.A. Noble, Major, RCAMC,
D.A.D.M.S. 2nd Can. Division.

Station In the Field

Date 14 Jun 42.

M. F. B. 246
BHM—6-41 (792)
H.Q. 1772-39-480

Pte [redacted] H.J.

Rule of procedure - 39(a) Complied with.

5

FIRST WITNESS FOR THE PROSECUTION No T 97244 Sgt INGLIS G.O.R. having been duly sworn states.

I am a member of the 3 Cdn Div Postal unit. On the night of 29 June 42 we made a test examination at our Post Office in Crossmount. After emitting the exam at about 1930 hrs I went up to my billet at Moortop House. As I left the Office I noticed the 15 cwt vehicle CF 773755. It was standing at the gate. I knew no more about the whereabouts of that vehicle until awakened later by Lieut Todd.

Q. Who authorises the use of transport in your unit?

A. Any M.C.O in the unit.

Q Who was the usual driver of that truck?

A. Pte Smith.

No Cross Examination.

BY THE COURT.

Q. Did you say that the vehicle was on charge to anybody?

A. Pte Smith

Q. What was the usual parking place for your vehicles?

A. It was the place where I saw the vehicle.

Q. Do you know the accused

A. Yes he is the Pte Smith before the Court.

Q. When did you next see this vehicle.

A. I have never seen it since.

Q. Is there no guard which has vehicle to be left when it leaves the vehicle park

A No the practice in our unit is to leave the vehicle

~~one~~ in the park unattended. The park in his case was ~~about~~ right along side ~~between~~ the main road. The unit vehicles consisting of ~~three~~ one 15 cwt and two 30 cwt and one ~~Station wagons~~ six cwt are always left unattended except when the men are doing maintenance on them. The park is alongside our office. This is their practice.

Q. You mentioned a night vehicle park?
A. The vehicles were brought down billets at night.

Q. Can you fix the time?
A. Grass in Hand.

Q. ~~About~~ Your billets were where
A. Moorlea Farm.

Q. What was the most direct route to your billets
A. (Was right down) the road & Clockfield Second right.

Q. Is Horam on the road to your billets?
A. No

Q. Was it his practice to have a lorry go to Crowborough in hand to pick up people?
A. No.

Q. Had the vehicle been sent down for the express purpose of picking men up.
A. No.

Q. How far was it to your billets?
A. About 1/4 of a mile from Cotterly not a half a mile.

Q. Was the truck standing there when you drew it, in the ordinary course of duty?
A. Yes it was waiting to pick up the personnel when they were through with their work.

Q. Was the truck overdue when you have referred to 15 cwt or changes to the Post war unit? A. Yes Sir.

RULE OF PROCEDURE 83(6) COMPLIED WITH.

SECOND WITNESS FOR PROSECUTION

C. 91953 Pte South J.E Lorning Scout

duly Sworn States:

I recognise the accused Pte Smith. On the night of 29 June 42 after duty I visited the pub at Cross-in-Hand. I entered at about 2000 hrs leaving at approximately 2230. On leaving the pub I saw an vehicle CX 773785 outside the pub just a little way down in front. I entered this vehicle in the back thinking it was going to our billets but instead the vehicle moved and headed towards Heathfield. I do not remember a great deal after this and not very much about the accident. Being in the back I do not know what the speed was. I was picked up off the ground and taken to the 14th Field Ambulance.

Q. Who was driving the vehicle.

A. To my knowledge Pte Smith was.

CROSS-EXAMINATION.

Q. Did you see Pte Smith driving the vehicle.

A. No I did not see him. Not driving

Q Are you sure of the number on the back. A: I did notice the number that night but I used to drive the vehicle.

BY THE COURT.

Q How do you know it was the truck you had been driving?

A. Because it was the Postal Coy truck or at least that it what I thought.

Q. Did you see anyone get in to the front of the vehicle

A. Cpl Warburton.

Q How do you know it was Pte Smith driving?

A. He had been assigned to that vehicle. Warburton

Q What side of the vehicle did he get in?

Q. He got in the space driver's side.
Q. After the accident did you see anyone?
A. Well yes I mean put in the ambulance with Pte Smith, Cpl Warkentin and two others.
Q. Had Smith been sitting in the back seat with you?
A. No Sir.
Q How many in the front seat.
A First two
Q. How do you know
A I remember seeing them in the front.
Q Who was in the front?
A. Pte Smith & Cpl Warkentin. Pte Smith was behind the wheel. This was before we started.
Q. Did the vehicle stop after it first started.
A. Yes I believe it did once.
Q. Did anyone get out of the front.
A Not that I know. I would not know about that.
Q. Did you hear the front door slam or have you any reason to believe that anyone got out.
A. No Sir.

RULE OF PROCEDURE 83 (B) COMPLIED WITH

THIRD WITNESS FOR THE PROSECUTION

C. 97248 Cpl WARKENTIN D. having been duly sworn states:

I recognise the accused Pte Smith ~~before me~~ I remember the night of 19 June. On best memory after arriving on exercise I went to a public house and left Republic House at about 10 o'clock. Pte Smith was standing outside the public house there was a vehicle outside the public house. I recognised the vehicle. I do not know what Pte Smith did outside the pub. I did not see Pte Smith get into any ~~car~~ vehicle that night.

No Cross Examination.

By The Court.

Q. Who did you see getting into the truck?
A. Two Soldiers only 12 feet away, but I cannot remember Pte Smith getting into the truck.
Q. Did you see Pte Smith the accused behind the drivers wheel of that truck before it started out that night.
A. Yes.
Q. Did you give any orders in relation to the vehicle during the evening?
A. No
Q. What did you recognise the vehicle as?
A. A Vehicle of 3 Can Div Postal Coy with Serial number
Rule of Procedure 83 (2) Complied

Fourth Witness for Prosecution

C.97387. Pte McLaughlin L.G. having been duly Sworn Stated:

I recognise the accused Pte Smith. On the night of June 29th I came out of the Cross-in-Hand Pub at Cross-in-Hand at about 2230 or 2245 and got in to a vehicle thinking we were going direct to the Car park but instead of that the truck turned around and we went in the direction of Heathfield and then to Horam we stopped at Horam for a few moments and some of us got out of the Car the truck then started back towards Heathfield on the Horam London road when

I felt a bad bump and I felt myself flying through the air. When I got up I was in a sort of haze for a few seconds. I could see the men lying on the ground and some people by the gate. I told people to phone for an ambulance and for Lieut Todd and the Provost and asked if we could get handcuffs. I do not know who got in the drivers seat of the vehicle when we started. I could not estimate the speed of the truck prior to the accident. After the accident I saw Pte Smith & Pte Warburton and three others on the ground. The truck was sitting ~~was sitting~~ right side up, the front wheels were out from under it. I don't know what was broken. Pte Smith was lying with his head towards the left side of the truck towards centre of the truck. His head was about four inches from the left front fender of the truck. Pte Warburton was quite a distance from the truck 10 or 12 feet. (That is only an estimate of course) He was directly in front of the truck.

By The Court

Q. Was the canvas top on the truck when you started?
A. Yes
Q. Who was in the truck with you?
A. Pte Worth, Pte South, Pte Chadwick Pte Flowers and Cpl Langley.
Q. Were there any others in the back.
A. No.
Q. Was it on the road or in a field after the accident?
A. It was off the road in a field I could not say how far.
Q. Were any other vehicles involved in the accident?

A. No Sir.

Q. Are all these names you have mentioned members of 3 Cdn Div Postal unit.

A. Yes Sir.

Q. What was the condition of the road - dry or wet.

A. I don't remember.

RULE OF PROCEDURE 83(3)
COMPLIED WITH

FIFTH WITNESS FOR THE PROSECUTION

CAPT. A. MEADERSON 3 Cdn Div D.O.W. having been duly Sworn States:

I am a member of the 3 Cdn Div D.O.W. On the 30th day of June Ford 30 cwt CY 118735 was brought into our shops. I examined the vehicle and found it was beyond our repair and the frame was fractured. It was evacuated to Army Ordnance workshop. The platoon gone on one side, one down wound not clear. In my opinion the damage done was in excess of $30.00.

NO CROSS-EXAMINATION.

Defending Officer

As to the first charge:

Each part of the charge must be proved. There is no proof here that any Government period has passed and yet has accused is charged with his proper use of it.

There is no evidence that the vehicle of his number stated in the charge was ever driven by his accused. There is only one witness who says his number and his is Some doubt. The case in this respect has not been proved. The burden is on the Crown.

The accused had a Corporal in his truck with him who could have authorised his trip. There is no evidence that he did not do so. This should have been proved.

As to the second charge there is absolutely no evidence of that type of wilful or culpable neglect which is necessary for conviction under Sec 40

As to the second charge

JUDGE ADVOCATE

I agree that no case has been made out on the second charge. I can advise you Sir that it should be dismissed.

AS

Expediting Officer:

I moved point out that the accused has a clean conduct sheet. I moved also point out that he is charged with improper use of a vehicle and that the unit of which he was a member was extremely slack in the method of issuing transport. He has no crimes, he has a clean cut appearance.

Summary of evidence in the case of: L12645
Private Smith N.J.
Regiment: 3rd Div. Postal Unit C.P.C.

By direction of the Commanding Officer the summary of evidence is taken on oath.

5th Witness No: C97248 Cpl. Warkentin D. 3rd Div. Postal Unit having been duly sworn states:-

I left the Field Post Office at Crone in Hand at 2000 hours June 29, 1942 and stopped at the pub for some drinks. On coming out of the pub the vehicle CV375735 was parked in front and so we all got in. I got into the front seat beside the driver Pte. Smith. I was figuring we were going back to the billets but we turned around and went the other way. I never questioned Pte. Smith. We stopped at Horam for about a minute. I asked Pte. Smith to slow down a bit while driving to Horam which he did. While we stopped at Horam I went out to talk to the boys in the back. From Horam we started on our return journey. I put back my head and went to sleep. That's all I remember until I woke up in 5 C.C.S.

The accused declines to cross-examine this witness.

(Signature of witness)
.....Cpl. D Warkentin C97248.....

The accused having been duly cautioned in accordance with Rule of Procedure 4 (3) reserves his defence.

I certify that the foregoing summary of evidence consisting of three papers was taken down by me in writing in the presence of the accused and rules of Procedure 4 (c) (d) (e) (f) have been complied with

(Signature of officer taking summary)
.....L. Lt. Adjt. R.C.....

Date: 7 Aug 42
Place: In the field.

STATEMENT OF MCLAUGHLIN L.G. C97387 TAKEN UNDER OATH

I left the Cross in Hand pub at Cross in Hand at approximately 2240 hrs, 29 June 42 and got into vehicle CV773735 thinking that we were going directly to the vehicle car-park. Instead of that the truck swung around and proceeded toward Heathfield and to Horam. We were returning on the Horam-Little London road, in the direction of Heathfield, and had gone only a short way when the accident happened. I felt myself flying through the air. I picked myself up and could see the men lying around and also saw some people standing by the gate. I had been thrown clear of the truck.

C97387

Signed Lt. L.G. McLaughlin.....

Summary of evidence in the case of: No: L12645
Private Smith, N.F.
Regiment: 3rd Div. Postal Unit C.F.C.

By direction of the Commanding Officer the summary of evidence is taken on oath.

1st Witness No: C97244 Sgt. Inglis C.C.S. 3rd Div. Postal Unit having been duly sworn states:-

At the Field Post Office at Cross in Hand on the evening of June 29, 1942, our unit wrote a Trades Test examination. After the examination at approximately 1930 hours, I left the office to go to our billets at Moor Top house. As I left the office the vehicle C97733J was stationed at the gate. I had no knowledge of the said vehicle from that time until I was awakened by Lieut. C. Todd at approximately midnight and had not authorized any trip for the vehicle.

The accused declined to cross-examine this witness.

W.C. Inglis Sgt
(Signature of witness)

.....

2nd Witness No: C97453 Pte. South J.E. 3rd Div. Postal Unit having been duly sworn states:-

At the Cross in Hand on the evening of June 29, 1942 after finishing duty at approximately 2000 hours, I went to the local pub until approximately 2230 hours. Upon leaving the pub I saw our vehicle C97733J parked just approximately in front of garage next to the pub and on thinking that this vehicle was going to our car park I entered same getting into the back. After getting into the vehicle the vehicle turned and headed toward Heathfield. I do not remember anything of the accident and cannot tell the speed of the vehicle as I was in the back of the vehicle. After the accident I remember being picked up off the ground and put into an ambulance and taken to the 14th Field Ambulance.

The accused declines to cross-examine this witness.

(Signature of witness)
.....Pte. J.E. South

Summary of evidence in the case of : No L12645
Private Smith H.J.
Regiment: 3rd Div. Postal Unit C.P.C.

By direction of the Commanding Officer the summary of evidence is taken on oath.

3rd Witness No: 097596 Pte. Powers J.M. 3rd Div. Postal Unit having been duly sworn states:-

At the Field Post Office at Cross in Hand on June 29, 1942 at approximately 1900 hours after finishing writing a Trades Test examination I went over to the Cross in Hand hotel at approximately 1930 hours. After being in there for approximately two hours I came out and I got into the back of the truck CV773735 which was sitting in front of the garage. Thinking I was going up to the billets or car Park, we immediately turned around and went towards Heathfield. On the journey the last place I recognized was Heathfield. I woke up in the hospital at 700 hours the following day. I did not see who was driving the vehicle at any time ~~~~ during the journey owing to my being in the back.

The accused declines to cross-examine this witness.

(Signature Of Witness)

.....Jack Powers.....

4th Witness No: 097242 Pte. Wirth A.H. 3rd Div. Postal Unit having been duly sworn states:-

At approximately 1900 hours I left our Field Post Office after writing the Trades Test Examination to go to the local pub at Cross in Hand. After being at the pub until approximately 2200 hours, I came out of the pub, entered the back of vehicle CV773735 which was parked in front of the garage next to the pub. I was under the impression that it was going immediately back to the car park or billets. Instead of going in that direction the vehicle immediately turned around and headed towards Heathfield. The last part of the country that I recognized was Heathfield. I do not know how fast the vehicle was travelling during the journey. Just before the crash I heard the scrapping of bushes on the tarpaulin. That is the last I remember until finding myself on the ground near the truck. I do not know who the driver was.

The accused declines to cross-examine this witness;

Signature of witness

.....A.H. Wirth.....

Certified True Copy

Army Form B.122

Date of enlistment 3-4-40 Sheet No.

No. L12645 Name Smith H.J. Sq., Batty., or Company Corps 3rd Div Postal Unit

Date of last entry in Company Conduct Sheet | No. and date of last drunk | G.C. Badges | Long Service and G.C. Pay | Signature O.C. Company, etc. E. Ladd Lt.

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

[P.T.O.

Wt. 29249/793, 2m.m. 11/40, S.P. Co., 61-7951

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

ARMY FORM B.296.

Alt. Corps (Ky President)

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
112649	Private	Smith H.J.	3rd Divisional Postal Unit

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Nil

	• Within last 12 months.	•Since Enlistment.
For	times	times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct, Nil

or

There are no entries in the conduct sheets of the accused.

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

• The numbers herein stated should correspond with the number of entries in the conduct sheets, permission being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

2. The accused has not been previously convicted, ~~as~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time. ~~or~~ The accused at the present time is under sentence for _____ beginning on the _____ day of _____

4. The accused has been in confinement, awaiting trial on the present charges, for No days in civil custody, and No days in military custody, making a total of No days, of which No days were spent in hospital.

5. The present age of the accused according to his ~~attestation paper~~ record of service is 23 y

6. The date of his ~~attestation~~ enlistment specified in his ~~attestation paper~~ record of service is 3-4-40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N/A

8. The accused is entitled to deferred pay or gratuity in respect of N/A service.

9. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)). N/A

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated _____ and in his regiment (*or* corps *or* department) the rank of _____ dated _____

(7)10-40 W.O.(M.A.P.)/972 75,000 12-40 A. & E.W. Ltd. Gp.278

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. L12645 Rank Private Name Smith W.J. of 3 Div Postal Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations in full, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		Nil		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this day of

13 The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Nil

	Date of Promotion.
In the rank of	
In the rank of	years.
In the rank of	years
	years.

(INSTRUCTION—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph concerned amended accordingly.)

WWW-125. Case #2

Spr. Smith H.L.W.

See WW-134 for 1st case.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused :

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Sec 41 A.A.	Not Guilty	Not guilty of rape but guilty of indecent assaul	
2nd	Sec 6(3)(d)AA	Not guilty	Guilty	
3rd	Sec 41 A.A.	Not Guilty	Not Guilty	
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~By [illegible] pending~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 15 days, of which Nil. days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo two years imprisonment with hard labour

(Sgd) "GM Morrison" Maj. — Judge-Advocate, if any. 5 Aug 44 — Date awarded. (Sgd) "B W Ingram" — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is : I confirm finding and Sentence.

~~I direct that the accused be sub-committed to prison or detention barracks until further orders.~~(1) "WCM"

(1. AA 57A. Delete if not used.)

(Sgd) "W C Murphy"

Date 18 Aug 44 — Commanding (W.C. Murphy) Brig 1 Cdn Armd Bde. — Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
K-1133 Tpr Smith HLW	Unit Parade on 21 Aug 44. Pt I Order N-54 Para 274 D.22 Aug 44	"E. D. Butler Capt"

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

Certified True Copy

RECEIVED AT CMHQ IN AD 160. WWW-125

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA2) 40/P & S/1698 (2664)

Convened by Order of (D.M. Owen) Capt Brigadier W.C. Murphy Comdl 1 Cdn Armd Bde dated 14 Aug 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K-1133	Tpr		Hugh Lloyd William	SMITH	14 Cdn Armd Regt.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date) 15 Aug 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fins ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73-74, 94-103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The accused is not fit to undergo trial by court-martial.~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to Lt Aurelio Pace as interpreter ? Ans No

The Interpreter is sworn.(1) ~~Do not object to any Interpreter.~~ Ans "Sworn"

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No. (2)

(1. RP 106. 2. If no objection, waiting member retires. RP 106(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc

President	Major	B W Ingram	1 Cdn Armd Bde Ord Fd Pk RCOC
Member	Capt	D G Green	1 Cdn Armd Bde Sig RCCS
Member	Capt	J F Wilson	14 Cdn Armd Regt
Judge-Advocate	Major	G M Morrison	DJA 1 Cdn Corps.
Prosecutor	Lieut	R A Cawsey	14 Cdn Armd Regt
Defending Offr	Capt	D F Baker	14 Cdn Armd Regt

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See 2d p 3.)

A8. The accused before arraignment make(s) (no) ~~a~~ plea(s). "NGM"

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule. "GNM"

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 80, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)

(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 37(D) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty (as to) ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part 1 of the Schedule is amended accordingly.

(1. Court may be cleared to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part 1 of the Schedule.(1)

(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)

(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans NO (1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (~~see~~) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans As a witness Do you intend to call witnesses on your behalf ?

Ans NO Are they witnesses as to character only ? Ans N/A

(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the 1st & 2nd charge(s), being subject to confirmation, will be promulgated later.(1)

Or [illegible] and that [illegible] are confirmed.(2)

(1. AA 54(2) (a), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans NO

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), ~~and certified true copy extract of Conduct Sheet(s)~~(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A ~~[illegible]~~ MFM 6 not available "CHC"

(1. MFB 215 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) ~~[illegible]~~(1), and in mitigation of punishment ?(2) Ans Yes

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A., if any.(2)

(1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 96, 118, 119(A), KR Can 308, 330, 563-566. Overseas #0 109, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(2), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 52. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, K-1133, Trooper Hugh Lloyd William SMITH, 14th Canadian Armoured Regiment, a soldier of the Canadian Army, is charged with:-

1st Charge
Sec. 41
Army Act

WHEN ON ACTIVE SERVICE
COMMITTING A CIVIL OFFENCE, THAT IS TO SAY RAPE,

in that he, in the field, in Italy, on 29 July 1944, unlawfullh had carnal knowledge, without her consent, of Signora Iride ANDREINI, wife of Conte Gaetano ANDREINI.

2nd Charge
Sec 6(3) (d)
Army Act

WHEN ON ACTIVE SERVICE
COMMITTING AN OFFENCE AGAINST THE PERSON OF AN INHABITANT OF THE COUNTRY IN WHICH HE WAS SERVING.

in that he, when serving in the field, in Italy, on 29 July 1944, assaulted Conte Gaetano ANDREINI, an inhabitant of Italy, by pointing a pistol at him and catching hold of him.

3rd Charge
Sec 41
Army Act

WHEN ON ACTIVE SERVICE
COMMITTING A CIVIL OFFENCE, THAT IS TO SAY
STEALING,

in that he, in the field, in Italy, on 29 July 1944, stole a sum of money, namely approximately Five Thousand (5,000) Lire, the property of Conte Gaetano ANDREINI OF ARNIANO, province of Toscana, Italy

In the Field
12 August 1944

"C.A. Richardson Lt-Col."
Lt-Col.,
Commanding Officer,
14th Canadian Armoured Regiment,
(The Calgary Regt (Tank), (CAC)

To be tried by Field General Court-Martial.

"W.C. Murphy" Brig

14 Aug 44

(W.C. Murphy) Brig,
Comd, 1 Cdn Armd Bde.

"BWI"

FIELD GENERAL COURT-MARTIAL

CFA05 (In lieu of AFA8) 40/P&S/1697 (2008)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fnt, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K.1133	Tpr		Hugh Lloyd William	SMITH	14 Cdn Armd Regt.

"WCM" CONVENING ORDER. "WCM"

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 14 Aug 44 endorsed by me, ~~[illegible]~~, "To be tried by Field General Court-Martial". "WCM"

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~[illegible]~~ "WCM"
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~[illegible]~~ "WCM" attached hereto.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	B.W. Ingram (Must be named. RP 106.)	1 Cdn Armd Bde Ord Fd Pk, RCOC (Unit.)

MEMBERS.

Capt	D.G. Green	1 Cdn Armd Bde Signals, RCCS
Capt (Rank.)	J.F. Wilson (Named or detailed. RP 106.)	14 Cdn Armd Regt (Unit.)

WAITING MEMBER.

Capt	J.H. Pratt	12 Cdn Armd Regt
Capt (Rank.)	D.C. Mathews (Named or detailed, if any. RP 106.)	14 Cdn Armd Regt (Unit.)

JUDGE-ADVOCATE.

Major (Rank.)	G.M. Morrison DJA (Must be named, if any. RP 106.)	1 Cdn Corps (Unit.)

On Active Service in the Fd

in ITALY (Country.)

"W.C. Murphy Brig" (Signed personally. RP 105 fn 2.) (Rank.)

Date 14 Aug 44

Commanding 1 Cdn Armd Bde (CMF)
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

"B1"

MEDICAL OFFICER'S CERTIFICATE

I have this day examined K-1133, Tpr SMITH, H.L.W., 14th Canadian Armoured Regiment, and find that he is physically FIT to undergo trial by Field General Court Martial.

In the Field
0830 hrs
15 Aug 1944

"R.R. Stein Capt"
R.M.O. 14 C.A.R.

EVIDENCE FOR THE PROSECUTION

First Witness for the Prosecution:

Conte Gaetano Andreini having been duly sworn states. I live at Cortina E Mandorli, Montespertoli. I recognize the accused. About 28th or 29th July last I saw him about 6 o'clock in the evening at a house connected with my house -- an apartment in the same building. He told me he had come to search for Fascists I offered to assist him and took him around the building to the other families - There are three families in the building. There is only one entrance to my living quarters. I took the accused into my quarters. There was no one in there when we went in. Another man who lives in the building want in. with us. I took him throughout my house to search as he said he was looking for fascists. There are two stories to the house. The accused and the other man were with me while searching. The other man was Biazoni Francisco. After searching upstairs we went downstairs and I gave wine and fruit to the soldier - the accused. While the three of us were talking my wife came in alone. The accused asked my wife how many rooms were upstairs and he asked to see the upstairs rooms again in order to search again and my wife and I took him upstairs. We first went into a small room, then to another, then to the centre room which is my bedroom. When we got in there the accused shut the door and stood with his back against the door and he spoke in English but I did not understand what he was saying, but he pointed to the bed and to my wife. The soldier was carrying a pistol in a holster when I first saw him. As soon as we started to search the house, the soldier took the pistol from the holster and was holding it in his hand. I tried to persuade the soldier not to do anything as I was afraid he was going to do something improper to my wife. I stood between my wife and the soldier and I wife said to me we would have to die together. The soldier was holding the pistol against my chest - pointing at me. Just after point to the bed and my wife the soldier said he would give us five minutes pointing to his watch --which I understood to mean unless we gave in to him, he would shoot us when the five minutes was up. Then the accused grabbed me by the throat and pushed me away. My wife ran towards the windowbut did not reach it because the soldier stopped her and hit her on the face with his hand. The soldier then compelled me to sit on the bed at the point of the pistol, at the same time holding onto my wife who was struggling with him and crying. He forced her on to the side of the bed opposite me. He holds the pistol in his left hand he pulled down my wife's underdress. Then the soldier opened his pants and got on my wife. I heard the breath of the soldier and knew that he was having sexual intercourse with my wife. Then he finished, my wife was fighting all the time. Before the soldier had sexual relations with my wife my wife and I tried to make him understand that my wife was not in physical condition to have intercourse. The soldier then made us understand that he did not want us to leave the house and took us downstairs to the waiting room. We stayed there about 15 mins without conversation. Then there was a knock on the door which my wife answered and Signor Cecchi entered. My wife asked him to stay with me and she went out. I had been going around in my pyjamas and went upstairs to get dressed leaving the accused and Cecchi downstairs. While changing I noticed that about 5000 lire which I had placed on the cabinet in my room that day was still there. I then went into the lavatory to wash and as I was coming out the soldier was waiting to get in and entered, the lavatory. I then went to my room and discovered that the money had disappeared.

Cross-Examination: Signor Biazini left my house before my wife and I and the accused went upstairs to search. The reason I didn't raise a complaint when we came downstairs after the attack on my wife was because the accused warned us not to go out but my wife got out as soon as she could. While the accused had my wife on the bed I did not see his penis but I saw him open his pants and get on top of my wife.

By the Court I do not understand English nor does my wife. When speaking to us the soldier spoke English with a few words of Italian. I am 60 years of age. My work is administrator of 62 farms. I do not own them. When I found the money gone from my room I went downstairs and while descending the stairs a Canadian Sergeant whom I know and who visits me was entering the house. The accused then left after having a few words of conversation with the Stt. I don't remember what hand the accused hit my wife with. When my wife was on the bed she was fighting to keep her legs together. My wife is not strong. I think she collapsed. While on my wife the accused was moving in the manner of one having sexual intercourse. The reason I did not attempt to apprehend the accused after Cecchi arrived was that I was not armed and I did not want to tell Cecchi what happened to my wife upstairs. I told the Sgt about the loss of the money but not about my wife. My wife was wearing an ordinary house dress. The accused had only a half glass of wine at my house. The accused was sober. While a Canadian Officer was investigating the loss of the money and questioning me, I then told of what happened to my wife.

RP 83(B) complied with.

Second witness for the Prosecution:

Iride Andreini having been duly sworn states: I am the wife of Conte Gaetano Andreini. I recognize the accused. I saw him 29 July 44 about 6 or 6.30 in the evening. I saw him in my home with my husband. They were talking when I entered the house. My husband then told me the accused was searching the house for Fascists. After a few minutes the soldier said he wanted to search upstairs so my husband, myself and accused went up. After searching some other rooms the soldier went into our bedroom --that of my husband and myself. The soldier was carrying a pistol in his right hand. When in the room the accused pointed the pistol at my husband. I did not just understand what the soldier was proposing to do but my husband stood between me and him. The soldier (accused) then grabbed my husband by the throat. My husband remained near the soldier until the soldier held the pistol against his chest and made him go to the other side of the bed. I don't remember exactly what I did while the accused was pointing the pistol at my husband. I was awfully afraid. I cried in a high voice and the soldier hit me in the face. The accused forced me onto the bed on the po opposite side to my husband. It is a wide bed. The soldier was lying on his side on the edge of the bed. The soldier removed my underdress.
(At this stage the witness shows signs of being emotionally upset and states that she does not wish to tell the actual details of what happened to her.

The Court assures her that she need not worry about doing so and explains that on charges of this kind she must give the whole story. She is assured that she would not be questioned on these points unless it were legally necessary.) The witness continues: I do not remember what happened after the accused took down my underdress. I became unconscious. Afterwards I found semen outside my private parts. The next thing I remember is my husband talking to the soldier. Then they went down stairs and I went to the lva

lavatory. There was money in the room when we went in there. I saw the soldier looking at it so I put a handerchief over it. After coming out of the lavatory I went downstairs. Then Signor Cecchi came in and I asked him to remain and I went in and I asked him to remain and I went into the neighbor's apartment. I did not tell them what happened, I did not like to do so.

No cross-exam

By the Court - I am thirty years of age. I did not see the money after I put the handkerchief over it. I do not know what happened to it. I don't know what the amount of the moneywas.

RP 83(B) complied with

Third witness for the Prosecution

M-27117 Sgt W Milne, 14 Cdn Armd Regt having been duly sworn states: I recognize the accused. I saw him in the house of Conte Andreisii on 29 July last at about 1900 hours. I am fitter Sgt in a Tk Tp and I and my crew were invited to the Conte's house for supper that evening. The accused is not in my crew. The accused was coming down the staris from the upstairs of the house when I entered. He had a pistol in a holster. He asked me if I had come in for a drink and I informed him that I had come on invitation for supper. He asked for a ride back but we told him we did not know how long we'd be. He then left the house.

Cross-Exam: The accused was not in front room when I entered house. He did not seem in any hurry to leave until I told him about being invited for supper. When I entered the house, the Conte was outside the door.

By the Court: I could see no evidence of the accused having been drinking. He appeared quite sober.

RP 83(B) complied with

Evidence for the Defence.

The accused having been duly sworn states: I was looking at pictures in the Hall of the Conte's house - a hall which separates two apartments. Four or five men came along. The Conte and one of the other men spoke to me and then I walked to the brewery. I asked there for wine but was given to understand that they had none. The Count and the other man were with me. The Count said he had wine and invited me to his house where I had a glass of wine. His wife came in with a water melon. While we were eating the melon the Count's friend went out. I can't swear why I went upstairs the first time. We looked in two rooms. The Count told me something I didn't understand. Then we went downstairs. We drank wine. The Count's wife got very excited about soldiers. She seemed to be scared of pistols. Mine was in my holster. We went upstairs again -- the Count, his wife and myself and went to the Conte's room. They were still talking about pistols. I took mine out and broke it to show them it wasn't loaded. They got very excited apparently thinking I was going to shoot them. The Count pushed his wife behind him. I put the pistol back in holster to see if they'd stop hollering. I saw money folded on dresser. I don't know how much. I saw it when I first went in room. The Count's wife tried to tell me there was something wrong with her. The Count sat on the edge of the bed holding his head in his hands and trying to tell me something was wrong. His wife was trying to pacify him. I sat on the edge of the bed next to the wife. The Count wanted to know if I wanted intercourse with his wife. He said "figi figi". He apparently had the impression that I wanted intercourse with his wife and that's the reason they were so excited. I tried to tell them I wasn't seeking intercourse.

I walked out of the room. The others followed me down. I drank more wine downstairs. Four or five minutes later an Italian came in and the Count's wife left. About 10 or 15 mins later the Count went up stairs. Later I went to lavatory then came down; was finishing wine as Sgt. Came in. He told me he and his fellows were invited to supper. I then went out to a truck and asked for a ride back to camp.

Cross-exam: When I entered the house there was no one there, I first removed pistol from holster in bedroom. I did not say I was looking for Fascists.

By the Court: I showed them the pistol was not loaded. It was not loaded. I don't know what kind of money it was.

RP 83(B) complied with

"BIW"

SUMMING UP BY PROS.

The Count has said under oath that the accused had been into his house and while in the house had assaulted the Count and stolen a sum of money. From the time the money had been last seen until it was discovered missing the accused had been the only one upstairs.

"BIW"

SUMMING UP BY DEFENCE

As far as the charge of rape is concerned this was not brought into the case until a second Summary of Evidence was taken. The woman did not in her statement give any a indication that even if the act was committed that there was any penetration which must be proved. Similarly with the Conte's evidence.

According to the accused's evidence he never actually touched the Conte but he may quite reasonably have pointed his pistol at the Conte while he was in the act of breaking the pistol to show it was empty.

The accused admits seeing the money on the dresser in the bedroom when he first entered but not afterwards.

"D.F. Baker"

"GMM"

SUMMING UP OF JUDGE ADVOCATE

Informs Court they are sole judges of facts and not to be guided by his opinion so far as facts are concerned. Deals with and defines offence of rape. Refers to MML Page 113 Para 37. Cautions Court to consider carefully whether or not penetration proven. Cannot be assumed from reticence of Signora Andreieni to testify as to all details. Refers to MML page 83 Para 45 on the question of corroboration (Reads) Practically a rule of law to require corroboration in indecency cases. Instructs court on their right to convict for indecent assault if they believe Pros Witnesses and If not satisfied conviction for rape justified. Refers to Para 34 Page 113 MML. Discusses assault - what constitutes indecent assault -- matter for Court to decide whether assault and whether indecent. Defines theft - circumstantial evidence. Weight of circumstant-

ial evidence necessary before conviction

defines reasonable doubt -benefit of same to be given

accused.

"GMM"

PLEA IN MITIGATION BY DEF OFFR

Accused's record is not a bad one and he is entitled to the benefit of it. His wife is an invalid and he is worried over her situation.

Ex "A" SWI"

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF THE ACCUSED.

K.1133, Tpr. SMITH, Hugh Lloyd William, 14th Canadian Armoured Regt

1. The following is a fair and true summary of the entries in the Regimental Conduct Sheets of the accused, exclusive of convictions by a Court-Martial or a civil Court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with

	Within Last 12 Months	Since enlistment
FOR Absence Without leave	Seven times	Eight Times.

for

2. Previous convictions of the accused by a Court Martial or a Civil Court, summary awards under Section 47 of the Army Act, and dispensions with trial under Section 73 of the Army Act are set out in the Schedule annexed to this statement.

3. The accused has been held under close Arrest, awaiting trial on the present charges for 13 days in Military custody.

4. The present age of the accused according to his Record of Service is twenty-six (26) years.

5. The date of his attestation specified in his Record of Service is 9 July 1941.

I certify that the foregoing Schedule and Statement as to Character and Particulars of Service of the Accused is a true and Correct extract from the Regimental Records and books in my custody.

In the Field
15 August 1944

"R.D. Butler Capt"
.....
(R.D. Butler), Capt & Adjt.,
14th Canadian Armoured Regt,
(The Calgary Regt(Tank)CAC.

No R-1133 Name SMITH, H.L.W. Sqn, Battery or Company | Corps CAC | Date of enlistment 9 Jul 41 | OC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/136 (3438)

Company Conduct Sheet Date of last entry in | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	2 Jul 42			AA Sec 15(1) AWL from 0100 hrs 2 Jul 42 to 1055 hrs 7 Jul 44		168 hrs Detn	9 Jul 42		Forf 7 dys pay FRI 149 (1)(b) 6 dys pay FRI 149(1)(a)
Field	20 Oct 43			AA Sec 15(1) AWL:-		14 days C.B.	20 Oct 43	FGCM	Forf 1 dys pay
Field	24 Oct 43			AA Sec 15(1) AWL from 0800 hrs 24 Oct 43 to 2120 hrs 17 Nov 43		Forf all ordinary pay for 60 days	24 Nov 43		Forf 6 dys pay for C.A. 25 dys pay FRI 149(1)(a) 7 dys pay FRI 149(1)(c)(ii) Total 91 days Pay.
Field	4 Dec 43			AA Sec 15(1) AWL:-		7 Days F.F.	9 Dec 43	(Forf 5) (dys pay) (FRI 149) ((1)(a)	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field 23 Mar 44				AA Sec 15(1) AWL from 0600 hrs 23 Mar 44 to 2359 hrs 26 Mar 44		27 Days Detn	10 Apr 44		Forf 4 days pay FRI 149 (1)(a) 14 days pay FRI 149(1)(c)(11) 27 days pay FRI 149(1)(b) Total 45 Days Pay.

CERTIFIED TRUE COPY FROM M.F.M. 4.
26 Sep 44

(D.M. Owen) Capt
for Officer i/c
Cdn Sec GHQ 2nd Ech - AAI.

RC-129
PL SMITH H.M.

Second Witness:

Mr. G.P. Boyden, Manager, Barclays Bank, Horley, Surrey, having been duly sworn states:

I produce the monthly statements of account of the Sergeants' Mess, Officers' Mess, Nursing Sisters' Mess, Men's Canteen, P.R.I. Account and Barrack Damage Account of No.14 Cdn. Gen. Hospital, R.C.A.M.C. I have compared the certified true copies of the entries in the bank's books with these statements and the statements truly represent the accounts as contained in the bank's books with reference to these accounts. The above statements which I have certified to be such true copies, contain all the entries in the bank's books with reference to these accounts for the period 1 Jul 42 to 30 Apr 43.

Statements of the Sergeants' Mess for the months of Jul 42 to Apr 43 are marked H.1 to H.10 consecutively.

Statements of the Officers' Mess for the months of Jul 42 to Apr 43 are marked I.1 to I.10 consecutively.

Statements of the Nursing Sisters' Mess for the months of Jul 42 to Apr 43 are marked J.1 to J.10 consecutively.

Statements of the Men's Canteen Account for the months of Jul 42 to Apr 43 are marked K.1 to K.10 consecutively.

Statements of the P.R.I. Account for the months of Dec 42 and Apr 43 are marked L.1 and L.2 respectively.

Statements of the Barrack Damage Account for the months of Dec 42 and Jan 43 are marked M.1 and M.2 respectively.

G. P. Boyden

The accused declines to cross-examine.

Third Witness:

Major J.M. Anderson, Regimental Funds Board, C.M.H.Q., having been duly sworn states:

I am a member of the Regimental Funds Board, C.M.H.Q., and on instructions received I supervised an audit of the Sergeants' Mess, Officers' Mess, Nursing Sisters' Mess, Men's Canteen, P.R.I. Account, and Barrack Damage Account of No.14 Cdn. Gen. Hospital, R.C.A.M.C., and submitted a report on the audit of the Messes and Regimental Institutes of that Unit which report I now produce (report is marked exhibit N). This report showed that there existed, as of 30 Apr 43, the following shortages:-

Sergeants' Mess	£ 149:14:11
Officers' Mess	9: 8: 4
Nursing Sisters' Mess	37:15: 9
Men's Canteen	57:14: 5
P.R.I. Account	44: 4: 8
Barrack Damage Account	6: 5: -

There is an unexplained overage in the Patients' Fund Account of £2: -: -.

Verification of the amounts shown to have been received by the accountant of the unit and the payments made should have resulted in a balance, either in the bank or in cash on hand, and the shortage is the difference between what should have been on hand in cash and the actual cash produced. As there is no evidence that a simultaneous cash count was made at the end of each month, by the Unit Audit Board, it is impossible to say in what month, or months, the various shortages occurred. I can say that the shortages occurred between the 1 Jul 42 and 30 Apr 43. With reference to the audit of the Officers' Mess Account, the mere fact that cash income and disbursements may have been checked by the Sec'y-Treasurer, is not a complete protection and according to the records the loss as stated did occur. I am shown Cheque No. 2/g.026813 dated 10 Sep 42, drawn upon Barclays Bank Limited, Horley, Surrey, by the Nursing Sisters' Mess, No.14 Cdn. Gen. Hospital, in the sum of £16:12: -, which has been marked on the back for deposit and is marked on it's face, as paid. This cheque is included in a deposit in the Account of the Men's Canteen as of 29 Sep 42 but the books of the Men's Canteen fail to show the receipt of this cheque. It would be possible, by including this cheque in the bank deposits, to withhold cash which should have been deposited, without disturbing the balance between the cash book and the bank.

(J.M. Anderson) Major,
Regimental Funds Board, C.M.H.Q.

The accused declines to cross-examine.

Fourth Witness:

D-92505 Q.M.S. Plumpton, W.J., No.14 Cdn. Gen. Hospital, R.C.A.M.C., having been duly sworn states:

From 1 Jun 42 to 7 Sep 42 I was President of the Sergeants' Mess Committee, No.14 Cdn. Gen. Hospital. The income of the Sergeants' Mess at that time came from members' monthly dues and bar sales, collected respectively by L/Sgts. Smith and the Sergeant who was bar steward for the time being. I should say that this system came into use, perhaps during the month of July 1942 and prior to that time there had been a permanent Mess Steward. The practise was for L/Sgt. Smith, who was the Treasurer of the Mess, as well as the accountant for all the Messes and Institutes, to collect, each day, the receipts for the previous day's sales from the bar, with the exception of what was considered necessary for the making of change. I did not check the amounts of money which L/Sgt. Smith collected from the Sergeant in the bar and I did not check to see whether he had deposited that money in the bank as it was his responsibility to do so. He not only looked after the banking of money but he prepared the Financial Statement for the Mess. I identify the accused as L/Sgt. (now Cpl.) H.M. Smith. At a meeting of the Sergeants' Mess on the 6 Jul 42 it was decided to change the method of operating the Mess, whereby we had had a permanent steward and that in the future there would be a roster of members of the mess who would be on duty for a week at a time. A tour of duty would be from 0800 hours on Monday morning to 0800 hours the following Monday morning. During the time that I was President of the Mess Committee, Sgt. Franklin, S., was Secretary and L/Sgt. Smith, H.M., was Treasurer.

(Wallace J. Plumpton) Q.M.S.,
No.14 Cdn. Gen. Hosp., RCAMC.

The accused declines to cross-examine.

Fifth Witness:

D-95645 L/Sgt. Homer, A., No.14 Cdn. Gen. Hospital, R.C.A.M.C., having been duly sworn states:

From 7 Sep 42 to 10 Jan 43 I was Secretary of the Sergeants' Mess, L/Sgt. Smith, H.M. was Treasurer and Q.M.S. Walker, A. was President. The income of the Mess came from Mess Dues and cash sales at the bar, all collected by the bar steward who handed over the proceeds to the Treasurer on the Monday morning when a new steward would take over for the new week. Presumably the Treasurer deposited the money in the bank. I did not check any of the receipts of cash or the deposits in the bank. The Financial Statements, being the Abstracts of Receipts and Disbursements, were prepared by the Treasurer.

Arthur Homer

(A. Homer) L/Sgt.,
No.14 Cdn. Gen. Hospital, RCAMC.

The accused declines to cross-examine.

Sixth Witness:

D-95848 Q.M.S. Sigouin, H., No.14 Cdn. Gen. Hospital, R.C.A.M.C., having been duly sworn states:

From 10 Jan 43 until 30 Apr 43 I was President of the Sergeants' Mess Committee, No.14 Cdn. Gen. Hospital, R.C.A.M.C. The income of the Sergeants' Mess was generally speaking all in cash. Members paid ten shillings each per month as Mess Dues and a nominal roll was kept in the bar showing the names of those who had paid and who had been given receipts either by the bar steward or by L/Sgt. H.M. Smith. I do not know how that money was handled but as regards other cash which came into the Mess which was by way of bar sales, all of which were in cash and paid, at the time, to the Sergeant who was then acting as bar steward. I know that L/Sgt. Smith collected the previous day's sales each morning, leaving behind only sufficient for bar change. No receipt was given by L/Sgt. Smith to the Bar Steward who handed over money to him. L/Sgt. Smith was the Treasurer of our Mess during that part of the time that I was President, up to some time near the end of March 1943. Because he was Treasurer of the Mess, I considered that L/Sgt. Smith was the person responsible for depositing the cash received in the bank and accounting for it. I did not check the amounts of money which L/Sgt. Smith received from the Sergeant in the bar to see whether he had made the deposit in the bank. I identify L/Sgt. (now Cpl.) H.M. Smith as the accused. During that period Sgt. Atchison, W.M., was Secretary of the Mess Committee and L/Sgt. Smith, H.M., was Treasurer, as well as Accountant of all Messes and Institutes. Sgt. Franklin, S., replaced L/Sgt. Smith, H.M., as Treasurer about 18 Mar 43. L/Sgt. Smith prepared the Financial Statements.

H. Sigouin

(H. Sigouin) Q.M.S.,
No.14 Cdn. Gen. Hosp., RCAMC.

The accused declines to cross-examine.

Seventh Witness:

D-95842 Sgt. S. Franklin, No.14 Cdn. Gen. Hospital, R.C.A.M.C., having been duly sworn states:

At a Special Meeting of the Sergeants' Mess on 18 Mar 43 I was elected to fill the position of Treasurer made vacant by the demotion of Cpl. H.M. Smith, and remained Treasurer until after 30 Apr 43. In practice I did not do any accounting up till the 1 May 43 although I did collect the money from the bar man. When I took over from L/Sgt. Smith as Treasurer of the Sergeants' Mess at the middle of March 1943, he turned over to me the balance of his cash on hand, being £7: -: -, for which I gave him a receipt - this did not include any uncollected money in the bar.

S. Franklin

(S. Franklin)Sgt.,
No.14 Cdn. Gen. Hosp., RCAMC.

The accused declines to cross-examine.

Eighth Witness:

D-95660 Sgt. Payne, T.M.B., No.14 Cdn. Gen. Hospital, R.C.A.M.C., having been duly sworn states:

When I was bar steward I followed the usual procedure of entering the total amount of the day's takings from the bar sales and Mess Dues in the Daily Cash Book and at the end of my tour of duty I turned over my money to L/Sgt. Smith, H.M., who signed an acknowledgement in the book (Daily Cash Takings Book is marked exhibit O). At some time during the month of July 1942 a change was made in the system of providing bar stewards for the Sergeants' Mess, No.14 Cdn. Gen. Hospital, and as a result we used a duty roster in which Sergeants are detailed to act as bar steward for a week at a time. I have acted as bar steward for one week, around the end of September and first of October 42. L/Sgt. Smith, as Treasurer of the Sergeants' Mess, and Unit Accountant, collected all the money taken in for Mess Dues and Bar Sales at the end of my week's tour of duty. I did not get a receipt for it. I had no conversation with him as to what he was going to do with the money.

T. M. B. Payne

(T.M.B. Payne)Sgt.,
No.14 Cdn. Gen. Hospital, RCAMC.

The accused declines to cross-examine.

Ninth Witness:

Major William Cohen, No.14 Cdn. Gen. Hospital, R.C.A.M.C., having been duly sworn states:

I was Sec'y-Treasurer of the Officers' Mess, No.14 Cdn. Gen. Hospital during the period 1 Jul 42 to 14 Oct 42. During that time L/Sgt. Smith, H.M. (now Cpl.) was accountant of the Officers' Mess and as such and being considered to be a competent and reliable N.C.O., and accountant was responsible for making all bank deposits and Petty Cash payments when required and prepared all Financial Statements.

At that time it was my practice to list the cheques and cash received by the Officers' Mess and to send L/Sgt. Smith to the bank to make the deposit. In all such cases, upon his return, I checked the duplicate deposit slip bearing the teller's initials, in order to satisfy myself that the deposit had been duly made. I think that on only one occasion I made a deposit myself. Cpl. Smith is frequently referred to as L/Sgt. Smith because he held that appointment while carrying out the duties of Accountant. He reverted to his substantive rank of Cpl., 12 Mar 43 but this reversion had nothing to do with the offences with which he is charged. During my term of office as Sec'y-Treasurer the other members of the Officers' Mess Committee were Major A.R. Bazin, President, Capt. H. Van Wyck, Vice-President, and Capt. J.E. McGovern, Assistant Sec'y-Treasurer.

(William Cohen) Major,
No.14 Cdn. Gen. Hosp., RCAMC.

The accused declines to cross-examine.

Tenth Witness:

Capt. J.M. Kilgour, No.14 Cdn. Gen. Hospital, R.C.A.M.C., having been duly sworn states:

I was the Sec'y-Treasurer of the Officers' Mess Committee, No. 14 Cdn. Gen. Hospital, R.C.A.M.C., from 15 Oct 42 to 30 Apr 43. During that period cash came into the Mess from three sources: (a) a small amount from cash sales from the bar. (b) payment of Mess bills in cash. (c) cash refunds for containers, etc. These cash receipts were placed in a cash box to which only the members of the Mess Committee had access and were balanced at the end of each month against the Petty Cash Book. Every cash sale in the bar was covered with a chit and marked "Cash Sale" and at the end of each day I collected the cash and checked it against the chits. Mess accounts paid in cash were received either by me or some other member of the Mess Committee and the money was placed in the Cash Box and its receipt noted in the Petty Cash Book as well as in the Messing Account Book. As regards cash refunds - these were turned over to me by the person who obtained them and I placed the money in the cash box and made an entry in the Petty Cash Book. Disbursements of Petty Cash were either made personally by me to some person for the purpose of a purchase or payment and I received a receipt, or the money was turned over to Cpl. Smith for deposit and I placed the money in the payment or for deposit in the bank. He furnished a receipt. Sums of money given to Cpl. Smith for deposit were all subsequently checked by means of the receipts and the entries in the Petty Cash Book against the Bank Book and during the period when I was Sec'y-Treas. all such funds were accounted for. At no time, when I was present, do I recall a cheque having been drawn for the purpose of providing Petty Cash but I believe it may have been done on one or more occasions when I was away, probably for the purpose of paying Mess Stewards when there was not sufficient Petty Cash in the cash box. Cheques in payment of Mess Accounts, etc. were always, so far as I can recall, made out in favour of the Officers' Mess. The only way in which I can account for the shortage of £9: 8: 4 disclosed by the audit of the Regimental Funds Board, is that it might have occurred in connection with some of the sales and purchases that took place, from time to time, between the various Messes and the Men's Canteen, since the balances owing were sometimes paid in cash. During the period I have mentioned, Cpl., (L/Sgt) Smith, was the person who did all the depositing of funds in the bank unless he was away, in which

At that time it was my practice to list the cheques and cash received by the Officers' Mess and to send L/Sgt. Smith to the bank to make the deposit. In all such cases, upon his return, I checked the duplicate deposit slip bearing the teller's initials, in order to satisfy myself that the deposit had been duly made. I think that on only one occasion I made a deposit myself. Cpl. Smith is frequently referred to as L/Sgt. Smith because he held that appointment while carrying out the duties of Accountant. He reverted to his substantive rank of Cpl., 12 Mar 43 but this reversion had nothing to do with the offences with which he is charged. During my term of office as Sec'y-Treasurer the other members of the Officers' Mess Committee were Major A.R. Bazin, President, Capt. N. Van Wyck, Vice-President, and Capt. J.E. McGovern, Assistant Sec'y-Treasurer.

(William Cohen) Major,
No.14 Cdn. Gen. Hosp., RCAMC.

The accused declines to cross-examine.

Tenth Witness:

Capt. J.M. Kilgour, No.14 Cdn. Gen. Hospital, R.C.A.M.C., having been duly sworn states:

I was the Sec'y-Treasurer of the Officers' Mess Committee, No. 14 Cdn. Gen. Hospital, R.C.A.M.C., from 15 Oct 42 to 30 Apr 43. During that period cash came into the Mess from three sources: (a) a small amount from cash sales from the bar. (b) payment of Mess bills in cash. (c) cash refunds for containers, etc. These cash receipts were placed in a cash box to which only the members of the Mess Committee had access and were balanced at the end of each month against the Petty Cash Book. Every cash sale in the bar was covered with a chit and marked "Cash Sale" and at the end of each day I collected the cash and checked it against the chits. Mess accounts paid in cash were received either by me or some other member of the Mess Committee and the money was placed in the Cash Box and its receipt noted in the Petty Cash Book as well as in the Messing Account Book. As regards cash refunds - these were turned over to me by the person who obtained them and I placed the money in the cash box and made an entry in the Petty Cash Book. Disbursements of Petty Cash were either made personally by me to some person for the purpose of a purchase or payment and I received a receipt, or the money was turned over to Cpl. Smith for the purpose of making a payment or for deposit in the bank. He furnished a receipt. Sums of money given to Cpl. Smith for deposit were all subsequently checked by means of the receipts and the entries in the Petty Cash Book against the Bank Book and during the period when I was Sec'y-Treas. all such funds were accounted for. At no time, when I was present, do I recall a cheque having been drawn for the purpose of providing Petty Cash but I believe it may have been done on one or more occasions when I was away, probably for the purpose of paying Mess Stewards when there was not sufficient Petty Cash in the cash box. Cheques in payment of Mess Accounts, etc., were always, so far as I can recall, made out in favour of the Officers' Mess. The only way in which I can account for the shortage of £9: 8: 4 disclosed by the audit of the Regimental Funds Board, is that it might have occurred in connection with some of the sales and purchases that took place, from time to time, between the various Messes and the Men's Canteen, since the balances owing were sometimes paid in cash. During the period I have mentioned, Cpl., (L/Sgt) Smith, was the person who did all the depositing of funds in the bank unless he was away, in which

case the deposit would be made by some other member of the Mess Committee. I consider that it was Cpl. Smith's responsibility and I relied upon him to do the banking and to prepare the Financial Statement. He was known as the accountant of the Officers' Mess. I identify the accused as L/Sgt. (now Cpl.) H.M. Smith. During my term of office the Mess Committee also included Major J.G. Petrie, President, Capt. R. DeW. Scott, Vice-President, Capt. C.W.V. McCutcheon, Assistant Vice-President.

J.M. Kilgour Capt

(J.M. Kilgour)Capt.,
No.14 Cdn. Gen. Hosp., RCAMC.

The accused declines to cross-examine.

Eleventh Witness:

Capt. C.W.V. McCutcheon, No.14 Cdn. Gen. Hospital, R.C.A.M.C. having been duly sworn states:

I was Assistant Secretary-Treasurer of the Officers' Mess from 15 Oct 42 to ~~30~~ Apr 43. In the Cash Book kept by Cpl. Smith were entered amounts of cheques received in payment of Officers' accounts and of sales to other Messes of the unit. Disbursements by cheque were also entered in this book. It was kept by Cpl. Smith until about the end of December after which he appears to have let most of his work slip and it was brought up to date by Sgt. Payne and the auditors. Prior to that time he had been the only person using the book. Capt. Kilgour and I kept up the Petty Cash book, noting in it the receipts and disbursements of Petty Cash. All other books were kept by Cpl. Smith. The bar steward, Pte. Hickey, W.J., turned over to us, very small amounts of cash taken in at the bar on the following morning. As of 30 Apr 43 I checked the cash and there was no cash on hand.

C.W.V. McCutcheon Capt

(C.W.V. McCutcheon)Capt.,
No.14 Cdn. Gen. Hospital, RCAMC.

The accused declines to cross-examine.

Twelfth Witness:

Lieut. (N/S) MacLean, M., No.14 Cdn. Gen. Hospital, R.C.A.M.C., having been duly sworn states:

I was Treasurer of the Nursing Sisters' Mess from 10 Nov 42 until 25 Mar 43. It was the practice at that time, for the Treasurer to be regarded as an assistant to Home Sister Monkhouse in financial matters, she however, had no authority to sign cheques which required the signature of any two of the Committee. At dances drinks would be sold for cash to guests who were not members of the Unit and the money was collected at the time by L/Cpl. Hughes or his assistant. L/Cpl. Hughes would have the takings of the bar under his control and as soon as the bar had closed after the dance, would turn the money over to Home Sister Monkhouse. Mess bills were, as a rule, paid by

cheque but some would be paid in cash and either H/S Monkhouse or I received payment of Mess accounts. The above were the only cash receipts. All bank deposits of cash or cheques were made by L/Sgt. Smith who would receive the cheques and cash from me or from H/S Monkhouse. I never obtained a receipt for any cheques or cash which I turned over to him, nor did I verify the deposit in the bank account afterwards. I know that I have seen some of our cheques for deposit, stamped with the stamp reading "For Deposit Only" and having a place for signature but I do not know whether all cheques for deposit in the Mess Account were so stamped, as this was done by L/Sgt. Smith. Small accounts were paid by H/S Monkhouse from Petty Cash for which, cheques against the account were issued when necessary and usually for £20 or £30. Such cheques were made payable to Petty Cash and both signed and countersigned following which they were turned over to L-Sgt. Smith to cash. Such sums would be used to pay small accounts owing by the Mess and to make cash purchases but so far as I know, cash collected at dances was never used as Petty Cash, being turned over to L/Sgt. Smith intact for deposit. During the time that I was Treasurer of our Mess I considered L/Sgt. (now Cpl.) H.M. Smith to be the person responsible for banking and drawing money, as above stated, for the Mess, and for the preparation of Financial Statements. I identify the accused as L/Sgt. (now Cpl.) H.M. Smith.

Marjorie L MacLean N/S

(M. MacLean) Lieut. (N/S),
No.14 Cdn. Gen. Hospital, RCAMC.

The accused declines to cross-examine.

Thirteenth Witness:

Lieut. (N/S) Hopper, E.M., No.14 Cdn. Gen. Hospital, R.C.A.M.C., having been duly sworn states:

I was Treasurer of the Nurses' Mess, No.14 Cdn. Gen. Hospital, R.C.A.M.C., from 6 Jul 42 till 10 Nov 42. During that time H/S. Monkhouse had no authority to sign cheques but she had certain duties with regard to the handling of Petty Cash. Cheques issued by the Mess required the signature of two members of the Committee. Cash was received by the Mess from only two sources namely, cash payment for drinks at dances by guests who were not members of the Unit and the occasional payment of a Mess Bill by a member, in cash, though most mess bills were paid by cheque. Cheques in payment of Mess accounts were always made payable to the Nursing Sisters' Mess, No.14 Cdn. Gen. Hospital, R.C.A.M.C., and when these were received by me, or when I received cash in payment of a Mess Account, I turned them over to H/S Monkhouse but I did not obtain any receipt from her, and I did not check the Bank Account to see whether the money was deposited. I knew that all bank deposits were supposed to be made by L/Sgt. Smith but I do not know how this was done in detail. I do not remember just how Petty Cash was obtained but I know that H/S Monkhouse was supposed to pay small accounts from Petty Cash and that cheques for that purpose were issued. I produce cheque No. 2/G.026813 dated 10 Sep 42 on Barclays Bank Limited at Horley in the sum of £16:12: -, payable to the Men's Canteen, No.14 Cdn. Gen. Hospital, stamped "Nursing Sisters' Mess, No.14 Cdn. Gen. Hospital" and signed Esther M. Hopper and Cecil M. MacDonald. I identify the signature Esther M. Hopper as my own but I do not know for what purpose this cheque was issued, and the endorsement on the back is not in my handwriting (this cheque is marked exhibit P). L/Sgt. Smith, H.M., (now Cpl.) whom I recognize as the accused, was the accountant of

our Mess and in addition to handling funds, as I have stated, he prepared our Financial Statements. I identify the accused as L/Sgt. (now Cpl.) H.M. Smith. The abovementioned cheque (marked exhibit P) is shown as a deposit on 29 Sep 42 in the Men's Canteen Account at Barclays Bank.

E. M. Hopper

(E.M. Hopper)Lieut. (N/S),
No.14 Cdn. Gen. Hospital, RCAMC.

The accused declines to cross-examine.

Fourteenth Witness:

Lieut. (N/S) Monkhouse, M.B., No.14 Cdn. Gen. Hospital, R.C.A.M.C., having been duly sworn states:

I am Home Sister of the Nursing Sisters' Mess, No.14 Cdn. Gen. Hospital, R.C.A.M.C., and held that position between the dates 1 Jul 42 and 30 Apr 43. In that capacity it is part of my duties to disburse Petty Cash which is used to pay for goods delivered to the door and to pay small accounts renedred. When I needed cash for this purpose I would either speak to the Treasurer or to L/Sgt. Smith and while I would not see the cheque, L/Sgt. Smith would turn over an amount of money to me, usually between £20 and £30, as to the disbursement of which, I kept a record in a Petty Cash Book. I consider myself to be an assistant to the Treasurer. The Mess had two sources of cash income, one being from cash sales of drinks to guests at dances who were not members of this Unit, and the other being the occasional payment of Mess Accounts in cash by members. Most Mess Accounts were paid by cheque. So far as I recall, I usually received the sum of £20 unless I asked for more. After a dance L/Cpl. Hughes would turn over the proceeds of cash sales to the President and Chairman of the Entertainment Committee, who would count it and turn it over to me that night or the following morning. I entered this amount in the Daily Cash Takings Book, in which were also entered the daily total of chits. This money I would turn over to L/Sgt. Smith, usually on that day or the day following but I received no receipt from him and not having the Bank Book in my possession I made no check to see whether that amount was deposited. Likewise, in the case of Mess Accounts, which were paid either to the Treasurer or to me, I turned over the cheques and the cash to L/Sgt. Smith, but obtained no receipt and do not know what amount he deposited. From 1 Jul 42 until some time around the end of Mar 43 I considered that Cpl. H.M. Smith was the person responsible for depositing funds in the Mess Account and generally doing our banking and preparing our Financial Statements. I identify the accused as L/Sgt. (now Cpl.) H.M. Smith. I produce Daily Cash Takings Book (marked exhibit Q) in which I wrote an entry of a receipt of £9: -: 9 on Sep 5, 42 and Deposit Slip Book (marked exhibit Q.A) in which, for the months of Sep and Oct 42, I am unable to find a corresponding entry to show that amount deposited by Cpl. Smith.

H B Monkhouse Lieut (N/S)

(H.B. Monkhouse)Lieut. (N/S),
No.14 Cdn. Gen. Hosp., RCAMC.

The accused declines to cross-examine.

Fifteenth Witness:

Major G.W. Halpenny, No.14 Cdn. Gen. Hospital, R.C.A.M.C., having been duly sworn states:

During the period 1 Jul 42 to 30 Apr 43 I was Chairman of the Men's Canteen Committee, No.14 Cdn. Gen. Hospital and during the same period up to the election on 15 Apr 43, when Major Petrie was elected to succeed me, I was Chairman of the Regimental Institutes Committee, though for all practical purposes I remained Chairman of the latter Committee until 30 Apr 43 because of the efforts being made to straighten out the financial situation. The Men's Canteen business is conducted by N.A.A.F.I. which turns over to the Canteen Committee 6% of the gross sales monthly. These payments were by cheque and the cheques were received by L/Sgt. (now Cpl.) Smith, the accused whom I recognize. He was supposed to deposit them in the Horley branch of Barclays Bank. These cheques did not require the endorsement of the members of the Committee. In addition the Men's Canteen has two other sources of cash receipts. Dances are held and an admission fee is charged, the proceeds were collected by L/Sgt. Smith from a member of the Dance Committee, which sum would amount to not more than five pounds after the orchestra had been paid in cash. I did not check the bank deposits in the Canteen Account for the purpose of finding out whether L/Sgt. Smith actually deposited the full amount he received. I have now checked the bank statement. I produce book of Barclays Bank Limited deposit slips, these slips being made in a handwriting which I recognize as that of L/Sgt. (now Cpl.) Smith (exhibit Q.1). Exhibits E.3, E.4 and E.6 show receipts of cash for dances. I recognize the signature of Cpl. Smith on receipts which are now marked Q.2, Q.3 and Q.4, purporting to acknowledge receipt of cash from dances. I have examined the bank statements and the bank deposit slips and have been unable to find any corresponding bank deposits. The second source of cash receipts handled by the Men's Canteen Committee, was through the sale of daily newspapers to patients and personnel of this unit. An arrangement has been in existence whereby the Men's Canteen Committee purchases 75 to 100 newspapers a day from Mallinson & Sons, Horley, and for convenience these are sold through the N.A.A.F.I. The proceeds from the sale of these newspapers was kept separate by Mrs. France, the Manageress of the N.A.A.F.I. Canteen, usually until the monthly bill for these newspapers was received by L/Sgt. Smith. He would then check the total amount of money on hand against the total daily sales and the corresponding daily charge on the bill, collect the money and would usually pay this bill from Mallinson & Son with this cash. A bill was rendered by Mr. Mallinson, dated 28 Feb 43, which included the sum of £12:18: 3 for the January account which had accordingly not been paid, and was subsequently paid, partly by cash and partly by cheque. (Receipted account in the sum of £27:19: -, is marked exhibit Q.5).

During the period 1 Jul 42 to 30 Apr 43 I was Chairman of the Regimental Institutes, No.14 Cdn. Gen. Hospital. During that time L/Sgt. (now Cpl.) H.M. Smith, whom I recognize as the accused, was the accountant of the P.R.I. Account. As such it was his responsibility to collect cash and deposit it in the bank on receipt. This account was part of the Men's Canteen Account although under the jurisdiction of a separate committee until the 1 Nov 42 when a separate bank account was opened in Horley, with Barclays Bank and a separate Financial Statement was rendered monthly. The source of revenue for this account came from work done by the Unit Barber and Unit Tailor. The money was collected by L/Sgt. Smith from the berber at the end of the month and this amount was checked against the daily signatures for haircuts, kept by the barbers. The berber also collected money for work done by the tailor on the presentation of the necessary slip, given by the tailor for work done. This amount was checked against the daily work book kept by the tailor. These two sources of cash revenue were taken by L/Sgt. Smith, a signed receipt given by him, and then the tradesmen were paid their tradespay in cash and the remainder was supposed

to have been deposited in the bank in the P.R.I. Account. Bank statements L.1 and L.2 show that no deposits were made from the original deposit of Nov 28, 1942, £39: 7: 4, until the end of April.

G.W. Halpenny
major

(G.W. Halpenny)Major,
No.14 Cdn. Gen. Hosp., RCAMC.

The accused declines to cross-examine.

Sixteenth Witness:

Mrs. I.J. France, Manageress, N.A.A.F.I. Canteen, No.14 Cdn. Gen. Hospital, R.C.A.M.C., having been duly sworn states:

I am the Manageress of the N.A.A.F.I. Canteen at No.14 Cdn. Gen. Hospital, R.C.A.M.C. I know L/Sgt. H.M.Smith of this unit and know that he was the accountant of the Men's Canteen, No.14 Cdn. Gen. Hospital, R.C.A.M.C. As a result of an arrangement made with the Men's Canteen which had contracted for the delivery of a number of newspapers each day, the papers were delivered to me to be sold by retail and I collected the money and kept a record of same. At the end of each month L/Sgt. Smith checked the amount of money I had received and gave me a receipt for it. He would usually check my book with Mallinson's Bill. My book contains the following receipts:- for the latter part of June and the month of July 42 £ 7:14: 5

2 Sep 42 L/Sgt. Smith collected	11:16: 1	
the payment for Sept. papers was collected by Sgt. Payne	8:19: 1	
18 Nov 42 L/Sgt. Smith collected	11: 2: 8	
10 Dec 42 L/Sgt. Smith collected	10: 6: -	
for Dec papers, no date, L/Sgt. Smith collected	10: 3: 4	
for Jan papers, no date, L/Sgt. Smith collected	12: 8: -	
12 Mar 43 Sgt. Payne collected	14:10: -	
2 Apr 43 QMS Plumpton collected	17:11: 4	

Mrs I.J. France

(Mrs. I.J. France)Manageress,
N.A.A.F.I. Canteen,
No.14 Cdn. Gen. Hosp., RCAMC.

The accused declines to cross-examine.

Seventeenth Witness:

E-15212 Pte. Anctil, L.P., No.14 Cdn. Gen. Hospital, R.C.A.M.C., having been duly sworn states:

During the period 1 Jul 42 to 30 Apr 43 I have been employed as a barber with the unit. Each customer paid 6d for a haircut and I collected the money from him and he signed his name in my book.

Until about March 1943 when I would go to the Registrar's Office around the first of each month I would turn over the money I had collected to Sgt. H.M. Smith who would give me my tradespay and keep the balance, and give me a receipt. I would not know what became of the money after that. After sometime in March 1943 someone else collected the money. I produce the following receipts which I obtained from Cpl. H.M. Smith and covering takings of the Barber and Tailor Shops:-

17 Jul 42	£ 9: 9: -	(exhibit	R.1)
31 Jul 42	13:12: -	("	R.2)
17 Aug 42	10:12: 6	("	R.3)
1 Sep 42	13: 3: 6	("	R.4)
17 Sep 42	10:19: 6	("	R.5)
2 Oct 42	11:12: 6	("	R.6)
4 Nov 42	21:10: -	("	R.7)
	(Signed by Sgt. Payne)		
1 Dec 42	20: 1: 5	("	R.8)
31 Dec 42	22:17: 6	("	R.9)
29 Jan 43	20: 5: 4	("	R.10)
1 Apr 43	31: 5: -	("	R.11)

Undated and unsigned, a chit which I recognize to be in the handwriting of Cpl. Smith
20: 7: - (" R.12)

L. Philippe Antil

(L.P. Antil)Pte.,
No.14 Cdn. Gen. Hosp., RCAMC.

The accused declines to cross-examine.

Eighteenth Witness:

D-95840 Pte. North, G.A., No.14 Cdn. Gen. Hospital, R.C.A.M.C., having been duly sworn states:-

I have been the tailor for the unit ever since we arrived in England. The customer found out from me what the work would cost and obtained a chit for that amount of money from Pte. Antil upon payment of the amount. The customer gave me the chit when I returned his clothes. I kept a book, recording each job and the price and I checked this over with L/Sgt. Smith at the end of every month. I handled no cash. I was paid tradespay.

G.A. North

(G.A. North)Pte.,
No.14 Cdn. Gen. Hosp., RCAMC.

The accused declines to cross-examine.

Nineteenth Witness:

Capt. J.H.W. Price, R.C.A.P.C., att/No.14 Cdn. Gen. Hospital, RCAMC., having been duly sworn states:

Orders of this unit require that all personnel of the unit pay 6d apiece per month into the Barrack Damage Account and this amount has been collected by me through the pay account and turned over to the Commanding Officer, receipt being acknowledged by him on the Acquittance Roll. Acquittance Roll No.336 dated 13 Feb 43 shows receipt of 10 shillings by Colonel A. Ross and Acquittance Roll No.350 dated 25 Feb 43 shows £5:15:-, paid by me to Colonel A. Ross on the Barrack Damage Account. I have examined bank statements M.1 and M.2 and I can find no entry which would appear to be a deposit of either of these amounts up to 30 Apr 43.

Jas H.W. Price

(J.H.W. Price) Capt., RCAPC.,
att/No.14 Cdn. Gen. Hosp., RCAMC.

The accused declines to cross-examine.

Twentieth Witness:

M-24164 S/Sgt. Dixon, C., Regimental Funds Board, C.M.H.Q.,

I certify that owing to the exigencies of the service and the loss of time involved the attendance of this witness cannot readily be obtained and a statement signed by him is attached hereto as exhibit S. The accused has been advised of his rights in this regard but after hearing the statement read over he does not demand to cross-examine the witness.

D. Cuddy

(D.J. Cuddy) Capt.,
J.A.G. Branch, C.M.H.Q.,
Officer detailed to take the
Summary of Evidence.

Twenty-first Witness:

Mr. K.E. Mallinson, Newsagent, Horley, Surrey, having been duly sworn states:

For some period of time I have supplied newspapers to No.14 Cdn. Gen. Hospital, R.C.A.M.C., and during the latter part of 1942 and the early part of 1943 it was customary for me to render an account after the end of each month, following which I would receive payment, either by cheque or cash, and I have seen L/Sgt. Smith before, when he came into my place of business in this regard. I am shown receipted accounts which were prepared from my books, as follows:

Account dated 31 Oct 42, marked "Paid in Cash 19 Nov 42" (marked exhibit T.1).

Account dated 30 Nov 42, marked "Paid in Cash 10 Dec 42" (marked exhibit T.2).

Account dated 31 Dec 42, marked "Paid in Cash 8 Jan 42" (marked exhibit T.3)

The account for the Jan 1943 papers was not paid in February and was accordingly carried forward in the sum of £12:18: 2 into the account dated 28 Feb 43 which is exhibit Q.5, and is receipted by my wife, Mrs. K.E. Mallinson, whose handwriting I recognize, as a payment in cash, 12 March 1943.

K E. Mallinson

(Mr. K.E. Mallinson)
Newsagent,
Horley, Surrey.

The accused declines to cross-examine.

Warning to the Accused:

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence.

The accused does not wish to make any statement or to give any evidence, nor does he wish to call any witnesses.

I certify that this Summary of Evidence consisting of fourteen pages was taken down by me in the presence of the accused and that Rule of Procedure 4 (C), (D), (E), (F) and (G) has been complied with.

D. J. Cuddy

(D. J. Cuddy) Capt.,
J.A.G. Branch, C.M.H.Q.,
Officer detailed to take
Summary of Evidence.

In the Field,
2 Sep 43.

LIST OF WITNESSES

1.	Lt-Col.	C.A. McIntosh.
2.	Mr.	G.P. Boyden.
3.	Major	J.M. Anderson.
4.	Q.M.S.	W.J. Plumpton.
5.	L/Sgt.	A. Homer.
6.	Q.M.S.	H. Sigouin.
7.	Sgt.	S. Franklin.
8.	Sgt.	T.M.B. Payne.
9.	Major	Wm. Cohen.
10.	Capt.	J.M. Kilgour.
11.	Capt.	C.W.V. McCutcheon.
12.	Lieut(N/S)	M. MacLean.
13.	Lieut(N/S)	E.M. Hopper.
14.	Lieut(N/S)	H.B. Monkhouse.
15.	Major	G.W. Halpenny.
16.	Mrs.	I.J. France.
17.	Pte.	L.P Anctil.
18.	Pte.	G.A. North.
19.	Capt.	J.H.W. Price.
20.	Capt.	D.J. Cuddy.
21.	Mr.	Mallinson

LIST OF EXHIBITS

A. Piece of paper signed H.M. Smith.
B.1 Sergeants' Mess Statement dated 31 Aug 42.
B.2 " " " " 30 Sep 42.
B.3 " " " " 31 Oct 42.
B.4 " " " " 30 Nov 42.
B.5 " " " " 31 Dec 42.
B.6 " " " " 31 Jan 43.
C.1 Officers' Mess Statement dated 31 Aug 42.
C.2 " " " " 30 Sep 42.
C.3 " " " " 31 Oct 42.
C.4 " " " " 30 Nov 42.
C.5 " " " " 31 Dec 42.
C.6 " " " " 31 Jan 43.
D.1 Nursing Sisters' Mess Statement dated 31 Aug 42.
D.2 " " " " " 30 Sep 42.
D.3 " " " " " 31 Oct 42.
D.4 " " " " " 30 Nov 42.
D.5 " " " " " 31 Dec 42.
D.6 " " " " " 31 Jan 43.
E.1 Men's Canteen Statement dated 31 Aug 42.
E.2 " " " " 30 Sep 42.
E.3 " " " " 31 Oct 42.
E.4 " " " " 30 Nov 42.
E.5 " " " " 31 Dec 42.
E.6 " " " " 31 Jan 43.
F.1 P.R.I. Account Statement date 30 Nov 42.
F.2 " " " " 31 Dec 42.
F.3 " " " " 31 Jan 43.
G.1 Barrack Damage Account Statement dated 31 Dec 42.
G.2 " " " " " 31 Jan 43.
H.1. Bank Statement Sergeants' Mess Jul 42.
H.2 " " " " Aug 42.
H.3 " " " " Sep 42.
H.4 " " " " Oct 42.
H.5 " " " " Nov 42.
H.6 " " " " Dec 42.
H.7 " " " " Jan 43.
H.8 " " " " Feb 43.
H.9 " " " " Mar 43.
H.10 " " " " Apr 43.
I.1 Bank Statement Officers' Mess Jul 42.
I.2 " " " " Aug 42.
I.3 " " " " Sep 42.
I.4 " " " " Oct 42.
I.5 " " " " Nov 42.
I.6 " " " " Dec 42.
I.7 " " " " Jan 43.
I.8 " " " " Feb 43.
I.9 " " " " Mar 43.
I.10 " " " " Apr 43.
J.1 Bank Statement Nursing Sisters' Mess Jul 42.
J.2 " " " " " Aug 42.
J.3 " " " " " Sep 42.
J.4 " " " " " Oct 42.
J.5 " " " " " Nov 42.
J.6 " " " " " Dec 42.
J.7 " " " " " Jan 43.
J.8 " " " " " Feb 43.
J.9 " " " " " Mar 43.
J.10 " " " " " Apr 43.
K.1 Bank Statement Men's Canteen Jul 42.
K.2 " " " " Aug 42.
K.3 " " " " Sep 42.
K.4 " " " " Oct 42.
K.5 " " " " Nov 42.
K.6 " " " " Dec 42.
K.7 " " " " Jan 43.
K.8 " " " " Feb 43.
K.9 " " " " Mar 43.
K.10 " " " " Apr 43.

L.1 Bank Statement P.R.I. Account Dec 42.
L.2 " " " " Apr 43.
M.1 Bank Statement Barrack Damage Account Dec 42.
M.2 " " " " " Jan 43.
N. Report on Audit by Regimental Funds Board.
O. Sergeants' Mess Daily Cash Takings Book.
P. Cheque for £16:12: 0 from Nursing Sisters' Mess to Men's Canteen.
Q.1 Men's Canteen Deposit Slip Book.
Q.2 Receipt to Cpl. Moore for £1: 1: 0 signed H.M. Smith.
Q.3 " " " " " 11: 0 " "
Q.4 " " " " " 4: 1: 6 " "
Q.5 Receipted account £27:19: 0 from Mallinson of Horley.
R.1 Receipt to Pte. Anctil for £9: 9: 0 signed H.M.Smith.
R.2 " " " " 13:12: 0 " "
R.3 " " " " 10:12: 6 " "
R.4 " " " " 13: 3: 6 " "
R.5 " " " " 10:19: 6 " "
R.6 " " " " 11:12: 6 " "
R.7 " " " " 21:10: 0 " T.M.B. Payne.
R.8 " " " " 20: 1: 5 " H.M.Smith.
R.9 " " " " 22:17: 6 " "
R.10 " for " " " 20: 5: 4 " "
R.11 " " " " " 31: 5: 0 " "
R.12 Unsigned receipt or statement for 20: 7: 0
S. Statement of S/Sgt. Dixon, C.

Q Nursing Sisters' Mess Daily Cash Takings Book.
Q.A " " " Deposit Slip Book.

T.1 Account of K.E. Mallinson dated 31 Oct 42.
T.2 " " " " 30 Nov 42.
T.3 " " " " 31 Dec 42.

CHARGE SHEET

The accused, D-95765 Cpl. Harvey Milne Smith, No. 14 Canadian General Hospital, RCAMC, a soldier in the Canadian Army Overseas, is charged with:-

First Charge
Sec 17
Army Act

WHEN CONCERNED IN THE CARE OF REGIMENTAL PROPERTY, EMBEZZLING THE SAME

in that he

in the Field between 1 Jul 42 and 30 Apr 43, when, as treasurer of the Sergeants' Mess of No. 14 Cdn Gen Hospital, RCAMC, he was concerned in the care of regimental property, applied £149.14.11, part thereof, to his own use with intent to defraud.

Second Charge
(Alternative)
Sec 40
Army Act

NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field between 1 Jul 42 and 30 Apr 43, when treasurer of the Sergeants' Mess, No. 14 Cdn. Gen Hosp, RCAMC, and concerned in the care of monies of the said mess, so negligently performed his duties as to be unable to account for the sum of £149.14.11

Third Charge
Sec 18(4)
Army Act

EMBEZZLING PROPERTY BELONGING TO A REGIMENTAL MESS

in that he

in the Field between 1 Jul 42 and 30 Apr 43, having, as accountant of the Officers' Mess of No. 14 Cdn Gen Hosp, RCAMC, received monies on behalf of the said mess, fraudulently embezzled £9.8.4 of the same.

Fourth Charge
(Alternative)
Sec 40
Army Act

NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field between 1 Jul 42 and 30 Apr 43, when accountant of the Officers' Mess of No. 14 Cdn Gen Hosp, RCAMC, and concerned in the care of money of the said mess, so negligently performed his duties as to be unable to account for the sum of £9.8.4, part of the said money.

Fifth Charge
Sec 18(4)
Army Act

EMBEZZLING PROPERTY BELONGING TO A REGIMENTAL MESS

in that he

in the Field between 1 Jul 42 and 30 Apr 43, having, as accountant of the Nursing Sisters' Mess of No. 14 Cdn Gen Hosp, RCAMC, received monies on behalf of the said Mess, fraudulently embezzled £37.15.9 of the same.

Sixth Charge
(Alternative)
Sec 40
Army Act

NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field, between 1 Jul 42 and 30 Apr 43, when accountant of the Nursing Sisters' Mess of No. 14 Cdn Gen Hosp, RCAMC, and concerned in the care of money of the said mess, so negligently performed his duties as to be unable to account for the sum of £37.15.9, part of the said money.

Seventh Charge
Sec 18(4)
Army Act

EMBEZZLING PROPERTY BELONGING TO A REGIMENTAL INSTITUTION

in that he

in the Field, between 1 Jul 42 and 30 Apr 43, having, as accountant of the Men's Canteen, No. 14 Cdn Gen Hosp, RCAMC, received monies on behalf of the said Men's Canteen, fraudulently embezzled £57.14.5

Eighth Charge
(Alternative)
Sec 40
Army Act

NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field, between 1 Jul 42 and 30 Apr 43 when accountant of the Men's Canteen, No. 14 Cdn Gen Hosp, RCAMC, and concerned in the care of money of the said Men's Canteen, so negligently performed his duties as to be unable to account for the sum of £57.14.5, part of the said money.

Ninth Charge
Sec 18(4)
Army Act

EMBEZZLING PROPERTY BELONGING TO A REGIMENTAL INSTITUTION

in that he

In the Field between 1 Jul 42 and 30 Apr 43, having, as accountant of the PRI Account, No. 14 Cdn Gen Hosp, RCAMC, received monies on behalf of the said PRI Account, fraudulently embezzled £44.4.8

Tenth Charge
(Alternative)
Sec 40
Army Act

NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field between 1 Jul 42 and 30 Apr 43, when accountant of the PRI Account, No. 14 Cdn Gen Hosp, RCAMC, and concerned in the care of money of the said PRI Account, so negligently performed his duties as to be unable to account for the sum of £44.4.8, part of the said money.

Eleventh Charge
Sec 18(4)
Army Act

EMBEZZLING PROPERTY BELONGING TO A REGIMENTAL INSTITUTION

in that he

in the Field between 1 Jul 42 and 30 Apr 43, having, as accountant of the Barrack Damages Account, No. 14 Cdn Gen Hosp, RCAMC, received monies on behalf of the said Barrack Damages Account, fraudulently embezzled £6.5.0.

Twelfth Charge
(Alternative)
Sec.40
Army Act

NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field, between 1 Jul 42 and 30 Apr 43, when accountant of the Barrack Damages Account, No. 14 Cdn Gen Hosp, RCAMC, and concerned in the care of money of the said Barrack Damages Account, so negligently performed his duties as to be unable to account for the sum of £6.5.0, part of the said money.

In the Field,
31 Aug 43.

Burnett S. Johnston

(Burnett S. Johnston) Colonel,
Officer Commanding,
No. 14 Cdn. Gen. Hospital,
R.C.A.M.C. - C.A.(O'S).

S.

M-24164 S/Sgt. Dixon, C., Regimental Funds Board, states:-

The shortage in the Nursing Sisters' Mess consisted of - prior to 31 Jan 43. Cash sales not entered and not deposited in the bank - £ 9: -: 9

Nursing Sisters' Accounts paid in cash and not entered - 31 Jan 43 to 30 Apr 43 - 22:11: 5

Nursing Sisters' Accounts paid in cash and not entered or deposited - 6: 3: 7

£ 37:15: 9

Men's Canteen
Cash outstanding

A cheque issued to the Men's Canteen by the Nursing Sisters' Mess and deposited in the bank but not entered in the receipts and therefore the sum of £16:12: 0 in cash could be withdrawn ~~and replaced~~ without showing any shortage in the books.

Another item in the sum of £3: 3: 0 is a cheque issued by the Cash Allowance to the Men's Canteen was not shown in receipts but was deposited in the bank and therefore the money could be withdrawn without the shortage being seen.

In January 1943 the records indicate that L/Sgt. Smith collected £12: 8: 0 from the N.A.A.F.I. and that this was normally used by him to pay the account of the newspaper dealer Mr. Mallinson but this was not done and there is no trace of the money. The account in the sum of £13: 9: 0 was actually paid in March.

The P.R.I. Account receipts from the Barber and Tailor shops were £241:15: 3. The disbursements were £152: 8: 8 but there was only cash on hand of £33:12: 5 and in the bank of £11:12: 6, a total shortage of £44: 4: 8.

The Barrack Damage Account showed a shortage of £6: 5: 0. There were no books. The receipts were shown by the Paymaster's Acquittance Rolls and these were checked against the deposits in the bank less the cash on hand leaving £6: 5: 0 not accounted for. The Paymaster obtained receipts from Colonel A. Ross.

M24164 S/Sgt.

R[illegible] of Buddles
Co.

17 July 1811

Received from the Auckland
the Sum of £9 9s. (Nine pounds
Nine Shillings) Tokens Barter
Shop 1 July - 15 July 1811

Cash 6 8 8
Voucher 3 - 1
9 9 -

[illegible]

31 July 42

R2 D/Bardsley

Received from Pte L.P.Anctil the sum of Thirteen pounds twelve shillings (Takings Barber Shop 16-31 July 42)

£13:12:-

(H.M.Smith L/Sgt.)

Rd of Buckley
Esq

17 July 45

Recevd from the Auctr
the Sum of £9 9/ (Nine pound
Nine Shillings (Takings Barber
Shop 1 July - 15 July 45

Cash 6 8 8
Cheque 3 - 1
£9 9/

32
35
39 225
41 300
39
39 7 525
225 212

31 July 42

R2 Blackley

Received from Pte L.P.Anctil the sum of Thirteen pounds twelve shillings (Takings Barber Shop 16-31 July 42)

£13:12:-

(H.M.Smith L/Sgt.)

17 Aug 41

R3 [illegible] Bradley
6/90

Received from the L.P. Audley
the sum of Ten pounds twelve
shillings and pence (Hair cutting
takings 10 - 15 Aug 41.

£10.12.6

[illegible] 2/Lt.

R 4
D. Bandy
Capt

Received thirteen pounds
three shillings and pence

1/9/43

R S Dandridge
Esq

17 Sept 1781

Received from Mr. L. Austin
the Sum of Ten Pounds nineteen Shillings
and Sixpence 492 Staves Sub @ 6:
£1:6:6 Sutphen

£10:19:6

R6 > Oct 4r.

R Sandby - 20

Recvd from Mr. Sandby, His
Sum of Eleven pounds. 18/6
(465 Haircuts @ 6d.) (15 - 30 Sep)

R 7 4/11/42

Received from Pte Arnold the sum

of Twenty-one pounds ten shillings

£ 21.10.— J. B. B. Payne

£ 5.13.— Zaiton

£ 15.17.— Barbu

£ 21.10.—

Tailor Shop Cash 5. 6 9
99 Haircuts 24 16 -
£ 30 : 2 9

Trades Pay
Knight 5 - 8
Annie 5 - 8 10 : 1 : 4
£ 20 : 1 : 5

Rec'd

Received from Pte
Rachel Twenty pounds
one shilling & five
pence as above

Lt

RB
D Cuddy
Sgt

31 Dec

Rec'd the sum of
Twenty two pounds 17/6

R9
D Buckley
Capt

29 Jan 43

Rec'd from Pte Anders
the sum of twenty pounds
~~two eight~~ shillings, ~~four~~ ~~eight~~ pence

£20 5 4
~~£ 8 4~~

Donald
Lieut.

R10
~~Pte~~ Buddy
~~Capt~~

1 Rent 43

Received from Sr Archd Hume
of twenty four pounds ten shillings
a/c Easter Sept and ten pounds sixteen
shillings a/c Easter Sept. Sata Thirty one
pounds five shillings.

£30:5/-

Dan Smith

RH
Dunlop
Exp.

Barker Shop

975 Lower Castle 23. 7. 6

Fees wages Quarter of 14

Knight with £9 8

£13 14 .6

Barker Shop 6 17. 6

£20 7.

RIL

Goodby

£200

STATEMENT. PHONE—313.

M ..... 194 .....

MALLINSON OF HORLEY

SURREY.

Press Correspondents.
Wholesale and Retail
Newsagents, Tobacconists and Stationers.
Sports Goods and General Sundries.

All descriptions of Printing executed at lowest possible prices.

Advertisements received for all Newspapers, etc.

ACCOUNTS DUE WHEN RENDERED PLEASE

STATEMENT. PHONE—313.

Sgt. Somerville 9 Ryecroft Rd
30 Ward 1942

M C.G.H. Smallpeice 201

MALLINSON OF HORLEY

SURREY.

Press Correspondents.
Wholesale and Retail
Newsagents, Tobacconists and Stationers.
Sports Goods and General Sundries.

All descriptions of Printing executed at lowest possible prices.

Advertisements received for all Newspapers, etc.

1 Wor	9·10	15 Ward		6	7	0	
2	7·0 ✓	18 Ward			5	6	
3	7·0 ✓	19			5	6 ✓	
4	7·0 ✓	20			5	6 ✓	
5	7·0 ✓	21			6	0	
6	8·0 ✓	22		8/4	9	10	
7	8·0 ✓	23			5	0 ✓	
8	8/4 9·10	24			5	3 ✓	
9	7·0 ✓	25			5	6 ✓	
10	7·0 ✓	26			6	0 ✓	
11	7·0 ✓	27			5	6 ✓	
12	6·0 ✓	28			7	6 ✓	
13	8·0	29		8/4	9	10 ✓	
14	5·0 ✓	30			7	0 ✓	
15	8/4 9·10				10	10	11
16	7·0 ✓						
17	6·6 ✓						
	67·0						

RENDERED PLEASE

Thanks
Account with
Mallinson & Horley
to December 31st.

STATEMENT. 13 Rd Buddy Boy PHONE—315.

31 Dec 194 3.

M C.G.H. Smackfield

MALLINSON OF HORLEY

SURREY.

Sgt-Smith

Press Correspondents.
Wholesale and Retail
Newsagents, Tobacconists and Stationers.
Sports Goods and General Sundries.

All descriptions of Printing executed at lowest possible prices.

Advertisements received for all Newspapers, etc.

1 Dec	8-0 ✓			6	1	5
2	6-0 ✓	18 Dec			7	0 ✓
3	5-6 ✓	19			8	0 ✓
4	5-6 ✓	20			9	10
5	6-6 ✓	21			8	0 ✓
6	12 9-10 ✓	22			7	0 ✓
7	7-0 ✓	23			6	0 ✓
8	7-0 ✓	24			11	2 ✓
9	7-6 ✓	27			6	2 ✓
10	7-0 ✓	28			7	6 ✓
11	7-6 ✓	29			8	0 ✓
12	6-3 ✓	30			7	0 ✓
13	16 9-10 ✓	31		10	12	11
14	7-0 ✓					
15	8-0 7x Rec'd					
16	6-0 ✓					
17	7-0 ✓					
	6-1-5					

8 Jan 1944
RECEIVED WITH THANKS
Bal £ 10-12-11

MALLINSON & CO. HORLEY

ACCOUNTS DUE WHEN RENDERED



P. [illegible]

EXHIBIT . C.

~~20685~~

Ecoth / 0 Lt. 1947

No 2/G.026813

Barclays Bank Limited

Horley. ~~WOKINGHAM.~~ Surrey

TWO PENCE

Pay Mess Canteen. No 14 Can Gen Hospital Order

Sixteen Pounds twelve Shillings

NURSING SISTERS MESS.

£16:12:- Stg

No. 14 CANADIAN GENERAL HOSPITAL.

Esther M. Latchford

Cecil M. Thibouard.

C

HEAD OFFICE - 54, LOMBARD STREET, E.C.3.

THIS CHEQUE REQUIRES ENDORSEMENT.....

Sir Lipsett
Trans: Cantum
No. 14 Colm Con Corps

H 1

1st Canadian General Hospital
Knights of Rhodes

IN ACCOUNT WITH
BARCLAYS BANK LIMITED,
Horley.

2/42

DATE	PARTICULARS	DR.	CR.	BALANCE
July 3	B/fwd	85 8 -	125 10 5	
	Sds		14 3 9	
6	No 2 Coy R of M 6 Mths Sds	1 - - ✓	51 11 -	
20				
23	Nursing S/Mc.	7 6 ✓		
	Men's Canteen	17 19 11 ✓		
27	C Y of M # 3	2 14 - ✓		
29	Kenward & Court	14 17 10 ✓		
	Cheques.	3 - - ✓		
		132 12 3	191 5 2	68 12 11

Entries true
copy of Acct

H 2

11th Canadian General Hospital
Sergts Mess

IN ACCOUNT WITH
BARCLAYS BANK LIMITED,
HORLEY
SURREY

3/42

DATE	PARTICULARS		DR.	CR.	BALANCE
			122 12 3	191 5 2	68 12 11
Aug 5	b/fwd.		6 13 4 ✓		
12	N.A.A.F.I.		14 - 10 ✓		
19	ex Mess F.S.	Sds	54 2 1 ✓	✓ 55 8 9	
	Reward		9 10 - ✓		
28	Officers Mess		12 12 11 ✓		
31	Europeans		4 2 - ✓	✓ 42 3 10	
	Wages	Sds	223 13 5	288 17 9	65 4 4

Certified true copy of a/c in our charge

for Barclays Bank Limited

H 3

14th Canadian General Hospital
Sergts Mess.

IN ACCOUNT WITH
BARCLAYS BANK LIMITED,
HORLEY,
SURREY.

4/67

DATE	PARTICULARS		DR. £	s.	d.	CR. £	s.	d.	BALANCE £	s.	d.
Sept 1			323	13	5	388	17	9	65	4	4
	Smith W 46		1	18	-						
2	N. & D 43		2	14	-						
3	Limes Fisheries		4	6	-						
7	M/S Mess	Sds	1	10	6	29	11	8			
	Miller		4	11	8						
19	NAAFI		2	8	8						
23	NAAFI.		1	12	6						
29	Officers Mess	245	17	-	-	3	19	4			
30	Kenward & Court		33	16	10						
			293	11	7	322	8	9	28	17	2

Certified true copy of entry in ledger
for BARCLAYS BANK LIMITED
[illegible]

14 Canadian General Hospital
Sergts Mess
Aldershot

IN ACCOUNT WITH
BARCLAYS BANK LIMITED,
Aldershot.

242

DATE	PARTICULARS		DR.	CR.	BALANCE
Oct 1	B/ Fwd.		293 11 7	322 8 9	
	Lynes Fisheries		2 8 9		
7	Coopers.	sds	9 16 10		
21	NAAFI.		3 16 9		
31		sds		48 - -	
			309 13 11	370 8 9	60 14 10

Certified true copy
of an entry

14 Canadian Gen. Hospital
Sergts Mess a/c

IN ACCOUNT WITH
BARCLAYS BANK LIMITED,
HORLEY, SURREY.

4/42

DATE	PARTICULARS		DR.	CR.	BALANCE
			£ s. d.	£ s. d.	£ s. d.
Nov 1	B/Fwd		309 13 11	370 8 9	
4	NAAFI	2dd	3 17 3	62	
	Kenward & Court		43 1 -		
11	Jelks		7 2 6		
	NAAFI		1 14 10		
		2 ds		27 4 1	
17			22		
18	Lindsell		3 4 10		
	NAAFI			22 2 1	
21		2 ds		9 18 3	
24		2 ds	10 10	43 13 9	
30	NAAFI	2 ds			
			391 13 2	535 11 11	143 18 9

Certified true copy of A/c rendered
BARCLAYS BANK LIMITED.
H.O. Horley

£1:-:- Raaf 3.17.3
2.14 Raaf 2.9

CARRIED FORWARD

14th Gen. Syn. Hospital

Sergts Mess

IN ACCOUNT WITH

BARCLAYS BANK LIMITED,

DATE	PARTICULARS		DR.	CR.	BALANCE
Dec 2	B/F wd.		391 13 2	535 11 11	
	Kenward & Sons.		44 19 5		
10	Lines Fisheries		4 5 10		
	Officers Mess		67 18 .		
12		2 cds		8 12 3	
16	NAAFI.		3 15 8		
	Cheques.		5 .		
23		2 cds		29 13 6	
29	NAAFI.		9 2 .		
	Coopers	2 cds	16 10 11	44 1 10	
	Varnett		3 5 .		
30	NAAFI		2 19 5		
31	Thom & Hendale		9 3 8		
		CARRIED FORWARD	545 3 8	617 19 6	

PTO

14th Canadian General Hospital
Seigle Mess.

IN ACCOUNT WITH
BARCLAYS BANK LIMITED,
HORLEY, SURREY.

1/43

DATE	PARTICULARS	DR.	CR.	BALANCE
Jan 1	Balance		72 15 10	
6	NAAFI.	3 10 3		
8	sds.		31 11	
11	NAAFI. sds	2 19 5	12 2 3	
20	NAAFI	2 14		
22	Lines Fisheries	8 4		
	do	1		
23	Coutts S/A	3 3 -		
24	Kenward & Court	42 11 4		
	do	44 9 11		
30	NAAFI. sds	2 3 3.	11	
		105 19 6	127 9 1	21 9 7

Certified true extract of entry in our books.

CARRIED FORWARD

14th Bn. Yeo. Hospital

IN ACCOUNT WITH

BARCLAYS BANK LIMITED,

HORLEY, SURREY.

2/43

DATE	PARTICULARS		DR.			CR.			BALANCE		
Feb 1	B/Fwd		105	19	6	124	9	1			
	~~NAAFI~~		~~2~~	~~3~~	~~3~~						
	Nth. Brit. Mercantile Ins.			7	6						
3	Jelks.		5	12	6						
13	Cash	sds	9			9			?		
20		sds				20					
22	NAAFI		2	4	10						
24		sds				12					
			123	4	4	168	9	1	45	4	9

CARRIED FORWARD

Certified true copy
of a/c in our ledger

[illegible] Manager

14th Canadian General Hospital. H9

Sergts' Mess

IN ACCOUNT WITH
BARCLAYS BANK LIMITED,

HONLEY.

3/43.

DATE	PARTICULARS	Dr.			Cr.			BALANCE		
		123	11	4	168	9	1	45	11	9
Feb 27	31/7 fwd.	27	8	8				17	16	1
Mar 3	Kenward & Court	2	12					15	4	1
8	NAAFI	3	15		6	16		18	15	1
15	NAAFI	15	10		175	5	1			
20	Canora	10	16							
22	NAAFI	2	2							
		169	8	4	175	5	1	5	16	9

Certified true copy of entry in the ledger of the above BANK LIMITED

CARRIED FORWARD

1/4th Canadian General Hospital
Sergts Mess
HORLEY,
SURREY.
5-16 9

H10

4/43

IN ACCOUNT WITH
BARCLAYS BANK LIMITED,

DATE	PARTICULARS	DR.	CR.	BALANCE
Apl	B/Fwd.	169 8 4	115 5 1	
6	Sds		35 7 7 ^	
13	Sds		10 - ^	
19	Smith	7 7 9 ^		
20	Cash Sds	10 15 ^	5 ^	
24	NAAFI	2 11 10 ^		
27	Jelks	3 10 ^		
	pd	5 12 6 ^		
	Lines Fisheries	2 3 ^		
30	Officers Mess Sds	3 15 -	32 7 6 ^	
		201 14 3	260 - 2	58 2 11

Certified true copy of entry in my ledger

CARRIED FORWARD

DETAILED STATEMENTS OF ACCOUNTS RECEIVABLE & ACCOUNTS PAYABLE FOR THE 2 MONTHS OR ~~QUARTER~~ ENDED

31 August 1942

(If space provided insufficient attach supplementary schedule)

(1) Accounts Receivable	Amount £	s.	d.
Current	5	10	

(2) Accounts Payable	Amount £	s.	d.

ABSTRACT OF RECEIPTS AND DISBURSEMENTS OF

July + August

THE No.14 Canadian General Hospital, (Formation, Unit or Detachment.) RCAMC.

2 MONTHS ENDED ~~QUARTER ENDED~~ 31 August 1942

Sergeants' Mess (Name of Fund or Account)

Date 1942	Receipts (Show source of receipts)	Amount £	s.	d.
June 30	Credit Balance from Prev. A/c.	57	6	2
	A/c Receivable Arrears	4	15	.
	Mess Fees	24	5	.
	Bar Sales	153	7	3
	Returned Containers	18	5	3
		257	18	8

Date 1942	Disbursements (Show name of firm and purpose)	Amount £	s.	d.
	Debit Bal. (if any) from Prev. A/c.			
	Schedule AP	47	6	1
	" B	76	6	6
	" M	20	.	11
	" MS	8	9	6
	" Exp	12	5	.
Aug 31	Balance (per Cash Book)	93	10	8
		257	18	8

BANK RECONCILIATION STATEMENT (Attach Bank Certificate)

1942	Outstanding Cheques			
Aug 11	NAAFI	2	14	.
24	NAAFI	2	14	.
27	Lines Fisheries	4	6	
27	Nurses' Mess	1	10	6
27	W.H. Smith	1	16	.
27	Miller Dance Expenses	4	11	8
	Balance per Cash Book	47	10	2
		65	4	4

1942				
Aug 31	Balance in Bank	65	4	4
		65	4	4

(*Note*:— Use form R.F.B.-1A in the case of Officers' and Sergeants' Messes only in substitution for this page.)

R.F.B.-1
60/P.S.S./21

FINANCIAL STATEMENT FOR THE { MONTH ENDED / QUARTER ENDED } ..... 194....

STATEMENT OF ASSETS AND LIABILITIES

Assets	Amount £	s.	d.	Liabilities	Amount £	s.	d.
Cash (per Cash Book)	93	10	8	(2) Accounts Payable			
In Bank £47.10.2				Bar			
On hand ..... X 46. -.6				Officers' Mess	17	.	.
				Kenward & Court	33	16	10
Inventory Stock (at cost)	7	2	4	Messing			
				Limes Fisheries	2	8	9
(1) Accounts Receivable:	5	10	.	Coopers	9	16	10
Arrears							
Current £5.10.-							
Regimental or Mess Property (See Arts. 136 and 138)							
Radio £10.							
				(3) Surplus	43	.	7
	106	3	.		106	3	.

TRADING AND PROFIT AND LOSS STATEMENT

Sales for month/or quarter ..... £.....

Inventory Stock at end of last month/or quarter ..... £.....

Add: Purchases for month or quarter ..... £.....

Less: Inventory at end of current month/or quarter ..... £.....

Cost of goods sold .....

Gross Profits ..... £.....

Canteen Expenses: Wages, Canteen Steward ..... £.....

Canteen Assistants ..... @ ..... each .....

Other operating Expenses (in detail):—

.....

.....

.....

Total Expenses ..... £.....

Net Profits ..... £.....

Receipts from other sources (give details):— £.....

.....

.....

Total net Profits for month/or quarter ..... £.....

Surplus from previous months/or quarters .....

Total surplus available .....

DISPOSITION OF PROFITS:—

Disbursements Men's Account (give details) ..... £.....

.....

.....

.....

Capital Expenditure, Men's Account (give details) .....

.....

.....

.....

Canteen Equipment and Fixtures (give details) .....

.....

(3) Balance available for distribution ..... £.....

(1) Show details on reverse side in space provided.

(2) Show details on reverse side in space provided.

(3) Surplus should agree with "Balance available for Distribution" next page.

The above Statement has been audited and is, in the opinion of the undersigned, correct and discloses a true state of finances as at 31 August (Date of Balance Sheet) 1942

E. G. [illegible] Lt-Col. Rank (Pres.)

G. Palmer Lt-Col. Rank } Members

[illegible] Major Rank

AUDIT BOARD

We hereby certify that we have ascertained that the total of the daily takings for the month/or quarter ended ..... 194..... as shown in the Steward's Cash Book corresponds with the amount of stock sold for that month or quarter as it appears in the Canteen Stock and Sales Record (Stock Sheet) and that the above statement is correct. The assets of the Fund or Canteen are insured for £..... in .....

(State name of Company)

.....

Accountant

.....

President Regimental Institute

Approved.

.....

Lt Colonel

Commanding .....

(For use in the case of Officers' or Sergeants' Messes)

R.F.H.-1A
AUG 1 & 2/42

MONTH ENDED / QUARTER ENDED / Period ..... 31 August 1942

TRADING AND PROFIT AND LOSS STATEMENT

Bar

Bar Sales for the ~~month or quarter~~ period		£ 153. 7. 3
Inventory stock at the end of last ~~month or quarter~~ period	£ 39. 7. 6	
Add: Purchases for ~~month or quarter~~ period	102.12. 4	
	£ 141.19.10	
Less: Inventory at close of current ~~month or quarter~~ period	7. 8. 4	
Cost of goods sold		13⅓.17. 6
Gross Profit for ~~month or quarter~~ period		18. 9. 9
Bar expenses: Wages (show details on back)	£	
Other operating expenses (show details on back)		
Total expenses		
Net profit on Bar for ~~month or quarter~~		18. 9. 9

Messing

Messing charges for the ~~month or quarter~~ period		£ 29.15.-
Inventory stock at end of last month or quarter	£	
Add: Purchases for ~~month or quarter~~ period	32. 6. 6	
Less: Inventory at close of current month or quarter	£	
Cost of Messing		
Gross ~~Profit~~ for ~~month or quarter~~ period		32. 6. 6
Mess expenses: Wages (show details on back)	£ 8. 9. 6	2.11. 6
Other operating expenses (show details on back)		
Total expenses		8. 9. 6
Net ~~profit~~, or loss, on Mess only for ~~month or quarter~~ period		£ 11. 1. -
Net profit on Bar b/d		£ 18. 9. 9
Net ~~profit~~ or loss, on Messing b/d		11. 1. -
Receipts from other sources (if any):—		
	£	
Total profits for ~~month or quarter~~ period		
Surplus from previous ~~month or quarter~~		£ 7. 8. 9
Total surplus available		25. 2. 7
		61.11. 4

DISPOSITION OF PROFITS:—

Income expenditures	Bar Merchandise used	£ 6. 5. 9	
	Dance Expenses	9.19. -	
Capital expenditures	Newspapers	2. 1. -	
	Cheque Stamps	5. -	
			18.10. 9
Surplus per Balance Sheet			£ 43. -. 7

Number of Dining Members 39 Prevailing ~~daily~~ Monthly charge for messing 10/-

We hereby certify that in respect of the Bar we have ascertained that the total of the daily takings for the ~~month or quarter~~ period ~~ended~~ 31 August 1942 *as shown in the Steward's Cash Book corresponds with the amount of Stock sold for that month or quarter as it appears in the Canteen Stock and Sales Record: that the inventories of Bar and Messing as above shown are correct, and that in all other respects the above Statement is correct.*

Wallace Templeton — PRESIDENT
C. Franklin — MEMBER
[illegible] — MEMBER

Approved: Ross (Albert Ross) — Colonel, RANK

Commanding No. 14 Canadian General Hospital, RCAMC.

DETAILED STATEMENTS OF EXPENSES FOR THE

PERIOD MONTH/OR QUARTER ENDED 31 August 194 2

Bar

Wages, Canteen Steward ..... £.....

Canteen Assistants ..... @ ..... each ...

Total Wages ..... £.....

Other Expenses :—

.....

.....

.....

.....

Total Other Expenses .....

TOTAL BAR EXPENSES £.....

Messing

Wages, Chef 2 months @ £1.10.- £ 3. -. -

Mess Assistants 1 @ 13/- for 2 months 5. 4. -

1 @ 5/6 each ... 5. 6

Total Wages £ 8.9.6.

Other Expenses :—

.....

.....

.....

.....

.....

.....

.....

.....

Total Other Expenses .....

TOTAL MESSING EXPENSES £ 8.9.6

No. 14 Canadian General Hospital

Sergeants' Mess
Schedule of Disbursements

Schedule AP

1942		£
July 21	Mens Canteen	17.19.11
	Kenward & Court	14.17.10
	Nurses' Mess	7. 6
	NAAFI	14. .10
		47. 6. 1

Schedule B

July 21	NAAFI	2.19. 5
31	Officers' Mess	2. 6
Aug 6	NAAFI	2.14. -
13	Kenward & Court	54. 2. 1
18	NAAFI	2.14.-
24	"	2.14. -
27	Officers' Mess	9.10. -
	Nurses' Mess	1.10. 6
		76. 6. 6

Schedule M

July 31	Sundry Cash Messing	1.17. -
Aug 22	Coopers	12.12.11
24	Limes Fisheries	4. 6. -
31	Sundry Cash Messing	1. 5. -
		20. -.11

Schedule MK

July 31	Wages	4. 7. 6
Aug 31	Wages	4. 2. -
		8. 9. 6

Schedule EXP

July 31	Cheque Stamps	5. -
	Newspapers	2. -
	Dance Expenses	5. 7. 4
Aug 6	Newspapers	1. -
27	"	1.18. -
29	Dance Expenses	4.11. 8
		18. 5. -

BARCLAYS BANK LIMITED

Horley, Surrey,

2nd.Sept,1942.

Dear Sir,

We hereby certify that at the close of business on 31st August, 1942, the balance standing in our books to the credit of :-
Sergeants' Mess, No. 14 Cdn.Gen. Hosp., RCAMC., account was £65. 4. 4 (say Sixty five pounds, four shillings and four pence)

Yours Faithfully,

A.P.Boyden, MGR.

Certified True Copy:-

William Fisher Capt

No.14 CANADIAN GENERAL HOSPITAL, R.C.A.M.C., C.A.(O's)

31 August 42

This is to certify that the Cash on Hand and the Inventory Stock (at Cost) of the Sergeants Mess at the above date was as follows:-

Cash on Hand £46: -: 6
(Forty six pounds and six pence)

Inventory Stock at Cost £ 7: 2: 4
(Seven pounds two shillings and four pence)

William Cobbett Capt.

DETAILED STATEMENTS OF ACCOUNTS RECEIVABLE & ACCOUNTS PAYABLE FOR THE MONTH ~~OR QUARTER~~ ENDED

30 Sept 42 194

(If space provided insufficient attach supplementary schedule)

(1) Accounts Receivable	£	s.	d.
Current	4	10	

(2) Accounts Payable	£	s.	d.
Bar			
Kennard & Court	43	1	
Officers Mess	15	15	6
	58	16	6
Messing			
Lines Fisheries	3	17	6
Coopers	8	14	3
	12	11	9
Expense			
W.H.Smith & Son	1	17	3
	73	5	6

ABSTRACT OF RECEIPTS AND DISBURSEMENTS OF

THE No.14 Canadian General Hospital (Formation, Unit or Detachment)

MONTH ENDED ~~QUARTER ENDED~~ 30 Sept 42 194

Sergeants Mess (Name of Mess or Account)

Date 194 2	Receipts (Show source of receipts)	£	s.	d.
Aug 31	Credit Balance from Prev. A/c.	93	10	8
	A/Cs Receivable	54	10	
	Mess Fees	13	10	
	Bar Sales	53		9
		165	11	5

Date 194 2	Disbursements (Show name of firm and purpose)	£	s.	d.
	Debit Bal. (if any) from Prev. A/c.			
	Schedule A/P			
Sept 24	Lines	2	6	9
24	Coopers	9	16	10
24	Kennard & Court	33	16	10
24	Officers Mess	17		
		63	2	5
	Schedule B			
2	NAAFI	2	8	8
17	NAAFI	1	12	6
		4	1	2
	Schedule E			
20	Cash Messing		8	6
	Schedule XX			
30	Wages	4	3	6
	Schedule XXV			
30	Radio Repairs		13	
	Papers		3	
	Elec. Supplies		5	6
			17	6
Sept 30	Balance (per Cash Book)	92	16	4
		165	11	5

BANK RECONCILIATION STATEMENT (Attach Bank certificate)

	Outstanding Cheques	£	s.	d.
Aug 24	NAAFI	2	14	
Sep 24	Lines	2	6	9
24	Coopers	9	16	10
Sep 30	Balance per Cash Book	13	17	7
		28	17	2

1942		£	s.	d.
Sep 30	Balance in Bank	28	17	2
		28	17	2

(Note:— Use form R.F.B.-1A in the case of Officers' and Sergeants' Messes only in substitution for this page.)

R.F.B.-1
60/T.A. 6/42

FINANCIAL STATEMENT FOR THE MONTH ENDED / ~~QUARTER ENDED~~ 30 Sept 42 194

STATEMENT OF ASSETS AND LIABILITIES

Assets	Amount £	s.	d.	Liabilities	Amount £	s.	d.
Cash (per Cash Book)	92	16	4	(2) Accounts Payable	73	5	6
In Bank 13.17.7							
On hand 78.18.9							
Inventory Stock (at cost)	22	5					
(1) Accounts Receivable:	4	10					
Arrears							
Current 4.10.-							
Regimental or Mess Property (See Arts. 186 and 188)							
				(3) Surplus	46	5	10
	119	11	4		119	11	4

(1) Show details on reverse side in space provided.

(2) Show details on reverse side in space provided.

(3) Surplus should agree with "Balance available for Distribution" next page.

The above Statement has been audited and is, in the opinion of the undersigned, correct and discloses a true state of finances as at 30 Sept 42. 194
(Date of Balance Sheet)

(C.A.Nelson) Lt.Col. Bank (Pres.)

(J.H.Palmer) Lt.Col Bank

(Burnett S.Johnston) Major Bank

Members

AUDIT BOARD

TRADING AND PROFIT AND LOSS STATEMENT

Sales for month/or quarter ..... £.....

Inventory Stock at end of last month/or quarter ..... £.....

Add: Purchases for month or quarter ..... £.....

£.....

Less: Inventory at end of current month/or quarter .....

Cost of goods sold ..... £.....

Gross Profits .....

Canteen Expenses: Wages. Canteen Steward ..... £.....

Canteen Assistants ..... @ ..... each .....

Other operating Expenses (in detail):—

.....

.....

.....

Total Expenses .....

Net Profits ..... £.....

Receipts from other sources (give details):—

..... £.....

.....

.....

Total net Profits for month/or quarter .....

Surplus from previous months/or quarters ..... £.....

Total surplus available .....

DISPOSITION OF PROFITS:—

Disbursements Men's Account (give details) ..... £.....

.....

.....

.....

Capital Expenditure, Men's Account (give details) .....

.....

.....

.....

Canteen Equipment and Fixtures (give details) .....

.....

(3) Balance available for distribution ..... £.....

We hereby certify that we have ascertained that the total of the daily takings for the month/or quarter ended ..... 194..... as shown in the Steward's Cash Book corresponds with the amount of stock sold for that month or quarter as it appears in the Canteen Stock and Sales Record (Stock Sheet) and that the above statement is correct. The assets of the Fund or Canteen are invested in ..... *for £* .....
(State name of Company)

....
Accountant President Regimental Institute

Approved.

..... *Lt. Colonel.*

Commanding .....

(For use in the case of Officers' or Sergeants' Messes)

MONTH ENDED / ~~QUARTER ENDED~~ 30 Sept. 42 194

TRADING AND PROFIT AND LOSS STATEMENT

Bar

Bar Sales for the month/~~quarter~~		£ 93. -. 9
Inventory stock at the end of last month/~~quarter~~	£ 7. 2. 4	
	60. 3. 8	
Add: Purchases for month/~~quarter~~	£ 60. 6. -	
	22. 5.	
Less: Inventory at close of current month/~~quarter~~		47. 1. -
Cost of goods sold		5.19. 9
Gross Profit for month/~~quarter~~	£	
Bar expenses: Wages (show details on back)		
Other operating expenses (show details on back)		
Total expenses		5.19. 9
Net profit on Bar for month/~~quarter~~		

Messing

Messing charges for the month/~~quarter~~		£ 13. -. -
Inventory stock at end of last month or quarter	£ 13. -. 3	
Add: Purchases for month/~~quarter~~	£	
Less: Inventory at close of current month/~~quarter~~		13. -. 3
Cost of Messing		4.19. 9
Gross Profit for month/~~quarter~~	£ 4. 3. 6	
Mess expenses: Wages (show details on back)		4. 3. 6
Other operating expenses (show details on back)		16. 3
Total expenses		
Net profit, ~~loss~~ on Mess only for month/~~quarter~~		£ ~~5.19. 9~~
Net profit on Bar b/d		£ 16. 3
Net profit, ~~loss~~ on Messing b/d		
Receipts from other sources (if any):—	£	
		~~6.16. -~~
Total profits for month/~~quarter~~		£ ~~22. 5. 9~~
Surplus from previous months/quarter		~~15.16. 9~~
Total surplus available		

DISPOSITION OF PROFITS:—

Income expenditures	Bar Mine Used	£ .14. -	
	Radio Repairs	11.	
	Electric Supplies	5. 6	
Capital expenditures	Newspapers 2 months	2. -. 3	3.10. 9
			16. 5.10
Surplus per Balance Sheet			£

Number of Dining Members 36 — Prevailing ~~daily~~ monthly charge for messing 10/-

We hereby certify that in respect of the Bar we have ascertained that the total of the daily takings for the month/~~quarter~~ ended 30 Sept. 42 194 as shown in the Steward's Cash Book corresponds with the amount of Stock sold for that month or quarter as it appears in the Canteen Stock and Sales Record: that the inventories of Bar and Messing as above shown are correct, and that in all other respects the above Statement is correct.

A. Walker — PRESIDENT
Arthur Homer — MEMBER
[illegible] — MEMBER

Approved: (Albert Ross) — Colonel — RANK

Commanding No.14 Canadian General Hospital, CASC

DETAILED STATEMENTS OF EXPENSES FOR THE

MONTH ~~OR QUARTER ENDED~~ 30 Sept 42 194

Bar

Wages, Canteen Steward ..... £ .....

Canteen Assistants ..... @ ..... each ....

Total Wages ..... £ .....

Other Expenses:—

.....

.....

.....

.....

Total Other Expenses ....

TOTAL BAR EXPENSES £ .....

Messing

Wages, Chief ..... £ 1.10. - .....

Mess Assistants ..... @ ..... each ..... 2.13. 6 ..... 4. 3. 6

Total Wages ..... £ .....

Other Expenses:—

.....

.....

.....

.....

.....

.....

.....

.....

Total Other Expenses ....

TOTAL MESSING EXPENSES £ 4. 3. 6

BARCLAYS BANK LIMITED

WORLEY SURREY,
BRANCH

3 Oct 42

Dear Sir,

We hereby certify that at the close of business on 30 Sept 1942, the balance standing in our books to the credit of:- Sergeants Mess account was £ 28.17. 2 (say Twenty eight pounds, seventeen shillings and two pence.)

Yours faithfully,

For Barclays Bank Limited,

J.P. Boyden, Mgr.

Certified True Copy:-

William Cohen Capt.

NO.14 CANADIAN GENERAL HOSPITAL, R.C.A.M.C. C.A.(O's)

This is to certify that the Cash on hand and Inventory of the Sergeants Mess as at 30 Sept 42 was as follows:-

Cash on Hand	£78.19. 9
Inventory	22. 5. -

William Cohen Capt

DETAILED STATEMENTS OF ACCOUNTS RECEIVABLE & ACCOUNTS PAYABLE FOR THE MONTH (OR QUARTER) ENDED

30 Oct 42 194

(If space provided insufficient attach supplementary schedule)

(1) Accounts Receivable	£	s.	d.
Current	6	10	

(2) Accounts Payable	£	s.	d.
BAR			
Leonard	44	19	5
Officers Mess	67	18	-
	112	17	5
MESSING			
Limes	4	5	10
Coopers	17	4	9
	21	10	7
EXPENSE			
Smith	1	17	3
	136	5	3

ABSTRACT OF RECEIPTS AND DISBURSEMENTS OF THE No. 14 Canadian General Hospital

Month Ended / Quarter Ended 31 October 1942 194

for garden tools

(Name or Title of Account)

Date 1942	Receipts (Show source of receipts)	£	s.	d.
Sep 30	Credit Balance from Prev. A/c.	92	16	4
	A/C Receivable	4	10	
	Mess Fees	12	10	
	Bar Sales	113	2	10
		222	19	2

Date 1942	Disbursements (Show name of firm and purpose)	£	s.	d.
	Debit Bal. (if any) from Prev. A/c.			
	A/P			
Oct 29	Forward	43	1	
	BAR			
7	NAAFI	4	17	3
25	NAAFI	3	16	9
		8	14	-
	MESSING			
31	Sdy Cash Purchases	6	1	2
	MESS EXPENSE			
31	Cleaning Materials		9	
	Taxes	4	9	6
		4	18	6
	EXPENSE			
31	Papers		4	
	Dance Exp. 2 Dances	12	14	
Oct 31	Balance (per Cash Book)	147	5	6
		222	19	2

BANK RECONCILIATION STATEMENT (Attach Bank certificate)

1942	Outstanding Cheques	£	s.	d.
Aug 24	NAAFI	2	14	
Oct 25	NAAFI	4	17	3
29	Leonard	43	1	
31	Balance per Cash Book	10	2	7
		60	14	10

1942		£	s.	d.
Oct 31	Balance in Bank	60	14	10
		60	14	10

(Note:— Use form R.F.B.-1A in the case of Officers' and Sergeants' Messes only in substitution for this page.)

R.F.B.-1
4017 A 8/39

FINANCIAL STATEMENT FOR THE { MONTH ENDED / QUARTER ENDED } ..... 194.....

STATEMENT OF ASSETS AND LIABILITIES

Assets	Amount £	s.	d.	Liabilities	Amount £	s.	d.
Cash (per Cash Book)	147	5	6	(2) Accounts Payable	136	5	3
In Bank..... 60 18 5							
On hand..... + 87							
147							
Inventory Stock (at cost).....	31	10	6				
(1) Accounts Receivable:	6	10					
Arrears.....							
Current..... 6.10.-							
Regimental or Mess Property (See Arts. 136 and 138).....							
				(3) Surplus	49	-	9
	185	6			185	6	

(1) Show details on reverse side in space provided.

(2) Show details on reverse side in space provided.

(3) Surplus should agree with "Balance available for Distribution" next page.

The above Statement has been audited and is, in the opinion of the undersigned, correct and discloses a true state of finances as at 31 October 2 (Date of Balance Sheet) 194.....

(W.A.Galbraith) A.G.(Ist Tas) Lt.Col. Rank (Pres.)

(J.H.Palmer) H.Q. Lt.Col. Rank

(Burnett Cameron) 1st Tk Major Rank

Members

AUDIT BOARD

TRADING AND PROFIT AND LOSS STATEMENT

Sales for month/or quarter ..... £.....

Inventory Stock at end of last month/or quarter ..... £.....

Add: Purchases for month/or quarter ..... £.....

£.....

Less: Inventory at end of current month/or quarter ..... £.....

Cost of goods sold ..... £.....

Gross Profits .....

Canteen Expenses: Wages, Canteen Steward ..... £.....

Canteen Assistants..... @ ..... each .....

Other operating Expenses (in detail):—

.....

.....

.....

Total Expenses..... .....

Net Profits ..... £.....

Receipts from other sources (give details):—

..... £.....

.....

....

Total net Profits for month/or quarter .....

Surplus from previous months/or quarters ..... £.....

Total surplus available .....

DISPOSITION OF PROFITS:—

Disbursements Men's Account (give details) ..... £.....

.....

.....

.....

Capital Expenditure, Men's Account (give details) .....

.....

.....

.....

Canteen Equipment and Fixtures (give details).....

.....

(3) Balance available for distribution ..... £.....

We hereby certify that we have ascertained that the total of the daily takings for the month/or quarter ended ..... 194..... as shown in the Steward's Cash Book corresponds with the amount of stock sold for that month or quarter as it appears in the Canteen Stock and Sales Record (Stock Sheet) and that the above statement is correct. The assets of the Fund or Canteen are insured in ..... for £.....

(State name of Company)

Accountant ..... President Regimental Institute

Approved.

..... Lt. Colonel.

Commanding .....

(For use in the case of Officers' or Sergeants' Messes)

MONTH ENDED / QUARTER ENDED 31 October 1942 194

TRADING AND PROFIT AND LOSS STATEMENT

Bar

Bar Sales for the month/quarter		£ 113. 2.10
Inventory stock at the end of last month/quarter	£ 22. 5.	
Add: Purchases for month/quarter	101.15. 6	
	£ 124. -. 6	
Less: Inventory at close of current month/quarter	31.10. 6	92.10. -
Cost of goods sold		20.12.10
Gross Profit for month/quarter		
Bar expenses: Wages (show details on back)	£	
Other operating expenses (show details on back)		
Total expenses		20.12.10
Net profit on Bar for month/quarter		

Messing

Messing charges for the month/quarter		£ 19. -. -
Inventory stock at end of last month or quarter	£	
Add: Purchases for month/quarter	15. -. -	
	£	
Less: Inventory at close of current month or quarter		15. -. -
Cost of Messing		4. -. -
Gross Profit for month/quarter		
Mess expenses: Wages (show details on back)	£ 4. 9. 6	
Other operating expenses (show details on back)	9. -	
Total expenses		4.13. 6
Loss		
N. profit/loss on Mess only for month/quarter		£ 18. 6
Net profit on Bar b/d		£ 20.12.10
Net profit or loss, on Messing b/d		18. 6
Receipts from other sources (if any) —	£	
Total profits for month/quarter		£ 19.12. 4
Surplus from previous month/quarter		46. 5.10
Total surplus available		66. -. 2

DISPOSITION OF PROFITS:—

Income expenditures	Newspapers	£ 4. -	
	Expenses 2 Dances	12.15.-	
Capital expenditures	Bar Mdse used at Dances and Entertainments	4. -. 5	16.19. 5
Surplus per Balance Sheet			£ 49. -. 9

Number of Dining Members 38 Prevailing monthly/daily charge for messing 10/-

We hereby certify that a Member of the Bar has ascertained that the total of the daily takings for the month/quarter ended 31 October 2 *194 as shown in the Steward's Cash Book corresponds with the amount of Stock sold for that month or quarter as it appears in the Canteen Stock and Sales Record; that the inventories of Bar and Messing as above shown are correct, and that in all other respects the above Statement is correct.*

A. Cooke — PRESIDENT
Arthur Homer — MEMBER
MEMBER

Approved (Albert Ross) — Colonel, RANK
Commanding No.1 Canadian General Hospital

DETAILED STATEMENTS OF EXPENSES FOR THE

MONTH OR QUARTER ENDED 31 October 1942 194

Bar

Wages, Canteen Steward		£	
Canteen Assistants	@	each	
Total Wages			£
Other Expenses:-			
Total Other Expenses			
TOTAL BAR EXPENSES			£

Messing

Wages, Chef	1 @ 7/6		£	1.10. - 7. 6
Mess Assistants	4 @	13/- each		2.12. -
Total Wages				£ 4. 9. 6
Other Expenses				
Cleaning materials				9. -
Total Other Expenses				9. -
TOTAL MESSING EXPENSES				£ 4.18. 6

BARCLAYS BANK LIMITED

Horley, Surrey.

4 Nov 42

We hereby certify that at the close of business on 31 October 42 the balance standing in our books to the credit of the Sergeants Mess was £60.18.10. say Sixty pounds fourteen shillings and ten pence.

Signed A.Boyden Manager

William Cohen Capt

This is to certify that the Cash on Hand and the Inventory at Cost of the Sergeants Mess, No.14 Canadian General Hospital as at 31 October 1942 was as follows:-

Cash on Hand	£17. 2.11
Inventory	1.10. 6

William Cobb Capt

ABSTRACT OF RECEIPTS AND DISBURSEMENTS OF

THE No.14 Canadian General Hospital
(Formation, Unit or Detachment.)

MONTH ENDED 30 November 1942 194
QUARTER ENDED

Sergeants Mess
(Name of Fund or Account.)

DATE 1942	RECEIPTS (Show source of receipts)	AMOUNT £	s.	d.	DATE 1942	DISBURSEMENTS (Show name of firm and purpose)	AMOUNT £	s.	d.
Oct 31	Credit Balance from Prev. A/c.	147	5	6		Debit Bal. (if any) from Prev. A/c.			
	Bar Sales	76	17	8		A/P			
	A/C's Receivable	6	10		Nov 27	Kennard	44	19	5
	Mess Dues	12			30	Officers Mess	67	18	
	Refunds Bar	3	14				112	17	5
						BAR			
					Nov 4	NAAFI	1	17	10
					17	NAAFI	3	9	10
					26	NAAFI		10	10
							5	18	6
						MESS			
					Nov 30	Sundry Cash Purchases		6	
						MESS EXPENSE			
					Nov 20	Eggs	4	2	
						EXPENSE			
					Nov 12	Telegram	23	11	1
						Purchasing Exp.		17	6
						Entertainment	7	11	11
						Billiard Table Chgs	7	2	6
						Newspapers		4	
							39	7	
					Nov 30	Balance (per Cash Book)	93	14	3
		246	7	2			246	7	2

BANK RECONCILIATION STATEMENT (Attach Bank certificate)

194	Outstanding Cheques				Nov 30	Balance in Bank	143	18	9
Nov 27	Kennard	44	19	5					
31	Officers Mess	67	18						
30	Balance per Cash Book	31	1	4					
		143	18	9			143	18	9

(Note:— Use form R.F.B.-1A in the case of Officers' and Sergeants' Messes only in substitution for this page.)

R.F.B.-1
40/7 & 8/261

FINANCIAL STATEMENT FOR THE (MONTH ENDED / ~~QUARTER ENDED~~) 30 November 1942 194

STATEMENT OF ASSETS AND LIABILITIES

ASSETS	£	s.	d.
CASH (per Cash Book)	83	14	3
In Bank 31. 1. 4			
On hand X 52.14. 1			
INVENTORY STOCK (at cost)	26	10	1
(1) ACCOUNTS RECEIVABLE:	7	10	
Arrears			
Current 7.10. -			
REGIMENTAL OR MESS PROPERTY (See Arts. 186 and 188)			
Radio £10. -			
Radiogram 25. -			
	117	26	4

LIABILITIES	£	s.	d.
(2) ACCOUNTS PAYABLE			
Lines	4	5	10
Coopers	17	4	9
Smith	1	17	3
	23	7	10
Less C/F Coopers		13	10
	32	14	-
BAR			
Kennard	39	15	3
Officers Mess	16	1	
S/S Mess	3	7	6
	99	3	9
MESSING			
Lines		8	4
OTHER			
Adjustment Kennard October A/C	7	14	8
(3) SURPLUS	27	15	7
	127	16	4

TRADING AND PROFIT AND LOSS STATEMENT

Sales for month/or quarter ..... £.....

Inventory Stock at end of last month/or quarter ..... £.....

Add: Purchases for month/or quarter ..... £.....

£.....

Less: Inventory at end of current month/or quarter ..... £.....

Cost of goods sold .....

Gross Profits ..... £.....

Canteen Expenses: Wages, Canteen Steward ..... £.....

Canteen Assistants ..... @ ..... each .....

Other operating Expenses (in detail):—

.....

.....

.....

Total Expenses .....

Net Profits ..... £.....

Receipts from other sources (give details):—

..... £.....

.....

.....

Total net Profits for month/or quarter .....

Surplus from previous months/or quarters ..... £.....

Total surplus available .....

DISPOSITION OF PROFITS:—

Disbursements Men's Account (give details) ..... £.....

.....

.....

.....

Capital Expenditure, Men's Account (give details) .....

.....

.....

.....

Canteen Equipment and Fixtures (give details) .....

.....

(3) Balance available for distribution ..... £.....

(1) Show details on reverse side in space provided.

(2) Show details on reverse side in space provided.

(3) Surplus should agree with "Balance available for Distribution" next page.

The above Statement has been audited and is, in the opinion of the undersigned, correct and discloses a true state of finances as at 30 Nov 42 (Date of Balance Sheet) 194

RECEIVED 21 DEC 1942

(C.A.McIntosh) ..... Lt.Col. Bank (Pres.)

(J.H.Palmer) ..... Lt.Col. Bank

(Burnett S.Johnston) ..... Major Bank } Members

AUDIT BOARD

We hereby certify that we have ascertained that the total of the daily takings for the month/or quarter ended ..... 194..... as shown in the Steward's Cash Book corresponds with the amount of stock sold for that month or quarter as it appears on the Canteen Stock and Sales Record (Stock Sheet) and that the above statement is correct. The assets of the Fund or Canteen are insured in ..... for £.....

(State name of Company)

....

Accountant President Regimental Institute

Approved.

..... Lt.-Colonel.

Commanding .....

Disposition of Profits

Sergeants' Mess

November 1942

Bar Mdse used	£	1.15. 6
Entertainment		7.11.11
Purchasing Expense		17. 6
Newspapers		4. -
Radiogram & records		27.11. 1
Billiard Table Charges		7. 2. 6
#Kenward & Court adjustment		7.14. 8
		48.17. 2

#This amount through an error in the supplier's statement was not charged to Bar in month of October 1942.

(For use in the case of Officers' or Sergeants' Messes)

D.F.R.-1A
W.O.F. & S. A/202

MONTH ENDED / QUARTER ENDED: November 30th 1942

TRADING AND PROFIT AND LOSS STATEMENT

Bar

Bar Sales for the month/or quarter		£ 76.17.6
Inventory stock at the end of last month/or quarter	£ 71.10.6	
Add: Purchases for month or quarter	67.6.8	
	£ 9.17.2	
Less: Inventory at close of current month or quarter	68.10.1	
Cost of goods sold		68.7.8
Gross Profit for month/or quarter		8.9.8
Bar expenses: Wages (show details on back)	£	
Other operating expenses (show details on back)		
Total expenses		
Net profit on Bar for month or quarter		8.9.8

Messing

Messing charges for the month or quarter		£ 19.10.-
Inventory stock at end of last month or quarter	£ 14.8	
Add: Purchases for month or quarter	£	
Less: Inventory at close of current month or quarter		14.8
Cost of Messing		19.1.8
Gross Profit for month or quarter		
Mess expenses: Wages (show details on back)	£ 8.2.-	
Other operating expenses (show details on back)		8.2.-
Total expenses		
Net profit, or loss, on Mess only for month or quarter		£ 10.17.8
Net profit on Bar b/d		£ 8.9.8
Net profit, or loss, on Messing b/d		10.17.8
Receipts from other sources (if any):—		
Credit Mts Coupons	£ 17.10	
Refund R.A.F.A.	1.10.-	
		19.7.10
Total profits for month or quarter		£ 37.15.-
Surplus from previous months or quarter		9.10.8
Total surplus available		47.5.8

DISPOSITION OF PROFITS:—

Income expenditures	£	
Capital expenditures — See attached Schedule		46.17.8
Surplus per Balance Sheet		£ 37.15.7

Number of Dining Members 39 Prevailing daily/~~monthly~~ charge for messing 10/-

We hereby certify that in respect of the Bar we have ascertained that the total of the daily takings for the month/or quarter ended November 30th 194... as shown in the Steward's Cash Book corresponds with the amount of Stock sold for that month/or quarter as it appears in the Canteen Stock and Sales Record that the inventories of Bar and Messing as above shown are correct, and that in all other respects the above Statement is correct.

A. Walker Lieut. — PRESIDENT
Athur Horner Sgt — MEMBER
[illegible] — MEMBER

Approved (Albert Ross) Ross. — RANK: Colonel

Commanding No.14 General Hospital, ROAME.

DETAILED STATEMENTS OF EXPENSES FOR THE

MONTH OR QUARTER ENDED ..... 194 ....

Bar

		£
Wages, Canteen Steward		
Canteen Assistants	@ each	
Total Wages		£
Other Expenses		
Total Other Expenses		
TOTAL BAR EXPENSES		£

Messing

		£
Wages, Chef		£ 2.10.-
Mess Assistants	@ 23/- each	2. 2. -
Total Wages		£ 4. 12. -
Other Expenses		
Total Other Expenses		
TOTAL MESSING EXPENSES		£ 4. 12. -

BARCLAYS BANK LIMITED
Horley Surrey Branch
4 Dec 1942.

Dear Sir,

We hereby certify that at the close of business on 30 November, 1942, the balance standing in our books to the credit of Sergeants' Mess account was £143.18. 9 (say One hundred and forty three pounds eighteen shillings and nine pence.

Yours faithfully,
For Barclays Bank Ltd.

A.P.Boyden, Mgr.

Certified True Copy.

L Bracewell Capt

. . .

This is to certify that the Cash on hand and the Inventory at Cost of the Sergeants Mess as at 30 November 1942 was as follows:-

Cash on Hand	£52.14. 1
Inventory	26.10. 1

William Cohen Capt

ABSTRACT OF RECEIPTS AND DISBURSEMENTS OF

THE No. 14 Canadian General Hospital
(Formation, Unit or Detachment.)

MONTH ENDED
~~QUARTER ENDED~~ 31 December 1942 194

Sergeants Mess
(Name of Fund or Account.)

DATE 194 2	RECEIPTS (Show source of receipts)	AMOUNT £	s.	d.	DATE 194 2	DISBURSEMENTS (Show name of firm and purpose)	AMOUNT £	s.	d.
~~Nov 30~~	Credit Balance from Prev. A/c.	~~39~~	~~16~~	~~3~~		Debit Bal. (if any) from Prev. A/c.			
	A/C Mess rable	7	10			A/T			
	~~Bar Sales~~	~~126~~	~~13~~	~~7~~	~~Dec 9~~	~~Idnee~~	~~4~~	~~5~~	~~10~~
					30	Coopers	16	10	11
	~~Mess Dues~~	~~13~~				~~Kennard~~	~~47~~	~~9~~	~~11~~
						Officers Mess	16	1	
	Billiard Table	5	4	2		~~N/S Mess~~	~~3~~	~~7~~	~~6~~
						Times		8	4
						~~Smith & Son~~	1	17	3
							90	-	9
						BAR			
					Dec 9	NAAFI	3	15	8
					21	"	2	19	5
					24	"	9	2	
					29	"	3	18	9
							19	7	4
						MESSING			
					Dec 17	Marlett	3	5	
						MESS EXPENSE			
					Dec 31	Mayes	4	2	
						EXPENSE			
					Dec 9	Thorn & Rodale		9	3
						Entertainment	9		10
						Newspapers		4	
						BILLIARD Table Chgs.	1		6
						Stationery		12	
						Christmas Wages	3	10	
							14	16	7
					Dec 31	Balance (per Cash Book)	204	12	4
		236	4				236	4	

BANK RECONCILIATION STATEMENT (Attach Bank certificate)

1942	Outstanding Cheques.				1942				
Dec 29	NAAFI	3	18	3	Dec 31	Balance in Bank	72	15	10
" 30	~~Kennard~~	47	9	11					
	Off. Mess	16	1						
	~~N/S Mess~~	3	7	6					
	Times		8	4					
	~~Smith~~	1	17	3					
31	Balance per Cash Book		2	7					
		72	15	10			72	15	10

(Note:— Use form R.F.B.-1A in the case of Officers' and Sergeants' Messes only in substitution for this page.)

R.F.B.-1
40/P & S/41

FINANCIAL STATEMENT FOR THE { MONTH ENDED / QUARTER ENDED } 31 December 1942 194

STATEMENT OF ASSETS AND LIABILITIES

ASSETS	AMOUNT £	s.	d.	LIABILITIES	AMOUNT £	s.	d.
CASH (per Cash Book)	204	12	4	(2) ACCOUNTS PAYABLE			
In Bank 1. 7				BAR			
On hand ..... X 104. 10. 9				Kenward	45	18	
				Officers Mess	29	5	
INVENTORY STOCK (at cost)	7	7	9		75	3	
				MESSING			
(1) ACCOUNTS RECEIVABLE:	7			Lines	1	-	-
Arrears							
Current ..... 7. -. -				EXPENSE			
				Billiard Table Chgs.	3	2	6
REGIMENTAL OR MESS PROPERTY (See Arts. 186 and 188)				Off. Mess Stationery	1	10	11
					4	13	5
				(3) SURPLUS	38	3	8
	119	-	1		119	-	1

(1) Show details on reverse side in space provided.

(2) Show details on reverse side in space provided.

(3) Surplus should agree with "Balance available for Distribution" next page.

The above Statement has been audited and is, in the opinion of the undersigned, correct and discloses a true state of finances as at 31 December 194 2.
(Date of Balance Sheet)

C.C. Mc Intosh Lt. (Pres.) Bank
(C. McIntosh)

[signature] Lt. Bank
(Kenneth J. Kenward)

[signature] Major Bank
(Burnett S. Johnstone)

Members AUDIT BOARD

TRADING AND PROFIT AND LOSS STATEMENT

Sales for month/or quarter ..... £ .....
Inventory Stock at end of last month/or quarter ..... £ .....
Add: Purchases for month/or quarter ..... £ .....
£ .....
Less: Inventory at end of current month/or quarter ..... £ .....
Cost of goods sold ..... £ .....
Gross Profits .....
Canteen Expenses: Wages, Canteen Steward ..... £ .....
Canteen Assistants ..... @ ..... each .....
Other operating Expenses (in detail):—
.....
.....
.....
Total Expenses .....
Net Profits ..... £ .....
Receipts from other sources (give details):— £ .....
.....
.....
Total net Profits for month/or quarter .....
Surplus from previous months/or quarters ..... £ .....
Total surplus available .....

DISPOSITION OF PROFITS:—

Disbursements Men's Account (give details) ..... £ .....
.....
.....
.....
Capital Expenditure, Men's Account (give details) .....
.....
.....
.....
Canteen Equipment and Fixtures (give details) .....
.....
(3) Balance available for distribution ..... £ .....

We hereby certify that we have ascertained that the total of the daily takings for the month/or quarter ended ..... 194 ..... as shown in the Steward's Cash Book corresponds with the amount of stock sold for that month or quarter as it appears in the Canteen Stock and Sales Record (Stock Sheet) and that the above statement is correct. The assets of the Fund or Canteen are insured in ..... for £ .....
(State name of Company)

....
Accountant President Regimental Institute

Approved.

..... Lt. Colonel.
Commanding .....

(For use in the case of Officers' or Sergeants' Messes)

MONTH ENDED / QUARTER ENDED 31 December 1942 194

TRADING AND PROFIT AND LOSS STATEMENT

Bar

Bar Sales for the month/quarter	£ 26.10. 1	£ 126.13. 7
Inventory stock at the end of last month/quarter	94.10. 4	
Add: Purchases for month/quarter	£ 121. -. 5	
	7. 7. 9	
Less: Inventory at close of current month or quarter		113.12. 8
Cost of goods sold		13. -.11
Gross Profit for month/quarter	£	
Bar expenses: Wages (show details on back)		
Other operating expenses (show details on back)		
Total expenses		13. -.11
Net profit on Bar for month/quarter		

Messing

Messing charges for the month/quarter		£ 20. -. -
Inventory stock at end of last month or quarter	£ 4. 5. -	
Add: Purchases for month/quarter	£	
		4. 5. -
Less: Inventory at close of current month or quarter		15.15. -
Cost of Messing		
Gross Profit for month or quarter	£ 4. 2. -	
Mess expenses: Wages (show details on back)		4. 2. -
Other operating expenses (show details on back)		
Total expenses		£ 11.13. -
Net profit/loss on Mess only for month/quarter		£ 13. -.11
Net profit on Bar b/d		£ 11.13. -
Net profit/loss on Messing b/d		
Receipts from other sources (if any)		
Billiard Table	£ 5. 4. 2	5. 4. 2
		£ 27.17. 1
Total profits for month/quarter		27.15. 7
Surplus from previous months/quarter		27.15. 8
Total surplus available		

DISPOSITION OF PROFITS:

Income expenditures	~~Amus~~ to Staff	3.10. -	
	Stationery etc.	£ 2. 2.11	
	Elec.equipment	9. 3	
Capital expenditures	Billiard Table Chgs.	4. 3. -	
	Newspapers	4	19.10. -
	Entertainment	7. -.10	38. 3. 8
			£
Surplus per Balance Sheet			

Number of Dining Members 40 Prevailing daily/monthly charge for messing 10/-

We hereby certify that in respect of the Bar we have ascertained that the total of the daily takings for the month/quarter ended 31 December 194 2 *as shown in the Steward's Cash Book corresponds with the amount of Stock sold for that month or quarter as it appears in the Canteen Stock and Sales Record: that the inventories of Bar and Messing as above shown are correct, and that in all other respects the above Statement is correct.*

Insurance carried with North British & Mercantile Insurance Co. £100.

PRESIDENT MEMBER Colonel MEMBER

Approved No.14 Canadian General Hospital

Commanding

DETAILED STATEMENTS OF EXPENSES FOR THE

MONTH ~~OR QUARTER ENDED~~ 31 December 1942 194

Bar

Wages, Canteen Steward ..... £.....

Canteen Assistants ..... @ ..... each ....

Total Wages ..... £.....

Other Expenses:

.....

.....

.....

.....

Total Other Expenses ....

TOTAL BAR EXPENSES £.....

Messing

Wages, Chef ..... £ 1.10. -

Mess Assistants 4 @ 13/- each ... 2.12. -

Total Wages ..... £ 4. 2. -

Other Expenses .....

.....

.....

.....

.....

.....

.....

.....

Total Other Expenses ....

TOTAL MESSING EXPENSES £ 4. 2. -

BARCLAYS BANK LIMITED

HORLEY SURREY BRANCH
2 January 1943

Dear Sir,

We hereby certify that at the close of business on 31st December, 1942, the balance standing in our books to the credit of Sergeants Mess account was £72.15.10.(say Seventy two pounds, fifteen shillings and ten pence)

Yours faithfully,

For BARCLAYS BANK LIMITED

A.P.Boyden, Mgr.

Schedule Of Accounts Receivable And Accounts Payable

As at 31 January 1943.

ACCOUNTS RECEIVABLE	Amount £	ACCOUNTS PAYABLE (Show name of Firm and Purpose)	Amount £ s. d.
Current—Total £		Officers' Mess	46 16 11
Arrears—in detail—(K.R. (Can.) para. 1001)		BAR	
		Officers' Mess	8 13 6
		Kenwood & Court	27 8 5
			36 2 2
		Messing	
		Limes	2 3 -
		Misc.	
		Newspapers	3 13 6
		Hire Piano	1 1 10
			4 15 4
Total - per statement of Assets and Liabilities £		Total - per statement of Assets and Liabilities £	89 17 5

PARTICULARS OF INSURANCE

	Amount £	Insurance £	Date of Expiry £
Inventory of Merchandise at end of period	9	50	Oct 43
Value of Furniture & Equipment carried as an Asset			
Value of Furniture & Equipment not carried as an Asset	33	50	Oct 43
Casualty or other Insurance			

X X

Secretary

REMARKS AND PROPOSALS OF THE COMMITTEE

Names of the Members

Committee	Sub-Committee
1 CWS, H. Sigouin President	1
2 Sgt. W.H. Atchison Secretary	2
3 L/Sgt. H.W. Smith Treasurer.	3

Date of last meeting 9 February 1943

Remarks

X X

Secretary of Committee

MFD 923 (Overseas) 40/P & S/1448 (9/42)

FINANCIAL STATEMENT

TRIPLICATE

The No. 14 Canadian General Hospital, RCAMC, CA(O'S)
Name of Unit

The Sergeants' Mess
Name of Institute or Fund

ABSTRACT OF RECEIPTS AND DISBURSEMENTS

For the Month or Quarter ended 31st January 1943.

Date	RECEIPTS (Show Source)	Amount £ s. d.	Date	DISBURSEMENTS (Show Name and purpose)	Amount £ s. d.
1942 Dec31	Cash on hand—Forward £	104 10 9	1943	A/P £	
	Bank Balance—Forward	1 7			
			Jan15	Limes	1 - -
	A/C Rec.	7 - -		Kenwood & Court	45 18 -
	Bar Sales	46 - 10	26	W. Jelks - Billiards	3 2 6
	Mess Dues	12 - -			
	Billiard Table	3 18 4		BAR	
	C/N Kenwood	2 6 8	JAN5	NAAFI	2 19 5
	Cheque cancelled	16 1 -	12	"	2 14 -
			15	"	2 3 3
				Mess Expenses	
			Jan31	Wages	4 2 -
				Expenses	
			Jan18	B. A. Coutts	3 3 -
			19	N.B. & M. Ins.	7 6
			28	W. Jelks - Billiard Hire	2 10 -
				Sunday Papers	4 -
				Ping Pong Balls	2 6
				Entertainments	9 19 6
				Cash on hand Last	104 8 5
				Bank Balance (per Cash Book)	10 4 10
	TOTAL £	192 19 2		TOTAL £	192 19 2

BANK RECONCILIATION STATEMENT (Attach Bank Certificate)

1943	Outstanding Cheques £ s. d.		Balance (per Cash Book) £	10 4 10
	M/Sist sre' Mess	3 7 6		
	Smith	1 17 3		
Jan28	Jelks	5 12 6 ✓		
19	N.B.&M. Ins.	7 6 ✓		
			Add Outstanding Cheques £	11 4 9
	TOTAL £		Balance per Bank Certificate £	21 9 7

Names of Signing and Countersigning Officers

C.W.S. Sigouin, H. President — Sgt. W. H. Atchison 2nd in Command

L/Sgt. H.W. Smith Treasurer

STATEMENT OF ASSETS AND LIABILITIES

As at 31st January 194 3.

ASSETS		Amount			LIABILITIES		Amount		
Cash (per Cash Book)	£	114	13	6	Accounts Payable (See page 4)	£	89	17	5
On hand	£10. 4. 10								
In bank	£104. 8. 8								
Petty Cash or Change Fund									
Inventory (at cost)		9	5	3					
Wet or Bar	£								
Dry or Mess	£								
Containers	£								
Amounts Receivable		8	-	-					
Current	£ 8. - -								
Arrears	£								
(See page 4)									
Furniture & Equipment (at cost) (if carried as an Asset)					Reserves:— For Depreciation				
					Other - Specify				
"Memorandum" Furniture & Equipment (If not carried as an Asset):									
Radio	£10. - -								
Radiogram	23. - -								
					Surplus		42	1	4
TOTAL £		131	18	9	TOTAL £		131	18	9

CERTIFICATE OF CASH ON HAND

I, the undersigned, hereby certify that the cash on hand, Petty Cash and Change Fund as included above, were counted by me and found correct as at the date of the above statement.

Treasurer

STATEMENT APPROVED

For President of the Committee

Commanding Officer

STATEMENT EXAMINED

Officer i/c Sub-Section, Regimental Funds Board

Date MAR 11 1943 194

CERTIFICATE OF AUDIT

We have audited the books and accounts of the Regimental Mess for the Month/Quarter ended 31 January 194 3 and in our opinion the above statement is properly drawn up so as to show a true and correct view of the state of the finances as at 31 January 194 3

(C. A. McIntosh) Lt.-Col. President

(J. [illegible] Palmer) Lt.-Col. Member Unit Audit Board

Date Audited 20 February 194 3.

Note.- Members of Audit Board should not be Members of the Committee nor Signing Officers for the Bank Account, (K.R. (Can.) 1939, para. 41c)

LIST OF APPENDICES ATTACHED

(a)	Bank Certificate	X
(b)	Merchandise Inventory (M.F.M. 133, Overseas)	X
(c)	Audit Board Report (if any)	
(d)	Other	

STATEMENT OF PROFIT AND LOSS

Month or Quarter ended 31 January 194 3.

	Wet Canteen or Bar		Dry Canteen or Messing		Total	
Sales (or Receipts) for period	£46. - 10	100%	£20. - -	100%	£66. - 10	100%
Inventory at end of last period (cost)	£ 7. 7 9		£		7. 7. 9	
Add Purchases for period	£40. 16. 10		£ 2. 3. -		42. 19. 10	
	£48. 4. 7		£ 2. 3. -		£50. 7. 7	
Less Inventory at end of current period (cost)	£ 9. 5. 3		£		£ 9. 5. 3	
Cost of Sales and/or Messing	£38. 19. 4		£ 2. 3. -		£41. - - 6	
Gross Profits	£ 7. 1. 6	15.2	£17. 17. -		£24. 18. 6	38.2
Deduct Expenses						
Wages—Steward and/or Caterer Chef	£		£ 1. 10. -			
Assistants 4 @ £1 17/- each	£		£ 2. 12. -			
@ each	£		£			
Total Wages	£		£ 4. 2. -			
Other Expenses (in detail)	£		£			
	£		£			
	£		£			
	£		£			
	£		£			
Deduct Total Expenses	£		£ 4. 2. -		£ 4. 2. -	
Net Operating Profit	£ 7. 1. 6		£ 13. 15. -		£ 20. 16. 6	
Add Revenue from Other Sources (Specify) Billiard Table Receipts	3. 18. 4		£ 1. 18. 4			
			£ 3. 6. 8			
			£		£ 7. 5. -	
Total Profit for the period					£ 28. 1. 6	
Add Surplus from previous statement					£ 14. 3. 8	
Total Surplus Available					£ 66. 5. 2	
Deduct Disposition of Surplus (in detail)*						
Piano Expenses			£ 9. 19. 6			
Bar Mats, Used			£ 2. - -			
Ping Pong Balls			£ 2. 9			
Newspapers - 3 months			£ 3. 17. 6			
Repair of Radio			£ 1. 15. 10			
Rental Radio & Piano			£ 7. 6			
Insurance			£		£ 24. 3. 10	
Final Surplus (per statement of Assets & Liabilities)					£ 42. 1. 4	

Average daily charge for Messing monthly 10/- No. of Members 40

*Nature of purchase or expense required, not name of supplier

ACCOUNTABILITY - MERCHANDISE SOLD - AT SELLING PRICE

	Wet Canteen or Bar	Dry Canteen or Messing
Inventory at end of last period (Selling Price)	£ 7. 13. 3	£
Add Purchases during this period (Selling Price)	£46. 7. 4	£
	£	£
Deduct Inventory at end of this period (Selling Price)	£ 9. 17. 9	£
Total to be accounted for	£44. 7. 10	£
Sales as above	£46. - 10	£
Variation	£ 1. 13. -	£

X X

Secretary

Have about this £3-2-0 raised

BARCLAYS BANK LIMITED

HORLEY, SURREY Branch

2 Feb 1943.

Dear Sir:

We hereby certify at the close of business on 31 January, 1943, the balance standing in our books to the credit of

SERGEANTS' MESS

account was £21 - 9 - 7

(say Twenty-one pounds, nine shillings and seven pence).

Yours faithfully,

For BARCLAYS BANK LIMITED

(Sgd) C. W. Boyden

Manager.

The Accountant
14th Canadian Gen'l. Hospital.

FOLIO

INVENTORY—STOCK ON HAND

Sergeants Mess No.14 Cdn. Gen.Hospital — 31 Jany 43
Named Unit — Institute — Date

Taken by Sgt. Atchison — Priced and Extended by L/Sgt H.M.Smith

Description of Article	Unit	Quantity in Units	Cost: Unit Price	Cost: Amount	Selling Price: Unit Price	Selling Price: Amount
Keg Beer		½ gals		2. 7 6		2.19.
Rum				5.		6.
½ doz Ginger ale		½ doz		12.		12.
				2. 5.		2. 5.
Empty Cases		15		3.15. 6		3.19. 6
Empty Bottles		@5 3/12				
				9. 5. 3		9.17. 9

We Hereby Certify that we were present at stocktaking on 31 Jany 43 day of and that the above list of articles is a true and correct statement of the goods on hand in the Canteen (or Mess) as at that date.

Member of Canteen or Mess Committee — X — Steward

W.F.M. 132 (Overseas)
8127 & 8/1441 (3-42)

I 1

14th Canadian General Hospital

Officers Mess

IN ACCOUNT WITH

BARCLAYS BANK LIMITED,

Aldershot.

2/42

DATE	PARTICULARS	Dr.	Cr.	BALANCE
		£ s. d.	£ s. d.	£ s. d.
June 29	Amts Fwd	206 13 1	339 15 9	
—	Aldershot Laundry	22 12 10		
— 30	Men's Canteen	5 11 9		
—	do	5 - -		
—	do	41 4 5	40 3 4	
— July 1	Lunio Fisheries	2 7 8		
—	Cash	1 16 1		
2	Cash	17 15 -		
		306 - 10	379 19 1	73 18 3

Certified true copy of page — our ledger

[illegible]

Page 2

14th Canadian General Hospital
Officers Mess.

IN ACCOUNT WITH
BARCLAYS BANK LIMITED,
Horley.

3/42

I 1

DATE	PARTICULARS		DR.	CR.	BALANCE
July 2	B/fwd.		306 - 10	379 19 1	
	Barracotta		3 18 -		
4	Lewis		11 -		
6	N A A F I		1 8 9		
	Hallett		19 4 5		
7	Bazin	Sds	7 6 -	160 18 6	
8	N A A F I		6 12 11		
9	County Delicacies		2 3 4		
10	Lotte		1 15 9		
	Wages	Sds	10 - -	74 3 11	
15		do		54 19 7	
20	Bacons & Speed.	Sds	121 13 -	15 3 2	
	International Tea Co's	Sds	10 - 6		
	Page & Overton	Sds	4 5 6	33 11 8	
		Sds		66 15 10	
22			495 - 9	785 11 9	

Page 3

I 1

14th Canadian General Hospital
Officers Mess

IN ACCOUNT WITH
BARCLAYS BANK LIMITED,
HORLEY,
SURREY.

4/42

DATE	PARTICULARS		Dr.	Cr.	BALANCE
July 22	B/Fwd.		495 - 9 ✓	785 11 9	
			8 18 ✓		
24	Fishers	Sds		24 7 7	
25			12 3 ✓		
28	Smith W.H.		94 17 4 ✓		
29	Kenwood & Lount		32 5 4 ✓		
	Coopers		18 1 ✓		
31	Sweet Supply derelict		4 13 ✓		
	King & Barnes			8 16 10½	148 17 6
	Cash	Sds	18 8 ✓	8 8 10 2	
			669 12 8		
~~Aug 1~~	~~[illegible]~~	~~Sds~~	~~1 9 3~~	~~19 4 [illegible]~~	
		~~Sds~~		~~19 4 [illegible]~~	
	~~Lyonville Laundry~~	~~Sds~~	~~6 4 5~~	~~15 10~~	
	~~Lyonville Laundry~~		~~32 16 7~~		
			~~709 14 8~~	~~19 2 10~~	~~[illegible]~~

Certified true copy of entry in Ledger
for BARCLAYS BANK LIMITED
[illegible]

Page 1

I 2

14th Canadian General Hospital
Officers Mess

IN ACCOUNT WITH
BARCLAYS BANK LIMITED,
HORLEY, SURREY

5/43

DATE	PARTICULARS		DR.	CR.	BALANCE
			669 12 8	818 10 2	148 17 6
Aug 1	B/fwd				
4	N.A.A.F.I.	Sds	1 5 3	67 6 1 m	
		Sds		151 7 4	108-15-[illegible]
5	Granville Laundry	Sds	5 7 5	45 10 -m	
	Granville Laundry		34 16 5		
6		Sds		19 18 6 m	
8		Sds		15 16 5 m	
	Boots Chemists		23 17 -		
	Barclay Perkins		30 - -		
10	Ferguson 108-15-[illegible]		41 8 -		Satisfactory [illegible]
	Saccone & Speed		67 10 -		
	Hedges & Butler		27 6 -		
	Hedges & Butler		21 - -		
		Sds		62 - 7 -	
13		Sds		13 7 2 -	
			912 2 9	1192 16 1	

Page 2

I 2

14th Canadian General Hospital
Officers Mess

IN ACCOUNT WITH
BARCLAYS BANK LIMITED,
HORLEY, SURREY

6/42

DATE	PARTICULARS		DR.	CR.	BALANCE
			£ s. d.	£ s. d.	
May 13	B/fwd		912 2 9	1192 16 1	
14		Sds		13 9 10	
17	Lillywhites	Sds	9 - -	18 8 3	
19	Kenward		31 - -		
20	Oxley		12 5 3		
21		Sds		38 10 8	
		Sds		8 9	
		Sds		41 19 3	
24			10 -		Cheque traced & [illegible]
26	Cheques		14 13 6		9/- on cheque
27	International Tea Co		60 15 -	12 7 4	[illegible]
28	Saccone & Speed Ltd	Sds	11 1 6		
29	Direct Supply Aerated Water		21 2 10		
31	Coopers		109 10 -		
	Ferguson's		7 6		
	Softhouse		1183 8 4	1317 11 5	

Page 3

14 M Canadian General Hospital
Officers Mess

IN ACCOUNT WITH
BARCLAYS BANK LIMITED,
FOREIGN BRANCH, SURREY.

I 2
Ledger Page 1

7/48

DATE	PARTICULARS	DR.	CR.	BALANCE
	B/Fwd	1182 8 4	1317 11 5	
		7 5 8		
		27 - -		
		10 10		
Sep 31	Solomon Bros	1		
	Saccone & Speed	10 8 10		71 12 9
	W & D & D	18 2 -		
	Linen & Valeries	1245 18 8	1317 11 5	
	Wages			

Certified true
Cost & Accounts Branch

Page 3

14th Canadian General Hospital
Officers Mess.

IN ACCOUNT WITH

BARCLAYS BANK LIMITED,

HORLEY
SURREY.

7/43

I 2
Buckley
Capt

DATE	PARTICULARS		DR.			CR.			BALANCE		
Aug 31	B/f wd		1182	8	4	1317	11	5			
	Solomon Bros	←	7	5	8						
	Saccone & Speed	←	27	-	-						
	N & D 7 8	←		10	10						
	Lines Fisheries	←	10	8	10						
	Wages	←	18	5	-						
			1245	18	8	1317	11	5	71	12	9

Certified true
copy of an entry
in the Bank's Ledger
A/C Manager

14th Canadian General Hospital
Officers Mess.

IN ACCOUNT WITH
BARCLAYS BANK LIMITED,
HORLEY,
SURREY.

I 3

8/47

DATE	PARTICULARS		DR.	CR.	BALANCE
			1245 18 8	1317 11 5	
Sept 1		sd/fwd	19 11 7 ✓		
	Gonville Laundry		3 4 - ✓		
2	Searle W J		14 4 - ✓	96 17 4 "	
7	Barclay Perkins	sds	9 11 9 ✓	88 16 2 "	
	Officers Mess.	sds		18 12 11 "	
9		sds	43 17 4 ✓		
11	N.A.A.F.I		18 10 6 ✓	84 8 7 "	
12	Horley.	sds		10 16 10 "	
15		sds	3 3 3 ✓		
16	NAAFI		1 4 4 ✓		
19	[illegible]		2 15 - ✓		
23	NAAFI		10 10 11 ✓		
	Pmly.		10 8 1 ✓		
28	Bunkell		66 10 - ✓		
	Bowyer		1442 19 5	1557 3 3	

Credited this sum
in our Account
with BARCLAYS BANK LIMITED
Horley
Surrey

Page 2

14 Canadian General Hospital

IN ACCOUNT WITH

BARCLAYS BANK LIMITED, Officers Mess Account

Horley

I 3

9/42

DATE	PARTICULARS	DR.	CR.	BALANCE
Sept 28	B/Fwd.	1442 19 5	1557 3 3	
29	Gonville Laundry x/c	27 8 5 ✓	22 15 9 ✓	
	International Stores x/c	8 4 11 ✓	40 14 5 ✓	
30	Booths Distilleries	35 7 6 ✓		
	(35-7-6)			

Certified true copy of all in our ledger

1514 - 3 | 1620 13 5 | 106 13 2

Page 1

14 Canadian General Hospital Officers Mess Bexley

I 4

IN ACCOUNT WITH

BARCLAYS BANK LIMITED,

Bexley.

DATE	PARTICULARS		DR.			CR.			BALANCE
Oct 1	B/Fwd.		1514		3	1620	13	5	
	Lyons Fisheries	†	10	8	2				
	Batchellor	†	7	2	6				
	Brown + Park	†	6	12	-				
2	Wedlan	†	10	-	-				
	Coopers	†	21	6	7				
	District Supply	†	1	16	-				
5	Utley	ods	5	12	6	118	1	5	
		ods				63		10	
10	NAAFI	†	5	6	3				
12	Kennards	†	8	19	5				
14	Jaccons + Speed	†	88	13					
	Barclay Perkins	†	31	1					
15		ods				29	19	6	
		do				122	8	5	
			1710	17	8	1954	3	7	

Certified long enjoy[illegible]
[illegible]

14 Canadian General Hospital
Officers Mess.

IN ACCOUNT WITH
BARCLAYS BANK LIMITED,
Horley.

I 4

11/42

DATE	PARTICULARS		DR.			CR.			BALANCE		
Oct 15	B/Fwd.		17	10	14 8	1954	3	4			
19	Saccone & Speed.	C	87	15	-						
22	Nursing Sisters	C	1	17	10						
23		ods.				42.		3.	n		
		ods.				50			n		
26	NAAFI.	C		16	3.						
27	International Stores	C	29	15	8						
28	NAAFI	C	1	2	6.						
31		ods.				29	17	4	n		
			18	32	4 11	2076	1	2	243	16	3.

Certified true copy
of an entry in our Books
for Barclays Bank Limited
[illegible]

14 Canadian Gen: Hospital
Officers Mess Fund
Capt

I 5

IN ACCOUNT WITH
BARCLAYS BANK LIMITED,
HORLEY, SURREY

12-42

DATE	PARTICULARS	DR.	CR.	BALANCE
Nov 1.	B/Fwd	1832 4 11	2076 1 2	
4	Wages pas.	19 5 -	44 11 7	
	do "	19 5 -	107 2 7	
	NAAFI	6 1 5		
7	do	2 - -		
10	Lemes Fisheries	7 14 7		
11	NAAFI	11 1 6		
	NAAFI	31 13 7		
18	NAAFI	5 8 4		
	Saccone & Speed	60 15 -		
	pas.		121 16 10	
19		49 - 5		
20	Coopers	66 8 -		
23	Byron & Bank	25 16 5		
	Bovril Distilleries			
	CARRIED FORWARD	2136 14 2	2349 12 2	

14th Canadian Gen. Hospital

Officers Mess a/c

IN ACCOUNT WITH

BARCLAYS BANK LIMITED,

13/42

DATE	PARTICULARS		DR.	CR.	BALANCE
Dec 1	B/f wd.		2183 18 7	2382 9 8	
	Gonville Laundry		21 19 6		
2	Cash for wages	sds	18 5 -	103 2 8	
			41 5 -		
7	Saccone				
	NAAFI	24/12	84 12 -	77 10 5	
9	NAAFI		22 5 9		
	NAAFI		9 16 3		
	6 Cheques		5 -		
10		sds		91 8 6	
		sds		99 18 -	
11	N.A.A.F.I.		1 7 -		
12	Hedges & Butler		7 16 -		
	Boots		33 9 5		
	Barclay Perkins	ods	57 - 8	26 15 7	
			2485 2	2781 4 10	

CARRIED FORWARD

Page 2

14th Canadian General Hospital
Officers Mess.

IN ACCOUNT WITH
BARCLAYS BANK LIMITED,
BORLEY, SURREY.

1/43

DATE	PARTICULARS	DR.	CR.	BALANCE
Dec 31	B/Fwd.	2800 5 2	2855 3 7	
	Balance	54 18 5		
		2855 3 7	2855 3 7	54 18 5
Jan 1	Balance		54 18 5	

Certified true copy of an entry in our books.
BARCLAYS BANK LIMITED
BORLEY, SURREY.

CARRIED FORWARD

14th Canadian General Hospital
Officers Mess

IN ACCOUNT WITH
BARCLAYS BANK LIMITED,
HORLEY, SURREY

I 7

1/43

DATE	PARTICULARS	DR.	CR.	BALANCE
				524 18 5
Jan 1	Balance	46 14 4		
4	Lowville Laundry	8 5		
	Carrington		164 16 11	
8	do.		131 9 4	
	do.	2 15		
11	Horley Press	16 5	49 3 2	
	Wages do.	3 7 6		
12	Fishers Fisheries	3 6 -		
	NAAFI	2 8 6		
13	NAAFI	42 16 4		
15	NAAFI	5 -		
	Cheques	23 5		
16	Barclay Perkins	4 5 8	60 2 8	
18	Direct Supply do.			
20	NAAFI	154 5 4	465 10 9	

CARRIED FORWARD

CORRECTION

This document has been rephotographed to assure legibility

14 Canadian Gen: Hospital
Officers Mess Fund
Capt

I 5

IN ACCOUNT WITH
BARCLAYS BANK LIMITED,
HORLEY SURREY

12 42

DATE	PARTICULARS	Dr.	Cr.	BALANCE
Nov 1.	B/Fwd	1832 4 11	2076 1 2	
4	Wages sas.	19 5	44 11 7	
	do "	19 5	107 2 7	
	NAAFI	6 1 5		
7	do	2 - -		
10	Crimes Fisheries	4 14 4		
11	NAAFI	11 1 6		
	NAAFI	31 13 4		
18	NAAFI	5 8 4		
	Succone & Spud	60 15 -		
	sas.		121 16 10	
19.				
20	Coopers	49 5		
23	Brown & Bank	66 8 -		
	Booth Distilleries	25 16 5		
	CARRIED FORWARD	2136 14 2	2349 12 2	

DATE	PARTICULARS	Dr.			Cr.			Balance		
	BROUGHT FORWARD	2136	14	2	2349	12	2			
Nov 23	NAAFI.	7	5	1						
24	Smith	6	5	2						
25	District Supply Co:	9	12	-						
	Clapshaws Bleave	3	10	1						
	Gunn & Poldin	6	10	7						
26	Can: Gen: Hosp:		15		32	1	6			
30	NAAFI.	13	6	7						
		2183	18	7	2382	9	8	198	11	1
	CARRIED FORWARD									

Certified true copy of a/c in our Ledger

Page 1

14th Canadian Gen. Hospital Officers mess a/c I 6

IN ACCOUNT WITH
BARCLAYS BANK LIMITED,

13/42

DATE	PARTICULARS		DR.			CR.			BALANCE
Dec 1	B/fwd		2183	18	4	2382	9	8	
	Gonville Laundry		21	19	6				
2	Cash for wages	sds	15	5	-	103	2	8	
7	Jaccope		41	5	-				
	NAAFI	29/12	84	12	-	71	10	5	
9	NAAFI		22	5	9				
	NAAFI		9	16	3				
	6 cheques			5	-				
10		sds				91	8	6	
		sds				99	18	-	
11	N.A.A.F.I.		1	7	-				
12	Hodges & Butler		7	16					
	Boots		33	9	5				
	Barclay Perkins ccs		54		8	26	15	7	
	CARRIED FORWARD		2485		2	2781	4	10	

DATE	PARTICULARS	DR.			CR.			BALANCE		
	BROUGHT FORWARD	2485		2	2781	4	10			
Dec 14	Saccone & Speed	40	10	-						
15	Tyler National Stores	3	7	3						
	Bunkell.	2	4	8						
16	NAAFI.	7	7	8						
17	Direct Supply.	9	12							
	Percival.	2	10	4						
	Apollinaris	3	17	-						
18	Coopers	32	18	10						
	NAAFI.	2	-	-						
	Gales Polden	3	12							
21	Lyons Fisheries	1	13	-						
23	Cash	8	10							
	Mews Canteen	119	18	6						
	Barrack Dam. Offs.		17	6	73	18	9			
	NAAFI.	2	6	10						
24	Mullins	14	3							
29	Warnett	15	5	3						
30	Cuttz	1								
	Star Brewery.	26	11	-						
	Hougan									
	CARRIED FORWARD	2800	5	2	2855	3	7	54	18	5

Page 2

14th Canadian General Hospital Officers Mess.

IN ACCOUNT WITH
BARCLAYS BANK LIMITED,
HORLEY, SURREY.

1/48

DATE	PARTICULARS	DR.	CR.	BALANCE
Dec 31	B/Fwd.	2800 5 2	2855 3 7	
	Balance	54 18 5		
		2855 3 7	2855 3 7	54 18 5
Jan 1	Balance		54 18 5	

Certified true copy of an entry in the books of BARCLAYS BANK LIMITED, HORLEY, SURREY.

CARRIED FORWARD

1/43

14th Canadian General Hospital
Officers Mess.

IN ACCOUNT WITH
BARCLAYS BANK LIMITED,
HORLEY, SURREY

DATE	PARTICULARS		DR.	CR.	BALANCE
Jan 1	Balance			54 18 5	
4	Gowrie Laundry	D	46 14 4		
	Carrington	D	8 5	✓	
8		D/D		164 16 11	
		D/D		131 9 4	
11	Horley Press.	D	2 15	✓	
	Wages	D/D	16 5	49 3 2	
12	Lewis Fisheries	D	3 7 6	✓	
	NAAFI	D	3 6 -	✓	
13	NAAFI	D	2 8 6	✓	
15	NAAFI	D	42 16 4	✓	
	Cheques	D	5 -	✓	
16	Barclay Perkins	D	23 5 -	✓	
18	Direct Supply	D/D	4 15 8	60 2 8	
20	NAAFI	D			
	CARRIED FORWARD		154 5 4	465 10 9	

DATE	PARTICULARS	Dr.	Cr.	BALANCE
	BROUGHT FORWARD	154 5 4	46 5 10 9	
Jan 23	Laccone & Speed	5 4 -		
27	Leigh's hess	14 8.		
	NAA 79. sds	6 6.	32 17.	
30	N/S. hess. sds	4 1	31 1 10	
		236 - 4	529 9 7	293 9 3

I certified true copy of a/c in our ledger

149.7.4
154.1.11
293.9.3

CARRIED FORWARD

14th Gen: Syes: Hospital
Officers Mess

I 8

1/43

IN ACCOUNT WITH
BARCLAYS BANK LIMITED,
HORLEY.

DATE	PARTICULARS	Dr.	Cr.	BALANCE
Feb 1	B/Fwd.	236 4	529 9 7	293 9 3
	Nth Brit: Mercantile Ins	1 17 6		
3	Brown & Kank	26 6		
	Saccone & Speed	24		
6	NAAFI	3 18 6		
	County Delicacies	12 10 1		
8	NAAFI	19 19 4		
	do	2 8 6		
10	cds.		52 17 6	
	"		108 10 10	
	"		92 5 10	
11	Cheques	10		
13	Books	32 14 9		
	Saccone & Speed	55 10		
	CARRIED FORWARD	418 15 -	483 6 9	

DATE	PARTICULARS	DR.			CR.			BALANCE			
	BROUGHT FORWARD	418	15		783	6	9				
Feb 15	NAAFI	3	18	6	✓						
	"		19	6	✓						
16.	Warnett	4	10	9	✓						
22	NAAFI.	4	8	4	✓						
	Saccone & Speed.	24			✓						
24	NAAFI.		19	6	✓						
		463	11	4	783	6	9	3	19	15	2.
	CARRIED FORWARD										

Certified true copy
of an entry in our Ledger

14th Canadian General Hospital

IN ACCOUNT WITH

BARCLAYS BANK LIMITED,

Officers' Mess

HORLEY.

I 9

2/4.3

DATE	PARTICULARS	DR.	CR.	BALANCE
Feb 24	13/Ford	463 11 1	783 6 9	319 15 8
Mar 1	NAAFI	8 9 3		
3	do	19 6		
4	Brown & Tank	26 6 -		
8	NAAFI	1 4 5		
	do	2 8		
	do	21 19 6		
9	sdry		90 10 1	
	do		64 18	
	do		18 13 3	
	do		52 2 6	
10	NAAFI	17 6		
13	Saccone-Speed	57		
15	Lunch sdry	6 11	72 1	
	CARRIED FORWARD	589 8 9	1084 11 7	

DATE	PARTICULARS	DR.	CR.	BALANCE
	BROUGHT FORWARD	589 8 9	1084 11 7	
Mar 15	NAAFI.	5 14 3		
16	Young.	3 9		
17	Barclay Perkins	20 12 4		
	NAAFI.	5 16		
	do	19 6		
18	Yorville Laundry	92 5 3		
19	NAAFI.	1 18		
20	Lyons Fisheries	11 3 10		
	Percival	4 17 6		
	Barclay Perkins	10 18 4		
22	NAAFI.	2 4		
	Anchor Vaults	169 2		
23			18 19	
24	Garrison	10		
	Marshall & Snelgrove	9 7 6		
	Feeling	39 11 3		
26	LDV.	2 9		
27	NAAFI	1 14		
	Barclay Perkins	17 2 4		
	CARRIED FORWARD	998 7 7	1103 10 7	

Page 2

14th Canadian General Hospital Officers Mess.

IN ACCOUNT WITH

BARCLAYS BANK LIMITED,

HORLEY, SURREY.

3/43

I 9

D. Ludby Capt

DATE	PARTICULARS	DR.	CR.	BALANCE
Mon 29	B/Fwd	998 7 7	1103 10 7	
	NAAFI	10 10 4		
	do	24 14 1		
	Booths Distilleries	28 1 6		
30			35 16 9	
31	Luccone & Speed	27		
	NAAFI	19 6		
		1089 13 -	1139 7 4	49 14 4

Certified true ~~to~~ Copy of entry in our Ledger

for BARCLAYS BANK LIMITED, HORLEY, SURREY.

Manager

CARRIED FORWARD

14th Canadian General Hospital Officers' Mess

IN ACCOUNT WITH
BARCLAYS BANK LIMITED,

4/43.

DATE	PARTICULARS	DR.	CR.	BALANCE
Apl 1	B/Fwd	1089 13	1139 7 4	
		6 7 10		
5	NAAFI	7 17 9	128/01 12 3	
	D Smith Sol.		5/7 18 7	
	Sol.			
6	Staff Sergeant Walther	5 - -		
		27 - -		
10	Saccone		120 6 8	
12		19 6		
14	NAAFI	3 17 5		
	do	5 13 11		
17	Quick	38 2 10		
19	Barclay Perkins	4 1		
	NAAFI	1 13 2		
	Smith	1 6 11		
20	Imes Fisheries			
	CARRIED FORWARD	1191 9 4	1419 4 10	

DATE	PARTICULARS	Dr.	Cr.	BALANCE
	BROUGHT FORWARD	1191 9 4	1419 4 10	
Sept 21	Feeding	7 17 5		
	Paafo.	19 6		
	Archery Vaults	90 17 2		
23	22 Prod. Unit	1 13 9		
~~24~~	~~122 Prod Unit~~			
24	Sports Agency.	13 17 6		
	Saccone & Speed	43 10		
	"	10		
28	Groves			
29	Computs Jan.	18	62 14 1	
	18471.	19 6		
30	Coopers 6068329	1 15 2		
	Paafo 6064328	9 8 10		
	~~Carrix~~ 6064327 Jan.	~~#. # 10~~	19 15 3	
		~~136 / 18~~	1501 14 2	~~38 16 10~~
		~~13 11 19 10~~		
		1363 16 2		137 18 -
	£.17.9		Certified true copy of entry in ledger	
	CARRIED FORWARD			

D Budden Capt C1

ABSTRACT OF RECEIPTS AND DISBURSEMENTS OF

THE No.14 Cdn.Gen.Hospital, R.C.A.M.C.
(Formation, Unit or Detachment)

PERIOD ~~MONTH~~ ENDED July + August 31st August 1942

Officers' Mess.
(Name of Fund or Account)

DETAILED STATEMENTS OF ACCOUNTS RECEIVABLE & ACCOUNTS PAYABLE FOR THE MONTH OR QUARTER ENDED .....194.....
(If space provided insufficient attach supplementary schedule)

(1) Accounts Receivable	Amount £	s.	d.
Current	406	2	3
Arrears			
Capt. Dinan		3	2
Sgt. Timmons	18	5	1
	424	10	6
Recapitulation			
Bar	232	10	11
Messing	99	16	6
Batmen	32		5
Laundry	30	12	8
Assessment	1	10	
No. 8 Cdn.Gen.Hosp.	9	11	9
	406	2	3

(2) Accounts Payable	Amount £	s.	d.
H. Bowyer & Son	66	10	
G.P.O. Telephone		1	4
Mens Canteen	106	12	2
Reserve for Telephone	7	18	3
	181	1	9
Bar			
Direct Supply	1	16	
F.W. Oxley	5	12	6
Booths Distilleries	35	7	6
Mens Canteen	2	10	4
Brown & Park	6	12	
Messing			
International Stores	8	4	11
Limes Fisheries	10	8	2
Coopers	21	6	7
Mens'Canteen	10	6	
Bunkill, R.A.	10	8	1
Gonville Laundry		7	4
" "	27	1	1
Mens'Canteen		10	
Reserve for Telephone	2	12	8
	324	4	11
Credit Note Kenward Court		4	2
" " Allen & Lloyd	4	7	9
	319	13	

Date 1942	Receipts (Show source of receipts)	Amount £	s.	d.
Jun 30	Credit Balance from Prev. A/c.	106	17	5
	Accounts Receivable	499	15	7
	Bar Sales	208	10	11
	Messing Charges	86		3
	Batmens Assess.	29	11	7
	Special Assessment	17		
	Laundry	20	4	6
	Credit Note W.M.Still	6	9	8
		974	9	11

Date 194	Disbursements (Show name of firm and purpose)	Amount £	s.	d.
	Schedule A,P.	452	13	5
	" B.	286		5
	" M.	100	15	2
	" B.E.	8	1	3
	" M.E.	26	16	7
	" Exp.	59	9	7
	Balance (per Cash Book)	40	13	6
		974	9	11

BANK RECONCILIATION STATEMENT (Cash Book)

1942	Outstanding Cheques			
Jul 24	N.A.A.F.I.	20	19	2
Aug 10	No. 8 Cdn.Gen.Hosp.	9	11	9
" 24	Searle	3	4	
" 24	F.W. Oxley	12	10	6
" 24	Gonville Laundry	19	1	7
" 31	Balance per Cash Book	6	5	9
		71	12	9

1942		Amount		
Aug. 31	Balance in Bank	71	12	9
		71	12	9

(Note:— Use form R.F.B.-1A in the case of Officers' and Sergeants' Messes only in substitution for this page.)

R.F.B. 1
40 P & S/20

FINANCIAL STATEMENT FOR THE { MONTH ENDED / QUARTER ENDED } ..... 194.....

STATEMENT OF ASSETS AND LIABILITIES

Assets	Amount £ s. d.	Liabilities	Amount £ s. d.
Cash (per Cash Book)	40 13 6	(2) Accounts Payable	319 13
In Bank 6- 5- 9			
On hand ..... X 33- 7- 9			
40-13- 6			
Inventory Stock (at cost)	306 5 7		
(1) Accounts Receivable:	44h 10 6		
Arrears 18- 8- 3			
Current 105- 2- 3			
Regimental or Mess Property (See Arts. 136 and 138)			
~~Radio 635- -~~			
~~Silver 160- -~~			
~~£ 195- -~~			
		(3) Surplus	353 16 7
	673 9 7		673 9 7

TRADING AND PROFIT AND LOSS STATEMENT

Sales for month/or quarter ..... £.....

Inventory Stock at end of last month/or quarter ..... £.....

Add: Purchases for month/or quarter ..... £.....

Less: Inventory at end of current month/or quarter ..... £.....

Cost of goods sold .....

Gross Profits .....

Canteen Expenses: Wages, Canteen Steward ..... £.....

Canteen Assistants ..... @ ..... each .....

Other operating Expenses (in detail):—

.....

.....

.....

Total Expenses .....

Net Profits ..... £.....

Receipts from other sources (give details):— £.....

.....

.....

Total net Profits for month/or quarter ..... £.....

Surplus from previous months/or quarters .....

Total surplus available .....

DISPOSITION OF PROFITS:—

Disbursements Men's Account (give details) ..... £.....

.....

.....

Capital Expenditure, Men's Account (give details) .....

.....

.....

.....

Canteen Equipment and Fixtures (give details) .....

.....

(3) Balance available for distribution ..... £.....

(1) Show details on reverse side in space provided. (2) Show details on reverse side in space provided.

(3) Surplus should agree with "Balance available for Distribution" next page.

The above Statement has been audited and is, in the opinion of the undersigned, correct and discloses a true state of finances as at 31st August 194 2
(Date of Balance Sheet)

(C.B. Maintosh) Lt.-Colonel Bank (Pres.)

(J.H. Palmer) Lt.-Colonel Bank

Sergeant Private Bank

(Burnett S. Johnston) Major Members

AUDIT BOARD

We hereby certify that we have ascertained that the total of the daily takings for the month/or quarter ended ..... 194..... as shown in the Steward's Cash Book corresponds with the amount of stock sold for that month or quarter as it appears in the Canteen Stock and Sales Record (Stock Sheet) and that the above statement is correct. The assets of the Fund or Canteen are insured in ..... (State name of Company) for £.....

Accountant President Regimental Institute

Approved.

Lt.-Colonel.

Commanding .....

(For use in the case of Officers' or Sergeants' Messes)

PERIOD ~~YEAR~~ ENDED / ~~QUARTER~~ ENDED 31st August, 194 2

TRADING AND PROFIT AND LOSS STATEMENT

Bar

Bar Sales for the ~~month or quarter~~ period		£ 441- 1-10
Inventory stock at the end of last ~~month~~ or quarter	£ 209- 1- 3	
Add: Purchases for ~~month or quarter~~ period	£ 331-18- 6	
	~~£ 540-19- 9~~	
Less: Inventory at close of current ~~month or quarter~~ period	£ 208- 5- 7	332-14- 1
Cost of goods sold		~~108- 7- 9~~
Gross Profit for ~~month or quarter~~ period		£
Bar expenses: Wages (show details on back)	~~8- 1- 3~~	8- 1- 3
Other operating expenses (show details on back)		~~100- 6- 6~~
Total expenses		
Net profit on Bar for ~~month or quarter~~ period		

Messing

Messing charges for the ~~month or quarter~~ period		£ 185-16- 9
Inventory stock at end of last month or quarter	£ 161- 8-11	
Add: Purchases for ~~month or quarter~~ period	£	
Less: Inventory at close of current month or quarter		161- 8-11
Cost of Messing		~~24- 7-10~~
Gross Profit for ~~month or quarter~~ period	£ 25- 5-	
Mess expenses: Wages (show details on back)	2- 8-11	
Other operating expenses (show details on back)	~~27-13-11~~	27-13-11
Total expenses		
		£ ~~3- 6- 1~~
Net ~~profit~~ or loss, on Mess only for ~~month or quarter~~ period		£ ~~100- 6- 6~~
Net profit on Bar b/d		£ 3- 6- 1
Net ~~profit~~ or loss, on Messing b/d	Batmans' Fees 61-11-12	~~97- - 5~~
Receipts from other sources (if any)	Mess Assessment 18-10-	
	Credit Note W.H. Stall 6- 9- 8	
	~~86-11- 8~~	86-11- 8
		~~181-15- 1~~
Total profits for ~~month or quarter~~ period		£ ~~204-15- 1~~
Surplus from previous ~~month or quarter~~		~~388- 7- 2~~
Total surplus available		

DISPOSITION OF PROFITS

	Telephone	2-12- 8	
	Dance	28- - -	
	Cheque Book	- 16- -	
Income expenditure	Canada - Locks	£ - 16- 1	
	Free Drinks	5-16- 2	
	Newspapers	2- - -	
Capital expenditure	Gift	- 7- 6	34-10- 7
	Repairs Radio		
			353-16- 7
Surplus per Balance Sheet			£

39 - 2 -

Number of Dining Members ..... Prevailing daily charge for messing ..... two 8

~~We~~ certify ~~31~~ August ~~of the Bar~~ 2 have ascertained that the total of the daily takings for the month/quarter ended ..... 194 .. as shown in the Steward's Cash Book corresponds with the amount of Stock sold for that month or quarter as it appears in the Canteen Stock and Sales Record. That the inventories of Mess and Messing to close of quarter are correct, and that in all other respects the above Statement is correct.

(G.A.McIntosh) Lt-Col. (J.H. Palmer) Lt.Col. (Burnett S. Johnston) Major.
PRESIDENT MEMBER MEMBER

Colonel

Approved (Albert Ross)

RANK

No.14 Cdn. Gen. Hospital, RCAMC.

Commanding

DETAILED STATEMENTS OF EXPENSES FOR THE MONTH/OR QUARTER ENDED ..... 194....

Bar

Wages, Canteen Steward	£	
Canteen Assistants @ each		
Total Wages		
Other Expenses:	£	
Glasses	7- 6-	
Expenses	-10- 3	
A/C Receivable Adjustment	- 5-	
Total Other Expenses		
TOTAL BAR EXPENSES £		8- 1- 3

Messing

Wages, Chef 2 months @ £2.0.0	£4.0.0	
Mess Assistants 10 @ £1.0.0 each 2 mos	20.0.0	
Total Wages £22.5.0	1.5.0	
Other Expenses	£	25- 5-
Laundry	7- 4	
Youngs - Napkins	-12-11	
" "	- 7-	
L /Cpl. Lewis - Shoe Polish	- 7- 6	
Stamps	-10- 10	
Giles	2- 6	
	10-10	
Total Other Expenses	2- 8-11	2- 8-11
TOTAL MESSING EXPENSES £		27-13-11

No. 14 CANADIAN GENERAL HOSPITAL, R.C.A.M.C.

OFFICERS' MESS

SCHEDULE OF DISBURSEMENTS

July & August 1942

	Schedule A.P.	£ s d	
1 Jul	Wages	17-15-	
13 "	Page & Contos	4- 5- 6	
16	International Stores	10- - 6	
21 "	Conville Laundry	24-16- 5	
	Coopers	35- 5- 4	
	Kenward & Court	94-17- 4	
	Limes Fisheries	8-18-	
24 "	W.H. Smith	-12-[illegible]3	
	King & Barnes	4-13-	
	Direct Supply	12- 1-	
	F.W. Oxley	12- 5- 3	
	N.A.A.F.I.	20-19- 2	
	Wages	-10-	
3 Aug	Barclay Perkins	30- -	
	Hedges & Butler	27- 6-	
	Booths Distilleries	23-17-	
24 Aug	Fergusons	109-10-	
	Solomon Bros	7- 5- 8	
4 "	Wm.Still & Sons	7-16-	£452-13- 5
	Schedule B		
1 Jul	N.A.A.F.I.	4- - 1	
9 "	Gasconi & Squad	121-13-	
16 "	Tillywhitps	9- -	
17 Aug	Kenward & Court	31- -	
4 "	N.A.A.F.I.	-10-10	
	Hedges & Butler	31- -	
18 "	Gasconi & Squad	60-15-	
25 "	" "	27- -	
24 "	Direct Supply	11- 1- 7	£286- - 5
	Schedule M		
1 Jul	N.A.A.F.I.	8-12-10	
24 "	N.A.A.F.I.	1- 5- 3	
	A.P.Giles	-19-10	
	Maj.Melvills	- 6-	
	N.A.A.F.I.	-10-	
	Laundry	7-15-	
31 Aug	Titheby & Christopher	2-11-	
	Goodman	5-14- 6	
	"	7- 3-11	
	"	4- 9- 2	
	International Stores	-12-	
22 Aug.	Coopers	21- 2-10	
24 "	Limes Fisheries	10- 8-10	
	F.J. Searle	3- 4-	
	Oxley	12-10- 6	
	International Tea	14-13- 6	£100-15- 2
	Schedule R.E.		
1 Jul	Glasses	7- 6	
12 Aug	Expenses	-10- 3	
24 "	Photos(Ac.Rec.)	- 5-	£ 8- 1- 3

SCHEDULE OF DISBURSEMENTS. (Cont'd)

1942.	Schedule M.E.	£ S D	
24 Jul	Wages	6-10-	
	Youngs	- 7-	
	Cpl.Lewis	- -10	
31 Aug	Wages	18- 5-	
	Youngs	- 7- 6	
	Stamps	- 2- 6	
	A.P.Giles & Sons	-10-10	
24 Aug	Laundry	-12-11	£ 26-16- 7
	SCHEDULE ExP		
10 Jul	Wages for Dance	10- -	
24 "		11- 5-	
21 "	Gonville Laundry	5- 7- 5	
		1- -	
	Newspapers	- 3-	
	Cpl.Mosl Gift	2- -	
10 Aug	Officers'Mess No.6CGH.	9-11- 9	
	Cheque Book	-10-	
	Gamage	-16- 3	
	Lofthouse	- 7- 6	
	Gonville Laundry	18- 8- 8	£ 59- 9- 7

No. 14 CANADIAN GENERAL HOSPITAL, R.C.A.M.C. C.A.(O's)

OFFICERS' MESS

Inventory - 31st August, 1942

BAR				£	S	P
Quantity	Article	Price				
1 1/3 Bottles	Scotch	@	-23-	1	-10	-
4/5 "	Gin	@	-19- 6		-15	7
1/5 "	Rum	@	-25-		-	5
1 1/3 "	Sherry	@	-18-	1	-	4
1 "	Port	@	-15-		-15	
1 "	Cordials	@	- 2- 6		-	9
1/4 "	Vermouth	@	- 9-		-	10
1/5 "	Soda Water	@	- 1-		-	6
2½ Siphons	Tomato Juice	@	- - 3		-	3
1 Bottle	Tonic Water	@	- 1-		2	16
1 "	Soda Water	@	- 1-		1	4
56 Siphons	" "	@	- 1-			
24 "						
STOCK ROOM						
6 Bottles	Whiskey, Honey Cream	@	-23-		6	18
6 "	Gin, Booths	@	-19- 6		7	16
16 "	Whiskey, Haigs	@	-23-		20	14
19 "	" B & W	@	-23-		21	17
7 "	Rum	@	-25-		8	15
5 "	Sherry	@	-18-		4	10
5 "	Port	@	-15-		3	15
1 "	Votrix	@	- 9-			9
12 "	Whiskey, Honey Cream	@	-23-		13	16
11 "	" Vat 69	@	-20- 1		11	-11
19 "	" Haigs	@	-23-		21	17
5 "	Rum	@	-25-		6	5
24 "	Whiskey, B & W.	@	-23-		27	12
117 "	Lighter Fluid	@	- 1- 3		7	6
53 Cartons	Soap, Body Guard	@	- - 5½			15
52 "	" Life Bouy	@	- - 5½			15
48 "	"Eau de Cologne	@	- - 5½			14
2 "	" Turtle Oil	@	- - 6			1
3 "	" Beauty Milk	@	- - 6			1
22 "	Shave X	@	- 1-		1	2
7 Tubes	Solidox, Large	@	- 1- 7			7
4 "	Pepsodent "	@	- 1-			6
11 "	" Med	@	- - 6			11
11 "	" Small	@	- - 6			5
12 "	Solidox, Small	@	- 1-			6
5 "	Forhans	@	- - 6			6
12 "	Odol	@	- - 6			7
14 Sticks	Shaving	@	- 1-			8
6 Cream Tubes	Shaving	@	- 1-		2	3
40 Packets	Exteria Cigs.20's	@	- 1- 8 -10%			10
7 "	St.Bruno Tob.1oz.	@	- 1- 6½ -10%			4
1 "	Country Life, Tob 1oz	@	- 1-10½ -10%			4
1 "	Golden Leaf, 1ozTob	@	- 1- 6½			2
1 "	Airman	@	- 1-10½		1	28
1 "	Golden Bar, Tob.1oz.	@	- - 3½ each		4	4
24doz"	Flints	@	- - 2 "			8
200 "	Flints	@	- - 2		4	-
20 Pads	Paper, Note Crested	@	- 4-		3	6
22 Pads	Paper, Note Plain	@	- 3-		1	10
37 Packages	Envelopes	@	- -10 Pkg.			10
6 Bottles	Cordial	@	- 2- 6			15
BOTTLES						
15 Siphons						15
2 Cases & Bottles,	Tonic Water					18
" " "	Pepsi Cola					18
2 " & siphons 12						13
1 " @ - 5-					1	-
4 " & 56 Siphons					3	1
5 " & 45 Siphons					8	9
15 " & 24 4/12 Bottles					5	14
					98	1

BARCLAYS BANK LIMITED

Horley, Surrey,

2nd. Sept, 1942.

Dear Sir,

We hereby certify that at the close of business on 31st August, 1942, the balance standing in our books to the credit of Officers' Mess, No.14 Cdn.Gen.Hosp.,RCAMC., account was £71.12. 9 (say Seventy one pounds, twelve shillings and nine pence)

Yours Faithfully,

A.P. Boyden, MGR.

Certified True Copy:-

W. Alan Cohen Capt.

NO.14 CANADIAN GENERAL HOSPITAL, R.C.A.M.C., C.A.(O'S)

31 August 42

This is to certify that the Cash on hand and the Inventory Stock (at Cost) of the Officers Mess at the above date was as follows:-

Cash on Hand £34: 7: 9
(Thirty four pounds seven shillings and nine pence)

Inventory Stock (at Cost) £208: 5: 7
(two hundred eight pounds five shillings and seven pence)

William C Scott Capt.

DETAILED STATEMENTS OF ACCOUNTS RECEIVABLE & ACCOUNTS PAYABLE FOR THE MONTH OF ~~QUARTER ENDED~~

30 Sept 42 194

(If space provided insufficient attach supplementary schedule)

(1) Accounts Receivable	Amount £	s.	d.
Arrears	113	7	6
Mess Charges	79	1	
Bar Sales	115		6
Batmen Assessment	27	10	
Laundry	21	6	9
	356	5	9
Less Prepayment		9	2
	355	16	7
ARREARS			
Major Galbraith	4	9	10
Major Halpenny	6	8	3
Capt Basin	18	7	2
Dickinson	22	11	7
Dinan	13	8	1
McCutcheon			6
Sgt. Timmons	18	5	1
N/S Mess	17	7	6
Capt. Reid		6	6
F/A Watson		16	9
No. 8 CCH	9	11	9
Mens Canteen	1	14	6
	113	7	6

(2) Accounts Payable	Amount £	s.	d.
Arrears			
Mens Canteen	119	18	6
Telephone Reserve		1	4
	119	19	10
Less C/N Kenward & Court		4	2
Allen & Lloyd	4	7	9
	115	7	11
Bar			
Barclay Perkins	30	14	4
Direct Supply	9	12	
N/S Mess	2	12	
	42	18	4
Messing			
Int. Stores.	29	15	8
Limes Fisheries	7	14	7
Coopers	29		5
	86	10	8
Expense			
W.H.Smith & Son	6	5	2
Gonville Laundry	21	19	6
Wages	19	5	
Gale & Polden	6	10	7
	54		3
	298	17	2

ABSTRACT OF RECEIPTS AND DISBURSEMENTS OF

THE No.14 Canadian General Hospital (Formation, Unit or Detachment.)

MONTH ENDED ~~QUARTER ENDED~~ 30 Sept 42 194

Officers Mess (Name of Fund or Account.)

Date 1942	Receipts (Show source of receipts)	Amount £	s.	d.
Aug 31	Credit Balance from Prev. A/c.	40	13	6
	A/C's Receivable	311	3	
	Prepayment Mess Bill		9	2
	Cash Bar Sales	45	9	7
		397	15	3

Date 1942	Disbursements (Show name of firm and purpose)	Amount £	s.	d.
	Debit Bal. (if any) from Prev. A/c.			
	Schedule A/P	206	5	1
	B	63	18	6
	N	21	2	2
	MS		13	9
	EXP	17	2	6
Sep 30	Balance (per Cash Book)	90	13	3
		397	15	3

BANK RECONCILIATION STATEMENT (Attach Bank certificate)

1942					1942				
	Outstanding Cheques				Sep 30	Balance in Bank	106	13	2
	As per attached list	85	14	9					
Sep 30	Balance per Cash Book	20	18	5					
		106	13	2			106	13	2

(Note:— Use form R.F.B.-1A in the case of Officers' and Sergeants' Messes only in substitution for this page.)

R.F.B.-1
40/P & S/261

FINANCIAL STATEMENT FOR THE (MONTH ENDED / ~~QUARTER ENDED~~) 30 Sept 42 194

STATEMENT OF ASSETS AND LIABILITIES

Assets	Amount £	s.	d.	Liabilities	Amount £	s.	d.
Cash (per Cash Book)	90	13	3	(2) Accounts Payable	298	17	2
In Bank 20.18.5							
On hand 69.14.10							
Inventory Stock (at cost)	179	18	5				
(1) Accounts Receivable:	355	16	7				
Arrears 113.7.6							
Current 242.9.1							
Regimental or Mess Property (See Arts. 136 and 138)							
Silverware £160.-.-							
Radio 35.-.-							
Furniture 20.-.-							
				(3) Surplus	327	13	1
	626	8	3		626	8	3

TRADING AND PROFIT AND LOSS STATEMENT

Sales for month/or quarter ..... £ .....

Inventory Stock at end of last month/or quarter ..... £ .....

Add: Purchases for month/or quarter ..... £ .....

£ .....

Less: Inventory at end of current month/or quarter ....

Cost of goods sold ..... £ .....

Gross Profits .....

Canteen Expenses: Wages, Canteen Steward ..... £ .....

Canteen Assistants ..... @ ..... each .....

Other operating Expenses (in detail):—

.....

.....

.....

Total Expenses ....

Net Profits ..... £ .....

Receipts from other sources (give details):—

..... £ .....

....

....

Total net Profits for month/or quarter .....

Surplus from previous months/or quarters ..... £ .....

Total surplus available .....

DISPOSITION OF PROFITS:—

Disbursements Men's Account (give details) ..... £ .....

.....

.....

.....

Capital Expenditure, Men's Account (give details) .....

.....

.....

.....

Canteen Equipment and Fixtures (give details) .....

.....

(3) Balance available for distribution ..... £ .....

(1) Show details on reverse side in space provided. (2) Show details on reverse side in space provided.

(3) Surplus should agree with "Balance available for Distribution" next page.

The above Statement has been audited and is, in the opinion of the undersigned, correct and discloses a true state of finances as at 30 Sep (Date of Balance Sheet) 194 2.

(W.H. McIntosh) Lt.-Col. Bank (Pres.)

(J.E. Fisher) Lt.-Col. Bank } Members

(Burnett S. Johnston) Major Bank

AUDIT BOARD

We hereby certify that we have ascertained that the total of the daily takings for the month/or quarter ended ..... 194..... as shown in the Steward's Cash Book corresponds with the amount of stock sold for that month or quarter as it appears in the Canteen Stock and Sales Record (Stock Sheet) and that the above statement is correct. The assets of the Fund or Canteen are insured in ..... for £ .....

(State name of Company)

....

Auditor(s) President Regimental Institute

Approved.

..... *Lt. Colonel*

Commanding .....

(For use in the case of Officers' or Sergeants' Messes)

B.F.B.-1A
+C.F.A.S.264

MONTH ENDED [redacted] 30 Sept 42 194...

TRADING AND PROFIT AND LOSS STATEMENT

Bar

Bar Sales for the month/[redacted]		£ 160.10. 1
Inventory stock at the end of last month/[redacted]	£ 208. 5. 7	
Add: Purchases for month/[redacted]	99. 1. 3	
	£ 307. 6.10	
Less: Inventory at close of current month/[redacted]	179.18. 5	127. 8. 5
Cost of goods sold		33. 1. 8
Gross Profit for month/or quarter		
Bar expenses: Wages (show details on back)	£	
Other operating expenses (show details on back)		13. 9
Total expenses		32. 7.11
Net profit on Bar for month/[redacted]		

Messing

Messing charges for the month/[redacted]		£ 79. 1. -
Inventory stock at end of last month or quarter	£	
Add: Purchases for month/[redacted]	107.12.10	
	£	107.12.10
Less: Inventory at close of current month or quarter		
Cost of Messing		28.11.10
Gross [redacted] or month or quarter		
Mess expenses: Wages (show details on back)	£ 19. 5. -	
Other operating expenses (show details on back)	12. 9	19.17. 9
Total expenses		
Net [redacted] or loss, on Mess only for month/[redacted]		£ 48. 9. 7
Net profit on Bar b/d		£ 32. 7.11
Net [redacted] or loss, on Messing b/d		48. 9. 7
Receipts from other sources (if any):—		
Batmen Assessment	£ 27.10. -	27.10.-
		£ 11. 8. 4
Total profits for month/[redacted]		353.16. 7
Surplus from previous months c/[redacted]		365. 4.11
Total surplus available		

DISPOSITION OF PROFITS:—

Income expenditure:	W.H.Smith Newspapers	£ 6. 5. 2	
	Gale & Polden	6.10.7	
Capital expenditure:	Furniture	17. 2. 6	
	Bar Misc. used	7.15. 7	37.13.10
Surplus per Balance Sheet			£ 327.11. 1

Number of Dining Members 39 Prevailing daily charge for messing 2/-

We hereby certify that in respect of the Bar we have ascertained that the total of the daily takings for the month/[redacted] ended 30 Sept 42 194... as shown in the Steward's Cash Book corresponds with the amount of Stock sold for that month or quarter as it appears in the Canteen Stock and Sales Record: that the inventories of Bar and Messing as above shown are correct, and that in all other respects the above Statement is correct.

W.H.Bazin Capt — PRESIDENT
John Elliott Lieut-Col — MEMBER
William Colan Capt — MEMBER

Approved (Albert Ross) Colonel RANK

Commanding No.14 Canadian General Hospital RCAMC

DETAILED STATEMENTS OF EXPENSES FOR THE MONTH/~~QUARTER~~ ENDED 30 Sept 42 194

Bar

Wages, Canteen Steward	£	
Canteen Assistants @ each		
Total Wages		£
Other Expenses:-		
Purchasing Expenses	12. -	
Bar Equipment	1. 9	
Total Other Expenses		13. 9
TOTAL BAR EXPENSES	£	13. 9

Messing

Wages, Chef	£	
Mess Assistants NCO Batman 4 @ each 15 Batmen	£ 2. -. - [illegible]	
Total Wages		19. 5. -
Other Expenses	£	
Gonville Laundry	12. 9	
Total Other Expenses		12. 9
TOTAL MESSING EXPENSES	£	19.17. 9

NO.14 CANADIAN GENERAL HOSPITAL, RCAMC

Officers Mess Inventory - 30 Sept 42

3/5	btl.	Whisky	13. 8	
2/5	"	Gin	9. -	
1/2	"	Rum	12. 6	
4/5		Sherry	1922-	
1/5		Port	3.7	
1½	"	Cordials	3.9	
3 8/12		Tonic Water	11.-	
1 11/12		Lager	14.4	
1 doz.		Ale	5.6	
1 1/5 only		Soda Water	1.3	
15 dos		Syphons Soda	£. -.-	13. 9. 9
2 11/12 ds		Whisky	23/-	40. 5. -
11/12 doz		"	20/1½	11. 1. 1
2 only		Booths Gin	19/6½	1.19. 1
16 only		Gordons Gin	22/6	18. -. -
4	"	Rum	25/-	5. -. -
6	"	Sherry	18/-	5. 8. -
6	"	Port	15/-	4.10. -
140	cakes	Soap	3½d	2. -. 10
106	btls.	Lighter Fluid	1/3	7.19. -
44	tubes	Shaving Cream	1/-	2. 4. -
23	"	Tooth Paste	6d	11. 6
33	"	Tooth Paste	1/-	1.13. -
4	"	"	1/10	7. 4
23 dos	Pgs	Flints	3/6 dos	4. -. 6
200		Flints	1d	16. 8
38	pkgs	Cigarettes	1/1	2. 1. 2
16	pkgs	Tobacco	1/6	1. 4. -
37	pkgs	Envelopes	6d	18. 6
20	pads	Note paper	4/-	4. -. -
22	"	Note paper	3/-	3. 6. -
26	dos	Lager	7/6	9.15. -
8	dos	Ale	5/6	2. 4. -
10	btls	Cordials	2/6	1. 5. - 130. 9. 8
28	cases		3/-	4.[illegible]. -
10	dos	Empties	3/-	1.10. -
38	cases		4/-	7.12. -
8	Cases		5/-	2. -. -
21 8/12		Syphons	1/-	13. -. -
76½	doz	Empties	2/-	7.13. - 25.18. -

179.18. 5

Certified

Disbursements Officers Mess Sept 42

Schedule A/P			
Sept 11	Bowyer & Son	66.10. -	
14	Oxley	5.12. 6	
17	P.H.G.	10.10.11	
23	Direct Supply	1.16. -	
	Limes Fisheries	10. 8. 2	
	Int. Stores	8. 4.11	
	Booths	35. 7. 6	
	Gonville	27. 8. 5	
	Coopers	21. 6. 7	
	Brown & Pank	6.12. -	
	Bunkell	10. 8. 1	204. 5. 1
Schedule B			
Sep 4	Barclay Perkins	14. 4. -	
	NAAFI	43.17. 4	
11	NAAFI	1. 4. 4	
17	NAAFI	2.15. -	
24	N/S Mess	1.17.10	65.18. 6
Schedule M			
Sep 2	NAAFI	3. 3. 3	
18	Coste	2.11. 2	
	Letheby	2.12.3	
14	Bunkell	11. -	
10	Goodman	8. 8. -	
17	Buck	7. -	
	Goodman	3. 9. 6	21. 2. 2
Schedule BE			
Sep 7	Purchasing Exp.	12. -	
12	Youngs	1. 9	13. 9
Schedule EXP			
Sep 23	Medlam	10. -. -	
25	Batchelor	7. 2. 6	17. 2. 6

Outstanding Cheques 30 Sept 42

July 24	NAAFI	20.19. 2
Sep 14	Oxley	5.12. 6
23	Medlam	10. -. -
23	Direct Supply	1.16. -
23	Limes	10. 8. 2
23	Coopers	21. 6. 7
23	Brown & Pank	6.12. -
24	N/S Mess	1.17.10
25	Batchelor	7. 2. 6
		85.14. 9

BARCLAYS BANK LIMITED

HORLEY, SURREY
BRANCH

3rd. Oct 1942

Dear Sir,

We hereby certify that at the close of business on 30 Sept 1942, the balance standing in our books to the credit of Officers' Mess account was £ 106.13. 2 (say One hundred & six pounds, thirteen shillings and two pence).

Yours faithfully,

For Barclays Bank Limited,

A.P. Boyden, Mgr.

Certified True Copy:

William Cohen Capt.

This is to certify that the Cash on Hand and Inventory of the Officers Mess, No.14 Canadian General Hospital as of 30 Sept 42 was as follows:-

Cash on Hand	£69.14.10
Inventory	179.18. 5

William Forbes Capt.

DETAILED STATEMENTS OF ACCOUNTS RECEIVABLE & ACCOUNTS PAYABLE FOR THE MONTH OR ~~QUARTER ENDED~~

31 October 1942 194

(If space provided insufficient attach supplementary schedule)

(1) Accounts Receivable	£	s.	d.
Current	371	11	4
Arrears	65	12	3
	437	3	7
Barrack Damages		15	
A/C Payable N/S Mess	15	16	3
Messing	37		6
Bar Sales	221	3	3
Batmen Assessment	27	10	-
Laundry	19	6	4
Arrears	65	12	3
	437	3	7

(2) Accounts Payable	£	s.	d.
Mens Canteen	119	13	6
N/S Mess	2	12	
Telephone Reserve		1	4
	122	11	10
Less C/Notes	4	18	7
	117	13	3
BAR			
Booths	25	16	5
Appolinaris	3	17	
Direct Supply	9	12	
Barclay Perkins	71	12	
	110	17	5
MESSING			
J.F.Percival	2	10	4
Lines	1	13	
Coopers	32	18	10
Bunkell	2	4	8
	39	6	10
EXPENSE			
Gonville Laundry	19	13	9
Wages	19	5	
N/S Mess	15	16	3
Barrack Damages		15	
	55	15	
	323	12	6

ABSTRACT OF RECEIPTS AND DISBURSEMENTS OF

THE No.14 Canadian General Hospital
(Formation, Unit or Detachment)

MONTH ENDED / ~~QUARTER ENDED~~ 31 October 1942 194

Officers Mess
(Name of Fund or Account)

Date 1942	Receipts (Show source of receipts)	£	s.	d.
Sep 30	Credit Balance from Prev. A/c.	90	13	3
	A/C Receivable	290	4	4
	Cash Bar Sales	79	9	8
	Furniture Fund Donation	50	-	-
		510	7	3

Date 1942	Disbursements (Show name of firm and purpose)	£	s.	d.
	Schedule A/P	141	3	11
	B	178	8	
	M	89	4	5
	MR	1	3	8
	RTP	10	13	4
Oct 31	Balance (per Cash Book)	109	13	11
		510	7	3

BANK RECONCILIATION STATEMENT (Attach Bank certificate)

1942		£	s.	d.
Oct 25	Outstanding Cheques.			
	Dairy	20	19	2
	Direct Supply	9	12	-
	Lines	7	14	7
	Coopers	49		5
	Smith	6	5	2
	Gonvills	21	19	6
	Cole & Feldon	6	10	7
	NAAFI	6	1	5
	Wages	19	5	
31	Balance per Cash Book	90	8	5
		243	16	3

1942		£	s.	d.
Oct 31	Balance in Bank	243	16	3
		243	16	3

(Note:— Use form R.F.B.-1A in the case of Officers' and Sergeants' Messes only in substitution for this page.)

R.F.B.-1
90 P & S/1940

FINANCIAL STATEMENT FOR THE (MONTH ENDED / ~~QUARTER ENDED~~) 31 October 1942 194

STATEMENT OF ASSETS AND LIABILITIES

Assets	Amount £ s. d.	Liabilities	Amount £ s. d.
Cash (per Cash Book)	109 12 11	(g) Accounts Payable	323 12 6
In Bank 96. 8. 5			
On hand 13. 5. 6			
Inventory Stock (at cost)	190 7 10		
(1) Accounts Receivable:	437 3 7		
Arrears 65.12. 3			
Current 371.11. 4			
Regimental or Mess Property (See Arts. 136 and 138)			
Silverware 160.			
Radio 35.			
Furniture 60.			
		(2) Surplus	413 12 10
			735 10 10
	735 10 10		737 5 4
	737 5 4		

(1) Show details on reverse side in space provided.

(2) Show details on reverse side in space provided.

(3) Surplus should agree with "Balance available for Distribution" next page.

The above Statement has been audited and is, in the opinion of the undersigned, correct and discloses a true state of finances as at 31 October 1942 194
(Date of Balance Sheet)

E.G. [illegible] Lt.Col. Rank (Pres.)
(C.A. Nicholson)
(J.H. [illegible]) Lt.Col. Rank
Major Rank
(Burnett Hunter) AUDIT BOARD
Members

TRADING AND PROFIT AND LOSS STATEMENT

	£	£
Sales for month or quarter		
Inventory Stock at end of last month or quarter		
Add: Purchases for month or quarter		
Less: Inventory at end of current month or quarter		
Cost of goods sold		
Gross Profits		
Canteen Expenses: Wages, Canteen Steward		
Canteen Assistants @ each		
Other operating Expenses (in detail) —		
Total Expenses		
Net Profits		
Receipts from other sources (give details) —		
Total net Profits for month or quarter		
Surplus from previous months or quarters		
Total surplus available		

DISPOSITION OF PROFITS:—

	£
Disbursements Men's Account (give details)	
Capital Expenditure, Men's Account (give details)	
Canteen Equipment and Fixtures (give details)	
(3) Balance available for distribution	

We hereby certify that we have ascertained that the total of the daily takings for the month or quarter ended 194 *as shown in the Steward's Cash Book corresponds with the amount of stock sold for that month or quarter as it appears in the Canteen Stock and Sales Record (Stock Sheet) and that the above statement is correct. The assets of the Fund or Canteen are insured for £* in
(State name of Company)

Accountant President Regimental Institute

Approved.

Lt. Colonel.

Commanding

(For use in the case of Officers' or Sergeants' Messes)

R.F.D.-1A
W.V.A. S.292

MONTH ENDED / QUARTER ENDED 31st October 1942

TRADING AND PROFIT AND LOSS STATEMENT

Non-profit Sales £139.17.6

Bar

Bar Sales for the month/or quarter	£179.18. 5	£300.12.11
Inventory stock at the end of last month/or quarter	232. 2. 8	
Add: Purchases for month/or quarter	£462. 1. 1	
	190. 7.10	
Less: Inventory at close of current month or quarter		271.13. 3
Cost of goods sold		28.19. 8
Gross Profit for month/or quarter	£	
Bar expenses: Wages (show details on back)		
Other operating expenses (show details on back)		
Total expenses		28.19. 8
Net profit on Bar for month/or quarter		

Messing

Messing charges for the month or quarter		£ 87. -. 6
Inventory stock at end of last month or quarter	£	
	68.11. 3	
Add: Purchases for month or quarter	£	
Less: Inventory at close of current month or quarter		68.11. 3
Cost of Messing		18. 9. 3
Gross Profit for month or quarter	£ 19.15. -	
Mess expenses: Wages (show details on back)	1. 6. 1	21. 1. 1
Other operating expenses (show details on back)		
Total expenses		£ 2.11.10
Net profit, or loss, on Mess only for month or quarter		£ 28.19. 8
Net profit on Bar b d		2.11.10
Net profit, or loss, on Messing b/d		
Receipts from other sources (if any)	£ 50. -. -	
Donation for furniture	27.10. -	77.10. -
Patrons' Assessment		£103.17.10
Total profits for month or quarter		327.11. 1
Surplus from previous months or quarter		£31. 8.11
Total surplus available		

DISPOSITION OF PROFITS:—

Income expenditures	Bar merchandise used	£ 7. 2. 9	
	Furniture	9. 9. 4	
Capital expenditures	Refund Mess Bills	18. -	
	Newspapers	6. -	17.16. 1
			£13.12.10
Surplus per Balance Sheet			

Number of Dining Members 30 Prevailing daily charge for messing 2/- per diem

We hereby certify that in respect of the Bar we have ascertained that the total of the daily takings for the month/quarter ended 31st October 1942 as shown in the Steward's Cash Book corresponds with the amount of Stock sold for that month or quarter as it appears in the Canteen Stock and Sales Record: that the inventories of Bar and Messing as above shown are correct, and that in all other respects the above Statement is correct.

R. DeWitt Scott MEMBER

MEMBER

PRESIDENT

Approved (Albert Ross) Colonel RANK

Commanding No.14 General Hospital, RCAMC.

DETAILED STATEMENTS OF EXPENSES FOR THE

MONTH OR ~~QUARTER~~ ENDED 31 October 1942 194

Bar

Wages, Canteen Steward ..... £ .....

Canteen Assistants ..... @ ..... each ... .

£ .....

Total Wages .....

Other Expenses:

.....

.....

.....

.....

.....

Total Other Expenses .....

TOTAL BAR EXPENSES £ .....

Messing

Wages, Chef ..... £ 2. -. -

Mess Assistants 15 @ ~~£1 0s 0d~~ £1 2s 10d each ... 17.15. - 19.15. -

£ .....

Total Wages .....

Other Expenses:

Laundry 1. 6. 1

.....

.....

.....

.....

.....

.....

.....

.....

.....

1. 6. 1

Total Other Expenses .....

21. 1. 1

TOTAL MESSING EXPENSES £ .....

NO. 14 CANADIAN GENERAL HOSPITAL
R.C.A.M.C. - C.A.(O'S)

OFFICERS' MESS

INVENTORY - 31 Oct 42

1	7/8	Btle.	Scotch	£ 1	2	4
	1/2	"	Gin		9	9
	3/4	"	Vermouth		6	9
	2/3	"	Rum		16	8
	1/2	"	Sherry		9	-
1		"	Port		16	-
	1/2	"	Cordial		1	3
1	11/12	doz."	Ale (½ Pt.)		14	5
1	only		" (Pint)			10
1	8-12	doz."	Lager		12	6
6	only	"	Tonic Water		1	6
1	9/12	doz. "	Coca Cola		5	3
6	only	"	Tonic Waters		1	6
8		"	Syphon Soda		4	-
6	doz.	"	" "	1	16	-
2	doz.	"	Whiskey (22/6)	27	-	-
1	"	"	" (20/1½)	12	1	6
9	only	"	Booth's (19/6½)	8	15	10
8	"	"	Gordon's " "	7	16	4
2	"	"	Rum (22/6)	2	5	-
3	"	"	Port (9/6)	1	8	6
4	"	"	" (15/-)	3	-	0
8	"	"	Sherry (5 @ 18/- 3 @ 13/-)	6	9	-
102		"	Lighter Fluid (1/3)	6	7	6
8	doz.		Chocolate Bars 2½d. - 10%		18	-
30	only		Shaving Cream (1/-)	1	10	-
2	"		Tubes Tooth Paste (1/10)		3	8
20	"		" " " (1/-)	1	8	-
33	"		" " " (6d)		16	6
12	only		Shaving Sticks (1/-)		12	-
90	"		Cakes Soap (3½d)	1	6	3
26	Pkgs.		Envelopes		13	-
17	Pads		Writing Paper Crested (4/-)		3	8
21	"		" " Plain (3/-)		3	3
38	Pkgs.		Asteria Cigarettes (1/1)	2	1	2
16	"		Tobacco (1/6)	1	4	-
22	doz.		Pkgs. Flints (3½d)	3	17	-
2	"		Tonic Water		6	-
6	"		Coca Cola		16	4
92	doz.		Lager	3-4 10. -	4	-
6	doz.		I.P. Ale (½ Pts.)	1	13	-
1	"		D.B. Pale (Pts.)		10	-
6	only	btls.	Cordial		10	6

EMPTIES:

2		Beer Cases		4 -
1		Syphon Case		1 -
14		Syphons		14 -
5	6/12	doz. Bottles		11 -
50	cases	Barclays	10	- -
99	doz.	btls. Ale	9	18 -
3	cases	Coca Cola		9 -
6	doz.	btls. Coca Cola		18 -
1	case	Tonic Water		3 -
1	doz.	btles. Tonic Water		3 -
20	cases	Soda	3	- -
20	doz.	Soda Syphons	12	- -
7	cases	whiskey (5/-)	1	15 -
37	doz.	btls. Barclay	3	14 -
29	cases	Barclays	2	18 -
6	"	Coca Cola		18 -
8	doz.	btls. Coca Cola	1	4 -
			£190	7 10

Officers' Mess

Schedule of Disbursements for Month of October 1942

Schedule AP

Oct.	8	Barclay Perkins	31. 1. -
	24	International Stores	29.15. 8
	25	Direct Supply	9.12. -
		Limes Fisheries	7.14. 7
		Coopers	49. -. 5
		W.H. Smith & Son	6. 5. 2
		Gonville Laundry	21.19. 6
		Gale & Polden	6.10.7
	2	Wages	19. 5. -
			181. 3.11

Schedule B

Oct.	2	Saccone & Speed	88.13. -
	12	do	87.15. -
	31	N.A.A.F.I.	2. -. -
			178. 8. -

Schedule M

Oct.	2	N.A.A.F.I.	5. 6. 3
			16. 3
	8	do	1. 2. 6
	22	do	6. 1. 5
	29	do	15.18. -
	31	Sundry Petty Cash Purchases	29. 4. 5

Schedule ME

Oct.	31	Wages	10. -
		Cleaning Materials	13. 8
			1. 3. 8

Schedule Exp

Oct.	2	Kennards	8.19. 5
	31	Sundry Petty Cash Expenses	1.13.11
			10.13. 4

BARCLAYS BANK LIMITED

Horley Surrey Branch

4 Nov 1942.

Dear Sir,

We hereby certify that at the close of business on 31st October 1942, the balance standing in our books to the credit of:- Officers' Mess account was £243.16.3 (say Two hundred & forty-three pounds sixteen shillings & three pence).

Yours faithfully,
For Barclays Bank Limited,
(Sgd) C. W. Boyden
Manager.

CERTIFIED A TRUE COPY .. ..
No.14 Cdn. Gen. Hospital, RCAMC.

This is to certify that the Cash on Hand and the Inventory at Cost of the Officers Mess, No.14 Canadian General Hospital as at 31st October 1942 was as follows:-

Cash on Hand	£13. 5. 6
Inventory	£190. 7.10

C.O.R. Lt-Col

ABSTRACT OF RECEIPTS AND DISBURSEMENTS OF

THE No. 22 Canadian General Hospital

MONTH ENDED / QUARTER ENDED 30 November 42 1942

Catterick Camp (Name of Fund or Account.)

DETAILED STATEMENTS OF ACCOUNTS RECEIVABLE & ACCOUNTS PAYABLE FOR THE MONTH OR QUARTER ENDED

30 November 1942 1942

(If space provided insufficient attach supplementary schedule)

(1) ACCOUNTS RECEIVABLE	AMOUNT £	s.	d.
Current	237	13	7
Arrears	82	7	
	320	12	7
A/C's Payable H/S Mess	3	15	9
Bar Sales	146	7	1
Messing	83	9	10
Assessment	27	10	
Laundry	26	5	5
Arrears	82	7	
Barrack Damages		17	6
	370	12	7
ADMIN			
H/S Mess	27	18	9
Capt. Blackmore	29	18	11
Lucas	1	12	11
McGovern		5	9
Turcot	1	2	8
Wheatley	1	13	9
Gormley	2	19	3
Major Wilkington	1	15	11
Col Macfarlane		12	8
Capt. Watson		14	9
Lieut. Lowell		4	10
Capt. Elliott	1	3	10
Capt. Hall		6	6
Mess Canteen	1	14	6
	82	7	-

(2) ACCOUNTS PAYABLE	AMOUNT £	s.	d.
Mess Canteen	119	18	6
	2	17	
H/S Mess		1	4
Telephone Reserve	9	17	
Appliances	9	12	
Direct Supply	57		
Barnsley Parking	2	10	4
Percival	1	13	
Lines	32	18	10
Coopers	2	4	8
Bamfell	19	13	9
Comville	10	10	7
H/S Mess			
	268	3	4
Less C/Notes	4	18	7
	263	4	9
H.M.	33	9	6
Booths			
MESS ORD		11	6
Coopers	3	2	5
Int. Stores	3	13	9
Percival	7	17	8
EXPENSE and OTHER			
Coutts	1		
Gale & Polden	3	12	
		17	6
Barrack Damages	3	15	9
H.S Mess	11	5	
Hayes	26	15	9
Comville	54	5	10
	358	17	8

DATE 194	RECEIPTS (Show source of receipts)	AMOUNT £	s.	d.
	Credit Balance from Prev. A/c.	107	13	22
	A/C's Receivable	256	10	7
	Cash Sales	33	7	2
	Barclays C/A A/C's P	14	11	4
		512	0	11

DATE 194	DISBURSEMENTS (Show name of firm and purpose)	AMOUNT £	s.	d.
	Debit Bal. (if any) from Prev. A/c.			
	Schedule A/P	60	7	9
	"	169	14	3
	"	36	2	6
	"		13	7
	"	10	8	4
Nov 30	Balance (per Cash Book)	245	2	6
		512	0	11

BANK RECONCILIATION STATEMENT (Attach Bank certificate)

1942	Outstanding Cheques				1942 Nov 30	Balance in Bank	199 11 3
Oct 25	HASTE	20	19	8			
	Comville	22	19	6			
Nov 30	Balance per Cash Book	155	11	5			
		198	11	1			198 11 3

(Note:— Use form R.F.B.-1A in the case of Officers' and Sergeants' Messes only in substitution for this page.)

R.F.B.-1
40/P & S/961

FINANCIAL STATEMENT FOR THE MONTH ENDED / ~~QUARTER ENDED~~ 30 November 1942 194

STATEMENT OF ASSETS AND LIABILITIES

Assets	Amount £	s.	d.	Liabilities	Amount £	s.	d.
Cash (per Cash Book)	245	2	6	(2) Accounts Payable	358	17	8
In Bank 155.12.5							
On hand X 89.10.1							
Inventory Stock (at cost)	230	1	10				
(1) Accounts Receivable:	370	12	7				
Arrears 82.7.6							
Current 288.5.1							
Regimental or Mess Property (See Arts. 136 and 138)							
Silverware £10.							
Radio 35.							
Furniture 60.							
				(3) Surplus	456	19	3
	845	16	11		845	16	11

(1) Show details on reverse side in space provided.

(2) Show details on reverse side in space provided.

(3) Surplus should agree with "Balance available for Distribution" next page.

The above Statement has been audited and is, in the opinion of the undersigned, correct and discloses a true state of finances as at 30 Nov 42 (Date of Balance Sheet) 194

RECEIVED 23 DEC 1942

(C.A.Rathbone) C.A.Rathbone Lt.Col. Rank (Pres.)

(J.F.Palmer) J.F.Palmer Lt.Col. Rank

(Thomas S.Johnston) Thomas S.Johnston Major Rank Members

AUDIT BOARD

TRADING AND PROFIT AND LOSS STATEMENT

Sales for month/or quarter £

Inventory Stock at end of last month/or quarter £

Add: Purchases for month/or quarter £

Less: Inventory at end of current month/or quarter £

Cost of goods sold

Gross Profits £

Canteen Expenses: Wages, Canteen Steward £

Canteen Assistants @ each

Other operating Expenses (in detail):—

Total Expenses

Net Profits £

Receipts from other sources (give details):—

£

Total net Profits for month/or quarter

Surplus from previous months/or quarters

Total surplus available £

DISPOSITION OF PROFITS:—

Disbursements Men's Account (give details) £

Capital Expenditure, Men's Account (give details)

Canteen Equipment and Fixtures (give details)

(3) Balance available for distribution £

We hereby certify that we have ascertained that the total of the daily takings for the month/or quarter ended 194 *as shown in the Steward's Cash Book corresponds with the amount of stock sold for that month or quarter as it appears in the Canteen Stock and Sales Record (Stock Sheet) and that the above statement is correct. The assets of the Fund or Canteen are insured in* (State name of Company) *for £*

Accountant

President Regimental Institute

Approved.

Lt.-Colonel.

Commanding

(For use in the case of Officers' or Sergeants' Messes)

S.F.M.14
40/A.R.20

MONTH ENDED / QUARTER ENDED | November 30th 1942

TRADING AND PROFIT AND LOSS STATEMENT

Bar — Non-profit Sales £ 69. 6. -

Bar Sales for the month/or quarter		£ 179.14. 2
Inventory stock at the end of last month or quarter	£ 190. 7. 10	
Add: Purchases for month or quarter	293. 3. 8	
	£ 483.11. 6	
Less: Inventory at close of current month or quarter	320. 1.10	
Cost of goods sold		163. 9. 8
Gross Profit for month or quarter		16. 4. 6
Bar expenses: Wages (show details on back)	£ 17. 7	
Other operating expenses (show details on back)		17. 7
Total expenses		15.10.11
Net profit on Bar for month or quarter		

Messing

Messing charges for the month or quarter		£ 83. 9.10
Inventory stock at end of last month or quarter	£ 34. -. 2	
Add: Purchases for month or quarter	£	
Less: Inventory at close of current month or quarter		34. -. 2
Cost of Messing		49. 9. 8
Gross Profit for month or quarter		
Mess expenses: Wages (show details on back)	£ 18. 5. -	
Other operating expenses (show details on back)	10. 2	
Total expenses		18.15. 2
Net profit, or loss, on Mess only for month or quarter		£ 30.14. 6
Net profit on Bar b/d		£ 30.14. 6
Net profit, or loss, on Messing b/d		
Receipts from other sources (if any) — Batmens' Assessment etc.	£ 27.10. -	
Credit Note Barclays	14.11. 4	
		42. 1. 4
Total profits for month or quarter		£ 417.12.10
Surplus from previous months or quarter		501.19. 7
Total surplus available		

DISPOSITION OF PROFITS:

Income expenditures	Refund Mess Bill	10. -	
	Stationery	3.12. -	
	Bar Mdse used	5. 1. 4	
	Football Team	£ 3.18. -	
Capital expenditures	Radio Repairs	1.3. -	
	Billiard Table Access.	1. 4. -	
			15.18. 4
Surplus per Balance Sheet			£ 486.19. 3

Number of Dining Members 30 — Prevailing daily charge for messing 2/-

We hereby certify that in respect of this Bar we have ascertained that the total of the daily takings for the month/quarter ended November 30th 1942 as shown in the Steward's Cash Book corresponds with the amount of Stock sold for that month or quarter as it appears in the Canteen Stock and Sales Record; that the inventories of Bar and Messing as above shown are correct, and that in all other respects the above Statement is correct.

PRESIDENT — MEMBER — MEMBER

Approved (Albert Ross.) Colonel RANK

Commanding No.14 General Hospital, NZASC.

DETAILED STATEMENTS OF EXPENSES FOR THE

MONTH/OR QUARTER ENDED November 30th 1942

Bar

Wages, Canteen Steward		£	
Canteen Assistants	at each		
Total Wages			£
Other Expenses:			
Purchasing Expenses		13. 7	
Total Other Expenses			13. 7
TOTAL BAR EXPENSES			£ 13. 7

Messing

Wages, Chief	1 @	£ 2. 5. -	£ 2. -. -
Mess Assistants	14 at	1. -. - each	16. 5. -
Total Wages			£ 18. 5. -
Other Expenses:			
Laundry		10.2	
Total Other Expenses			10. 2
TOTAL MESSING EXPENSES			£ 18.15. 2

Schedule of Disbursements
Officers' Mess November 1942

Schedule AP

Nov.	2	Wages	19. 5. -
	18	Booths	25.16. 5
	24	Barrack Damages	15. -
	30	Barclay Perkins	14.11. 4
			60. 7. 9

Schedule B

Nov.	1	N.A.A.F.I.	31.13. 7
	3	do	2. -. -
	4	do	16. 4
	9	Saccone & Speed	60.15. -
		N.A.A.F.I.	2. 8. 7
	19	Brown & Pank	66. 8. -
		N.A.A.F.I.	2. 3. 4
	20	do	5.10. 9
	30	Petty Cash Purchases	3. -. -
			174.15. 7
		Less Bar Mdse used	5. 1. 4
			169.14. 3

Schedule M

Nov.	4	N.A.A.F.I.	10. 5. 2
	9	do	2.19. 9
	19	do	5. 1. 9
	20	do	7.15.10
			26. 2. 6

Schedule B.E.

Nov.	30	Purchasing Expenses	13. 7
			13. 7

Schedule Exp.

Nov.	9	Football Team Stockings	3.10. -
	30	Radio Repairs	1. 3. -
		Billiard Table Access.	1. 4. -
		Refund Mess Bill	10. -
		Bar Mdse used	5. 1. 4
			10. 8. 4

26 10 0 4

No.14 CANADIAN GENERAL HOSPITAL, KIANG.GA.(O's)

Inventory Officers' Mess 30 Nov 42

7	only	Coca Cola			
3	"	Lager			1. 9
1	"	Cordial			1.10
2/5ths	Btl	Whisky			2. 6
1/3	"	Port			9. 4
1/3	"	Sherry			5. 4
1/5	"	Rum			6.
1	"	Gin			5.
6	only	Chocolate Bars			19. 6
3	Btls	Whisky			1. 3
16	"	Gin	@ 20. 1		3. . 3
1	"	Rum	19. 6		17. //.
7	"	Port	96.		1. 5.
6	"	Sherry H & B	16.		5. 5.
4	"	Sherry NAAFI	19.		5.14
98	"	Lighter Fluid	13.		5.12.
60	Bars	Soap	1. 3		6. 2. 6
16	Doz.Boxes	Matches	30		17. 6
2	Bars	Soap	5 -10%		2. 8. 3
12		Shaving Sticks	2		1. 4
29		Shaving Soap	6		6.
36		Tooth Paste	1.		6.
26		" "	6		1. 9.
22	doz Pkgs	Flints	1.		17. 6
12	doz	Chocolate Bars	3. 6 doz.pkgs		1. 6
16	Pads	Writing Paper -Crested	21		3.17
21	"	Writing Paper -Non-Crested	4.		1.10
25	Pkgs.	Envelopes	3.		3. 4
17	5/12 doz	Coca Cola	6		3. 3
1	doz.	Tonic Water	3.		2.12. 6
2	11/12 doz	Cordials	3.		2.11. 9
46	doz.	Lager	3.		3.
17		Coca Cola Cases	3. 6		4. 7. 6
29	3/12 doz.	Coca Cola Bottles	7. 6		17. 6.
6		Cases & Bottles Tonic Water	3.		2.11.
83		Beer Cases	5. doz.		5. 7 9
100	doz.	Beer bottles	2.		2. 6
14	doz.	Appolinaris Bottles	2.		2. 6
23		Soda Cases	2.		10. 2.
26	6/12 doz.	Soda Syphons	2.		1. 8.
6		Whisky Cases	1.		1. 3
					13.10.
			5.		1.10

Inventory paid for but in Transit.

Broom & Pank
Booths

66. 8
11. 9. 5
270. 1.10

This is to certify that the Cash on Hand and the Inventory at Cost of the Officers Mess, No.14 Canadian General Hospital as at 30 November 1942 was as follows:-

Cash on Hand including Deposits held	£89.10.1
Inventory	£230. 1.10

BANCH ES BANK LIMITED
Horley Surrey Branch
4 Dec 1942.

Dear Sir,

We hereby certify that at the close of business on 30 Nov 42 the balance standing in our books to the credit of:-Officers Mess account was £196.11. 1 (say One hundred and ninety eight pounds eleven shillings and one penny.

Yours faithfully,
For Barclays Bank Ltd.

A.P.Boyden,MGR.

Certified True Copy.

DETAILED STATEMENTS OF ACCOUNTS RECEIVABLE & ACCOUNTS PAYABLE FOR THE MONTH OR QUARTER ENDED

.....194.....

(If space provided insufficient attach supplementary schedule)

(1) Accounts Receivable	Amount £	s.	d.
Current	520	7	5
ARREARS			
Capt Dinan	6	2	9
Kilgour	8	5	3
Major McMahon		7	9
Kilkington	1	15	11
Col Macfarlane		14	8
Capt McLean		16	5
Major Simard	1	8	1
Mundell		9	8
Lieut Lovell		5	6
Capt Wilmott	1	3	10
Capt Dickison		4	6
N/S Mess	31	8	9
	563	10	6
Barrack Damages	1		6
N/S Mess	44	9	3
Messing	210	2	6
Bar Sales	299	15	9
Canteen	35	10	
Spec Assessment	9	6	
Laundry	26	3	11
Arrears	43	3	1
	669	13	
Less adjustments	6		6
	663	10	6

(2) Accounts Payable	Amount £	s.	d.
N/S Mess	22	4	
Percival ✓	3	18	9
Coopers ✓		11	6
Tel. Reserve		1	4
	26	15	7
Loan C/F	4	1?	7
	21	17	
BAR			
Barclay Perkins ✓	17	2	4
Direct Supply ✓	5	16	
	22	18	4
MESSING			
Limes ✓	5	15	6
Keeling ✓	21		11
	26	16	5
MESS EXPENSE			
Gonv lle Laundry ✓		8	2
EXPENSE			
Wages ✓	16	5	
Gonville Laundry ✓	26	3	11
Carrington ✓	8	5	
Acct. Service ✗	8		
Morley Press ✓	2	15	
Barrack Damages ✓	1		6
N/S Mess ✗	44	9	3
	61	8	11
	[illegible]		

ABSTRACT OF RECEIPTS AND DISBURSEMENTS OF

THE ~~No.14~~ Canadian General Hospital
(Formation, Unit or Detachment)

MONTH ENDED
~~QUARTER ENDED~~ 31 December 1942 .....194.....

~~CT 0070 Keep~~
(Name of Fund or Account.)

Date 194 2	Receipts (Show source of receipts)	Amount £	s.	d.
Nov 30	Credit Balance from Prev. A/c.	245	2	6
	A/S Receivable	333	10	
	Cash Sales	111	13	2
	Cash Messing	2	4	
		692	14	8

Date 194 2	Disbursements (Show name of firm and purpose)	Amount £	s.	d.
	Debit Bal. (if any) from Prev. A/c.			
	Schedule A/P	337		8
	B	228	2	5
	M	30	4	2
	EXP	28	13	6
Dec 31	Balance (per Cash Book)	68	3	11
		692	14	8

BANK RECONCILIATION STATEMENT (Attach Bank certificate)

1942	Outstanding Cheques				Dec 31	Balance in Bank	54 18 5
Dec 10	Gonville	46	14	4			
Dec 31	Balance per Cash Book	8	4	1			
		54	18	5			54 18 5

(Note:— Use form R.F.B.-1A in the case of Officers' and Sergeants' Messes only in substitution for this page.)

R.F.B.-1
40T & 50M

FINANCIAL STATEMENT FOR THE ~~MONTH ENDED~~ / ~~QUARTER ENDED~~ 31 December 1942 194

STATEMENT OF ASSETS AND LIABILITIES

Assets	Amount £	s.	d.	Liabilities	Amount £	s.	d.
Cash (per Cash Book)	68	8	11	(2) Accounts Payable	178	16	7
In Bank 8. 4. 1							
On hand 60. 4.10							
Inventory Stock (at cost)	120	10	10				
(1) Accounts Receivable:	563	10	6				
Arrears 43. 3. 1							
Current 520. 7. 5							
Regimental or Mess Property (See Arts. 186 and 188)							
Silverware £160.							
Radio 35							
Furniture 60							
				(3) Surplus	573	19	8
	752	18	3		752	18	3

(1) Show details on reverse side in space provided.

(2) Show details on reverse side in space provided.

(3) Surplus should agree with "Balance available for Distribution" next page.

The above Statement has been audited and is, in the opinion of the undersigned, correct and discloses a true state of finances as at 31 December 2 (Date of Balance Sheet) 194

(O.A.McIntosh) C.G.McIntosh Lt.Col. Rank (Pres.)

(J.H.Palmer) J.H.Palmer Lt.Col. Rank

(Burnett S.[illegible]) Burnett Hunter Major Rank

Members

AUDIT BOARD

TRADING AND PROFIT AND LOSS STATEMENT

	£	s.	d.	£	s.	d.
Sales for month/or quarter						
Inventory Stock at end of last month/or quarter						
Add: Purchases for month/or quarter						
Less: Inventory at end of current month/or quarter						
Cost of goods sold						
Gross Profits						
Canteen Expenses: Wages, Canteen Steward						
Canteen Assistants @ each						
Other operating Expenses (in detail):—						
Total Expenses						
Net Profits						
Receipts from other sources (give details):—						
Total net Profits for month/or quarter						
Surplus from previous months/or quarters						
Total surplus available						

DISPOSITION OF PROFITS:—

	£	s.	d.
Disbursements Men's Account (give details)			
Capital Expenditure, Men's Account (give details)			
Canteen Equipment and Fixtures (give details)			
(3) Balance available for distribution			

We hereby certify that we have ascertained that the total of the daily takings for the month/or quarter ended 194 *as shown in the Steward's Cash Book corresponds with the amount of stock sold for that month or quarter as it appears in the Canteen Stock and Sales Record (Stock Sheet) and that the above statement is correct. The assets of the Fund or Canteen are insured in* (State name of Company) *for £*

Accountant

President Regimental Institute

Approved.

Lt. Colonel.

Commanding

(For use in the case of Officers' or Sergeants' Messes)

N.F.H.-1A
#13-A-8.201

XXXXXXXXXXXX
MONTH ENDED } 31 December 1942
QUARTER ENDED }

TRADING AND PROFIT AND LOSS STATEMENT

Bar

			£ 411.13.11
Bar Sales for the month/or quarter		230. 1.10	
Inventory stock at the end of last month/or quarter	£	251. -. 9	
Add: Purchases for month or quarter	£	481. 2. 7	
		~~120.18.10~~	
Less: Inventory at close of current month or quarter			360. 3. 9
Cost of goods sold			51.10.2
Gross Profit for month/or quarter	£		
Bar expenses: Wages (show details on back)			51.10. 2
Other operating expenses (show details on back)			
Total expenses			
Net profit on Bar for month or quarter			112. 6. 6

Messing

			£
Messing charges for the month or quarter		57. -. 7	
Inventory stock at end of last month or quarter	£		
Add: Purchases for month or quarter	£		57. -. 7
			55. 5.11
Less: Inventory at close of current month or quarter		16. 5. -	
Cost of Messing		8. 2	
Gross Profit for month or quarter	£		16.13. 2
Mess expenses: Wages (show details on back)			38.12. 9
Other operating expenses (show details on back)			
Total expenses			51.10. 2
Net profit, or loss, on Mess only for month or quarter			£ ~~34.12. 9~~
Net profit on Bar b/d			£
Net profit, or loss, Canteen Assessment etc.		35.10. -	
Receipts from other Special Assessment	£	9. 6. -	44.16. -
			134.18.11
			~~486.19. 3~~
Total profits for month or quarter			621.14. 2
Surplus from previous months or quarter			
Total surplus available			

DISPOSITION OF PROFITS per separate schedule

			£
Income expenditures			47.14. 6
Capital expenditures			573.19. 8
			£
Surplus per Balance Sheet		2/-	

Number of Dining Members 39 Prevailing daily charge for messing

31 December 1942

We hereby certify that in respect of the Bar we have ascertained that the total of the daily takings for the month/ or quarter ended ... 194... as shown in the Steward's Cash Book corresponds with the amount of Sales Vouchers and Cash Sales Record; that the inventories of Bar and Messing as above shown are correct, and that in all other respects the above Statement is correct.

Insurance:- North British & Mercantile Insce. Co. $500.

R. Pelletier Major — R. Idwith Scott Colonel — H. Kilgour Capt
PRESIDENT — MEMBER — MEMBER

Approved: A. Rae.
No.14 Canadian General Hospital
Commanding

DETAILED STATEMENTS OF EXPENSES FOR THE
MONTH/OR QUARTER ENDED 31 December 1942 194

Bar

Wages, Canteen Steward £

Canteen Assistants @ each

Total Wages £

Other Expenses:

Total Other Expenses

TOTAL BAR EXPENSES £

Messing

Wages, Chef 1 @ £2.5/ £

Mess Assistants 1 @ £1 each 16. 5.

Total Wages £ 16. 5.

Other Expenses

Laundry 8.2.

Total Other Expenses 8. 2

TOTAL MESSING EXPENSES £ 16.13.2

Inventory - Officers Mess - 31 December 1942

5	btl. Whisky	5.12. 6
17	Gin	16.11. 6
1	Port	11
12	Sherry	9. -. -
94 btl	Lighter Fluid	10. -. 6
11 tubes	Tooth Paste	5. 6
46	Tooth Paste	2. 6. -
40 cakes	Soap	11. 8
20 pkgs.	Cigarettes	1. 1. 8
12 dos.	Choc. Bars	1.10.
33 dos.	Swan Matches	4.19. -
19 pads	Writing paper	2.17.
15 pads	do.	3. -.
24 pkgs.	Envelopes	12.
3 btl.	Vermouth	1. 7.
5 dos.	Beer	1.17. 6
20 Cases & Bottles	Minerals	9. -. -
48 Cases & Bottles	Beer	14. 8.
22 Cases & 22 dos	Syphons	30. 8.
10	Whisky Cases	5. -. -
		120.13.10

Disbursements December 1942

A/C Payable.

1942		
Dec 1	Wages	£13. 5. -
7	Barclays	57. . 8
8	Booths	33. 9. 5
10	Appolinaris	3.17.
	Direct	9.12.
	Percival	2.10. 4
	Limes	1.13.
	Coopers	32.18.10
	Bunbell	2. 4. 8
	Gonville	46.14. 4
	Gale & Polden	3.12. -
	Coutts	1. -. -
	Int.Tea	3. 7. 5
	Canteen	119.18. 6
	Barrack Dmgs.	17. 6
		137. -. 8

BAR

Dec 1	Saccone	41. 5. -
	NAAFI	67.12. -
3	NAAFI	1.12. 5
7	Saccone	40.10. -
	Hodges & Butler	7.16. -
	NAAFI	2. -. -
9	NAAFI	1. 7.
10	NAAFI	4. 6.
18	Mullins	14. 3. -
27	Star Brewery	27.11. -
		228. 2. 5

MESSING

1942		
Dec 3	NAAFI	1.6. 7
	NAAFI	8.3.10
10	NAAFI	3.1. 8
17	NAAFI	2.6.10
23	Barnett	15.5. 3
		30.4. 2

EXPENSES - Dist. of Profits

Elec.Equipment	16. -.	
Staff Bonus	8.10.	
A/C written off	2.15.	
Decorations	1. 1.	
Trav.Exp.	12. 6	28.12. 6
Acct.Service	8. -. -	
Mess Donation	8. 5. -	
Stationery	2.15.	19. -. -
		47.12. 6

BARCLAYS BANK LIMITED
Horley Surrey Branch
2 Jan 1943

Dear Sir,

We hereby certify that at the close of business on 31st December, 1942, the balance standing in our books to the credit of Officers Mess account was £54. 18. 5 (say Fifty four pounds eighteen, shillings and five pence)

Yours faithfully,
For BARCLAYS BANK LIMITED
A.P.Boyden, Mgr.

OFFICERS MESS 31 December 1942

Inventory £120.16.10
Cash on hand 60. 4.10

Certified J. W. Kilgour Capt

Schedule Of Accounts Receivable And Accounts Payable

As at 31st January 194 3

ACCOUNTS RECEIVABLE	£	s	d
Current—Total	364	12	8
Arrears—in detail—(K.R. (Can.) pars. 1001)			
Lt.Col. Palmer	11	3	5
Major Copping	7	15	5
" Couper	4	17	7
Capt. Cohen	6	5	6
" Dinan	2	-	3
" McCutcheon	10	16	10
Major Wheatley	2	8	9
" Mundell		8	-
" Evans	3	9	5
Lieut. Lovell	2	5	2
Capt. McLean	1	4	1
Col. MacFarlane		14	8
Major Elkington	1	15	11
" Simard	3	3	6
O/S Mess	36	11	-
Sgt's. Mess	16	19	3
	476	11	5
Barrack Damages		18	-
Mess Charges	70	6	9
Mess Chits	203	8	4
Batmen etc.	36	-	-
Laundry	36	4	11
Arrears	111	18	9
M/S Mess	7	10	8
Spec. Asses.	10	4	-
	476	11	5
Total - per statement of Assets and Liabilities			

ACCOUNTS PAYABLE (Show name of Firm and Purpose)	£	s	d
M/S Mess	66	13	3
Tel Reserve		1	4
Gonville		10	-
Acct'g Service	8	-	-
	75	4	7
Mess C/N	4	18	7
	70	6	-
Messing			
Limes	5	8	4
Mess Exp.			
Gonville		7	8
Youngs	3	-	-
	3	7	8
Expenses			
Gonville Laundry	36	4	11
Carrington	10	-	-
Wages	19	12	6
Newspapers	6	4	9
M/S Mess	7	10	8
Barrack Damages		18	-
	80	10	10
Total - per statement of Assets and Liabilities	159	12	10

PARTICULARS OF INSURANCE

	Amount	Insurance	Date of Expiry
Inventory of Merchandise at end of period	£ 94 - -	£ 200	£ Oct. 43
Value of Furniture & Equipment carried as an Asset	£	£	£
Value of Furniture & Equipment not carried as an Asset	£ 255 - -	£ 300	£ Oct. 43
Casualty or other Insurance	£	£	£

X X

Secretary

REMARKS AND PROPOSALS OF THE COMMITTEE

Names of the Members

Committee

1 X
2 X
3

Sub-Committee

1
2
3

Date of last meeting X 194 X

Remarks

X X

Secretary of Committee

MFD 923 (Overseas)
40/P & S/1446 (9/42)

TRIPLICATE

FINANCIAL STATEMENT

The NO. 14 CANADIAN GENERAL HOSPITAL, ACANC, GA(O'S)
Name of Unit

The Officers' Mess.
Name of Institute or Fund

Bank Book C6
Ex B
Ex C Cash

ABSTRACT OF RECEIPTS AND DISBURSEMENTS

For the Month ~~or Quarter~~ ended 31st January, 1943. 194

Date 1942	RECEIPTS (Show Source)	£	s	d
Dec 31	Cash on hand—Forward	60	4	10
	Bank Balance—Forward	8	4	1
	Cash Sales	42	11	3
	A/C Receivable	454	19	3
	Cash Messing		9	
	TOTAL £	566	8	5

Date 1943	DISBURSEMENTS (Show Name and purpose)		£	s	d
Jan 7	Carrington		8	5	7
	A/C Pay - Limes		3	7	6
	Horley Prems		2	15	-
	Wages		16	5	-
	Barrack Dmgs.		1	-	6
	Percival		3	18	9
	Barclay		17	2	4
	Direct Supply		5	16	-
	Limes		5	15	6
	Keeling		21	-	11
	Gonville		26	2	1
	Coopers			11	6
			112	-	1
7	BAR	NAAFI	42	16	4
		Direct Supply	4	5	-
11		Seconne	57	-	-
		Barclay	23	5	-
		No.5 C.G.H.	14	8	-
26		Seconne	27	-	-
27		Brown & Pank	26	6	-
28		NAAFI	4	1	-
		Cash Purchase		5	-
			159	6	4
Jan 7	MESSING	NAAFI	2	8	6
		"	3	6	-
11		"	1	6	-
12		"	12	8	-
27		Cty. Delicacies	12	10	1
30		Harnett	4	10	9
31		Cash Purchase	9	4	5
			50	13	9
Jan 31	Wages		1	-	-
19	Exp. NBAK Insurance		1	17	6
	Petty Cash Sundry			16	9
	Transfer to A/C Written Off		1	18	10
	Bank Balance (per Cash Book)		139	7	4
	Cash on Hand		53	7	10
	TOTAL £		566	8	5

BANK RECONCILIATION STATEMENT (Attach Bank Certificate)

Outstanding Cheques	£	s	d
See separate schedule			
TOTAL £	154	1	11

	£	s	d
Balance (per Cash Book) £	139	7	4
Add Outstanding Cheques £	154	1	11
Balance per Bank Certificate £	293	9	3

Names of Signing and Countersigning Officers

J. G. Petrie, Major — President
J. M. Kilgour, Capt. — Treasurer

R. deWitt Scott, Capt. — Countersigning
C. W. V. McCutcheon Capt. — Countersigning

STATEMENT OF ASSETS AND LIABILITIES

As at 31 January, 194 3.

ASSETS		Amount			LIABILITIES		Amount		
Cash (per Cash Book)	£	198	15	2	Accounts Payable	£	159	12	10
On hand	£ 59. 7.10				(See page 4)				
In bank	£ 139. 7. 4								
Petty Cash or Change Fund									
Inventory (at cost)		94	8	10					
Wet or Bar	£								
Dry or Mess	£								
Containers	£								
Accounts Receivable		476	11	5					
Current	£ 364.12.8								
Arrears	£ 111.18.9								
(See page 4)									
Furniture & Equipment (at cost)					Reserves:—				
(If carried as an Asset)					For Depreciation				
"Memorandum"					Other - Specify				
Furniture & Equipment									
(If not carried as an Asset)									
Silverware	£ 160.								
Radio	25.								
Furniture	60								

Outstanding Cheques - Officers Mess 31 Jan 43

1943	Jan 11	N.B.&.M.Insce.	1.17. 6
		Baccone	27. -. -
		Brown & Pank	26. 6.
		Cty. Delicasies	12.10. 1
	30	Parr. Damages	1. -. 6
		Percival	3.18. 9
		Parclay	17. 2. 4
		Direct Supply	5.16.
		Limes Fisheries	5.15. 6
		Keeling	21. -.11
		Gonville	26.12. 1
		Coopers	11. 6
		Warnett	4.10. 9
			154. 1.11

153-11-11

3.18.6 4

Naa-1.

8. 9 3

Naa-1

19 6

Bunn. Pank

26: 6: 0

Naa-1.

2: 8: 0

15 8 6: 5

196: 3:

BARCLAYS BANK LIMITED

HORLEY SURREY Branch

2 Feb 1943.

Dear Sir:

We hereby certify that at the close of business on 31 January, 1943, the balance standing in our books to the credit of

Officers' Mess

account was £293. 9. 3

(say Two Hundred and Ninety-three pounds, nine shillings and three pence).

Yours faithfully,

For BARCLAYS BANK LIMITED

(Sgd) C. W. Boyden

Manager.

The Accountant,
14 Canadian Gen'l. Hospital.

Page 1

J 1

14th Canadian General Hospital.
Nursing Sisters Mess.

IN ACCOUNT WITH
BARCLAYS BANK LIMITED,
Horley.

1/42

DATE	PARTICULARS	DR.	CR.	BALANCE
			37 8 -	
	Sds		39 8 -	
June 23	Sds		42 19 3	
	Sds		5 10 9	
25				
26	Rates per Wokingham	11 1 - ✓		
29	cash		29 16 9	197 6 1
	Sds		53 4 4	173 13 7
30	Sds			173 13 7
		3 12 6 ✓		
		20 - - ✓		
July 1	Offreins Salmon.			173 13 7
2	cash	34 13 6	208 7 1	173 13 7

Certified true
copy of an entry in our
ledger
for Barclays Bank Limited

Page 2

14th Canadian General Hospital

IN ACCOUNT WITH

Nursing Sisters Mess

BARCLAYS BANK LIMITED,

Hanley

J 21

2/42

DATE	PARTICULARS		DR.	CR.	BALANCE
July 3	B/f wd		34 13 6	208 7 1	173 13 7
4	Cash		2 15 7		
	Stapley		28 14 9		
6	Cowpen & Co	Sds	4 1 6	25 18 11	
	Stapley		12 8 6		
7	Smith		4 8		
	Bazin	Sds	7 6	49 9 10	
8	Gale & Polden		10 13 11		
	Uglow Bros		1 11 2		
	A & A & S		15 4 9		
	do		15		Debited this day's [illegible] on our ledger
	Halls		10 - 8		
9	Henza Coffee	Sds	1 18 6	57 7 11	
	Sale & Son		1 2 -	57 18 5	
10	Searle		12 6 6		
			143 17 -	398 17 2	

Page 2

14th Canadian General Hospital

Nursing Sisters Mess

IN ACCOUNT WITH

BARCLAYS BANK LIMITED,

Aldershot

J 1 Hardy Capt

3/42

DATE	PARTICULARS		DR.	CR.	BALANCE
			143 17 -	398 17 2	
July 10	B/fwd	X	14 6 11	X no 6/s	
1	N.A.A.F.I.	X	1 14 2	X no 6/s	
1	Huggett	X	3 6 10	X no 6/s	
11	N.A.A.F.I.	X	4 14 6	X no 6/s	
1	Talmage	X	21 14 2	X no 6/s	
1	Hallett	X	43 10 -	X no 6/s	
1	Snow White Hall	Sds X	20 - -	X no 56 6 7	
15	Petty Cash	-		4 9 8	
-		X	3 6 -	X no 6/s	
18	Gibson	Sds		18 15 9	Cheque being copy of Cash on hand
20		X	11 15 -	X no	
25	Officers Mess	X	3 9 9	X no	
1	N.A.A.F.I.	Sds X	44 10 -	X no 87 12 -	
1	Phillips	X	12 6 2	X no	
24	Times Fisheries		391 3 6	506 1 2	

Page 4

J 1

14th Canadian General Hospital.
Nursing Sisters Mess
Aldershot

IN ACCOUNT WITH
BARCLAYS BANK LIMITED,
HORLEY,
SURREY.

4/42

DATE	PARTICULARS		DR.	CR.	BALANCE
			£ s. d.	£ s. d.	£ s. d.
July 25	B/Fwd	Sds	291 3 6	506 1 2	3 16 9 A
		X	10 - -	XA	
24	Hawes	X	10 11 3	XA	
	Tennant	X	21 13 2	XA	
	Cooper	3dsX	20 - -	XA 12 3 3	A
28	Cook	X	60 13 11	XA	
	Horley Laundry	X	1 9 -	XA	
29	N.A.A.F.I.	X	8 6	XA	
31	Marshall	sds		11 14 9	A
			416 2 4	533 15 11	117 13 7

I certify true copy of entry in our ledger
for Barclays Bank Limited
[illegible]
Manager

Page 1

14th Canadian General Hospital

IN ACCOUNT WITH Nursing Sisters Mess

BARCLAYS BANK LIMITED,

HORLEY, SURREY.

J 2 Buddy Cage

5/47

DATE	PARTICULARS		DR.			CR.			BALANCE		
Aug 5	B/fwd		416	2	4	533	15	11	117	13	7
6		Sds				69	18	2 ✓A			
7		Sds				52	3	7 ✓A			
7		Sds				54	14	4 ✓A			
8	Bradley		10	12	4 ✓A						
12	N A A F I.		4	13	9 ✓A						
13		Sds				39	6	11 ✓A			
		Sds				52	5	2 ✓A			
17		Sds				65	15	2 ✓A			
19	C C S # 3		31	1	11 ✓A						
20	Oxley		30	6	- ✓A						
21	Cash	Sds	35	11	9 ✓A	8	12	6 ✓A			
	Cash	Sds	20	-	- ✓A	16	16	9 ✓A			
24	C C S # 3		3	14	9 ✓A						
31	Coopers		22	3	4 ✓A						
			574	5	2	893	11	4			

Page 2

J 2

1st Canadian General Hospital
Nursing Sisters Mess.

IN ACCOUNT WITH
BARCLAYS BANK LIMITED,
ORLEY,
SURREY.

6/42.

DATE	PARTICULARS	DR.	CR.	BALANCE
		576 5 2	893 11 4	
Aug 31	10/Aud.	2 5 3		
	ct d d Y d.	576 10 5	893 11 4	317 - 11

Certified true copy of Entry in our Ledger

Page 1

14th Canadian General Hospital
Nursing Sisters Mess.

IN ACCOUNT WITH
BARCLAYS BANK LIMITED,
HORLEY, SURREY.

4/42

J 3
Ledger
6 pgs

DATE	PARTICULARS		DR.	CR.	BALANCE
Sept. 1		B/fwd.	576 10 5	893 11 4	
2	N.A.A.F.I.		1 16 7		
	do		5 1 6		
7	do	sds	1 10 6	40 18 4	
	do		57 8 6		
	Petty Cash		20 - -		
12		sds		32 - 9	
		sds		36 1 9	
		sds		41 8 10	
		sds		34 18 8	
15	Petty Cash	sds	20 - -	50 4 -	
16	Cheques		10 - -		Carried over to page 90 on ledger
19	N.A.A.F.I.		2 14 -		
21	Horley Sam. Laundry		142 9 5		
23	NAAFI		11 12 11		
			780 13 10	1131 17 8	

Page 2

J3

14th Canadian General Hospital
Nursing Sisters Mess
Hartley

IN ACCOUNT WITH
BARCLAYS BANK LIMITED,
Hartley

8/42

DATE	PARTICULARS	DR.	CR.	BALANCE
Sept. 23	B/Fwd	780 13 10	1131 17 8	
	Bowyer	29 12 4		
	Quick	14 10		
	Smith	1 8 8		
29	Sergts. Mess	3 19 4		
	Mens Canteen acc.	16 12 -	31 9 5	
	Furlong	6 13 9		
30	Fergussons	27 19 6		
	NAAFI	8 10 2		
	Kenward & Court	2 19 3		
	Percival	6 7 8		
		899 66	1163 7 1	264 7

Certified true
Copy Entries on Ledger.
for BARCLAYS BANK LIMITED

14 Canadian General Hospital

IN ACCOUNT WITH

BARCLAYS BANK LIMITED,

Hooley

J 4

Nursing Sisters Mess Hooley Camp

9/42

DATE	PARTICULARS		DR.				CR.				BALANCE
Oct 1	B/Fwd		899	6	6		1163	7	1		
	Limes Fishnets		15	12	7	A					
	Woddle			8	6	A					
2	Coopers		30	4	6	A					
3	Salvage		7	10	-	A					
5	Skinner		1	1		A					
	Oxley		66	18	9	A					
	O/Mess.		27	12	-	A					
6	Petty Cash		20	-	-	A					
10	NAAFI.		3	17	9	A					
14	NAAFI.		23	11	9	A					
15	Officers Mess.	2ds	60	15		M	35	11	4	M	
		2ds					13	5	2	A	
		do					40	10	8	A	
		do					40	12	6	A	
			1156	18	4		1293	7	-		

Credited June 30th 1/c — no Ledger

Page 2

14th Canadian General Hospital
Nursing Sisters' Mess Fund
Aldershot

J 4

IN ACCOUNT WITH
BARCLAYS BANK LIMITED,
Aldershot

10/42

DATE	PARTICULARS		DR.	CR.	BALANCE
Oct 15	B/F wd.		1156 18 4	1293 7 -	
		pds		36 9 2 ↑	
17	Cooper		4 16 2 ↑		
19	Stapley		15 18 ↑		
	Petty Cash		20 - - ↑		
	Lewis		13 ↑		
21	Evans		10 - - ↑		
	NAAFI		3 11 - ↑		
		pds		39 8 9 ↑	
22				8 3 ↑	
23	Mess Canteen	pds	114 10 - ↑	36 4 10 ↑	Certified that copy of a/c in Ledger
24		pds			
26	NAAFI		2 18 6 ↑		
			13 6 ↑	33 19 3 ↑	
28	NAAFI	pds	20		
Oct 31	Petty Cash		24 13 6 ↑		
	Officers Mess		14 19 8 ↑		
	Quick		1389 11 8	1447 12 -	58 - 4

14th Canadian Gen. Hospital
Nursing Sisters Mess

IN ACCOUNT WITH
BARCLAYS BANK LIMITED,
HORLEY, SURREY

1142

DATE	PARTICULARS	DR.	CR.	BALANCE
Nov 1	B/F wd	1389 11 8	1447 12 -	
4	Horley San. Laundry	10	10	
	NAAFI 2 ds.	4 3 9	40 9 7	
	Kenwood + Cont.	2 2 8		
7	Petty Cash	20 - -		
10	James Fishers	23 5 3		
11	NAAFI	4 10		
16	do	2 13 2		
19	2 ds		55 10	
	2 ds.		33 5	
	2 ds		56 18 5	
	2 ds		53 16 8	
	2 ds		65 6 8	
20	Coopers	35 15 10		
	CARRIED FORWARD	1482 6 2	1752 18 4	

DATE	PARTICULARS	DR.			CR.			BALANCE		
	BROUGHT FORWARD	1482	6	2	17	52	18 4			
					41	19	8 A			
Nov 21	"									
23	NAAFI.	1	18	9 A						
	Pascwal	3	5	8 A						
24	Smith	1	8	2 A						
25	Lyons	3	5	9 A						
26	Petty Cash	20		A						
	Gen: Gen: Hosp:	2	3	6 A						
	Officers Mess "	20	5	- A	14	13	2 A			
			7	3 A						
30	NAAFI.									
	Anderson "	7	7	- A	16	12	- A			
		1542	7	3	1829	3	2	286	15	11

Certified true copy of a/c in the Ledger for Public Audit

CARRIED FORWARD

14 Can. Gen. Hospital
Nursing Sisters

IN ACCOUNT WITH
BARCLAYS BANK LIMITED,
HORLEY, SURREY.

J 6
Lady Cope

DATE	PARTICULARS		DR.	CR.	BALANCE
Dec 1	B/f'wd		1542 7 3	1829 3 2	
2	Officers Mess	2cs	55 14 6	25 3 2	
5	Simpson		9 6		
7	Petty Cash	2cs	20	59 11 5	
				60 4 1	
				42 9 8	
				38 14 1	
9	NAAFI		4 17 3		
	Charges		5 -		
12		2cs		30 16 10	
				54 8 8	
				84 5 29	
15	Bunkell		4 10		
16	Petty Cash		20		
		CARRIED FORWARD	1656 19 6	2183 13 3	526 1 9

DATE	PARTICULARS	Dr.			Cr.			BALANCE		
	BROUGHT FORWARD	1656	19	6	2183	1	3			
Dec 16	NAAFI.	3	8	5	✓A					
17	Percival	1	4	6	✓A					
18	Gale & Polden.	34	3	1	✓A					
	do	16	2	5	✓A					
	Coopers.	39	16	1	✓A					
	Lawleys.	6	2	11	✓A					
19	Zuick	11	12		✓A					
21	Limes Fisheries	4	10	2	✓A					
	OC no 14 Gen: Hosp:	5	6	11	✓A					
23	Barrack Dam:	2	4		✓A					
	O/M.	13	10		✓A					
	"	27			✓A					
	Cash.	11			✓A					
29	Petty Cash.	20			✓A					
31	Balance	330		9						
		2183		9	2183	1	3	330		9
	CARRIED FORWARD									

certified true copy of entry in ledger

14th Canadian General Hospital — J 7
Nursing Sisters

IN ACCOUNT WITH
BARCLAYS BANK LIMITED,
HORLEY, SURREY.

43.

DATE	PARTICULARS		DR.	CR.	BALANCE
Jan 1	Balance			330 9	
2	Horley Laundry		144 7 3		
8	Oxley	ods	5 5	12 13 1	
		ods		54 5	
		ods		41 12 8	
11		ods		53 9 2	
		ods		43 13 3	
12	Petty Cash	ods	20	37 4 1	
13	NAAFI		1 8 10		
14	Dolling wood		10		
15	Aspray	Orders	10 -		
16	Cash	Orders	8 8		
18	Cash	Orders	4 4		
20	NAAFI		2 14		
		CARRIED FORWARD	206 7 1	577 13 5	

DATE	PARTICULARS	Dr.	Cr.	BALANCE
	BROUGHT FORWARD	206 7 1	577 13 5	
Jan 22	Lines Fisheries	8 8 4 M		
24.	NAAFI.	4 1 M	39 12 11 A	
	Forward. sas	3 19 8 M	53 17 11 A	
30.	Petty Cash	20 A		
	Officers Mess sas	26 15 5 M	17 2 8 A	
		269 11 6	688 6 11	418 15 5
0/2				
10 Fe.	Telegrams	1 10		
26.	Canvas Damage	2 4 6		
27.	Stanley	9 12		
"	Office	24 5 3		
"	Quest	17 17 8		
"	Lyons	9 4 8		
"	Journals	5 8		
"	Stanley (Dr)	64 2 1		
	Mess Furniture			
	CARRIED FORWARD			

Certified true copy of entry in ledger

14th Canadian General Hospital — J 8

IN ACCOUNT WITH

BARCLAYS BANK LIMITED,

HORLEY, SURREY.

DATE	PARTICULARS	DR.	CR.	BALANCE
Feb 1	B/Fwd	269 11 6	688 6 11	
	Godfrey & Son.	1 2 6		
	Nth Brit: Mercantile Ins	1 10		
4	6 cheques.	10		
6	3 pm. gs.	5 8		
8	Imes Fisheries	9 4 8		
	Ruck	17 17 8		
	NAAFI.	2 1 5		
10	Gale & Polden sds	1 18 11	87 17 11	
			58 6 11	146 x 10
12	Bowyer	12		
13	NAAFI	14 11 8		
15	NAAFI.	4 7 5		
	Harrods	11 3		
	CARRIED FORWARD	329 7 -	834 11 9	

DATE	PARTICULARS	Dr.			Cr.			BALANCE		
	BROUGHT FORWARD	329	7		834	11	9			
Feb 16.	NAAFI.	1	19	-						
	" do	2	12							
17	Coopers.	19	11	1						
20	Bakery - Bags	20								
	Horley Sun: Laundry	64	2	1						
	" "	66	9	6						
22	NAAFI.	3	13	8						
		507	14	4	834	11	9	326	14	5
	CARRIED FORWARD									

Certified true copy of entry in the Ledger of Messrs. [illegible]

14th Canadian General Hospital

IN ACCOUNT WITH

BARCLAYS BANK LIMITED,

Nursing Sisters Mess

HORLEY, Surrey

J 9

3/43

DATE	PARTICULARS	DR.			CR.			BALANCE		
Feb 22	73/Ford	507	14	4	834	11	9	326	17	5
Mar 1	NAAFI.	2	4	2						
8	do	1	15	5						
	Petty Cash	40								
17	Stapley	9	12							
	do	4	16	-						
20	Jays	10								
22	NAAFI.	1	18	3						
	Agents	26	19	1						
27	Petty Cash	25								
30	do.				44	17	7			
					20	7	11			
					54	14	4			
					64	12	1	167	11	6
	CARRIED FORWARD	629	19	3	1022	3	3			

DATE	PARTICULARS	Dr.	Cr.	BALANCE
	BROUGHT FORWARD	629 19 3	1022 3 3	
Mar 30	Sales		46 3 5	
	do		94 19 10	
	do		56 17 3	
		629 19 3	1220 3 9	590 4 6
	CARRIED FORWARD			

187-11-6
46-3-5
94-19-10
56-17-3
385-12-0

Certified true copy of entry in our ledger

14th Canadian General Hospital

IN ACCOUNT WITH

BARCLAYS BANK LIMITED,

Missing Lieutenants

HORLEY, SURREY

4/43

DATE	PARTICULARS	DR.	CR.	BALANCE
Apl 1	Sundries 31 Twd.	629 19 3	1220 3 9	
2	Stapley	4 6		
3	Limes Fisheries	7 11 8		
	Duck	13 5 9		
5	Woldmans	2 15		
	NAAFI	1 2 1		
	Feeling	5 19 9		
	Percival	5 15 4		
	Ellis	3 6 3		
	Smith	3 6 6		
13	Cotton	25 3 3		
14	Reeves	10	128 10 5	
	NAAFI	1 18 10		
	Horley Sanitary	86 14 5		
27	~~Sports Agency~~	~~13 17 6~~		
	CARRIED FORWARD	846 10 1	1348 14 2	

DATE	PARTICULARS	Dr.			Cr.			BALANCE		
	BROUGHT FORWARD	846	10	1	1348	14	2			
Apl 27	NAAFI	5	14	6						
28	Wages	25			102		2			
30	LOCK	5	4							
6	Campbell (unpaid cheque)	3	6	10						
7	Gale & Polden	8	18	3						
		894	13	8	1450	14	4	556		8
	CARRIED FORWARD									

Certified true copy of entry in our ledger.

128-10-3
102-2-7
10-2-10
230

TRIPLICATE D1

DETAILED STATEMENTS OF ACCOUNTS RECEIVABLE & ACCOUNTS PAYABLE FOR THE ~~MONTH OR QUARTER ENDED~~ period ended 31 August 194?

(If space provided insufficient attach supplementary schedule)

ABSTRACT OF RECEIPTS AND DISBURSEMENTS OF [illegible]

THE No.14 CANADIAN GENERAL HOSPITAL (Overseas)
(Formation, Unit or Detachment.)

Period ~~Month Ended~~ ~~(Quarter Ended)~~ July & Aug 194?

NURSING SISTERS MESS
(Name of Fund or Account.)

(1) Accounts Receivable	Amount £	s.	d.
Current	302	16	11
Arrears			
Capt. Dickinson		4	2
Capt. Kilgour		5	2
Capt. Wheatley		4	6
Lt.Col. Palmer		5	2
	302	19	-
[illegible]			
Bar	61	17	11
Messing	127	10	4
Patron Assess.	14	-	-
Spec.Assess.	2	2	
Laundry	44	6	0
	301	15	11

(2) Accounts Payable	Amount £	s.	d.
Arrears.			
H.Sawyer	45	12	4
Telephone Charges	1	4	
Morley Laundry		10	
Mess Canteen	105	14	
	152	-	4
Current.			
Mess Canteen	2	16	10
P.W.Coley	3	11	2
Officers Mess	17	7	6
Fergusons	27	19	6
Kenwood & Court	2	19	3
Repairs.		12	
H.Sawyer			
Coopers	30	4	6
Lines Fisheries	15	13	7
Mess Canteen	5	19	2
P.W.Coley	61	7	7
Salvage	7	10	
F.J.Searle	6	9	9
H.Keeling	13	9	6
Skinner	1	1	
F.H.Cooper	4	16	2
A.D.Quick	21	10	
Percival	6	7	8
Mess Damages			
Morley Laundry	1	11	3
Imprest A/Count			
H.C.Smith	1	8	8
Thorn & Dodds		8	0
Morley Laundry	140	18	2
	522	1	1

Date 194?	Receipts (Show source of receipts)	Amount £	s.	d.
Jun 30	Credit Balance from Prev. A/c.	29	7	8
	A/C's Receivable	350	2	-
	Bar Sales	103	12	3
	Messing Charges	116	16	
	Patron Fees	39	10	
	Special Assessment	20	8	
	Laundry	74	11	6
	Credit Note - Coopers	13	12	2
		737	19	7

Date 194?	Disbursements (Show name of firm and purpose)	Amount £	s.	d.
	Schedule A.P.	191	6	10
	B.	49	19	
	M.	82	11	11
	B.S.	7	19	6
	N.S.	31	11	6
	ENSF	30	7	10
Aug 31	Balance (per Cash Book)	344	3	
		737	19	7

BANK RECONCILIATION STATEMENT (Attach Bank certificate)

1942	Outstanding Cheques			
July 19	Mess Canteen		10	6
Aug 24	NAAFI	1	16	7
27	NAAFI	5	1	6
31	Sgts.Mess	3	19	4
31	Balance per Cash Book	305	13	
		317	-	11

Aug 31	Balance in Bank	317	- 11
		317	- 11

AUDIT 2

(Note: Use form R.F.B.-1A in the case of Officers' and Sergeants' Messes only in substitution for this page.)

R.F.B.-1
40/P & S/20)

FINANCIAL STATEMENT FOR THE (Period MONTH ENDED / QUARTER ENDED) 31 August 194

STATEMENT OF ASSETS AND LIABILITIES

Assets	Amount £	s.	d.	Liabilities	Amount £	s.	d.
Cash (per Cash Book)	344	3		(2) Accounts Payable	522	1	1
In Bank 305:13:3							
On hand 38:10:-							
Inventory Stock (at cost)	123	-	8				
(1) Accounts Receivable:	302	19					
Arrears 1: 2: 3							
Current 301:16:11							
Regimental or Mess Property (See Arts. 136 and 138)							
				(3) Surplus	243	1	7
	765	2	8		765	2	8

TRADING AND PROFIT AND LOSS STATEMENT

Sales for month or quarter ..... £ .....

Inventory Stock at end of last month or quarter ..... £ .....

Add: Purchases for month or quarter ..... £ .....

£ .....

Less: Inventory at end of current month or quarter ..... £ .....

Cost of goods sold ..... £ .....

Gross Profits ..... £ .....

Canteen Expenses: Wages, Canteen Steward ..... £ .....

Canteen Assistants ..... @ ..... each .....

Other operating Expenses (in detail):—

.....

.....

.....

Total Expenses ....

Net Profits ..... £ .....

Receipts from other sources (give details):—

..... £ .....

.....

Total net Profits for month or quarter ....

Surplus from previous months or quarters ..... £ .....

Total surplus available ....

DISPOSITION OF PROFITS:—

Disbursements Men's Account (give details) ..... £ .....

.....

.....

Capital Expenditure, Men's Account (give details) .....

.....

.....

.....

Canteen Equipment and Fixtures (give details) .....

....

(3) Balance available for distribution ..... £ .....

(1) Show details on reverse side in space provided. (2) Show details on reverse side in space provided.

(3) Surplus should agree with "Balance available for Distribution" next page.

The above Statement has been audited and is, in the opinion of the undersigned, correct and discloses a true state of finances as at 31 August 194 .
(Date of Balance Sheet)

(C.A. Pelmont) F.G. Mitchell Lt. Col. Bank (Pres.)

(T.W. Pelmont) Shalmers Mr. Col. Bank

(Burnett & Johnston) Scott Edwards Major Bank Members

AUDIT BOARD

We hereby certify that we have ascertained that the total of the daily takings for the month or quarter ended ..... 194 ..... as shown in the Steward's Cash Book corresponds with the amount of stock sold for that month or quarter as it appears in the Canteen Stock and Sales Record (Stock Sheet) and that the above statement is correct. The assets of the Fund or Canteen are insured in .....
(State name of Company)

for £ .....

Secretary *President Regimental Institute*

Approved,

Lt. Colonel.

Commanding .....

Nursing Sisters Mess

Period ENDED / ENDED 31 August 1942.

(For use in the case of Officers' or Sergeants' Messes)

R.F.B.-1A
A.F.A. S/209

TRADING AND PROFIT AND LOSS STATEMENT

Bar

Bar Sales for the period		£ 165:10: 2
Inventory stock at the end of last month/or quarter	£ 131:19:11	
Add: Purchases for period	104:12: -	
Less: Inventory at close of current month/or quarter	£ 236:11:11	
Cost of goods sold	118: -: 8	
Gross Profit for period		113:11: 3
Bar expenses: Wages (show details on back)	£	46:18:11
Other operating expenses (show details on back)	7:19: 6	
Total expenses		7:19: 6
Net profit on Bar for period		38:19: 5

Messing

Messing charges for the period		£ 244: 6: 4
Inventory stock at end of last month/or quarter	£	
Add: Purchases for period	250:11:10	
Less: Inventory at close of current month/or quarter	£	
Cost of Messing		250:11:10
Gross Profit for period		6: 5: 6
Mess expenses: Wages (show details on back)	£ 28: 1: -	
Other operating expenses (show details on back)	5: 1: 9	
Total expenses		33: 2: 9
Net profit or loss, on Mess only for period		£ 39: 8: 3
Net profit on Bar b/d		£ 38:19: 5
Net profit or loss, on Messing b/d		39: 8: 3
Receipts from other sources (if any): Batmen Fees	83:10: -	
Special Assess.	£ 22:10: -	
Cr.Note - Coopers	13:12: 2	
Total profits for period		119:12: 2
Surplus from previous period		£ 119: 3: 4
Total surplus available		158: 4: 6
		277: 7:10

DISPOSITION OF PROFITS:—

Income expenditures	£	
Capital expenditures As per seperate schedule		
Per Balance Sheet		34: 6: 3
		£ 243: 1: 7

No. of Dining Members 85 Prevailing daily charge for messing 1/-

We hereby certify that in respect of the Bar we have ascertained that the total of the daily takings for the period ended 31 August 1942 as shown in the Steward's Cash Book corresponds with the amount of stock sold for the period as it appears in the Canteen Stock and Sales Record: that the inventories of Bar and Messing as above shown are correct, and that in all other respects the above Statement is correct.

J. M. Macdonald Langhorne
PRESIDENT MEMBER

Esther M. Hopper
MEMBER

Albert Ross
(Albert Ross)

Colonel
RANK

Commanding No. 14 Canadian General Hospital, RCAMC

DETAILED STATEMENTS OF EXPENSES FOR THE PERIOD ~~MONTH OR QUARTER~~ ENDED 31 August 1942.

Bar

		£	£
Wages, Canteen Steward			
Canteen Assistants	@ each		
Total Wages			
Other Expenses:—			
Glasses		7: 6: -	
W.J.Holt		:13: 6	
			7:19: 6
Total Other Expenses		TOTAL BAR EXPENSES £	7:19: 6

Messing

		£	£
Wages, Chef	Civilian Help 2 mos. @ £1:16/-	3: -: -	
Mess Assistants	10 @ £1 each 2 mos.	20: -: -	
			28: 1: -
Total Wages			
Other Expenses:—			
Cl aning Materials		1:5 :10	
Towels & Serviettes		1: 9: -	
Hyatts - Locks		15: 8	
Mess Laundry		1 :11: 3	
			5: 1: 9
Total Other Expenses		TOTAL MESSING EXPENSES £	33: 2: 9

No. 14 CANADIAN GENERAL HOSPITAL, R.C.A.M.C.

SISTERS' MESS

Schedule of Disbursements July

& August, 1942

DATE			
	SCHEDULE A/P		
Jul 16	Limes Fisheries	12. 6. 2	
" 21	Coopers	21.13. 2	
	"	13.12. 2	
	Officers Mess	11.15.	
" 24	N.A.A.F.I.	31. 1.11	
	Horley Laundry	60.13.11	
	R. Marshall	8. 6	
	F.W.Oxley	30. 6	
" 31	Wages	9.10	191. 6.10
	SCHEDULE B		
Jul 1	N.A.A.F.I.	8. 9. 9	
" 2	T. Stapley & Sons	27. 4. 6	
" 31	Cash Bar Purchases	5.10.	
Aug 20	N.A.A.F.I.	2. 9. 6	
" 24	N.A.A.F.I.	1.12. 5	
" 27	N.A.A.F.I.	13. 6	
" 31	Sgts.Mess	3.19. 4	49.19.
	SCHEDULE M		
Jul 1	M.Keeling	12. 8. 6	
	N.A.A.F.I.	6.15.	
" 2	T. Stapley & Sons	1.10. 3	
" 3	N.A.A.F.I.	3. 6.10	
" 17	N.A.A.F.I.	3. 9. 9	
	N.A.A.F.I.	1. 9.	
" 19	N.A.A.F.I.	10. 6	
" 31	Geo. Mackenzie	2.	
	Sundry Messing	6.13.11	
	Crawley Co-op.	1. 7	
	Stapley	1. 5	
	Skinners	2. 8	
Aug 6	N.A.A.F.I.	4.13. 9	
" 13	N.A.A.F.I.	1. 7. 6	
"20	N.A.A.F.I.	1. 5. 3	
" 24	N.A.A.F.I.	4. 2	
" 27	N.A.A.F.I.	4. 8.	
" 22	Coopers	22. 2. 4	
" 26	Sundry Messing	2.	
" 25	P.R. Coste	2. 5. 8	
" 24	Direct Fruit	1.	
	Geo. Mackenzie	7	
	Sundry Messing	4	
	R.E. Buck	7.	
	Jenson Messing	4. 5. 6	
" 22	Coopers	14. 2½	
	Direct Fruit	1. 1	
" 12	Geo. Mackenzie	2.	
" 19	" "	3.	
" 5	" "	3.	
" 12	Huggett	4.10½	
" 17	Letheby & Christopher	2.18. 3	
" 31	Sundry Messing	11.	82.11.11

SCHEDULE OF DISBURSEMENTS OF N/SISTERS MESS (CONT'D).

DATE			
	SCHEDULE B.E.		
Jul 1	Glasses	7. 6.	
" 31	W.J. Holt.	13. 6	7.19 6
	SCHEDULE M.E.		
Jul 31	Mence Smith Ltd.	5. 9	
	Wages	5.13.	
	"	10.10.	
Aug 22	Mence Smith Ltd.	3. 2	
" 17	" " "	6.10½	
	Stapley & Sons	1. 1	
Aug 22	Charles E. Burgess	8	
" 28	Sopers	1. .	
" 31	Wages	8.	
	Hyatt	15. 8½	
	Fortnum & Mason	9.	
	Wheelers	7½	
	Blofield	1. 6	
	Sundry Expense	6 1½	
	Wages	11.10.	31.11 6
	SCHEDULE EXP		
Jul 11	Orchestra	4.10.	
" 31	Flowers	1. 8	
	Piano Tuning	10. 6	
	Hogan Repairs	4. 6	
	"	4.	
	W. Andrews Gift	3. 3.	
Aug 7	M/S Bradley Gift	10.12. 4	
" 24	Flowers	4.	
" 22	"	4.	
" 23	Asprey Gift	9. 7. 6	30. 7.10

DISPOSITION OF PROFITS / - / M/SISTERS' MESS

July & August 1942

Thorn & Hoddle Repairs	8. 6
W.H. Smith (Papers)	1. 8. 8
Wedding Present	10.12. 4
Flowers	8.
Wedding Present	9. 7. 6
" "	3. 3.
Orchestra	4.10.
Flowers	1. 8.
Piano Tuning	10. 6
Hogan Repairs	8. 6
Free Drinks	2. 1. 3
	34. 6. 3

NO. 1¼ CANADIAN GENERAL HOSPITAL, RCAMC., C.A.(O's)
NURSING SISTERS MESS - INVENTORY 31 AUG 42

			£			
Keg	Beer			:15: -		
35	btl.	Gin	22/6	39: -: 6		
8	4/5	Whisky	23/-	10: 2: 5		
3	4/5	Whisky	26/6	5: -: 8		
12		Whisky	28/6	17: 2: -		
1	btl.	Sloe Gin	25/-	1: 5: -		
1¼	"	Brandy	42/6	3: 3: 9		
7	4/5 "	Rum	25/-	9:15: -		
3	btl.	Port	15/-	2: 5: -		
3	"	"	10/-	1:10: -		
1	2/3	Sherry	18/-	1:10: -		
1	btl.	Pommard	10/-	:10: -		
1	"	Beaune	5/6	: 5: 6	£ 92:	4:10
Note	Paper,	plain	4/-	1:12: -		
Craven	A	10's 13 pkgs	9d less 10%	: 8: 9		
	Do.	20's 2 pkgs	1/6 less 10%	: 2: 8		
2	11/12	doz. Swan Matches	3/- " "	: 7:10		
13	3/12	" Bryant "	1/6 " "	:17:10		
38		Choc. Bars	2¾d " "	: 7: 1		
3	tubes	Meltonian Cream	10d	: 2: 6		
8	tins	Shoe Polish	3½d	: 2: 4		
4	btls.	Coffee	4/4 less 10%	:15: 7		
50	tubes	Tooth Paste	6d	1: 5: -		
49	"	" "	1/-	2: 9: -		
13	btls.	Ink	4d	: 4: 4		
5	tins	Tooth Powder	6d	: 2: 6		
4	"	"	1/-	: 4: -		
10	"	Vaseline	4d	: 3: 4		
284	bars	Soap	3½d	4: 2: 8		
50	btls.	Lighter Fluid	1/3	3: 2: 6		
6	btls.	Cordial	2/6	:15: -		
22	"	Tonic Water	3½d	: 6: 5		
9	syphons	Soda "	1/-	: 9: -	18: -:	4
2	only	Candy Jars	1/-	: 2: -		
14		Pepsi-Cola Cases	3/-	2: 2: -		
5		Coca-Cola Cases	3/-	:15: -		
22	2/12	doz. Pepsi-Cola	3/-doz.	3:6 : 6		
10	doz	btls. Coca-Cola	3/-doz	1:10: -	7:15:	6
					£118: -:	8

Approved.

President, Mess Committee.

BARCLAYS BANK LIMITED

Horley, Surrey,

2nd. Sept, 1942.

Dear Sir,

We hereby certify that at the close of business on 31st August, 1942, the balance standing in our books to the credit of:- N/Sisters' Mess, No. 14 Cdn.Gen.Hosp.,RCAMC., account was £317. .11 (say Three hundred and seventeen pounds and eleven pence.)

Yours Faithfully,

A.P. Boyden, MGR.

Certified True Copy:-

William Cole Capt.

No.14 CANADIAN GENERAL HOSPITAL, R.C.A.M.C., C.A.(O's)

31 August 42

This is to certify that the Cash on Hand and the Inventory Stock (at Cost) of the Nursing Sisters Mess at the above date was as follows:-

Cash on Hand (Thirty eight pounds ten shillings)	£38:10:-
Inventory Stock at Cost (One hundred eighteen pounds and eight pence)	£118: -: 8

Cecil B. MacDonald
P.M.C.

DETAILED STATEMENTS OF ACCOUNTS RECEIVABLE & ACCOUNTS PAYABLE FOR THE MONTH OR ~~QUARTER ENDED~~

30 Sept 42 194

(If space provided insufficient attach supplementary schedule)

(1) Accounts Receivable	£	s.	d.
Arrears	48	3	3
Bar Sales	69	7	1
Messing	111		4
Batmen Assessment	42	2	
Laundry	64	8	11
	335	2	
ARREARS			
H/S Auger	3	1	
Clarke	2	15	6
Cox	9	8	2
Crombie	9	9	1
Desborough	1	11	
Doherty	2	10	6
Fraser		7	
Gibson, A.F.	3	19	6
Metu	3		11
Hodson		11	
Hopper	2	17	7
MacKay	2	4	8
March	2	6	10
Moss		18	7
Osborne		10	4
Provost	1	15	7
Sykes		3	8
Gambon		5	
Blair	2	10	7
Officers Mess	7	7	2
	48	3	8

(2) Accounts Payable	£	s.	d.
Arrears			
Mens Canteen	114	10	
Officers Mess	17	7	6
Telephone Reserve	1	4	
	133	1	6
Bar			
Officers Mess	7	6	
Kenward & Court	2	2	8
	9	8	8
Messing			
Coopers	35	15	10
Limes Fisheries	23	8	3
F.W.Oxley	5	5	
F.J.Searle	3	5	9
H.D.Quick	14	19	8
Percival	3	5	8
	86		2
Mess Expense			
Morley Laundry		17	4
Expense			
Morley Laundry	64	8	11
W.H.Smith & Son	1	8	2
	65	17	1
	295	4	9

ABSTRACT OF RECEIPTS AND DISBURSEMENTS OF

THE No.14 Canadian General Hospital (Formation, Unit or Detachment.)

MONTH ENDED / ~~QUARTER ENDED~~ 30 Sept 42 194

Nursing Sisters Mess (Name of Fund or Account.)

Date 194 2	Receipts (Show source of receipts)	£	s.	d.
Aug 31	Credit Balance from Prev. A/c.	344	3	
	A/C's Receivable	254	15	4
	Cash Bar Sales	1	10	6
	Messing	8	13	7
		609	2	5

Date 194 2	Disbursements (Show name of firm and purpose)	£	s.	d.
	Debit Bal. (if any) from Prev. A/c.			
	Schedule A/P	338	19	7
	B	39	9	11
	M	24	17	8
	ME	17	7	7
	EXP	17	1	9
Sep 30	Balance (per Cash Book)	110	15	11
		609	2	5

BANK RECONCILIATION STATEMENT (Attach Bank certificate)

		£	s.	d.
1942	Outstanding Cheques			
	As per attached list	171	13	9
Sep 30	Balance per Cash Book	92	4	10
		264	-	7

1942		£	s.	d.
Sep 30	Balance in Bank	264	-	7
		264	-	7

(Note:— Use form R.F.B.-1A in the case of Officers' and Sergeants' Messes only in substitution for this page.)

R.F.B.-1
SEPT & 1941

FINANCIAL STATEMENT FOR THE MONTH ENDED / ~~QUARTER ENDED~~ 30 Sept 42 194

STATEMENT OF ASSETS AND LIABILITIES

Assets	Amount £	s.	d.	Liabilities	Amount £	s.	d.
Cash (per Cash Book)	110	15	11	(2) Accounts Payable	295	4	9
In Bank 92. 6.10							
On hand 18. 9. 1							
Inventory Stock (at cost)	334	19	9				
(1) Accounts Receivable:	335	2					
Arrears 48. 3. 8							
Current 286.18. 4							
Regimental or Mess Property (See Arts. 136 and 138)							
Sundry Furniture £75.-.-							
				(3) Surplus	265	12	11
	560	17	8		560	17	8

TRADING AND PROFIT AND LOSS STATEMENT

Sales for month/or quarter ..... £.....

Inventory Stock at end of last month/or quarter ..... £.....

Add: Purchases for month/or quarter ..... £.....

Less: Inventory at end of current month/or quarter ..... £.....

Cost of goods sold .....

Gross Profits ..... £.....

Canteen Expenses: Wages, Canteen Steward .....

Canteen Assistants ..... @ ..... each .....

Other operating Expenses (in detail):—

.....

.....

Total Expenses ..... £.....

Net Profits .....

Receipts from other sources (give details):— £.....

.....

.....

Total net Profits for month/or quarter ..... £.....

Surplus from previous months/or quarters .....

Total surplus available .....

DISPOSITION OF PROFITS:—

Disbursements Mess Account (give details) ..... £.....

.....

.....

.....

Capital Expenditure, Mess Account (give details) .....

.....

.....

.....

Canteen Equipment and Fixtures (give details) .....

.....

(3) Balance available for distribution ..... £.....

(1) Show details on reverse side in space provided.

(2) Show details on reverse side in space provided.

(3) Surplus should agree with "Balance available for Distribution" next page.

The above Statement has been audited and is, in the opinion of the undersigned, correct and discloses a true state of finances as at 30 Sept 42 (Date of Balance Sheet) 194

(C. [illegible] F. Tait) Lt.Col. Bank (Pres.)

(T.T. Patton) Lt.Col. Bank

(Burnett T. Johnston) Major Bank

Members

AUDIT BOARD

We hereby certify that we have ascertained that the total of the daily takings for the month/or quarter ended ..... 194 ..... as shown in the Steward's Cash Book corresponds with the amount of stock sold for that month or quarter as it appears in the Canteen Stock and Sales Record (Stock Sheet) and that the above statement is correct. The assets of the Fund or Canteen are insured for £..... in ..... (State name of Company)

Auditor *President Regimental Institute*

Approved.

Lt Colonel.

Commanding .....

(For use in the case of Officers' or Sergeants' Messes)

B.F.H.-1A
60/P.A.S./202

MONTH ENDED ..... 30 Sept 42 ..... 194....

TRADING AND PROFIT AND LOSS STATEMENT

Bar

Bar Sales for the month		£ 70.17. 7
Inventory stock at the end of last month	£ 118. -. 8	
Add: Purchases for month	48.18. 7	
	£ 166.19. 3	
Less: Inventory at close of current month	114.19. 9	
Cost of goods sold		52.19. 6
Gross Profit for month		18.18. 1
Bar expenses: Wages (show details on back)	£	
Other operating expenses (show details on back)		
Total expenses		
Net profit on Bar for month		18.18. 1

Messing

Messing charges for the month		£ 119.13.11
Inventory stock at end of last month or quarter	£	
Add: Purchases for month	120.17.10	
	£	
Less: Inventory at close of current month or quarter		120.17.10
Cost of Messing		1. 3.11
Gross [illegible] for month		
Mess expenses: Wages (show details on back)	£ 13. 5. -	
Other operating expenses (show details on back)	5. 9.11	
Total expenses		18.14.11
Net [illegible] or loss, on Mess only for month		£ 19.18.10
Net profit on Bar b/d		£ 18.18. 1
Net [illegible] or loss, on Messing b/d		19.18.10
Receipts from other sources (if any):—		
Batmen Assessment	£ 42.2.-	42. 2. -
Total profits for month		£ 41. 1. 3
Surplus from previous months o[illegible]		243. 1. 7
Total surplus available		284. 2.10

DISPOSITION OF PROFITS:—

Income expenditures	£	
See attaches schedule		
Capital expenditures		
		18. 9.11
Surplus per Balance Sheet		£ 265.12.11

Number of Dining Members 85 Prevailing daily charge for messing 1/-

We hereby certify that in respect of the Bar we have ascertained that the total of the daily takings for the month/ [illegible] ended 30 Sept 42 *194... as shown in the Steward's Cash Book corresponds with the amount of Stock sold for that month or quarter as it appears in the Canteen Stock and Sales Record: that the inventories of Bar and Messing as above shown are correct, and that in all other respects the above Statement is correct.*

Cecil N. Macdonald — PRESIDENT
C. Campbell — MEMBER
Esther M. Hopper — MEMBER

Approved Albert Ross — (Albert Ross) Colonel — RANK

Commanding No.1 Canadian General Hospital RCAMC

DETAILED STATEMENTS OF EXPENSES FOR THE

MONTH OR ~~QUARTER~~ ENDED 30 Sept. 42 194.....

Bar

Wages, Canteen Steward ..... £.....

Canteen Assistants ..... @ ..... each ... .

Total Wages ..... £.....

Other Expenses:

.....

.....

.....

.....

.....

Total Other Expenses .....

TOTAL BAR EXPENSES £.....

Messing Civilians

Wages, Chef ..... £ 2.15. -

9 @ £1 1.10. -

Mess Assistants ..... @ ..... each ... 9. -. -

Total Wages ..... £ 13. 5. -

Other Expenses:

Laundry		17. 4	
Mence Smith	Hardware	11 -. 6	
Youngs	"	3. 9	
Mulholland	Cleaning materials	2.10	
Skinners		4. 4	
Barkers	Cleaning	12. 6	
Mackenzie	Cleaning	9. 6	
Gillet		9. 2	
Hobbs	Hardware	1.10. -	5. 9.11

.....

.....

.....

.....

.....

Total Other Expenses .....

TOTAL MESSING EXPENSES £ 18.14.11

N/S Mess Inventory 30 Sept 42

12	Soda Syphons	1/-	12. -
3	Cordial	2/6	7. 6
	Candy		3. -
60	Choc.Bars		11. 3
6	Cordials	2/6	15. -
17	Pepsi Cola		3.10
15	Ginger Ale		3. 9
4	Matches		5
100	Cigarettes		6. 9
8	pads Notepaper	4/-	1.12.
13	Choc Bars		2.11
94	Choc Bars		10. 7
21	Tonic Water		6. 1
284	Cakes Soap		4. 2. 8
59	Matches		12. 7
46	Lighter Fluid	1/3	2.17. 6
9	ds. B & H Matches		12. 2
12	btls Ink		4. -
9	tins Vaseline		3. -
33	tubes Tooth Paste	1/-	1.13. -
46	"	6d	1. 3. -
7	"	6d	3. 6
11	"	1/-	11. -
5	pads Writing Paper	4/-	1. -. -
2000	Cigarettes		6.15. -
18	btls Ale		8. -
12	Syphons		12. -
40	Pepsi Cola		9. -
33½	btls Gin	22/6	37.13. 9
1	Sloe Gin	25/-	1. 5. -
24	Whisky	23/-	27.12. -
1½	Brandy	42/6	3. 3. 9
6½	Cordial	2/6	16. 3
22/5	Rum	25/-	3. -. -
1 2/3	Sherry	18/-	1.10. -
2	Votrix	9/-	18. -
1	Besune	5/6	5. 6
1	Pommard		10. -
5 4/5	Port	10/-	2.18. -
4	Whisky	28/6	5.14. -
10 doz	Bottles	3/-	1.10. -
7	Cases	3/-	1. 1. -
1	Case	1/-	1. -
			114.19. 9

Disbursements N/S Mess Sept 42

	Schedule A/P			
1942				
Sep 10	Mens Canteen	16.12. -	} 26 Always in payment of pay	
	H.Bowyer	29.12. 4		
	Horley Laundry	142. 9. 5		
	Fergusons	27.19. 6		
	Coopers	30. 4. 6		
	Lines	15.12. 7		
	F.A.Cooper	4.16. 2		
	F.W.Oxley	66.18. 9		
23	Horley Laundry	10. -		
	Talmage	7.10. -		
	Searle	6. 9. 9		
	Skinner	1. 1. -		
	W.H.Smith	1. 8. 8		
	H.D.Quick	14.10. -		
	Percival	6. 7. 8		
	Thorn & Hoddle	8. 6		
	Kennard & Court	2.19. 3		
	Keeling	6.13. 9		
	Keeling	6.15. 9		388.19. 7
	Schedule B			
Sep 1	NAAFI	1.10. 6		
17	"	1.11.11		
	Officers Mess	27.12. -		
23	NAAFI	3. -. 9		
11	NAAFI	2.14. -		
3	NAAFI	3. -. 9		39. 9.11
	Schedule M			
Sep 2	Mackenzie	2. 6		
	Hughes	3.18.		
	Burkett	4.		
4	Direct Fruit	1. 9		
	Mence Smith	2. 3		
	Mackenzie	1. 6		
8	Direct Fruit	4. 8		
	Mackenzie	2. 6		
12	Jensen	5. 2. -		
16	Mackenzie	3. -		
9	MacKenzie	1. 6. 4		
12	Hughes	5. 5. -		
23	Hughes	3. -. -		
	Mackenzie	3. -		
30	Mackenzie	3. -		
25	Jensen	4. -. -		
17	NAAFI	3. 1. -		
23	NAAFI	5. 9. 5		
3	NAAFI	2. 7. 9		34.17. 8
	Schedule ME			
Sep 4	Mence Smith	2. 9		
	Youngs	3. 9		
8	Mence Smith	2. 2		
10	Mulholland	2.1[illegible]		
	Skinners	4. 4		
12	Mence Smith	12. 6		
10	Barkers	12. 6		
18	Mence Smith	3. 1		
22	Mackenzie	9. 6		
20	Turner	4.8		
26	Hobbs	1.10.-		
30	Wages	13. 5.		
30	Laundry	17.4		18.14.11
				482. 2. 1

N/S Mess Disbursements Sept. Sheet 2.

482. 2. 1

Forward

Schedule EXP Disposition of Profits

Orchestra	£5. -. -	
Flowers	4. -	
Robinson	10. 6	
Simpson	12. -	
Newspapers	1. 9. 2	
Elec. Supplies	4. 3	
Brandes Gift	10. -. -	
Cheque stamps	10. -	£. 9.11

		Outstanding Cheques	N/S Mess
Sep 10	Coopers		30. 4. 6
	Limes		15.12.7
	F.A.Cooper		4.16. 2
14	F.W.Oxley		66.18. 9
17	Off.Mess		27.12. -
23	Horley Ldy.		10. -
23	Talmage		7.10. -
23	F.J.Searle		6. 9. 9
23	H.Skinner		1. 1. -
23	Thorn & Hoddle		8. 6
23	Brands		10. -. -
30	Mens Canteen		10. 6
			171.13. 9

BARCLAYS BANK LIMITED

HORLEY, SURREY,
BRANCH

3rd Oct 1942

Dear Sir,

We hereby certify that at the close of business on 30th Sept 1942, the balance standing in our books to the credit of:- Nursing Sisters' Mess account was £264. . 7 (say Two hundred & sixty four pounds and seven pence.)

Yours faithfully,

For Barclays Bank Limited,

A.P. Boyden, Mgr.

Certified True Copy:

Cecil M. Macdonald.

This is to certify that the Cash on Hand and Inventory of the Nursing Sisters Mess, No.14 Canadian General Hospital as of 30 Sept 42 was as follows:-

Cash on Hand	18. 9. 1
Inventory	114.19. 9

Esther M. Hopper

D 3

ABSTRACT OF RECEIPTS AND DISBURSEMENTS OF

No. 14 Canadian General Hospital C.A.M.C.

THE (Formation, Unit or Detachment.)

MONTH ENDED / QUARTER ENDED October 31st 2 194

Nursing Sisters' Mess

(Name of Fund or Account.)

DETAILED STATEMENTS OF ACCOUNTS RECEIVABLE & ACCOUNTS PAYABLE FOR THE MONTH OR QUARTER ENDED October 31st 2 194

(If space provided insufficient attach supplementary schedule)

(1) Accounts Receivable	Amount £	s.	d.
Messing	119	13	
Bar Sales	149	17	10
Mess Dues	42		
Laundry	78	4	11
Christmas Cards	34	3	1
Barrack Damages	2	3	6
Arrears	29	11	7
	455	13	11

(2) Accounts Payable	Amount £	s.	d.
Arrears			
Coopers	35	15	10
Telephone Reserve	1	2	
F.W.Oxley	5	5	
Morley Laundry	65	6	3
	107	11	1
Messing			
Coopers	39	16	7
H.P.Cole	12	12	
Mess Fisheries	4	10	2
Percival	1	2	6
R.A.Purnell	4	10	
	61	13	3
Bar			
Gale & Polden	16	2	5
Officer's Mess	37		
	43	2	5
Expense			
Morley Laundry	79	1	
Christmas Cards (Gale Polden)	34	3	1
Barrack Damages	2	3	6
	115	7	
	327	14	4

Date 194	Receipts (Show source of receipts)	Amount £	s.	d.
Oct. 1	Credit Balance from Prev. A/c.	110	15	11
31	Accounts Receivable	335	10	5
	Bar Sales	8	3	
	Messing	5	18	5
		459	7	9

Date 194	Disbursements (Show name of firm and purpose)	Amount £	s.	d.
	Debit Bal. (if any) from Prev. A/c.			
Oct 31	Schedule AP	107	13	8
	B	99	1	
	M	43	1	8
	MM	13	13	3
	Exp	10	19	
		75	19	2
	Balance per Cash Book	383	7	7
		459	7	9

BANK RECONCILIATION STATEMENT (Attach Bank certificate)

Outstanding Cheques				Balance in Bank	58	4
Car Accident Benefits	30	14	9			
	19	5	7			
Balance per Cash Book	38		4		58	4

(Note:— Use form R.F.B.-1A in the case of Officers' and Sergeants' Messes only in substitution for this page.)

R.F.B.-1
40/P & S/201

FINANCIAL STATEMENT FOR THE { MONTH ENDED / QUARTER ENDED } ..... 194.....

STATEMENT OF ASSETS AND LIABILITIES

Assets	Amount £	s.	d.	Liabilities	Amount £	s.	d.
Cash (per Cash Book)	75	19	2	(2) Accounts Payable	327	14	4
In Bank 19. 5. 7							
On hand 12.13. 5							
Deposit held in Canteen ..... 44. . 2							
Inventory Stock (at cost)	113	3	5				
(1) Accounts Receivable:	455	13	11				
Arrears 29.11. 7							
Current 426. 2. 4							
Regimental or Mess Property (See Arts. 186 and 188) ..... Sundry Furniture £75.-.-							
				(2) Surplus	317	2	2
	644	16	6		644	16	6

TRADING AND PROFIT AND LOSS STATEMENT

Sales for month or quarter ..... £.....

Inventory Stock at end of last month or quarter ..... £.....

Add: Purchases for month or quarter ..... £.....

£.....

Less: Inventory at end of current month or quarter ..... £.....

Cost of goods sold ..... £.....

Gross Profits ..... £.....

Canteen Expenses: Wages, Canteen Steward ..... £.....

Canteen Assistants ..... @ ..... each .....

Other operating Expenses (in detail):—

.....

.....

.....

Total Expenses ..... £.....

Net Profits ..... £.....

Receipts from other sources (give details):—

..... £.....

.....

.....

Total net Profits for month or quarter ..... £.....

Surplus from previous months or quarters ..... £.....

Total surplus available ..... £.....

DISPOSITION OF PROFITS:—

Disbursements Men's Account (give details) ..... £.....

.....

.....

.....

Capital Expenditure, Men's Account (give details) .....

.....

.....

.....

Canteen Equipment and Fixtures (give details) .....

.....

.....

(3) Balance available for distribution ..... £.....

(1) Show details on reverse side in space provided.

(2) Show details on reverse side in space provided.

(3) Surplus should agree with "Balance available for Distribution" next page.

The above Statement has been audited and is, in the opinion of the undersigned, correct and discloses a true state of finances as at October 31st 19[illegible]
(Date of Balance Sheet)

C.A.McIntosh, Lt.Col. Bank (Pres.)

J.E.Palmer, Lt.Col. Bank

Burnett S.Johnston, Major Bank

Members

AUDIT BOARD

We hereby certify that we have ascertained that the total of the daily takings for the month/or quarter ended ..... 194..... as shown in the Steward's Cash Book corresponds with the amount of stock sold for that month or quarter as it appears in the Canteen Stock and Sales Record (Stock Sheet) and that the above statement is correct. The assets of the Fund or Canteen are insured in ..... for £.....

(State name of Company)

....

Accountant — President Regimental Institute

Approved.

..... *Lt. Colonel.*

Commanding .....

(For use in the case of Officers' or Sergeants' Messes)

W.F.B.-13
W.P.A.S./28

MONTH ENDED / QUARTER ENDED October 31st 1942

TRADING AND PROFIT AND LOSS STATEMENT

Bar

Bar Sales for the month/or quarter			£ 156. -.10
Inventory stock at the end of last month or quarter		£114.19. 9	
Add: Purchases for month or quarter		£ 32.19. 6	
		£147. 9. 3	
Less: Inventory at close of current month or quarter		133. 9. 5	
Cost of goods sold			14. 1. 1
Gross Profit for month or quarter			14. 1. 1
Bar expenses: Wages (show details on back)		£	
Other operating expenses (show details on back)			
Total expenses			
Net profit on Bar for month or quarter			14. 1. 1

Messing

Messing charges for the month or quarter			£ 125.11. 5
Inventory stock at end of last month or quarter		£	
Add: Purchases for month or quarter		£ 104.14.11	
		£ 104.14.11	
Less: Inventory at close of current month or quarter			
Cost of Messing			104.14.11
Gross Profit for month or quarter			20.16. 6
Mess expenses: Wages (show details on back)		£ 10.10. -	
Other operating expenses (show details on back)		3.19. 6	
Total expenses		14. 9. 6	14. 9. 6
Net profit, or loss on Mess only for month or quarter			£ 6. 7. 2
Net profit on Bar b/d			£ 14. 1. 1
Net profit, or loss on Messing b/d			6. 7. 2
Receipts from other sources (if any) —			
Xmas Dance		£ 42. -. -	
			42. -. -
Total profits for month or quarter			£ 62. 8. 3
Surplus from previous months or quarter			265. 12. 11
Total surplus available			328. 1. 2

DISPOSITION OF PROFITS:—

Income expenditure	Periodicals, Flowers, etc.	£ 2.19. -	
	Orchestra for Dance	5. 7. -	
Capital expenditure	Wages for Dance	5. 7. -	
			10.19. -
			£ 317. 2. 2
Surplus per Balance Sheet			

Number of Dining Members 65 Prevailing daily charge for messing 1/- per diem

We hereby certify that in respect of the Bar we have ascertained that the total of the daily takings for the month/ or quarter ended ..... 194.. as shown in the Steward's Cash Book corresponds with the amount of Stock sold for that month or quarter as it appears in the Control Stock and Sales Record that the inventories of Bar and Messing as above shown are correct, and that in all other respects the above Statement is correct.

Cecil M. MacDonald. PRESIDENT — C. Campbell MEMBER — Esther M. Hopper MEMBER

Approved ..... MESS — Colonel RANK

Commanding No 14 Canadian General Hospital

DETAILED STATEMENTS OF EXPENSES FOR THE

MONTH OR QUARTER ENDED October 31st 1942

Bar

Wages, Canteen Steward £

Canteen Assistants of each

Total Wages £

Other Expenses:

Total Other Expenses

TOTAL BAR EXPENSES £

Messing

Wages, Chef £ 7. -. -

Mess Assistants 1 @ 1.10. - 1.10. -

7 at 1. -. - each 7. -. -

Total Wages £ 10.10. -

Other Expenses:

Sundry Cleaning Materials etc. 3. 3. 3

Laundry 16. 1

Total Other Expenses 3.19. 4

TOTAL MESSING EXPENSES £ 14. 9. 4

NO. 14 CANADIAN GENERAL HOSPITAL
R.C.A.M.C. - C.A.(O'S)

NURSING SISTERS' MESS
INVENTORY
31 October - 1942

		£	s.	d.
24	Tooth Paste 1/-	1.	4.	-
37	" " 6d.	1.	5.	6
6	Vaseline		3.	-
7	Tins Boot Polish 4d.		2.	4
9	Ink 6d.		4.	6
2	" 4d.			8
2 doz.	Swan Matches		5.	3
5 5/12	doz. Safety Marches		7.	8
4350	Envelopes 1/3 (50's)	5.	8.	9
27 btls.	Lighter Fluid	1.13.		9
17 pkgs.	Churchman's Cigarettes 20's	1.	5.	6
2	Syphons Soda		1.	-
8/12	Chocolate bars 1½d.			11
19 11/12	" " 2½d.	2.11.		8
32 btls.	Pepsi Cola		8.	-
7 4/12	Beer ½ Pts.	2.11.		4
12 btls.	Coca Cola		3.	-
6 "	Ginger Ale		1.	6
11/12	Chocolate bars 3d.		2.	9
7 btls.	Cordial		17.	6
	Candy 2/-		2.	-
½ Tin	Biscuits 7d. ½ lb.		5.	10
		33.	9.	4
29½ btls.	Gin	7.	2.	8
5 1/3 "	Scotch	13.	10.	-
10 4/5 "	Rum	3.	3.	9
1½ "	Brandy	1.	5.	-
1 btle.	Sloe Gin	1.	4.	-
1 1/3 "	Sherry (18/-)	2.	8.	-
5 "	Port (10/-)		5.	6
1 btle.	Beaune		10.	-
1 "	Pommard		15.	9
18 "	Vermouth	24.	15.	-
22 "	Whiskey			
EMPTIES:				
21	Syphons	1.	1.	-
1	Case		6.	-
3 cases	bottles - Barclay Perkins	1.	4.	-
2 doz.	1 case Ginger Ale		6.	-
3 cases	Pepsi Cola		6.	-
4 5/12 btls.	" "		13.	3
7 4/12 doz.	Beer Bottles		14.	8
4 cases	" "		16.	-
2 cases	Pepsi Cola		6.	-
13 btls.	" "		3.	3
2	Candy Jars		4.	-
1	Whiskey Case		5.	-
3	Tins (Biscuit)		3.	-
	Total -	£113.	3.	5

Nursing Sister's Mess

Schedule of Disbursements for month of October 1942

Schedule AP			
Oct. 25	Officers' Mess		24.13. 6
	Lines Fisheries		27. 8. 3
	P.J. Searle		3. 5. 9
	H.T. Quick		18.19. 8
	J.F. Percival		3.5 . 8
	W.H. Smith & Son		1. 8. 2
	Kennard & Court		2. 2. 8
	Mens' Canteen		114.10. -
27			197.15. 8
Schedule B			
Oct 6	H.A.A.F.I.		20. 8. -
12	Officers' Mess		60.15. -
16	Stapley & Sons		15.18. -
30	H.A.A.F.I.		2. -. -
			99. 1. -
Schedule H			
Oct 2	H.A.A.F.I.		3.17. 9
6	do		2. 3. 9
14	do		3.11. -
17	do		8.18. 6
21	do		13. 6
27	do		4. 3. 9
30	Sundry Petty Cash Purchases		24.13. 5
			43. 1. 8
Schedule M.E.			
Oct. 30	Wages		10.10. -
	Sundry Petty Cash Purchases		3. 3. 3
			13.13. 3
Schedule Rep.			13. -
Oct. 14	H.K. Lewis & Co.		
30	Sundry Petty Cash Disbursements		10. 6. -
			10.19. -

Nursing Sisters' Mess

Outstanding Cheques

		10. - ✓
Sept. 23	Morley Laundry	10. 6 ✓
30	Mens' Canteen	21. 6. 3 ✓
Oct. 25	Lines Fisheries	3. 3. 6 ✓
	Kennard & Court	8. 3. 9 ✓
	N.A.A.F.I.	3. 2. 9 ✓
	F.J. Searle	3. 5. 3 ✓
	Percival	1. 6. 9 ✓
	W.H. Smith	
		36.14. 9

BARCLAYS BANK LIMITED

Horley Surrey Branch
4 Nov 1942.

Dear Sir:

We hereby certify that at the close of business on 31st October 1942, the balance standing in our books to the credit of :- Nursing Sisters' Mess Account was £58. 0. 4 (say Fifty-eight pounds and four pence).

Yours faithfully,
For Barclays Bank
(Sgd) C. W. Boyden
Manager.

CERTIFIED A TRUE COPY . Cecil M. Macdonald.
No.14 Cdn. Gen. Hospital, RCAMC.

This is to certify that the Cash on Hand and the Inventory at Cost of the Nursing Sisters Mess, No.14 Canadian General Hospital as at 31 October 1942 was as follows:-

Cash on Hand(Including undeposited cheques	£56.13. 7
Inventory	£113. 3. 5

Esther M. Hopper

D4

DETAILED STATEMENTS OF ACCOUNTS RECEIVABLE & ACCOUNTS PAYABLE FOR THE MONTH ~~OR QUARTER ENDED~~

30 November 1942 194

(If space provided insufficient attach supplementary schedule)

(1) Accounts Receivable	£	s.	d.
CURRENT			
Bar Sales	71	3	
Messing	116	4	
Ration Assessment	54		
Barrack Damages	2	4	
Laundry	65	12	2
Officers Mess A/C's		18	9
	310	1	11
ARREARS			
H/S Campbell F.A.	6	9	
Cox	2		
Hebb	3	12	9
Hetu	3	8	3
Irving	5	2	5
Jamieson, D.	4	11	5
Johnson	4	2	
Lloyd	7	15	3
Osborne	3	13	2
Seward		9	7
Tennant	3	7	
Parker	5	15	3
Watson	7	4	7
Cambon	2	14	9
Douglas	3	12	8
Officers Mess	22	4	
	88	2	1
	398	4	-

(2) Accounts Payable	£	s.	d.
ACCOUNTS			
Telephone Reserve	3	4	
Oxley	5	5	
Morley Laundry	144	7	3
Coopers	39	16	7
H.D. Quick	11	12	
Lines	4	10	2
Percival	1	4	6
Bunkell	4	10	
Gale & Polden	50	5	6
Officers Mess	27	-	-
	289	15	
BAR			
Gale & Polden	1	18	11
Stapley	4	16	
	6	14	11
MESS MO			
H.Bowyer & Son		12	
Coopers	19	11	1
	20	3	1
MESS EXPENSE			
Harrods		11	3
Morley Laundry		17	4
	1	8	7
CANTEEN			
Morley Laundry	65	12	2
Barrack Damages	2	4	
Officers Mess A/C's		13	7
	68	14	11
	386	16	6

ABSTRACT OF RECEIPTS AND DISBURSEMENTS OF

THE No.14 Canadian General Hospital

(Formation, Unit or Detachment)

MONTH ENDED / QUARTER ENDED 30 November 1942 194

Nursing Sisters' Mess

(Name of Fund or Account.)

Date 1942	Receipts (Show source of receipts)	£	s.	d.
Oct 31	Credit Balance from Prev. A/c.	75	19	2
	A/C's Receivable	367	11	10
	Cash Sales Mess Cards	2	6	1
		445	17	1

Date 194	Disbursements (Show name of firm and purpose)	£	s.	d.
	Debit Bal. (if any) from Prev. A/c.			
	Schedule A/P	37	19	4
	B	30	14	4
	H	30	2	5
	HH	11	7	3
	HHP	11	5	7
Nov 30	Balance (per Cash Book)	324	8	2
		445	17	1

BANK RECONCILIATION STATEMENT (Attach Bank certificate)

1942		£	s.	d.
	Outstanding Cheques.			
Sep 30	Mess Canteen		10	6
Nov 30	Balance per Cash Book.	286	5	5
		286	15	11

1942		£	s.	d.
Nov 30	Balance in Bank	286	15	11
		286	15	11

(Note:— Use form R.F.B.-1A in the case of Officers' and Sergeants' Messes only in substitution for this page.) R.F.B.-1 (677 & 678)

FINANCIAL STATEMENT FOR THE (MONTH ENDED / ~~QUARTER ENDED~~) 30 November 1942 194

STATEMENT OF ASSETS AND LIABILITIES

Assets	Amount £	s.	d.	Liabilities	Amount £	s.	d.
Cash (per Cash Book)	324	8	2	(2) Accounts Payable	386	10	6
In Bank 286. 5. 5							
On hand 38. 2. 9							
Inventory Stock (at cost)	93	4	3				
(1) Accounts Receivable:	398	4					
Arrears 88. 2. 1							
Current 310. 1.11							
Regimental or Mess Property (See Arts. 186 and 188)							
Mess Furniture £75.							
				(3) Surplus	429	19	11
	815	16	5		815	16	5

TRADING AND PROFIT AND LOSS STATEMENT

Sales for month/or quarter		£
Inventory Stock at end of last month/or quarter	£	
Add: Purchases for month/or quarter	£	
	£	
Less: Inventory at end of current month/or quarter		£
Cost of goods sold		
Gross Profits		
Canteen Expenses: Wages, Canteen Steward	£	
Canteen Assistants @ each		
Other operating Expenses (in detail):—		
Total Expenses		
Net Profits		£
Receipts from other sources (give details):—	£	
Total net Profits for month/or quarter		£
Surplus from previous months/or quarters		
Total surplus available		

DISPOSITION OF PROFITS:—

Disbursements Mess Account (give details)	£	
Capital Expenditure, Mess Account (give details)		
Canteen Equipment and Fixtures (give details)		
(3) Balance available for distribution		£

(1) Show details on reverse side in space provided.

(2) Show details on reverse side in space provided.

(3) Surplus should agree with "Balance available for Distribution" next page.

The above Statement has been audited and is, in the opinion of the undersigned, correct and discloses a true state of finances as at 30 Nov 42 (Date of Balance Sheet) 194

RECEIVED 11 DEC 1942

(Col. Signature) Lt. Col. Rank (Pres.)

(J. Palmer) Lt. Col. Rank

(Burnett) Major Rank

Members

AUDIT BOARD

We hereby certify that we have ascertained that the total of the daily takings for the month/or quarter ended 194 *as shown in the Steward's Cash Book corresponds with the amount of stock sold for that month or quarter as it appears in the Canteen Stock and Sales Record (Stock Sheet) and that the above statement is correct. The assets of the Fund or Canteen are insured for £* in (State name of Company)

Accountant

President Regimental Institute

Approved.

Lt Colonel

Commanding

(For use in the case of Officers' or Sergeants' Messes)

B.F.M.-3A
W.O.F.A. 8/208

MONTH ENDED / QUARTER ENDED } November 30th 1942

TRADING AND PROFIT AND LOSS STATEMENT

Bar

Bar Sales for the month/or quarter	£ 113. 7. 5	£ 71. 3. -
Inventory stock at the end of last month or quarter	37. 9. 3	
Add: Purchases for month or quarter	£ 150.12. 8	
	93. 4. 3	
Less: Inventory at close of current month or quarter	57. 8. 5	57. 8. 5
Cost of goods sold		13.14. 7
Gross Profit for month/or quarter	£	
Bar expenses: Wages (show details on back)		
Other operating expenses (show details on back)		
Total expenses		13.14. 7
Net profit on Bar for month or quarter		

Messing

Messing charges for the month or quarter		£ 116. 4. -
Inventory stock at end of last month or quarter	£ 50. 5. 6	
Add: Purchases for month or quarter	£	
		50. 5. 6
Less: Inventory at close of current month or quarter		65.18. 6
Cost of Messing		
Gross Profit for month or quarter	£ 10.10. -	
Mess expenses: Wages (show details on back)	2. 5. 10	12.15.10
Other operating expenses (show details on back)		
Total expenses		£ 57.12. 8
Net profit, or loss, on Mess only for month or quarter		£ 58.11. 7
Net profit on Bar b/d		55.12. 8
Net profit, or loss, on Messing b/d		
Receipts from other sources (show details) Refund Assessment & Mess Dues	£ 54. -. -	
Cash Sale Christmas Cards	2. 6. 1	56. 6. 1
		£ 2. -. -
Total profits for month or quarter		£ 317. 2. 7
Surplus from previous months or quarter		428. 9. 6
Total surplus available		

DISPOSITION OF PROFITS:

Income expenditure:	Gift	£ 7. 7. -
	Furniture	1. -. -
Capital expenditure:	Gift	2.18. 7
		11. 5. 7
		£ 428.19.11

Surplus per Balance Sheet £

Number of Dining Members 85 Prevailing daily charge for messing 1/-

We hereby certify that in respect of the Bar we have ascertained that the total of the daily takings for the month/or quarter ended November 30th 1942 as shown in the Steward's Cash Book corresponds with the amount of Stock sold for that month or quarter as it appears in the Canteen Stock and Sales Record: that the inventories of Bar and Messing as above shown are correct, and that in all other respects the above Statement is correct.

Margaret J. C. Mawer — MEMBER
Helen Craig — MEMBER
M. S. Meldrum — MEMBER

Approved (Albert Ross) — Colonel, RANK
Commanding No.14 General Hospital, M.E.F.

DETAILED STATEMENTS OF EXPENSES FOR THE MONTH OR QUARTER ENDED November 30th 194 2

Bar

Wages, Canteen Steward		£	
Canteen Assistants	@ each		
Total Wages			
Other Expenses:-		£	
Total Other Expenses			
TOTAL BAR EXPENSES		£	

Messing

Wages, Chef				
Mess Assistants	1 @ £1.10. -		£	2. -. -
	7 @ £1. -. each			1.10. -
Total Wages				7. -. -
Other Expenses			£	10.10. -
	Cleaning Materials			
	Laundry		17. 3	
	Harrods, Stationery		17. 4	
			11. 3	
Total Other Expenses				
				2. 5.10
TOTAL MESSING EXPENSES		£		12.15.10

Schedule of Disbursements
Nursing Sisters' Mess November 1942

Schedule AP

Nov.	24	Barrack Damages	£ 2. 3. 6
	2	Coopers	35.15.10
			37.19. 4

Schedule B

			1.12. 2
Nov.	4	N.A.A.F.I.	~~8y-8y-8~~
	8	do	2.13. 2
	6	Officers' Mess	20. 5. -
	30	Petty Cash Purchases	6. 4. -
			30.14. 4

Schedule M

Nov.	4	N.A.A.F.I.	2. 8. 8
	18	do	1.18. 9
	23	do	7. 3
	30	Petty Cash Purchases	25. 7. 9
			30. 2. 5

Shedule M.E.

Nov.	30	Wages	10.10. -
		Petty Cash Purchases	17. 3
			11. 7. 3

Schedule Ex.

Nov.	3	Mrs. Muir	1. -. -
	23	Treasure Box	7. 7. -
	30	N/S Mess	3.18. 7
			11. 5. 7

No. 14 CANADIAN GENERAL HOSPITAL, ACAMC.CA.(O's)

Inventory M/Sisters' Mess 30 Nov 42

					11. 6
1	Jar	Candy			5.10
4	Tin	Candy	@	22. 6	30.16. 9
27	bottles	Gin		22. 6	14. 1. 3
12½	"	Whisky			1. 5.
1	"	Sloe Gin			3. 8. 9
2½	"	Rum		25.	3. 3. 9
1½		Brandy		46. 6	5.
2	"	Port		10.	18.
6	"	Sherry			5. 6
1	"	Benedictine			10.
1	"	Pommard			18.
1	"	Vetrix			3.16. 3
2		Lager			14.
10	2/12 doz.	Cokes			3.15.10
6	doz.	Chocolates Bars			14. 6
30	4/12 doz.	Tooth Paste		6	1. 5.
29		" "		1.	4.
25		Shoe Polish			6. 2
12		B & H Matches			2.
4	7/12	Swan Matches			2.
10	only	Vaseline			14. 1.
5		Lighter Fluid			9. 7. 6
17	btls.	Churchman Cigarettes			5.
175	pkgs.	Envelopes			5.12. 6
4000		Cordials			4. 2.10
22	btls.	Soap			9.
234	bars	Syphons Soda			8.
16		Candy Jars			12.
2		Beer Cases			12.
6		Bottles			18
12	doz.	Coke Cases			1. 4.
6		Coke Empties	@	5.	10.
8	doz.	Cases		5.	16.
2		Cases			12.
2		Bottles			3.
6	doz.				21. 4. 3

This is to certify that the Cash on Hand and the Inventory at Cost of the Nursing Sisters Mess, No.14 Canadian General Hospital, as at 30 November 1942 was as follows:-

Cash on Hand including Deposits held	£38. 2. 9
Inventory	93. 4. 3

M.S. Maclean N.S.

BARCLAYS BANK LIMITED
Horley Surrey Branch
4 Dec 1942.

Dear [illegible],

We hereby certify that at the close of business on 30 November 1942, the balance standing in our books to the credit of Nursing Sisters Mess account was £286.15.11 (say Two hundred and eighty six pounds fifteen shillings and eleven pence.

Yours faithfully,
For Barclays Bank Ltd.

A.P. Boyden, Mgr.

Certified True Copy.

M.S. Maclean N.S.

D5

ABSTRACT OF RECEIPTS AND DISBURSEMENTS OF

THE No.1 Canadian General Hospital
(Formation, Unit or Detachment.)

MONTH ENDED 31 December 1942 194

Nursing Sisters Mess
(Name of Fund or Account.)

DETAILED STATEMENTS OF ACCOUNTS RECEIVABLE & ACCOUNTS PAYABLE FOR THE MONTH OR QUARTER ENDED

.....194.....
(If space provided insufficient attach supplementary schedule)

(1) ACCOUNTS RECEIVABLE	AMOUNT £	s.	d.
Messing	120	2	
Bar Sales	144	10	4
Batmen ascas.	53	7	6
Laundry	62	13	7
Barrack Damages	2	4	6
Officers Mess	2	6	6
Arrears	45	14	4
	431		9
H/S Clark	3	8	8
Cox	2		
Dakin	3	6	2
Jamieson	4	4	3
Lodge	2	6	2
MacKay	2	15	7
Mowell	3	8	5
Savard		9	1
Tennant	3	10	
Officers Mess	22	4	
H/S Phillips		10	
	48	2	4
Less Credits allowed	3	6	
	45	16	4

(2) ACCOUNTS PAYABLE	AMOUNT £	s.	d.
Officers Mess		13	9
BAR			
Stapley	9	12	
Officers Mess	20	10	
	30	2	
MESSING			
Coopers	20		
H.D.Quick	17	17	3
Percival		7	2
Limes Fisheries	9	4	2
	47	9	
BAR EXPENSE			
Youngs	5	8	
MESS Expense			
Laundry	1	8	6
EXPENSE			
Laundry	62	13	7
Canteen	5		
P.M.I.	6		
Barrack Damages	2	4	6
Officers Mess	2	6	6
	99	4	7
1942 Dec 31 Balance per Cash Book	363	10	10

DATE 194 2	RECEIPTS (Show source of receipts)	AMOUNT £	s.	d.
Nov 30	Credit Balance from Prev. A/c.	324	8	2
	Accts. Receivable	352	7	8
	Bar Sales	1		6
Dec 31	Balance (per Cash Book)	677	16	4

DATE 194 2	DISBURSEMENTS (Show name of firm and purpose)	AMOUNT £	s.	d.
	Debit Bal. (if any) from Prev. A/c.			
	Schedule A/P	335	17	9
	B	72	3	6
	H	28	3	1
	BE		11	9
	ME	24	12	6
	EXP	49	10	8
		677	16	4

BANK RECONCILIATION STATEMENT (Attach Bank certificate)

Outstanding Cheques see attd. schedule	249	9	6
Balance per Cash Book	80	11	3
	330		9

1942 Dec 31 Balance in Bank 330 9

(Note:— Use form R.F.B.-1A in the case of Officers' and Sergeants' Messes only in substitution for this page.)

R.F.B.-1
40/7 & 8/261

FINANCIAL STATEMENT FOR THE (MONTH ENDED / QUARTER ENDED) 31 December 1943 194

STATEMENT OF ASSETS AND LIABILITIES

Assets	Amount £	s.	d.	Liabilities	Amount £	s.	d.
Cash (per Cash Book)	116	15	2	(2) Accounts Payable	~~163~~	~~10~~	~~10~~
In Bank 80.11.3							
On hand 36.3.11							
Inventory Stock (at cost)	66						
(1) Accounts Receivable:	431		9				
Arrears 45.16.4							
Current 385.4.5							
Regimental or Mess Property (See Arts. 186 and 188)							
Furniture £75.							
				(3) Surplus	450	5	1
	613	15	11		613	15	11

(1) Show details on reverse side in space provided.

(2) Show details on reverse side in space provided.

(3) Surplus should agree with "Balance available for Distribution" next page.

TRADING AND PROFIT AND LOSS STATEMENT

Sales for month/or quarter ..... £ .....

Inventory Stock at end of last month/or quarter ..... £ .....

Add: Purchases for month/or quarter ..... £ .....

Less: Inventory at end of current month/or quarter ..... £ .....

Cost of goods sold .....

Gross Profits ..... £ .....

Canteen Expenses: Wages, Canteen Steward ..... £ .....

Canteen Assistants ..... @ ..... each .....

Other operating Expenses (in detail):—

Total Expenses .....

Net Profits ..... £ .....

Receipts from other sources (give details):—

£ .....

Total net Profits for month/or quarter .....

Surplus from previous months/or quarters .....

Total surplus available ..... £ .....

DISPOSITION OF PROFITS:—

Disbursements Men's Account (give details) ..... £ .....

Capital Expenditure, Men's Account (give details) .....

Canteen Equipment and Fixtures (give details) .....

(3) Balance available for distribution ..... £ .....

The above Statement has been audited and is, in the opinion of the undersigned, correct and discloses a true state of finances as at 31 December 1943 (Date of Balance Sheet)

(Col. McIntosh) E.C. McIntosh: 10,002 Bank (Pres.)

(J.H. Palmer) J.H. Palmer 10,002 Bank

(Harold N. Johnston) Major Bank } Members

AUDIT BOARD

We hereby certify that we have ascertained that the total of the daily takings for the month/or quarter ended ..... 194 ..... as shown in the Steward's Cash Book corresponds with the amount of stock sold for that month or quarter as it appears in the Canteen Stock and Sales Record (Stock Sheet) and that the above statement is correct. The assets of the Fund or Canteen are insured in ..... (State name of Company) for £ .....

..... Accountant

Approved.

..... President, Regimental Institute

..... Lt.-Colonel Commanding

(For use in the case of Officers' or Sergeants' Messes)

R.F.D.-1A
#5/P.A.S./202

MONTH ENDED / QUARTER ENDED 31 December 1942 194

TRADING AND PROFIT AND LOSS STATEMENT

Bar

Bar Sales for the month/or quarter		£ 145.10.10
Inventory stock at the end of last month/or quarter	£ 93. 4. 3	
Add: Purchases for month/or quarter	102. 5. 6	
	£ 195. 9. 9	
Less: Inventory at close of current month/or quarter	66	
Cost of goods sold		129. 9.9
Gross Profit for month/or quarter		16. 1. 1
Bar expenses: Wages (show details on back)	£	
Other operating expenses (show details on back)	5.19. 9	5.19. 9
Total expenses		10. 1. 2
Net profit on Bar for month/or quarter		

Messing

Messing charges for the month/or quarter		£ 120. 2. -
Inventory stock at end of last month/or quarter	£ 75.12. 1	
Add: Purchases for month/or quarter	£	
Less: Inventory at close of current month/or quarter		75.12. 1
Cost of Messing		44.9.11
Gross Profit for month/or quarter	£ 16.15. -	
Mess expenses: Wages (show details on back)		
Other operating expenses (show details on back)	9. 7.11	26. 2.11
Total expenses		18. 7. -
Net profit, or loss, on Mess only for month/or quarter		£
Net profit on Bar b/d		£ 10. 1. 2
Net profit, or loss, on Messing b/d		18. 7. -
Receipts from other sources (if any):—		
Batmen Assessment	£ 53. 7. 6	
		53. 7. 6
Total profits for month/or quarter		£ 80.15.10
Surplus from previous months/or quarter		428.19.11
Total surplus available		510.15. 9

DISPOSITION OF PROFITS:—

Income expenditures see attached schedule	£ 60.10. 8	
Capital expenditures		60.10. 8
Surplus per Balance Sheet		£ 450. 5. 1

Number of Dining Members 85 Prevailing daily charge for messing 1/-

We hereby certify that in respect of the Bar we have ascertained that the total of the daily takings for the month/ or quarter ended 31 December 19 42 *as shown in the Steward's Cash Book corresponds with the amount of Stock sold for that month or quarter as it appears in the Canteen Stock and Sales Record: that the invent- ories of Bar and Messes under my charge were taken and that in all other respects the above Statement is correct.*

Insurance - North British & Mercantile Ins. Co. £100

Examined M. Carmichie — Hleen Graef — Margaret Strachan
PRESIDENT MEMBER MEMBER

Approved Chas. Colonel
RANK

Commanding No. 1 Canadian General Hospital

DETAILED STATEMENTS OF EXPENSES FOR THE MONTH/QUARTER ENDED 31 December 1942

Bar

Wages, Canteen Steward		£
Canteen Assistants	@ each	
Total Wages		
Other Expenses:—		£
Glasses		5.19. 9
Total Other Expenses		
TOTAL BAR EXPENSES		£ 5.19. 9

Messing

Wages, Chef		
Mess Assistants	1 @ £1.10/ 7 @ £1 Extra Help each	£ 2..-. - 8.10. -
Total Wages		~~6. 5. -~~
Other Expenses:—		£ 16.15. -
Dishes		6. 2.11
Cleaning Materials		1.11. 6
Laundry		1. 8. 6
Cheque Stamps		5
Total Other Expenses		9. 7.11
TOTAL MESSING EXPENSES		£ 26. 2.11

Schedule of Disbursements - Officers Mess - December 1942

Accounts Payable

1942		
Dec 11	Coopers	39.16. 7
	Oxley	5. 5.
	Horley Laundry	144. 7. 3
	Quick	11.12.
	Limes	4.10. 2
	Percival	1. 4. 6
	Bunkell	4.10.
	Gale & Polden	16. 2. 5
	Off. Mess	27. -
	Gale & Polden	34. 3. 1
	Barrack Dogs	2. 4.
31	Gale & Polden	1.18.11
	Stapley	4.16. -
	Bowyer	12.
	Cooper	19.11. 1
	Horley Laundry	66. 9. 6
	Harrods	11. 3
	Tel Reserve	1. 4.
		385.17. 9

BAR

Dec 1	Officers Mess	55.19. 6
7	NAAFI	2.14. -
	Officers Mess	13.10. -
		72. 3. 6

MESSING

Dec 3	NAAFI	4.17. 3
7	do	14. 5
31	Sdy. petty Cash	22.11. 5
		28. 3. 1

BAR EXPENSE

Dec 31	Glasses	11. 9

MESS EXPENSE

Dec 7	Lowley	6. 2.11
31	Cheques Stamps	5.
	Wages	16.15.
	Sundry	1.11. 6
		24.14. 5

EXPENSE

Donations	13. 4. 6
Civilian Help	5. 6.11
Xmas Bonus	11.
Petty Cash Sundries	17.15. -
A/C Rec written off	2. 4. 3
	49.10. 8

Inventory - Nursing Sisters Mess - 31 December 1942

2¾	btl. Scotch	3. 1.10
19⅔	Gin	21.18. 9
1	Sloe Gin	1. 5.
1	Rum	1. 6. 6
1 1/3	Brandy	3. -. -
2 2/3	Sherry	2. 8. -
1 2/3	Votrix	15. -
5 2/12	Ginger Ale	15. 6
4 1/12	Pepsi	11. 5
6 only	Syphons	6. -
8 tins	Vaseline	2. 8
8 btl	Ink	4
4	Shoe Polish	2
25	tooth Paste	12. 6
15	do	15
12 btl	Lighter Fluid	15.
4 m	Envelopes	5. -.
53 pkgs	Cigarettes	3.11. 6
154	Choc Bars	1. 9.
	Candy	2. 6
4 doz	Stout	1. 1. 4
284 bars	Soap	4. 2.10
11 btl.	Cordial	1. 7. 6
91	Mineral Bottles	15. 2
72	do. 3d	18.
2	Candy Jars	4.
20 Cases 40 doz Pepsi		9. -. -
		66. -. -

Outstanding Cheques 31 December 1942

1942		
Sep 30	Mens Canteen	10.6.
Dec 11	Oxley	5. -.
	Morley Laundry	144. 7. 3
15	Treasure Box	4. 4. -
31	Gale & Polden	1.13.11
	Stapley	4.16.
	H. Bowyer	12.
	Coopers	19.11.1
	Morley Laundry	66. 9. 6
	Harrods	11. 3
	Tel. Reserve	1. 4.
		249. 9. 6

Disposition of Profits - December 1942

Electrical Equipment	25. 5. -
Flowers	2. 9.
Lamp Shade	1.17. 3
Decorations	2.14.
Orchestra	4. -.
Stamps	10. -
Civilian Wages	5. 6.11
Acctg. Services 8 Mos.	11. -. -
Adj. A/C Receivable	2. 4. 3
Donations	25. 4. 3
	60.10. 8

NURSING SISTERS MESS 31 December 1942

Cash on Hand	£36. 3.11
Inventory	66. -. -

Certified Marjorie D. MacLean N/S

BARCLAYS BANK LIMITED

Horley Surrey Branch
2 Jan 1943

Dear Sir,

We hereby certify that at the close of business on 31st December, 1942, the balance standing in our books to the credit of Nursing Sisters account was £ 330. . 9 (say Three hundred and thirty pounds & nine pence)

Yours faithfully,
For BARCLAYS BANK LIMITED
A.P.Boyden.Mgr.

Schedule Of Accounts Receivable And Accounts Payable

As at 31 January 194 3.

ACCOUNTS RECEIVABLE	£	Amount £	s	d
Current—Total		325	19	1
Arrears—in detail—(K.R. (Can.) para. 1001)				
N/S Rowland		9	6	-
N/S C. Campbell		2	11	1
N/S F. Cameron		6	8	7
N/S J. Dorsonenns		2	18	10
N/S L. Findlay		6	1	11
N/S M. Hetu		3	17	11
N/S Irving		5	5	11
N/S Osborne		2	14	5
N/S Savard		6	9	7
N/S Skead		5	13	2
N/S Locken		6	5	3
Officers' Mess		22	4	-
		399	19	4
Barrack Damages			2	2	6
Messing Charges			93	1	6
Bar Sales			74	5	8
Between Assessment			43	-	-
Spec. Assessment			30	15	-
Laundry			82	14	5
Arrears			74	-	3
			399	19	4
Total—per Statement of Assets and Liabilities	£				

ACCOUNTS PAYABLE (Show name of Firm and Purpose)	£	Amount s	d
Officers Mess		23	15	3
Coopers		80	-	-
Percival			7	2
Canteen (Mens')		5	-	-
P.R.I.		6	-	-
		55	2	5
BAR:				
Appolinarus		8	18	3
Gale & Polden		5	10	-
		14	8	3
Messing Coopers		19	-	-
Lines		7	11	8
Percival		5	8	2
Quick		13	5	9
		35	5	7
Messing Exp. Laundry		4	4	-
EXP:				
Laundry		82	14	5
W. H. Smith		3	6	5
Barrack Damages		2	2	6
		88	3	4
Total—per Statement of Assets and Liabilities	£	197	3	7

PARTICULARS OF INSURANCE

	Amount £	Insurance £	Date of Expiry £
Inventory of Merchandise at end of period	50. 18. 4	200. - -	Oct. 1943
Value of Furniture & Equipment carried as an Asset			
Value of Furniture & Equipment not carried as an Asset	75. - -	200. - -	Oct. 1943
Casualty or other Insurance			

X Secretary

REMARKS AND PROPOSALS OF THE COMMITTEE

Names of the Members

Committee

1 X
2
3 X

Sub-Committee

1
2
3

Date of last meeting X 194 X

Remarks

X Secretary of Committee X

MFD 921 (Overseas) 40/P & S/1446 (9/42)

FINANCIAL STATEMENT — TRIPLICATE

The No. 14 Canadian General Hospital, RCAMC. CA(O'S) Name of Unit

The Nursing Sisters' Mess Name of Institute or Fund

D6 D/Sunday

ABSTRACT OF RECEIPTS AND DISBURSEMENTS

For the Month or Quarter ended 31 January 194 3.

Date 1942	RECEIPTS (Show Source)	£	Amount s	d
Dec31	Cash on Hand—Forward		36	3	11
	Bank Balance—Forward		80	11	3
	A/C Rec.		353	6	8
	Bar Sales (Cash)		1	3	9
	Adjustments A/C Rec.		3	13	10
	TOTAL £		474	19	5

Date 1943	DISBURSEMENTS (Show Name and purpose)	£	Amount s	d
Jan29	A/P. Barrack Damages		2	4	6
	Stapley		9	12	-
	Quick		17	17	8
	Lines		3	4	2
	Youngs		5	8	-
	Horley Ldy.		64	2	1
			105	8	7
			1	5	10
Jan7	BAR NAAFI		2	14	-
12	"		3	19	8
20	Kenwood		26	15	5
29	Officers'Mess		2	16	1
31	Ldy.Purchases		37	14	-
31	MESSING Sundry Purchases		16	-	2
		£	11	10	-
	WAGES				
31	MESS EXP. Cleaning Mats.			2	8
	EXP. Mess donations as against Special Assessment		28	8	-
			1	10	-
Jan19	N.B.&M. Ins.			9	
	Elec. Equipment		2	-	-
	Decorations				
	Adjustment A/C Rec.		36	-	10
			3	13	10
	Cash on hand—Undeposited Cheques		76	5	4
	Bank Balance—(per Cash Book)		188	18	-
	TOTAL £		474	19	5

BANK RECONCILIATION STATEMENT (Attach Bank Certificate)

Outstanding Cheques £		Balance (per Cash Book) £	s	d
See Separate Schedule			188	18	-
	228-13-11	Add Outstanding Cheques £	229	17	5
TOTAL £		Balance per Bank Certificate £	418	15	5

NAMES OF SIGNING AND COUNTERSIGNING OFFICERS

N/S W. M. Crombie	President	N/S Helen Craig	[illegible]
N/S M. S. MacLean	Treasurer	N/S M.J.G. Mowat	[illegible]

Schedule Of Accounts Receivable And Accounts Payable

As at 31 January 194 3.

ACCOUNTS RECEIVABLE	£	Amount			ACCOUNTS PAYABLE (Show name of Firm and Purpose)	£	Amount		
Current—Total	£	325	19	1	Officers Mess	£	23	15	3
Arrears—in detail—(K.R. (Can.) para. 1001)					Coopers		20	-	-
M/S Eqvland		9	6	-	Percival			7	2
M/S C. Campbell		2	11	1	Canteen (Kens')		5	-	-
M/S F. Cameron		6	8	7	P.R.I.		6	-	-
M/S J. Dorsonenne		2	18	10			55	2	5
M/S L. Findlay		6	1	11	BAR:				
M/S M. Hetu		3	17	11	Appolinarus		8	18	3
M/S Irving		5	5	11	Gale & Polden		5	10	-
M/S Osborne		2	14	5			14	8	3
M/S Savard		6	9	3					
M/S Skead		5	13	1	Messing Coopers		19	-	-
M/S Locken			6	3	Limes		7	11	8
Officers' Mess		22	4	-	Percival		5	8	2
		399	19	4	Quick		13	5	9
							32	5	7
					Messing Exp. Laundry		4	4	-
					EXP:				
					Laundry		82	14	5
					W. Z. Smith		3	6	5
					Barrack Damages		2	2	6
							88	3	4
Barrack Damages		2	2	6					
Messing Charges		93	1	6					
Bar Sales		74	5	8					
Batmen Assessment		43	-	-					
Spec. Assessment		30	15	-					
Laundry		82	14	5					
Arrears		74	-	3					
		399	19	4					
Total - per statement of Assets and Liabilities	£				Total - per statement of Assets and Liabilities	£	197	3	7

PARTICULARS OF INSURANCE

	Amount	Insurance	Date of Expiry
Inventory of Merchandise at end of period	£ 50. 18. 4	£ 200. - -	£ Oct. 1943
Value of Furniture & Equipment carried as an Asset	£	£	£
Value of Furniture & Equipment not carried as an Asset	£ 75. - -	£ 200. - -	£ Oct. 1943
Casualty or other Insurance	£	£	£

X X

Secretary

REMARKS AND PROPOSALS OF THE COMMITTEE

Names of the Members

Committee	Sub-Committee
1 X	1
2 X	2
3	3

Date of last meeting X 194 X

Remarks

X X

Secretary of Committee

MFD 021 (Overseas) 40/P.R.S/1446 (9/42).

FINANCIAL STATEMENT

TRIPLICATE

The No. 14 Canadian General Hospital, RCAMC. CA(O'S) D6
Name of Unit

The Nursing Sisters' Mess
Name of Institute or Fund

ABSTRACT OF RECEIPTS AND DISBURSEMENTS

For the Month or Quarter ended 31 January 194 3.

Date 1942	RECEIPTS (Show Source)	£	Amount			Date 1943	DISBURSEMENTS (Show Name and purpose)	Amount		
Dec31	Cash on hand—Forward	£	36	3	11	Jan29	A/F. Barrack Damages	£ 2	4	6
	Bank Balance—Forward		80	11	3		Stapley	9	12	-
	A/C Rec.		353	6	8		Quick	17	17	8
	Bar Sales (Cash)		1	3	9		Limes	3	4	2
	Adjustments A/C Rec.		3	13	10		Youngs	5	8	-
							Morley Ldy.	64	2	1
								106	8	5
						Jan7	BAR NAAFI	1	9	10
						12	"	2	14	-
						20	Kenwood	3	19	8
						29	Officers' Mess	26	15	5
						31	Sdy. Purchases	2	16	1
								37	14	-
							MESSING			
						31	Sundry Purchases	16	-	2
							WAGES	£ 11	10	-
						31	MESS EXP. Cleaning Mats.		2	8
							EXP.			
							Mess donations as against Special Assessment	28	8	-
						Jan19	N.B.&.K. Ins.	1	10	-
							Elec. Equipment		9	
							Decorations	2	-	-
							Adjustment A/C Rec.	36	-	10
								3	13	10
							Cash on hand Undeposited Cheques	76	5	4
							Bank Balance (per Cash Book)	188	18	-
	TOTAL	£	474	19	5		TOTAL	£ 474	19	5

BANK RECONCILIATION STATEMENT (Attach Bank Certificate)

Outstanding Cheques	£				Balance (per Cash Book)	£	188	18	-
See Separate Schedule									
					225/6-11				
					Add Outstanding Cheques	£	X 229	17	5
TOTAL	£				Balance per Bank Certificate	£	418	15	5

NAMES OF SIGNING AND COUNTERSIGNING OFFICERS

M/S W. M. Crombie	President	M/S Helen Craig	
M/S M. S. MacLean	Treasurer	M/S M.J.G. Mount	

STATEMENT OF ASSETS AND LIABILITIES

As at 31 January 194 3

ASSETS		Amount			LIABILITIES		Amount		
Cash (per Cash Book)		269	3	4	Accounts Payable	£	197	5	7
On hand X	£ 76.5.4.				(See page 4)				
In bank	£193.18.-								
Petty Cash or Change Fund	£								
Inventory (at cost)		50	18	4					
Wet or Bar	£								
Dry or Mess	£								
Containers	£								
Accounts Receivable		399	19	4					
Current	£ 325.19.1								
Arrears	£ 74.- 3								
(See page 4)									
Furniture & Equipment (at cost)					Reserves—				
(If carried as an Asset)					For Depreciation				
					Other - Specify				
"Memorandum"									
Furniture & Equipment									
(If not carried as an Asset)									
Furniture	£ 75.- -								
					Surplus		518	17	5
TOTAL	£	716	1	-	TOTAL	£	716	1	-

CERTIFICATE OF CASH ON HAND

I, the undersigned, hereby certify that the cash on hand, Petty Cash and Change Fund as included above, were counted by me and found correct as at the date of the above statement.

Marjorie S Maclean

Treasurer

STATEMENT APPROVED

(W.H. Crosbie) H Craig Lt. (H/S)
President of the Committee
for WH Crosbie

(Albert Rose) Albert Rose Colonel
Commanding Officer

STATEMENT EXAMINED

Officer i/c Sub-Section,
Regimental Funds Board

MAR 11 1943
Date 194

CERTIFICATE OF AUDIT

We have audited the books and accounts of the Nursing Sisters' Mess

for the Month/Quarter ended 31 January 194 3

and in our opinion the above statement is properly drawn up so as to show a true and correct view of the state of the finances as at 31 January 194 3

(Col. McIntosh) Lt.-Col. President

(J. M. Palmer) Lt.-Col. Member Unit Audit Board

Date Audited 20 February 194 3

Note.- Members of Audit Board should not be Members of the Committee nor Signing Officers for the Bank Account, (K.R. (Can.) 1939, para. 41e)

LIST OF APPENDICES ATTACHED

(a)	Bank Certificate	X
(b)	Merchandise Inventory (M.F.M. 133, Overseas)	X
(c)	Audit Board Report (if any)	
(d)	Other	

STATEMENT OF PROFIT AND LOSS

Month or Quarter ended 31 January 194 3.

	Wet Canteen or Bar		Dry Canteen or Messing		Total	
Sales (or Receipts) for period	£ 75 9 5	100%	£ 93. 1. 6	100%	£ 168. 10. 11	100%
Inventory at end of last period (cost)	£ 66. - -		£		66. - -	
Add Purchases for period	£ 52. 2. 8		£ 51. 5. 9		£ 103. 8. -	
	£ 118 2 8		£ 51 5 9		£ 169. 8. -	
Less Inventory at end of current period (cost)	£ 50 18 4		£		£ 50. 18. 4	
Cost of Sales and/or Messing	£ 67 3 11		£ 51 5 9		£ 118. 9. 8	
Gross Profits	£ 8. 5 6	10.6	£ 41. 15. 9	44	£ 50. 1. 5	30.4
Deduct Expenses						
Wages—Steward and/or Caterer	£		£			
Assistants 10 @ £1 each	£		£ 10. - -			
1 @ £1.10 each	£		£ 1. 10. -			
Total Wages	£		£ 11. 10			
Other Expenses (in detail)						
Laundry	£		£ 4. 4 -			
Cleaning Materials	£		£ - 2. 8			
	£		£			
	£		£			
	£		£			
Deduct Total Expenses	£		£ 15. 16. 8		£ 15. 16. 8	
Net Operating Profit	£ 9. 5. 6		£ 25. 19. 1		£ 34. 4. 7	
Add Revenue from Other Sources (Specify)						
Patron Assessment			£ 43. - -			
Special Assessment			£ 30. 15 -			
			£		£ 73. 15. -	
Total Profit for the period					107. 19. 7	
Add Surplus from previous statement					470. 17. -	
Total Surplus Available					558. 16. 8	
Deduct Disposition of Surplus (in detail)*						
Mess Donations from Spec. Assessment			£ 25. - -			
Insurance			£ 1. 10. -			
Misc. Equipment			£ 1. 09. -			
Decorations			£ 2. - -			
Adjustment Mess Bills			£ 3. 13. 10			
Newspapers			£ 5. 6. 5			
			£		£ 39. 7. 3	
Final Surplus (per statement of Assets & Liabilities)					£ 518. 17. 5	

Average daily charge for Messing 9d. No. of Members 85.

*Nature of purchase or expense required, not name of supplier

ACCOUNTABILITY - MERCHANDISE SOLD - AT SELLING PRICE

	Wet Canteen or Bar	Dry Canteen or Messing
Inventory at end of last period (Selling Price)	£ 74. 17. 4	£
Add Purchases during this period (Selling Price)	£ 58. 16. 4	£
	£ 133. 16. 4	£
Deduct Inventory at end of this period (Selling Price)	£ 56. - 3 X	£
Total to be accounted for	£ 74. 16. 1	£
Sales as above	£ 75. 9. 5	£
Variation	£ 13. 4	£

Helen Craig
Secretary

FOLIO

INVENTORY—STOCK ON HAND

No.14 Cdn.Gen. Hospital (Name of Unit) Nursing Sisters Mess (Institute) 31 Jan 43 (Date)

Taken by X X Priced and Extended by X X

DESCRIPTION OF ARTICLE	Unit	Quantity in Units	COST		SELLING PRICE	
			Unit Price	Amount	Unit Price	Amount
Gin	Btl	4		4.10.		6.10.
"		2		1.19.		3. 5.
Scotch		7		7. .10		11. 7. 6
Rum		1		1. 5.		1.12. 6
Sloe Gin		1		1. 5.		1.12. 6
Votrix		2		18.		18.
Brandy		1 1/3		2.16. 8		3. 9. 8
Spanish Sherry		2 4		2.		3.
H.B.Sherry		1		19.		1. 4.
Stout		2 doz		10. 8		14.
Cigarettes	Pkg.	52		4. 7.		4.16. 8
Matches	Bxs.	24		5. 6		6.
Writing Pads		24		4.16.		5. 8.
Envelopes		2500		4. 2.10		4.16.
Soap	Grs.	2		2. 1. 8		2.10.
Candy Loose				5. 2		5. 9
Cordials	Btl	14		1.15.		1.15.
Tooth Paste		7		7.		8. 9
Tooth Paste		17		8. 6		10. 7
Shoe Polish	Tins	4		2.		2. 4
Vaseline	"	6		2.		2. 6
Soda Water	Btl.	12		12.		12.
Cordial Bottles		14		3. 6		3. 6
Pepsi Cases & Bottles		16		7. 4.		7. 4.
Cases & Bottles G.Ale		2		1. 2.		1. 2.
				5.18. 4		59. -. 3X

WE HEREBY CERTIFY that we were present at stocktaking on 30-12-X (Date) day of 63-16-3 (Date) and that the above list of articles is a true and correct statement of the goods on hand in the Canteen (or Mess) as at that date.

Marjorie L.MacLean W/S (Member of Canteen or Mess Committee) Helen B. Hutchinson W/S

M.F.M. 108 (Overseas)

Outstanding Cheques - Nursing Sisters Mess

1942 Dec 31	Mens Canteen	10. 6
	Gale	1.18.11
	Stapley	4.16.
	Bowyer	12.
	Coopers	19.11. 1
	Horley Ldy.	66. 9. 6
	Harrods	11. 3
	Tel. Reserve	1. 4
1943 Jan 19	N.B.A.M.Insce.	1.10.
30	Barr. Damages	2. 4. 6
	Stapley	9.12.
	Officers Mess	24.5. 3
	Quick	17.17. 8
	Limes Fish	9. 4. 2.
	Youngs	5. 8.
	Horley Ldy.	64. 2. 1
		229.16.11

x £1-K-O

x to Bank

Reconciliation Statement

£229-17-5

BARCLAYS BANK LIMITED

HORLEY SURREY BRANCH

2 Feb 1943.

Dear Sir:

We hereby certify that at the close of business on 31st January, 1943, the balance standing in our books to the credit of

Nursing Sisters' Mess

account was £418 - 15 - 5

(say Four Hundred and Eighteen Pounds, Fifteen shillings and five pence).

Yours faithfully,

For BARCLAYS BANK LIMITED

(Sgd) C. W. Boyden.

Manager,

The Accountant,
14th Canadian Gen'l. Hospital.

14th Canadian General Hospital

IN ACCOUNT WITH

BARCLAYS BANK LIMITED,

Harley.

Men's Canteen.

1/42

K 1

DATE	PARTICULARS	DR.	CR.	BALANCE
June 23	Amts Fwd.		33 10 8	
26	Bales from Eastbourne		325 14 4	
29	Over a Sons.	11 1 8		
30	Sds		23 2 5	
	Sds		37 1 2	
	Sds		51 16 2	
July 2	~~Cash~~			
		11 1 8	471 4 9	460 3 1
	Threadneedle Bonus Co	37 7 -		
	Gunnerwood Leather Service	3 6 -		
	Thorne White	14 18 1		
		66 12 9	471 4 9	404 12 -

Certified true copy of entry in our ledger

[illegible]

Page 2

14th Canadian General Hospital

IN ACCOUNT WITH

Men's Canteen

BARCLAYS BANK LIMITED,

Hoorley.

K 1

3/42

DATE	PARTICULARS		DR.			CR.			BALANCE		
July 3	B/fwd		66	12	9	471	4	9			
	Patients Fund	Sds	19	2	6 ✓	6	7	—			
6	6 cheques			5	— ✓						
8	Apex Equip		11		✓						
13	Johnston		8		✓						
20	5 cheques			5	— ✓						
22	Officers Messe	Sds	55		10	17	19	11 ✓			
25	Anstil	Sds	10	13	7	20	2	9 ✓			
28	Patients Fund	Sds	12	2		82	18	8 ✓			
30	Howenden		4	9	1						
	Percival		69	6	3						
	Barclay Perkins		52	6	11						
31	N A A F I.		147	12	2						
	do		4	3	1						
	do		16	16	6						
			497	15	8	538	13	1	60	17	5

Certified that £ 3 1/2 p is in ledger. [illegible] Howenden

14th Canadian General Hospital
Men's Canteen

4/47

IN ACCOUNT WITH

BARCLAYS BANK LIMITED,

HORLEY,

SURREY.

K2

S/Lt Wadsley

DATE	PARTICULARS	DR.	CR.	BALANCE
Aug 1	B/fwd	477 15 8	538 13 1	
4	Unredus Bonus Co.	18 12 10		
	N & A 7.9	24 17 -		
19	N & A 7.9	1 - 5		
	N & A 7.9	19 13 6		
	N & A 7.9	17 9 8		
21	Sds			
31	N & A 7.9		37 16 6	
		17 1 11		
		576 11 -	576 9 7	1 5

Certified from bkg 1 a/c in ledger

[illegible]

114th Canadian General Hospital

IN ACCOUNT WITH Men's Canteen

BARCLAYS BANK LIMITED,

HORLEY, SURREY.

K 3

Bardsley

6 copies

5/47

DATE	PARTICULARS	DR.	CR.	BALANCE
Sept 1	B/f wd	576 11 -	576 9 7	
7	sds.		41 11 10	
9	sds		3 3 -	
15	Officer Commanding	12 6 10		
	4 D. North sds	19 2 6	30 11 3	
21	N. A. A. F.	16 2 2		
29	Bath Ration	5 17 9		
	Scotchman sds ✓	5 5 -	56 18 8	
		635 5 3	708 14 4	73 9 1

Certified true copy of a/c in our Bankbook

for BARCLAYS BANK LIMITED, SURREY

Manager

14 Canadian General Hospital
Mens Canteen K4

IN ACCOUNT WITH
BARCLAYS BANK LIMITED,
Horley.

+/ sundry Cpts

642

DATE	PARTICULARS	DR.	CR.	BALANCE
Oct 1	B/Fwd	635 5 3	708 14 4	.. .
		16 8		
20	NAAFI.	4 19	147 19 2	
24	London Rubber Co:	2 - -		
31	Petty Cash	5		
	Hutchinson	663 4 11	856 13 6	193 8 7.

Certified true copy of a/c in my ledger

1897 9
1875 9 7
375 16 11
37 17 11
3 1 5 1
1 5 1

1897 9
1875 9 7
375 16 11
37 17 11
3 1 5 1
1 5 1

1897 9
1875 9 7
375 16 11
37 17 11
3 1 5 1
1 5 1

1897 9
1875 9 7
375 16 11
37 17 11
3 1 5 1
1 5 1

14th Canadian Gen. Hospital
Mens Canteen
K 5

IN ACCOUNT WITH
BARCLAYS BANK LIMITED,
HORLEY, SURREY

DATE	PARTICULARS	DR.	CR.	BALANCE
		£ s. d.	£ s. d.	£ s. d.
Nov 1	B/F wd	663 4 11	856 13 6	
	14	4 10		
19	NAAFI	4 11 6		
21	Hyltchurch	20 17 6		
24	Patients Fund	3 17 6		
25	Clapshaw & Cleave	8 18 -		
	May	13 3 2	42 1 3	
28	2nd Gen Hospital 2nd	34 7 4		
	" " PRI 4th	9 6 6		
30	O.C. no 6 Co: RCE	17 8 5		
	" " Construct Co.	794 19 8	898 14 9	103 15 1

Balance as per Ledger
as at 14-11-40
for BARCLAYS BANK LIMITED, HORLEY, SURREY

CARRIED FORWARD

14th Can. General Hospital
Mens Canteen a/c.

IN ACCOUNT WITH
BARCLAYS BANK LIMITED,
HORLEY, SURREY

K6

DATE	PARTICULARS	DR.	CR.	BALANCE
Dec 1	B/F wd.	794 19 8	898 14 9	
4	OC no 6 Coy R&E.	9 9 11		
22	NAAFI	23 5 7		
23	Sergts. 2 ds	10 14 -	119 18 6	
24	Gunners.	11		
	Cash	9		
29	2 ds.		46 9 1	
31	Balance	213 13 2		
		1065 2 4	1065 2 4	213 13 2

Certified true copy of a/c in our ledger
BARCLAYS BANK LIMITED
HORLEY, SURREY

CARRIED FORWARD

14th Canadian General Hospital
Mens Canteen a/c

IN ACCOUNT WITH

BARCLAYS BANK LIMITED,

HORLEY, SURREY

K7

DATE	PARTICULARS	DR.	CR.	BALANCE
Jan 1	Balance		213 13 2	
19	NAAFI	15 14 -		
24		245	48 4 8	
		15 14	261 17 10	246 3 10

CARRIED FORWARD

14th Can: Gen: Hospital

IN ACCOUNT WITH

Mens Canteen a/c. K 8

7/43

BARCLAYS BANK LIMITED,

HORLEY,

SURREY.

DATE	PARTICULARS	Dr.	Cr.	BALANCE
Feb 1	B/Fwd.	15 14	261 17 10	246 3 10
23.	NAAFI.	14 13 2		
27	Cas		29 19 3	
		30 7 2	291 17 1	261 9 11

Certified true copy of a/c in ledger

CARRIED FORWARD

14th Canadian General Hospital.

Hons Canteen

IN ACCOUNT WITH

BARCLAYS BANK LIMITED, HORLEY, SURREY

K9

3/43

DATE	PARTICULARS	DR.	CR.	BALANCE
Feb 27	B/Fwd	30 4 2	291 17 1	261 9 11
Mar 16	Mallinson	13 9		
23	NAAFI	11 13 5		
		55 9 7	291 17 1	236 4 6

Certified Copy of Ledger Acc[t] of the above BARCLAYS BANK LIMITED

CARRIED FORWARD

14th Canadian General Hospital
Mens Canteen
HORLEY, SURREY.

IN ACCOUNT WITH
BARCLAYS BANK LIMITED,

4/43

DATE	PARTICULARS	DR.	CR.	BALANCE
		£ s. d.	£ s. d.	£ s. d.
Apl 1	B/ Fwd	55 9 7	291 14 1	
15	Mallinson	18 9 4		
20	NAAFI	11 13 2		
24	Paymaster	7 17 6		
27	NAAFI	5 10 0		
		93 14 5	291 14 1	~~198 2 8~~
		4 1 10		194 - 10
Apl 30	Cash	97 16 3		

CARRIED FORWARD

Certified true copy of a/c in our ledger
for Barclays Bank Limited
[illegible]

TRIPLICATE

DETAILED STATEMENTS OF ACCOUNTS RECEIVABLE & ACCOUNTS PAYABLE FOR THE [illegible] Period ended 31 August 1942.

(If space provided insufficient attach supplementary schedule)

(1) Accounts Receivable	Amount £	s.	d.
Mens Mess Comm. - Loan	80	-	-
Do. Apl a/c	18	13	8
May a/c	111	13	7
Officers Mess	119	18	6
Officers Mess No.8 Gen.	35	6	-
N/S Mess No.14 Gen.	114	10	-
	480	1	9

(2) Accounts Payable	Amount £	s.	d.

ABSTRACT OF RECEIPTS AND DISBURSEMENTS OF

Period [illegible] Ended 31 August 1942.

THE No.14 Canadian General Hospital RCAMC
(Formation, Unit or Detachment.)

Mens Canteen
(Name of Fund or Account.)

Date 1942	Receipts (Show source of receipts)	Amount £	s.	d.
Jun 30	Credit Balance from Prev. A/c.	570	17	6
	A/cs Receivable	23	10	11
	Sales Equipment etc.	18	2	6
	Barber Shop Receipts	46	17	-
	Tailor Shop Receipts	13	1	9
	NAAFI Rebate	22	18	8
		695	8	4

Date 1942	Disbursements (Show name of firm and purpose)	Amount £	s.	d.
	Schedule A/P	442	13	2
	EXP	99	11	9
	Balance (per Cash Book)	153	3	5
		695	8	4

BANK RECONCILIATION STATEMENT (Attach Bank certificate)

1942	Outstanding Cheques			
Aug 31	J.S. Hutchison	5	-	-
Aug 31	Balance per Cash Book	127	2	9
		132	2	9

1942				
Aug 31	Balance in Bank	132	2	9
		132	2	9

2

(Note:— Use form R.F.B.-1A in the case of Officers' and Sergeants' Messes only in substitution for this page.)

R.F.B.-1
(R.F.A. 8/20)

FINANCIAL STATEMENT FOR THE (Period MONTH ENDED / QUARTER ENDED) 31 August 194 2.

STATEMENT OF ASSETS AND LIABILITIES

Assets	Amount £	s.	d.	Liabilities	Amount £	s.	d.
Cash (per Cash Book)	153	3	5	(2) Accounts Payable			
In Bank Canada 106:- 1- London 21:11:7 Harley Dr 2:11:7				London Rubber Co	4	19	-
On hand 26:-:1							
Inventory Stock (at cost)	39	10	10				
(1) Accounts Receivable:	450	1	9				
Arrears £450119							
Current							
Regimental or Mess Property (See Arts. 136 and 138)							
				(3) Surplus	667	17	-
	672	16			672	16	-

(1) Show details on reverse side in space provided. (2) Show details on reverse side in space provided.

(3) Surplus should agree with "Balance available for Distribution" next page.

The above Statement has been audited and is, in the opinion of the undersigned, correct and discloses a true state of finances as at 31 Aug 194 2. (Date of Balance Sheet)

(C. L. Gintosh) Lt. Col. Bank (Pres.)

(J. F. Fraser) Lt. Col. Bank

(Burnett & Johnston) Major Bank — Members AUDIT BOARD

TRADING AND PROFIT AND LOSS STATEMENT

Canteen is non-operative

Sales for month or quarter ..... £

Inventory Stock at end of last month or quarter ..... £

Add: Purchases for month or quarter ..... £

Less: Inventory at end of current month or quarter ..... £

Cost of goods sold ..... £

Gross Profits .....

Canteen Expenses: Wages, Canteen Steward ..... £

Canteen Assistants ..... @ ..... each

Other operating Expenses (in detail):—

Total Expenses ..... £

Net Profits ..... £

Receipts from other sources (give details):—

£

Total net Profits for month or quarter .....

Surplus from previous months or quarters ..... £

Total surplus available .....

DISPOSITION OF PROFITS:—

Disbursements Men's Account (give details) ..... £

Capital Expenditure, Men's Account (give details) .....

Canteen Equipment and Fixtures (give details) .....

(3) Balance available for distribution ..... £

We hereby certify that we have ascertained that the total of the daily takings for the Month *period ended* 31 August 194 2. *as shown in the Steward's Cash Book corresponds with the amount of stock sold for that month or quarter as it appears in the Canteen Stock and Sales Record (Stock Sheet) and that the above statement is correct. The assets of the Fund or Canteen are insured in* Cornhill Insce Co. (State name of Company) *for* 250:-:-

(H. W. Smith) L/Sgt. Auditor (G. Halpenny) Major Principal Supervising Dietitian

Approved.

(A. Ross) Lt. Colonel.

Commanding No. 14 Canadian General Hospital

NO. 14 CANADIAN GENERAL HOSPITAL, RCAMC - MENS CANTEEN

Schedule of Disbursements - July & Aug 42

SCHEDULE A.P.

1942			
July 10	NAAFI	£ 19:13: 6	
10	do.	147:12: 2	
10	J.F.Percival	69: 6: 7	
10	NAAFI	24:17: -	
10	NAAFI	17: 9: 8	
10	Unedus Bonus Co	18:12:10	
10	Barclay Perkins	52: 6:11	
10	Officers Mess	55: :10	
10	NAAFI	16:16: 6	
10	NAAFI	4: 3: 1	
10	NAAFI	1: -: 5	
10	Hovenden	4: 9: 1	
10	Anctil - Barber Supplies	3: 3:11	
10	Trades pay - Barbers	8: 1: -	£442:13: 2

SCHEDULE EXP

Barber Shop.

July 10	Anctil - Clippers	8: -: -	
10	Carriage of Chairs	8: 3	
31	Trades Pay - Anctil	5: 4: -	
31	Trades Pay - Knight	4:17: 4	
Aug 31	Do. Anctil	5: 4: -	27: 1: 1
	Do. Knight	3: 7: 6	

Dance Expenses

July31	Orchestra	4: 4: -	
	NAAFI - Food	15:19: -	
Aug 31	Orchestra	5: -: -	
31	NAAFI - Food	17: 1:11	42: 4:11

Disposition of Profits.

July 31	Stamps	-:10: -	
	Adjustment Peterkin A/C	/:16: -	
	Youngs- Lawnmower	2: 5: -	
	Youngs- Sports Mdse.	2: 1: -	5:12: -

Wages etc.

July 31	Adams - May wages.	1: -: -	
Aug 31	Acctg.Service 2 mos.	6: -: -	7: -: -
July 31	Patients Fund(Patients share NAAFI Rebate)		12: 2: -
Aug 31	Adjustment Officers Mess A/C		5:11: 9
			£542: 4:11

NO.14 CANADIAN GENERAL HOSPITAL, RCAMC., C.A.(O's)

MENS CANTEEN - INVENTORY 31 AUGUST 42

600 Bars	Ivory Soap	24/- C.	£ 7: 4: -
12 Cases	Camay Soap	15/11 case.	9:11: -
60 Cards	Razor Blades	4/9 card	14: 5: -
50 lbs.	Shaving Soap	2/4 lb.	2: 7: -
2 gross	Xmas Cards	18/- gross	1:16: -
1 case	Milk (4 doz)	11/- doz	2: 4: -
			37: 7: -

62 Pads	Stationery	2d pad	:10:4	
21 Note Books		2d	: 3: 6	
1½ gross	Lighter wicks	1d	:18: -	
10 doz	Pencils	1½	: 15:-	
11 pkgs	Envelopes	2d	: 1:10	
			£2: 8: 8	2: 3:10
		10% disc.	4:10	
				£39:10'10

BANK OF MONTREAL

9 Waterloo Place,
Pall Mall,
LONDON.
1st.Sept.1942.

R.C.A.M.C.14th Canadian General Hospital
Mens' Canteen Account No.00590

We hereby certify that the balance at credit of above account at this office at the close of business on 31st August, 1942., was £24. 4. 2 (Twenty four pounds four shillings and twopence)

A. Robert, MGR.

Certified True Copy:-

BARCLAYS BANK LIMITED

Horley, Surrey,

2nd Sept. 1942.

Dear Sir,

We hereby certify that at the close of business on 31st August, 1942, the balance standing in our books to the debit of :- Mens' Canteen, No.14 Cdn.Gen. Hosp.,RCAMC., account was £ - . 1. 5 (Say One shilling and five pence).

Yours Faithfully,

A.P.Boyden, MGR.

Certified True Copy :- _____ Major

NO. 14 CANADIAN GENERAL HOSPITAL, R.C.A.M.C., C.A.(O's)

31 August 42

This is to certify that the Cash on Hand and the Inventory Stock (at Cost) of the Mens Canteen at the above date was as follows:-

Cash on Hand — £26: -: 8
(Twenty six pounds and eight pence)

Inventory Stock (at Cost) — £39:10:10
(Thirty nine pounds ten shillings and ten pence)

Chairman Mess Committee

E 2

DETAILED STATEMENTS OF ACCOUNTS RECEIVABLE & ACCOUNTS PAYABLE FOR THE MONTH (~~OR QUARTER ENDED~~)

30 Sept 42 ..... 194.....

(If space provided insufficient attach supplementary schedule)

(1) Accounts Receivable	Amount £	s.	d.
~~Ens Mess~~ Loan	80	-	-
April A/C	18	13	8
May A/C	111	13	7
Officers Mess	119	18	6
N/S Mess	114	10	-
	444	15	9

(2) Accounts Payable	Amount £	s.	d.

ABSTRACT OF RECEIPTS AND DISBURSEMENTS OF

THE ~~No.14 Canadian General Hospital~~ (Formation, Unit or Detachment)

Month Ended / ~~Quarter Ended~~ 30 Sept 42 ..... 194.....

..... ~~Mess Canteen~~ (Name of Fund or Account.)

Date 1942	Receipts (Show source of receipts)	Amount £	s.	d.
Aug 31	Credit Balance from Prev. A/c.	~~159~~	~~9~~	~~9~~
	~~A/C's Receivable~~	~~39~~	~~6~~	
	~~NAAFI Participation~~	~~67~~	~~11~~	~~1~~
	~~Tail p Shop~~	~~6~~	~~9~~	~~9~~
	~~Barber Shop~~	~~23~~	~~18~~	~~6~~
		296	8	9

Date 1942	Disbursements (Show name of firm and purpose)	Amount £	s.	d.
	Debit Bal. (if any) from Prev. A/c.			
	~~Schedule A/P~~	~~6~~	~~19~~	
	~~Schedule B&P~~	~~85~~	~~19~~	~~11~~
Sep 30	Balance (per Cash Book)	195	9	10
		296	8	9

BANK RECONCILIATION STATEMENT (Attach Bank certificate)

1942	Outstanding Cheques			
Sep 18	London Rubber	4	19	
30	Petty Cash	2		
30	No.6 CCC RCE	9	6	6
Sep 30	Balance per Cash Book	189	7	9
		205	13	3

1942				
Sep 30	Balance in Bank			
	Montreal	104. -. -		
	London	24.4. 2		
	Surlay	73.9. 1		
		205	13	3

(Note:— Use form R.F.B.-1A in the case of Officers' and Sergeants' Messes only in substitution for this page.)

R.F.B.-1
40/7 & 50/21

FINANCIAL STATEMENT FOR THE (MONTH ENDED / ~~QUARTER ENDED~~) 30 Sept 42 194

STATEMENT OF ASSETS AND LIABILITIES

Assets	Amount £	s.	d.	Liabilities	Amount £	s.	d.
Cash (per Cash Book)	395	9	10	(2) Accounts Payable			
In Bank 389. 7. 9				Patients Fund	10	10	
On hand 6. 2. 1				No.6 CGO RCE	8	12	
Inventory Stock (at cost)	39	10	10				
(1) Accounts Receivable:	444	15	9				
Arrears 444.15.9							
Current							
Regimental or Mess Property (See Arts. 186 and 188)							
				(3) Surplus	660	13	5
	879	15	5		879	15	5

(1) Show details on reverse side in space provided.

(2) Show details on reverse side in space provided.

(3) Surplus should agree with "Balance available for Distribution" next page.

The above Statement has been audited and is, in the opinion of the undersigned, correct and discloses a true state of finances as at 30 Sept 42 (Date of Balance Sheet) 194

Approved

(C.A.(C.F.T.S.) Lt.Col., Rank (Pres.)

(F.W.Holman) Lt.Col., Rank

Colonel (Herbert A.Farrington) Major Rank Members

AUDIT BOARD

TRADING AND PROFIT AND LOSS STATEMENT

Canteen is non-operative

Sales for month/or quarter ..... £.....

Inventory Stock at end of last month/or quarter ..... £.....

Add: Purchases for month/or quarter ..... £.....

Less: Inventory at end of current month/or quarter ..... £.....

Cost of goods sold .....

Gross Profits ..... £.....

Canteen Expenses: Wages, Canteen Steward ..... £.....

Canteen Assistants ..... @ ..... each .....

Other operating Expenses (in detail):—

.....

.....

.....

Total Expenses .....

Net Profits ..... £.....

Receipts from other sources (give details):—

..... £.....

.....

Total net Profits for month/or quarter .....

Surplus from previous months/or quarters .....

Total surplus available ..... £.....

DISPOSITION OF PROFITS:—

Disbursements Men's Account (give details) ..... £.....

.....

.....

Capital Expenditure, Men's Account (give details) .....

.....

.....

.....

Canteen Equipment and Fixtures (give details) .....

.....

(3) Balance available for distribution ..... £.....

We hereby certify that we have ascertained that the total of the daily takings for the month ~~or quarter~~ ended 30 Sept 42 194 as shown in the Steward's Cash Book corresponds with the amount of stock sold for that month or quarter as it appears in the Canteen Stock and Sales Record (Stock Sheet) and that the above statement is correct. The assets of the Fund or Canteen are insured in ..... (State name of Company) for £.....

(H.F.Dutch) Lt/Qt. Auditor (G.F.Halpenny) Major President Regimental Institute

Approved.

(Short Ross) Ross Lt. Colonel.

Commanding No.14 Canadian General Hospital

Mona Canteen Disbursements Sept 42

	Schedule A/P		
	London Rubber Co		4.19. 0
	Schedule EXP		
Sep 18	Dance Expenses	5. 5.	
	Do.	16. 2. 2	
		2. -. -	
30	Petty Cash	9. -.10	
	Trades pay Barbers	1. 6. 6	
	Barber Shop Equipment	5.7. 6	
	Trades Pay Tailor Sept	19.2. 6	
	Do. April - August	5.17.9	
	Ration Allce. Asst. overspent	9.6. 6	
	Patients Fund HASPI	12.6.10	
	No.6 CCS RCE		
	Adjustment No.3 CCS a/c		85.19.11

This is to certify that the Cash on Hand and Inventory of the Mess Canteen, No.14 Canadian General Hospital as of 30 Sept 42 was as follows:-

Cash on Hand	6. 2. 1
Inventory	39.10.10

Maj

Bank of Montreal
9 Waterloo Place,
London. 1 Oct 42

Mess Canteen Account
No.14 Canadian General Hospital

We hereby certify that ~~the~~ balance at credit of the above account at the close of business on 30 Sept 42 was £24.4.2 (Twenty four pounds four shillings and two pence)

(Signed) W.B.Clay
pro Manager

Certified a true copy

G.W.Halpenny
Major

BARCLAYS BANK LIMITED

HORLEY SURREY,
BRANCH

3 Oct 42

Dear Sir,

We hereby certify that at the close of business on 30 Sep 42, the balance standing in our books to the credit of:- Mens' Canteen account was £ 73. 9. 1 (Say Seventy three pounds, nine shillings and one penny)

Yours Faithfully,

For Barclays Bank Limited,

J.P. Boyden, Mgr.

Certified True Copy:-

G.E. Halpenny
Major

F 3

ABSTRACT OF RECEIPTS AND DISBURSEMENTS OF Dundalk Depot

THE No. 14 Gdn. Gen. Hospital, RCAMC.
(Formation, Unit or Detachment.)

MONTH ENDED / QUARTER ENDED 31 October 194 2

Mess Canteen
(Name of Fund or Account.)

DETAILED STATEMENTS OF ACCOUNTS RECEIVABLE & ACCOUNTS PAYABLE FOR THE MONTH / OR QUARTER ENDED

31 October 194 2
(If space provided insufficient attach supplementary schedule)

(1) ACCOUNTS RECEIVABLE	AMOUNT £	s.	d.
Mess Mess Loan	80		
April Acct.	18	13	8
May Acct.	111	13	7
Officers' Mess	119	18	6
	330	5	9

(2) ACCOUNTS PAYABLE	AMOUNT £	s.	d.

DATE 194 2	RECEIPTS (Show source of receipts)	AMOUNT £	s.	d.
Sept.30	Credit Balance from Prev. A/c.	195	9	10
Sept.30	A/C Receivable	114	10	
	NAAFI Participation	33	9	2
	Dance Ticket Sale	5	12	
	Barber Shop	26	6	
	Tailor Shop	5	12	
		380	19	-

DATE 194 2	DISBURSEMENTS (Show name of firm and purpose)	AMOUNT £	s.	d.
	Debit Bal. (if any) from Prev. A/c.			
Oct 17	Dance Orchestra	4	11	6
	NAAFI - Dance	16	-	8
31	Trades Pay - Tailor	4	11	10
	" " - Barbers	10	8	
	Balance (per Cash Book)	345	7	
		380	19	-

BANK RECONCILIATION STATEMENT (Attach Bank certificate)

194 2	Outstanding Cheques			
Oct 17	Hutchinson	4	11	6
Sep 30	No.6 C.O.D. RCE.	9	6	6
		311	14	9
	Balance per Cash Book	325	12	9

194 2 Oct 31	Balance in Bank			
	Barclay	193	8	7
	London	24	4	2
	Montreal	108	-	-
		325	12	9

(Note:— Use form R.F.B.-1A in the case of Officers' and Sergeants' Messes only in substitution for this page.) R.F.B.-1 40/P & S/41

FINANCIAL STATEMENT FOR THE { MONTH ENDED / QUARTER ENDED } 31 October 1942

STATEMENT OF ASSETS AND LIABILITIES

Assets	Amount £ s. d.	Liabilities	Amount £ s. d.
Cash (per Cash Book)	345 7	(2) Accounts Payable	
In Bank 311. 14. 9		Patients' Fund	20 12 6
On hand 33. 12. 3		No. 6 C.C.C. R.C.E.	17 8 5
		W. May	8 18
Inventory Stock (at cost)	39 10 10		
(1) Accounts Receivable:	330 5 9		
Arrears 330. 5. 9			
Current			
Regimental or Mess Property (See Arts. 136 and 138)			
		(3) Surplus	667 19 8
	715 3 7		715 3 7

TRADING AND PROFIT AND LOSS STATEMENT

Sales for month/or quarter Canteen is Non-operative. £

Inventory Stock at end of last month/or quarter £

Add: Purchases for month or quarter £

Less: Inventory at end of current month/or quarter

Cost of goods sold £

Gross Profits

Canteen Expenses: Wages, Canteen Steward £

Canteen Assistants @ each

Other operating Expenses (in detail):—

Total Expenses

Net Profits £

Receipts from other sources (give details):—

Total net Profits for month/or quarter

Surplus from previous months/or quarters £

Total surplus available

DISPOSITION OF PROFITS:—

Disbursements Men's Account (give details) £

Capital Expenditure, Men's Account (give details)

Canteen Equipment and Fixtures (give details)

(3) Balance available for distribution £

(1) Show details on reverse side in space provided.

(2) Show details on reverse side in space provided.

(3) Surplus should agree with "Balance available for Distribution" next page.

The above Statement has been audited and is, in the opinion of the undersigned, correct and discloses a true state of finances as at 31 October 1942 (Date of Balance Sheet)

(O. A. Holstead) Lieut. Colonel. Rank (Pres.)

(J. H. Palmer) Lieut. Colonel. Rank

(Dunott S. Hunter) Major. Rank

Members AUDIT BOARD

We hereby certify that we have ascertained that the total of the daily takings for the month/or quarter ended 31 Oct 1942 *as shown in the Steward's Cash Book corresponds with the amount of stock sold for that month or quarter as it appears in the Canteen Stock and Sales Record (Stock Sheet) and that the above statement is correct. The assets of the Fund or Canteen are insured for £* in (State name of Company)

W. M. Smith L/Sgt. (Auditor) 21/11/42

G.W. Whipsey Major (President, Regimental Institute)

Approved.

(Albert Ross) Lt. Colonel.

No. 14 Can. Gen. Hosp., RCASC.

Commanding

BANK OF MONTREAL

9 Waterloo Place, Pall Mall.

LONDON, 2nd November, 1942.

R.C.A.M.C. 14th General Hospital
Mens' Canteen Account No.00590

We hereby certify that the balance at credit of the above account at this Office at the close of business on 31st October, 1942 was £24. 4 2d. (Twenty four pounds, four shillings and twopence).

(Sgd) W. B. Gray
For: Manager.

Officer Commanding,
14th General Hospital,
R.C.A.M.C.
Canadian Army England.

CERTIFIED A TRUE COPY
No.14 Cdn. Gen. Hosp. RCAMC.

BARCLAYS BANK LIMITED

MORLEY SURREY BRANCH.

4 Nov. 1942.

Dear Sir:

We certify that atthe close of business on 31 October 1942, the balance standing in our books to the credit of:- Mens Canteen account was £193. 8. 7 (say One hundred & Ninety three pounds, eight shillings and seven pence.)

Yours faithfully,

For Barclays Bank Limited

(Sgd) C. W. Boyden

Manager.

The Accountant,
14th Canadian Gen. Hospital.

CERTIFIED A TRUE COPY
No. 14 Cdn. Gen. Hosp. RCAMC.

This is to certify that the Cash on Hand and the Inventory at Cost of the Mess Canteen, No.14 Canadian General Hospital as at 31 October 1942 was as follows:-

Cash on Hand	£33.12. 3
Inventory	£39.10.10

[signature] Major.

E4

DETAILED STATEMENTS OF ACCOUNTS RECEIVABLE & ACCOUNTS PAYABLE FOR THE MONTH OR QUARTER ENDED

30 November 1942 ..... 194.....

(If space provided insufficient attach supplementary schedule)

(1) Accounts Receivable	Amount £	s.	d.
Mess Mess Loan	80	-	-
April A/C	23	2	3
May A/C	111	13	7
Officers Mess	119	11	6
	333	5	9

(2) Accounts Payable	Amount £	s.	d.

ABSTRACT OF RECEIPTS AND DISBURSEMENTS OF Sundry Accts

THE No.14 Canadian General Hospital (Formation, Unit or Detachment.)

MONTH ENDED / QUARTER ENDED 30 November 1942 ..... 194.....

Mess Canteen (Name of Fund or Account.)

Date 1942	Receipts (Show source of receipts)	Amount £	s.	d.
Oct 31	Credit Balance from Prev. A/c.	345	7	
	Canteen Receipts	9	12	
	RAAF Participation	42	1	3
		393	-	3

Date 1942	Disbursements (Show name of firm and purpose)	Amount £	s.	d.
	Debit Bal. (if any) from Prev. A/C.			
	A/C			
Nov 23	Patients Fund	20	17	6
23	No.6 GOC RCE	17	8	5
17	E.May	5	18	
		47	3	11
Nov 9	Sports Equipment	3	17	6
17	Mess Dance Expenses	19	4	10
27	Patients Fund	13	3	2
	No.6 GOC RCE	9	9	11
	Mgt.Funds-Bal. due	39	7	4
Nov 30	Balance (per Cash Book)	260	13	9
		393	-	3

BANK RECONCILIATION STATEMENT (Attach Bank certificate)

1942	Outstanding Cheques			
Nov 27	No.6 GOC RCE	9	9	11
Nov 30	Balance per Cash Book	286	9	4
		295	19	3

Date 1942				
Nov 30	Balance in Bank			
	Burley 103.15. 1			
	London 22. 4. 2			
	Montreal 168. -. -			
		295	19	3

(Note:— Use form R.F.B.-1A in the case of Officers' and Sergeants' Messes only in substitution for this page.)

R.F.B.-1
20/P & S/261

FINANCIAL STATEMENT FOR THE { MONTH ENDED / QUARTER ENDED } 30 November 1942 194

STATEMENT OF ASSETS AND LIABILITIES

Assets	Amount £	s.	d.	Liabilities	Amount £	s.	d.
Cash (per Cash Book)	260	11	7	(2) Accounts Payable	NIL		
In Bank 226. 9. 4							
On hand 34. 2. 3							
Inventory Stock (at cost)	39	18	10				
(1) Accounts Receivable:	330	5	9				
Arrears 330. 5. 9							
Current							
Regimental or Mess Property (See Arts. 186 and 188)							
				(3) Surplus	630	10	2
	630	10	2		630	10	2

TRADING AND PROFIT AND LOSS STATEMENT

Sales for month/or quarter ..... £.....

Inventory Stock at end of last month/or quarter ..... £.....

Add: Purchases for month/or quarter ..... £.....

£.....

Less: Inventory at end of current month/or quarter ..... £.....

Cost of goods sold ..... £.....

Gross Profits .....

Canteen Expenses: Wages, Canteen Steward ..... £.....

Canteen Assistants ..... @ ..... each .....

Other operating Expenses (in detail):—

.....

.....

.....

Total Expenses ....

Net Profits ..... £.....

Receipts from other sources (give details):—

..... £.....

.....

....

Total net Profits for month/or quarter ..... £.....

Surplus from previous months/or quarters .....

Total surplus available .....

DISPOSITION OF PROFITS:—

Disbursements: Men's Account (give details) ..... £.....

.....

.....

.....

Capital Expenditure, Men's Account (give details) .....

.....

.....

.....

Canteen Equipment and Fixtures (give details) .....

.....

(3) Balance available for distribution ..... £.....

(1) Show details on reverse side in space provided.

(2) Show details on reverse side in space provided.

(3) Surplus should agree with "Balance available for Distribution" next page.

The above Statement has been audited and is, in the opinion of the undersigned, correct and discloses a true state of finances as at 30 Nov 42 (Date of Balance Sheet) 194

(G.) Nelson ..... Rank (Pres.)

(J.) Nelson ..... Rank

(Thomas) ..... Major Rank

Members

AUDIT BOARD

We hereby certify that we have ascertained that the total of the daily takings for the month/or quarter ended 30 November 1942 194 as shown in the Steward's Cash Book corresponds with the amount of stock sold for that month or quarter as it appears in the Canteen Stock and Sales Record (Stock Sheet) ~~and that the above statement~~ is correct. The assets of the Fund or Canteen are insured in .....

(Name of Company)

for £.....

(H.W. SMITH) L/Cpl. .....

(G.V. HALFPENNY) MAJOR

President Regimental Institute

Approved. .....

No. 1 Canadian General Hospital

Commanding .....

BARCLAYS BANK LIMITED
Horley Surrey Branch
4 Dec 1942

Dear Sir,

We hereby certify that at the close of business on 30 November, 1942, the balance standing in our books to the credit of Mens Canteen account was £103.15. 1 (say One hundred and three pounds, fifteen shillings and one penny)

Yours faithfully,
For Barclays Bank Ltd.
A.P.Boyden, Mgr.

Certified True Copy.

[signature]

BANK OF MONTREAL,
2 Waterloo Place, Pall Mall
LONDON, 1st December, 1942.

CHR.MC

R.C.A.M.C.14 General Hospital
Mess Canteen Account No. 00590

We hereby certify that the balance at credit of the above account at this office at the close of business on 30th November, 1942. was £ 24. 4. 2. (Twenty-Four Pounds, four Shillings and Two Pence).

ROBERTS
P Manager.

Certified True Copy.

This is to certify that the Cash on Hand and theInventory at Cost of the Mens Canteen, No.14 Canadian General Hospital as at 30 November 1942 was as follows:-

Cash on Hand including deposits	£34. 4. 3
Inventory	39.10.10

[signature]

F 5

DETAILED STATEMENTS OF ACCOUNTS RECEIVABLE & ACCOUNTS PAYABLE FOR THE MONTH OR QUARTER ENDED

.....194.....

(If space provided insufficient attach supplementary schedule)

ABSTRACT OF RECEIPTS AND DISBURSEMENTS OF Canteen Fund

THE No. 14 Canadian General Hospital
(Formation, Unit or Detachment.)

MONTH ENDED / QUARTER ENDED 31 December 1942 194.....

Naval Canteen
(Name of Fund or Account.)

(1) ACCOUNTS RECEIVABLE	AMOUNT £	s.	d.	(2) ACCOUNTS PAYABLE	AMOUNT £	s.	d.
Arrears							
Naval Canteen Loan	40						
April A/C	13	13	8	Nil			
May A/C	111	13	7				
	218	7	3				
Patients Fund	6	11	6				
Officers Mess	4						
S/S Mess	5						
	225	18	9				

DATE 1942	RECEIPTS (Show source of receipts)	AMOUNT £	s.	d.	DATE 1942	DISBURSEMENTS (Show name of firm and purpose)	AMOUNT £	s.	d.
Nov 30	Credit Balance from Prev. A/c.	160	13	7		Debit Bal. (if any) from Prev. A/c.			
	NAAFI Participation	33	11	1	Dec 22	Sundries	10	14	
	A/C Receivable	119	18	6		Canteen Expenses	13	13	7
	Red Cross Donation	12	18			Cash purchases for Patients as per contra	6	11	6
						NAAFI	8	12	
						Issues to Staff	4		
						Sundry Christmas Exp		19	6
					Dec 31	Balance (per Cash Book)	377	10	7
		627	1	2			627	1	2

BANK RECONCILIATION STATEMENT (Attach Bank certificate)

	Outstanding Cheques				Dec 31	Balance in Bank	345	17	4
						Bowlay 239.13.4			
						London 78. 4. 9			
						Montreal 108. -. -			
1943									
Jan 31	Balance per Cash Book.	345	17	4					
		345	17	4			345	17	4

(Note:— Use form R.F.B.-1A in the case of Officers' and Sergeants' Messes only in substitution for this page.)

R.F.B.-1
4/57 & 6/201

FINANCIAL STATEMENT FOR THE (MONTH ENDED / ~~QUARTER ENDED~~) 31 December 1942 194

STATEMENT OF ASSETS AND LIABILITIES

Assets	Amount £	s.	d.	Liabilities	Amount £	s.	d.
Cash (per Cash Book)	377	10	7	(2) Accounts Payable			
In Bank 345.17.4				Patients Fund	10	12	8
On hand 31.13.3				No.6 CCC RCE	2	6	5
Inventory Stock (at cost)	18	18	4				
Free Distribution of Stock at Christmas £21.12.6							
(1) Accounts Receivable:	225	18	9				
Arrears 210. 7. 3							
Current 15.11.6							
Regimental or Mess Property (See Arts. 186 and 188)							
				(3) Surplus	609	8	7
	622	7	8		622	7	8

TRADING AND PROFIT AND LOSS STATEMENT

Sales for month/or quarter £

Inventory Stock at end of last month/or quarter £

Add: Purchases for month/or quarter £

Less: Inventory at end of current month/or quarter

Cost of goods sold £

Gross Profits

Canteen Expenses: Wages, Canteen Steward £

Canteen Assistants ..... @ ..... each

Other operating Expenses (in detail):—

Total Expenses

Net Profits £

Receipts from other sources (give details):—

£

Total net Profits for month/or quarter

Surplus from previous months/or quarters £

Total surplus available

DISPOSITION OF PROFITS:—

Disbursements Men's Account (give details) £

Capital Expenditure, Men's Account (give details)

Canteen Equipment and Fixtures (give details)

(3) Balance available for distribution £

(1) Show details on reverse side in space provided. (2) Show details on reverse side in space provided.

(3) Surplus should agree with "Balance available for Distribution" next page.

The above Statement has been audited and is, in the opinion of the undersigned, correct and discloses a true state of finances as at 31 December 2 (Date of Balance Sheet) 194

(G.A.McIntosh) Capt. Asst. Adt. Lt.Col. Rank (Pres.)

(J.F.Palmer) Lt.Col. Rank

(Burnett P.Johnston) Major Rank

Members

AUDIT BOARD

We hereby certify that we have ascertained that the total of the daily takings for the month/or quarter ended ..... 194 ..... as shown in the Steward's Cash Book corresponds with the amount of stock sold for that month or quarter as it appears in the Canteen Stock and Sales Record (Stock Sheet) and that the above statement is correct. The assets of the Fund or Canteen are insured in ..... (State name of Company) for £

Secretary / President Regimental Institute

Approved.

Lt. Colonel.

No.14 Canadian General Hospital

Commanding

BARCLAYS BANK LIMITED

HORLEY SURREY BRANCH
2 January 1943

Dear Sir,

We hereby certify that at the close of business on 31st December, 1942, the balance standing in our books to the credit of Mens Canteen account was £213.13. 2. (say Two hundred and thirteen pounds thirteen shillings and two pence)

Yours faithfully,
For BARCLAYS BANK LIMITED
A.P.Boyden,MGR.

BANK OF MONTREAL,
9 Waterloo Place, Pall Mall,
L O N D O N S.W.1.
1st January, 1943.

CHR/JNR

R.C.A.M.C. 14th General Hospital,
Mens' Canteen Account No. 00590.

We hereby certify that the balance at credit of the above account at this office at the close of business on 31st December, 1942. was £24.4.2 (Twenty four pounds, four shillings and two-pence)

W.B.Gray, Mgr.

Schedule Of Accounts Receivable And Accounts Payable

As at 31 January 194 3.

ACCOUNTS RECEIVABLE	£	s	d
Current—Total			
Arrears—in detail—(K.R. (Can.) para. 1001)			
Mens Canteen Loan	80	-	-
May A/C	80	-	-
Patients Fund	6	11	6
Officers' Mess	4	-	-
N/Sisters' Mess	5	-	-
Amount of £31. 13. 7 written off Cash Ration Allowance May A/C			
Total - per statement of Assets and Liabilities	175	11	6

ACCOUNTS PAYABLE (Show name of Firm and Purpose)	£	s	d
Patients' Fund	16	6	-
No.6 C.C.C., R.C.E.	6	7	5
P.R.I. Acct.	1	-	-
Total - per statement of Assets and Liabilities	25	13	5

PARTICULARS OF INSURANCE

	Amount £	Insurance £	Date of Expiry £
Inventory of Merchandise at end of period			
Value of Furniture & Equipment carried as an Asset			
Value of Furniture & Equipment not carried as an Asset			
Casualty or other Insurance			

No Insurance carried as Inventory to be disposed of.

Secretary

REMARKS AND PROPOSALS OF THE COMMITTEE

Names of the Members

	Committee		Sub-Committee
1	Major G. W. Halpenny	1	Spr. A. J. Teel
2	Major W. Mason Cowper	2	Pte. J. McCormack
3		3	Pte. J. E. Mahoney

Date of last meeting 16 February 194 3

Remarks

Secretary of Committee

MFD 923 (Overseas)
40/P.A.S./1446 (9/42).

FINANCIAL STATEMENT

TRIPLICATE

The No. 14 Canadian General Hospital, RCAMC. CA(O'S) Name of Unit

The Mens' Canteen. Name of Institute or Fund

E 6

Sunday 1940

ABSTRACT OF RECEIPTS AND DISBURSEMENTS

For the Month or Quarter ended 31st January 194 3

Date 1942	RECEIPTS (Show Source)	£	s	d
	Cash on hand—Forward	31	13	3
	Bank Balance—Forward	345	17	4
	A/C Rec.	18	13	8
	NAAFI Participation	29	11	-
	Aux.Services Donation	4	-	-
	Dance Ticket Sales	6	1	5
	TOTAL £	435	16	9

Date 1943	DISBURSEMENTS (Show Name and purpose)	£	s	d
Jan16	Dance Orchestra	2	-	-
	NAAFI: Food for Dance	15	14	-
	Cash on hand	39	14	9
	Bank Balance (per Cash Book)	378	8	-
	TOTAL £	435	16	9

BANK RECONCILIATION STATEMENT (Attach Bank Certificate)

Outstanding Cheques	£	s	d
TOTAL £			

	£	s	d
Balance (per Cash Book)	378	8	0
Hanley £24-7-10			
Preston 24-4-2			
Montreal 107-0-0			
Add Outstanding Cheques £			
Balance per Bank Certificate £	378	8	0

Names of Signing and Countersigning Officers

President

Treasurer

Officer Commanding

2nd. in Command

STATEMENT OF ASSETS AND LIABILITIES

As at January 31st 194 3.

ASSETS		Amount			LIABILITIES		Amount		
Cash (per Cash Book)	£	435	16	9 X	Accounts Payable (See page 4)	£	25	13	5
On hand	£ 39.14.9								
In bank	£ 376. 8.-	416	2	9					
Petty Cash or Change Fund									
Inventory (at cost)		18	18	4					
Wet or Bar	£								
Dry or Mess	£								
Containers	£								
Accounts Receivable		175	11	6					
Current	£								
Arrears (See page 4)	£ 175.11.6								
Furniture & Equipment (at cost) (If carried as an Asset)					Reserves— For Depreciation				
					Other - Specify				
"Memorandum" Furniture & Equipment (If not carried as an Asset)	£								
					Surplus	X	604	17	2
							630	6	7
TOTAL £		630	6	7	TOTAL £				

CERTIFICATE OF CASH ON HAND

I, the undersigned, hereby certify that the cash on hand, Petty Cash and Change Fund as included above, were counted by me and found correct as at the date of the above statement.

G.W. Halpenny
Treasurer

STATEMENT APPROVED

G.W. Halpenny
G. W. Halpenny, Major.
President of the Committee

(Albert Ross) Commanding Officer Colonel

STATEMENT EXAMINED

Officer i/c Sub-Section, Regimental Funds Board

MAR 11 1943
Date 194

CERTIFICATE OF AUDIT

We have audited the books and accounts of the Regts Canteen
for the Month/Quarter ended 31 January 194 3
and in our opinion the above statement is properly drawn up so as to show a true and correct view of the state of the finances as at 31 January 194 3

(C.A. McIntosh) President Lt.-Col.

(J.E. Palmer) Member Unit Audit Board Lt.-Col.

Date Audited 20 February 194 3.

Note:- Members of Audit Board should not be Members of the Committee nor Signing Officers for the Bank Account, (K.R. (Can.) 1939, para. 41c)

LIST OF APPENDICES ATTACHED

(a)	Bank Certificate	X
(b)	Merchandise Inventory (M.F.M. 133, Overseas)	
(c)	Audit Board Report (if any)	
(d)	Other	

STATEMENT OF PROFIT AND LOSS

Month or Quarter ended 194

	Wet Canteen or Bar		Dry Canteen or Messing		Total	
Sales (or Receipts) for period	£	100%	£	100%	£	100%
Inventory at end of last period (cost)	£		£			
Add Purchases for period	£		£			
	£		£		£	
Less Inventory at end of current period (cost)	£		£		£	
Cost of Sales and/or Messing	£		£		£	
Gross Profits	£	%	£	%	£	%
Deduct Expenses						
Wages—Steward and/or Caterer	£		£			
Assistants @ each	£		£			
@ each	£		£			
Total Wages	£		£			
Other Expenses (in detail)						
	£		£			
	£		£			
Non-operative.	£		£			
	£		£			
	£		£			
Deduct Total Expenses	£		£		£	
Net Operating Profit	£		£		£	
Add Revenue from Other Sources (Specify)						
			£			
			£			
			£			
			£		£	
Total Profit for the period					£	
Add Surplus from previous statement					£	
Total Surplus Available					£	
Deduct Disposition of Surplus (in detail)*						
			£			
			£			
			£			
			£			
			£			
			£			
Final Surplus (per statement of Assets & Liabilities)					£	

Average daily charge for Messing No. of Members

*Nature of purchase or expense required, not name of supplier

ACCOUNTABILITY - MERCHANDISE SOLD - AT SELLING PRICE

	Wet Canteen or Bar	Dry Canteen or Messing
Inventory at end of last period (Selling Price)	£	£
Add Purchases during this period (Selling Price)	£	£
	£	£
Deduct Inventory at end of this period (Selling Price)	£	£
Total to be accounted for	£	£
Sales as above	£	£
Variation	£	£

X X

Secretary

BANK OF MONTREAL,
9, Waterloo Place,
Pall Mall,
LONDON, 1st February, 1943.
S.W.1.

R.C.A.M.C. 14th General Hospital, Mens'
Canteen Account No. 00590

We hereby certify that the balance at credit of the above account at this office at the close of business on 30th January, 1943, was £24.4.2. (Twenty-four Pounds, Four Shillings and Two Pence).

(Sgd) W. B. Gray
Manager.

Officer Commanding,
14th General Hospital, R.C.A.M.C.,
Canadian Army,
England.

BANK OF MONTREAL,

9, Waterloo Place,
Pall Mall,

LONDON, 1st February, 1943.
S.W.1.

R.C.A.M.C. 14th General Hospital, Mens' Canteen Account No. 00590

We hereby certify that the balance at credit of the above account at this office at the close of business on 30th January, 1943, was £24.4.2. (Twenty-four Pounds, Four Shillings and Two Pence).

(Sgd) W. B. Gray
Manager.

Officer Commanding,
14th General Hospital, R.C.A.M.C.,
Canadian Army,
England.

BARCLAYS BANK LIMITED

HORLEY, SURREY Branch

2 Feb 1943.

Dear Sir:

We hereby certify that at the close of business on 31st January, 1943, the balance standing in our books to the credit of

MENS' CANTEEN

account was £246 - 3 - 10

(say Two Hundred and Forty-six pounds three shillings and ten pence).

Yours faithfully,

FOR BARCLAYS BANK LIMITED

(Sgd) C. W. Boyden

Manager.

The Accountant,
14th Canadian Gen'l. Hospital.

1/

1914 Canadian General Hospital
P.R.J. a/c.

L 1

IN ACCOUNT WITH
BARCLAYS BANK LIMITED,
MORLEY, SURREY.

L42

DATE	PARTICULARS	DR.	CR.	BALANCE
Nov 28	Dlo.		39 7 4	
Dec 24	Smith	12		
29	Cheques.	5		
31	Balance	27 2 4		
		39 7 4	39 7 4	27 2 4

CARRIED FORWARD

Certified true copy of an entry in the books of the BARCLAYS BANK LIMITED
MANAGER

11th Canadian General Hospital.

IN ACCOUNT WITH

BARCLAYS BANK LIMITED, HORLEY, SURREY.

L-2

2143

DATE	PARTICULARS	DR.	CR.	BALANCE
			27 2 4	27 2 4
Jan 1st	Balance	1 1 10		
Apl 14	Gale & Polden	14 8		
24	Scott			
		15 9 10	27 2 4	11 12 6

Certified true copy of entry in our Ledger.
for BARCLAYS BANK LIMITED,
HORLEY, SURREY.
Manager.

CARRIED FORWARD

F1

ABSTRACT OF RECEIPTS AND DISBURSEMENTS OF

THE...o,14 Canadian General Hospital RCAMC
(Formation, Unit or Detachment.)

MONTH ENDED / QUARTER ENDED 30 November 1942 194

F.M.L. Account
(Name of Fund or Account.)

DATE 1942	RECEIPTS (Show source of receipts)	AMOUNT £	s.	d.	DATE 194	DISBURSEMENTS (Show name of firm and purpose)	AMOUNT £	s.	d.
	Credit Balance from Prev. A/c.					Debit Bal. (if any) from Prev. A/c.			
Nov 28	Balance from Mens Canteen	39	7	4	Nov 30	Trades Pay - Barbers	10	1	4
						do, and Alloes, Tailor	5	6	8
	Barber Shop	14	16			Equipment Barber Shop	5	5	
	Tailor Shop	5	9	6					
					Nov 30	Balance (per Cash Book)	48	79	10
		69	12	10			69	12	10

BANK RECONCILIATION STATEMENT (Attach Bank certificate)

	Outstanding Cheques.				Nov 30	Balance in Bank	39	7	4
1942									
Nov 30	Balance per Cash Book.	39	7	4					
		39	7	4			39	7	4

(Note:— Use form R.F.B.-1A in the case of Officers' and Sergeants' Messes only in substitution for this page.)

R.F.B.-1
40/7 & 5/20

FINANCIAL STATEMENT FOR THE { MONTH ENDED / QUARTER ENDED } 30 November 1942 194

STATEMENT OF ASSETS AND LIABILITIES

Assets	Amount £	s.	d.	Liabilities	Amount £	s.	d.
Cash (per Cash Book)	48	19	10	(2) Accounts Payable			
In Bank..... 39. 7. 4							
On hand..... 9.12. 6							
Inventory Stock (at cost).....							
(1) Accounts Receivable:							
Arrears.....							
Current.....							
Regimental or Mess Property (See Arts. 186 and 188).....							
				(3) Surplus	48	19	10
	48	19	10		48	19	10

TRADING AND PROFIT AND LOSS STATEMENT

Sales for month/or quarter ..... £.....
Inventory Stock at end of last month/or quarter ..... £.....
Add: Purchases for month/or quarter ..... £.....
£.....
Less: Inventory at end of current month/or quarter ..... £.....
Cost of goods sold ..... £.....
Gross Profits .....
Canteen Expenses: Wages, Canteen Steward ..... £.....
Canteen Assistants ..... @ ..... each .....

Other operating Expenses (in detail):—
.....
.....
.....
Total Expenses ....

Net Profits ..... £.....

Receipts from other sources (give details):—
..... £.....
.....
.....
Total net Profits for month/or quarter .....
Surplus from previous months/or quarters ..... £.....
Total surplus available .....

DISPOSITION OF PROFITS:—

Disbursements Men's Account (give details) ..... £.....
.....
.....
.....
Capital Expenditure, Men's Account (give details) .....
.....
.....
.....
Canteen Equipment and Fixtures (give details) .....
.....
(3) Balance available for distribution ..... £.....

(1) Show details on reverse side in space provided.
(2) Show details on reverse side in space provided.
(3) Surplus should agree with "Balance available for Distribution" next page.

The above Statement has been audited and is, in the opinion of the undersigned, correct and discloses a true state of finances as at 30 Nov 42 (Date of Balance Sheet) 194

(Capt. Paymaster) G.G. [illegible] Bank (Pres.)
(Lieut.-Colonel) F.C. Malcomson Bank
(Major) [illegible] Bank
AUDIT BOARD — Members

We hereby certify that we have ascertained that the total of the daily takings for the month/or quarter ended ..... 194 ..... as shown in the Steward's Cash Book corresponds with the amount of stock sold for that month or quarter as it appears in the Canteen Stock and Sales Record (Stock Sheet) and that the above statement is correct. The assets of the Fund or Canteen are insured in .....

A.M. Smith Lt Col (Duly authorised Officer) — for J. Robertson (President Regimental Institute)

Approved.

[illegible] Colonel.

Commanding No. 14 Canadian General Hospital

Barclays Bank Limited
Horley Surrey Branch

4 Dec 1942

Dear Sir,

We hereby certify that at the close of business on 30 November, 1942, the balance standing in our books to the credit of P.R.I. account was £39. 7. 4. (Say Thirty nine pounds seven shillings and four pence)

Yours faithfully,
For Barclays Bank Limited

A.P.Boyden, Mgr.

Certified True Copy.

This is to certify that the Cash on Hand of the P.R.I. Account No.14 Canadian General Hospital as at 30 November 1942 was as follows:-

Cash On Hand £9.12.6

J. Petrie Major

F 2

ABSTRACT OF RECEIPTS AND DISBURSEMENTS OF

THE No. 2 Canadian General Hospital
(Formation, Unit or Detachment.)

MONTH ENDED / QUARTER ENDED: 31 December 1945 194

Fund

(Name of Fund or Account.)

DETAILED STATEMENTS OF ACCOUNTS RECEIVABLE & ACCOUNTS PAYABLE FOR THE MONTH OR QUARTER ENDED
31 December 1945 194
(If space provided insufficient attach supplementary schedule)

(1) ACCOUNTS RECEIVABLE	AMOUNT £	s.	d.
Officers Mess	4		
N/C Mess	6		
Mess Canteen	1		
	11		

(2) ACCOUNTS PAYABLE	AMOUNT £	s.	d.

DATE 194 2	RECEIPTS (Show source of receipts)	AMOUNT £	s.	d.
Nov 30	Credit Balance from Prev. A/c.	48	19	10
	Barber Shop	27	2	
	Tailor Shop	6	3	6

(Note:— Use form R.F.B.-1A in the case of Officers' and Sergeants' Messes only in substitution for this page.)

R.F.B.-1
60/P & S/261

FINANCIAL STATEMENT FOR THE (MONTH ENDED / QUARTER ENDED) 31 December 1942 194

STATEMENT OF ASSETS AND LIABILITIES

Assets	Amount £	s.	d.	Liabilities	Amount £	s.	d.
Cash (per Cash Book)	53	14	8	(2) Accounts Payable			
In Bank 27. 2. 4				Gale & Polden	1	1	10
On hand 26.12. 4							
Inventory Stock (at cost)							
(1) Accounts Receivable:	13						
Arrears 11. 7. 7							
Current							
Regimental or Mess Property (See Arts. 186 and 188)							
				(3) Surplus	53	12	10
	67	15	8		54	14	8

TRADING AND PROFIT AND LOSS STATEMENT

Sales for month/or quarter ..... £ .....

Inventory Stock at end of last month/or quarter ..... £ .....

Add: Purchases for month/or quarter ..... £ .....

£ .....

Less: Inventory at end of current month/or quarter ..... £ .....

Cost of goods sold ..... £ .....

Gross Profits .....

Canteen Expenses: Wages, Canteen Steward ..... £ .....

Canteen Assistants ..... @ ..... each .....

Other operating Expenses (in detail):—

.....

.....

.....

Total Expenses ....

Net Profits ..... £ .....

Receipts from other sources (give details):—

..... £ .....

.....

.....

Total net Profits for month/or quarter ..... £ .....

Surplus from previous months/or quarters .....

Total surplus available .....

DISPOSITION OF PROFITS:—

Disbursements Men's Account (give details) ..... £ .....

.....

.....

.....

Capital Expenditure, Men's Account (give details) .....

.....

.....

.....

Canteen Equipment and Fixtures (give details) .....

.....

(3) Balance available for distribution ..... £ .....

(1) Show details on reverse side in space provided.

(2) Show details on reverse side in space provided.

(3) Surplus should agree with "Balance available for Distribution" next page.

The above Statement has been audited and is, in the opinion of the undersigned, correct and discloses a true state of finances as at 31 December 42 (Date of Balance Sheet) 194

(C.A. McIntosh) C.C. 111 Section Lt.-Col. Rank (Pres.)

(J.S. Holmes) Lt.-Col. Rank

(Burnett E. Hamilton) Major Rank

Members

AUDIT BOARD

We hereby certify that we have ascertained that the total of the daily takings for the month/or quarter ended ..... 194 ..... as shown in the Steward's Cash Book corresponds with the amount of stock sold for that month or quarter as it appears in the Canteen Stock and Sales Record (Stock Sheet) and that the above statement is correct. The assets of the Fund or Canteen are insured in ..... (State name of Company) for £ .....

..... Accountant

..... President Regimental Institute

Approved.

Lt. Colonel

No.14 Canadian General Hospital

Commanding .....

BARCLAYS BANK LIMITED

HORLEY SURREY BRANCH

2 January, 1943

Dear Sir,

We hereby certify that at the close of business on 31st December, 1942, the balance standing in our books to the credit of P.R.I., account was £27. 2. 4.(say Twenty seven pounds, two shillings and four pence)

Yours faithfully,

For BARCLAYS BANK LIMITED,

A.P. Boyden, Mgr.

Schedule Of Accounts Receivable And Accounts Payable

As at 31 January, 1943

ACCOUNTS RECEIVABLE	£	Amount			ACCOUNTS PAYABLE (Show name of Firm and Purpose)	£	Amount		
Current—Total	£					£			
Arrears—in detail—(K.R. (Can.) para. 1001)									
Officers' Mess		4	-	-					
N/Sisters' Mess		6	-	-					
Mens' Canteen		1	-	-					
		11	-	-					
Total - per statement of Assets and Liabilities	£				Total - per statement of Assets and Liabilities	£			

PARTICULARS OF INSURANCE

	Amount	Insurance	Date of Expiry
Inventory of Merchandise at end of period	£	£	£
Value of Furniture & Equipment carried as an Asset	£	£	£
Value of Furniture & Equipment not carried as an Asset	£	£	£
Casualty or other Insurance	£	£	£

X Secretary

REMARKS AND PROPOSALS OF THE COMMITTEE

Names of the Members

Committee

1 X
2
3 X

Sub-Committee

1 X
2
3 X

Date of last meeting X 194 X

Remarks

X Secretary of Committee X

TRIPLICATE

MFD 923 (Overseas)
40/P & B/1446 (D.42)

FINANCIAL STATEMENT

The No. 14 Canadian General Hospital, RCAMC. CA(O'S) F3
Name of Unit

The P.R.I. Account
Name of Institute or Fund

ABSTRACT OF RECEIPTS AND DISBURSEMENTS

For the Month or Quarter ended 31 January 1943.

Date	RECEIPTS (Show Source)	£	Amount			Date 1943	DISBURSEMENTS (Show Name and purpose)	£	Amount		
Dec31	Cash on hand—Forward		26	12	4	Jan31	Wages - Barbers		9	1	2
	Bank Balance—Forward		27	2	4		" - Tailor		5	10	9
	Barber Shop		22	17	-						
	Tailor Shop		6	9	6						
							Cash on hand		41	6	11
							Bank Balance (per Cash Book)		27	2	4
	TOTAL	£	83	1	2		TOTAL	£	83	1	2

BANK RECONCILIATION STATEMENT (Attach Bank Certificate)

Outstanding Cheques	£		Balance (per Cash Book)	£	27	2	4
			Add Outstanding Cheques	£			
TOTAL	£		Balance per Bank Certificate	£	27	2	4

NAMES OF SIGNING AND COUNTERSIGNING OFFICERS

(G.W. Halpenny) Major President (H.U.B. Galbraith) Major Officer Commanding
(J. G. Petrie) Major Treasurer 2nd. in Command

STATEMENT OF ASSETS AND LIABILITIES

As at 31 January, 194 3.

ASSETS		Amount			LIABILITIES		Amount		
Cash (per Cash Book)	£	68	9	3	Accounts Payable	£			
On hand	£ 41.6.11				(See page 4)				
In bank	£ 27.2.4				Gale & Polden		1	1	10
Petty Cash or Change Fund									
Inventory (at cost)									
Wet or Bar	£								
Dry or Mess	£								
Containers	£								
Accounts Receivable		11	-	-					
Current	£								
Arrears	£								
(See page 4)									
Furniture & Equipment (at cost)					Reserves:—				
(If carried as an Asset)					For Depreciation				
					Other - Specify				
"Memorandum"									
Furniture & Equipment									
(If not carried as an Asset)									
	£								
					Surplus		78	7	5
TOTAL £		79	9	3	TOTAL £		79	9	3

CERTIFICATE OF CASH ON HAND

I, the undersigned, hereby certify that the cash on hand, Petty Cash and Change Fund as included above, were counted by me and found correct as at the date of the above statement.

G.W. Halpenny
Treasurer

STATEMENT APPROVED

G.W. Halpenny
(G.W. Halpenny) Major
President of the Committee

Albert Ross. Colonel
(Albert Ross)
Commanding Officer

STATEMENT EXAMINED

J. Ross Barker Maj.
Officer i/c Sub-Section,
Regimental Funds Board

MAR 11 1943
Date 194

CERTIFICATE OF AUDIT

We have audited the books and accounts of the P.L.A. Accounts
for the Month/Quarter ended 31 January 1943
and in our opinion the above statement is properly drawn up so as to show a true and correct view of the state of the finances as at 31 January 1943

C.G. McIntosh Lt.-Col.
(C.A. McIntosh) President

J.H. Palmer Lt.-Col.
(J.H. Palmer) Member Unit Audit Board

Date Audited 20 February 1943

Note:- Members of Audit Board should not be Members of the Committee nor Signing Officers for the Bank Account, (K.R. (Can.) 1939, para. 41c)

LIST OF APPENDICES ATTACHED

(a)	Bank Certificate	X
(b)	Merchandise Inventory (M.F.M. 132, Overseas)	
(c)	Audit Board Report (if any)	
(d)	Other	

STATEMENT OF PROFIT AND LOSS

Month or Quarter ended 194

	Wet Canteen or Bar		Dry Canteen or Messing		Total	
Sales (or Receipts) for period	£	100%	£	100%	£	100%
Inventory at end of last period (cost)	£		£			
Add Purchases for period	£		£			
	£		£		£	
Less Inventory at end of current period (cost)	£		£		£	
Cost of Sales and/or Messing	£		£		£	
Gross Profits	£	%	£	%	£	%
Deduct Expenses						
Wages—Steward and/or Caterer	£		£			
Assistants (1) each	£		£			
(2) each	£		£			
Total Wages	£		£			
Other Expenses (in detail)						
	£		£			
	£		£			
	£					
	£		£			
	£		£			
	£		£			
Deduct Total Expenses	£		£		£	
Net Operating Profit	£		£		£	
Add Revenue from Other Sources (*Specify*)						
			£			
			£			
			£			
			£		£	
Total Profit for the period					£	
Add Surplus from previous statement					£	
Total Surplus Available					£	
Deduct Disposition of Surplus (in detail)*						
			£			
			£			
			£			
			£			
			£			
			£			
			£		£	
Final Surplus (per statement of Assets & Liabilities)					£	

Average daily charge for Messing ..... No. of Members .....

*Nature of purchase or expense required, not name of supplier

ACCOUNTABILITY - MERCHANDISE SOLD - AT SELLING PRICE

	Wet Canteen or Bar	Dry Canteen or Messing
Inventory at end of last period (Selling Price)	£	£
Add Purchases during this period (Selling Price)	£	£
	£	£
Deduct Inventory at end of this period (Selling Price)	£	£
Total to be accounted for	£	£
Sales as above	£	£
Variation	£	£

X X
Secretary

BARCLAYS BANK LIMITED

HORLEY, SURREY BRANCH

18 February, 1943.

Dear Sir:

We hereby certify that at the close of business on 31st January 1943, the balance standing in our books to the credit of the

P.R.I.

account was £27 - 2 - 4

(say Twenty-seven pounds, two shillings and four pence).

Yours faithfully,

For: BARCLAYS BANK LIMITED

(Sgd) C. W. Boyden

Manager.

The Accountant,
14 Canadian Gen'l. Hospital.

4/Buildings

No 14 Canadian General Hospital
Barrack Damage Hosp. &c.

IN ACCOUNT WITH
BARCLAYS BANK LIMITED,
HORLEY, SURREY.

142

DATE	PARTICULARS	DR.	CR.	BALANCE
			9 3 6	
			9 4 6	
Nov 26		18 8		18 8
Dec 23			18 8	
31	Balance	18 8		

Certified true copy of a/c in our ledger
for BARCLAYS BANK LIMITED
[illegible]

CARRIED FORWARD

No 14 Canadian General Hospital
Barrack Damage
Hospital a/c Horley Surrey

IN ACCOUNT WITH
BARCLAYS BANK LIMITED, HORLEY, SURREY.

143

DATE	PARTICULARS	DR.	CR.	BALANCE
	Balance.		18 8	
			6 1	
Jan 1			5 14 6	30 3 6
8		£	30 3 6	
30				

Certified true copy of an entry in the Ledger
[illegible]

CARRIED FORWARD

BARCLAYS BANK LIMITED

HORLEY, SURREY BRANCH

2 MAR 1943 19

DEAR SIR,

We hereby certify that at the close of business on 28 February 1943, the balance standing in our books to the credit of Barrack Damage account was £ 30 - 3 - 6. (say Thirty pounds three shillings & sixpence)

No entries during month

Yours faithfully,

For BARCLAYS BANK, LIMITED,

E. W. Hayden

Manager.

The Accountant
14th Canadian Gen. Hospital

No. 133

BARCLAYS BANK LIMITED

HORLEY, SURREY BRANCH.

- 2 APR 1943 19

DEAR SIR,

We hereby certify that at the close of business on 31st March 1943, the balance standing in our books to the credit of:—

Barrack Damage account was £ 30 - 3 - 6

(sd) Thirty pounds, three shillings, and sixpence)

No entries during month

Yours faithfully,

For BARCLAYS BANK LIMITED

A. Hayden

Manager.

The Accountant

with Com' 'General Hosp'

H. O. 123

K/Gudaly 8/50 G1

ABSTRACT OF RECEIPTS AND DISBURSEMENTS OF

THE ... No. 16 Canadian General Hospital ...
(Formation, Unit or Detachment.)

MONTH ENDED / QUARTER ENDED ... 31 ... DECEMBER 1942 ... 194 ...

... Regtl. Funds Account ...
(Name of Fund or Account.)

DATE 194 2	RECEIPTS (Show source of receipts)	AMOUNT £	s.	d.	DATE 194 2	DISBURSEMENTS (Show name of firm and purpose)	AMOUNT £	s.	d.
Dec 1	Credit Balance from Prev. A/c.	9	3	6		Debit Bal. (if any) from Prev. A/c.			
	A/C Receivable	8	28						
	A/C Collection		6	6					
					Dec 31	Balance (per Cash Book)	18	8	
		18	8				18	8	

BANK RECONCILIATION STATEMENT (Attach Bank certificate)

	Outstanding Cheques.				Dec 31	Balance in Bank.	18	8	
Dec 31	Balance per Cash Book.	18	8						
		18	8				18	8	

(Note:— Use form R.F.B.-1A in the case of Officers' and Sergeants' Messes only in substitution for this page.)

R.F.B.-1
40/P & S(R)

FINANCIAL STATEMENT FOR THE { MONTH ENDED / QUARTER ENDED } ..... 194.....

STATEMENT OF ASSETS AND LIABILITIES

Assets	Amount £	s.	d.	Liabilities	Amount £	s.	d.
Cash (per Cash Book)	18	8		(2) Accounts Payable			
In Bank.....							
On hand.....							
Inventory Stock (at cost).....							
(1) Accounts Receivable:	9	6					
Arrears M/S 2. 6. 6 O/R 6. 3. -							
Current.....							
Regimental or Mess Property (See Arts. 136 and 138).....							
				(3) Surplus	27	14	
	27	14			27	14	

TRADING AND PROFIT AND LOSS STATEMENT

Sales for month/or quarter ..... £.....
Inventory Stock at end of last month/or quarter ..... £.....
Add: Purchases for month/or quarter ..... £.....
£.....
Less: Inventory at end of current month/or quarter ..... £.....
Cost of goods sold ..... £.....
Gross Profits .....
Canteen Expenses: Wages, Canteen Steward ..... £.....
Canteen Assistants ..... @ ..... each .....
Other operating Expenses (in detail):—
.....
.....
.....
Total Expenses .....
Net Profits ..... £.....
Receipts from other sources (give details):—
..... £.....
.....
.....
Total net Profits for month/or quarter .....
Surplus from previous months/or quarters ..... £.....
Total surplus available .....

DISPOSITION OF PROFITS:—

Disbursements Men's Account (give details) ..... £.....
.....
.....
.....
Capital Expenditure, Men's Account (give details) .....
.....
.....
.....
Canteen Equipment and Fixtures (give details).....
.....
(3) Balance available for distribution ..... £.....

(1) Show details on reverse side in space provided. (2) Show details on reverse side in space provided.

(3) Surplus should agree with "Balance available for Distribution" next page.

The above Statement has been audited and is, in the opinion of the undersigned, correct and discloses a true state of finances as at 31 DECEMBER 1942 (Date of Balance Sheet) 194.....

(C.A. Nelstrop) C.G. 11th Fd Regt R.C.A. Lt.Col Rank (Pres.)
(J.A. Palmer) [signature] Lt.Col. Rank
(Burnett [illegible]) [illegible] Major Rank } Members
AUDIT BOARD

We hereby certify that we have ascertained that the total of the daily takings for the month/or quarter ended ..... 194..... as shown in the Steward's Cash Book corresponds with the amount of stock sold for that month or quarter as it appears in the Canteen Stock and Sales Record (Stock Sheet) and that the above statement is correct. The assets of the Fund or Canteen are insured in ..... for £.....
(State name of Company)

Secretary / President Regimental Institute

Approved. [signature] Lt Colonel
No.14 Canadian General Hospital
Commanding .....

BARCLAYS BANK LIMITED

HORLEY SURREY BRANCH,

2 January, 1943.

Dear Sir,

We hereby certify that at the close of business on 31st December, 1942, the balance standing in our books to the credit of Barrack Damage account was £18 . 8. (say Eighteen pounds and eight shillings).

Yours faithfully,

For BARCLAYS BANK LIMITED,

A.P.Boyden, Mgr.

No. 14 General Hospital, RCAMC.

Barrack Damages Account

Period ended November 30th 1942.

Statement of Receipts & Expenditures

Receipts		Expenditures	
Nov.26/42 Barrack Damage Collection	£9: 3: 6	Nov.42 Nil	
		Balance	£9: 3: 6
	9: 3: 6		9: 3: 6

Bank Reconciliation Statement

Nov.30/42 Balance per Cash Book	9: 3: 6	Balance per Bank Certificate	9: 3: 6
	9: 3: 6		9: 3: 6

Statement of Assets & Liabilities

Balance per Cash Book			9. 3. 6		
Accounts Receivable					
Officers		17. 6			
Nursing Sisters		2. 4. -			
Paymaster No.14 C.G.H.		5.16. 6	8.18. -	Surplus	18. 1. 6
			18. 1. 6		18. 1. 6

The above Statement has been audited and is, in the opinion of the undersigned, correct and discloses a true state of finances as at 30 November 1942.

(C.A.McIntosh) Lt. Col. President

(J.H.Palmer) Lt. Col. Member

(Burnett S.Johnston) Major Member

Approved,

(Albert Ross) Colonel.
O.C. No.14 Canadian General Hospital. RCAMC

BARCLAYS BANK LIMITED
Horley Surrey Branch
4 Dec 1942

Dear Sir,

We hereby certify taht at the close of business on 30 November 1942, the balance standing in our books to the credit of Barrack Damage account was £9. 3. 6 (say nine pounds three shillings and sixpence.)

Yours faithfully,
For Barclays Bank Limited
A.P.Boyden, Mgr.

Certified True Copy .

K. Macnaughton
Major

MFD 023 (Overseas)
40/P & S/1446 (D/42)

TRIPLICATE

FINANCIAL STATEMENT

The No. 14 Canadian General Hospital, RCAMC, CA(O'S) G 2.
Name of Unit

The Barrack Damage Account,
Name of Institute or Fund

ABSTRACT OF RECEIPTS AND DISBURSEMENTS

For the Month or Quarter ended 31 January, 1943.

Date 1942	RECEIPTS (Show Source)	£	Amount s	d	Date 1943	DISBURSEMENTS (Show Name and purpose)	£	Amount s	d
Dec 31	Cash on hand—Forward								
	Bank Balance—Forward		18	8 -					
	A/C Rec.		9	6 -					
	O/R Collection		5	14 6					
					Jan 31	Cash on hand Undeposited Cheques	3	5	-
						Bank Balance (per Cash Book)	30	3	6
	TOTAL £		33	8 6		TOTAL £		33	8 6

BANK RECONCILIATION STATEMENT (Attach Bank Certificate)

Outstanding Cheques £				Balance (per Cash Book) 30-3-6	£	s	d
					33	8	6
				Add Outstanding Cheques £			
TOTAL £				Balance per Bank Certificate £	33	8	6
					30-3-6		

NAMES OF SIGNING AND COUNTERSIGNING OFFICERS

J. H. Palmer, Lt.Col. President — Albert Ross Colonel Officer Commanding

Treasurer — 2nd in Command

STATEMENT OF ASSETS AND LIABILITIES

As at 31st January 194 3.

ASSETS		Amount			LIABILITIES		Amount		
Cash (per Cash Book)	£	33	6	6	Accounts Payable	£			
On hand	£ 3. 5. -				(See page 4)				
In bank	£30. 1. 6								
Petty Cash or Change Fund									
Inventory (at cost)									
Wet or Bar	£								
Dry or Mess	£								
Containers	£								
Accounts Receivable		3	-	6					
Current N/S	£ 2. 2. 6								
Mess Officers (See page 4)	18. -								
Furniture & Equipment (at cost)					Reserves:—				
(If carried as an Asset)					For Depreciation				
					Other - Specify				
"Memorandum"									
Furniture & Equipment									
(If not carried as an Asset)									
	£								
					Surplus		36	9	-
TOTAL £		36	9	-	TOTAL £		36	9	-

CERTIFICATE OF CASH ON HAND

I, the undersigned, hereby certify that the cash on hand, Petty Cash and Change Fund as included above, were counted by me and found correct as at the date of the above statement.

X X

Treasurer

STATEMENT APPROVED

President of the Committee

(Albert Ross) Colonel Commanding Officer

STATEMENT EXAMINED

Officer i/c Sub-Section, Regimental Funds Board

Date MAR 11 1943 194

CERTIFICATE OF AUDIT

We have audited the books and accounts of the Barrack Damage Account for the Month/Quarter ended 31 January 194 3 and in our opinion the above statement is properly drawn up so as to show a true and correct view of the state of the finances as at 31 January 194 3

(C.A. McIntosh) Lt.-Col. President

(C.A. Cepping) Lt.-Col. Member Unit Audit Board

Date Audited 20 February 194 3

Note.- Members of Audit Board should not be Members of the Committee nor Signing Officers for the Bank Account, (K.R. (Can.) 1939, para. 41c)

LIST OF APPENDICES ATTACHED

		X
(a)	Bank Certificate	
(b)	Merchandise Inventory (M.F.M. 133, Overseas)	
(c)	Audit Board Report (if any)	
(d)	Other	

STATEMENT OF PROFIT AND LOSS

Month or Quarter ended 194

	Wet Canteen or Bar		Dry Canteen or Messing		Total	
Sales (or Receipts) for period	£	100%	£	100%	£	100%
Inventory at end of last period (cost)	£		£			
Add Purchases for period	£		£			
	£		£		£	
Less Inventory at end of current period (cost)	£		£		£	
Cost of Sales and/or Messing	£		£		£	
Gross Profits	£	%	£	%	£	%
Deduct Expenses						
Wages—Steward and/or Caterer	£		£			
Assistants @ each	£		£			
@ each	£		£			
Total Wages	£		£			
Other Expenses (in detail)						
	£		£			
	£		£			
	£					
	£		£			
	£		£			
	£		£			
Deduct Total Expenses	£		£		£	
Net Operating Profit	£		£		£	
Add Revenue from Other Sources (Specify)						
			£			
			£			
			£			
Total Profit for the period					£	
Add Surplus from previous statement					£	
Total Surplus Available					£	
Deduct Disposition of Surplus (in detail)*						
			£			
			£			
			£			
			£			
			£			
			£			
Final Surplus (per statement of Assets & Liabilities)					£	

Average daily charge for Messing No. of Members

*Nature of purchase or expense required, not name of supplier

ACCOUNTABILITY - MERCHANDISE SOLD - AT SELLING PRICE

	Wet Canteen or Bar	Dry Canteen or Messing
Inventory at end of last period (Selling Price)	£	£
Add Purchases during this period (Selling Price)	£	£
	£	£
Deduct Inventory at end of this period (Selling Price)	£	£
Total to be accounted for	£	£
Sales as above	£	£
Variation	£	£

Secretary

BARCLAYS BANK LIMITED

HORLEY, SURREY BRANCH

2 Feb 1943.

Dear Sir:

We hereby certify that at the close of business on 31st January, 1943, the balance standing in our books to the credit of

BARRACK DAMAGE A/C

account was £30 - 3 - 6

(say Thirty pounds, three shillings and sixpence).

Yours faithfully,

For BARCLAYS BANK LIMITED

(Sgd) C. W. Boyden

Manager.

The Accountant,
14th Canadian Gen'l. Hospital.

NURSING SISTERS

SERGEANTS' MESS

DAILY CASH TAKINGS BOOK

THE WELLINGTON SERIES No. 4

Corps

PRINTED AND PUBLISHED IN GREAT BRITAIN BY
GALE & POLDEN LTD., WELLINGTON WORKS, ALDERSHOT
AND AT LONDON AND PORTSMOUTH
[COPYRIGHT]

DAILY CASH ACCOUNT for the Month of August **1942**

Date	Amount in Words	Amount in Figures £	s.	d.	Signature of Caterer	Signature of Treasurer
1			12	6½		
2			16	4		
3			10	11		
4			6	4½		
5			19	7½		
6			6	11		
7			12	6		
8			3	10		
9		1	5	9		
10			18	4		
11			4	4		
12			18	3		
13			3	5		
14			3	8		
15			15	3		
16		2	–	8		
17		1	4	10		
18		–	–	8		
19			17	2		
20		2	2	5		
21		1	5	–		
22			9	5½		
23			1	1		
24			15	1		
25			5	10½		
26			6	10		
27			15	7		
28		1	11	3		
29			17	4½		
30						
31						
	£					

DAILY CASH ACCOUNT for the Month of September 1942

Gale & Polden, Ltd., Aldershot. [Copyright] P-8652 No. 4

Date	Amount in Words	Amount in Figures £	s.	d.	Signature of Caterer	Signature of Treasurer
1			15	-½		
2			9	2½		
3		2	8	1		
4			8			
Carried		9		9		
5		38	10	10		
6		1	5	2		
7			13	9½		
8		1	14	-		
9			5	4		
10		2	3	-		
11		2	7	7		
12		1	18	1		
13		1	10	7		
14			13	6½		
15			18	9		
16			14	2½		
17			6	10		
18		2	4	11½		
19			11	2		
20			19	5½		
21			15	-		
22			11	6½		
23		1	11	-½		
24		2	4	9		
25		3	1	9½		
26		2	5	3½		
27			15	7½		
28		1	10	9		
29			13	1		
30		1	5	1		
		£41	6	4		
		9	0	9		
	£	75	11	7		
		69	7	1		
		2	4	6		

DAILY CASH ACCOUNT for the Month of October 1942

Date	Amount in Words	Amount in Figures £	s.	d.	Signature of Caterer	Signature of Treasurer
1			8	8		
2			12	10½		
3			12	1½		
4		1	2	1½		
5			17	3		
6		4	4	8½		
7		1	6	4½		
8		1	9	9½		
9		21	-	3½		
10		4	6	6		
11		2	3	-		
12		5	16	7		
13		2	11	11½		
14			16	3½		
15			6	1		
16		3	18	1½		
17		Cash 8	3	-		
18		2	10	2		
19		5	3	11		
20		2	15	10		
21		8	8	3		
22		1	19	4		
23			18	5½		
24		4	16	1½		
25			15	9½		
26		2	6	1		
27		7	-	½		
28		1	14	9		
29			13	1		
30			3	6½		
31		5	6	10½		
		145	13	2		
	£	8	7	2		
		137	6	0		
		15	12	3		
		153	4	5		

DAILY CASH ACCOUNT for the Month of November 1942

Gale & Polden, Ltd., Aldershot. [Copyright] P-5052 No. 4

Date	Amount in Words	Amount in Figures £	s.	d.	Signature of Caterer	Signature of Treasurer
1		1	15	2½		
2		5	7	7½		
3			17	1		
4		3	4	8½		
5			13	10		
6			19	7½		
7		1	7	4½		
8		2	10	5½		
9		2	—	6		
10		5	5	-½		
11			8	11		
12		2	3	4½		
13		2	10	2		
14		9	5	-½		
15		1	4	7		
16		3	8	10½		
17		3	13	4½		
18		2	4	7		
19		1	17	9½		
20		7	15	2		
21			17	2		
22		1	3	10½		
23		1	14	4		
24		1	2	7		
25		1	3	—		
26		—	—	5		
27		[illegible]				
28			7	7		
29			14	11½		
30		3	16	10		
31						
		£				

Nursing Sisters' Mess

DAILY CASH ACCOUNT for the Month of December **19** 42

Date	Amount in Words	Amount in Figures £	s.	d.	Signature of Caterer	Signature of Treasurer
1		–	18	–		
2		5	16	1½		
3		14	8	3½		
4		4	11	8		
5		2	–	3½		
6		1	19	1½		
7		1	4	6		
8		1	1	7½		
9			10	7		
10		1	2	2		
11			14	9		
12		2	8	6½		
13			19	3		
14			8	–		
15		1	18	6		
16			6	5		
17		1	9	6		
18		2	6	11½		
19			16	4½		
20		1	16	9½		
21		2	8	11		
22		1	2	3		
23		1	14	3		
24		45	8	6	45/3/6.	
25		1	10	-½		
26			14	2		
27		1	8	1		
28		1	5	10		
29		59	10	5		
30		2	5	8½		
31		19	2	11½		
			13	13		
	£	161	14	7		

Nursing Sisters' Mess

DAILY CASH ACCOUNT for the Month of January **19** 43

Gale & Polden, Ltd., Aldershot. [Copyright] P-5652 No. 4

Date	Amount in Words	Amount in Figures £	s.	d.	Signature of Caterer	Signature of Treasurer
1			5	11½		
2			15	11½		
3				8		
4			6	1		
5			4	1		
6			5	10		
7			8	6		
8			3	4		
9			9	6		
10			9	6		
11			12	8		
12			2	7		
13			18	3		
14		1	7	4		
15		3	4	1		
16		1	4	11½		
17			13	6		
18		3	2	1		
19		1	19	2		
20			17	4		
21		2	11	2		
22		9	4	9½		
23		6	11	3		
24			12	7½		
25		2	-	1		
26			10	-½		
27			5	6½		
28			29	5		
29			6	5		
30		28	17	3		
31		5	19	10½		
		£	99	10		

Nursing Sisters Mess — No 14 Cdn. Gen. Hospital

DAILY CASH ACCOUNT for the Month of February **19 43**

Date	Amount in Words	Amount in Figures £	s.	d.	Signature of Caterer	Signature of Treasurer
1						
2		2	15	4½		
3		7	3	11		
4		2	16	8		
5		2	14	10½		
6			4	-½		
7		1	17	3		
8		1	18	-		
9			10	9		
10		2	13	6		
11		3	13	10½		
12		1	12	2½		
13		3	2	8½		
14		3	-	8½		
15			14	2		
16		4	-	5		
17			14	1		
18			17	3		
19		1	11	3½		
20			9	4½		
21		1	-	11		
22		1	2	11		
23			8	2½		
24		-	12	-		
25			8	11		
26		1	16	9½		
27		1	4	1½		
28			10	2		
29			14	6		
30		3/12 -	17	-		
31						
		£				

CANADIAN LEGION WAR SERVICES

IN THE FIELD.

25 August. 1943.

Concert Party. E.N.S.A.

at the Recreation Hall.

Commencing. 1930 hrs.

Everyone welcome.

Nursing Sisters Mess — No 14 Cdn Gen Hospital

DAILY CASH ACCOUNT for the Month of March 1943

Gale & Polden, Ltd., Aldershot. [Copyright] P-8052 No. 4

Date	Amount in Words	Amount in Figures £	s.	d.	Signature of Caterer	Signature of Treasurer
1		1	6	3		
2		1	9	11½		
3		—	9	3½		
4		1	6	11		
5		—	17	1½		
6		1	2	—		
7		—	13	1		
8		2	3	1		
9		1	15	6		
10		—	14	—		
11		1	12	7½		
12		—	14	10½		
13		1	16	10½		
14	— —	2	1	7		
15			10	11		
16		1	1	8		
17		3	16	1		
18		1	7	9		
19		5	—	11½		
20		1	1	7½		
21			14	7½		
22		1	—	3		
23		1	14	½		
24		2	—	4½		
25		25	6	—		
26		12	—	3		
27			7	5		
28			18	1		
29			15	11½		
30		1	15	10		
31		1	6	10½		
	£					

CANADIAN LEGION WAR SERVICES
IN THE FIELD.

25 August. 1943.

Concert Party. E.C.N.S.S.T.

at the Recreation Hall.

Commencing 1930 hrs.

Everyone welcome.

Nursing Sisters' Mess — No 14 Cdn Gen Hospital

DAILY CASH ACCOUNT for the Month of March 1943

Gale & Polden, Ltd., Aldershot. [Copyright] P-8632 No. 4

Date	Amount in Words	Amount in Figures £	s.	d.	Signature of Caterer	Signature of Treasurer
1		1	6	3		
2		1	9	11½		
3		—	9	3½		
4		1	6	11		
5		—	17	1½		
6		1	2	—		
7		—	13	1		
8		2	3	1		
9		1	15	6		
10		—	14	—		
11		1	12	7½		
12		—	14	10½		
13		1	16	10½		
14		2	1	7		
15			10	11		
16		1	1	8		
17		3	15	1		
18		1	7	9		
19		5	—	11½		
20		1	1	7½		
21			14	7½		
22		1	—	3		
23		1	14	½		
24		2	—	4½		
25		25	6	—		
26		12	—	3		
27			7	5		
28			18	1		
29			15	11½		
30		1	15	10		
31		1	6	10½		
		£				

Nursing Sisters' Mess — No 14 Cdn. Gen. Hospital

DAILY CASH ACCOUNT for the Month of April 1943

Date	Amount in Words	Amount in Figures £ s. d.	Signature of Caterer	Signature of Treasurer
1		4 9 9½		
2		5 16 7½		
3		4 2 9		
4		2 4 4½		
5		2 1 —		
6		1 16 7		
7		3 10 8		
8		1 1 10½		
9		2 7 2		
10		2 3 5½		
11		2 1 9		
12		2 13 9		
13		2 2 8½		
14		2 6 7½		
15		2 17 2½		
16		1 16 9½		
17		29 - 4 total of 2 above		
18		2 1 6		
19		1 14 6½		
20		2 9 5		
21		1 18 9		
22		9 9 ½		
23		13 6½		
24		2 12 10		
25		1 16 9		
26		1 8 9		
27		1 3 2		
28		16		
29		10 6		
30		- 5 -		
31				
	£			

Nursing Sisters' Mess — No 14 Cdn. Gen. Hospital

DAILY CASH ACCOUNT for the Month of May 1943

Gale & Polden, Ltd., Aldershot. [Copyright] P-6534 No. 4

Date	Amount in Words	Amount in Figures £	s.	d.	Signature of Caterer	Signature of Treasurer
1		6	17	10		
2			14	4		
3			7	11		
4		1	2	3		
5		2	14	6		
6		2	13	2½		
7		1	16	8		
8		1	10	5½		
9		2	8	3½		
10		3	1	11		
11		2	8	5		
12		8	–	8½		
13		2	17	6½		
14		~~2~~ 3	~~18~~ 1	~~1/7~~		
15		1	10	1		
16		1	15	½		
17		1	10	3		
18		2	5	5½		
19		2	17	4½		
20		3	14	8		
21		1	18	9		
22		3	16	2½		
23		2	10	6½		
24		1	10	4		
25		2	9	2½		
26		2	11	6		
27		2	19	5½		
28		3	6	8½		
29	Cert.- 2/4/11	36	1	10		
30		1	18	1½		
31		1	2	9½		
	total chits	113	9	1		
	cash	2	4	11		
	£	115	14	–		

Nursing Sisters' Mess — No 14 Can. Gen. Hospital

DAILY CASH ACCOUNT for the Month of June 1918

Date	Amount in Words — Cash Sales	Amount in Words — Cheques	Total Amount in Figures — Cash Sales £ s. d.	Each Day should be signed by both parties — Signature of Caterer	Signature of Treasurer
1	£ 2 9 9		2 9 9	H.B. Monkhouse 14/6	A.G. Ritchie 4/6
2	4 18 3		4 18 3	H.B. Monkhouse 14/6	A.G. Ritchie 4/6
3	2 10 2		2 10 2	H.B. Monkhouse 14/6	A.G. Ritchie 4/6
4	2 8 6		2 8 6	H.B. Monkhouse 14/6	A.G. Ritchie 4/6
5	3 14 9½		3 14 9½	H.B. Monkhouse 14/6	A.G. Ritchie 4/6
6	2 1 11		2 1 11	H.B. Monkhouse 14/6	A.G. Ritchie 4/6
7	2 14 10		2 14 10	H.B. Monkhouse 14/6	A.G. Ritchie 4/6
8	1 16 10		1 16 10	H.B. Monkhouse 14/6	A.G. Ritchie 4/6
9	1 10 9		1 10 9	H.B. Monkhouse 14/6	A.G. Ritchie 4/6
10	- 13 6½		- 13 6½	H.B. Monkhouse 14/6	A.G. Ritchie 4/6
11	2 5 2½		2 5 6½	H.B. Monkhouse 14/6	A.G. Ritchie 4/6
12	1 14 6		1 14 6	H.B. Monkhouse 14/6	A.G. Ritchie 4/6
13	12 11½		12 11½	H.B. Monkhouse 14/6	A.G. Ritchie 4/6
14	1 5 1		1 5 1	H.B. Monkhouse	A.G. Ritchie 4/6
15	1 12 4		1 12 4	H.B. Monkhouse 14/6	A.G. Ritchie 4/6
16	1 14 4		1 14 4	H.B. Monkhouse 14/6	A.G. Ritchie 4/6
17	9 11 10½		9 11 10½	H.B. Monkhouse 14/6	A.G. Ritchie 4/6
18	2 6 4½		2 6 4½	H.B. Monkhouse 14/6	A.G. Ritchie 4/6
19	6 11		6 11	H.B. Monkhouse 14/6	A.G. Ritchie 4/6
20	1 1 3		1 1 3	H.B. Monkhouse 14/6	A.G. Ritchie 4/6
21	3 19 5		3 19 5	H.B. Monkhouse 14/6	A.G. Ritchie 4/6
22	1 5 1		1 5 1	H.B. Monkhouse 14/6	A.G. Ritchie 4/6
23	18 1½		18 1½	H.B. Monkhouse 14/6	A.G. Ritchie 4/6
24	7 - 7½		7 - 7½	H.B. Monkhouse 14/6	A.G. Ritchie 4/6
25	4 7 3		4 7 3	H.B. Monkhouse 14/6	A.G. Ritchie 4/6
26	1 3 10		1 3 10	H.B. Monkhouse 14/6	A.G. Ritchie 4/6
27	5 13 2		5 13 2	H.B. Monkhouse 14/6	A.G. Ritchie 4/6
28	2 13 5½		2 13 5½	H.B. Monkhouse 14/6	A.G. Ritchie 4/6
29	1 17 5		1 17 5	H.B. Monkhouse 14/6	A.G. Ritchie 4/6
30	2 9 10		2 9 10	H.B. Monkhouse 14/6	A.G. Ritchie 4/6
31					
			15 15		
			£ 77 18 8½		

Total of column 1 to agree with total Cash Sales in Cash Book.
Total of Column 2 to agree with total Cheques in the Receipt book.

Nursing Sisters Mess — No 14 Cdn. Gen. Hospital

DAILY CASH ACCOUNT for the Month of July 1943.

Gale & Polden, Ltd., Aldershot. [Copyright] Publish No. 4

Date	Amount in Words: Cash	Chits	Amount in Figures: £ s. d.	Signature of Caterer	Signature of Treasurer
1		2 19 5½	2 19 5½	H.B. Monkhouse A/S	A. C. Risdon
2		3 16 2½	3 16 2½	H.B. Monkhouse A/S	A. C. Risdon
3		11 6½	11 6½	H.B. Monkhouse A/S	A. C. Risdon
4		1 14 9	1 14 9	H.B. Monkhouse A/S	A. C. Risdon
5		2 11 5	2 11 5	H.B. Monkhouse A/S	A. C. Risdon
6	2 6	4 7½	7 1½	H.B. Monkhouse A/S	A. C. Risdon
7	3 6	1 15 ½	1 18 6½	H.B. Monkhouse A/S	A. C. Risdon
8		2 16 9	2 16 9	H.B. Monkhouse A/S	E. Horsfall
9		- 11 -	- 11 -	H.B. Monkhouse A/S	A. C. Risdon
10		- 12 3	- 12 3	H.B. Monkhouse A/S	A. C. Risdon
11		- 17 2½	- 17 2½	H.B. Monkhouse A/S	A. C. Risdon
12		2 6 11	2 6 11	H.B. Monkhouse A/S	A. C. Risdon
13		2 3 2	2 3 2	H.B. Monkhouse A/S	E. Horsfall
14		4 11 7½	4 11 7½	H.B. Monkhouse	E. Horsfall
15		8 3 5½	8 3 5½	H.B. Monkhouse	E. Horsfall
16		1 5 7	1 5 7	H.B. Monkhouse A/S	E. Horsfall
17		9 17 3	9 17 3	H.B. Monkhouse A/S	E. Horsfall
18		5 15 3½	5 15 3½	H.B. Monkhouse A/S	E. Horsfall
19		2 2 1½	2 2 1½	H.B. Monkhouse A/S	E. Horsfall
20		1 - 11	1 - 11	H.B. Monkhouse	E. Horsfall
21		2 2 1½	2 2 1½	H.B. Monkhouse	E. Horsfall
22		2 9 0	2 9 0	H.B. Monkhouse	E. Horsfall
23		1 7 -	1 7 -	H.B. Monkhouse	E. Horsfall
24		3 6 10	3 6 10	H.B. Monkhouse	E. Horsfall
25		2 10½	2 1 - ½	H.B. Monkhouse	E. Horsfall
26		2 4 8½	2 4 8½	H.B. Monkhouse	E. Horsfall
27		8 9	9 8 9	H.B. Monkhouse	E. Horsfall
28		1 18 11½	1 18 11½	H.B. Monkhouse	E. Horsfall
29		4 2 9	4 2 9	H.B. Monkhouse	E. Horsfall
30		2 12 -	2 12 -	H.B. Monkhouse	E. Horsfall
31	b/m chits HQ K5/11/8	14 17 7	14 17 7	H.B. Monkhouse	E. Horsfall

16 13

93 7 11

Nursing Sisters Mess — No 14 Con Sec Hospital

DAILY CASH ACCOUNT for the Month of August **19 43**

Date	Amount in Words — Sales: Cash	Sales: Chits	Total Amount in Figures £ s. d.	Signature of Caterer	Signature of Treasurer
1		2 7 9	2 7 9	H.B. Monkhouse	E. Hunsfall
2		2 8 8	2 8 8	H.B. Monkhouse	E. Hunsfall
3		3 6 -½	3 6 -½	H.B. Monkhouse	E. Hunsfall
4		5 32½	5 32½	H.B. Monkhouse	E. Hunsfall
5		138½	138½	H.B. Monkhouse	E. Hunsfall
6		15 8 —	15 8 —	H.B. Monkhouse	E. Hunsfall
7		3 10 2	3 10 2	H.B. Monkhouse	E. Hunsfall
8		5 18 2	5 18 2	H.B. Monkhouse	E. Hunsfall
9		1 19 5½	1 19 5½	H.B. Monkhouse	E. Hunsfall
10		3 8 —	3 8 —	H.B. Monkhouse	E. Hunsfall
11		2 — 6	2 — 6	H.B. Monkhouse	E. Hunsfall
12		3 12 9½	3 12 9½	H.B. Monkhouse	E. Hunsfall
13		19 11½	19 11½	H.B. Monkhouse	E. Hunsfall
14		2 4 4	2 4 4	H.B. Monkhouse	E. Hunsfall
15		1 16 3	1 16 3	H.B. Monkhouse	E. Hunsfall
16		4 5 6½	4 5 6½	H.B. Monkhouse	E. Hunsfall
17		1 10 11	1 10 11	H.B. Monkhouse	E. Hunsfall
18		3 8 5½	3 8 5½	H.B. Monkhouse	E. Hunsfall
19		2 12 1	2 12 1	H.B. Monkhouse	E. Hunsfall
20		1 14 5	1 14 5	H.B. Monkhouse	E. Hunsfall
21		3 9 4	3 9 4	H.B. Monkhouse	E. Hunsfall
22		1 19 3	1 19 3	H.B. Monkhouse	E. Hunsfall
23	3 4 5½	3 45½	3 45½	H.B. Monkhouse	A.G. Tibbs
24	15 5	15 5	15 5	H.B. Monkhouse	A.G. Tibbs
25	1 3 3½	1 3 3½	1 3 3½	H.B. Monkhouse	A.G. Tibbs
26	1 4 1½	1 4 1½	1 4 1½	H.B. Monkhouse	A.G. Tibbs
27	11 3	11 3	11 3	H.B. Monkhouse	A.G. Tibbs
28		2 8 8	2 8 8	H.B. Monkhouse	A.G. Tibbs
29		6 4	6 4	H.B. Monkhouse	A.G. Tibbs
30		1 7 8½	1 7 8½	H.B. Monkhouse	A.G. Tibbs
31		2 17 1½			A.G. Tibbs

£

Twenty bottles Whisky on sale. Next 20 names on list:—

H/S MacNeer ✓
Osborne ✓
Phillips ✓
Soward ✓
Watson ✓
C. Macdonald ✓
Walker ✓
Auger ✓
R. Bradley
Doherty ✓
Elliott ✓
Hanchet ✓
Horsfall ✓
Johnson ✓
McDougall ✓
Shaw ✓
Smeaton ✓
Sykes ✓
Taylor ✓
Scott ✓

Auger not wanting a Bottle
Got it Sept 11th

3-8-8½
7 6
3-14-2½

11 6½
7 6
19 1½

28/10
4/5
20/3½
27/7½
41/-
79/6
3/-½
20) 204/8½
10/4/8½

53/4/½
26/6
3
78/18
79/6

36/-
29/10
26/6
40/-
26/6
27/-
13/7
2
199/5
9/19/5

20) 199 (9
180
19

SERGEANTS' MESS
DAILY CASH TAKINGS BOOK

THE WELLINGTON SERIES No. 4

No. 14 Cdn. Gen. Hospital. Corps

PRINTED AND PUBLISHED IN GREAT BRITAIN BY
GALE & POLDEN LTD., WELLINGTON WORKS, ALDERSHOT
AND AT LONDON AND PORTSMOUTH

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Sgts Mess

No 14 Edw Gen Hosp

DAILY CASH ACCOUNT for the Month of August 19 17

Date	Amount in Words	Amount in Figures £	s.	d.	Signature of Caterer	Signature of Treasurer
1						
2			7	3		
3			1	10		
4			16	9		
5			4	7		
6			10	9		
7		1	17	2		Armbruster
8			9	10		
9			4	9		
10			15	3		
11		1	5	2		
12		2	6	1		
13		1	15	9		
14		3	2	3		
15		1	3	-		
16		-	11	9		
17		1		11		
18			9	6		Armbruster
19		1	2			
20			12			
21		1	6	7		
22		1	19	3		
23		1	10	0	A.H. Barley	
24	One £ ten	1	0	8½	A.H. Barley	
25	One £ eight/6	0	10	0	A.H. Barley	
26	6. ten	0	0	6	A.H. Barley	Armbruster
27	One £	1	0	0	A.H. Barley	
28	Two £ ten	2	10	0	A.H. Barley	
29	Sales	2	4	1	A.H. Barley	
30	Sales	2	16	7	A.H. Barley	Armbruster
31	Sales	3	3	9	L.W. Dowe.	
		£	63	14	9	

Hgts. Mess — No. 14 Can. Gen. Hosp.

DAILY CASH ACCOUNT for the Month of September 1942

Gale & Polden, Ltd., Aldershot. [Copyright] P-8652 No. 4

Date	Amount in Words	Amount in Figures £	s.	d.	Signature of Caterer	Signature of Treasurer
1	Sales	1	3	0	L.W. Love	
2	Sales		19	0	L.W. Love	
3	Sales		3	6	L.W. Love	
4	Sales		4	0	L.W. Love.	
5	Sales		6	0	L.W. Love.	
6	Sales		1	0	L.W. Love	
7	Sales		3	6	J.W. Jones.	
8	Sales	1	8	1	J.W. Jones.	
9	Sales	1	18	6	J.W. Jones	
10	Sales	2	1	6	J.W. Jones.	
11	Sales	1	18	2	J.W. Jones.	
12	Sales	1	0	6	J.W. Jones.	
13	Sales		13	11	J.W. Jones.	
14	Sales	4	17	9	L. Mains	
15	Sales	1	5	11	L. Mains	
16	Sales	5	0	8	L. Mains	
17	Sales	2	5	8	L. Mains	
18	Sales	1	12	7	L. Mains	
19	Sales	2	14	11	L. Mains	
20	Sales	3	15	1	L. Mains	
21	Sales		10	6	[illegible]	
22	Sales		15	6	[illegible]	
23	Sales		17	3	[illegible]	
24	Sales		14	3	[illegible]	
25	Sales	1	3	3	[illegible]	
26	Sales	3	5	3	[illegible]	
27	Sales		17	3	[illegible]	
28		4	16	5	J.M.B. Payne	
29	"	3	11	11	J.M.B. Payne	
30	"	2	14	3	J.M.B. Payne	
31						
	£	53		9		
		53	2	9		

Officers' Mess — No. 14 Edwardes Hostel

DAILY CASH ACCOUNT for the Month of December 19[illegible]

Date	Amount in Words	Amount in Figures £	s.	d.	Signature of Caterer	Signature of Treasurer
		1	14	7		
1		1	3	1		
2		1	2	10		
3		1				
4			11	3		
5		1	1	10		
6			6	1		
7			7	10		
8			14	4		
9		6	5	11		
10		1		7		
11			19	7		
12			19	7		
13			15	8		
14			8	9		
15		5	[illegible]	1		
16		1	13	6		
17		1	14	3		
18		1	11	11		
19		3	3	10		
20			6	7		
21			11	9		
22		1	7	10		
23		15	1	10		
24		16	7	7		
25		6	9	6		
26		7	15	9		
27			8	11		
28		1	1	4		
29		1	17	6		
30		23	5	7		
31		24	7	3		
Jan 1		1	6	11		
2			16			
3						
		£	176	13	7	

Sgt Mess

No. 14 Con. Sect. Hospital.

DAILY CASH ACCOUNT for the Month of January 1917

Gale & Polden, Ltd., Aldershot. [Copyright] P.8654 No. 4

Date	Amount in Words	Amount in Figures £	s.	d.	Signature of Caterer	Signature of Treasurer
1						
2					See December	
3					See do	J Hardman Lt.
4					See do	
5			6	8		
6			10	6		
7			16	4		
8			1	2	1	
9			1	10	4	
10		£	10	9		
11			10	8		
12			5	9		
13			16			
14			11	8		
15		1		4		
16		1	17	4		
17			14	1		
18			9			
19			18	7		
20			16	9		
21			18	9		
22			14	3		
23			13	3		
24		1	18	3		
25		1		6		
26			17	3		
27			12	9		
28		1	2	4		
29		1	7	7		
30		2		3		
31		18	15	10		
		2	19	10		
	£	46	10			Hon Secretary

95 Mess — No. 14 Canadian General Hospital

DAILY CASH ACCOUNT for the Month of February **1943**

Date	Amount in Words	Amount in Figures £	s.	d.	Signature of Caterer	Signature of Treasurer
1			14	3		
2			6	9		
3			13	3		
4			3	4		
5			13	7		
6		1	13	3		
7		2	9	5		
8			11	8		
9			11	1		
10			9	4		
11			8			
12		1	3	4		
13		1	17			
14		20	2	11		
15			4	8		
16			11	7		
17			13	4		
18			16	8		
19			8	4		
20		1	13	4		
21			9	4		
22			1	6		
23			19	4		
24				4		
25			17	4		
26			14	6		
27		7	9	10		
28		2	2	2		
29						
30						
31						
	£	62	17	11		

Lab Mess

No 1 Canadian General Hospital

DAILY CASH ACCOUNT for the Month of March 1917

Gale & Polden, Ltd., Aldershot. [Copyright] P-0655 No. 4

Date	Amount in Words	Amount in Figures £	s.	d.	Signature of Caterer	Signature of Treasurer
1						
2			6	10		Northumb Fus
3			12	7		Northumb Fus
4			11	8		Northumb Fus
5			10	4		Northumb Fus
6		1	7	7		Northumb Fus
7			9	4		Northumb Fus
8	£1. 4. 4	1	17			Northumb Fus
9			6	10		Northumb Fus
10			7			Northumb Fus
11		1	10			Northumb Fus
12		2	11	10		Northumb Fus
13		3	7	4		Northumb Fus
14		2	5			Northumb Fus
15	£1. 4. 4 Rations 3/8	4	1	4		Northumb Fus
16	1/8		4	3	Mess Dues 10/-	Northumb Fus
17	3/4	1	8	3		D. Franklin
18	2/8 "	1	3	18		D. Franklin
19	7/ "	1	7	6		D. Franklin
20	2/4 "		15	2		D. Franklin
21	3/4 "	1	11	4		D. Franklin
22	3/4 " 19:-	1	3	0	£-:10:-	D. Franklin
23	2/4 "		4	-		D. Franklin
24	2/8 "		2	-		D. Franklin
25	3/- "		6	6		D. Franklin
26	1/- "		1	9		D. Franklin
27	1/8 "	1	4	9		D. Franklin
28	2/- "		11	6		D. Franklin
29	1/- " 13/8	8	16	2		D. Franklin
30	2/4 "		6	6	£ 9:-:-	D. Franklin
31	1/4 " 3:8		13	10	1:10:-	D. Franklin
			19	20		D. Franklin
	~~£4:15:-~~ £	~~41 9 7~~				
	£4:5:-	41 2 3				

Sgts. Mess

No. 14 Gn. Gen. Hosp.

DAILY CASH ACCOUNT for the Month of April. **19** 43

Date	Amount in Words Billiards			Amount in Figures Bar Sales			Signature of Caterer Mess Dues			Signature of Treasurer
	£	s.	d.	£	s.	d.	£	s.	d.	
1		2	.		7	7		6	-	
2		3	.		18	3				
3										
4										
5		2	4		7	11				
6		2	4		13	2				
7		2	.		7	6				
8		2	4		2	4				
9		2	8		3	8				
10		2	8		16	.				
11		2	.		4	9				
12		1	8							
13		1	4		10	.				
14		1	.							
15			8							
16										
17		1	4							
18		1	.							
19		2	.							
20		1	4							
21		1	8							
22		1	4							
23		1/2	8							
24										
25										
26										
27										
28										
29										
30										
31										

£ £ £

Sgts. Mess — No. 14. Cdn. Gen. Hosp.

DAILY CASH ACCOUNT for the Month of May **19 43**

Gale & Polden, Ltd., Aldershot. [Copyright] P-8652 No. 4

Date	Amount in Words Billiards	Laundry	Amount in Figures Bar £	Sales s.	d.	Signature of Caterer Mess Dues	Total			Signature of Treasurer (Steward)
1	2 –	1 4 5		10	–		1	16	5	A Franklin A.F.
2	1 –	1 9						2	9	A. Franklin A.F.
3	1 8			10	–			11	8	C.W. Anderson A. Franklin
4	1 8			2	6			4	2	C.W. Anderson A. Franklin
5	1 4			2	6			3	10	C.W. Anderson A. Franklin
6	2 4			5	–			7	4	C.W. Anderson A. Franklin
7	1 –	19 10	9	17	10		10	18	8	C.W. Anderson A. Franklin
8	1 –	9 –	27	10	11		28	–	11	C.W. Anderson A. Franklin
9	8	1 4	1	–	6		1	2	6	C.W. Anderson A. Franklin
10	1 –			19	6		1	0	6	C.W. Anderson A. Franklin
11	2 8	1 10		2	–			6	6	C.W. Anderson A. Franklin
12	2 –	7		3	–			5	7	C.W. Anderson A. Franklin
13	2 –	2 1		10	9	3 – –	3	14	10	C.W. Anderson A. Franklin
14	1 –	9 6	3	16	6	29 – –	33	7	–	C.W. Anderson A. Franklin
15	2 –	6 4	6	15	7	4 – –	11	3	11	J.A. Pope A. Franklin
16	8	2 10	1	6	3	1 – –	2	9	9	J.A. Pope A. Franklin
17	1 –	1 10		2	9	2 – –	2	5	7	C.W. Anderson A. Franklin
18	1 8					1 15 –	1	16	8	C.W. Anderson A. Franklin
19	4	2 6	3	1	–		3	3	10	C.W. Anderson A. Franklin
20	8	8 10	1	13	–		2	2	6	~~Witnessed~~ A. Franklin
21	1 8	3 4	2	3	6		2	8	6	C.W. Anderson A. Franklin
22	1 4	2 4	3	1	6	1 10 –	4	15	2	C.W. Anderson A. Franklin
23	1 4		1	16	11		1	18	3	C.W. Anderson A. Franklin
24	2 –		4	16	6	10 –	5	8	6	C.W. Anderson A. Franklin
25	1 4	1 8		16	3	– – –		19	3	C.W. Anderson A. Franklin
26				7	10	1 – –	1	7	10	C.W. Anderson A. Franklin
27	3 –	10 7	3	1	–	2 10 –	6	4	7	C.W. Anderson A. Franklin
28	8	17 8	7	16	8	12 5 –	21	–	–	C.W. Anderson A. Franklin
29	4	1 3	38	1	9	2 – –	40	3	4	C.W. Anderson A. Franklin
30	4		11	14	3	10 –	12	4	7	C.W. Anderson A. Franklin
31	1 8	3 9	2	18	4	1 10 –	4	13	9	C.W. Anderson A. Franklin
	£ 2 1 4	6 13 3	135	4	1	62 10 –	206	8	8	

Sergeants' Mess — No. 14 Cdn. Gen. Hospital.

DAILY CASH ACCOUNT for the Month of June **19 43**

Date 1943	Amount in Words: Billiards	Laundry	Amount in Figures: Bar £	Sales s.	d.	Signature of Caterer: Mess Dues	Total	Signature of Treasurer: Steward
1	1 ·			3 ·			4 ·	L.W. Anderson D. Franklin
2	1 4		1	16 8			1 18 ·	L.W. Anderson D. Franklin
3	1 8	9 ·		4 6			15 2	L.W. Anderson D. Franklin
4	1 4	13 4	2	3 8			2 18 4	L.W. Anderson D. Franklin
5	8	13 1	1	0 9			1 14 6	L.W. Anderson D. Franklin
6	8			7 11			8 7	L.W. Anderson D. Franklin
7	2 ·	4 10		15 2		10 ·	1 12 ·	L.W. Anderson D. Franklin
8	1 8			18 6			1 · 2	L.W. Anderson D. Franklin
9	1 ·			1 6			2 6	L.W. Anderson D. Franklin
10	1 4	2 8	2	5 11			2 9 11	L.W. Anderson D. Franklin
11	8	7 10					8 6	L.W. Anderson D. Franklin
12		6 9	1	4 7			1 11 4	L.W. Anderson D. Franklin
13	1 4	1 5		9 ·			11 9	L.W. Anderson D. Franklin
14		11		5 6		10 ·	16 7	L.W. Anderson D. Franklin
15		3		8 ·		5 ·	16 ·	L.W. Anderson D. Franklin
16				12 9		15 ·	1 7 9	L.W. Anderson D. Franklin
17		8 6	1	10 6			1 19 ·	L.W. Anderson D. Franklin
18		14 9	1	19 3		5 ·	2 19 ·	L.W. Anderson D. Franklin
19		5 ·	1	5 2		5 ·	1 15 2	L.W. Anderson D. Franklin
20		4 ·	1	3 10			1 7 10	L.W. Anderson D. Franklin
21		4 ·		16 2			1 · 2	L.W. Anderson D. Franklin
22				13 8			13 8	L.W. Anderson D. Franklin
23			1	5 7			1 5 2	L.W. Anderson D. Franklin
24		2 7	1	6 9			1 9 4	L.W. Anderson D. Franklin
25		2 5	8	3 1			8 15 6	L.W. Anderson D. Franklin
26				4 4	2	5 ·	2 19 4	L.W. Anderson D. Franklin
27		1 2		14 ·			15 2	L.W. Anderson D. Franklin
28		2 4	5	4 ·	2	10	7 16 4	L.W. Anderson D. Franklin
29				13 1		10 ·	1 3 1	L.W. Anderson D. Franklin
30				17 3	1	5 ·	2 2 3	L.W. Anderson D. Franklin
	£ 14 8	5 7 7	39	13 10	9	· ·	54 16 1	

Sergeants' Mess — No. 14 Can. Gen. Hospital

DAILY CASH ACCOUNT for the Month of July 1943

Gale & Polden, Ltd., Aldershot. (Copyright) P-5552 No. 4

Date 1943	Amount in Words: Mess Dues	Laundry	Amount in Figures: Bar Sales £	s.	d.	Total. £	s.	d.	Signature of Caterer / Signature of Treasurer — Steward
1		7 2	1	10	4	1	17	6	E. W. Anderson D. Franklin
2	15 ·	12 ·	6	5	4	7	12	4	E. W. Anderson D. Franklin
3	10	6 8	25	10	10	26	7	6	E. W. Anderson D. Franklin
4	1 5 ·	1 5 10	2	9	5	2	9	5	E. W. Anderson D. Franklin
5	1 5 ·	14 7	1	2	7	3	2	2	E. W. Anderson D. Franklin
6				5	11		5	11	E. W. Anderson D. Franklin
7				16	·		16	·	E. W. Anderson D. Franklin
8	5 ·	6 ·	3	·	9	3	11	9	E. W. Anderson D. Franklin
9		5 1	1	8	6	1	13	7	E. W. Anderson D. Franklin
10		3 5		19	·	1	2	5	E. W. Anderson D. Franklin
11			1	10	10	1	10	10	E. W. Anderson D. Franklin
12			1	7	7	1	7	7	E. W. Anderson D. Franklin
13	10 ·	1 10	3	12	6	4	4	4	E. W. Anderson D. Franklin
14			5	17	2	5	17	2	John S. Woodall D. Franklin
15		15 11	1	4	2	2	·	1	John S. Woodall D. Franklin
16	5 ·	17 4	1	8	2	2	10	6	John S. Woodall D. Franklin
17		1 10	2	2	10	2	4	8	E. W. Anderson D. Franklin
18			1	13	9	1	13	9	E. W. Anderson D. Franklin
19			2	1	5	2	1	5	E. W. Anderson D. Franklin
20			2	14	11	2	14	11	E. W. Anderson D. Franklin
21		13 ·	3	10	9	4	3	9	E. W. Anderson D. Franklin
22		7 11	1	5	7	1	13	6	E. W. Anderson D. Franklin
23			1	2	4	1	2	4	E. W. Anderson D. Franklin
24	5 ·	6 10	2	6	·	2	17	10	E. W. Anderson D. Franklin
25			4	3	3	4	3	3	E. W. Anderson D. Franklin
26		2 9	1	1	·	1	3	9	E. W. Anderson D. Franklin
27		2 6	2	10	9	2	13	3	E. W. Anderson D. Franklin
28	5 5 ·	5 9	6	·	9	11	11	6	E. W. Anderson D. Franklin
29	1 10 ·	1 5	8	19	1	10	10	6	E. W. Anderson D. Franklin
30	15		8	12	11	9	7	11	E. W. Anderson D. Franklin
31			32	18	2	32	18	2	E. W. Anderson D. Franklin
£	11 5 ·	6 12 £	139	7	7	157	4	7	

Sergeants' Mess — No. 14 Cdn. Gen. Hosp.

DAILY CASH ACCOUNT for the Month of August 1943

Date	Amount in Words: Mess Dues	Laundry	Amount in Figures: Bar Sales £	s.	d.	Total	Signature of Caterer: Steward	Signature of Treasurer
1								
2	10	18 5	4	12	8	6 1 1	B W Anderson	D. Franklin
3	10	4 10	3	10	7	4 5 5	B W Anderson	D. Franklin
4	10	2 9	3	9	5	4 2 2	B W Anderson	D. Franklin
5	10		3	9	10	3 19 10	B W Anderson	D. Franklin
6			1	11	7	1 11 7	B W Anderson	D. Franklin
7	5	1 8	1	5	4	1 12	L L Coote	D. Franklin
8		1 4		18	6	19 10	Benjamin	D. Franklin
9			1	2	7	1 2 7	L L Coote	D. Franklin
10		2 4	1	5	2	1 7 6	J Kilcrandall	D. Franklin
11				3		3	L L Coote	Cowlishaw
12				9	10	9 10	W G Hooper	Cowlishaw
13		9 10		12	3	12 3	Pay Sgt	Cowlishaw
14		6 6	1	14	4	2 4 2	A Mayo	Cowlishaw
15		13 3	19	16	1	20 9 4	H M Wallace RSM	Cowlishaw
16	5 0		1	6	0	1 6 0	R Binney	Cowlishaw
17	5 0		1	17	2	2 2 2	B W Anderson	Cowlishaw
18			3	6	6	3 11 6	W G H	Cowlishaw
19				17	6	17 6	B W Anderson	Cowlishaw
20		4 9	4	0	2	4 4 11	E Potter	Cowlishaw
21		11 6	3	11	4	4 2 10	B W Anderson	Cowlishaw
22		2 7	1	11	10	1 14 5	B W Anderson	Cowlishaw
23		4 6	1	1	1	1 5 7	B W Anderson	Cowlishaw
24		1 11	1	5	2	1 7 1	B W Anderson	Cowlishaw
25			2	5	0	2 5 0	B W Anderson	Cowlishaw
26			3	11	7	3 11 7	B W Anderson	Cowlishaw
27	4 15 0	9 6	6	8	8	11 13 2	B W Anderson	Cowlishaw
28	15 0	4 9	29	18	11	31 0 8	B W Anderson	Cowlishaw
29			2	1	0	2 1 0	B W Anderson	Cowlishaw
30	10 0		1	17	8	3 7 8	B W Anderson	Cowlishaw
31	15 0	9 0	2	14	10	3 18 6	B W Anderson	Cowlishaw
£	10 10 0	5 4 11	113	5	6	129 0 4		

Jan

59. 7. 5
41. 12. 8
48. 13. 3
53. 9. 2
37. 4. 1
39. 12. 11
53. 17. 11
17. 2. 8

358. 6. 7
12. 13. 1

345. 03. 1
12. 18. 4

359. 11. 6

Feb

87. 17. 11
58. 6. 11

BARCLAYS BANK LIMITED

AUG 12 1942 19

Credit Mrs

Notes	£1	6	- -
	10/-		10 -
Silver			10 -
Nickel 3d. pieces			
Copper			4
		7	- 4
Bank Notes, £5 & upwards			
Postal Orders			
Drafts			
			15 -
		4	1 10
		5	5 4
		4	1 3
		2	4 -
		4	10 11
		3	13 4
		2	14 11
Total Credit £		39	6 11



Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.S. 4

74276

BARCLAYS BANK LIMITED

AUG 1 1942 19

Credit H/S Mars

Notes	£1		
"	10/-		
Silver			
Nickel 3d.			
Copper			
Total			
Bank Notes, £5 & upwards			
Postal Orders	Lovejoy	4 9	-
Drafts	Eaton	4 14	8
	Moss	3 6	8
	Fitzgerald	4 13	1
	Wilde	5 17	9
	Watson	3 9	3
	Vaughan	3 12	-
	Flanagan	4 7	5
Maj	Johnson	1 7	4
	J. MacDonald	2 16	4
	C. MacDonald	4 6	4
	McLean	3 4	10
	Armstrong	1 2	9
	M. MacLean	4 17	9
Total Credit £		62 5	7

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.S. 4

BARCLAYS BANK LIMITED

15 Feb 1962

Credit N/S Mess

Notes £1		4	-
Baku 4 9	£10		10
Cebu 7	£5		
Silver 8	£1		19 6
Kwan 9	10/-		
[illegible] 3 4 9	5/-		3
Copper 10 9	2/6		
Jay 5 9	1/-	4	19 9
Total Cash		5	9 9
Bank Notes £5 & upwards			
Postal Orders		2	15 4
Drafts... Little		2	17 5
Elliott		2	9 1
D Jameson		3	8 2
A'Otterburn		2	12 -
Davies		5	6 4
Taylor		4	1 -
Mackay		3	2 2
Sneath		3	7 5
Partington		4	1 1
Spedden		4	13 1
Savard		2	17 2
Scott		3	16 4
Nicholson			
Total Credit £		50	4

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.S. Taylor 5 6 5

BARCLAYS BANK LIMITED

29 Sept 1942

Credit Financing Customs Purchases

	£ s. d.
Notes £1	
" 10/-	
Silver	
Nickel 3d. ...	
Copper	
Bank Notes	
Postal Orders	
Drafts	2 10 5 A
Fraser	6 17 6 B
Bowland	2 14 3 C
Monat	7 . . A
Watson	3 4 3 A
Webb	1 10 3 B
Armstrong	3 6 4 B
Lloyds	2 15 . B
Phillips	1 6 . B
Metropolitan	
Credit £	31 9 5

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.S. 4

4282

BARCLAYS BANK LIMITED

AUG 1 1942 19

Credit Y/S Mess

Notes	£1		
"	10/-		
Silver			
Nickel			
Copper			
Total			
Bank Notes, £5 & upwards			
Postal Orders	Horsfall	4 4 -	
Drafts...	Lt Nixon	4 14 8	
	Mess	3 6 8	
	Fitzgerald	4 13 1	
	Wells	5 17 9	
	Watson	3 9 3	
	Marshall	3 12 -	
	J Flanagan	4 7 5	
Maj	Johnston	1 7 4	
	J MacDonald	2 16 4	
	C MacDonald	4 6 4	
	Mclaren	3 4 10	
	Armstrong	1 2 9	
	M. MacLean	4 17 9	
Total Credit £		52 5 7	

BARCLAYS BANK LIMITED AUG 1942 HORLEY

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4

Lagan	8.6
Ferguson	7.4
Scott	6
Roche	1.2.6
Lobb	4.14.6
	6.13.4
Beaufell	7
	7.-.4

BARCLAYS BANK LIMITED

Credit

	£	s.	d.
Notes £1	4	-	-
Notes £10		10	
Silver		19	6
Bronze			3
Total Cash	5	9	9
Bank Notes, £5 & upwards			
Postal Orders	2	15	4
Drafts	2	12	5
	2	9	1
	3	8	2
	2	12	-
	5	6	4
	4	1	-
	3	2	2
	3	7	5
	4	1	1
	4	13	1
	2	12	2
	2	14	-
Total Credit £	50	4	

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.
Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4

BARCLAYS BANK LIMITED

29 Sept 1944

Credit Finsbury Central Area

Notes	£1		
"	10/-		
Silver	...		
Nickel 3d. ...	...		
Copper	...		
Bank Notes ...	...		
Postal Orders ...	...		
Drafts	...		
Fraser		2 10 5	
Bowland		6 17 6	
Mowat		2 14 3	
Watson		7 . .	
Watt		3 4 3	
Cushnaugh		1 10 3	
Lloyd		3 6 9	
[illegible]		2 15 .	
Phillips		1 6 .	
[illegible] Credit £		31 9 5	

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4

BARCLAYS BANK LIMITED

5 Oct 194x

Credit Mrs Longchester Bros

	£	s	d
Notes ... £1			
Mrs Longchester ... 10/-		5	-
Silver ...	2	3	5
Nickel 3d. Pieces ...		1	-
Copper ...			
Total Cash ...		3	8	5
Bank Notes, £5 & upwards			
Postal Orders ...			
Drafts ...		2	6	8
Briggs		1	14	11
Howland		2	12	11
Shapland		3	2	3
Hall				
Total Credit £		13	5	2

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4

BARCLAYS BANK LIMITED

OCT 1 41942 19

Credit NURSING SISTERS MESS.
No. 24 CANADIAN GENERAL HOSPITAL

Notes ... £1	1	6	3
Silver ... 10/-	1	5	4
Nickel 3d. Pieces ...	2	10	4
Copper ...	2	8	7
Total Cash ...	6	10	6
Bank Notes £5 & upwards			
Postal Orders	4	8	10
Drafts ...	3	17	
	3	12	8
	2	10	7
		9	1
	3	6	2
	3	5	7
	3	1	6
	4	2	4
	5	8	3
Total Credit £	40	12	6

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.
Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.S. 4

BARCLAYS BANK LIMITED

OCT 1 1942 19

NURSING SISTERS MESS.
No. 14 CANADIAN GENERAL HOSPITAL

Credit

Notes	£1		
"	10/-		
Silver			
Nickel 3d. Pieces			
Copper			
Total Cash			
Bank Notes, £5 & upwards			
Postal Orders Scott		2 6	11
Drafts.... Vass		2 8	10
Cahill		2 6	9
Walker		4 3	8
Rogers		2 0	5
Hall		5 8	
Phillips		3 14	11
Taylor		2 1	2
Monkhouse		3 9	3
Elliott		3 2	6
Davis		3 3	2
Total Credit £		35 11	1

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4

BARCLAYS BANK LIMITED

OCT 1 1941 19

Credit NURSING SISTERS MESS.

No. 14 CANADIAN GENERAL HOSPITAL

Notes	£		
"	10/-		
Silver			
Nickel 3d. Pieces			
Copper			
Total Cash			
Bank Notes, £5 & upwards			
Postal Orders	Marshall	4 15	A
Drafts	Shaw	4 17 2	
	Johnson	2 19 4	
	Mowat	3 15 9	
	Marsh	2 6 10	
	Macdonald	2 12 2	
	McCann	2 10 11	
	Hopper	5 7 10	
	Parker	4 10 10	
	Bond	3 14 .	
	Baird	3 . 5	
Total Credit £		49 10 6	A

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4

BARCLAYS BANK LIMITED

OCT 14 1942

NURSING SISTERS MESS.

Credit No. 4 CANADIAN GENE[illegible]OSPITAL

	£	s	d
Notes ... 31			
Silver ...			
Nickel 3d. Pieces ...			
Copper ...			
Total Cash ...			
Bank Notes, £5 & upwards			
Postal Orders Walton	2	13	5
Drafts... Taylor	3	16	7
Wilson	2	-	-
Jamieson	2	16	6
Fitzgerald	3	14	3
Campbell	2	7	8
Cooney	2	12	3
Richardson	2	6	4
Crawford	3	8	8
Mackenzie	6	12	9
Chisholm	3	10	9
Total Credit £	36	9	1

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4

BARCLAYS BANK LIMITED

NURSING SISTERS MESS[D]

Credit: 14 CANADIAN GENERAL HOSPIT

OCT 23 1942

Notes £1			
... ... 10/-			
Silver ...		13	10
Nickel 3d. Pieces ...			
Copper ...	1	11	7
Total Cash	2	5	5
Bank Notes, £5 & upwards			
Postal Orders ...	1	17	10
Drafts	3	2	10
	4	10	
	2		
	2	14	6
	4	10	5
	3	18	7
	2	6	3
	2	19	1
	3	3	4
	3	4	1
	2	16	5
Total Credit £	34	8	9

Pa...

Cu... Bank reserves the right... discretion to postpone payment of cheques drawn against uncleared effects which may have been credited...

Cou... and Metropolitan Cheques ... ection.

C.S.S. 4

74285

BARCLAYS BANK LIMITED

OCT 2 1942 19

Credit NURSING SISTERS MESS.

No. 14 CANADIAN GENERAL HOSPITAL

Notes	£1	1		
"	10/-		10	
"		6	10	
Silver				
Nickel 3d. Pieces			3	
Copper				
Total Cash		8	3	4
Bank Notes, £5 & upwards				
Postal Orders				
Drafts				



Total Credit £ 8 3 4

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.S. 4

BARCLAYS BANK LIMITED

Oct 23 19 42

Credit [illegible]

Notes ...	£1		
" ...	10/-		
Silver			
Nickel			
Copper			
Total Cash			
Bank Notes, £5 & upwards			
Postal Orders			
Drafts [illegible]			
[illegible]	1	6	6
[illegible]	4	-	8
[illegible]	2	10	9
[illegible]	4	2	3
[illegible]	2	1	1
[illegible]	3	6	2
[illegible]	2	1	11
[illegible]	3	9	8
[illegible]	2	5	4
[illegible]	2	15	6
[illegible]	3	17	8
[illegible]	2	7	4
[illegible]			
Total Credit £	[illegible]	[illegible]	[illegible]

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4

BARCLAYS BANK LIMITED

27 Oct 19 62

Credit W & Mrs

Notes £1	2		
Louise 5/6 10/-		10	
Silver Turnbull 2.13.4 2.17.10		7	6
Nickel 3d. Pieces			
Copper			4
Total Cash	2	17	10
Bank Notes		A	
Postal Orders			
Drafts			
Fleming	3	4	
Taylor	2	8	3A
Stewart	4	7	8A
Watson	4	4	5A
Doherty	2	10	6A
Cox	10		A
Lancashire	3	10	8A
Total Credit £	33	19	3A

BARCLAYS BANK 28 OCT 1962 HORLEY

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4

BARCLAYS BANK LIMITED

4 Nov 1948

Credit W & Mann

Notes ... £1			
Clothing 15/	10/		
Cotton 5/.		10	
Silver		10	
Nickel 3d. Pieces ...			
Copper			
Total Cash		1 -	
Bank Notes, £5 & upwards ...			
Postal Orders			
Drafts ...			
Scott		17 10	
St James	4	10 3	
Blair	5	3 6	
Van Wyck		18 9	
Palmer	1	2 1	
Scott	4	7 7	
Bowlan	4	1 5	
McGoogall	4	. .	
Agnew	4	10 3	
Sabara	5		
Lodge	4	13 5	
Thurgar		4 6	
Total Cash £		~~14~~ 8	

Paid in by 40 8 7

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4

74287

BARCLAYS BANK LIMITED

Credit NURSING SISTERS MESS. Ltd.
No. 14 CAMDEN CENTRAL BRANCH

	£	s	d
Notes			
Brigg [illegible]	11	7	
Bradley [illegible]	19		
Nick[illegible]			
Cop[illegible]			
Total C[illegible]		7	
Bank Notes £5 & upwards			
Postal Orders			
Drafts & [illegible]			
[illegible]		5	
[illegible]		2	
[illegible]		3	15
[illegible]		5	8
[illegible]		6	11
[illegible]		6	18
[illegible]		7	11
[illegible]		8	4
[illegible]		1	2
[illegible]		3	1
[illegible]		3	16
[illegible]			18
[illegible]		3	18
Total Credit £		65	6

BARCLAYS BANK LIMITED
13 NOV 1942
HORLEY

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4

BARCLAYS BANK LIMITED

16 Nov 1942

Credit ...ORNG SISTERS MESS.

...ORNG ROYAL HOSPITAL

	£	s	d
Notes	£1		
" ...	10/-		
Silver ...			
Nickel ...			
Copper ...			
Total Cash ...			
Bank Notes, £5 & upwards			
Postal Orders ...			
Drafts ... Powell		6	12 9
Chas		6	11 6
Crowther		4	7 11
Marlea		3	13 12
Otis		5	11 5
Whaley		7	5 2
Bryceland		5	6 10
Tollett		4	11 10
Rathbone		3	3 11
Evans		3	9 7
Partington		2	2 8
Total Credit £		53	1 8

BARCLAYS BANK LIMITED 18 NOV 1942 HORLEY

Paid in by

A

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4

BARCLAYS BANK LIMITED

19 Nov 19

Credit NURSING SISTERS MESS.

[illegible] CANADIAN GENERAL HOSPITAL

Notes ...	£1		
" ...	10/-		
Silver ...			
Nickel ...			
Copper ...			
Total Cash ...			
Bank Notes, £5 & upwards			
Postal Orders			
Drafts &c.			
Worsley		5	1 6
Fitzgerald		4 8	7 6
Mahoney		4 6	5 6
Gibson		6 13	10 3
Doherty		2 7	11 6
Newton		4 8	8 6
Falls		5 7	5 6
Sherman		6 18	7 6
Lazowska		3 15	5 6
Ogden		3 18	2 6
Macha		3 7	11 6
O'Connor		5 2	2 6
Total Credit £		55	10

BARCLAYS BANK LIMITED 19 NOV 1942 HORSLEY

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4

BARCLAYS BANK LIMITED

19 Nov 194X

Credit NURSING SISTERS MESS.
No. 14 CANADIAN GENERAL HOSP

Notes £1			
"			
Silver ...			
Nickel ...			
Copper ...			
Total Cash ...			
Bank Notes, £5 & upwards			
Postal Orders			
Drafts ... Mrs Taylor	6	14	5
Bowlan	5	7	8
Isabell	4	3	6
Dalton	4	9	8
Price	3	8	1
Jamieson	5	2	3
Jones	5	18	9
Jones	3	10	-
Saunders	3	17	3
Robertson	5	11	11
Lovell	4	16	9
Morgan	3	17	7
Lawson			
Total Credit £	54	18	3

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4

BARCLAYS BANK LIMITED

19 Nov 1942

Credit [illegible]ASING SISTERS MESS,
No. 14 CANADIAN GENERAL HOSP.

	£	s	d
Notes	£1		
"			
Silver			
Nickel			
Copper			
Total Cash			
Bank Notes, £5 & upwards			
Postal Orders			
Drafts [illegible]		5 1	6
[illegible]		2 5	10
[illegible]		3 2	10
T. Macdonald		4 9	10
Fletcher		9 17	8
[illegible]		4 16	9
Campbell		3 8	7
Page			
Total Credit £		33 5	

BARCLAYS BANK LIMITED
13 NOV 1942
HORLEY

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.
Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.S. 4

BARCLAYS BANK LIMITED

21 Nov 1947

Credit M/s Mc—

Notes	£1		
"	10/-		
Silver		6	
Nickel			
Copper			1
Total Cash		6	1
Bank Notes, £5 & up			
Postal Orders ...			
Drafts... Agnew		5 17	1
Kead		6 3	3
Mowat		4 6	1
Tyrrell		14	8
Low		3 7	8
McEachern		2 10	1
Marlow		3 7	6
Glasgow		4 19	1
Clark		3 16	5
Monkhouse		6 11	10
Total Credit £		41 19	8

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4

4290

BARCLAYS BANK LIMITED

26 Nov 1942

Credit N.S. Meos

Notes	£1	2	. .
Cash Sales	10/-		
Silver			
Nickel 3d. Pieces			
Copper			
Total Cash		2	. .
Bank Notes, £5 & upwards			
Postal Orders			
Drafts Grages		2 11	7½
Shepherds		3 6	1½
Wood		6 2	. .
Grovers		3 13	6
Total Credit £		17 13	2½

BARCLAYS BANK LIMITED
26 NOV 1942
By 2
HORLEY

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.S. 4

BARCLAYS BANK LIMITED

30 Nov 1942

Credit N/S Mess

	£	s	d
Notes £1			
... ... 10/-			
Silver		5	-
Nickel 3d. Pieces ...			
Copper			
Total Cash		5	-
Bank Notes, £5 & upwards			
Postal Orders			
Drafts			
Mess ord		6	9
Savarn		5	-
Mepam		5	-
Hoffe		5	-
Total Credit £			

BARCLAYS BANK LIMITED 30 NOV 1942 HORLEY

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4

4291

BARCLAYS BANK LIMITED

2 Nov 19 44

Credit M & Mrs

Notes	£1		
"			
Silver			
Nickel 3d. Pieces			
Copper			
Total Cash			
Bank Notes, £5 & upwards			
Postal Orders			
Drafts			
Mackay		4	15 10
Turnbull		5	9 11
Lodge		4	6 10
Scott		4	10 5
McDougall		6	2
Total Credit £		25	3 2

BARCLAYS BANK LIMITED 2 DEC 1942 HOP

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection."

C.S.B. 4

BARCLAYS BANK LIMITED

7 Dec 1942

Credit N.S. Mea

Notes ...	£1		
"	10/-	10	-
Silver ...	...		
Nickel ...	...		
Copper ...	...		
		10	-
Total Cash ...			
Bank Notes, £5 & upwards		3	5
Postal Orders		3	5
Drafts ...	Augus	1	14
	Adams	3	-
	Ackland	4	10
	Angus	5	-
	Banks	2	10
	Iphute	3	7
	Bradley	2	14
	Lamb	2	18
	Brang	3	10
	Desborough	2	10
	Dickey		
Total Credit £		28	19

7 DEC 1942

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4

BARCLAYS BANK LIMITED

7 Dec 1942

Credit W & Meon

Notes ... £1
... 10/-
Silver ...
Nickel 3d. Pieces
Copper

7 DEC 1942

Total Cash ...

Bank Notes, £5 & upwards	7	15	8
Postal Orders Douglas	3	3	10
Drafts... J T Bowman	3	8	2
Farmer	4	3	7
Elliott	2	17	10
Fletcher	2	18	4
Fraser	3	6	11
Gallo	4	3	3
Gainsborough	3	18	9
Hindlow	2	18	2
HP Gibson	23	15	9
HP do	23	15	9
HP do			
Total Credit £	47	9	8

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4

BARCLAYS BANK LIMITED

7 Dec 19 41

Credit W. Rees

Notes ...	£1		
" ...	10/-		
Silver ...			
Nickel & Pieces			
Copper ...			
Total Cash ...			
Bank Notes, £5 & upwards		£	s. d.
Postal Orders	Forma		9
	Voucher	1	16 7
Drafts ...	Hopkin	2	16 10
	Young	8	2 7
	Jamieson	3	15 5
	Jowett	4	2 7
	McDougall	4	5 [illegible]
	McCann	2	16 5
	Marsden	3	12 [illegible]
	McEachen	2	6 3
	MacLean	2	2 [illegible]
	J. MacDonald	4	4 1
	MacDonald	4	2 10
	Mowat	4	6 9
	MacKenzie	4	6 8
Total Credit £		60	4 1

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4

BARCLAYS BANK LIMITED

7 Dec 1942

Credit

Yr Sincs

7 DEC 1942
10
TRURO

	£	s	d
Notes			
"			
Silver			
Nickel 3d. Pieces			
Copper			
Total Cash			
Bank Notes £5 & upwards	2	3	
Postal Orders	3	4	7
Drafts	6	8	8
	3	7	10
	3	16	10
	2	17	7
	2	10	3
	6	9	7
	2	15	
	4	5	6
	12	1	7
	2	6	10
	5	4	7
Total Credit £	59	11	5

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4

BARCLAYS BANK LIMITED

10 Nov 19 [illegible]

NURSING SISTERS MESS 19

Credit 14 CANADIAN GENERAL HOSP.

Notes			
Silver			
Nickel & Pieces			
Copper			
Total Cash			
Bank Notes £5 & upwards	5	5	8
Postal Orders	4	15	10
Drafts	5	8	10
Stokes	2	11	-
Carling	7	16	6
Johnson	7	10	4
Osborne	5	9	4
Whalen	3	9	9
Hodgson	3	-	9
Stephens	4	11	5
Mead	3	4	10
Briggs	9	3	7
Jackson	3	1	
Stenson			
Total Credit £	59	8	8

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4

4294

BARCLAYS BANK LIMITED

NURSING SISTERS MESS
19
CANADIAN GENERAL HOSPITAL

Credit

	£	s.	d.
Notes			
"			
Silver			
Nickel 3d. Pieces			
Copper			
Total Cash			
Bank Notes, £5 & upwards			
Postal Orders			
Drafts			
Samuel	6	11	5
Savage	5	3	7
Stonefall	4	17	1
Jarvis	2	16	3
Campbell	10	11	1
Jean	3	16	3
Coombs	2	9	11
Total Credit £	37	5	2

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED

17 Dec 1947

Credit W S Mess

	£	s	d
Notes £1	2		
... ... 10/-			
... ...		6	
Nickel 3d. Pieces ...			
Copper			7
Total Cash ...	2	6	7
Bank Notes, £5 & £10 Bonds			
Postal Orders			
Drafts ...			
Phillips	2	.	8
Fitzgeralds	3	4	10
Hampden	3	16	.
Gill	2	16	1
Lloyds	10	5	11
Bond	5	7	7
Total Credit £	30	16	10

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4

BARCLAYS BANK LIMITED

9 Jan 1942

Credit

Notes — £1	
" — 10/-	
Silver —	
Nickel 3d. Pieces	
Copper —	
Total Cash —	
Bank Notes, £5 & upwards	
Postal Orders	
Drafts... Bowlam	4 17 10
Gavan	4 . .
Whitehole	4 3 3
Vor A/cs Recs.	
Total Credit £	12 13 1

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4

BARCLAYS BANK LIMITED

8 Nov 19 63

Credit Miss Gordon

Notes ...	£1		
" ...	10/-		
Silver ...			
Nickel & Pieces ...			
Copper ...			
Total Cash ...			
Bank Notes £5 & upwards			
Postal Orders			
Drafts ...			
Mrs Morrison		8	15 9
[illegible]		8	5 [illegible]
[illegible]		3	17 6
[illegible]		3	15 [illegible]
[illegible]		2	4 [illegible]
[illegible]		3	3 9
[illegible]		7	4 9
[illegible]		3	11 [illegible]
[illegible]		7	16 [illegible]
[illegible]		4	4 [illegible]
Lodge		6	[illegible] [illegible]
Total Credit £		[illegible]	

Paid in by £37 - -

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.S. 4

4296

BARCLAYS BANK LIMITED

8 Jan 1943

Credit W. L. Mee & Co.

	£	s	d
Notes ...	£1		
" ...	10/-		
Silver			
Nickel 3d. Pieces			
Copper			
Total Cash			
Bank Notes, £5 & upwards			
Postal Orders			
Drafts... Elliott	4	7	5
Hopkins	5	1	2
Rowell	7	9	10
Dann	4	4	4
Fitzgerald	3	8	3
Dann	4	3	7
Norman	5		8
A. Bradley	7	17	5
Total Credit £	41	12	8

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4

BARCLAYS BANK LIMITED

11 Dec 1923

Credit [illegible]

Notes ...	£1		
" ...	10/-		
Silver ...			
Nickel 3d. Pu			
Copper ...			
Total Cash ...			
Bank Notes, £5 & upwards			
Postal Orders ...			
Drafts — Horsley		3	8
		6	5	3
Mackay		2	10	2
Jayn		2	15	3
Baker				
Wacker		4	7	
Cabell		2	19	2
Monkhouse		4	3	6
		2	5	5
Hanchet		5		11
Whaley		4	15	1
Stewart		4	10	8
Pardington				
Total Credit £		43	13	2

BARCLAYS BANK LIMITED
No. 1
HORLEY

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.S. 4.

297

BARCLAYS BANK LIMITED

11 Jan 1923

Credit Mrs Mean

	£	s	d
Notes ... £1			
" ... 10/-			
Silver ...			
Nickel 3d. Pieces			
Copper			
Total Cash			
Bank Notes, £5 & upwards			
Postal Orders			
Drafts MacDonald	3	7	6
Dobcroft	3	19	.
McCann	3	3	0
Young	3	17	8
Bell	5	14	7
Roberts	3	8	3
Lovell	4	18	11
Maclver	3	7	8
Maybacken	4	13	9
Gibson KB	3	15	5
Maclean	3	7	3
Mc Dougall	5	19	4
Sinclair	4	5	5
Total Credit £	83	9	2

BARCLAYS BANK LIMITED
11 JAN 1923
HORLEY

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4

BARCLAYS BANK LIMITED

12 Aug 1943

NURSING SISTERS MESS.
THE CANADIAN GENERAL HOSPITAL

Credit

Notes £1	2		
Bradley 10/-		9	6
Silver 2. 9. 10			
Nickel and Pieces ...			4
Copper			
Total Cash ...		9	10
Bank Notes, £5 & upwards			
Postal Orders			
Drafts: H Letson	3	9	11
Turkey	2	16	7
Sapp	3	11	9
Barr	4	5	8
Baker	7	13	5
T. MacDonald	2	10	
Lloyds	5	2	4
Scott	5	4	7
Total Credit £	37	4	1

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

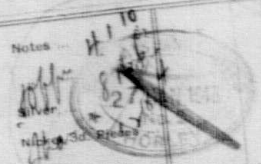
C.S.B. 4

BARCLAYS BANK LIMITED

19

Credit NURSING SISTERS MESS,

CANADIAN GENERAL HOS



Notes			
Silver			
Nickel 3d. Pieces			
Copper			
Total Cash		12	18 4
Bank Notes, £5 & upwards			
Postal Orders			
Drafts			
Edenton		3	15 5
Swinkell		4	5 5
Jachon		2	17 8
Flanagan		3	18 3
Lanheadh		3	16 8
Meaton		2	5
Hodgson		4	17 7
Woodhead		3	8 6
J Taylor		2	15 6
Watson		6	12 11
Total Credit £		39	12 11

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4

BARCLAYS BANK LIMITED

27 Aug 19 43

Credit NURSING SISTERS MESS.
14 CANADIAN GENERAL HOSP

Notes	£1		
"	10/		
Silver			
Nickel 3d. Pieces			
Copper ...			
Total Cash			
Bank Notes, £5 & upwards			
Postal Orders			
Drafts... Not Stated		5 19	10
Jones		16	9
Coombs		8 13	4
Wilson		6 10	6
Blair		1 5	8
Adams		2 8	7
Fox		6 7	
Atherton		3 1	11
Briggs		6 10	8
Lennard		6 7	8
Total Credit £		52 17	11

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4

4239

Arrears

Bowlands	9. 6.
L. Campbell	2. 11. 1
L. Campbell	6. 8. 7
L. Campbell	2. 18. 10
D. Drummond	6. 1. 11
Sandlas	3. 17. 11
Hebe.	5. 5. 11
Young	2. 14. 5
Stone	6. 9. 3
Savard	5. 13. 1
Stead	9. 3
Locker	

£1 16

BARCLAYS BANK LIMITED

19

NURSING SISTERS MESS.
No. 14 CANADIAN GENERAL HOSPI

Credit

Notes	£1		
"	10/-		
Silver			
Nickel 3d. Pieces			
Copper			
Total Cash			
Bank Notes, £5 & upwards			
Postal Orders			
Drafts Parker	1	3	9
Fell	5	-	1
Stefford	3	13	4
Mackay	3	4	6
Officers	41		
Total Credit £	17	2	8

Paid in by

Customers are advised that the Bank reserves the right at its discretion to sanction payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4

BARCLAYS BANK, LIMITED

18 Jul 1942

Credit NURSING SISTERS MESS.
No. 14 CANADIAN GENERAL HOSP

Notes	£1	3	7
	5	4	
	10	14	5
Silver		6	8	7
		2	19	6
Nickel & Bronze		4	6	
Copper		3	1	5
		4	10	8
Total Cash		3	3	
Bank Notes (£5 upwards)		3	10	4
		3	4	4
Postal Orders		3	7	8
Drafts		2	2	4
		2	8	10
		3	14	2
		3	6	4
		2	12	4
		7	1	6
		5	4	3
		3	1	8
		2	3	7
		4	3	
		3	10	1
Total Credit £		87	17	11

Paid in by

Customers are advised that the Bank reserves the right at its discretion to defer the payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques remain Inland and Metropolitan Cheques two clear days for collection.

C.S.B. 4

4300

BARCLAYS BANK LIMITED

10 Feb 1943

Credit M & S Mens

Notes	Mowat	5	
	Potts	4 15	
	Wood	7 5	
	Woodward	5	
	Jones		
Nickel & Silver Pieces	Shead	5 6	9
Copper		10 17	11
	Ayres	2 4	10
Total Cash	Turner	2 15	5
Bank Notes & Cheques		2 19	9
Postal Orders	Wilson	2 19	4
Drafts	Neale	3 10	5
	McEachern	3 15	5
	Mayhew	4 3	5
	Locke	2 7	8
Total Credit £		58 1 6	11

BARCLAYS BANK LIMITED

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4

BARCLAYS BANK LIMITED

17 Aug 1942

Credit W S Mason

	£	s	d
Notes ... £1			
10/-			
Velvet 7/6		7	
Silver 4/-			
Coupon Nickel 3d/Bronze			4
Copper			
Total		7	4
Bank Notes			
Postal Orders			
Drafts... Foxton	2	9	1
2 Lambell	5	7	3
Osborne	3	11	4
Rowland	2	17	5
Young	2	17	8
Davies	1	3	2
Fraser	3	12	-
Briggs	4	1	3
Marsh	4	5	5
Parker	3	-	6
Lane	4	18	9
Monkman	4	10	-
Marriott	5	9	7
Total Credit £	47	9	6

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone the cost of cheques drawn against uncleared effects which may have been credited to the account

Country Cheques require three and Town two Cheques two clear days for collection

C.S.B. 4

BARCLAYS BANK LIMITED

18 Aug 19 42

Credit M/s Meos

Notes	£1		
"	10/-		
Silver	...		
Nickel 3d. Pieces ...			
Copper ...			
Total Cash			
Bank Notes, £5 & upwards			
Postal Orders			
Drafts			
Powell		4	13 8
Doherty		3	18 8



Total Credit £ 8 7 5

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4

BARCLAYS BANK LIMITED

21 Aug 1942

Credit W & Mrs

Notes	£1	
"	10/-	
Silver		
Nickel		
Copper		
Total Cash		
Bank Notes, £5 & upwards		
Postal Orders		
Drafts...		
Lisbon at		4 9 5d
Phillips		5 17 4d
Crowd		2 14 3d
Law		3 17 7d
Total Credit £		16 16 4d

24 AUG 1942
HALIFAX

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4

BARCLAYS BANK LIMITED

31 Dec
28 Aug 19[illegible]

Credit Mfg Mer.

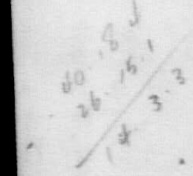
	£	s	d
Mr Mason			
Notes £1			
Silver 10/-	6	8	
Mr Latchmore 1d			5
Nickel and Pence			
Copper			
Total Cash		6	8
Bank Notes, £5 & upwards			
Postal Orders			
Drafts	1	10	6
Barnabell,	3	1x	3
Mackay	3	11	9
Coombie,	2	1	8
Mc Dougall			
Scott			
Cahill			
Jamieson			
Fyfe			
Angus			
Lloyd			
Lavard			
Total Credit £			

Paid in by [illegible] 10 18 4

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4



Left Mess	1-10-6
Turnbull	3-12-3
Mackay	3-11-9
Lumbie	2-1-8
McDougall	3-7-1
	14-3-3

BARCLAYS BANK LIMITED

12 Sept 1944

Credit W.S. Peers

		£	s.	d.
Notes	£1	2		
	10/-			
Silver			16	
Nickel 3d. & Bronze				
Copper			2	
Total Cash		2	18	8
Bank Notes				
Postal Orders				
Drafts				
J Hampton		3	19	2
Craig		2	16	11
Lovell		2	19	3
Eckhard		2	15	3
Shaw		3	18	5
Sayer		2	18	10
Young		3	14	10
Whatley		6	13	2
Hamblet		3	7	10
Lawrence		2	11	11
Manager		3	5	7
Total Credit £		41	7	10

12 SEP 1944
No. 2
DORLEY

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4

BARCLAYS BANK LIMITED

12 Sept 1946

Credit Wd Mess.

	£	s	d
Notes			
" ...			
Silver ...			
Nickel 3d. Pieces			
Copper ...			
Total Cash ...			
Bank Notes, £5 & upwards			
Postal Orders ...			
Drafts ...			
Lt Cassidy	1	18	7
MacDonald	2	5	5
Dickey	2	14	8
McDougall	2	1	9
Jamieson	2	12	3
Saunders	2	8	4
Laird	4	1	8
Thurston	8	1	3
Monkhouse	2	16	11
MacDonald	2	17	10
Wilson	3	3	1
Total Credit £	36	1	9

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.S. 4

4280

BARCLAYS BANK LIMITED

12 Sept 19 47

Credit W L Mc ...
No 15 Edn Gen Coop

Notes ...	£1		
	10/-		
Silver ...			
Nickel 3d. Pieces			
Copper			
Total Cash ...			
Bank Notes, £5 & upwards			
Postal Orders ...			
Drafts... Stewart		2	9 5
Angus		2	17 10
Parker		4	11 6
McLaren		2	17 8
Fletcher		2	16 6
Pass		2	19 1
Stewart		3	4 7
Cahill		2	5 1
Horsfall		2	10 6
Talbot		1	17 7
Douglas			8 6
Jamieson		3	9 9
Total Credit £		34	- 9

Paid in by

Customers are advised that the Bank reserves the right at its discretion to sanction payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4

BARCLAYS BANK LIMITED

14 Aug 1942

Credit W. J. Mess

Notes	£1		
...	10/		
Silver ...			
Nickel 3d.			
Copper ...			
Total Cash			
Bank Notes, £5 & upwards			
Postal Orders ...			
Drafts ... W. Gibson		3	5
Walker		2	10 1
Lodge		3	7 4
Fitzgerald		3	5 7
Stephen		2	16 1
Bonds		3	3 7
H. Gibson		6	16 8
Falls		3	10 9
Hodgson		2	14 4
Bailey		2	13 5
Rowell		2	15 7
Read		1	4 10
Total Credit £		39	18 8

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4

12 SEP 1942

7428

BARCLAYS BANK LIMITED.

5/11/ 1941

Credit Men's Canteen

#14 Canadian General Hosp.

Notes ... £1	10	0	0
" ... 10/-	14	0	0
Silver ...			
Nickel 3d. Pieces			
Copper ...			
Bank Notes, £5 & upwards			
Postal Orders			
Drafts	✓	0	0
	✓	0	0
	11	0	0
	4	0	0
	39		
Total £	50	0	0

BARCLAYS BANK LIMITED — BRANCH — BROMLEY, KENT

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.3.B. 4.

BARCLAYS BANK LIMITED.

1 May 1903.

Credit Men's Canteen
14 Edn Gen Hosp.

Notes	£1	18	0	0		
"	10/-		10			
Silver			4	6		
Nickel 3d. Pieces				6		
Copper				4	18	15 4
Bank Notes, £5 & upwards						
Postal Orders						
Drafts						
Cheque.					38	6 9
Cheque					29	18 0
					87	0 1
Total £					£7	2 =1/8

Paid in by Wallace Thompson.

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

17/11/ 193 47

Credit Mrs L. Carter

#14 Canadian Funeral Hosp

Notes ... £1			
" ... 10/-			
Silver ...			
Nickel 3d. Pieces			
Copper ...			
Bank Notes, £5 & upwards			
Postal Orders			
Drafts	9	0	0
	11	4	0
	11	0	0
	7	0	0
	21	10	X
			7
Total £	√9	N	X

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

4/12/ 194

Credit Men's Canteen.
#14 Canadian Forces Hqrs.

Notes ... £1	2	0	0
" ... 10/-	13	0	0
Silver ...			
Nickel 3d. Pieces			
Copper			
Bank Notes, £5 & upwards			
Postal Orders			
Drafts	1	0	0
	9	0	0
	4	6	9
	2	17	5
Total £	32	4	2

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

4/12/1941

Credit Mess Canteen

1/4 Canadian General Hosp

Notes ... £1	
" ... 10/-	
Silver	
Nickel 3d. Pieces	
Copper ...	
Bank Notes, £5 & upwards	
Postal Orders	
Drafts	
ck 8/10 ms 05	
Total £	

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

11/12/ 194

Credit Men's Canteen

R.C. Canadian Funeral Corps

Notes	£1		
"	10/-		
Silver			
Nickel 3d. Pieces			
Copper			
Bank Notes, £5 & upwards			
Postal Orders			
Drafts Sgt Mess		21	11
Total £		21	11

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

17/12/ 1964

Credit Mrs Coulter

Notes .. £1		2	0	0
" ... 10/		10	0	0
Silver				
Nickel 3d. Pieces				
Copper ...				
Bank Notes, £5 & upwards				
Postal Orders				
Drafts				
Total £		12		



Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

18/12/ 1941

Credit Men's Canteen

Notes	£1		
"	10/-		
Silver			
Nickel 3d. Pieces			
Copper			
Bank Notes, £5 & upwards			
Postal Orders			
Drafts		10	11 9
		25	0 0
		2	3 3
		2	1 0
		70	0 0
		25	7 1
		1	0 10
Total £		136	3 11

BARCLAYS BANK LTD. 18 DEC 1941

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

9/1 1942

Credit Mrs. Canteen

Notes	£1	6	5	0	1 1	8
"	10/-					
Silver			1	3	1	3
Nickel 3d. Pieces		6	7	0	6 7	0
Copper						
Bank Notes, £5 & upwards					✓	0
Postal Orders					4 7	4
Drafts					1	0
					1	0

Canadian
$5.0.0

Total £ 14 2 3

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4

BARCLAYS BANK LIMITED.

21/1/ 1942

Credit Mrs's Coulson

Notes £1	10	0	0
" ... 10/-			
Silver ...			
Nickel 3d. Pieces			
Copper ...			
Bank Notes, £5 & upwards			
Postal Orders	30	1	11
Drafts	2	12	8
	2	4	9
	1	14	0
	1	4	9
	20	18	9
Total £	68	16	10

BARCLAYS BANK LIMITED
21 JAN 1942
WOKINGHAM

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

24/1/ 1942

Credit Men's Canteen

Notes ... £1	N	0	0
" ... 10/-			
Silver ...			
Nickel 3d. Pieces			
Copper ...			
Bank Notes, £5 & upwards			
Postal Orders		10	0
Drafts	3	N	3
	1	11	6
	2	4	7
Total £	23	1	6

BARCLAYS BANK LIMITED 24 JAN 1942 MOSS SIDE

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

30/1/ 1942

Credit Mess Canteen

Notes ... £1	20	0	0
„ ... 10/-			
Silver			
Nickel 3d. Pieces			
Copper ...			
Bank Notes, £5 & upwards			
Postal Orders			
Drafts	10	0	0
	2	4	9
Total £	32	4	9

BARCLAYS BANK LIMITED 30 JAN 1942 WORKSOP

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

2/2/ 1942

Credit Men's Canteen

Notes .. £1		20	0	0
" ... 10/-				
Silver				
Nickel 3d. Pieces				
Copper ...				
Bank Notes, £5 & upwards		40	0	0
Postal Orders				
Drafts		10	0	0
Total £		70	0	0

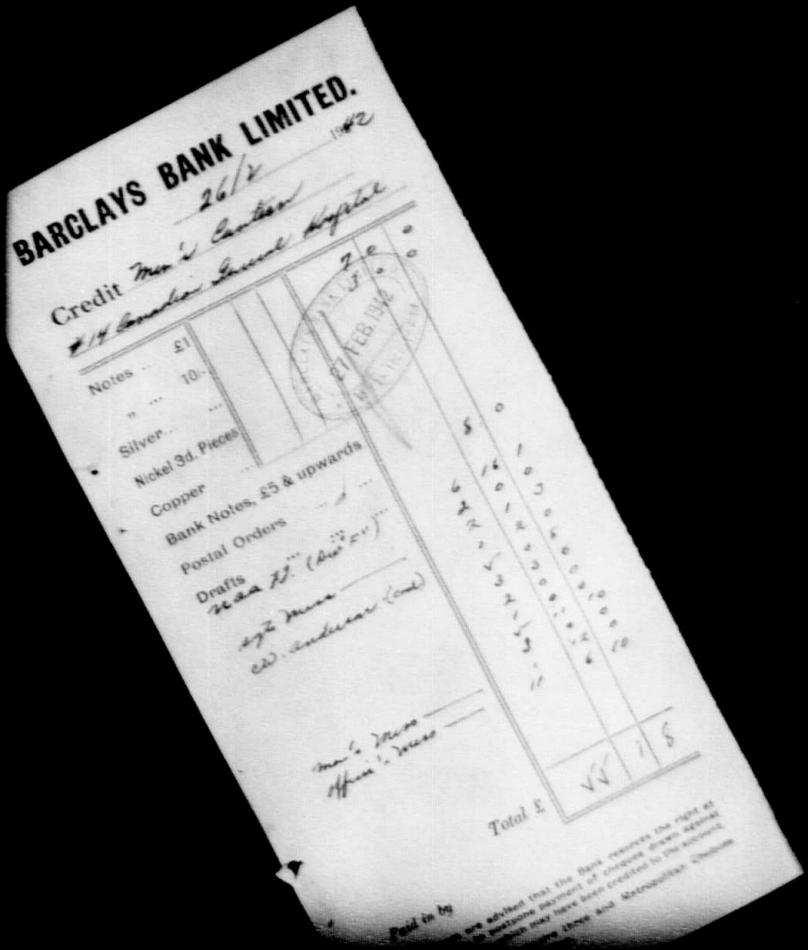
BARCLAYS BANK LIMITED 4 FEB 1942 WOKINGHAM

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.


BARCLAYS BANK LIMITED.
1942
Credit
Notes
Silver
Nickel 3d. Pieces
Copper
Bank Notes, £5 & upwards
Postal Orders
Drafts
Total £
Paid in by

BARCLAYS BANK LIMITED.

26/2 1942

Credit Mrs E Canteen

#14 Canadian General Hospital

Notes	£1	7	0	0
"	10/-	3	0	0
Silver				
Nickel 3d. Pieces				
Copper				
Bank Notes, £5 & upwards				
Postal Orders			5	0
Drafts		6	16	1
Mrs H. (Bur F")		2	0	0
Mrs		2	1	3
Anderson (Card)		1	2	0
		√	0	5
		3	3	0
		2	0	0
		1	0	0
		√	11	10
		3	1	0
Mrs Mrs		1	12	0
Offrs Mess		11	6	10
Total £		√√	1	5

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

0/21 1942

Credit Mrs W Carter

Notes	£1	3	1
"	10/-	5	4
Silver		5	6
Nickel 3d. Pieces		0	3
Copper		19	0
Bank Notes, £5 & upwards		1	0
Postal Orders		3	10
Drafts			

Total £ 77 14 0

6 MAR 42

BARCLAYS BANK LIMITED 6 MAR 1942 WOKINGHAM

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

10/3 1942

Credit Messrs Cawleys
#14 & 24

Notes ... £1			
" ... 10/-			
Silver			
Nickel 3d. Pieces			
Copper ...			
Bank Notes, £5 & upwards			
Postal Orders			
Drafts	7	17	2
Wages	17	10	0
Donation from Co.	1	0	0
Total £	26	5	2



Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

28/8/ 1934

Credit Men's Canteen.

Notes ... £1	27	0	0
" ... 10/-	1	0	0
Silver ...			
Nickel 3d. Pieces			
Copper ...			
Bank Notes, £5 & upwards			
Postal Orders		2	6
Drafts			
Naafi Men's Money	4	14	7
	8	2	3
	2	0	0
	1	0	0
	1	0	0
	1	2	4
	1	2	4
	✓	11	10
Total £	54	17	10

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

28/3/1 19[illegible]

Credit Mrs. Courtenay.

Notes ..	£1	
„ ...	10/-	
Silver ..	...	
Nickel 3d. Pieces		
Copper ..		
Bank Notes, £5 & upwards		
Postal Orders		
Drafts		
Canadian $1300 $2.0.0		6 7 7
	Total £	



Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

3/4/ 1931

Credit Mrs L Carleton

Notes ... £1			
" ... 10/-			
Silver			
Nickel 3d. Pieces			
Copper ...			
Bank Notes, £5 & upwards			
Postal Orders		£	0
Drafts	2	12	6
	2	0	0
	4	16	9
Mrs Robertson	20	12	10
Mrs Mann	20	0	9
Bank Commission		14	0
Total £		1	3

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

10/4/ 1942

Credit Mrs. Carter

Notes	£1	
" ...	10/-	
Silver ...	...	
Nickel 3d. Pieces		
Copper ...		
Bank Notes, £5 & upwards		
Postal Orders		
Drafts		
Mrs. Miss a/c		20 0 0
Mrs. Le Sueur		1 15 0
Mrs. Miss Le Sueur		23 3 10
		48 3 10
Total £		44 19 2

BARCLAYS BANK LIMITED
ST. PETER PORT BRANCH
11 APR 1942

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

21/4/ 1942

Credit Mrs Carter.

Notes	£1	
" ...	10/-	
Silver ...	...	
Nickel 3d. Pieces		
Copper ...		
Bank Notes, £5 & upwards		
Postal Orders ...	...	
Drafts		
Mrs's Mum a/c.		10 14 4
Mrs. Mum a/c		14 11 0
M P. A. Mum		1 14 8
		1 14 0
		43 6 6

BARCLAYS BANK LIMITED ... 21 APR 1942 ... £

Total £ 72 1 6

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C 52 4

BARCLAYS BANK LIMITED.

29/4/ 1932

Credit Mrs. Courtenay

Notes	£1	Carried forward	8	3	0		
		Cheque			0		
"	10/-		3		0		
"						12	9
Silver							
Nickel 3d. Pieces							
Copper			3	10	0	3	10 0
Bank Notes, £5 & upwards							
Postal Orders						2	6
Drafts						✓	✓ 0
						2	10 0
						2	7 3
						4	13 10
						2	0 0
						3	0 0
		Total £				24	1 4

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

20/4 1934

Credit Men's Canteen

Notes	£1	6	0	0
"	10/-	2	0	0
Silver				
Nickel 3d. Pieces				
Copper				
Bank Notes, £5 & upwards				
Postal Orders				
Drafts				
Total £		8		

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

11/4 19[illegible]

Credit Mrs's Counter

Notes	£1		
"	10/-		
Silver			
Nickel 3d. Pieces			
Copper			
Bank Notes, £5 & upwards		1	0
Postal Orders		6	15
Drafts Mrs P Abbot Rdyard's Own		2	7
		✓	
		3	0
		9	3
		1	0
		✓	
		3	0



Total £ ✓1 5 9

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.6.

BARCLAYS BANK LIMITED.

15/1/ 193 42

Credit Messrs Coulson

Notes	£1	41	0 0
"	10/-	13	0 0
Silver		5	0 0
Nickel 3d. Pieces		3	10 0
Copper			
Bank Notes, £5 & upwards			
Postal Orders		2	6 0
Drafts		11	1 6
		13	0 3
		6	8 0
		4	0 0

BARCLAYS BANK LIMITED
CLEARING BANK
19 JAN 1943
Cashier

	£	s	d
118			
	3	10	0

Total £

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques [illegible] clear days for collection.

BARCLAYS BANK LIMITED.

19/1/ 1934

Credit Men's Canteen

Notes	£1	12	0 0
" ...	10/-		
Silver ...	...		
Nickel 3d. Pieces		2	0 0
Copper ...		14	0 0
Bank Notes, £5 & upwards			
Postal Orders	...		
Drafts ...	... ...	1	0 0
from Mills & Co		1	0 0

BARCLAYS BANK LIMITED.

20/5/ 1942

Credit Men's Canteen

Notes ... £1	25	0	0
" ... 10/-			
Silver ...			
Nickel 3d. Pieces			
Copper			
Bank Notes, £5 & upwards			
Postal Orders		2	6
Drafts	1	0	0
M.O. Messrs Read Sons	1	0	0
✓ Messrs Ayre Read	32	12	2
P.C.V.	46	8	1
✓ ✓ Ayre Read	8	9	0
Total £	115	11	9

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

21/5/ 1934

Credit Men's Canteen

Notes	£1	7	0
"	10/-	7	0
Silver		10	0
Nickel 3d. Pieces			
Copper		1	0
Bank Notes, £5 & upwards			
Postal Orders			
Drafts			
Total £		24	0

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

May 22 1942

Credit Miss Coulson

Notes ... £1	£3	0	0
" ... 10/-			
Silver ...			
Nickel 3d. Pieces			
Copper			
Bank Notes, £5 & upwards			
Postal Orders ...			
Drafts			
Jas Bunney (M. H. Pennington)	25	0	0
Total £	28	0	0

BARCLAYS BANK LIMITED 22 MAY 1942 HAMMERSMITH BRANCH

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

May 21 1942

Credit Mess's Canteen

Canadian Notes £1	$1.00		
" ... 10			
Silver ...		7	8 9
Nickel 3d. Pieces			11 3
Copper ...		2	11 0
Bank Notes, £5 & upwards			
Postal Orders			
Drafts		146	0 0
			4 3
Total £		156	17 3

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

June 21 193 42

Credit Mrs. Carter

Notes ... £1			
" ... 10/-			
Silver			
Nickel 3d. Pieces			
Copper ...			
Bank Notes, £5 & upwards			
Postal Orders			
Drafts Per Imperial Milk Bar	11	1	0
	3	0	0
A. Means. Pepsi Cola	12	12	0
Mar 7	6	16	8

BARCLAYS BANK LIMITED
25 JUN 1942
HORLEY

Total £	33	10	8

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

30 6 / 193 4

Credit Jones & Carter

Notes ...	£1		
" ...	10/-		
Silver ...	...		
Nickel 3d. Pieces			
Copper	...		
Bank Notes, £5 & upwards			
Postal Orders	... ...		
Drafts	Neath ...	4	4 "
	Swan & Mus	6	14 10
	Ayr & Cayhams	12	1 8

Total £ 23 2 8

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

30/6/ 1947

Credit Mess Canteen.

Notes	£1			
„	10/-			
Silver				
Nickel 3d. Pieces				
Copper				
Bank Notes, £5 & upwards				
Postal Orders				
Drafts			37	1 2
Total £			37	1 2



Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4

BARCLAYS BANK LIMITED.

30/6/ 193 4

Credit Mun'l Canteen

Notes ... £1			
" ... 10/-			
Silver ...			
Nickel 3d. Pieces			
Copper ...			
Bank Notes, £5 & upwards	41	4	5
Postal Orders	5	0	0
Drafts	5	11	9
Total £	51	16	2



Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

Credit Miss Barker. 3 May 1954

10 15 6

Notes ... £1	
" ... 10/-	
Silver ...	
Nickel 3d. Pieces	
Copper ...	
Bank Notes, £5 & upwards	
Postal Orders	
Drafts ... Dublin ...	6 17 .



Total £ 6 17 .

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

30 May 1934

Credit Mens Canteen

	£	s	d
Notes ... £1			
" ... 10/-			
Silver ...			
Nickel 3d. Pieces			
Copper ...			
Bank Notes, £5 & upwards			
Postal Orders			
Drafts			
A/c Mens Canteen	17	19	11
Total £	17	19	11

BARCLAYS BANK LIMITED
HORLEY

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

Credit Mrs Lawton 25 July 1947

	£	s	d
Notes .. £1			
" ... 10/-			
Silver			
Nickel 3d. Pieces			
Copper ..			
Bank Notes, £5 & upwards			
Postal Orders			
Drafts ...			
Xpee Fund	4	9	2
Capt Fyfe	2	-	-
Rachel (Cash)	10	17	7
Hardlaws (Cash)	3	-	-
	20	2	9
Total £	20	2	9

BARCLAYS BANK LTD. 25 JUL 1947 No. 2 MORLEY

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

28 July 1942

Credit Mess Canteen

Notes ...	£1		
" ...	10/-		
Silver ...	...		
Nickel 3d. Pieces			
Copper	...		
Bank Notes, £5 & upwards			
Postal Orders	... ...		
Drafts	... ...		
Mat'l Rebate		22	12 8
Total £		22	12 8

BARCLAYS BANK LIMITED
28 JUL 1942
H

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

21 Aug 1942

Credit New Canteen

Notes ...	£1		
" ...	10/-		
Silver ...	...		
Nickel 3d. Pieces			
Copper	...		
Bank Notes, £5 & upwards			
Postal Orders	... ...		
Drafts	... ...	2 4 9	
Cash		35 11 9	
	Total £	37 16 6	



Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

7 th 19[illegible]

Credit New Account

Notes	£1	3		
"	10/-	1	10	
Silver			2	
Nickel 3d. Pieces				
Copper				4 12
Bank Notes, £5 & upwards				
Postal Orders				
Drafts				36 19 10



Total £ 41 11 10

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

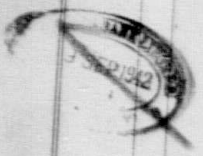
Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

Credit Rent Instalment 9 Feb 1942

Notes ...	£1	
" ...	10/-	
Silver ...	...	
Nickel 3d. Pieces		
Copper ...	...	
Bank Notes, £5 & upwards		
Postal Orders ...	...	
Drafts ...	...	3 3
Jack Rabin Esq		
	Total £	3 3



Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

Credit Messrs Lawlers 15 Feb 1945

Notes ... £1	
" ... 10/-	
Silver ...	
Nickel 3d. Pieces	
Copper ...	
Bank Notes, £5 & upwards	
Postal Orders	
Drafts	
Naafi	20 11 3
Total £	20 11 3

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

E. 4.

BARCLAYS BANK LIMITED.

29 Sept 1967

Credit Mrs Carter

Notes ... £1			
" ... 10/-			
Silver ...			
Nickel 3d. Pieces			
Copper ...			
Bank Notes, £5 & upwards			
Postal Orders			
Drafts			
Mr B C & H	35	1	8
Mrs Mrs	16	12	-
Hutchinson	5	5	-
Total £	56	18	8

BARCLAYS BANK LIMITED
HORLEY

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

22 Dec 1934

Credit Mrs Sanders

Notes ... £1		
" ... 10/-		
Silver ...		
Nickel 3d. Pieces		
Copper ...		
Bank Notes, £5 & upwards		
Postal Orders		
Drafts		
N/b Mrs	114	10
Na 78	33	9
		7
Total £	147	19



Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

28 Nov 1947

Credit Mrs Lambert.

Notes ..	£1		
" ...	10/-		
Silver...	...		
Nickel 3d. Pieces			
Copper	...		
Bank Notes, £5 & upwards			
Postal Orders	... ...		
Drafts	... ...	Nil ?!	4 1 3

BARCLAYS BANK LIMITED
23 NOV 1947
No. 18
HORLEY

Total £		4 1	3

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

19 Dec 1939

Credit Mrs Aitken's A/c
Our Edn Fund Acc

Notes ...	£1		
" ...	10/-		
Silver ...	...		
Nickel 3d. Pieces			
Copper ...	...		
Bank Notes, £5 & upwards			
Postal Orders ...	...		
Drafts ...	...	...	
Diff Acc		119	18 6
Total £		119	18 6

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

28 Dec 193[illegible]

Credit Mrs Landeen

	£	s	d
Notes ... £1			
" ... 10/-			
Silver			
Nickel 3d. Pieces			
Copper ...			
Bank Notes, £5 & upwards			
Postal Orders			
Drafts			
Nash & Co	33	11	1
Red Cross Soap	12	18	.
Total £	46	9	1

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

27 Aug 1943

Credit Mrs Sanders

Notes ... £1		
" ... 10/-		
Silver ...		
Nickel 3d. Pieces		
Copper ...		
Bank Notes, £5 & upwards		
Postal Orders		
Drafts		
Cha.	18	8
Haa?!	29	11
Total £	48	8

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

19 33

Credit

Notes	£1				
„ ...	10				
Silver ...	...				
Nickel 3d. Pieces					
Copper	...				
Bank Notes, £5 & upwards					
Postal Orders	...	...			
Drafts	...	...	...	29	19 3



Total £ 29 19 3

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4.

BARCLAYS BANK LIMITED.

9 Apr 43 193

Credit Mrs Carter

No 14 Abbey Gdns Nos. RCAMC

Notes .. £1			
" ... 10/-			
Silver			
Nickel 3d. Pieces			
Copper ..			
Bank Notes, £5 & upwards			
Postal Orders			
Drafts			
2/6 Mrs		5	- -
Total £		5	- -

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4

BARCLAYS BANK LIMITED.

9 Apr 43 193

Credit Mrs Carter

No. 14 Abbey Gdns Nos. RCAMC

Notes .. £1			
" ... 10/-			
Silver			
Nickel 3d. Pieces			
Copper ..			
Bank Notes, £5 & upwards			
Postal Orders ...			
Drafts			
2/6 Mrs		5	- -
Total £		5	- -

Paid in by

Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account.

Country Cheques require three and Metropolitan Cheques two clear days for collection.

C.S.B. 4

Rec'd from Capt Major
the sum of One pound
One shilling Balance
Dance Ticket Sale

£1.1/-

1930 V3

25 March 43 Qs

To Lady

Recd from Cpl R. Ramsden

the sum of Eleven Shillings

at Mens Canteen Dance admissions

11/-

25 March 43

19 Jan 43

Received from Cpl Moore
the sum of Four pounds
one shilling & six pence
a/c Mess canteen. - Sale
of Dance Tickets less
Orchestra charges

£4:1:6 Dontomski

19 Jan 43

STATEMENT

PHONE 1014

28 Feb 1943

M Mayor Halfpenny

MALLINSON OF HORLEY

SURREY.

Press Correspondents.
Wholesale and Retail
Newsagents, Tobacconists and Stationers
Sports Goods and General Sundries

All descriptions of Printing executed at lowest possible prices.

Advertisements received for all Newspapers, etc.

31 Jan		To 7 Dundee				12	18	2
1 Feb		11-6✓				8	1	8
2		11-0✓	16 Feb	10-6✓				
3		8-0✓	17	10-0✓				
4		11-0✓	18	10-0✓				
5		11-0✓	19	11-6✓				
6		10-6✓	20	12-0				
7	3/4	9-10✓	21 3/4					
8	12/-	12-6✓	22 11/6					
9		11-6✓	23					
10		11-0✓	24					
11		10-0✓	25	9-6✓				
12		10-0✓	26	9-6✓				
13	21/10	13-0✓	27	12-0✓				
14	3/4	9-10✓	28 3/4	9-10				
15		11-0✓		6-19-2		6	19	2
		8-1-8				27	19	0

ACCOUNTS DUE WHEN RENDERED PLEASE

26 Mar 43

Rec'd from Cpl R. Hamilton
the sum of Eleven Shillings
as Mens Canteen Dance admission

11/-

25 Mar 43

$$\frac{1\,5/4\;3/5}{3\;10\;,\;13\;,\;11}$$

19 Jan 03

Recd from Cpl Meade
the sum of Four pounds
one shilling and pence
a/c Mess Canteen. - Sale
of Dance Tickets &c
Orchestra Charge.

£4:1:6

Dan Lomax

19 Jan 03

STATEMENT

PHONE 95

28 Feb 1947

M Major Halfpenny

MALLINSON OF HORLEY

SURREY.

Press Correspondents.
Wholesale and Retail
Newsagents, Tobacconists and Stationers
Sports Goods and General Sundries

All descriptions of Printing executed at lowest possible prices.

Advertisements received for all Newspapers, etc.

31 Jan		To 7 Dundeed				12	18	2
1 Feb		11-6✓				8	1	8
2		11-0✓	16 7/6	10-6✓				
3		8-0✓	17	10-0✓				
4		11-0✓	18	10-0✓				
5		11-0✓	19	11-6✓				
6		10-6✓	20	13	RECEIVED WITH THANKS			
7	8/4	9-10✓	21 3/4					
8	12/-	12-6✓	22 11/8					
9		11-6✓	23					
10		11-0✓	24	7-0				
11		10-0✓	25	9-6✓				
12		10-0✓	26	9-6✓				
13	11/10	13-0✓	27	12-0✓				
14	8/4	9-10✓	28	9-10				
15		11-0✓		6-19-2		6	19	2
		8-1-8				27	19	0

ACCOUNTS DUE WHEN RENDERED PLEASE

Offering Music 6/-
Complete Organ 4/10
10/10

£ 27.14.-
14.10.-
9-
£ 13

Jan Debt 12.18.2
Offering Music Debt 6.-.
Complete Organ Debt 4.10.
13.9.—

15.-.10
10.10
14.10.-
12.12.2
£27 8 2

31-6030/Forms/A3091/37

Exhibit "A" to Cuddy

ORIGINAL

Army Forms A3091 (Stout)

Cover for Documents

Nature of Enclosures.

REPORT

on

AUDIT

of

MESSES AND REGIMENTAL INSTITUTES

of the

No. 14 CANADIAN GENERAL HOSPITAL, R.C.A.M.C.

for the period:

1 Jul 42 to 30 Apr 43.

REGIMENTAL FUNDS BOARD

Notes or Letters written.

Examined.

Regimental Funds Board C.A. (A.F.)

41/14 Cdn Gen Hosp/1

22 Jun 43

The President,
Regimental Funds Board.

Audit of Messes and Regimental Institutes
No.14 Canadian General Hospital R.C.A.M.C

1. Pursuant to your instructions we now report that we have completed the audit of the affairs of the Regimental Messes and Institutes of the m/n Hospital for the period from 1 Jul 42 to 30 Apr 43.

2. We have prepared and submit herewith the following financial statements covering the period under review:-

		Appendix
Officers' Mess	1 Jul 42 to 31 Jan 43	A
	1 Feb 43 to 30 Apr 43	A 1
Nursing Sisters' Mess	1 Jul 42 to 31 Jan 43	B
	1 Feb 43 to 30 Apr 43	B 1
Sergeants' Mess	1 Jul 42 to 31 Jan 43	C
	Months of Feb Mar & Apr 43	C 1 - 3
Men's Canteen	1 Jul 42 to 31 Jan 43	D
	1 Feb 43 to 30 Apr 43	D 1
P. R. I. Account	1 Nov 42 to 30 Apr 43	E
Barrack Damage Acct.	29 Oct 42 to 30 Apr 43	F
Patients' Fund	1 Jul 42 to 30 Apr 43	G
C.O's Fund	1 Jul 42 to 30 Apr 43	H
2nd Cash Element Acct.	Fiscal year ended 26 Mar 43	I
	Month of Apr 43	I 1

3. The Cash on Hand at 30 Apr 43 was verified by actual count and stock inventories at that date duly certified as correct by various officers of the Unit. Bank balances as at 30 April have been verified by certificate from the bank with the exception of the balances in the West End Branch, Bank of Montreal, Montreal P.Q. We are awaiting certificates from Canada covering these balances of £108. 0. 0. and £25. 1. 0. standing to the credit of the Men's Canteen and C.O's Fund respectively.

4. We have had exhibited to us a verification request dated 23 Mar 43 from the Bank of Montreal Head Office inspection department, which states that the West End Branch, Montreal, held for safekeeping in the name of No.14 General Hospital R.C.A.M.C. $2,000 Dominion of Canada 3% 1952 at that date.

5. The members of the various messes, with the exception of a few who were not available, have signed to the effect that the amounts shown as due from them at 30 April are correct, and statements of account as at that date have been obtained from all firms and individuals known to have had dealings with the hospital.

6. In our opinion, the Balance Sheets and supporting statements accompanying this report are properly drawn up so as to exhibit a true and correct view of the state of affairs of the Messes and Institutes, according to the best of our information and the explanations given to us and as shown by the books and records produced.

(cont.)

7. The Regimental Accountant L/Sgt. Smith H.M. supervised and operated all the Unit Messes and Funds with the exception of the C.O's Fund and the 2nd Cash Element Account.

8. Suitable books and records were in existence for the funds administered by L/Sgt. Smith H.M. but they were either disregarded entirely, or with the exception of cash books and accounts receivable records, discontinued during the month of September 1942.

9. Considerable reliance was placed on the Regimental Accountant with the result that he was entrusted with the preparation of cheques, the recording of transactions in the books, the preparation of Bank deposit slips and the actual deposit of cheques and cash.

10. From an examination of the books and records produced it would appear that no proper audit had been conducted subsequent to the month of August 1942, and in our opinion a similtaneous cash count of all funds made at any time subsequent to 30 Sep 42 would have revealed a cash shortage.

11. All monies received were not deposited in the bank, contrary to R.M.M.C. 1942 para 16, and numerous disbursements were made from cash receipts. Cash was seldom deposited during the period under review resulting in an increasing balance of cash said to have been on hand.

12. As a result of our audit and the cash counts conducted on 30 Apr 43 a net shortage of £303. 3. 1. was revealed on all funds administered by L/Sgt. Smith H.M.

13. We submit the following observations on the various Regimental Messes and Institutes.

Officers' Mess

14. A considerable number of Accounts Receivable have been allowed to remain in arrears, regardless of the fact that this was observed on in our letter dated 30 Dec 42.

15. Several payments have been made which include foods invoiced to and received by the Nursing Sisters' Mess, and goods have been invoiced and received by this Mess but paid for by the Nursing Sisters' Mess. Some difficulty was experienced in segregating these items and making the proper charges from one mess to the other.

16. A number of vouchers were missing, but the amounts of the expenditures involved appeared reasonable, most items being satisfactorily explained. These items have been allowed.

17. The audited financial statement for the month of Jan 43 as submitted to the Regimental Funds Board was not prepared from the books and records, and does not exhibit the true facts. Disbursements were shown in this statement that were not actually paid until February and March 43, and in some instances were not paid as at the date of the audit. It is difficult to understand how Capt. J. M. Kilgour could certify that Cash on Hand as at 31 Jan 43 amounted to £59. 7.10 when in fact there should only have been £23. 12. 4 on hand as shown by our audited statement.

18. The Cash Shortage of £9. 8. 4. was the amount of cash that should have been on hand as at 30 Apr 43, but as certified to by Capt. C. W. V. McCutcheon, the Secretary-Treasurer of this Mess, there was no cash at all on hand.

(cont.)

Officers' Mess (Cont.)

19. The Committees for the period covered by our audit are as follows:-

1 Jul to 15 Oct 42	Major A.E.Bazin	President
	Capt.Van Wyck	Vice-President
	Capt.(now Major) W.Cohen	Sec-Treas.
	Capt.McGovern	Asst.Sec-Treas.
15 Oct 42 to 30 Apr 43	Major Gordon Petrie	President
	H/Capt.R.D.Scott	Vice-President
	Capt.J.M.Kilgour	Sec-Treas.
	Capt.C.W.V.McCutcheon	Asst.Sec-Treas.

Nursing Sisters' Mess

20. The Cash and Accounts Receivable books were the only records maintained for the entire period under review. These were not totalled or balanced for the months of February, March and April 43.

21. The Cash Shortage in this Mess as at 30 Apr 43 of £37.15. 9 represented actual cash receipts not deposited in the Bank, nor accounted for in any way. The shortages commenced in September 42, the first item being Cash Sales of £9. 0. 9. turned over to L/Sgt. Smith by 2 Lieut. N/S Monkhouse. This receipt was not entered in the general cash book kept by L/Sgt. Smith or deposited in the bank. The shortages continued throughout the period from Sep 42 to Feb 43, the actual cash receipts not being accounted for. The Bar was conducted largely on the chit system and very little actual cash was received each month. Presumably it was intended to deposit cash in Jan 43, when actual cash receipts of £12.18. 4 were listed on the duplicate deposit slip, but not added in the total and not shown at all on the original deposit slip turned in at the Bank.

22. Bar chits for guest entertainment at Mess dinners, and in the Mess, could not be produced at the time of this audit.

23. The variation of £25.12. 7 as shown by the Accountability statement as at 30 Apr 43 is probably due to free drinks, and Bar Stock used in the Mess not being taken into account.

24. It will be noted by reference to the Trading Profit and Loss statement for the period 1 Jul 42 to 31 Jan 43 (Appendix B) that the gross profit on the bar sales was 27.90%. For the three months period ended 30 Apr 43 (Appendix B 1) the gross profit dropped to 10.27%. This was due to greatly decreased sales of Beer and Liquor, the two chief items of Bar Stock from which a substantial profit is derived.

25. The Committees for the period covered by our audit are as follows:

1 July to Nov 42	Lieut.	N/S C.McDonald	President
	"	N/S A.Tennant	Vice-President
	"	N/S C.Campbell	Secretary
	"	N/S Hopper	Treasurer
Nov 42 to Apr 43	"	N/S W.Crombie	President
	"	N/S M.Mowatt	Vice-President
	"	N/S H.Craig	Secretary
	"	N/S M.McLean	Treasurer

(Cont.)

Sergeants' Mess

26. The Regimental Accountant L/Sgt. Smith, was the Treasurer of this Mess, and had full control over all cash and bank transactions.

27. The Cash Book was written up and balanced monthly, but cash on hand was short as from the end of Sep 42 and the shortage became progressively greater in amount each month. This would have been apparent had an actual physical check been made at any time during the period involved. The accumulated shortage to 30 Apr 43 was £149.14.11.

28. The Cash Balance, said to have been on hand at the close of business on 31 Dec 42, as reflected in the statement submitted to the Regimental Funds Board, amounted to £104.10. 9. Failure to deposit this large sum during the succeeding month resulted in the following observation being made by this Board. Para 13 of R.F.B. letter 41/14 Cdn Gen Hosp/1 dated 11 Mar 43 reads:

> "It will be noted that the opening cash balance of £104.10. 9, which amount should have been deposited in the bank during the first week of January, is still on hand at the close of January. The Receipts of £88. 6.10 appear to be the only deposits made. May it be explained, please, why this sum of £104.10. 9 was not deposited in January 43. Loss by bombing, fire and theft is always prevalent, therefore cash should be deposited in the bank as often as possible."

29. The financial position of the Sergeants' Mess was commented on by the Regimental Funds Board in Dec 42, when the following observation was submitted to the unit in a letter dated 30 Dec 42, para 5 (d) of which reads:

> "May action be taken to improve the liquid position of this Mess at once, please, so that all accounts with suppliers may be promptly settled."

Under date of 4 Jan 43, the Unit replied - re para 5 "Such action taken." In view of this reply it was assumed by R.F.B. that careful supervision of the financial affairs of this Mess would be exercised in future.

30. The Officers' Mess is the largest creditor of this Mess, and an agreement was reached with the Officers' Mess committee to defer the payment of this account until the financial position was improved, providing all future purchases would be on a cash basis. All other creditors have been paid subsequent to the date of the audit.

31. When the true financial condition of the mess was realized, and subsequent to this audit, a per capita levy of £1. 0. 0 was agreed to by the members in order that necessary working capital could be made available to continue operations. The amount realized is set up as an Account Payable in the books, payment of which is to be made when sufficient surplus has accumulated to ensure the solvency of the Institute.

32. The Committees for the period covered by our audit are as follows:

July to Aug 42	Q.M.S. Plumpton W.J.	President
	Sgt. Franklin B.S.	Secretary
	L/Sgt. Smith H.M.	Treasurer
Sept to Dec 42	Q.M.S. Walker A.	President
	L/Sgt. Homer A.	Secretary
	L/Sgt. Smith H.M.	Treasurer

(cont.)

Sergeants' Mess (Cont.)

32. (Cont.)

Jan to April 43

Q.M.S. Sigourin H.	President
Sgt. Atchison W.M.	Secretary
L/Sgt. Smith H.M.	Treasurer

Sgt. Franklin S. was elected Treasurer in March 43 to replace L/Sgt. Smith H.M.

Major (now Lt. Col.) Johnston was the Supervising Officer of the Sergeants' Mess for the entire period under review.

Men's Canteen

33. The Canteen did not operate as such during the period under review, the revenue being derived from N.A.A.F.I. 6% rebates, barber, tailor shops, and miscellaneous revenue.

34. The total Cash Shortage of this Institute amounts to £57.14. 5.

35. The Cash Book was discontinued in November 42 and was not closed off for that month.

36. It was the practice for L/Sgt. Smith to make collection of cash receipts from the barbers' and tailors' shops, etc. He paid the employees in cash, taken from these receipts, for services rendered and expenses incurred. The balance of cash after these disbursements had been made was held by him for later deposit in the Bank.

37. The Nursing Sisters' Mess paid the Canteen the sum of £16.12. 0 by cheque No.2/6026813 dated 10 Sep 42 for a credit note on H.Bowyer & Son.

38. In this connection the Regimental Funds Board submitted the following observations to the Unit, see para 8 of letter dated 1 Oct 42, quoted hereunder:

> "The June statement shows a credit from H.Bowyer & Sons of £16.12. 0 which appears to have been dropped in this statement without any comment. Please explain."

In answer to this observation the R.F.B. received a letter from the Unit dated 19 Oct 42. Para 4 (a) is quoted below:

> "The credit note was applied on a Nursing Sisters' Mess Account with H.Bowyer & Son and an equivalent amount has been credited to the Men's Canteen from the Nursing Sisters' Mess."

A further observation was sent to the Unit by the Regimental Funds Board in a letter dated 9 Feb 43 of which para 11 reads:

> "During the month of Sept the Nursing Sisters' Mess shows a payment of £16.12. 0 to the Men's Canteen which account can not be traced in the receipts of the Men's Canteen statement. Please advise where this receipt may be found."

In answer to this observation para 11 of a letter from the Unit dated 22 Feb 43 is quoted:

> "The amount of £16.12. 0 was paid to H.Bowyer & Son and not to the Men's Canteen as shown. This amount, together with another payment of £29.12. 4 clears the account payable of £46. 4. 4. shown on the August statement."

(cont.)

Men's Canteen (Cont.)

38. (Cont.)

This reply was not satisfactory, and a further letter was dispatched to the Unit on 11 Mar 43, a copy of which is attached to this report. A cheque for £3. 3. 0. received from the 2½d Cash Ration Allowance was treated in exactly the same manner as the £16.12. 0 from the Nursing Sisters' Mess; the cheque being deposited in the Canteen Bank account, but now shown in the receipts, thus cash to this amount probably being withdrawn without disclosing actual cash shortage. Our audit revealed that these cheques were deposited in the Canteen Bank account during Sep 42, but not entered in the Cash Book receipts, therefore actual cash to this amount was short.

39. The N.A.A.F.I. would not take the responsibility for any loss on the sale of newspapers so all papers were charged to the Men's Canteen, but delivered to the N.A.A.F.I. Canteen for sale.

40. The books did not record any newspaper transactions whatsoever during the period L/Sgt. Smith was the book-keeper, yet it appears the following transactions took place:

The Officers' Mess received Sunday papers for which no accounting had been made. L/Sgt. Smith collected the Cash from the N.A.A.F.I. for the sale of these newspapers and paid the wholesale paper dealer; but at no time was the amount collected from N.A.A.F.I. sufficient to pay the wholesaler in full the balance being made up from Canteen Cash without any accounting therefor.

41. Although L/Sgt. Smith collected the proceeds of £12. 8. 0 from the N.A.A.F.I. for the month of January 43 he did not pay the money over to the paper dealer or deposit these receipts in the Bank.

42. The Committees and sub-committees for the period under review are as follows:

1 Jul 42 to 30 Apr 43	Committee	Sub-Committee
	Major G.W.Halpenny	Spr.A.V.Tekl
	Major F.W.Wigglesworth	Pte.J.McCormack
	Major W.Mason Couper	Pte.J.H.Mahoney
	Capt.T.G.Pyshe	

P.R.I. Account

43. The financial transactions of the barber and tailor shops were transferred from the Canteen to this account in November 1942. A shoemaker's shop and photographer's shop started operations in March 1943.

44. A Bank Account was opened in November with the deposit of a cheque from the Canteen for the net amount of the revenue of the barber and tailor shops, which had been credited to the Canteen Account. This was the only deposit made during the entire period under review. Cash revenue was collected and Cash disbursements were made by L/Sgt. Smith H.W.

	£ s d	£ s d
Total Receipts for the period amounted to		241.15. 3
Total Disbursements		152. 8. 8
Balance should be Cash on Hand and in Bank		89. 6. 7
Actual Cash on Hand	33. 9. 5	
Cash in the Bank	11.12. 6	45 .1.11
Cash Shortage as at 30 April 43.....		44. 4. 8

(cont.)

P.R.I.Account (Cont.)

45. The barber, Pte. Ancil, is running a small privately owned Canteen in the barber's shop, obtaining his supplies on credit from British suppliers, charged to this account. During May 43 he reimbursed this account for the cost price of supplies he received in Nov 42 and made payment direct to the supplier for additional goods he received in April 43.

46. It was suggested to Major Petrie that this canteen cease operating immediately, as it was contrary to regulations. N.A.A.F.I. is operating a canteen for the benefit of the men and the unit is receiving the 6% rebate, as previously mentioned.

47. The Committees for the period covered by our audit are as follows:

July to Oct 42.	Major G. W. Halpenny
	Major J. G. Petrie
	Major H.S.B. Galbraith
	Capt. Turcot R.A.
Nov 42 to Apr 43	Major G. W. Halpenny
	Major J. G. Petrie
	Major H.S.B. Galbraith
	Capt. T. G. Fyshe

Barrack Damages

48. No books whatsoever could be produced for this account at the time of audit.

49. The Paymaster collected the revenue of this account, andpaid it to Col. A. Ross, from whom he obtained a receipt. Col. Ross, in turn handed the cash to L/Sgt. H.M.Smith for deposit in the bank, who gave Col. Ross his receipt for the amount involved.

	£ s d
Total Revenue for the period was	51.17. 0
Total Deposits in the Bank	30. 3. 6
Balance should be Cash on Hand and in Bank	21.13. 6
Actual Cash on Hand as at 30 Apr 43	15. 8. 6
Shortage	6. 5. 0

Patients' Fund

50. The revenue of this account was derived from the 6% rebates on N.A.A.F.I. Canteen Sales to Patients and received by cheques which have been deposited in the bank without deduction.

51. All disbursements were made by cheque with the exception of £2. Petty Cash paid to Spr. Forbes. This £2. was cash belonging to one of the other Institutes, but as it was not known to which Institute it belonged, it is treated in this statement as cash over.

52. There was no committee appointed for this Institute.

(cont.)

C. O's. Fund.

53. The books of this Institute were kept by Major E. A. McNaughton and found to be satisfactory.

54. All revenue was deposited in the bank and all disbursements were made by cheque.

2½d Cash Ration Allce.

55. The books and records of this fund came under the control of Major R. Ferguson, and were found to be quite satisfactory.

56. The books, Bank Statements, returned cheques, vouchers etc. were all in good order for audit purposes.

57. At the end of the fiscal year this fund was overexpended by £128. 0.10, which amount is shown as a reduction from the liability due to the Canteen.

General.

58. The total shortages of £303. 3. 1 revealed by our audit, and referred to in the report are summarized below:

SUMMARY OF TOTAL SHORTAGES

Officers' Mess	9. 8. 4	
Nursing Sisters' Mess	37.15. 9	
Sergeants' Mess	149.14.11	
Men's Canteen	57.14. 5	
P.R.I. Account	44. 4. 8	
Barrack Damages	6. 5. 0	
Total Shortages	305. 3. 1	
Less Patients' Fund (Over)	2. 0. 0	
Net Total Shortages		£ 303. 3. 1

59. The book-keeper, L/Sgt. Smith H.M. received a salary of £3. 2. 6. per month for his services to all Institutes.

60. The members of the regimental audit boards for the period covered by our audit are as follows:

1 July to 31 Dec 42	Lt. Col. C.A. McIntosh	President
	Lt. Col. J.H. Palmer	Member
	Major B.S. Johnston	Member
Month of January 43	Lt. Col. C.A. McIntosh	President
	Lt. Col. J.H. Palmer	Member
	Major G.W. Halperny	Member

61. All of which is respectfully submitted.

(J.M. Anderson) Major, E.D., R.C.A.
Member,
Regimental Funds Board.

C O P Y

41/14 Cdn Gen Hosp RCAMC/1

11 Mar 43

Officer Commanding,
No.14 Cdn General Hospital,
R.C.A.M.C.,
C.A.O.

Audit of Regimental Institutes
Months of Sep, Oct, Nov and Dec 42

1. With reference to your answers to our observations re the m/n returns contained in your letter 279/8/7/5 dated 22 Feb 43, we comment as follows:-

2. Para 11 (a) During the month of Aug 42 the amount of £16.12. 0. which had previously been shown as an Account Receivable in the Men's Canteen was dropped without any explanation.

(b) In answer to our observation regarding this, we refer you to Para 4 of your letter 279/8/7/5 dated 19 Oct 42, in which you state that this credit note was taken over by the N/S Mess and an equivalent amount paid to the Men's Canteen from the N/S Mess.

(c) During the month of Sep 42 the N/S Mess shows this payment of £16.12. 0 to the Men's Canteen, but the Men's Canteen statement does not show the receipt of this amount.

(d) In view of these facts the answer to our observation re (c) above is not understood. However, when L/Sgt. Smith visited this office he gave us to understand the payment of £16.12. 0 had been paid to H.H.Bowyer & Son instead of the Canteen by mistake, and that a refund would be claimed and credited to the Canteen.

(e) It is suggested that this amount be set up on the books of the Canteen as an Account Receivable until such time as the refund is received.

3. Para 13 (a) The amount of £4. 6. 3. was the first Zgd entitlement to be received, and which could not be traced in the books and records, or accounted for at the time of the last audit.

(b) This is not a proper charge against either Canteen or Regimental Funds, and therefore should be reimbursed without delay.

4. May an early reply, in duplicate, be received, please.

(Sgd.) G.E.W.Barton, Major,
for (W.G.Stillman) Lt.Col.
President,
Regimental Funds Board.

CD/VMT

Schedule Of Accounts Receivable And Accounts Payable

As at 31 January 1943

ACCOUNTS RECEIVABLE	£	Amount £	s	d
Amount—Total		364	2	8
Balance—in detail—(K.R. (Can.) para. 1001)		155	7	11
Lt. Col. Palmer	11- 3- 5			
Major Copping	7-16- 5			
" Cowper	4-17- 7			
Capt. Cohen	6- 5- 6			
" Dinan	2- 0- 3			
" Mc Cutcheon	10-16-10			
Major Wheatley	2- 8- 9			
" Mundell	1 -1- 0			
" Evans	3- 9- 5			
Lieut Lovell	2-5- 2			
Capt. Mc Lean	1- 4- 1			
Col Mc Farlane	14- 8			
Major Elkington	1-15-11			
" Simard	3- 3- 6			
N/S Mess	21- 8- 9			
Sgts Mess	45- 6- 0			
Capt Bensley	8-18- 8			
Capt Bazin	20-13- 0			
Arrears from				
August	16- 9			
October	3-12- 2			
November	38-11- 1			
December	112- 7-11			
Total Arrears	185- 7-11			
Total - per statement of Assets and Liabilities	£	519	10	7

ACCOUNTS PAYABLE (Show name of Firm and Purpose)	£	Amount £	s	d
N/s Mess(a/cs chgd to Offs)		71	11	11
Barrack Damages a/c		1	18	6
Conville Laundry		63	5	8
W. G. Smith & Sons Newspapers		6	4	9
Carrington's Gift		10	0	0
P.R.I. a/c) Wages for		4	0	0
Men's Canteen) Bookkeeping		4	0	0
Wages Payable Bar 1- 0- 0				
Mess 10- 5- 0				
Batmen 10-12- 6		21-	17	6
Men's Canteen Paper a/c		2	6	6
Bar Purchases				
Barclay Perkins & Co.		17	2	4
Mess Purchases				
Lime Fisheries 11- 3-10				
R. Keeling Ltd. 31-11-11				
Coopers 11- 6		43	7	3
Total		245	14	5
Credits				
Direct Supply Co (Overpaid) 4-6-0				
Kennard & Court Ltd. 4-2				
Allen & Lloyd 4-7-9		8	17	11
Total - per statement of Assets and Liabilities	£	236	16	6

PARTICULARS OF INSURANCE

	Amount £	Insurance £	Date of Expiry £
Inventory of Merchandise at end of period	93-19-10		
Value of Furniture & Equipment carried as an Asset			
Value of Furniture & Equipment not carried as an Asset	£255- 0- 0	£ 500	£ 9 Oct 43
Casualty or other Insurance			

Secretary

REMARKS AND PROPOSALS OF THE COMMITTEE

Names of the Members

Committee 1st July - 15 Oct 42.

1 Capt. (Now Major) A.I. Bazin
2 Capt E Van Dyck
3 Capt W. Cohen
Capt Mc Govern

XXX Committee 15 Oct 42 - 15 April 43.

1 Major Gordon Petrie
2 H/Capt R.D. Scott
3 Capt J.W. Kilgour
Capt C.W. Mc Cutcheon

Date of last meeting 194

Remarks

Secretary of Committee

M[illegible]29 (Overseas)
40[illegible]B/1446 (8/42)

Appendix A.
FINANCIAL STATEMENT

The #14 Cdn Gen Hospital R.C.A.M.C.
Name of Unit

The Officers' Mess.
Name of Institute or Fund

ABSTRACT OF RECEIPTS AND DISBURSEMENTS

For the Period ended 1 July 42 to 31 Jan. 1943

Date 1942	RECEIPTS (Show Source)	£	Amount £	s	d
1Jul	Cash on hand—Forward		44	6	2
	Bank Balance—Forward		62	11	3
31 Jul	On June a/cs	£436-13-0			
31 Aug	On June a/cs	61-11-7			
30 Sept	On June a/cs	3-2			
31Oct	On June a/cs	18- 5-1	516	12	10
31 Aug	July a/cs	322-12-5			
	Aug a/cs	2- 5-2	324	17	7
30 Sept	July a/cs	35- 7-6			
	Aug a/cs	273- 7-2			
	Sept a/cs	9-2	309	3	10
31 Oct	July a/cs	25-14-2			
	Aug a/cs	45-11-8			
	Sept a/cs	200-13-11	271	19	3
30 Nov	Aug a/cs	7-0-6			
	Sept a/cs	27- 3-11			
	Oct a/cs	320- 2-2			
	Nov a/cs	10-0	354	16	7
31 Dec	July a/cs	3-14-5			
	Aug a/cs	10- 4-5			
	Sept a/cs	13- 7-5			
	Oct a/cs	47- 7-0			
	Nov a/cs	233-10-3			
	Dec a/cs	6- 2-0	314	5	6
31 Jan	Nov a/cs	14-15-9			
	Dec a/cs	407-13-0	422	8	9
31 July	Bar Sales	16-11-2			
31 Aug	" "	20-11-6	168	18	0 I
30 Sept	" "	47-14-9			
30 Oct	" "	79- 9-8			
30 Nov	" "	32-17-1			
31 Dec	" "	111-18-2			
31 Jan	" "	42-11-1	352	13	7
31 July	Mess Chgs	18-0			
31 Dec	" "	2- 4-0			
31 Jan	" "	6-0	3	11	0
31 Oct	Donation		50	0	0
	TOTAL £		3136	4	4

I Liquor sold at cost.

Date	DISBURSEMENTS (Show Name and purpose)	£	Amount £	s	d
1st July 42 to 31st Jan 43.	Payments by Cash.				
	On June a/cs Pay.		1	6	4
	Bar Purchases		5	5	0
	Mess Purchases		78	8	5
	Mess Wages			10	0
	Bar Expenses		3	13	1
	Mess "		2	4	5
	Disposition of Profits		8	17	10
	Payments by Cheques.				
	On June a/cs Payable		625	17	10
	Bar Purchases		1403	3	0
	Mess Purchases		369	0	10
	Bar Wages		6	0	0
	Mess Wages Batmen 60- 0-0				
	Mess 32- 5-0		92	5	0
	Bar Expense			10	0
	Mess Expense		1	3	10
	Pr of P.				
	Glasses		7	6	0
	Dance Expense		21	5	0
	Laundry Exp. 3-6-1 Offs 116-18-10				
			120	4	11
	8 Cdn Gen Hosp (Contra) a/cs Rec		9	11	9
	Telephone		2	12	8
	Furniture & Elect. Equip.		42	1	11
	Newspapers		6	5	2
	Donation		3	10	0
	Barrack Damages		1	12	6
	Radio Repairs		1	0	0
	Bonus to Staff		8	10	0
	Gift		8	5	0
	Insurance		1	17	6
	Stationery		12	17	7
31Jan	Cash on hand		23	12	4
	Bank Balance (per Cash Book)		217	6	5
	TOTAL £		3136	4	4

BANK RECONCILIATION STATEMENT (Attach Bank Certificate)

Outstanding Cheques	£			
Jan 27	Saccone & Speed	27	0	0
	Brown & Park	26	6	0
	Country Delicacies	12	10	1
Jan 28	NAAFI	3	18	6
" 30	Warnett	4	10	9
" 19	N.B.M. Insurance Co.	1	17	6
TOTAL £		76	2	10

	£	s	d
Balance (per Cash Book) £	217	6	5
Add Outstanding Cheques £	76	2	10
Balance per Bank Certificate £	293	9	3

Names of Signing and Countersigning Officers

Major A.I. Bazin President — Col A Ross Officer Commanding
Major W Cohen Treasurer — 2nd in Command

STATEMENT OF ASSETS AND LIABILITIES

As at 31 January 1943

ASSETS		Amount
Cash (per Cash Book)		
On hand	£ 23-12-4	240 18 9
In bank	£ 217-6-5	
Petty Cash or Change Fund		
Inventory (at cost)		
Wet or Bar	£	93-19-10
Dry or Mess	£ 93-19-10	
Containers	£	
Accounts Receivable		
Current	£ 364-2-8	519 10 7
Arrears	£ 155-7-11	
(See page 4)		
Furniture & Equipment (at cost) (If carried as an Asset)		
"Memorandum" Furniture & Equipment (If not carried as an Asset)	£ 255-0-0	
TOTAL £		854 9 2

LIABILITIES		Amount
Accounts Payable (See page 4)	£	236 16 6
Reserves:— For Depreciation		
Other - Specify		
Surplus		617 12 8
TOTAL £		854 9 2

CERTIFICATE OF CASH ON HAND

I, the undersigned, hereby certify that the cash on hand, Petty Cash and Change Fund as included above, were counted by me and found correct as at the date of the above statement.

Treasurer

STATEMENT APPROVED

President of the Committee

Commanding Officer

STATEMENT EXAMINED

Officer i/c Sub-Section, Regimental Funds Board

Date 194

CERTIFICATE OF AUDIT

We have audited the books and accounts of the

for the Month/Quarter ended 194

and in our opinion the above statement is properly drawn up so as to show a true and correct view of the state of the finances as at 194

President

Member Unit Audit Board

Date Audited 194

Note:- Members of Audit Board should not be Members of the Committee nor Signing Officers for the Bank Account. (K.R. (Can.) 1939, para. 41c)

LIST OF APPENDICES ATTACHED

(a) Bank Certificate	X
(b) Merchandise Inventory (M.F.M. 133, Overseas)	X
(c) Audit Board Report (if any)	
(d) Other	

STATEMENT OF PROFIT AND LOSS

Period Month/~~Quarter~~ ended 1 July 42 to 31 Jan 43. 194

Retail 1740-6-0
Wholesale at Cost 108-18-0
Free Drinks 30-15-6

	Wet Canteen or Bar		Dry Canteen or Messing		Total	
Sales (or Receipts) ~~for Period~~	£ 1879-19-6	100%	£ 619-11-4	100%	£ 2499-10-10	100%
Inventory at end of last period (cost)	£ 209-1-3		£		209-1-3	
Add Purchases for period	£ 1471-0-2		£ 490-16-6		1961-16-8	
	£ 1680-1-5		£ 490-16-6		£ 2170-17-11	
Less Inventory at end of current period (cost)	£ 93-19-10		£		£ 93-19-10	
Cost of Sales and/or Messing	£ 1586-1-7		£ 490-16-6		£ 2076-18-1	
Gross Profits	£ 293-17-11	15.60	£ 128-14-10	20.79	£ 422-12-9	16.90
Deduct Expenses						
Wages—Steward and/or Caterer	£ 7-0-0		£			
Assistants @ each	£		£ 43-0-0			
@ each	£		£			
Total Wages	£ 7-0-0		£ 43-0-0			
Other Expenses (in detail)						
	£		£			
Miscellaneous Exp.	£ 4-3-1		£ 6-14-4			
	£		£			
	£		£			
Deduct Total Expenses	£ 11-3-1		£ 49-14-4		£ 60-17-5	
Net Operating Profit	£ 282-14-10		£ 79-0-6		£ 361-15-4	
Add Revenue from Other Sources (Specify)						
	£		£			
List attached below	£		£ 573-18-8			
Total Profit for the period	£				£ 573-18-8	
Add Surplus from previous statement					£ 939-14-0	
Total Surplus Available					£ 1513-12-8	
Deduct Disposition of Surplus (in detail)						
	£		£			
List attached below	£		£ 522-16-5			
	£		£			
	£		£			
Final Surplus (per statement of Assets & Liabilities)	£				£ 522-16-5	
	£				£ 617-12-8	

Average daily charge for Messing 2/- No. of Members 39

Revenue from Other Sources.

Adjustment June a/cs Rec.	£ 6-11-0
Donation	50-0-0
Batmen	223-14-6
Laundry	180-4-6
Assessments	28-14-0
No 8 Cdn Gen Hosp (Contra)	9-11-9
N/S Mess (Contra)	71-11-11
Barrack Damages	3-11-0
	£ 573-18-8

Disposition of Profits.

Batmen	70-12-6
Laundry	180-4-6
No 8 Cdn Gen Hosp (Contra)	9-11-9
N/S Mess (Contra)	71-11-11
Barrack Damages	3-11-0
Adjustment June a/cs Rec	1-11-0
" July & Dec a/cs Rec	3-18-4
Free Drinks	30-15-6
Glasses	7-6-0
Dance Expense	21-5-0
Telephone	2-12-8
Furniture & Fixtures	43-4-1
Newspapers	15-5-5
Extra Salaries	4-0-0
Donations	3-10-0
Radio Repairs	1-3-0
Bonus to Staff	8-10-0
Gifts	18-5-0
Insurance	1-17-6
Stationery, Books etc.	12-17-7
Bookkeeper's Salary	8-0-0
Miscellaneous Expenses	3-3-8
Total	£ 522-16-5

Schedule Of Accounts Receivable And Accounts Payable

As at 30 April 194 3

ACCOUNTS RECEIVABLE	£	Amount			ACCOUNTS PAYABLE (Show name of Firm and Purpose)		£	Amount		
Current—Total	£	331	3	3	N/S Mess arrears	71.11.11	£			
Arrears—in detail—(K.R. (Can.) para. 1001)					Chgs to Officers	4. 0. 4				
Major R.Ferguson			10	0	Pd NAAFI by N/S					
Capt.A.R.Bazin		9	12	0	Mess MP	5. 0. 1				
" S.G.Dickinson		15	8	0		80.12. 4				
" J.J.Dinan		10	15	9	Less Pd NAAFI for					
" C.D.T.Mundell		4	6	6	N/S Mess	4.15. 2		75	17	2
Major J.H.Beasley			10	5						
Lieut. Turner		1	10	1	Barrack Damages Acct.			4	15	6
Capt.T.A.Fysher			5	11	P.R.I. Account			4	0	0
Lieut. Davidson		1	5	4	Men's Canteen			4	0	0
Capt. N.G.McLean		1	10	9	Gonville Laundry	D of P		36	13	7
Lieut. White			9	0	Barclay Perkins Ltd.	BP		24	13	8
N/S Mess		93	18	1	Lime Fisheries	MP		4	4	3
Sgts Mess		64	12	8	Coopers	MP			14	0
Capt.A.D.Duncan		7	4	7	S.A.Coutts	Radio Repairs		1	7	10
					Direct Supply	BP		8	14	3
					R.Keeling Ltd.	MP		14	12	2
					W.H.Smith & Sons	Papers		1	11	0
					Hyatts Stores				8	8
					Men's Canteen, Paper Account			3	4	6
					Total			184	16	7
					Credit Notes:					
					Kenward & Court	4. 2				
					Allan & Lloyd	4 . 7. 9				
					Brown & Paul	3. 0		4	14	11
Total - per statement of Assets and Liabilities	£	543	2	4	Total - per statement of Assets and Liabilities		£	180	1	8

PARTICULARS OF INSURANCE

		Amount		Insurance		Date of Expiry
Inventory of Merchandise at end of period	£	287. 9. 9	£		£	
Value of Furniture & Equipment carried as an Asset	£		£		£	
Value of Furniture & Equipment not carried as an Asset	£	255. 0. 0	£	500.0.0	£	9 Oct 43
Casualty or other Insurance	£		£		£	

Secretary

REMARKS AND PROPOSALS OF THE COMMITTEE

Names of the Members

Committee	Sub-Committee
1 Major G. Petrie	1
2 H/Capt. R. D. Scott	2
3 Capt.J.M.Kilgour	3
Capt.A.W.V.McCutcheon	

Date of last meeting 2 February 194 3

Remarks

Secretary of Committee

Appendix A.1
FINANCIAL STATEMENT

The No. 14 Cdn General Hospital R.C.A.M.C.
Name of Unit

The OFFICERS' MESS
Name of Institute or Fund

ABSTRACT OF RECEIPTS AND DISBURSEMENTS

For the Monthxxx Quarter ended 1 Feb 43 to 30 Apr 43 194

1943	RECEIPTS (Show Source)	£	Amount			1943	DISBURSEMENTS (Show Name and purpose)	£	Amount		
1 Feb	Cash on hand—Forward		23	12	4	1 Feb	On Jan A/Cs. Pay		157	11	6
	Bank Balance—Forward		217	6	5	to	Bar Purchases		814	5	1
28 Feb	On A/Cs. Rec		281	1	0	30 Apr	Mess Purchases		104	7	9
	Cash Bar Sales		29	12	6	1943	Bar Wages		6	10	0
31 Mar	On A/Cs. Rec		342	15	10		Mess Wages		22	0	0
	Cash Bar Sales		18	5	2		Batmen		30	0	0
	Cash Mess Dues		2	13	9		Bar Expense		3	2	7
	Laundry			13	6		Mess Expense		1	16	8
	Barrack Damages				6		NAAFI for N/S Mess		4	15	2
Apr	On A/Cs. Rec.		329	4	4		Laundry		59	0	1
	Cash Bar Sales		59	13	0		Glasses		4	7	0
	Mess dues			10	0		Table Napkins		9	7	6
							Newspapers		3	2	2
							Electrical Fixtures			3	9
							Gifts		5	0	0
							Photos		13	17	6
							Paid by cash 106. 9. 0				
							Paid by Cheque 1132.17. 9				
							Total Payments		1239	6	9
							Cash Shortage		9	8	4
						30 Apr	Cash on hand nil				
							Bank Balance (per Cash Book)		56	13	3
	TOTAL	£	1305	8	4		TOTAL	£	1305	8	4

BANK RECONCILIATION STATEMENT (Attach Bank Certificate)

	Outstanding Cheques	£				Balance (per Cash Book)	£	56	13	3
13 Apr	Gonville Laundry		30	0	6					
26 Apr	Saccone & Speed		15	0	0					
28 Apr	Meux's Brewery		20	6	6					
	Men's Canteen		10	0	0					
	NAAFI		1	4	0					
	NAFI		4	13	9					
						Add Outstanding Cheques	£	81	4	9
	TOTAL	£	81	4	9	Balance per Bank Certificate	£	137	18	0

NAMES OF SIGNING AND COUNTERSIGNING OFFICERS

Major G. W. Halpenny, President — Col. A. Ross, Officer Commanding
Capt. A. W. V. McCutcheon, Treasurer — Lieut.G.G.Chapman

STATEMENT OF ASSETS AND LIABILITIES

As at 30 April 194 3

ASSETS		Amount			LIABILITIES		Amount		
Cash (per Cash Book)	£	56	13	3	Accounts Payable	£	180	1	8
On hand Nil	£				(See page 4)				
In bank	£ 56.13. 3								
Petty Cash or Change Fund									
Inventory (at cost)		287	9	9					
Wet or Bar	241.16. 9								
Dry or Mess	£								
Containers	£ 45.13. 0								
Accounts Receivable									
Current	331. 3. 3	543.	2	4					
Arrears	211.19. 1								
(See page 4)									
Cash Shortage		9	8	4					
Furniture & Equipment (at cost)					Reserves:—				
(If carried as an Asset)					For Depreciation				
"Memorandum"					Other - Specify				
Furniture & Equipment									
(If not carried as an Asset)	£ 255. 0. 0								
					Surplus		716	12	0
TOTAL £		896	13	8	TOTAL £		896	13	8

CERTIFICATE OF CASH ON HAND

I, the undersigned, hereby certify that the cash on hand, Petty Cash and Change Fund as included above, were counted by me and found correct as at the date of the above statement.

Treasurer

STATEMENT APPROVED

President of the Committee

Commanding Officer

STATEMENT EXAMINED

Officer i/c Sub-Section,
Regimental Funds Board

Date 194

CERTIFICATE OF AUDIT

We have audited the books and accounts of the

for the Month/Quarter ended 194

and in our opinion the above statement is properly drawn up so as to show a true and correct view of the state of the finances as at 194

President

Member Unit
Audit Board

Date Audited 194

Note:- Members of Audit Board should not be Members of the Committee nor Signing Officers for the Bank Account. (K.R. (Can.) 1939, para. 41c)

LIST OF APPENDICES ATTACHED

(a) Bank Certificate
(b) Merchandise Inventory (M.F.M. 133, Overseas)
(c) Audit Board Report (if any)
(d) Other

STATEMENT OF PROFIT AND LOSS

Month or Quarter ended 30 April 194 3

	Wet Canteen or Bar		Dry Canteen or Messing		Total	
Sales (or Receipts) for period	£ 808. 2. 6	100%	£ 198. 4. 8	100%	£ 1006. 7. 2	100%
Inventory at end of last period (cost)	£ 93.19.10		£		93.19.10	
Add Purchases for period	£ 847.10. 0		£ 128.18. 3		976. 8. 3	
	£ 941. 9.10		£ 128.18. 3		£ 1070. 8. 1	
Less Inventory at end of current period (cost)	£ 287. 9. 9		£		£ 287. 9. 9	
Cost of Sales and/or Messing	£ 654. 0. 1		£ 128.18. 3		£ 782.18. 4	
Gross Profits	£ 154. 2. 5	19.09	£ 69. 6. 5	34.96	£ 223. 8.10	22.22 %
Deduct Expenses						
Wages—Steward and/or Caterer	£ 6.10. 0		£ 6. 0. 0			
Assistants @ each	£		£ 16. 0. 0			
@ each	£		£			
Total Wages	£ 6.10. 0		£ 22. 0. 0			
Other Expenses (in detail)						
Miscellaneous Expense	£ 3. 2. 7		£ 1.16. 8			
	£		£			
	£		£			
	£		£			
Deduct Total Expenses	£		£			
Net Operating Profit	£ 9.12. 7		£ 23.16. 8		£ 33. 9. 3	
	£144. 9.10		£ 45. 9. 9		£ 189.19. 7	
Add Revenue from Other Sources (Specify)						
Laundry Receipts			£			
Barrack Damages			£ 85. 4. 2			
N/S Mess			£ 2.17. 0			
Total Profit for the period			£ 4. 0. 4		£ 92. 1. 6	
Add Surplus from previous statement					£ 282. 1. 1	
			Total Surplus Available		£ 617.12. 8	
Deduct Disposition of Surplus (in detail)*					£ 879.13. 9	
As per list below			£ 183. 1. 9			
			£			
			£			
			£			
			£			
Final Surplus (per statement of Assets & Liabilities)					£ 183. 1. 9	
					£ 716.12. 0	

Average daily charge for Messing 1/3 No. of Members 39

*Nature of purchase or expense required, not name of supplier

DISPOSITION OF PROFITS

	£	s	d
Glasses	4.	7.	0
Table Napkins	9.	7.	6
Newspapers	5.	11.	2
Fixtures		12.	5
Gift	5.	0.	0
Photos	13.	17.	6
N/S Mess (Contra)		4.	0
Radio Repairs	1.	7.	10
Accounts Receivable, written off	1.	0.	0
Free Drinks	9.	7.	4
Laundry	95.	13.	8
Barrack Damages	2.	17.	0
Batmen	30.	0.	0
Total	£ 183.	1.	9

Schedule Of Accounts Receivable And Accounts Payable

As at 31 January 1943

ACCOUNTS RECEIVABLE		Amount			ACCOUNTS PAYABLE (Show name of Firm and Purpose)	Amount		
Amount—Total	£	368	6	3	Officers' Mess Contra a/c 3.5.9.			
Items in detail—(K.R. (Can.) para. 1001)					B.P. 32.8.6	35	13	9
N/S Bowland	£ 9. 6. 0				Mens Canteen Wages	5	0	0
Cameron	6. 8. 7				P.R.I. a/c	6	0	0
D'Orsennens	2.18.10				Barrack Damages a/c	2	2	6
Findlay	6. 1.11				Horley Sanitary Laundry	86	18	5
Flanagan	1				Direct Supply B.P.		10	0
Hebb	6				The Apollmaris Co B.P.	3	17	0
Heter	3.17.11				W.H. Smith Newspapers	3	6	6
Irving	5. 5.11				Gale & Polden B.P.	8	18	3
Jamieson	7. 1. 6				J.H. Percival M.P.	5	15	4
Osborne	2.14. 5				Lime Fisheries M.P.	7	11	8
Parkington	3. 9				H.D. Quick M.P.	13	5	9
Seward	6. 9. 3				Coopers M.P.	32	10	4
Skead	5.13. 1					211	9	6
Taylor	3. 9				Less			
Loechen	9. 3				Stapley & Co Credit Note	4	16	0
Campbell	2.11. 1							
Sgts' Mess	3. 7. 6							
Officers' Mess	22. 4. 0							
		84	17	4				
Total - per statement of Assets and Liabilities	£	453	3	7	Total - per statement of Assets and Liabilities	£ 206	13	6

PARTICULARS OF INSURANCE

		Amount		Insurance		Date of Expiry
Inventory of Merchandise at end of period	£	44.12. 3	£		£	
Value of Furniture & Equipment carried as an Asset	£		£		£	
Value of Furniture & Equipment not carried as an Asset	£	75. 0. 0	£	400. 0. 0	£	9 Oct 43
Casualty or other Insurance	£		£		£	

Secretary

REMARKS AND PROPOSALS OF THE COMMITTEE

Names of the Members

Committee	Sub-Committee
1	1
2	2
3	3

Date of last meeting 194

Remarks

Secretary of Committee

MF[illegible] (Overseas)
49/[illegible]/1445 (9/42)

Appendix B.
FINANCIAL STATEMENT

The 14 Can Gen Hosp R.C.A.M.C.
Name of Unit

The N/S Mess
Name of Institute or Fund

ABSTRACT OF RECEIPTS AND DISBURSEMENTS

For the ~~Month or Quarter~~ Period ended 1 July 42 to 31 Jan 1943

1942	RECEIPTS (Show Source)	Amount			Date	DISBURSEMENTS (Show Name and purpose)	Amount		
1 Jul	Cash on hand—Forward £	11	13	7	1st	£			
	Bank Balance—Forward 10,14,1-3,0.0	7	14	1	July	By Cheque £1798. 3. 2			
31 Jul	On June a/cs Rec	314	4	10	42	By P. Cash 318.2. 2			
	Spec Assessments	3	12	0	to	2116. 5. 4			
	Overpayments		12	5	31st	Distribution of Payments.			
31 Aug	on a/cs Rec	386	3	6	Jan.	On June a/cs Payable	344	7	2
	Cash Sales		7	0	43.	Bar Purchases	399	2	10
30 Sept	On a/cs Rec	254	15	4		Mess Purchases	594	16	6½
	Cash Sales	10	11	3		Wages	94	12	11
	Mess Dues	1	17	10		Bar Expense	4	13	10
31 Oct	On A/cs Rec	304	19	1		Mess "	8	6	10
	Cash Sales	8	3	0		Glasses & Dishes	20	2	11
30 NOv	On a/cs Rec	364	13	3		Entertainment	25	10	0
	Cash Sales	2	6	1		Decorations & Flowers	9	18	3
31 Dec	On a/cs Rec	346	15	11		Polish etc.		5	9
	Cash Sales	1	0	6		Adjustment June a/cs Pay	21	17	4
31 Jan	On a/cs Rec	353	6	8		Gifts	93	12	4
	Cash Sales	1	3	9		Insurance	1	10	0
	Mess Dues	4	1	0		Equipment	11	18	1½
						Laundry	417	8	3
						Newspapers	3	9	10
						Barrack Damages	6	12	0
						Xmas Cards	52	4	5
						Stapley & Co Overpayment	4	16	0
						Stamps	1	0	0
						Cash Shortage	31	12	2
					31Jan	Petty Cash on Hand Cash on hand	17	12	4
						Bank Balance (per Cash Book)	212	11	3
	TOTAL £	2378	1	1		TOTAL £	2378	1	1

BANK RECONCILIATION STATEMENT (Attach Bank Certificate)

Outstanding Cheques	£			Balance (per Cash Book) £			
See list attached to page 3					212	11	3
				Add Outstanding Cheques £	206	4	2
TOTAL £				Balance per Bank Certificate £	418	15	5

Names of Signing and Countersigning Officers

President A.Ross Colonel Officer Commanding

Treasurer 2nd in Command

STATEMENT OF ASSETS AND LIABILITIES

As at 31 January 194 3

ASSETS		Amount			LIABILITIES		Amount		
Cash (per Cash Book)	£	212	11	3	Accounts Payable	£	206	13	6
On hand	£ [illegible]				(See page 4)				
In bank	£ 212.11.3								
Petty Cash or Change Fund		17	12	4					
Inventory (at cost)		44	12	3					
Wet or Bar	£ 44.12. 3								
Dry or Mess	£								
Containers	£								
Accounts Receivable		453	3	7					
Current	£ 368. 6. 3								
Arrears	£ 84.17. 4								
(See page 4)									
Cash Shortage		31.	12	2					
Furniture & Equipment (at cost)					Reserves—				
(If carried as an Asset)					For Depreciation				
"Memorandum"					Other - Specify				
Furniture & Equipment									
(If not carried as an Asset)									
	£ 75. 0. 0								
					Surplus		552	18	1
TOTAL £		759	11	7	TOTAL £		759	11	7

CERTIFICATE OF CASH ON HAND

I, the undersigned, hereby certify that the cash on hand, Petty Cash and Change Fund as included above, were counted by me and found correct as at the date of the above statement.

Treasurer

STATEMENT APPROVED

President of the Committee

Commanding Officer

STATEMENT EXAMINED

Officer i/c Sub-Section,
Regimental Funds Board

Date 194

CERTIFICATE OF AUDIT

We have audited the books and accounts of the

for the Month/Quarter ended 194

and in our opinion the above statement is properly drawn up so as to show a true and correct view of the state of the finances as at 194

President

Member Unit
Audit Board

Date Audited 194

Note:- Members of Audit Board should not be Members of the Committee nor Signing Officers for the Bank Account, (K.R. (Can.) 1939, para. 41c)

LIST OF APPENDICES ATTACHED

(a) Bank Certificate
(b) Merchandise Inventory (M.F.M. 133, Overseas)
(c) Audit Board Report (if any)
(d) Other

STATEMENT OF PROFIT AND LOSS

Period ended 1 July 42 to 31 Jan 19[illegible]

	Wet Canteen or Bar		Dry Canteen or Messing		Total	
Sales (or Receipts) for period	£ 738. 7.11	100%	£ 810. 6. 0	100%	£ 1548.13.11	100%
Inventory at end of last period (cost)	£ 131.19.11		£		131.19.11	
Add Purchases for period	£ 444.16. 7		£ 653.19. 7½		1098.16. 2½	
	£ 576.16. 6		£ 653.19. 7½		£ 1230.16. 1½	
Less Inventory at end of current period (cost)	£ 44.12. 3		£		£ 44.12. 3	
Cost of Sales and/or Messing	£ 532. 4. 3		£ 653.19. 7½		£ 1186. 3.10½	
Gross Profits	£ 206. 3. 8	27.90%	£ 156. 6. 4½	19.25%	£ 362.10. 0½	23.40%
Deduct Expenses						
Wages—Steward and/or Caterer	£		£			
Assistants each	£		£			
each	£		£			
Total Wages	£		£			
Other Expenses (in detail)						
Miscellaneous Items	£ 4.13.10		£ 8. 6.10			
	£		£			
	£		£			
	£		£			
Deduct Total Expenses	£ 4.13.10		£ 8. 6.10		£ 13. 0. 8	
Net Operating Profit	£ 201. 9.10		£ 147.19. 6½		£ 349. 9. 4½	
Add Revenue from Other Sources (Specify)						
Overpayments 12/5 a/cs Rec Overcharged £ 1.0.3			£ 1.12. 8			
Laundry £494.12. 2 Mess Assessments £317.19. 6			£ 812.11. 8			
Special Assessment £56.17.0 Officers' Mess £3.5.3.			£ 60. 2. 3			
Xmas Cards £34.3.1. Barrack Damages £8.14.6			£ 42.17. 7		£ 917. 4. 2	
Total Profit for the period					£ 1266.13. 6½	
Add Surplus from previous statement £ 161.4.6 - £3.0.0					£ 158. 4. 6	
Total Surplus Available					£ 1424.18. 0½	
Deduct Disposition of Surplus (in detail)						
Accounts Receivable written off			£ 5. 5. 2			
See list attached.			£ 866.14. 9½			
			£			
			£			
Final Surplus (per statement of Assets & Liabilities)					£ 871.19.11½	
					£ 552.18. 1	

Average daily charge for Messing 1/- No. of Members 85

*Nature of purchase or expense required, not name of supplier

List of Outstanding Cheques as at 31 January 43.

Dec 31	Gale & Polden	1.18.11
	Stapley Ltd	4.16. 0
	H. Bowyer & Son	12. 0
	Coopers	19.11. 1
	Horley Laundry	66. 9. 6
	Harrolds	11. 3
	O.C. Telephones	1. 4. 0
	N.B.M. Insurance	1.10. 0
	O.C. Barrack Damages	2. 4. 6
	Stapley & Sons	9.12. 0
	H.D. Quick	17.17. 8
	Lime Fisheries	9. 4. 8
	Youngs	5. 8. 0
	Horley Laundry	64. 2. 1
	H.W. Godfrey	1. 2. 6
		£ 206. 4. 2

Disposition of Profits as at 31 January 43.

Wages & Batmen	105.12.11
Glasses & Dishes	2[illegible] 2.11
Entertainment	25.10. 0
Decorations & Flowers	9.18. 3
Polish etc.	5. 9
Adjustment June a/cs Rec	21.17. 4
Gifts	93.12. 4
Insurance	1.10. 0
Equipment	11.18. 1½
Laundry	504. 6. 8
Newspapers	6.16. 4
Barrack Damages	8.14. 6
Xmas Cards	52. 4. 5
Stamps	1. 0. 0
Officers' Mess (Contra)	3. 5. 3
	£ 866.14. 9½

Schedule Of Accounts Receivable And Accounts Payable

As at 30 April 1943

ACCOUNTS RECEIVABLE		Amount £	s	d
Amount—Total	£	261	7	10
Amount in detail—(K.R. (Can.) para. 1001)				
N/S Bowland	5. 6.10			
Clarke	3.13.10			
Findlay	4. 3. 3			
Heter	5.17. 6			
Irving	4.12.10			
Payn	1.12. 1			
Rowell	3.12. 0			
Skead	6. 3			
Whaley	3. 3. 4			
Mc Rae	2.13. 1			
Sgts' Mess	3. 7. 6			
Offrs' Mess	71.11.11	110	0	5
		371	8	3
Less Credits Balances				
N/S Tripp	3. 2			
" Stewart	3. 0		6	2
		371	2	1
April Laundry a/cs not chg'd in Rec. till May.		50	9	9
Total - per statement of Assets and Liabilities	£	421	11	10

ACCOUNTS PAYABLE (Show name of Firm and Purpose)		Amount £	s	d
Officers' Mess	£	125	6	11
Barrack Damages a/c		8	12	0
Apallmaris Co		3	17	0
N/S Monkhouse		1	15	6
J.H. Percival		7	14	7
Sgts' Mess		1	7	0
Horley Laundry		215	10	4
Gale & Polden Ltd.		11	6	3
H. D. Quick		49	7	5
Stapleys Ltd		4	0	0
Coopers		17	15	0
T. Staples & Sons		5	16	0
W.H. Smith & Son		2	10	5
Horley Press		4	0	0
Red Cross Assoc.		7	10	0
R. Keeling Ltd.		33	9	6
Hedley Vicars		14	5	0
Line Fisheries		8	15	8
P.R.I. a/c Photos		30	8	3
Total - per statement of Assets and Liabilities	£	541	6	10

PARTICULARS OF INSURANCE

	Amount £	s	d	Insurance £	s	d	Date of Expiry £	s	d
Inventory of Merchandise at end of period	75. 1. 9								
Value of Furniture & Equipment carried as an Asset									
Value of Furniture & Equipment not carried as an Asset	101. 0. 0			400. 0. 0			9 Oct 43.		
Casualty or other Insurance									

Secretary

REMARKS AND PROPOSALS OF THE COMMITTEE

Names of the Members

Committee	Sub-Committee
1 N/S M.S. Mac Lean	1
2 " M.J.G. Mowat	2
3 " A.C. Fletcher	3

Date of last meeting 194

Remarks

Secretary of Committee

Appendix B.1
FINANCIAL STATEMENT

MF[illegible] (Overseas)
40[illegible]/1446 (8-42)

The No 14 Cdn Gen Hosp R.C.A.M.C.
Name of Unit

The N/S Mess
Name of Institute or Fund

ABSTRACT OF RECEIPTS AND DISBURSEMENTS

Period
For the [illegible] ended 30 April 194 3

Date 1943	RECEIPTS (Show Source)	Amount £	s	d
1 Feb	Cash on hand—Forward	17	12	4
	Bank Balance—Forward	212	11	3
28 Feb	On a/cs Receivable	349	2	8
	Bottles & Cases Ret'd	1	16	0
31 Mar	On a/cs Receivable	193	10	3
	Bottles & Cases Ret'd	2	14	0
30 Apr	On a/cs Receivable	254	10	10
	Cash Bar Sales		15	0
	Bottles & Cases Ret'd		4	0
	Cheque O.C. 14 C.G.H. Canc.	1	4	0
H	H/S Monkhouse Petty Cash	1	15	6
TOTAL £		1035	15	10

Date 1943	DISBURSEMENTS (Show Name and purpose)	£	Amount s	d
1st	Disbursements by			
Feb.	Cheque	£344. 8. 7		
to	Petty Cash	141. 1. 3		
30	Total	485. 9.10		
April				
1943	On Jan a/cs Payable		169	16 3
	Bar Purchases		135	7 1
	Mess Purchases		61	2 4
	Wages		31	5 0
	Expenses		4	16 1
	Equipment		2	17 9
	Decorations & Flowers		8	15 11
	Entertainment		19	17 6
	Gifts		20	0 0
	Radio & Records		26	19 1
	Newspapers		1	6 0
	N/S Campbell Ret'd Cheque		3	6 10
	Cash Shortage		6	3 7
30Apr	Petty Cash on Hand		18	15 7
30Apr	Cash on hand		28	12 9
30Apr	Bank Balance (per Cash Book)		496	14 1
TOTAL £			1035	15 10

BANK RECONCILIATION STATEMENT (Attach Bank Certificate)

Outstanding Cheques				Balance (per Cash Book) £	s	d
29 Jan Barrack Damages a/c	2.	4	6			
2 Feb Mess Canteen	5	0	0			
P.R.I. a/c	6	0	0			
12 Apr Mess Canteen	20	0	0			
Capt W. Bailey	3	15	0			
27 Apr Mess Canteen	20	0	0			
NAAFI	2	7	1			
				496	14	1
Add Outstanding Cheques £				59	6	7
TOTAL £	59	6	7	Balance per Bank Certificate £	556	0	8

NAMES OF SIGNING AND COUNTERSIGNING OFFICERS

N/S Marjorie S. MacLean President — A. Ross Colonel Officer Commanding
" Margaret J.G. Mowat Treasurer — 2nd in Command

STATEMENT OF ASSETS AND LIABILITIES

As at 30 April 1943

ASSETS		Amount			LIABILITIES		Amount		
Cash (per Cash Book)	£	525	6	10	Accounts Payable	£	551	6	10
On hand	£ 28.12. 9				(See page 4)				
In bank	£ 496.14. 1								
Petty Cash or Change Fund		18	15	7					
Ret'd Cheques on Hand		3	6	10					
Inventory (at cost)		75	1	9					
Wet or Bar	£ 73.15. 3								
Dry or Mess	£ 1. 6. 6								
Containers	£ ✓								
Accounts Receivable									
Current	£ 311.11. 5	421	11	10					
Arrears	£ 110. 0. 5								
(See page 4)									
Cash Shortage	31.12. 2								
Add	6. 3. 7	37.	15	9					
Furniture & Equipment (at cost) (if carried as an Asset)					Reserves:— For Depreciation				
					Other - Specify				
"Memorandum" Furniture & Equipment (If not carried as an Asset)									
	£ 101.0.0								
					Surplus		530	11	9
TOTAL £		1081	18	7	TOTAL £		1081	18	7

CERTIFICATE OF CASH ON HAND

I, the undersigned, hereby certify that the cash on hand, Petty Cash and Change Fund as included above, were counted by me and found correct as at the date of the above statement.

Treasurer

STATEMENT APPROVED

President of the Committee

Commanding Officer

STATEMENT EXAMINED

Officer i/c Sub-Section, Regimental Funds Board

Date 194

CERTIFICATE OF AUDIT

We have audited the books and accounts of the

for the Month/Quarter ended 194

and in our opinion the above statement is properly drawn up so as to show a true and correct view of the state of the finances as at 194

President

Member Unit Audit Board

Date Audited 194

Note:- Members of Audit Board should not be Members of the Committee nor Signing Officers for the Bank Account. (K.R. (Can.) 1939, para. 41c)

LIST OF APPENDICES ATTACHED

(a) Bank Certificate
(b) Merchandise Inventory (M.F.M. 133, Overseas)
(c) Audit Board Report (if any)
(d) Other

STATEMENT OF PROFIT AND LOSS

~~Month~~ or Quarter ended 30 April 1943

	Wet Canteen or Bar		Dry Canteen or Messing		Total	
Sales (or Receipts) for period	£ 234. 0. 4	100%	£ 282.16. 0	100%	£ 516.16. 4	100%
Inventory at end of last period (cost)	£ 42.12. 3		£		42.12. 3	
Add Purchases for period	£ 240. 8. 6		£ 199.12. 6		440. 1. 0	
	£ 285. 0. 9		£ 199.12. 6		£ 484.13. 3	
Less Inventory at end of current period (cost)	£ 75. 1. 9		£		£ 75. 1. 9	
Cost of Sales and/or Messing	£ 209.19. 0		£ 199.12. 6		£ 409.11. 6	
Gross Profits	£ 24. 1. 4	10.27 %	£ 83. 3. 6	29.40 %	£ 107. 4.10	20.74 %
Deduct Expenses						
Wages—Steward and/or Caterer	£		£ 6. 0. 0			
Assistants 1 @ 30/- each	£		£ 4.10. 0			
2 @ 20/- each	£		£			
3 @ 10/- each	£		£ 20.15. 0			
Total Wages	£		£ 31. 5. 0			
Other Expenses (in detail)						
	£		£			
Miscellaneous Expenses	£ 2. 8. 0		£ 2. 8. 1			
	£		£			
	£		£			
	£		£			
Deduct Total Expenses	£ 2. 8. 0		£ 33.13. 1		£ 36. 1. 1	
Net Operating Profit	£ 21.13. 4		£ 49.10. 5		£ 71. 3. 9	
Add Revenue from Other Sources (Specify)						
Barrack Damages	£ 6. 9. 6		£ 6. 9. 6			
Laundry			£ 208. 7. 0			
Red Cross Assoc. £5.10.0 Telephone £1.4.0			£ 6.14. 0			
Pictures Sales			£ 30. 4. 0			
Total Profit for the period					£ 251.14. 6	
Add Surplus from previous statement					£ 322.18. 3	
Total Surplus Available					£ 552.18. 1	
Deduct Disposition of Surplus (in detail)*					£ 875.16. 4	
Equipment £2.17.9 - Decorations £8.15.11			£ 11.13. 8			
A/cs Receivable Written off			£ 25.10			
Entertainment £19.17.6 - Gifts £20. 0. 0			£ 39.17. 6			
Radio & Records £26.19.1 Newspapers £3.16.5			£ 30.15. 6			
Laundry £215.10.4 - Barrack Damages £6. 9. 6			£ 221.19.10			
Office Supplies £4.0.0 - Red Cross Assoc. 5.10.0			£ 9.10. 0			
Photos			£ 30. 8. 3			
Final Surplus (per statement of Assets & Liabilities)					£ 345. 4. 7	
					£ 530.11. 9	

Average daily charge for Messing 9d No. of Members 85

*Nature of purchase or expense required, not name of supplier

ACCOUNTABILITY - MERCHANDISE SOLD - AT SELLING PRICE

	Wet Canteen or Bar	Dry Canteen or Messing
Inventory at end of last period (Selling Price)	£ 56. 7.11	£
Add Purchases during this period (Selling Price)	£ 296.16. 7	£
	£ 353. 4. 6	£
Deduct Inventory at end of this period (Selling Price)	£ 93.11. 7	£
Total to be accounted for	£ 259.12.11	£
Sales as above	£ 234. 0. 4	£
Variation	£ 25.12. 7	£

Secretary

Schedule Of Accounts Receivable And Accounts Payable

As at 31 Jan 1943

ACCOUNTS RECEIVABLE	£	Amount
Total	£	8 0 0
NIL		
Total - per statement of Assets and Liabilities	£	8 0 0

ACCOUNTS PAYABLE (Show name of Firm and Purpose)	£	Amount
Bar Purchases	£	84 15 8
Officers' Mess		
(Nov)- 16. 1. 0		
(Dec)- 29. 5. 0		
(Jan)- 8.13. 6	53.19. 6	
N/S Mess (Nov)	3. 7. 6	
Kenward & Court (Jan)	27. 8. 8	
Mess Purchases		3 15 6
Lime Fisheries (Jan)	2. 3. 0	
Percivals (Jan)	1.12. 6	
Expenses		6 12 7
NAAFI Piano Rent		
(Dec) 6.10		
(Jan) 15. 0	1. 1.10	
W.H. Smith Papers		
(1 Aug to 31 Jan)	5.10. 9	
Total - per statement of Assets and Liabilities	£	95 3 9

PARTICULARS OF INSURANCE

	Amount	Insurance	Date of Expiry
Inventory of Merchandise at end of period	£	£	£
Value of Furniture & Equipment carried as an Asset	£	£	£
Value of Furniture & Equipment not carried as an Asset	£	£	£
Casualty or other Insurance	£	£	£

Secretary

REMARKS AND PROPOSALS OF THE COMMITTEE

Names of the Members

Committee

1 _____
2 _____
3 _____

Sub-Committee

1 _____
2 _____
3 _____

Date of last meeting _____ 194

Remarks

Secretary of Committee

Appendix C.
FINANCIAL STATEMENT

M[illegible] (Overseas)
[illegible]/1446 (9/42).

The 14 Can General Hospital R.C.A.M.C.
Name of Unit

The Sergeants' Mess
Name of Institute or Fund

ABSTRACT OF RECEIPTS AND DISBURSEMENTS

Period
For the ~~Month of~~ ended 1 Jul 42 to 31 Jan 1943

Date 1942	RECEIPTS (Show Source)		Amount			Date	DISBURSEMENTS (Show Name and purpose)		Amount		
1 Jul	Cash on hand—Forward	£	18	3	9	1 Jul	By Cheque -a/cs Payable	£	47	6	1
	Bank Balance—Forward		39	2	5	42	Bar Purchases		418	18	1
31Jul	To a/cs Receivable						Officers' Mess	94. 8. 0			
	(Jun Mess Dues)		4	15	0		N/S Mess	1.10. 6			
							NAAFI	56.19. 0			
	To Bar Receipts		569	14	11		Kenward & Court	266. 0. 7			
31 Jul		89.12. 6					Mess Purchases		54	14	7
31 Aug		63.14. 9					Lime Fisheries	12. 8.11			
30 Sept		53. 2. 9					Coopers	39. 0. 8			
31 Oct		113.12.10					Warnett & Sons	3. 5. 0			
30 Nov		76.17. 8					Mess Expenses		6	19	3
31 Dec		100. 8. 5					W.H. Smith	1.18. 0			
31 Jan 43		72. 6. 9					Thorne & Huddle	9. 3			
							Wages	4. 2. 0			
	To Mess Dues		118	5	0		Bank Cheques	10. 0			
31 Jul 42		10. 5. 0				to	General Expenses		42	17	2
31 Aug		19.10. 0					Dances	4.11. 8			
30 Sept.		18. 0. 0					B. Table Rent	12.15. 0			
31 Oct		19. 0. 0					Radiogram	22. 0. 0			
30 Nov		19.10. 0					Repairs Radio	3. 3. 0			
31 Dec		20. 0. 0					Insurance	7. 6			
31 Jan 43		12. 0. 0									
	To Billiard Table Receipts		9	2	6		By Cash Payments		90.	7	9
31 Dec 42		5. 4. 2					A/cs Pay Wages	6. 0			
31 Jan 43		3.18. 4					Bar Purchases	7.11			
							Mess "	9.17. 8			
	To Miscellaneous Receipts						Sundry Mess Exs.	1.11. 0			
							Wages	28.10. 6			
							Dances	14.14. 7			
							Radio Repairs	16. 6			
3 Jul 42	Mc Ewan & Younger (Container Refund)		18	5	3	31 Jan 43	Games etc.	2.11. 1			
							Stationery	12. 0			
							B. Table Rent	1. 9. 6			
31 Aug	N/S Mess a/c NAAFI (Bar Purchase refund)		3	19	4						
						31 Jan	Cash on hand	104.15. 8	120	5	3
							Bank Balance (per Cash Book)	15. 9. 7			
	TOTAL	£	781	8	2		TOTAL	£	781	8	2

BANK RECONCILIATION STATEMENT (Attach Bank Certificate)

1943	Outstanding Cheques	£			
19 Jan	N.B.M. Insurance			7	6
28 Jan	Jelks		5	12	6
	TOTAL	£	6	0	0

Balance (per Cash Book)	£	15	9	7
Add Outstanding Cheques	£	6	0	0
Balance per Bank Certificate	£	21	9	7

NAMES OF SIGNING AND COUNTERSIGNING OFFICERS

President — Officer Commanding

Treasurer — 2nd in Command

STATEMENT OF ASSETS AND LIABILITIES

As at 31 Jan 194 3

ASSETS		Amount			LIABILITIES		Amount		
Cash (per Cash Book)	£	120	5	3	Accounts Payable	£	95	3	9
On hand	£ 104.15. 8				(See page 4)				
In bank	£ 15. 9. 7								
Petty Cash or Change Fund									
Inventory (at cost)		9	5	3					
Wet or Bar	£ 3. 4. 6								
Dry or Mess	£								
Containers	£ 6. 0. 9								
Accounts Receivable		8	0	0					
Current	£ 8. 0. 0								
Arrears	£								
(See page 4)									
Furniture & Equipment (at cost)					Reserves—				
(If carried as an Asset)					For Depreciation				
					Other - Specify				
"Memorandum"									
Furniture & Equipment									
(If not carried as an Asset)									
	£								
Radio	10. 0. 0								
Radiogram	23. 0. 0								
	£ 33. 0. 0								
					Surplus		42	6	9
TOTAL £		137	10	6	TOTAL £		137	10	6

CERTIFICATE OF CASH ON HAND

I, the undersigned, hereby certify that the cash on hand, Petty Cash and Change Fund as included above, were counted by me and found correct as at the date of the above statement.

Treasurer

STATEMENT APPROVED

President of the Committee

Commanding Officer

STATEMENT EXAMINED

Officer i/c Sub-Section,
Regimental Funds Board

Date 194

CERTIFICATE OF AUDIT

We have audited the books and accounts of the

for the Month/Quarter ended 194

and in our opinion the above statement is properly drawn up so as to show a true and correct view of the state of the finances as at 194

President

Member Unit
Audit Board

Date Audited 194

Note:- Members of Audit Board should not be Members of the Committee nor Signing Officers for the Bank Account, (K.R. (Can.) 1939, para. 41c)

LIST OF APPENDICES ATTACHED

(a) Bank Certificate
(b) Merchandise Inventory (M.F.M. 133, Overseas)
(c) Audit Board Report (if any)
(d) Other

STATEMENT OF PROFIT AND LOSS

Period
~~Monthly or Quarter~~ ended 31 Jan. 194 3

	Wet Canteen or Bar		Dry Canteen or Messing		Total	
Sales (or Receipts) for period	£ 587. 1. 4	100%	£ 126. 5. 0	100%	£ 713. 6. 4	100%
Inventory at end of last period (cost)	£ 39. 7. 6.		£		39. 7. 6	
Add Purchases for period	£ 500. 2. 4		£ 68. 7. 9		568.10. 1	
	£ 539. 9.10		£ 68. 7. 9		£ 607.17. 7	
Less Inventory at end of current period (cost)	£ 3. 4. 6		£		£ 3. 4. 6	
Cost of Sales and/or Messing	£ 536. 5. 4		£ 68. 7. 9		£ 604.13. 1	
Gross Profits	£ 50.16. 0		£ 57.17. 3		£ 108.13. 3	
Deduct Expenses						
Wages—Steward and/or Caterer	£		£ 10.10. 0			
Assistants 4 @ 9/- each	£		£ 18. 4. 0			
Others X @ XX	£		£ 3.18. 6			
Total Wages	£		£ 32.12. 6			
Other Expenses (in detail)						
Newspapers	£		£ 8.10. 9			
Cleaning	£		£ 9. 0			
Repairs to Toaster	£		6. 3			
Stationary	£		£ 12. 0			
Bank Cheques	£		£ 10. 0			
	£		£			
Deduct Total Expenses	£		£ 43. 3. 6		£ 43. 3. 6	
Net Operating Profit	£ 50.16. 0		£ 14.13. 9		£ 65. 9. 9.	
Add Revenue from Other Sources (Specify)						
Billiard Table Receipts			£ 9. 2. 6			
Refund on containers			£ 18. 5. 3.			
~~Setting up container~~ Account 31 Jan			£ 6. 0. 9		£ 33. 8. 6	
Total Profit for the period			(54. 2. 7		£ 98.18. 3	
Add Surplus from previous statement less adjt. June a/c Payable			6. 0		£ 53.16. 7	
Total Surplus Available					£	
Deduct Disposition of Surplus (in detail)*					152.14.10	
Purchase of Radiogram			£ 22. 0. 0			
Billiard Table Rent			£ 13.15. 6			
Radio Repairs			£ 3.19. 6			
Insurance			£ 7. 6			
Dances			£ 49. 6. 3			
Piano Rent			£ 1. 1.10			
Records & Games			£ 2.11. 1		£ 110. 8. 1	
Stock used for entertainment			17. 6. 5			
Final Surplus (per statement of Assets & Liabilities)					£ 42. 6. 9	

Average ~~Monthly~~ charge for Messing 10/- No. of Members 40

*Nature of purchase or expense required, not name of supplier

ACCOUNTABILITY - MERCHANDISE SOLD - AT SELLING PRICE

	Wet Canteen or Bar	Dry Canteen or Messing
Inventory at end of last period (Selling Price)	£	£
Add Purchases during this period (Selling Price)	£	£
	£	£
Deduct Inventory at end of this period (Selling Price)	£	£
Total to be accounted for	£	£
Sales as above	£	£
Variation	£	£

Secretary

Schedule Of Accounts Receivable And Accounts Payable

As at 28 Feb 1943

ACCOUNTS RECEIVABLE	£	s	d
Current—Total	8	0	0
Arrears—in detail—(K.R. (Can.) para. 1001) (Jan)	1	0	0
Sgt. Horton			
Total—per statement of Assets and Liabilities	9	0	0

ACCOUNTS PAYABLE (Show name of Firm and Purpose)	£	s	d
Bar Purchases	125	15	10
Officers' Mess (Nov) £16. 1. 0			
(Dec) 29. 5. 0			
(Jan) 8.13. 6			
(Feb) 9. 9. 6			
N/S Mess (Nov) 3. 7. 6			
Kenward & Court (Feb) 58.19. 4			
Mess Purchases	4	7	6
Percival (Jan) 1.12. 6			
Coopers (Feb) 12. 0			
Lines (Jan) 2. 2. 0			
Expenses			
Jelks B.Table Rent (Feb)	2	10	0
W.Smith - Papers (Aug)-(Jan) £.10.9			
" " "(Feb) 17. 0	6	7	9
NAAFI-Piano Rent			
(Jan) 1. 1.10			
(Feb) 15. 0	1	16	10
Total—per statement of Assets and Liabilities	140	17	11

PARTICULARS OF INSURANCE

	Amount £	Insurance £	Date of Expiry £
Inventory of Merchandise at end of period			
Value of Furniture & Equipment carried as an Asset			
Value of Furniture & Equipment not carried as an Asset			
Casualty or other Insurance			

Secretary

REMARKS AND PROPOSALS OF THE COMMITTEE

Names of the Members

Committee

1
2
3

Sub-Committee

1
2
3

Date of last meeting 194

Remarks

Secretary of Committee

Appendix C.1
FINANCIAL STATEMENT

M[illegible] (Overseas)
[illegible]/1446 (9/42)

The 14th Cdn General Hospital R.C.A.M.C.
Name of Unit

The Sergeants' Mess
Name of Institute or Fund

ABSTRACT OF RECEIPTS AND DISBURSEMENTS

For the Month or Quarter ended 28th February 1943

Date 1943	RECEIPTS (Show Source)	£	s	d
1 Feb	Cash on hand—Forward	104	15	8
"	Bank Balance—Forward	15	9	7
1/28	To Accts. Rec. (Mess Dues)	7	0	0
7/28	To Mess Dues (Feb)	10	10	0
1/28	To Bar Sales	62	17	11
1/28	To Billiard Table Receipts	4	4	4
13 Feb	Bank Draft (Cashed in Bar)	9	0	0
	TOTAL £	213	17	6

Date 1943	DISBURSEMENTS (Show Name and purpose)	£	s	d
	By Cheque Payments			
	Accts. Payable			
25 Feb	Kenward & Court	27	8	8
	Bar Purchases			
4 Feb	NAAFI £ 2. 4.10			
27Feb	" 2.12. 0	4	16	10
	Sundry			
13Feb	Cash	9	0	0
	By Cash Payments			
28Feb	Bar Purchases - Stepley	7	2	6
	Expense			
28Feb	Wages	4	2	0
1/28	Newspapers		4	0
28Feb	Dances	12	0	0
28Feb	Cash on hand £133.19. 5			
	Bank Balance (per Cash Book) 15. 4. 1	149	3	6
	TOTAL £	213	17	6

BANK RECONCILIATION STATEMENT (Attach Bank Certificate)

Outstanding Cheques	£	s	d
25Feb Kenward & Court	27	8	8
27 " NAAFI	2	12	0
TOTAL £	30	0	8

	£	s	d
Balance (per Cash Book)	15	4	1
Add Outstanding Cheques	30	0	8
28Feb Balance per Bank Certificate	45	4	9

NAMES OF SIGNING AND COUNTERSIGNING OFFICERS

President A. Ross Colonel Officer Commanding

Treasurer 2nd in Command

STATEMENT OF ASSETS AND LIABILITIES

As at 28 Feb. 194?

ASSETS		Amount			LIABILITIES		Amount		
Cash (per Cash Book)	£	149	3	6	Accounts Payable	£	140	17	11
On hand	£ 133.19. 5				(See page 4)				
In bank	£ 15. 4. 1								
Petty Cash or Change Fund									
Inventory (at cost)		36. 13	0						
Wet or Bar	£ 30.17. 6								
Dry or Mess	£								
Containers	£ 5.15. 6								
Accounts Receivable		9	0	0					
Current	£ 8. 0. 0								
Arrears	£ 1. 0. 0								
(See page 4)									
Furniture & Equipment (at cost)					Reserves:—				
(if carried as an Asset)					For Depreciation				
					Other - Specify				
"Memorandum"									
Furniture & Equipment									
(If not carried as an Asset)									
Radio	£ 10. 0. 0								
Radiogram	23. 0. 0								
(at cost)	33. 0. 0								
					Surplus		53	18	7
TOTAL	£	194	16	6	TOTAL	£	194	16	6

CERTIFICATE OF CASH ON HAND

I, the undersigned, hereby certify that the cash on hand, Petty Cash and Change Fund as included above, were counted by me and found correct as at the date of the above statement.

Treasurer

STATEMENT APPROVED

President of the Committee

Commanding Officer

STATEMENT EXAMINED

Officer i/c Sub-Section,
Regimental Funds Board

Date 194

CERTIFICATE OF AUDIT

We have audited the books and accounts of the

for the Month/Quarter ended 194

and in our opinion the above statement is properly drawn up so as to show a true and correct view of the state of the finances as at 194

President

Member Unit
Audit Board

Date Audited 194

Note:- Members of Audit Board should not be Members of the Committee nor Signing Officers for the Bank Account, (K.R. (Can.) 1939, para. 41c)

LIST OF APPENDICES ATTACHED

(a) Bank Certificate
(b) Merchandise Inventory (M.F.M. 133, Overseas)
(c) Audit Board Report (if any)
(d) Other

STATEMENT OF PROFIT AND LOSS

Month or ~~QUARTER~~ ended 28 Feb 1943

	Wet Canteen or Bar		Dry Canteen or Messing		Total	
Sales (or Receipts) for period	£ 63.17. 9	100%	£ 18.10. 0	100%	£ 82. 7. 9	100%
Inventory at end of last period (cost)	£ 3. 4. 6.		£		3. 4. 6	
Add Purchases for period	£ 80. 8. 2.		£ 12. 0		81. 0. 2	
	£ 83.12. 8		£ 12. 0		£ 84. 4. 8	
Less Inventory at end of current period (cost)	£ 30.17. 6		£		£ 30.17. 6	
Cost of Sales and/or Messing	£ 52.15. 2		£ 12. 0		£ 53. 7. 2	
Gross Profits	£ 11. 2. 7	%	£ 17.18 0	%	£ 29. 0. 7	%
Deduct Expenses						
Wages—Steward and/or Caterer	£		£ 1.10. 0			
Assistants 4 @ 13/- each	£		£ 2.12. 0			
@ each	£		£			
Total Wages	£		£ 4. 2. 0			
Other Expenses (in detail)						
	£		£			
	£		£			
Newspapers	£		£ 1. 1. 0			
	£		£			
	£		£			
	£		£			
Deduct Total Expenses	£		£ 5. 3. 0		£ 5. 3. 0	
Net Operating Profit	£ 11. 2. 7		£ 12.15. 0		£ 23.17. 7	
Add Revenue from Other Sources (Specify)						
Bank Draft cashed in Bar			£ 9. 0. 0			
Billiard Table Receipt			£ 4. 4. 4			
			£			
			£		£ 13. 4. 4	
Total Profit for the period					£ 37. 1.11	
Add Surplus from previous statement					£ 42. 6. 9	
Total Surplus Available					£ 79. 8. 8	
Deduct Disposition of Surplus (in detail)*						
Cash for Bank draft as per contra			£ 9. 0. 0			
Stock used for entertainment			£ 19.10			
Cost of two Dances			£ 12. 7. 0			
Billiard Table Rent			£ 2.10. 0			
Piano Rent			£ 15. 0			
Decrease in container a/c			£ 2. 3		£ 25.10. 1	
Final Surplus (per statement of Assets & Liabilities)					£ 53.18. 7	

Monthly
Average ~~daily~~ charge for Messing 10/- No. of Members 40

*Nature of purchase or expense required, not name of supplier

ACCOUNTABILITY - MERCHANDISE SOLD - AT SELLING PRICE

	Wet Canteen or Bar	Dry Canteen or Messing
Inventory at end of last period (Selling Price)	£	£
Add Purchases during this period (Selling Price)	£	£
	£	£
Deduct Inventory at end of this period (Selling Price)	£	£
Total to be accounted for	£	£
Sales as above	£	£
Variation	£	£

Secretary

Schedule Of Accounts Receivable And Accounts Payable

As at 31 Mar 194 3

ACCOUNTS RECEIVABLE	£	Amount			ACCOUNTS PAYABLE (Show name of Firm and Purpose)	£	Amount		
Interest—Total	£	6	0	0	Bar Purchases	£	140	4	6
Arrears—in detail—(K.R. (Can.) para. 1001)					Officers' Mess				
Sgt. Horton (Jan)		1	0	0	(Nov) £16. 1. 0				
					(Dec) 29. 5. 0				
					(Jan) 8.13. 6				
					(Feb) 9. 9. 6				
					(Mar) 1. 3. 8	64.12. 8			
					N/S Mess (Nov)	3. 7. 6			
					Kenward & Court (Feb)	58.19. 4			
					" " (Mar)	13. 5. 0			
					Mess Purchases		8	9	5
					Lime Fisheries (Jan)	2. 3. 0			
					Percival (Jan)	1.12. 6			
					" (Mar)	4. 1.11			
					Coopers (Feb)	12. 0			
					Expense		13	2	1
N/S Mess -a/c NAAFI - bar payment - (Mar)		1	7	0	N.Smith Papers (to Feb)	6. 7. 9			
					" " (Mar)	1. 0. 0			
						£ 7. 7. 9			
Potos (Mar)		4	0	0	NAAFI Piano Rent				
					(Jan) 1. 1.10				
					(Feb) 15. 0				
					(Mar) 15. 0	£ 2.11.10			
					Jelks B. Table Rent				
					(Mar)	£ 3. 2. 6			
Total - per statement of Assets and Liabilities	£	12	7	0	Total - per statement of Assets and Liabilities	£	161	16	0

PARTICULARS OF INSURANCE

		Amount	Insurance	Date of Expiry
Inventory of Merchandise at end of period	£		£	£
Value of Furniture & Equipment carried as an Asset	£		£	£
Value of Furniture & Equipment not carried as an Asset	£		£	£
Casualty or other Insurance	£		£	£

Secretary

REMARKS AND PROPOSALS OF THE COMMITTEE

Names of the Members

Committee

1
2
3

Sub-Committee

1
2
3

Date of last meeting 194

Remarks

Secretary of Committee

Appendix C.2
FINANCIAL STATEMENT

M[illegible] (Overseas)
40[illegible]/1446 (D/42)

The 14th Cdn General Hospital R.C.A.M.C.
Name of Unit

The Sergeants' Mess
Name of Institute or Fund

ABSTRACT OF RECEIPTS AND DISBURSEMENTS

For the Month or [illegible] ended 31 Mar 1943

Date 1943	RECEIPTS (Show Source)	£	Amount			Date 1943	DISBURSEMENTS (Show Name and purpose)	£	Amount		
1 Mar	Cash on hand—Forward		133	19	5		By Cheque				
"	Bank Balance—Forward		15	4	1		Mess Purchases				
						9 Mar	NAAFI £3. 5. 0		5	7	4
1/31	To a/cs Rec. (Mess Dues)		8	0	0	16 "	" 2. 2. 4				
							Expense				
1/31	To Mess Dues (Mar)		14	10	0	12 "	Pancra				
							Photos on repayment		10	16	0
1/31	To Bar Sales		41	2	3						
							By Cash				
							A/cs Payable				
1/31	Billiard Table Receipts		4	5	0	8 "	Jelks & Co		2	10	0
							Bar Purchases				
1/31	Photograph Receipts		6	16	0	11 "	Stepley		2	5	0
							Expense				
						1/31	Newspapers			4	4
						31 "	Wages		6	2	7
						31Mar	Cash on hand	£190.12. 9			
							Bank Balance (per Cash Book)	5.16. 9	196.	9	6
	TOTAL £		223	16	9		TOTAL £		223	16	9

BANK RECONCILIATION STATEMENT (Attach Bank Certificate)

Outstanding Cheques	£			Balance (per Cash Book)	£	5	16	9
NIL								
				Add Outstanding Cheques	£			
TOTAL £				31 Mar Balance per Bank Certificate	£	5	16	9

Names of Signing and Countersigning Officers

President A. Ross Colonel Officer Commanding

Treasurer 2nd in Command

STATEMENT OF ASSETS AND LIABILITIES

As at 31 Mar 194 3

ASSETS		Amount			LIABILITIES		Amount		
Cash (per Cash Book)	£	196	9	6	Accounts Payable	£	161	16	0
On hand	£ 190.12. 9				(See page 4)				
In bank	£ 5.16. 9								
Petty Cash or Change Fund									
Inventory (at cost)		19	18	10					
Wet or Bar	£ 13.19. 2								
Dry or Mess	£								
Containers	£ 5.19. 8								
Accounts Receivable		12	7	0					
Current	£ 11. 7. 0								
Arrears	£ 1. 0. 0								
(See page 4)									
Furniture & Equipment (at cost)					Reserves—				
(If carried as an Asset)					For Depreciation				
					Other - Specify				
"Memorandum"									
Furniture & Equipment									
(If not carried as an Asset)									
Radio	£ 10. 0. 0								
Radiogram	23. 0. 0								
At Cost	33. 0. 0								
					Surplus		66	19	4
TOTAL	£	228	15	4	TOTAL	£	228	15	4

CERTIFICATE OF CASH ON HAND

I, the undersigned, hereby certify that the cash on hand, Petty Cash and Change Fund as included above, were counted by me and found correct as at the date of the above statement.

Treasurer

STATEMENT APPROVED

President of the Committee

Commanding Officer

STATEMENT EXAMINED

Officer i/c Sub-Section,
Regimental Funds Board

Date 194

CERTIFICATE OF AUDIT

We have audited the books and accounts of the

for the Month/Quarter ended 194

and in our opinion the above statement is properly drawn up so as to show a true and correct view of the state of the finances as at 194

President

Member Unit
Audit Board

Date Audited 194

Note:- Members of Audit Board should not be Members of the Committee nor Signing Officers for the Bank Account. (K.R. (Can.) 1939, para. 41c)

LIST OF APPENDICES ATTACHED

(a) Bank Certificate
(b) Merchandise Inventory (M.F.M. 133, Overseas)
(c) Audit Board Report (if any)
(d) Other

STATEMENT OF PROFIT AND LOSS

Month ~~or Quarter~~ ended 31 Mar 194 3

	Wet Canteen or Bar		Dry Canteen or Messing		Total	
Sales (or Receipts) for period	£ 42. 6. 7	100%	£ 20.10. 0	100%	£ 62.16. 7	100%
Inventory at end of last period (cost)	£ 30.17. 6		£		30.17. 6	
Add Purchases for period	£ 15. 6. 8		£ 9. 9. 3		24.15.11	
	£ 46. 4. 2		£ 9. 9. 3		£ 55.13. 5	
Less Inventory at end of current period (cost)	£ 13.19. 2		£		£ 13.19. 2	
Cost of Sales and/or Messing	£ 32. 5. 0		£ 9. 9. 3		£ 41.14. 3	
Gross Profits	£ 10. 1. 7		£ 11. 0. 9		£ 21. 2. 4	
Deduct Expenses						
Wages—Steward and/or Caterer	£ 2.15. 7		£ 1.10. 0			
Assistants 3 @ 13/- each	£		£ 1.19. 0			
each	£		£			
Total Wages	£ 2.15. 7		£ 3. 9. 0			
Other Expenses (in detail)						
	£		£			
Newspapers	£		£ 1. 4. 4			
	£		£			
	£		£			
	£		£			
	£		£			
Deduct Total Expenses	£ 2.15. 7		£ 4.13. 4		£ 7. 8.11	
Net Operating Profit	£ 7. 6. 0		£ 6. 7. 5		£ 13.13. 5	
Add Revenue from Other Sources (Specify)						
Billiard Table Receipts			£ 4. 5. 0			
Photographs			£ 10.16. 0			
~~Increase in Container a/c~~			£ 4. 2		£ 15. 5. 2	
Total Profit for the period					£ 28.18. 7	
Add Surplus from previous statement						
Total Surplus Available					£ 83.18. 7	
Deduct Disposition of Surplus (in detail)*						
Stock used for entertainment			£ 1. 4. 4			
Photographs on repayment			£ 10.16. 0			
Piano Rent			£ 15. 0			
Billiard Table Rent			£ 3. 2. 6			
			£			
			£		£ 15.17.10	
Final Surplus (per statement of Assets & Liabilities)					£ 68.19. 4	

Monthly
Average ~~mess~~ charge for Messing 10/- No. of Members 40

*Nature of purchase or expense required, not name of supplier

ACCOUNTABILITY - MERCHANDISE SOLD - AT SELLING PRICE

	Wet Canteen or Bar	Dry Canteen or Messing
Inventory at end of last period (Selling Price)	£	£
Add Purchases during this period (Selling Price)	£	£
	£	£
Deduct Inventory at end of this period (Selling Price)	£	£
Total to be accounted for	£	£
Sales as above	£	£
Variation	£	£

Secretary

Schedule Of Accounts Receivable And Accounts Payable

As at 30 Apr 194 3

ACCOUNTS RECEIVABLE	£	s	d
Sundries—Total			
Sundries in detail—(K.R. (Can.) para. 1001)			
Sgt. Horton (Jan)	1	0	0
M/S Mess - a/c NAAFI payment (Mar)	1	7	0
Total - per statement of Assets and Liabilities	2	7	0

ACCOUNTS PAYABLE (Show name of Firm and Purpose)	£	s	d
Bar Purchases			
Officers' Mess			
(Nov) £16. 1. 0			
(Dec) 29. 5. 0			
(Jan) 8.13. 6			
(Feb) 9. 9. 6			
(Mar) 1. 3. 8 £64.12. 8			
M/S Mess (Nov) 3. 7. 6			
Kenward & Court			
(Feb) 58.19. 4			
(Mar) 13. 5. 0			
(Apr) 2. 5. 6 74. 9.10	142	10	0
Mess Purchases			
Coopers (Feb) 12. 0			
" (Apr) 1. 0. 6 1.12. 6			
Percivals			
(Jan) 1.12. 6			
(Mar) 4. 1.11 5.14. 5	7	6	11
Expense			
W. Smith -papers- (Apr) 1. 0.0			
NAAFI Piano Rent (Apr) 16.0	1	15	0
Total - per statement of Assets and Liabilities	151	11	11

PARTICULARS OF INSURANCE

	Amount £	Insurance £	Date of Expiry £
Inventory of Merchandise at end of period	8.12. 4		
Value of Furniture & Equipment carried as an Asset			
Value of Furniture & Equipment not carried as an Asset	33. 0. 0	100. 0. 0	9 Oct. 43
Casualty or other Insurance			

Secretary

REMARKS AND PROPOSALS OF THE COMMITTEE

Names of the Members

Committee

1
2
3

Sub-Committee

1
2
3

Date of last meeting 194

Remarks

Secretary of Committee

Appendix C.3

FINANCIAL STATEMENT

MF 223 (Overseas)
40 M/1446 (9/42)

The 14th Cdn General Hospital R.C.A.M.C.
Name of Unit

The Sergeants' Mess
Name of Institute or Fund

ABSTRACT OF RECEIPTS AND DISBURSEMENTS

For the Month ended 30 Apr 194 3

Date 1943	RECEIPTS (Show Source)	£	s	d
1 Apr	Cash on hand—Forward	190	12	9
	Bank Balance—Forward	5	16	9
1/30	To A/cs Rec (Mess Dues)	6	0	0
	" " " (Photos)	4	0	0
"	To Bar Sales	58	12	7
"	To Billisrds Receipts	2	1	10
"	To Mess Dues (Apr)	21	10	0
"	To Laundry	1	13	11
TOTAL £		290	7	10

Date	DISBURSEMENTS (Show Name and purpose)	£	s	d
	By Cheque - A/cs Pay.		15	5	1
13 Apr	W. Jelks	£3. 2. 6			
"	W. Smith	7. 7. 9			
"	NAAFI	2.11.10			
"	Lime Fisheries	2. 3. 0			
	Bar Purchases		14	10	0
17 "	Officers' Mess	3.15. 0			
20 "	Cigarettes	10.15. 0			
	Expense		2	13	10
13 "	W. Jelks B. Chalk	3.10			
	" B. T. Rent	2.10. 0			
	By Cash - Expense		17	1	1
1 "	Dance	7.10. 6			
	Wages - Bar	2.13. 8			
to	" Mess	3.14. 0			
	Papers	4. 0			
	Paint etc.	1. 2. 6			
30 "	Stamps	2. 6			
	Laundry repayable	1.13.11			
	Bar Purchases		32	10	0
1 "	Cigarettes	10. 0. 0			
5 "	Officers' Mess	20. 5. 0			
14 "	" "	2. 5. 0			
30 "	By Cash Shortage		149	14	11
30 "	Cash on hand	10. 0			
	Bank Balance (per Cash Book)	58. 2.11	58	12	11
	TOTAL £		290	7	10

BANK RECONCILIATION STATEMENT (Attach Bank Certificate)

Outstanding Cheque £		Balance (per Cash Book) £	s	d
NIL			58	2	11
		Add Outstanding Cheque £			
TOTAL £		Balance per Bank Certificate £	58	2	11

NAMES OF SIGNING AND COUNTERSIGNING OFFICERS

President Officer Commanding

Treasurer 2nd in Command

STATEMENT OF ASSETS AND LIABILITIES

As at 30 April 1943

ASSETS		Amount			LIABILITIES		Amount		
Cash (per Cash Book)	£	58	12	11	Accounts Payable (See page 4)	£	151	11	11
On hand	£ 10. 0								
In bank	£ 58. 2.11								
Petty Cash or Change Fund									
Inventory (at cost)		8	12	4					
Wet or Bar	£ 2.12. 6								
Dry or Mess	£								
Containers	£ 5.19.10								
Accounts Receivable		2	7	0					
Current	£								
Arrears (See page 4)	£ 2. 7. 0								
Cash Shortage		149	14	11					
Furniture & Equipment (at cost) (If carried as an Asset)					Reserves:— For Depreciation				
					Other - Specify				
"Memorandum" Furniture & Equipment (If not carried as an Asset)									
Radio	£ 10. 0. 0								
Radiogram	23. 0. 0								
	33. 0. 0								
					Surplus		67	15	3
TOTAL	£	219	7	2	TOTAL	£	219	7	2

CERTIFICATE OF CASH ON HAND

I, the undersigned, hereby certify that the cash on hand, Petty Cash and Change Fund as included above, were counted by me and found correct as at the date of the above statement.

Treasurer

STATEMENT APPROVED

President of the Committee

Commanding Officer

STATEMENT EXAMINED

Officer i/c Sub-Section, Regimental Funds Board

Date 194

CERTIFICATE OF AUDIT

We have audited the books and accounts of the

for the Month/Quarter ended 194

and in our opinion the above statement is properly drawn up so as to show a true and correct view of the state of the finances as at 194

President

Member Unit Audit Board

Date Audited 194

Note:- Members of Audit Board should not be Members of the Committee nor Signing Officers for the Bank Account. (K.R. (Can.) 1939, para. 41c)

LIST OF APPENDICES ATTACHED

(a) Bank Certificate
(b) Merchandise Inventory (M.F.M. 133, Overseas)
(c) Audit Board Report (if any)
(d) Other

STATEMENT OF PROFIT AND LOSS

Month ~~or Quarter~~ ended 30 April 1943

	Wet Canteen or Bar		Dry Canteen or Messing		Total	
Sales (or Receipts) for period	£ 65. 0. 2	100%	£ 21.10. 0	100%	£ 86.10. 2	100%
Inventory at end of last period (cost)	£ 13.19. 2		£		13.19. 2	
Add Purchases for period	£ 49. 5. 6		£ 1. 0. 6		50. 6. 0	
	£ 63. 4. 8		£ 1. 0. 6		£ 64. 5. 2	
Less Inventory at end of current period (cost)	£ 2.12. 6		£		£ 2.12. 6	
Cost of Sales and/or Messing	£ 60.12. 2		£ 1. 0. 6		£ 61.12 8	
Gross Profits	£ 4. 8. 0		£ 20. 9. 6		£ 24.17. 6	
Deduct Expenses						
Wages—Steward and/or Caterer	£ 2.13. 8		£ 1.15. 0			
Assistants @ each	£		£ 1.19. 0			
@ each	£		£			
Total Wages	£ 2.13. 8		£ 3.14. 0			
Other Expenses (in detail)						
	£		£			
Newspapers	£		£ 1. 4. 0			
Stamps for Postage	£		2. 6			
	£		£			
	£		£			
	£		£			
Deduct Total Expenses	£ 2.13. 8		£ 5. 0. 6		£ 7.14. 2	
Net Operating Profit	£ 1.14. 4		£ 15. 9. 0		£ 17. 3. 4	

Add Revenue from Other Sources (Specify)

Billiards Receipts	£ 2.1.10	
Laundry	£ 1.13.11	
Containers a/c	£ 2	
Total Profit for the period		£ 3.15.11
Add Surplus from previous statement		£ 20.19. 3
Total Surplus Available		£ 66.19. 4
Deduct Disposition of Surplus (in detail)*		£ 27.18. 7
Dance Expense	£ 7.10. 6	
Free Drinks	£ 6. 7. 7	
Billiards Rental & Dry.	£ 2.13.10	
Laundry	£ 1.15.11	
Paint & Brushes	£ 1. 2. 6	
Piano Rent	£ 15. 0	
	£	
Final Surplus (per statement of Assets & Liabilities)		£ 20. 3. 4
		£ 67.15. 3

Average ~~Monthly~~ charge for Messing 10/ No. of Members 40

*Nature of purchase or expense required, not name of supplier

ACCOUNTABILITY - MERCHANDISE SOLD - AT SELLING PRICE

	Wet Canteen or Bar	Dry Canteen or Messing
Inventory at end of last period (Selling Price)	£ 17.10. 7	£
Add Purchases during this period (Selling Price)	£ 54. 7. 0	£
	£ 72.17. 7	£
Deduct Inventory at end of this period (Selling Price)	£ 2.12. 6	£
Total to be accounted for	£ 69. 5. 1	£
Sales as above	£ 65. 0. 2	£
Variation	£ 4. 4.11	£

Secretary

Schedule Of Accounts Receivable And Accounts Payable

As at 31 Jan 1943

ACCOUNTS RECEIVABLE	£	s	d	ACCOUNTS PAYABLE (Show name of Firm and Purpose)	£	s	d
Current—Total				Patient's Fund	18	6	0
Arrears—in detail—(K.R. (Can.) para. 1901)				6 Cdn Const Coy R.C.E.	6	7	5
2nd Cash Ration Allowance	160	0	0	P.R.I. a/c	1	0	0
Patient's Fund	6	11	6	NAAFI		5	10
Officers' Mess	4	0	0	Mallinsons Paper a/c	12	18	2
N/S Mess	5	0	0				
2nd Cash Ration Allowance	4	6	3				
NAAFI Paper a/c	12	8	0				
Officers ' Mess Paper a/c	2	6	6				
Total - per statement of Assets and Liabilities	194	12	3	Total - per statement of Assets and Liabilities	38	17	5

PARTICULARS OF INSURANCE

	Amount £	Insurance £	Date of Expiry £
Inventory of Merchandise at end of period			
Value of Furniture & Equipment carried as an Asset			
Value of Furniture & Equipment not carried as an Asset			
Casualty or other Insurance			

Secretary

REMARKS AND PROPOSALS OF THE COMMITTEE

Names of the Members

Committee	Sub-Committee
1 Major G.W. Halpenny	1 Spr Teal A.J.
2 F.W. Wiglesworth	2 Pte Mc Cormack J.
3 " W. Mason Cooper	3 Pte Mahoney J.H.

Date of last meeting 16 Feb 1943

Remarks

Secretary of Committee

[illegible] (Overseas)
[illegible] 1445 (9/42).

Appendix D
FINANCIAL STATEMENT

The 14th Cdn General Hospital R.C.A.M.C.
Name of Unit

The Mens Canteen
Name of Institute or Fund

ABSTRACT OF RECEIPTS AND DISBURSEMENTS

For the Period ended 1 July 42 31 Jan 1943

Date 1942-3	RECEIPTS (Show Source)	£	s	d	Date 1942-3	DISBURSEMENTS (Show Name and purpose)	£	s	d
1 July	Cash on hand—Forward	72	3	10	1 July	By Cash 114.14.10			
1942	Bank Balance—Forward	498	13	8		By Cheque 828. 3. 1			
	On June a/cs Rec	306	4	1		942.17.11			
to	Barber Shop	97	1	6					
	Tailor Shop	25	3	6	to	On June A/cs Payable	422	9	8
31 Jan	NAAFI Rebates	229	2	3	31 Jan	Barber Shop	47	16	5
1943	Sale of Equipment	6	7	0	1943	Tailor Shop	17	12	4
	Donations	2	0	0		P.R.I. a/c	39	7	4
	Sales (June a/cs)	29	9	5		Patient's Fund	58	9	6
	Sale of Dance Tickets	17	5	6		Entertainment (Dances)	142	9	2
	Red Cross Xmas Fund	12	18	0		Miscellaneous Expenses	2	5	6
	Aux Ser. Donations	4	0	0		Purchases June a/cs	25	2	6
	NAAFI (Papers Sold)	60	18	2		Wages June a/c	1	10	0
	Cheque Cashed (Contra)	9	0	0		Purchase of Lawnmower	2	5	0
	Officers' Mess (Contra)	5	11	9		Purchase of Sports Equip.	5	18	6
						Accountant Wages	6	0	0
						Officers' Mess (Contra)	5	11	9
						6 Cdn Const Coy NAAFI Rebate	36	4	10
						Tailor's Wages June a/c	11	9	6
						2nd Cash Ration Allow	5	17	9
						Wm. Andy & Co.	8	18	0
						Sgts' Mess (Beer for Xmas)	10	14	0
						NAAFI (Xmas Cheer)	8	12	0
						Cook's Bonus	4	0	0
						Patient's Fund (Contra)	6	11	6
						Cash (Contra)	9	0	0
						Postage Stamps		10	0
						Mallison Papers	64	2	8
						Smith Accounting	7	0	0
						Cash Shortage	19	15	0
					31 Jan	Cash on hand	27	17	9
						Bank Balance (per Cash Book)	378	8	0
	TOTAL £	1375	18	8		TOTAL £	1375	18	8

BANK RECONCILIATION STATEMENT (Attach Bank Certificate)

Outstanding Cheques £				Balance (per Cash Book) £	378	8	0
NIL				Bank of Montreal Can £108. 0.0			
				" " " Eng 24. 4. 2			
				Barclays Horley 246. 3.10			
				Add Outstanding Cheque £	NIL		
TOTAL £				Balance per Bank Certificate £	378	8	0

Names of Signing and Countersigning Officers

Major G.W. Halpenny President — A. Ross Colonel Officer Commanding
" F.W. Wiglesworth Treasurer — 2nd in Command

STATEMENT OF ASSETS AND LIABILITIES

As at 31 Jan 1943

ASSETS	£	Amount £	s	d
Cash (per Cash Book)		406	5	9
On hand	27.17.9			
In bank	378.8.0			
Petty Cash or Change Fund				
Inventory (at cost)		19	3	3
Wet or Bar				
Dry or Mess	19.3.3			
Containers				
Accounts Receivable		194	12	3
Current	34.12.3			
Arrears	160.0.0			
(See page 4)				
Cash Shortage		19	15	0
Furniture & Equipment (at cost) (if carried as an Asset)				
"Memorandum" Furniture & Equipment (If not carried as an Asset)				
TOTAL £		639	16	3

LIABILITIES	£	Amount £	s	d
Accounts Payable (See page 4)		38	17	5
Reserves— For Depreciation				
Other - Specify				
Surplus		600	18	10
TOTAL £		639	16	3

CERTIFICATE OF CASH ON HAND

I, the undersigned, hereby certify that the cash on hand, Petty Cash and Change Fund as included above, were counted by me and found correct as at the date of the above statement.

Treasurer

STATEMENT APPROVED

President of the Committee

Commanding Officer

STATEMENT EXAMINED

Officer i/c Sub-Section, Regimental Funds Board

Date 194

CERTIFICATE OF AUDIT

We have audited the books and accounts of the

for the Month/Quarter ended 194

and in our opinion the above statement is properly drawn up so as to show a true and correct view of the state of the finances as at 194

President

Member Unit Audit Board

Date Audited 194

Note:- Members of Audit Board should not be Members of the Committee nor Signing Officers for the Bank Account, (K.R. (Can.) 1939, para. 41c)

LIST OF APPENDICES ATTACHED

(a) Bank Certificate
(b) Merchandise Inventory (M.F.M. 133, Overseas)
(c) Audit Board Report (if any)
(d) Other

STATEMENT OF PROFIT AND LOSS

Period ~~Month/Quarter~~ ended 31 Jan 1943

	Wet Canteen or Bar £	%	Dry Canteen or Messing £	%	Total £	%
Sales (or Receipts) for period		100%		100%		100%
Inventory at end of last period (cost)						
Add Purchases for period						
Less Inventory at end of current period (cost)						
Cost of Sales and/or Messing						
Gross Profits						
Deduct Expenses						
Wages—Steward and/or Caterer						
Assistants ( ) each						
( ) each						
Total Wages						
Other Expenses (in detail)						
Deduct Total Expenses						
Net Operating Profit						
Add Revenue from Other Sources (Specify)						
Miscellaneous Items			507.19.10		507.19.10	
Total Profit for the period					696. 9. 8	
Add Surplus from previous statement					1204. 9. 6	
Total Surplus Available						
Deduct Disposition of Surplus (in detail)*						
Adjustment of a/cs Receivable			42. 6.11			
Inventory used at Dues			20. 7. 7			
Miscellaneous Items			540.16. 2			
					603.10. 8	
Final Surplus (per statement of Assets & Liabilities)					600.18.10	

Average daily charge for Messing No. of Members

*Nature of purchase or expense required, not name of supplier

ACCOUNTABILITY - MERCHANDISE SOLD - AT SELLING PRICE

	Wet Canteen or Bar £	Dry Canteen or Messing £
Inventory at end of last period (Selling Price)		
Add Purchases during this period (Selling Price)		
Deduct Inventory at end of this period (Selling Price)		
Total to be accounted for		
Sales as above		
Variation		

Secretary

Schedule Of Accounts Receivable And Accounts Payable

As at 30 April 1943

ACCOUNTS RECEIVABLE	Amount			ACCOUNTS PAYABLE (Show name of Firm and Purpose)	Amount		
Current—Total £				Mallisons Paper a/c £	16	17	2
Arrears—in detail—(K.R. (Can.) para. 1001)				Patient's Fund	60	0	2
Officers' Mess Paper a/c	3	4	6	No 6 Cdn C. Coy R.C.E.	9	7	5
Officers' Mess	4	0	0	P.R.I. a/c	1	0	0
				Rec Gen of Can Cigs.	177	12	1
NAAFI Paper a/c	16	3	0				
" Rebate	46	13	2				
Cash Ration Allow. £164. 6. 3							
Less amount w/o 96. 7. 3	67	19	0				
Total - per statement of Assets and Liabilities £	137	19	8	Total - per statement of Assets and Liabilities £	264	16	10

PARTICULARS OF INSURANCE

	Amount	Insurance	Date of Expiry
Inventory of Merchandise at end of period	£	£	£
Value of Furniture & Equipment carried as an Asset	£	£	£
Value of Furniture & Equipment not carried as an Asset	£	£	£
Casualty or other Insurance	£	£	£

Secretary

REMARKS AND PROPOSALS OF THE COMMITTEE

Names of the Members

Committee	Sub-Committee
1 Major J.W. Halpenny	1 Spr Teal A.J.
2 " F.E. Higlesworth	2 Pte Mc Cormack J.
3 " W. Mason Cooper	3 Pte Mahoney J.H.

Date of last meeting 16 Feb 1943

Remarks

Secretary of Committee

M[illegible] (Overseas)
4[illegible]446 (D/42)

Appendix D.1
FINANCIAL STATEMENT

The 14th Can General Hospital R.C.A.M.C.
Name of Unit

The Mens Canteen
Name of Institute or Fund

ABSTRACT OF RECEIPTS AND DISBURSEMENTS

For the [illegible]th or Quarter ended 30 April 1943

Date 1943	RECEIPTS (Show Source)	Amount			Date 1943	DISBURSEMENTS (Show Name and purpose)	Amount		
1 Feb	Cash on hand—Forward £	27	17	9		By Cheques £			
	Bank Balance—Forward	378	8	0	20 Feb	NAAFI	14	13	2
27 Feb	NAAFI Rebate	29	19	3	12 Mar	Mallison Papers	13	9	0
	NAAFI Paper a/c " "	12	8	0	16 Mar	Paymaster Rec Transport	7	17	6
		32	1	4	20 Mar	NAAFI Dance	11	13	5
26 Feb	Dance Tickets	4	1	0	26 Mar				
	Major Johnson Refund	1	19	7	4 Apr	Mallison Papers	18	9	4
20 Mar	Dance Tickets	4	11	0	11 Apr	NAAFI a/cs Pay		5	10
	NAAFI Rebate	38	6	9	16 Apr	NAAFI Dance	11	12	2
Apr	NAAFI Rebate	29	18	0	30 Apr	Cash Entertainment	4	1	10
Apr	Sale of Dance Tickets	4	14	0					
	M/S Mess	5	0	0					
	Sale of Am. Cigs.	193	2	6					
						By Cash			
						Mallison Papers a/c	14	10	0
					19 Feb	Orchestra for Dance	3	10	0
						Major Johnson Entertainment	3	0	0
					22 Feb	Expenses re Hockey Game		18	4
					20 Mar	Orchestra	3	10	0
					Apr	Orchestra	3	10	0
						Cash Shortage	37	19	5
					30 Apr	Cash on hand	287	2	2
						Bank Balance (per Cash Book)	326	5	0
	TOTAL £	762	7	2		TOTAL £	762	7	2

BANK RECONCILIATION STATEMENT (Attach Bank Certificate)

Outstanding Cheques £				Balance (per Cash Book) £	326	5	0
				Bank Accounts.			
				Bank of Montreal Canada £108. 0. 0			
				Bank of Montreal London 24. 4. 2			
				Barclays Horley 194. 0.10			
				Add Outstanding Cheques £	NIL		
TOTAL £	NIL			Balance per Bank Certificate £	326	5	0

NAMES OF SIGNING AND COUNTERSIGNING OFFICERS

Major G.W. Halpenny President — A. Ross Colonel Officer Commanding
Major F.W. Higlesworth Treasurer — 2nd in Command

STATEMENT OF ASSETS AND LIABILITIES

As at 30 April 194 3

ASSETS		Amount £	s	d	LIABILITIES		Amount £	s	d
Cash (per Cash Book)	£	613	7	2	Accounts Payable (See page 4)	£	264	16	10
On hand	£ 287. 2. 2								
In bank	£ 326. 5. 0								
Petty Cash or Change Fund									
Inventory (at cost)		19	3	3					
Wet or Bar	£								
Dry or Mess	£ 19. 3. 3								
Containers	£								
Accounts Receivable		137	19	8					
Current	£								
Arrears	£								
(See page 4)									
Cash Shortage	19.15. 0								
Add	37.19. 5	57	14	5	Reserves—				
Furniture & Equipment (at cost)					For Depreciation				
(If carried as an Asset)					Other - Specify				
"Memorandum"									
Furniture & Equipment									
(If not carried as an Asset)									
	£								
					Surplus		563	7	8
TOTAL £		828	4	6	TOTAL £		828	4	6

CERTIFICATE OF CASH ON HAND

I, the undersigned, hereby certify that the cash on hand, Petty Cash and Change Fund as included above, were counted by me and found correct as at the date of the above statement.

Treasurer

CERTIFICATE OF AUDIT

We have audited the books and accounts of the

for the Month/Quarter ended 194

and in our opinion the above statement is properly drawn up so as to show a true and correct view of the state of the finances as at 194

President

Member Unit
Audit Board

Date Audited 194

Note:- Members of Audit Board should not be Members of the Committee nor Signing Officers for the Bank Account, (K.R. (Can.) 1939, para. 41c)

STATEMENT APPROVED

President of the Committee

Commanding Officer

STATEMENT EXAMINED

Officer i/c Sub-Section,
Regimental Funds Board

Date 194

LIST OF APPENDICES ATTACHED

(a) Bank Certificate
(b) Merchandise Inventory (M.F.M. 133, Overseas)
(c) Audit Board Report (if any)
(d) Other

STATEMENT OF PROFIT AND LOSS

Month or Quarter ended 194

	Wet Canteen or Bar		Dry Canteen or Messing		Total	
Sales (or Receipts) for period	£	100%	£	100%	£	100%
Inventory at end of last period (cost)	£		£			
Add Purchases for period	£		£		£	
	£		£		£	
Less Inventory at end of current period (cost)	£		£		£	
Cost of Sales and/or Messing	£		£		£	
Gross Profits	£		£		£	
Deduct Expenses						
Wages—Steward and/or Caterer			£			
Assistants @ each			£			
@ each	£		£			
Total Wages	£		£			
Other Expenses (in detail)						
	£		£			
	£		£			
	£					
	£		£			
	£		£			
	£		£			
Deduct Total Expenses	£		£		£	
Net Operating Profit	£		£		£	
Add Revenue from Other Sources (Specify)						
			£			
			£			
			£			
			£		£	
Total Profit for the period					£	
Add Surplus from previous statement					£	
Total Surplus Available					£	
Deduct Disposition of Surplus (in detail)*						
			£			
			£			
			£			
			£			
			£			
			£			
					£	
Final Surplus (per statement of Assets & Liabilities)					£	

Average daily charge for Messing No. of Members

*Nature of purchase or expense required, not name of supplier

ACCOUNTABILITY - MERCHANDISE SOLD - AT SELLING PRICE

	Wet Canteen or Bar	Dry Canteen or Messing
Inventory at end of last period (Selling Price)	£	£
Add Purchases during this period (Selling Price)	£	£
	£	£
Deduct Inventory at end of this period (Selling Price)	£	£
Total to be accounted for	£	£
Sales as above	£	£
Variation	£	£

Secretary

Schedule Of Accounts Receivable And Accounts Payable

As at 30 April 194 3

ACCOUNTS RECEIVABLE	£	Amount		
Account—Total				
Accounts—in detail—(K.R. (Can.) para. 1001)				
Pte Ancil Barber		5	15	0
Officers ' Mess		4	0	0
N/S Mess Photos		30	8	3
Mens Canteen		1	0	0
Pte Ancil Barber		13	9	2
Total - per statement of Assets and Liabilities	£	54	12	5

ACCOUNTS PAYABLE (Show name of Firm and Purpose)	£	Amount		
R. Hovenden & Sons Ltd.		25	17	5½
Kodak Ltd Photo Supplies		10	16	5
Total - per statement of Assets and Liabilities	£	36	13	10½

PARTICULARS OF INSURANCE

	Amount	Insurance	Date of Expiry
Inventory of Merchandise at end of period	£	£	£
Value of Furniture & Equipment carried as an Asset	£	£	£
Value of Furniture & Equipment not carried as an Asset	£	£	£
Casualty or other Insurance	£	£	£

Secretary

REMARKS AND PROPOSALS OF THE COMMITTEE

Names of the Members

Committee

1
2
3

Sub-Committee

1
2
3

Date of last meeting 194

Remarks

Secretary of Committee

Appendix E
FINANCIAL STATEMENT

(Overseas)
(1445 (9/42)

The 14th Cdn General Hosp R.C.A.M.C
Name of Unit

The P.R.I. Account
Name of Institute or Fund

ABSTRACT OF RECEIPTS AND DISBURSEMENTS

Period
For the ~~Month or Quarter~~ ended 1 Nov 42 - 30 Apr 1943

Date	RECEIPTS (Show Source)	£	Amount			Date	DISBURSEMENTS (Show Name and purpose)	£	Amount		
	Cash on hand—Forward		NIL			Nov 30	Barbers		10	1	4
	Bank Balance—Forward						Tailor		5	6	8
28 Nov	Mens Canteen		39	7	4		Northover Barber Equip.		5	5	0
30 Nov	Barber		24	16	0	Dec 31	Barbers		10	8	0
	Tailor		5	9	6		Tailors		5	17	8
30 Dec	Barber		27	2	0		Smith Bookkeeping		12	0	0
	Tailor		6	3	6		Cheque Book			5	0
31 Jan	Barber		22	17	0	Jan 31	Barbers		9	1	2
	Tailor		6	9	6		Tailor		5	10	9
28 Feb	Barber		23	2	6	28 Feb	Barbers		9	8	0
	Tailor		6	12	6		Tailor		5	2	7
31 Mar	Barber		24	9	0		A. Scott Shoemaker Equip.		10	12	2
	Tailor		6	16	0	31 Mar	Barbers		10	8	0
30 Apr	Barber		22	8	6		Tailor		6	3	8
	Tailor		7	7	6	30 Apr	Scott Shoemaker Equip.		5	0	0
	Shoemaker		12	10	11		" "		1	16	0
	N/S Mess		6	0	0		" Material		2	14	6
	Watchmaker			3	6		Gale & Polden Books		1	1	10
							Carrey Watchmaker Exp.		1	16	2
							Scott Shoemaker Material		14	8	0
							" " "		1	8	2
							Barbers		7	19	0
							Tailor		6	15	0
							Shoemaker		6	0	0
							Cash Shortage		44	4	8
						30 Apr	Cash on hand		33	9	5
							Bank Balance (per Cash Book)		11	12	6
	TOTAL	£	241	15	3		TOTAL	£	241	15	3

BANK RECONCILIATION STATEMENT (Attach Bank Certificate)

Outstanding Cheques	£			Balance (per Cash Book)	£	11	12	6
NIL								
				Add Outstanding Cheques	£	NIL		
TOTAL	£			Balance per Bank Certificate	£	11	12	6

Names of Signing and Countersigning Officers

Major J.G. Petrie — President — A. Ross Colonel — Officer Commanding
" E. Galbraith — Treasurer — — 2nd in Command

STATEMENT OF ASSETS AND LIABILITIES

As at 30 April 194 3

ASSETS		Amount			LIABILITIES		Amount		
Cash (per Cash Book)	£	45	1	11	Accounts Payable (See page 4)	£	36	13	10½
On hand	£ 33. 9. 5								
In bank	£ 11.12. 6								
Petty Cash or Change Fund									
Inventory (at cost)									
Wet or Bar	£								
Dry or Mess	£								
Containers	£								
Amounts Receivable									
Current	£ 54.12. 5	54	12	5					
Arrears	£								
(See page 4)									
Cash Shortage		44	4	8					
Furniture & Equipment (at cost) (If carried as an Asset)					Reserves— For Depreciation				
					Other - Specify				
"Memorandum" Furniture & Equipment (If not carried as an Asset)	£								
					Surplus		107	5	1½
TOTAL £		143	19	0	TOTAL £		143	19	0

CERTIFICATE OF CASH ON HAND

I, the undersigned, hereby certify that the cash on hand, Petty Cash and Change Fund as included above, were counted by me and found correct as at the date of the above statement.

Treasurer

STATEMENT APPROVED

President of the Committee

Commanding Officer

STATEMENT EXAMINED

Officer i/c Sub-Section, Regimental Funds Board

Date 194

CERTIFICATE OF AUDIT

We have audited the books and accounts of the

for the Month/Quarter ended 194

and in our opinion the above statement is properly drawn up so as to show a true and correct view of the state of the finances as at 194

President

Member Unit Audit Board

Date Audited 194

Note:- Members of Audit Board should not be Members of the Committee nor Signing Officers for the Bank Account, (K.R. (Can.) 1939, para. 41c)

LIST OF APPENDICES ATTACHED

(a) Bank Certificate
(b) Merchandise Inventory (M.F.M. 133, Overseas)
(c) Audit Board Report (if any)
(d) Other

STATEMENT OF PROFIT AND LOSS

Month or Quarter ended 194

	Wet Canteen or Bar		Dry Canteen or Messing		Total	
Sales (or Receipts) for period	£	100% £		100% £		100%
Inventory at end of last period (cost)	£		£			
Add Purchases for period	£		£			
	£		£		£	
Less Inventory at end of current period (cost)	£		£		£	
Cost of Sales and/or Messing	£		£		£	
Gross Profits	£	%	£	%	£	%
Deduct Expenses						
Wages—Steward and/or Caterer	£		£			
Assistants @ each	£		£			
@ each	£		£			
Total Wages	£		£			
Other Expenses (in detail)						
	£		£			
	£		£			
	£					
	£		£			
	£		£			
	£		£			
Deduct Total Expenses	£		£		£	
Net Operating Profit	£		£		£	
Add Revenue from Other Sources (Specify)						
			£			
			£			
			£			
			£		£	
Total Profit for the period					£	
Add Surplus from previous statement					£	
Total Surplus Available					£	
Deduct Disposition of Surplus (in detail)*						
			£			
			£			
			£			
			£			
			£			
			£			
			£		£	
Final Surplus (per statement of Assets & Liabilities)					£	

Average daily charge for Messing No. of Members

*Nature of purchase or expense required, not name of supplier

ACCOUNTABILITY - MERCHANDISE SOLD - AT SELLING PRICE

	Wet Canteen or Bar	Dry Canteen or Messing
Inventory at end of last period (Selling Price)	£	£
Add Purchases during this period (Selling Price)	£	£
	£	£
Deduct Inventory at end of this period (Selling Price)	£	£
Total to be accounted for	£	£
Sales as above	£	£
Variation	£	£

Secretary

Schedule Of Accounts Receivable And Accounts Payable

As at 30 April 1943

ACCOUNTS RECEIVABLE	Amount £	s	d	ACCOUNTS PAYABLE (Show name of Firm and Purpose)	Amount £	s	d
Account—Total							
Summary in detail—(K.R. (Can.) para. 1001)							
Officers ' Mess	4	15	6				
N/S Mess	8	12	0				
Paymaster		10	0				
Total - per statement of Assets and Liabilities	13	17	6	Total - per statement of Assets and Liabilities		NIL	

PARTICULARS OF INSURANCE

	Amount £	Insurance £	Date of Expiry £
Inventory of Merchandise at end of period			
Value of Furniture & Equipment carried as an Asset			
Value of Furniture & Equipment not carried as an Asset			
Casualty or other Insurance			

Secretary

REMARKS AND PROPOSALS OF THE COMMITTEE

Names of the Members

Committee	Sub-Committee
1	1
2	2
3	3

Date of last meeting 194

Remarks

Secretary of Committee

[illegible] (Overseas)
[illegible]445 (9/42)

Appendix F
FINANCIAL STATEMENT

The 14th Cdn General Hospital R.C.A.M.C.
Name of Unit

The Barracks Damages a/c
Name of Institute or Fund

ABSTRACT OF RECEIPTS AND DISBURSEMENTS

Period
For the [illegible]er ended 29 Oct 42 30 April 1943

Date 1942-3	RECEIPTS (Show Source)	Amount £	s	d	Date 1942-3	DISBURSEMENTS (Show Name and purpose)	Amount £	s	d
	Cash on hand—Forward	NIL							
	Bank Balance—Forward	NIL							
Oct 29	Paymaster	5	17	6					
" 29	Officers' Mess		15	0					
	N/S Mess	2	3	6					
Nov 12	Paymaster		7	6					
" 27	"	5	16	6					
	Officers' Mess		17	6					
	N/S Mess	2	4	0					
Dec 15	Paymaster		6	6					
" 26	"	6	1	0					
	N/S Mess	2	4	6					
Jan 14	Paymaster		4	6					
" 28	"	5	14	6					
Feb 13	"		10	0					
" 25	"	5	15	0					
Mar 12	"		15	0					
" 29	"	6	4	0					
Apr 14	"		3	0					
" 29	"	5	17	6					
					30 Apr	Shortage of Cash		6	5	0
					30 Apr	Cash on hand 14. 9. 0 19/6		15	8	6
						Bank Balance (per Cash Book)		30	3	6
	TOTAL £	51	17	0		TOTAL £		51	17	0

BANK RECONCILIATION STATEMENT (Attach Bank Certificate)

Outstanding Cheques £				Balance (per Cash Book) £			
NIL					30	3	6
				Add Outstanding Cheques £	NIL		
TOTAL £				Balance per Bank Certificate £	30	3	6

NAMES OF SIGNING AND COUNTERSIGNING OFFICERS

J. H. Palmer Lt. Col. President — A. Ross Colonel Officer Commanding
Treasurer — 2nd. in Command

STATEMENT OF ASSETS AND LIABILITIES

As at 30 April 194 3

ASSETS		Amount			LIABILITIES		Amount		
Cash (per Cash Book)	£	45	12	0	Accounts Payable	£			
On hand	£ 15. 8. 6				(See page 4)				
In bank	£ 30. 3. 6								
Petty Cash or Change Fund									
Inventory (at cost)									
Wet or Bar	£								
Dry or Mess	£								
Containers	£								
Accounts Receivable		13	17	6					
Current	£ 13.17. 6								
Arrears	£								
(See page 4)									
Cash Shortage		6	5	0					
Furniture & Equipment (at cost)					Reserves				
(if carried as an Asset)					For Depreciation				
					Other - Specify				
"Memorandum"									
Furniture & Equipment									
(If not carried as an Asset)	£								
					Surplus		65	14	6
TOTAL £		65	14	6	TOTAL £		65	14	6

CERTIFICATE OF CASH ON HAND

I, the undersigned, hereby certify that the cash on hand, Petty Cash and Change Fund as included above, were counted by me and found correct as at the date of the above statement.

Treasurer

STATEMENT APPROVED

President of the Committee

Commanding Officer

STATEMENT EXAMINED

(*Officer* i/c Sub-Section, Regimental Funds Board

Date 194

CERTIFICATE OF AUDIT

We have audited the books and accounts of the

for the Month/Quarter ended 194

and in our opinion the above statement is properly drawn up so as to show a true and correct view of the state of the finances as at 194

President

Member Unit
Audit Board

Date Audited 194

Note: Members of Audit Board should not be Members of the Committee nor Signing Officers for the Bank Account, (K.R. (Can.) 1939, para. 41e)

LIST OF APPENDICES ATTACHED

(a) Bank Certificate
(b) Merchandise Inventory (M.F.M. 133, Overseas)
(c) Audit Board Report (if any)
(d) Other

STATEMENT OF PROFIT AND LOSS

Month or Quarter ended 194

	Wet Canteen or Bar		Dry Canteen or Messing		Total	
Sales (or Receipts) for period	£	100%	£	100%	£	100%
Inventory at end of last period (cost)	£		£			
Add Purchases for period	£		£		£	
	£		£		£	
Less Inventory at end of current period (cost)	£		£		£	
Cost of Sales and/or Messing	£		£		£	%
Gross Profits	£		£			
Deduct Expenses						
Wages—Steward and/or Caterer	£		£			
Assistants @ each	£		£			
@ each	£		£			
Total Wages	£		£			
Other Expenses (in detail)						
	£		£			
	£		£			
	£					
	£		£			
	£		£			
	£		£			
Deduct Total Expenses	£		£		£	
Net Operating Profit	£		£		£	
Add Revenue from Other Sources (Specify)						
			£			
			£			
			£		£	
Total Profit for the period					£	
Add Surplus from previous statement					£	
Total Surplus Available					£	
Deduct Disposition of Surplus (in detail)*						
			£			
			£			
			£			
			£			
			£			
			£		£	
Final Surplus (per statement of Assets & Liabilities)					£	

Average daily charge for Messing No. of Members

*Nature of purchase or expense required, not name of supplier

ACCOUNTABILITY - MERCHANDISE SOLD - AT SELLING PRICE

	Wet Canteen or Bar	Dry Canteen or Messing
Inventory at end of last period (Selling Price)	£	£
Add Purchases during this period (Selling Price)	£	£
	£	£
Deduct Inventory at end of this period (Selling Price)	£	£
Total to be accounted for	£	£
Sales as above	£	£
Variation	£	£

Secretary

Schedule Of Accounts Receivable And Accounts Payable

As at 30 April 194 3

ACCOUNTS RECEIVABLE	£	Amount			ACCOUNTS PAYABLE (Show name of Firm and Purpose)	£	Amount		
Current—Total	£				W. H. Smith & Son Papers	£	1	10	4
Arrears—in detail—(K.R. (Can.) para. 1001)									
Canteen a/c NAAFI Rebate		60	0	2					
Total - per statement of Assets and Liabilities	£	60	0	2	Total - per statement of Assets and Liabilities	£	1	10	4

PARTICULARS OF INSURANCE

	Amount	Insurance	Date of Expiry
Inventory of Merchandise at end of period	£	£	£
Value of Furniture & Equipment carried as an Asset	£	£	£
Value of Furniture & Equipment not carried as an Asset	£	£	£
Casualty or other Insurance	£	£	£

Secretary

REMARKS AND PROPOSALS OF THE COMMITTEE

Names of the Members

Committee	Sub-Committee
1	1
2	2
3	3

Date of last meeting 194

Remarks

Secretary of Committee

Appendix G

FINANCIAL STATEMENT

M[illegible] (Overseas)
A[illegible]446 (9/42)

The 14 Cdn General Hospital R.C.A.M.C.
Name of Unit

The Patient's Fund
Name of Institute or Fund

ABSTRACT OF RECEIPTS AND DISBURSEMENTS

For the Period ended 1 July 42 30 Apr 194 3

Date 1942	RECEIPTS (Show Source)	£	Amount			Date	DISBURSEMENTS (Show Name and purpose)	£	Amount		
30 June	Cash on hand—Forward		19	2	6	3 July	Cheque Book			5	0
	Bank Balance—Forward		66	12	7	23 Oct	Petty Cash		5	0	0
28 Jul	Canteen a/c NAAFI Rebate		12	2	0	12 Dec	Matron Herman Xmas Extras		40	0	0
30 Sept	" " " "		12	6	10	17 Dec	" " " "		2	2	0
23 Nov	" " " "		20	17	6	21 Dec	NAAFI Chocolate		13	4	0
27 Nov	" " " "		13	3	2	29 Dec	Hyatts Locks etc.		3	12	6
22 Dec	Red Cross Donation		20	2	0		Coutts Xmas Lights etc.		9	8	3
	R.A.F. Gatwick Donation		2	2	0	15 Jan	Linten " " "		7	3	0
8 Jan	Matron Herman Contra		9	17	9	29 Mar	Spr Forbes Petty Cash		12	0	0
5 Feb	" " "		6	0	0	12 Apr	W.H. Smith & Sons Papers		9	9	7
	Cash Over		2	0	0		S.A. Coutts		2	10	0
							Spr Forbes Petty Cash		2	0	0
						30 Apr	Cash on hand		6	0	0
							Bank Balance (per Cash Book)		72	12	0
	TOTAL	£	184	6	4		TOTAL	£	184	6	4

BANK RECONCILIATION STATEMENT (Attach Bank Certificate)

Outstanding Cheques	£				Balance (per Cash Book)	£	72	12	0
12 Apr S.A. Coutts	£	2	10	0					
					Add Outstanding Cheques	£	2	10	0
TOTAL	£	2	10	0	Balance per Bank Certificate	£	74	2	0

Names of Signing and Countersigning Officers

Major J.G. Petrie — President — A. Ross Colonel — Officer Commanding
" B. Galbraith — Treasurer — 2nd. in Command

STATEMENT OF ASSETS AND LIABILITIES

As at 30 April 194 3

ASSETS		Amount			LIABILITIES		Amount		
Cash (per Cash Book)	£	77	12	0	Accounts Payable	£	1	10	4
On hand	£ 6. 0. 0				(See page 4)				
In bank	£ 71.12. 0								
Petty Cash or Change Fund		1	15	7	Cash Over		2	0	0
Inventory (at cost)									
Wet or Bar	£								
Dry or Mess	£								
Containers	£								
Accounts Receivable		60	0	2					
Current	£ 60. 0. 2								
Arrears	£								
(See page 4)									
Furniture & Equipment (at cost)					Reserves:—				
(If carried as an Asset)					For Depreciation				
					Other - Specify				
"Memorandum"									
Furniture & Equipment									
(If not carried as an Asset)									
	£								
					Surplus		135	17	5
TOTAL £		139	7	9	TOTAL £		139	7	9

CERTIFICATE OF CASH ON HAND

I, the undersigned, hereby certify that the cash on hand, Petty Cash and Change Fund as included above, were counted by me and found correct as at the date of the above statement.

Treasurer

STATEMENT APPROVED

President of the Committee

Commanding Officer

STATEMENT EXAMINED

Officer i/c Sub-Section,
Regimental Funds Board

Date 194

CERTIFICATE OF AUDIT

We have audited the books and accounts of the

for the Month/Quarter ended 194

and in our opinion the above statement is properly drawn up so as to show a true and correct view of the state of the finances as at 194

President

Member Unit
Audit Board

Date Audited 194

Note: Members of Audit Board should not be Members of the Committee nor Signing Officers for the Bank Account, (K.R. (Can.) 1939, para. 41c)

LIST OF APPENDICES ATTACHED

(a) Bank Certificate
(b) Merchandise Inventory (M.F.M. 133, Overseas)
(c) Audit Board Report (if any)
(d) Other

STATEMENT OF PROFIT AND LOSS

Month or Quarter ended 194

	Wet Canteen or Bar		Dry Canteen or Messing		Total	
Sales (or Receipts) for period	£	100%	£	100%	£	100%
Inventory at end of last period (cost)	£		£			
Add Purchases for period	£		£			
	£		£		£	
Less Inventory at end of current period (cost)	£		£		£	
Cost of Sales and/or Messing	£		£		£	
Gross Profits	£	%	£	%	£	%
Deduct Expenses						
Wages—Steward and/or Caterer	£		£			
Assistants @ each	£		£			
@ each	£		£			
Total Wages	£		£			
Other Expenses (in detail)						
	£		£			
	£		£			
	£					
	£		£			
	£		£			
	£		£			
Deduct Total Expenses	£		£		£	
Net Operating Profit	£		£		£	
Add Revenue from Other Sources (Specify)						
			£			
			£			
			£			
			£		£	
Total Profit for the period					£	
Add Surplus from previous statement					£	
Total Surplus Available					£	
Deduct Disposition of Surplus (in detail)*						
			£			
			£			
			£			
			£			
			£			
			£			
			£		£	
Final Surplus (per statement of Assets & Liabilities)					£	

Average daily charge for Messing No. of Members

*Nature of purchase or expense required, not name of supplier

ACCOUNTABILITY - MERCHANDISE SOLD - AT SELLING PRICE

	Wet Canteen or Bar	Dry Canteen or Messing
Inventory at end of last period (Selling Price)	£	£
Add Purchases during this period (Selling Price)	£	£
	£	£
Deduct Inventory at end of this period (Selling Price)	£	£
Total to be accounted for	£	£
Sales as above	£	£
Variation	£	£

Secretary

Schedule Of Accounts Receivable And Accounts Payable

As at 30 April 194 3

ACCOUNTS RECEIVABLE	£	Amount			ACCOUNTS PAYABLE (Show name of Firm and Purpose)	£	Amount		
Current—Total	£					£			
Arrears—in detail—(K.R. (Can.) para. 1001)									
La Salle		27	14	10	Youngs		9	15	0
Post Office		6	0	0	Allen & Hanburys Ltd.		2	5	6
Hughes		3	12	6	Thorn & Hoddly Ltd.			7	6
					Eade & Sons		1	11	3
Total - per statement of Assets and Liabilities	£	37	7	4	Total - per statement of Assets and Liabilities	£	13	19	3

PARTICULARS OF INSURANCE

	Amount	Insurance	Date of Expiry
Inventory of Merchandise at end of period	£	£	£
Value of Furniture & Equipment carried as an Asset	£	£	£
Value of Furniture & Equipment not carried as an Asset	£	£	£
Casualty or other Insurance	£	£	£

Secretary

REMARKS AND PROPOSALS OF THE COMMITTEE

Names of the Members

Committee

1 _____
2 _____
3 _____

Sub-Committee

1 _____
2 _____
3 _____

Date of last meeting _____ 194

Remarks

Secretary of Committee

[redacted] (Overseas)
[redacted] 1446 (D/42)

Appendix H
FINANCIAL STATEMENT

The 14 Cdn General Hospital R.C.A.M.C.
Name of Unit

The C. O's. Funds
Name of Institute or Fund

ABSTRACT OF RECEIPTS AND DISBURSEMENTS

For the [redacted] Period ended 1 July 42 30 April 1943

Date 1942-3	RECEIPTS (Show Source)	£	Amount			Date	DISBURSEMENTS (Show Name and purpose)	£	Amount		
30 June	Cash on hand—Forward					Aug	Hospital Equipment		75	17	3
	Bank Balance—Forward		131	1	11		Benefit to Patients		3	0	0
Aug	Repayment Loans		22	10	0		" Unit Personnel		6	0	0
	Equipment Sold		7	6	6		Loans		15	3	6
Sept	Repayment Loans		11	11	0		Bank Charges & Postage		1	1	3
Nov 30	Sale of Bonds		111	14	2	Sept	Hospital Equip.		6	16	4
Dec 11	Loan N/S Mess		5	6	11		Benefit to Patients			11	4
Feb 2	Interest on Bonds $36.75		8	4	6		" " Unit Personnel		6	0	0
Feb 18	Sorrey & Hankes Refund			15	0		Miscellaneous Expenses			8	8
Apr 1	L. Joundry "			1	3	Nov	Benefit to Unit Personnel		7	5	4
Apr 30	Interest on Bonds $29.40		6	7	1		Miscellaneous Expense		3	17	9
							Loans		6	0	0
							Hosp. Equip.		19	15	7
							Benefits to Patients			5	0
						Dec	Miscellaneous Expenses			19	6
							Hospital Equipment		13	12	9
							Benefit to Unit Personnel		6	6	11
						Feb 1	Hosp. Equip.		34	10	9
						"	Benefit Unit Personnel		9	9	0
						Apr 30	Miscellaneous Expenses		3	3	11
						Apr 30	Cash on hand				
						Apr 30	Bank Balance (per Cash Book)		84	13	6
	TOTAL	£	304	18	4		TOTAL	£	304	18	4

BANK RECONCILIATION STATEMENT (Attach Bank Certificate)

Outstanding Cheques	£				Balance (per Cash Book)	£	84	13	6
Apr 1 Rec Gen of Can.		1	8	10					
" 27 Young & Co		1	15	0					
					Add Outstanding Cheques	£	3	3	10
TOTAL	£	3	3	10	Bank of Montreal Can.	£25. 1. 0	87	17	4
					Bank of Montreal Eng.	62.16. 4			

NAMES OF SIGNING AND COUNTERSIGNING OFFICERS

Major E.A. Mac Naughton President — A. [illegible] Colonel — Officer Commanding

Treasurer — 2nd. in Command

STATEMENT OF ASSETS AND LIABILITIES

As at 30 April 194 3

ASSETS		Amount			LIABILITIES		Amount		
Cash (per Cash Book)	£	84	13	6	Accounts Payable (See page 4)	£	13	19	3
On hand	£								
In bank	£ 84.13.6								
Petty Cash or Change Fund									
Dom. of Can Bonds (Cost)		440	11	8					
Inventory (at cost)									
Wet or Bar	£								
Dry or Mess	£								
Containers	£								
Accounts Receivable		37	7	4					
Current	£								
Arrears (See page 4)	£ 37.7.4								
Furniture & Equipment (at cost) (If carried as an Asset)					Reserves:—				
					For Depreciation				
					Other - Specify				
"Memorandum"									
Furniture & Equipment (If not carried as an Asset)	£								
					Surplus		548	13	3
TOTAL £		562	12	6	TOTAL £		562	12	6

CERTIFICATE OF CASH ON HAND

I, the undersigned, hereby certify that the cash on hand, Petty Cash and Change Fund as included above, were counted by me and found correct as at the date of the above statement.

Treasurer

STATEMENT APPROVED

President of the Committee

Commanding Officer

STATEMENT EXAMINED

Officer i/c Sub-Section, Regimental Funds Board

Date 194

CERTIFICATE OF AUDIT

We have audited the books and accounts of the

for the Month/Quarter ended 194

and in our opinion the above statement is properly drawn up so as to show a true and correct view of the state of the finances as at 194

President

Member Unit Audit Board

Date Audited 194

Note:- Members of Audit Board should not be Members of the Committee nor Signing Officers for the Bank Account. (K.R. (Can.) 1939, para. 41c)

LIST OF APPENDICES ATTACHED

(a) Bank Certificate
(b) Merchandise Inventory (M.F.M. 132, Overseas)
(c) Audit Board Report (if any)
(d) Other

STATEMENT OF PROFIT AND LOSS

Period Month or Quarter ended 1 July 42 30 April 194 3

		Wet Canteen or Bar		Dry Canteen or Messing		Total	
Sales (or Receipts) for period	£		100%	£	100%	£	100%
Inventory at end of last period (cost)	£			£			
Add Purchases for period	£			£			
	£			£		£	
Less Inventory at end of current period (cost)	£			£		£	
Cost of Sales and/or Messing	£			£		£	
Gross Profits	£		%	£	%	£	%
Deduct Expenses							
Wages—Steward and/or Caterer	£			£			
Assistants @ each	£			£			
@ each	£			£			
Total Wages	£			£			
Other Expenses (in detail)							
	£			£			
	£			£			
	£						
	£			£			
	£			£			
	£			£			
Deduct Total Expenses	£			£		£	
Net Operating Profit	£			£		£	

Add Revenue from Other Sources (Specify)

Equipment Sold	£ 7.6.6	
Interest on Bonds	£ 14.11.7	
Refund on Overpayment	£ 16.3	£ 22.14.4
Total Profit for the period		£ 22.14.4
Add Surplus from previous statement		£ 774.18.9
Total Surplus Available		£ 797.13.1
Deduct Disposition of Surplus (in detail)*		
Loans W/C	£ 35.19.2	
Hospital Equipment	£ 150.12.8	
Benefit to Patients	£ 3.16.4	
" " Unit Personnel	£ 35.1.3	
Expenses (Miscellaneous)	£ 6.11.1	
a/cs Payable	£ 13.19.3	
	£	£ 248.19.30
Final Surplus (per statement of Assets & Liabilities)		£ 548.13.3

Average daily charge for Messing No. of Members

*Nature of purchase or expense required, not name of supplier

ACCOUNTABILITY - MERCHANDISE SOLD - AT SELLING PRICE

		Wet Canteen or Bar	Dry Canteen or Messing
Inventory at end of last period (Selling Price)	£		
Add Purchases during this period (Selling Price)	£		
	£		
Deduct Inventory at end of this period (Selling Price)	£		
Total to be accounted for	£		
Sales as above	£		
Variation	£		

Secretary

Schedule Of Accounts Receivable And Accounts Payable

As at 26 March 194 3

ACCOUNTS RECEIVABLE	£	s	d	ACCOUNTS PAYABLE (Show name of Firm and Purpose)	£	s	d
Current—Total £				NAAFI Mar a/c Net	38	5	5
Arrears—in detail—(K.R. (Can.) para. 1001)				R. Keeling	46	4	3
Col. Ross 1941-42 Adj.	4	6	3	International Stores	5	19	0
Feb-Claims	67	4	2	J. H. Percival Co	23	10	4
Mar-Claims	71	7	11	R. Keeling Containers a/c	5	10	3
				NAAFI " "	8	0	6
				Canteen a/c Arrears £80. 0. 0			
				Purchases Current 111.13. 7			
				Cheque re loan 4. 6. 3	195	19	10
Total - per statement of Assets and Liabilities £	142	18	4	Total - per statement of Assets and Liabilities £	323	9	7

PARTICULARS OF INSURANCE

	Amount £	Insurance £	Date of Expiry £
Inventory of Merchandise at end of period			
Value of Furniture & Equipment carried as an Asset			
Value of Furniture & Equipment not carried as an Asset			
Casualty or other Insurance			

Secretary

REMARKS AND PROPOSALS OF THE COMMITTEE

Names of the Members

Committee	Sub-Committee
1	1
2	2
3	3

Date of last meeting 194

Remarks

Secretary of Committee

(Overseas)
1446 (9/42)

Appendix I
FINANCIAL STATEMENT

The 14th Cdn General Hospital R.C.A.M.C.
Name of Unit

The 2nd Cash Ration Allowance
Name of Institute or Fund

ABSTRACT OF RECEIPTS AND DISBURSEMENTS

For the Year ended 26 March 194 3

Date 1942	RECEIPTS (Show Source)	£	s	d	Date 1942	DISBURSEMENTS (Show Name and purpose)	£	s	d
1 May	Cash on hand—Forward As per our				Aug 14	NAAFI re 1941-42 Period	1	11	6
	Bank Balance—Forward last audit	82	2	4	May 12	Canteen 1941-42 "	25	0	0
28 Aug	Canteen a/c	5	17	9	June10	" 1941-42 "	6	15	10
12 May	July 1941 Claims	25	7	3		Net Purchases 1942-43 Period	813	16	11
	1942-43 Entitlements	786	7	4					
						Cash on hand			
					26 Mar	Bank Balance (per Cash Book)	52	10	5
	TOTAL £	899	14	8		TOTAL £	899	14	8

BANK RECONCILIATION STATEMENT (Attach Bank Certificate)

Outstanding Cheques	£	s	d		£	s	d
Mar 31 R.E. Buck		7	0	Balance (per Cash Book) £	52	10	5
				Add Outstanding Cheques £		7	0
TOTAL £		7	0	Balance per Bank Certificate £	52	17	5

NAMES OF SIGNING AND COUNTERSIGNING OFFICERS

Major E. Ferguson President — A. Ross Colonel Officer Commanding
Treasurer — 2nd. in Command

STATEMENT OF ASSETS AND LIABILITIES

As at 26 March 194 3

ASSETS		Amount			LIABILITIES		Amount		
Cash (per Cash Book)	£	52	10	5	Accounts Payable	£	323	9	7
On hand	£				(See page 4)				
In bank	£ 52,10, 5								
Petty Cash or Change Fund									
Inventory (at cost)									
Wet or Bar	£								
Dry or Mess	£								
Containers	£								
Accounts Receivable		142	18	4					
Current	£ 71, 7,11								
Arrears	71,10, 5								
(See page 4)									
Furniture & Equipment (at cost)					Reserves:—				
(If carried as an Asset)					For Depreciation				
"Memorandum"					Other - Specify				
Furniture & Equipment									
(If not carried as an Asset)									
£									
Overexpenditure		128	0	10	Surplus				
TOTAL £		323	9	7	TOTAL £		323	9	7

CERTIFICATE OF CASH ON HAND

I, the undersigned, hereby certify that the cash on hand, Petty Cash and Change Fund as included above, were counted by me and found correct as at the date of the above statement.

Treasurer

STATEMENT APPROVED

President of the Committee

Commanding Officer

STATEMENT EXAMINED

Officer i/c Sub-Section,
Regimental Funds Board

Date 194

CERTIFICATE OF AUDIT

We have audited the books and accounts of the

for the Month/Quarter ended 194

and in our opinion the above statement is properly drawn up so as to show a true and correct view of the state of the finances as at 194

President

Member Unit
Audit Board

Date Audited 194

Note:- Members of Audit Board should not be Members of the Committee nor Signing Officers for the Bank Account, (K.R. (Can.) 1939, para. 41c)

LIST OF APPENDICES ATTACHED

(a) Bank Certificate
(b) Merchandise Inventory (M.F.M. 133, Overseas)
(c) Audit Board Report (if any)
(d) Other

STATEMENT OF PROFIT AND LOSS

Month or Quarter ended 194

	Wet Canteen or Bar		Dry Canteen or Messing		Total	
Sales (or Receipts) for period	£	100%	£	100%	£	100%
Inventory at end of last period (cost)	£		£			
Add Purchases for period	£		£			
	£		£		£	
Less Inventory at end of current period (cost)	£		£		£	
Cost of Sales and/or Messing	£		£		£	
Gross Profits	£	%	£	%	£	%
Deduct Expenses						
Wages—Steward and/or Caterer	£		£			
Assistants @ each	£		£			
@ each	£		£			
Total Wages	£		£			
Other Expenses (in detail)						
	£		£			
	£		£			
	£					
	£		£			
	£		£			
	£		£			
Deduct Total Expenses	£		£		£	
Net Operating Profit	£		£		£	
Add Revenue from Other Sources (Specify)						
			£			
			£			
			£			
			£		£	
Total Profit for the period					£	
Add Surplus from previous statement					£	
		Total Surplus Available			£	
Deduct Disposition of Surplus (in detail)*						
			£			
			£			
			£			
			£			
			£			
			£			
Final Surplus (per statement of Assets & Liabilities)					£	
					£	

Average daily charge for Messing No. of Members

*Nature of purchase or expense required, not name of supplier

ACCOUNTABILITY - MERCHANDISE SOLD - AT SELLING PRICE

	Wet Canteen or Bar	Dry Canteen or Messing
Inventory at end of last period (Selling Price)	£	£
Add Purchases during this period (Selling Price)	£	£
	£	£
Deduct Inventory at end of this period (Selling Price)	£	£
Total to be accounted for	£	£
Sales as above	£	£
Variation	£	£

Secretary

Schedule Of Accounts Receivable And Accounts Payable

As at 30 April 194 3

ACCOUNTS RECEIVABLE	Amount £	s	d	ACCOUNTS PAYABLE (Show name of Firm and Purpose)	Amount £	s	d
Current—Total £				Canteen a/c 195.19.10 £			
Arrears—in detail—(K.R. (Can.) para. 1001)				1942-43 Over Expen. 128. 0.10	67	19	0
Col. Ross 1941-42 a/c	4	6	3				
C.T.O. April Claim	86	4	2	NAAFI April a/c Net	34	14	10
				J.H. Percival April a/c Net	12	7	10
				R. Keeling " " "	28	10	9
				R.E. Buck " " "		7	0
Total - per statement of Assets and Liabilities £	90	10	5	Total - per statement of Assets and Liabilities £	143	19	5

PARTICULARS OF INSURANCE

	Amount £	Insurance £	Date of Expiry £
Inventory of Merchandise at end of period			
Value of Furniture & Equipment carried as an Asset			
Value of Furniture & Equipment not carried as an Asset			
Casualty or other Insurance			

Secretary

REMARKS AND PROPOSALS OF THE COMMITTEE

Names of the Members

Committee

1
2
3

Sub-Committee

1
2
3

Date of last meeting 194

Remarks

Secretary of Committee

[redacted] (Overseas)
[redacted] 1446 (D/42)

Appendix II
FINANCIAL STATEMENT

The 14th Cdn General Hospital R.C.A.M.C.
Name of Unit

The 2nd Cash Ration Allowance
Name of Institute or Fund

ABSTRACT OF RECEIPTS AND DISBURSEMENTS

For the Month or ~~Quarter~~ ended 30 April 194 3

Date 1943	RECEIPTS (Show Source)	Amount £	s	d	Date 1943	DISBURSEMENTS (Show Name and purpose)	Amount £	s	d
	Cash on hand—Forward £				12 Apr	NAAFI £	38	5	5
26 Mar	Bank Balance—Forward	52	10	5		R. Keeling	46	4	3
13 Apr	C.T.O. Feb Claim	67	4	2		International Stores	5	19	0
19 Apr	C.T.O. Mar "	71	7	11		J.H. Percival	23	10	4
					15 Apr	R. Keeling Container a/c	5	10	3
						NAAFI " "	8	0	6
					30 Apr	Cash on hand	63	12	9
						Bank Balance (per Cash Book)			
	TOTAL £	191	2	6		TOTAL £	191	2	6

BANK RECONCILIATION STATEMENT (Attach Bank Certificate)

Outstanding Cheques £				Balance (per Cash Book) £	63	12	9
NIL							
				Add Outstanding Cheques £	NIL		
TOTAL £				Balance per Bank Certificate £	63	12	9

NAMES OF SIGNING AND COUNTERSIGNING OFFICERS

Major R. Ferguson President — A. Ross Colonel Officer Commanding
Treasurer — Ind. in Command

STATEMENT OF ASSETS AND LIABILITIES

As at 30 April 194 3

ASSETS	£	Amount £	s	d	LIABILITIES	£	Amount £	s	d
Cash (per Cash Book)		63	12	9	Accounts Payable (See page 4)		143	19	5
On hand	63.12.9								
In bank									
Petty Cash or Change Fund									
Inventory (at cost)									
Wet or Bar									
Dry or Mess									
Containers									
Accounts Receivable		90	10	5					
Current	86.4.2								
Arrears (See page 4)	4.6.3								
Furniture & Equipment (at cost) (If carried as an Asset)					Reserves— For Depreciation				
					Other - Specify				
"Memorandum" Furniture & Equipment (If not carried as an Asset)									
					Surplus		10	3	9
TOTAL £		154	3	2	TOTAL £		154	3	2

CERTIFICATE OF CASH ON HAND

I, the undersigned, hereby certify that the cash on hand, Petty Cash and Change Fund as included above, were counted by me and found correct as at the date of the above statement.

Treasurer

STATEMENT APPROVED

President of the Committee

Commanding Officer

STATEMENT EXAMINED

Officer i/c Sub-Section, Regimental Funds Board

Date 194

CERTIFICATE OF AUDIT

We have audited the books and accounts of the

for the Month/Quarter ended 194

and in our opinion the above statement is properly drawn up so as to show a true and correct view of the state of the finances as at 194

President

Member Unit Audit Board

Date Audited 194

Note:- Members of Audit Board should not be Members of the Committee nor Signing Officers for the Bank Account, (K.R. (Can.) 1939, para. 41c)

LIST OF APPENDICES ATTACHED

(a) Bank Certificate
(b) Merchandise Inventory (M.F.M. 133, Overseas)
(c) Audit Board Report (if any)
(d) Other

STATEMENT OF PROFIT AND LOSS

Month or Quarter ended 194

	Wet Canteen or Bar £	%	Dry Canteen or Messing £	%	Total £	%
Sales (or Receipts) for period		100%		100%		100%
Inventory at end of last period (cost)						
Add Purchases for period						
Less Inventory at end of current period (cost)						
Cost of Sales and/or Messing						
Gross Profits		%		%		%
Deduct Expenses						
Wages—Steward and/or Caterer						
Assistants @ each						
@ each						
Total Wages						
Other Expenses (in detail)						
Deduct Total Expenses						
Net Operating Profit						
Add Revenue from Other Sources (Specify)						
Total Profit for the period						
Add Surplus from previous statement						
Total Surplus Available						
Deduct Disposition of Surplus (in detail)*						
Final Surplus (per statement of Assets & Liabilities)						

Average daily charge for Messing No. of Members

*Nature of purchase or expense required, not name of supplier

ACCOUNTABILITY - MERCHANDISE SOLD - AT SELLING PRICE

	Wet Canteen or Bar £	Dry Canteen or Messing £
Inventory at end of last period (Selling Price)		
Add Purchases during this period (Selling Price)		
Deduct Inventory at end of this period (Selling Price)		
Total to be accounted for		
Sales as above		
Variation		

Secretary

Eleventh Charge Section 18(4) Army Act	4	Guilty	Guilty
Twelfth Charge 'Alt) Section 40 Army Act	4	with. draw	

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D-95765 Corporal Harvey Milne SMITH 14 Canadian General Hospital, R.C.A.M.C.	First Charge Section 17 Army Act	Guilty	Guilty	15 Sept 43 I confirm the finding and sentence of the Court but commute the sentence of the Court to Sixteen months detention and confirm the sentence as commuted. R. G. McClusker, Brig E.A. McCusker, Brig D.D.M.S., 1 Cdn Corps
	Second Charge (Alt) Section 40 Army Act	With drawn		
	Third Charge Section 15(4) Army Act	Guilty		
	Fourth Charge (Alt) Section 40 Army Act	With drawn		
	Fifth Charge Section 15(4) Army Act	Guilty		
	Sixth Charge (Alt) Section 40 Army Act	With drawn		
	Seventh Charge Section 15(4) Army Act	Guilty		
	Eighth Charge (Alt) Section 40 Army Act	With drawn		
	Ninth Charge Section 15(4) Army Act	Guilty	Guilty	
	Tenth Charge (Alt) Section 40 Army Act	With drawn		

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*).

(Signed) R. G. McClusker (E.A. McCusker) Brigadier
Commanding D.D.M.S., 1 Cdn Corps

(Signed) Patrick) Lieutenant-Colonel
Commanding Officer (d) *President*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on any form, and in some cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signed on the first page, and all alterations in the first two columns of the schedule to be initialled by him.

RQ-129

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this 12th day of September, 19 43

Whereas it appears to me, the undersigned, an officer in Command of 1 Canadian Corps R.C.A.M.C., on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~and that it is not practicable to delay the trial to reference to a superior qualified officer.~~

* Omit where Convening Officer is a Commanding Officer of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers ~~hereunder named~~ appointed or detailed hereunder.

* Omit if not applicable

~~* If any unable to appear,~~
~~* In place of~~
~~* Who is President~~
~~* If any Officer having more than one year's seniority~~
~~for the following reasons, namely:~~

Patrick J. Maloney Maj.

President.		
Rank.	Name.	Regiment.
Major	P.J. Maloney	5 Cdn C.C.S., RCAMC.
Members.		
Rank.	Name.	Regiment.
A Captain to be detailed by O.C. 31 Cdn C.T.Coy, R.C.A.S.C.		
A Lieutenant to be detailed by 45 Cdn Gen Tpt Coy, R.C.A.S.C.		

*Signed T. C. McCusker
(E.A.McCusker) Brigadier
Commanding D.D.M.S. 1 Cdn Corps
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
D-95765 Corporal Harvey Milne SMITH 14 Canadian General Hospital, R.C.A.M.C.	First Charge Section 17 Army Act	Guilty	Guilty	I confirm the finding and sentence of the Court to Sixteen Months detention and commute the sentence to Reduction to the ranks.
	Second Charge (Alt) Section 40 Army Act	With drawn		
	Third Charge Section 15(4) Army Act	Guilty	Guilty	
	Fourth Charge (Alt) Section 40 Army Act	With drawn		
	Fifth Charge Section 15(4) Army Act	Guilty	Guilty	
	Sixth Charge (Alt) Section 40 Army Act	With drawn		
	Seventh Charge Section 15(4) Army Act	Guilty	Guilty	
	Eighth Charge (Alt) Section 40 Army Act	With drawn		
	Ninth Charge Section 15(4) Army Act	Guilty	Guilty	
	Tenth Charge (Alt) Section 40 Army Act	With drawn		

14 Sept 43.

R. A. McCusker
R.A. McCusker, Brig
D.D.M.S., 1 Cdn Corps

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):

(Signed) R. A. McCusker
(R.A.McCusker) Brigadier
Commanding D.D.M.S. 1 Cdn Corps

(Signed) Patrick
Confirming Officer (*e*)

Provisional

(*a*) Appointment, acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in such cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the form of the Schedule to be initialled by him.

Patrick J. Mahoney Maj.

CHARGE SHEET

The accused, D-95765 Cpl. Harvey Milne Smith, No. 14 Canadian General Hospital, RCAMC, a soldier in the Canadian Army Overseas, is charged with:-

First Charge
Sec 17
Army Act

WHEN CONCERNED IN THE CARE OF REGIMENTAL PROPERTY, EMBEZZLING THE SAME

in that he

in the Field between 1 Jul 42 and 30 Apr 43, when, as treasurer of the Sergeants' Mess of No. 14 Cdn Gen Hospital, RCAMC, he was concerned in the care of regimental property, applied £149.14.11, part thereof, to his own use with intent to defraud.

Second Charge
(Alternative)
Sec 40
Army Act

NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field between 1 Jul 42 and 30 Apr 43, when treasurer of the Sergeants' Mess, No. 14 Cdn. Gen Hosp, RCAMC, and concerned in the care of monies of the said mess, so negligently performed his duties as to be unable to account for the sum of £149.14.11

Third Charge
Sec 18(4)
Army Act

EMBEZZLING PROPERTY BELONGING TO A REGIMENTAL MESS

in that he

in the Field between 1 Jul 42 and 30 Apr 43, having, as accountant of the Officers' Mess of No. 14 Cdn Gen Hosp, RCAMC, received monies on behalf of the said mess, fraudulently embezzled £9.8.4 of the same.

Fourth Charge
(Alternative)
Sec 40
Army Act

NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field between 1 Jul 42 and 30 Apr 43, when accountant of the Officers' Mess of No. 14 Cdn Gen Hosp, RCAMC, and concerned in the care of money of the said mess, so negligently performed his duties as to be unable to account for the sum of £9.8.4, part of the said money.

Fifth Charge
Sec 18(4)
Army Act

EMBEZZLING PROPERTY BELONGING TO A REGIMENTAL MESS

in that he

in the Field between 1 Jul 42 and 30 Apr 43, having, as accountant of the Nursing Sisters' Mess of No. 14 Cdn Gen Hosp, RCAMC, received monies on behalf of the said Mess, fraudulently embezzled £37.15.9 of the same.

Sixth Charge
(Alternative)
Sec 40
Army Act

NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field, between 1 Jul 42 and 30 Apr 43, when accountant of the Nursing Sisters' Mess of No. 14 Cdn Gen Hosp, RCAMC, and concerned in the care of money of the said mess, so negligently performed his duties as to be unable to account for the sum of £37.15.9, part of the said money.

Seventh Charge
Sec 18(4)
Army Act

EMBEZZLING PROPERTY BELONGING TO A REGIMENTAL INSTITUTION

in that he

in the Field, between 1 Jul 42 and 30 Apr 43, having, as accountant of the Men's Canteen, No. 14 Cdn Gen Hosp, RCAMC, received monies on behalf of the said Men's Canteen, fraudulently embezzled £57.14.5

Eighth Charge
(Alternative)
Sec 40
Army Act

NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field, between 1 Jul 42 and 30 Apr 43 when accountant of the Men's Canteen, No. 14 Cdn Gen Hosp, RCAMC, and concerned in the care of money of the said Men's Canteen, so negligently performed his duties as to be unable to account for the sum of £57.14.5, part of the said money.

Ninth Charge
Sec 18(4)
Army Act

EMBEZZLING PROPERTY BELONGING TO A REGIMENTAL INSTITUTION

in that he

In the Field between 1 Jul 42 and 30 Apr 43, having, as accountant of the PRI Account, No. 14 Cdn Gen Hosp, RCAMC, received monies on behalf of the said PRI Account, fraudulently embezzled £44.4.8

Tenth Charge
(Alternative)
Sec 40
Army Act

NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field between 1 Jul 42 and 30 Apr 43, when accountant of the PRI Account, No. 14 Cdn Gen Hosp, RCAMC, and concerned in the care of money of the said PRI Account, so negligently performed his duties as to be unable to account for the sum of £44.4.8, part of the said money.

Eleventh Charge
Sec 18(4)
Army Act

EMBEZZLING PROPERTY BELONGING TO A REGIMENTAL INSTITUTION

in that he

in the Field between 1 Jul 42 and 30 Apr 43, having, as accountant of the Barrack Damages Account, No. 14 Cdn Gen Hosp, RCAMC, received monies on behalf of the said Barrack Damages Account, fraudulently embezzled £6.5.0.

Twelfth Charge
(Alternative)
Sec.40
Army Act

NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field, between 1 Jul 42 and 30 Apr 43, when accountant of the Barrack Damages Account, No. 14 Cdn Gen Hosp, RCAMC, and concerned in the care of money of the said Barrack Damages Account, so negligently performed his duties as to be unable to account for the sum of £6.5.0, part of the said money.

In the Field,
31 Aug 43.

(Burnett S. Johnston) Colonel,
Officer Commanding,
No. 14 Cdn. Gen. Hospital,
R.C.A.M.C. - C.A.(O'S).

To be tried by Field General Court-Martial.

(E.A.McCusker) Brigadier
D.D.M.S. 1 Cdn Corps.

Signed in the Field,
this 12 day of September, 1943.

This is to certify that I have, this date, medically examined D-98765 Cpl. Smith, M.M. and have found him fit to undergo trial by Court Martial.

E.A. Macnaughton

(E.A. Macnaughton) Major, RCAMC.,
Duty Medical Officer, No. 14 Cdn. Gen. Hospital, RCAMC.

Horley, Surrey,
14 Sep 43.

PAGE 1.

Accused D95765 Cpl. H Smith 14 Cdn. Gen. Hosp.
(Number) (Rank) (Christian Names) (Surname) (Unit)

Held in the Field in England on 14 Sept 43.
(Country) (Date)

PRESIDENT: Major Patrick J. Mahaney S.C.C.S - R.C.A.M.C.

MEMBERS: Capt. John C. Thompson 31 Cdn. C.I. Coy. R.C.A.S.C.
Lt. Bruce I. Bolster. 45 Cdn. Gen. Tpt. Coy, R.C.A.S.C.

JUDGE ADVOCATE: (If any) None.

OFFICERS UNDER INSTRUCTION: Major Robert Fergusen, 14th Cdn. Gen. Hosp.
Major Jules Gosselin 14th Cdn. Gen. Hosp.
Lt. C.G. Chapman 14th. Cdn. Gen. Hosp.

PROSECUTING OFFICER: Major. W. Mason Cooper. Lawyer? Ans. No

DEFENDING OFFICER: Capt. J. L. Cann. Lawyer? Ans. No.

(The following procedure must be actually carried out.)

The Convening Order; the ranks, names and corps of Officers appointed to serve on the Court; the Charge Sheet(s) and the Summary of Evidence are laid before the assembled Court by the President. (Rs.P. 17(2), 22(A).)

The Court, in private (R.P. 22 Fn.1), satisfy themselves that it is properly convened (A.A. 49; R.P. 105) and constituted; that the accused is/are amenable to Military Law and that each charge discloses an offence. (R.P. 106)

The accused is/are brought before the Court and at 1020 hours the trial commences.

The Prosecuting Officer produces a Medical Certificate (K.R. (Can) 557; CARO Circular Letter 177) that the accused is/are fit to undergo trial by Court Martial. The certificate is initialled by the President and attached to the Proceedings.

The Convening Order is read in the hearing of the accused.

The names of the President and Members of the Court are read to the accused (R.P. 110).

President to accused:
Do you object to be tried by me as President or by any of the Officers whose names you have heard read over? (R.P. 110(B)). Ans. No

The President, Members, Judge Advocate and Officers under Instruction are duly sworn (Rs.P. 26, 27, and 111.) (Forms of Oath on Page "D".)

President to accused: Do you object to N.A. as interpreter? Ans. N.A.

The interpreter is duly sworn.

Do you object to ..... as shorthand writer? N.A.

The shorthand writer is duly sworn. (Form of oath on Page 'L'.)

The Charge Sheet(s) is/are initialled by the President.

The Prosecuting Officer informs the Court that the accused has not elected trial by Court Martial (A.A. 46 (8).]

If special plea(s) is/are made for separate trial on one or more charges (Rs.P. 62 (3), 108); or as to the jurisdiction of the Court (R.P. 34), or in bar of trial (R.P. 36), or as to accused's mental fitness to stand trial (A.A. 130, R.P. 57), record such pleas and evidence (if any) on separate sheet(s), to be initialed by the President and attached to the Proceedings. Where accused does not plead intelligibly or refuses to plead, see R.P. 35(A).

Each charge is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty (R.P. 112).

He pleads as follows:

First Charge	Guilty	Sixth Charge	Withdrawn
Second Charge	Withdrawn	Seventh Charge	Guilty
Third Charge	Guilty	Eight Charge	Withdrawn
Fourth Charge	Withdrawn	Ninth Charge	Guilty
Fifth Charge	Guilty	Tenth Charge	Withdrawn

(For procedure on alternative charges, see R.P. 77, fn. 2.)

Further proceedings are recorded on Pages hereto attached.

11th Charge - Guilty

12th Charge - Withdrawn

PAGE 'A'

(For use when accused pleads Guilty to all charges.)

(Any printed matter not applicable to be struck out and all alterations, erasures and additions to be initialled by the President.)

1. R.P. 35(B) is complied with, by the President ascertaining that the accused understands the nature of the charge(s) (fn.3) and his plea thereto, explaining the difference in procedure by the plea (R.P. 37(B)), and advising him to withdraw his plea if he thinks the accused ought to plead 'Not Guilty' thereto.

2. President to accused:
Q. Do you desire to make any statement of the circumstances in reference to the charge(s)? (R.P. 37(B)). Ans. Yes. Through defending Officer - attached

(Statement, if any, not on oath, is recorded on separate sheet, initialled by the President and attached hereto. Accused is not subject to cross-examination thereon.)

3. Summary of Evidence is read aloud, in the presence of the accused, initialled by the President and attached to the Proceedings. (If no such summary, it is necessary for determination of sentence that sufficient evidence be taken and recorded on separate sheet, initialled by the President and attached to the Proceedings (R.P. 37(B)).

4. President to accused:
Q. Do you wish to call any witnesses as to character? (R.P. 37(C)).
Ans. Yes. 2 witnesses attached

(Such evidence, confined to character only, is recorded on separate sheet, initialled by the President, and attached hereto.)

5. Statement of Character and Service (A.F.B. 296) and Field Conduct Sheet (N.F.B. 6), signed in the manner required by A.A. 163 (1) (h) and purporting to refer to the accused by his number (if any), rank, name and Corps, are produced to the Court, read, marked ' ', and ' ', initialled by the President and attached to the Proceedings. (R.P. 46: Overseas R.O. 3131.)

6. President to accused:
Q. Do you wish to address the Court on your Statements of Character, Service and Conduct, and in mitigation of punishment? (R.P. 37(C) and 46(D)). Ans. No (No cross-examination.)

(Record address, if any, on separate sheet, initialled by the President and attached hereto.)

7. President to accused:
The Court is closed for consideration of the sentence. The sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in Open Court are accordingly terminated. (Overseas R.O. 3262.)

(Record Finding and Sentence on Page 2 of A.F.A. 3.)

(Punishments - A.A. 44, K.R. (Can) 563 - 566; Sentence of F.G.Cs.M. - R.P. 118; one sentence only to be awarded - R.P. 48; sentence should be dated.)

Patrick J. Mahony Maj.
(Signature of President)

Lt Col. [illegible] Johnson R.A.M.C. Officer Commanding
14 Can Gen Hospital, depose that the
accused has been known to me for a
matter of approx. 3 years, in during his
period of service as a member of this
unit. With the exception of the episode or
episodes which led to his appearance
before this court, his conduct to the best
of my knowledge has been what one
might term exemplary. I have cause to
believe too that the accused prior to
enteriing the service was what one might
consider to be a responsible citizen in
all respects. In fact, it is known to me
that he has held civilian posts of
importance with which were associated
a good deal of responsibility. Insofar
as is known to me, the charges which
bring the accused before this court
is the first & only deviation from the
course usually thought to be in accord
with so called good citizenship. It is
further known to me that the accused
is the son of a widowed mother & is
the nephew of a very responsible citizen
presently resident in Scotland. It is
assumed the members of this court
having perused the summary of evidence
that the circumstances which led to
charges against the accused are

Say the least, extenuating.

R. P. 83 (B) have been complied with.

Claim P30276 RSM Hardy. R.E. acting in capacity ~~of~~ as RSM. of 14 Can Ger Hosp. R.C.A.M.C.

I have known Cpl Smith, from the date of his enlistment, & I would state that his character & conduct was exemplary up to late February & early March of this year. This work has been performed in a most proficient manner at all times. I have found him satisfactory in all respects.

R.P. 83 (B) has been complied with.

A

Lieut. Johnson R.A.M.C. O.C. Commanding
14 Can Gen Hospital, depose that the
accused has been known to me for a
matter of approx. 3 years, & during his
period of service as a member of this
unit. With the exception of the episode or
episodes which led to his appearance
before this court, his conduct to the best
of my knowledge has been what one
might term exemplary. I have cause to
believe too that the accused prior to
entering the service was what one might
consider to be a responsible citizen in
all respects, in fact, it is known to me
that he has held civilian posts of
importance with which were associated
a good deal of responsibility. Insofar
as is known to me, the charges which
bring the accused before this court
is the first & only deviation from the
course usually thought to be in accord
with so called good citizenship. It is
further known to me that the accused
is the son of a widowed mother & is
the nephew of a very responsible citizen
presently resident in Scotland. It is
assumed the members of the Court
having perused the Summary of Evidence
that the circumstances which led to
charges against the accused are

well known to members of the court.
Bearing in mind all the circumstances,
all of which are well known to me, I for
one, as a member of the Service, and as
the O.C. the unit of which the accused
is a member, feel that Cpl Smith is
not wholly to blame for the unfortunate
predicament in which he presently finds
himself. Having seen a good deal of
the accused on many occasions during
the past two months, & bearing in mind
his conduct over the same period of time
I am quite certain that he has up to the
present undergone a marked degree
of punishment to date. It is my opinion
tho, that it is unlikely that his future conduct
is liable to deviate from that of a
responsible citizen, when I state for the
information of the court, that insofar as
I am concerned, and as the present
O.C. of the accused unit as a Unit would
be quite prepared to have Cpl Smith
returned to this unit following the date
of the completion of such punishment
as the court might determine. The accused
has very definitely possibilities insofar as
the future is concerned. I feel that the
Court would do well to seriously consider
a certain amount of leniency in the matter
in view of the fact that the circumstances
associated with the whole case, all of

Say the least, extenuating.

R. P. 83 (B) have been complied with.

FH

Claim P 30276 R Sh Hardy. R. E. acting in capacity as R Sh. of 14 Can Ger Hosp. R C A M C.

I have known Spl Smith, from the date of his enlistment, & I would state that his character & conduct was exemplary up to late February & early March of this year. His work has been performed in a most proficient manner at all times. I have found him satisfactory in all respects.

R.P. 83 (B) has been complied with.

A

Mr. President and Gentlemen:

Inasmuch as Cpl. Smith has chosen to facilitate the proceedings of the Court by pleading "Guilty" to the main charges preferred against him, there remains but little for a Defending Officer to do. There are, however, certain extenuating circumstances which I respectfully consider it my duty to bring to your attention, and your duty to duly consider before passing judgement in this matter.

FIRST. You see in Corporal Smith a man who for years prior to the war fulfilled faithfully positions of trust with various well-known firms. Appended hereto are references from two of these firms, which with your permission I will read. Cpl. Smith has accepted much greater responsibility than any he has been called upon to deal with in his army career. His record as a Civilian is an unblemished one. Up to the time of this trouble, as his Commanding Officer and his Regimental Sergeant Major have told you, his military record was a clean one. Two instances of "Absent without leave" only appear on his M.F.M. 6, and both of these may be described as co-incidental with the trouble that Cpl. Smith found himself to be facing.

SECONDLY. I submit that Cpl. Smith was given far too great a responsibility. Even with adequate supervision, no Lance Sergeant should have thrust upon him responsibility and potential temptation to the degree that Cpl. Smith accepted. Adequate supervision has been shown to have been totally lacking. It is a well known fact that Medical Men are not conversant with even elementary business practice, and this case has certainly shown no exception to that rule. Had adequate supervision been excercised, it is certain that upon the first instance of Cpl. Smith succumbing to temptation, the resulting irregularity would have been detected at once, and further irregularities rendered impossible. Cpl. Smith informs me, and I see no reason for doubting his word, that in the first instance he had every intention of returning the small amount which he used of Regimental Funds. At this time Cpl. Smith encountered a disappointment. An offer had been made to him of a higher rank and a better position with another Unit. He subsequently received information that this appointment did not receive the approval of the Office of the A.M.D. at C.M.H.Q.

As a result of this disappointment, he, in common parlance drowned his sorrows. This action must always prove disastrous to one having the responsibility he held at that time. To cut a long story short, instead of being able to repay his first borrowed capital, he found it necessary to borrow more. Being a trained accountant, he knew that, at any time, these irregularities might come to light, and he lived in fear of this eventuality. Again, alcohol was the only answer to his worries. Then came the final blow- Cpl. Smith was notified that for one hundred and eleven days he had been drawing Trades Pay to which he was not entitled according to War Establishment, and that such Trades Pay would be returnable. I quote No.18 Canadian General Hospital, RCAMC Part II Order No. 71 dated 30 Nov 42

NO.5 TRADESMEN'S RATES OF PAY
[illegible]/Sgt. SMITH, R.M. Ceases to draw tradesmen's rates of pay, Clerk, Group "C" with effect from 11 Aug 42.

This effectually preventd Cpl. Smith from returning the monies extracted from various Regimental Funds up to that time.

I ask you to consider well the nervous state of Cpl. Smith at this time- in constant fear of these defalcations coming to light, vain endeavours to procure elsewhere money with which to repay that already borrowed- which only resulted in complete loss of control, yet heavier drinking and the further appropriation of monies.

It is submitted that Cpl.Smith, at this time, was totally oblivious to the amount of money spent while drinking. Consider too, that this did not occur in one week or one month but over a period of months. Had the Audit Board properly performed its functions, I respectfully submit that it would have been impossible for such a condition to exist, and for a man to endure the mental anguish and resultant loss of control which Cpl. Smith suffered at that time.

THIRDLY I ask you to consider the fact that for better than the past four months, Cpl. Smith has been a patient of this hospital awaiting action upon this matter.

I ask you to consider the age of this man. At 41 he is not a young man, even by civilian standards. The disposal which it is in your power to make of the time this man has left to shape his civilian career may be of vital importance to him.

I ask you to consider that he has already given over three years of what could have been the most productive years of his life, in the service of his country.

FOURTHLY During the time that Cpl.Smith has been a patient his conduct, in every way, has been exemplary.

He has assisted this investigation in every way within his power at all times, even to the extent of pleading guilty before this Court, in order to facilitate proceedings, and clear the matter up with all celerity.

Therefore, Mr. President and Gentlemen, I humbly request that all these points receive your most careful consideration, being ever mindful that the future of one of your fellow men may depend upon the decision you arrive at to-day. A man, with a clean record, did only what many a better man as well as many a worse one has done before, when faced with such a temptation.

I may further state that the Commanding Officer of this station expressed verbally to me this morning his willingness to have Cpl. Smith reported here if he is not at any time in the future.

That is all sir.

PLEASE ADDRESS ALL COMMUNICATIONS TO THE FIRM

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ESTABLISHED 1869
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C.G. Wallace, C.A.
Gordon S. Small, C.A.
Malcolm J. McLeod, C.A.

460 ST. FRANCOIS XAVIER ST.
P.O. BOX 2398 PLACE D'ARMES
MONTREAL

19th November, 1938.

Mr. Harvey M. Smith,
372 King St. West,
Toronto, Ont.

Dear Sir,

In reply to your letter of the 18th inst. we have pleasure in stating that you were in our employ from the middle of March until the middle of August 1930, in connection with some special work which we had to do. During the short time you were in our service we were entirely satisfied with your work and with the manner in which you conducted yourself.

We trust you will be successful in securing a satisfactory position in Toronto.

Yours very truly,

Riddell, Stead, Graham & Hutchison

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Ottawa, February 26, 1938

TO WHOM IT MAY CONCERN:

Mr. Harvey M. Smith has been with this Company from March, 1936 until January, 1938, when he left of his own accord.

Mr. Smith acted as assistant to the writer, and proved himself to be willing, competent, and a particularly good man in office detail.

Yours very truly,

MORTIMER LIMITED

Stanley F. Pearson

Sales Manager,
Calendar & Specialty Division

SFPearson:S

Patricia J. Casselman Lieut.

Summary of Evidence

Summary of Evidence in the case of D-95765 Cpl. Harvey Milne Smith, No.14 Cdn. Gen. Hospital, R.C.A.M.C.

The Commanding Officer has directed that the evidence be taken under oath.

The rights of the accused at the taking of a summary of Evidence are explained to him.

First Witness:

Lieut-Col. C.A. McIntosh, No.14 Cdn. Gen. Hospital, R.C.A.M.C., having been duly sworn states:

I was President of the Audit Board for all Messes, Canteens and Regimental Institutes of No.14 Cdn.Gen. Hospital during the period 1 Jul 42 to 30 Apr 43. Since about August 1942, Cpl. Smith, H.M., has been employed as Accountant of all Messes, Canteens and Regimental Institutes in this Unit. I do not believe he was ever officially detailed as such in Unit Orders but he has been employed only in that capacity for the period of time I have mentioned, and until relieved of those duties in Mar 1943 or the early part of April 1943. In practice he collected all cash and, so far as I know, made all bank deposits. He also kept all the accounts and prepared all the Financial Statements "Abstract of Receipts and Disbursements" for the various Messes, Canteens and Regimental Institutes. Bank accounts were carried with Barclays Bank Limited branch at Horley, Surrey, by the Sergeants' Mess, Officers' Mess, Nursing Sisters' Mess, Men's Canteen, The P.R.I. Account and the Barrack Damages Account, and these were the only bank accounts used during the period 1 Jul 42 to 30 Apr 43 except by the Men's Canteen which maintained another account with the Bank of Montreal, Waterloo Place, London. I produce a piece of paper upon which certain writings appear but in particular the following words: - "Received the sum of six pounds, five shillings, a/c Barrack Damages. H.M. Smith 1/3/43". I have seen the signature of Cpl. H.M. Smith on many occasions and I identify the signature H.M. Smith as being in his handwriting. (Piece of paper is marked - exhibit A). I produce "Abstract of Receipts and Disbursements" of the Sergeants' Mess, No.14 Cdn. Gen. Hospital, dated 31 Aug 42 (marked exhibit B.1); 30 Sep 42 (exhibit B.2); 31 Oct 42 (exhibit B.3); 30 Nov 42 (exhibit B.4); 31 Dec 42 (exhibit B.5); 31 Jan 43 (exhibit B.6); and of the Officers' Mess, No.14 Cdn. Gen. Hospital, dated 31 Aug 42 (exhibit C.1); 30 Sep 42 (exhibit C.2); 31 Oct 42 (exhibit C.3); 30 Nov 42 (exhibit C.4); 31 Dec 42 (exhibit C.5); and 31 Jan 43 (exhibit C.6); and of the Nursing Sisters' Mess, No.14 Cdn. Gen. Hospital, dated 31 Aug 42 (exhibit D.1); 30 Sep 42 (exhibit D.2); 31 Oct 42 (exhibit D.3); 30 Nov 42 (exhibit D.4); 31 Dec 42 (exhibit D.5); 31 Jan 43 (exhibit D.6); and of the Men's Canteen, No.14 Cdn. Gen. Hospital, dated 31 Aug 42 (exhibit E.1); 30 Sep 42 (exhibit E.2); 31 Oct 42 (exhibit E.3); 30 Nov 42 (exhibit E.4); 31 Dec 42 (exhibit E.5); 31 Jan 43 (exhibit E.6); and of the P.R.I. Account, No.14 Cdn. Gen. Hospital, this account having functioned separately from the Men's Canteen only from Nov 1942, 30 Nov 42 (exhibit F.1); 31 Dec 42 (exhibit F.2); 31 Jan 43 (exhibit F.3); and the Barrack Damages Account, No.14 Cdn. Gen. Hospital, dated 31 Dec 42 (exhibit G.1); 31 Jan 43 (exhibit G.2);. I consider that Cpl. Smith was the person who actually deposited the money and prepared the Financial Statements for the Messes, etc., previously mentioned. There was no Committee for the Barrack Damage Account and the Account was administered by the then Commanding Officer of the Unit, Colonel A. Ross.

C.A. McIntosh

(C.A. McIntosh)Lt-Col.,
No.14 Cdn Gen Hosp., RCAMC.

Accused declines to Cross-examine.

Second Witness:

Mr. G.P. Boyden, Manager, Barclays Bank, Horley, Surrey, having been duly sworn states:

I produce the monthly statements of account of the Sergeants' Mess, Officers' Mess, Nursing Sisters' Mess, Men's Canteen, P.R.I. Account and Barrack Damage Account of No.14 Cdn. Gen. Hospital, R.C.A.M.C. I have compared the certified true copies of the entries in the bank's books with these statements and the statements truly represent the accounts as contained in the bank's books with reference to these accounts. The above statements which I have certified to be such true copies, contain all the entries in the bank's books with reference to these accounts for the period 1 Jul 42 to 30 Apr 43.

Statements of the Sergeants' Mess for the months of Jul 42 to Apr 43 are marked H.1 to H.10 consecutively.

Statements of the Officers' Mess for the months of Jul 42 to Apr 43 are marked I.1 to I.10 consecutively.

Statements of the Nursing Sisters' Mess for the months of Jul 42 to Apr 43 are marked J.1 to J.10 consecutively.

Statements of the Men's Canteen Account for the months of Jul 42 to Apr 43 are marked K.1 to K.10 consecutively.

Statements of the P.R.I. Account for the months of Dec 42 and Apr 43 are marked L.1 and L.2 respectively.

Statements of the Barrack Damage Account for the months of Dec 42 and Jan 43 are marked M.1 and M.2 respectively.

G.P. Boyden

G. P. Boyden

The accused declines to cross-examine.

Third Witness:

Major J.M. Anderson, Regimental Funds Board, C.M.H.Q., having been duly sworn states:

I am a member of the Regimental Funds Board, C.M.H.Q., and on instructions received I supervised an audit of the Sergeants' Mess, Officers' Mess, Nursing Sisters' Mess, Men's Canteen, P.R.I. Account, and Barrack Damage Account of No.14 Cdn. Gen. Hospital, R.C.A.M.C., and submitted a report on the audit of the Messes and Regimental Institutes of that Unit which report I now produce (report is marked exhibit N). This report showed that there existed, as of 30 Apr 43, the following shortages:-

Sergeants' Mess	£ 149:14:11
Officers' Mess	9: 8: 4
Nursing Sisters' Mess	37:15: 9
Men's Canteen	57:14: 5
P.R.I. Account	44: 4: 8
Barrack Damage Account	6: 5: -

There is an unexplained overage in the Patients' Fund Account of £2: -: -.

Verification of the amounts shown to have been received by the accountant of the unit and the payments made should have resulted in a balance, either in the bank or in cash on hand, and the shortage is the difference between what should have been on hand in cash and the actual cash produced. As there is no evidence that a simultaneous cash count was made at the end of each month, by the Unit Audit Board, it is impossible to say in what month, or months, the various shortages occurred. I can say that the shortages occurred between the 1 Jul 42 and 30 Apr 43. With reference to the audit of the Officers' Mess Account, the mere fact that cash income and disbursements may have been checked by the Sec'y-Treasurer, is not a complete protection and according to the records the loss as stated did occur. I am shown Cheque No. 2/g.026813 dated 10 Sep 42, drawn upon Barclays Bank Limited, Horley, Surrey, by the Nursing Sisters' Mess, No.14 Cdn. Gen. Hospital, in the sum of £16:12: -, which has been marked on the back for deposit and is marked on it's face, as paid. This cheque is included in a deposit in the Account of the Men's Canteen as of 29 Sep 42 but the books of the Men's Canteen fail to show the receipt of this cheque. It would be possible, by including this cheque in the bank deposits, to withhold cash which should have been deposited, without disturbing the balance between the cash book and the bank.

J.M. Anderson

(J.M. Anderson)Major,
Regimental Funds Board, C.M.H.Q.

The accused declines to cross-examine.

Fourth Witness:

D-92505 Q.M.S. Plumpton, W.J., No.14 Cdn. Gen. Hospital, R.C.A.M.C., having been duly sworn states:

From 1 Jun 42 to 7 Sep 42 I was President of the Sergeants' Mess Committee, No.14 Cdn. Gen. Hospital. The income of the Sergeants' Mess at that time came from members' monthly dues and bar sales, collected respectively by L/Sgts. Smith and the Sergeant who was bar steward for the time being. I should say that this system came into use, perhaps during the month of July 1942 and prior to that time there had been a permanent Mess Steward. The practise was for L/Sgt. Smith, who was the Treasurer of the Mess, as well as the accountant for all the Messes and Institutes, to collect, each day, the receipts for the previous day's sales from the bar, with the exception of what was considered necessary for the making of change. I did not check the amounts of money which L/Sgt. Smith collected from the Sergeant in the bar and I did not check to see whether he had deposited that money in the bank as it was his responsibility to do so. He not only looked after the banking of money but he prepared the Financial Statement for the Mess. I identify the accused as L/Sgt. (now Cpl.) H.M. Smith. At a meeting of the Sergeants' Mess on the 6 Jul 42 it was decided to change the method of operating the Mess, whereby we had had a permanent steward and that in the future there would be a roster of members of the mess who would be on duty for a week at a time. A tour of duty would be from 0800 hours on Monday morning to 0800 hours the following Monday morning. During the time that I was President of the Mess Committee, Sgt. Franklin, S., was Secretary and L/Sgt. Smith, H.M., was Treasurer.

Wallace J. Plumpton

(Wallace J. Plumpton)Q.M.S.,
No.14 Cdn. Gen. Hosp., RCAMC.

The accused declines to cross-examine.

Fifth Witness:

D-95645 L/Sgt. Homer, A., No.14 Cdn. Gen. Hospital, R.C.A.M.C., having been duly sworn states:

From 7 Sep 42 to 10 Jan 43 I was Secretary of the Sergeants' Mess, L/Sgt. Smith, H.M. was Treasurer and Q.M.S. Walker, A. was President. The income of the Mess came from Mess Dues and cash sales at the bar, all collected by the bar steward who handed over the proceeds to the Treasurer on the Monday morning when a new steward would take over for the new week. Presumably the Treasurer deposited the money in the bank. I did not check any of the receipts of cash or the deposits in the bank. The Financial Statements, being the Abstracts of Receipts and Disbursements, were prepared by the Treasurer.

Arthur Homer.
(A. Homer)L/Sgt.,
No.14 Cdn. Gen. Hospital, RCAMC.

The accused declines to cross-examine.

Sixth Witness:

D-95848 Q.M.S. Sigouin, H., No.14 Cdn. Gen. Hospital, R.C.A.M.C., having been duly sworn states:

From 10 Jan 43 until 30 Apr 43 I was President of the Sergeants' Mess Committee, No.14 Cdn. Gen. Hospital, R.C.A.M.C. The income of the Sergeants' Mess was generally speaking all in cash. Members paid ten shillings each per month as Mess Dues and a nominal roll was kept in the bar showing the names of those who had paid and who had been given receipts either by the bar steward or by L/Sgt. H.M. Smith. I do not know how that money was handled but as regards other cash which came into the Mess which was by way of bar sales, all of which were in cash and paid, at the time, to the Sergeant who was then acting as bar steward. I know that L/Sgt. Smith collected the previous day's sales each morning, leaving behind only sufficient for bar change. No receipt was given by L/Sgt. Smith to the Bar Steward who handed over money to him. L/Sgt. Smith was the Treasurer of our Mess during that part of the time that I was President, up to some time near the end of March 1943. Because he was Treasurer of the Mess, I considered that L/Sgt. Smith was the person responsible for depositing the cash received in the bank and accounting for it. I did not check the amounts of money which L/Sgt. Smith received from the Sergeant in the bar to see whether he had made the deposit in the bank. I identify L/Sgt. (now Cpl.) H.M. Smith as the accused. During that period Sgt. Atchison, W.M., was Secretary of the Mess Committee and L/Sgt. Smith, H.M., was Treasurer, as well as Accountant of all Messes and Institutes. Sgt. Franklin, S., replaced L/Sgt. Smith, H.M., as Treasurer about 18 Mar 43. L/Sgt. Smith prepared the Financial Statements.

H Sigouin
(H. Sigouin)Q.M.S.,
No.14 Cdn. Gen. Hosp., RCAMC.

The accused declines to cross-examine.

Seventh Witness:

D-95842 Sgt. S. Franklin, No.14 Cdn. Gen. Hospital, R.C.A.M.C., having been duly sworn states:

At a Special Meeting of the Sergeants' Mess on 18 Mar 43 I was elected to fill the position of Treasurer made vacant by the demotion of Cpl. H.M. Smith, and remained Treasurer until after 30 Apr 43. In practice I did not do any accounting up till the 1 May 43 although I did collect the money from the bar man. When I took over from L/Sgt. Smith as Treasurer of the Sergeants' Mess at the middle of March 1943, he turned over to me the balance of his cash on hand, being £7: -: -, for which I gave nim a receipt - this did not include any uncollected money in the bar.

S. Franklin

(S. Franklin)Sgt.,
No.14 Cdn. Gen. Hosp., RCAMC.

The accused declines to cross-examine.

Eighth Witness:

D-95660 Sgt. Payne, T.M.B., No.14 Cdn. Gen. Hospital, R.C.A.M.C., having been duly sworn states:

When I was bar steward I followed the usual procedure of entering the total amount of the day's takings from the bar sales and Mess Dues in the Daily Cash Book and at the end of my tour of duty I turned over my money to L/Sgt. Smith, H.M., who signed an acknowledgement in the book (Daily Cash Takings Book is marked exhibit O). At some time during the month of July 1942 a change was made in the system of providing bar stewards for the Sergeants' Mess, No.14 Cdn. Gen. Hospital, and as a result we used a duty roster in which Sergeants are detailed to act as bar steward for a week at a time. I have acted as bar steward for one week, around the end of September and first of October 42. L/Sgt. Smith, as Treasurer of the Sergeants' Mess, and Unit Accountant, collected all the money taken in for Mess Dues and Bar Sales at the end of my week's tour of duty. I did not get a receipt for it. I had no conversation with him as to what he was going to do with the money.

T. M. B. Payne

(T.M.B. Payne)Sgt.,
No.14 Cdn. Gen. Hospital, RCAMC.

The accused declines to cross-examine.

Ninth Witness:

Major William Cohen, No.14 Cdn. Gen. Hospital, R.C.A.M.C., having been duly sworn states:

I was Sec'y-Treasurer of the Officers' Mess, No.14 Cdn. Gen. Hospital during the period 1 Jul 42 to 14 Oct 42. During that time L/Sgt. Smith, H.M. (now Cpl.) was accountant of the Officers' Mess and as such and being considered to be a competent and reliable N.C.O., and accountant was responsible for making all bank deposits and Petty Cash payments when required and prepared all Financial Statements.

At that time it was my practice to list the cheques and cash received by the Officers' Mess and to send L/Sgt. Smith to the bank to make the deposit. In all such cases, upon his return, I checked the duplicate deposit slip bearing the teller's initials, in order to satisfy myself that the deposit had been duly made. I think that on only one occasion I made a deposit myself. Cpl. Smith is frequently referred to as L/Sgt. Smith because he held that appointment while carrying out the duties of Accountant. He reverted to his substantive rank of Cpl., 12 Mar 43 but this reversion had nothing to do with the offences with which he is charged. During my term of office as Sec'y-Treasurer the other members of the Officers' Mess Committee were Major A.R. Bazin, President, Capt. N. Van Wyck, Vice-President, and Capt. J.E. McGovern, Assistant Sec'y-Treasurer.

William Cohen

(William Cohen)Major,
No.14 Cdn. Gen. Hosp., RCAMC.

The accused declines to cross-examine.

Tenth Witness:

Capt. J.M. Kilgour, No.14 Cdn. Gen. Hospital, R.C.A.M.C., having been duly sworn states:

I was the Sec'y-Treasurer of the Officers' Mess Committee, No. 14 Cdn. Gen. Hospital, R.C.A.M.C., from 15 Oct 42 to 30 Apr 43. During that period cash came into the Mess from three sources: (a) a small amount from cash sales from the bar. (b) payment of Mess bills in cash. (c) cash refunds for containers, etc. These cash receipts were placed in a cash box to which only the members of the Mess Committee had access and were balanced at the end of each month against the Petty Cash Book. Every cash sale in the bar was covered with a chit and marked "Cash Sale" and at the end of each day I collected the cash and checked it against the chits. Mess accounts paid in cash were received either by me or some other member of the Mess Committee and the money was placed in the Cash Box and its receipt noted in the Petty Cash Book as well as in the Messing Account Book. As regards cash refunds - these were turned over to me by the person who obtained them and I placed the money in the cash box and made an entry in the Petty Cash Book. Disbursements of Petty Cash were either made personally by me to some person for the purpose of a purchase or payment and I received a receipt, or the money was turned over to Cpl. Smith for the purpose of making a payment or for deposit in the bank. He furnished a receipt. Sums of money given to Cpl. Smith for deposit were all subsequently checked by means of the receipts and the entries in the Petty Cash Book against the Bank Book and during the period when I was Sec'y-Treas. all such funds were accounted for. At no time, when I was present, do I recall a cheque having been drawn for the purpose of providing Petty Cash but I believe it may have been done on one or more occasions when I was away, probably for the purpose of paying Mess Stewards when there was not sufficient Petty Cash in the cash box. Cheques in payment of Mess Accounts, etc., were always, so far as I can recall, made out in favour of the Officers' Mess. The only way in which I can account for the shortage of £9: 8: 4 disclosed by the audit of the Regimental Funds Board, is that it might have occurred in connection with some of the sales and purchases that took place, from time to time, between the various Messes and the Men's Canteen, since the balances owing were sometimes paid in cash. During the period I have mentioned, Cpl., (L/Sgt) Smith, was the person who did all the depositing of funds in the bank unless he was away, in which

case the deposit would be made by some other member of the Mess Committee. I consider that it was Cpl. Smith's responsibility and I relied upon him to do the banking and to prepare the Financial Statement. He was known as the accountant of the Officers' Mess. I identify the accused as L/Sgt. (now Cpl.) H.M. Smith. During my term of office the Mess Committee also included Major J.G. Petrie, President, Capt. R. DeW. Scott, Vice-President, Capt. C.W.V. McCutcheon, Assistant Vice-President.

J.M. Kilgour Capt

(J.M. Kilgour)Capt.,
No.14 Cdn. Gen. Hosp., RCAMC.

The accused declines to cross-examine.

Eleventh Witness:

Capt. C.W.V. McCutcheon, No.14 Cdn. Gen. Hospital, R.C.A.M.C. having been duly sworn states:

I was Assistant Secretary-Treasurer of the Officers' Mess from 15 Oct 42 to 30 Apr 43. In the Cash Book kept by Cpl. Smith were entered amounts of cheques received in payment of Officers' accounts and of sales to other Messes of the unit. Disbursements by cheque were also entered in this book. It was kept by Cpl. Smith until about the end of December after which he appears to have let most of his work slip and it was brought up to date by Sgt. Payne and the auditors. Prior to that time he had been the only person using the book. Capt. Kilgour and I kept up the Petty Cash book, noting in it the receipts and disbursements of Petty Cash. All other books were kept by Cpl. Smith. The bar steward, Pte. Hickey, W.J., turned over to us, very small amounts of cash taken in at the bar on the following morning. As of 30 Apr 43 I checked the cash and there was no cash on hand.

C.W.V. McCutcheon Capt

(C.W.V. McCutcheon)Capt.,
No.14 Cdn. Gen. Hospital, RCAMC.

The accused declines to cross-examine.

Twelfth Witness:

Lieut. (N/S) MacLean, M., No.14 Cdn. Gen. Hospital, R.C.A.M.C., having been duly sworn states:

I was Treasurer of the Nursing Sisters' Mess from 10 Nov 42 until 25 Mar 43. It was the practice at that time, for the Treasurer to be regarded as an assistant to Home Sister Monkhouse in financial matters, she however, had no authority to sign cheques which required the signature of any two of the Committee. At dances drinks would be sold for cash to guests who were not members of the Unit and the money was collected at the time by L/Cpl. Hughes or his assistant. L/Cpl. Hughes would have the takings of the bar under his control and as soon as the bar had closed after the dance, would turn the money over to Home Sister Monkhouse. Mess bills were, as a rule, paid by

cheque but some would be paid in cash and either H/S Monkhouse or I received payment of Mess accounts. The above were the only cash receipts. All bank deposits of cash or cheques were made by L/Sgt. Smith who would receive the cheques and cash from me or from H/S Monkhouse. I never obtained a receipt for any cheques or cash which I turned over to him, nor did I verify the deposit in the bank account afterwards. I know that I have seen some of our cheques for deposit, stamped with the stamp reading "For Deposit Only" and having a place for signature but I do not know whether all cheques for deposit in the Mess Account were so stamped, as this was done by L/Sgt. Smith. Small accounts were paid by H/S Monkhouse from Petty Cash for which, cheques against the account were issued when necessary and usually for £20 or £30. Such cheques were made payable to Petty Cash and both signed and countersigned following which they were turned over to L-Sgt. Smith to cash. Such sums would be used to pay small accounts owing by the Mess and to make cash purchases but so far as I know, cash collected at dances was never used as Petty Cash, being turned over to L/Sgt. Smith intact for deposit. During the time that I was Treasurer of our Mess I considered L/Sgt. (now Cpl.) H.M. Smith to be the person responsible for banking and drawing money, as above stated, for the Mess, and for the preperation of Financial Statements. I identify the accused as L/Sgt. (now Cpl.) H.M. Smith.

Marjorie S MacLean Lt

(M. MacLean)Lieut. (N/S),
No.14 Cdn. Gen. Hospital, RCAMC.

The accused declines to cross-examine.

Thirteenth Witness:

Lieut. (N/S) Hopper, E.M., No.14 Cdn. Gen. Hospital, R.C.A.M.C., having been duly sworn states:

I was Treasurer of the Nurses' Mess, No.14 Cdn. Gen. Hospital, R.C.A.M.C., from 6 Jul 42 till 10 Nov 42. During that time H/S. Monkhouse had no authority to sign cheques but she had certain duties with regard to the handling of Petty Cash. Cheques issued by the Mess required the signature of two members of the Committee. Cash was received by the Mess from only two sources namely, cash payment for drinks at dances by guests who were not members of the Unit and the occasional payment of a Mess Bill by a member, in cash, though most mess bills were paid by cheque. Cheques in payment of Mess accounts were always made payable to the Nursing Sisters' Mess, No.14 Cdn. Gen. Hospital, R.C.A.M.C., and when these were received by me, or when I received cash in payment of a Mess Account, I turned them over to H/S Monkhouse but I did not obtain any receipt from her, and I did not check the Bank Account to see whether the money was deposited. I knew that all bank deposits were supposed to be made by L/Sgt. Smith but I do not know how this was done in detail. I do not remember just how Petty Cash was obtained but I know that H/S Monkhouse was supposed to pay small accounts from Petty Cash and that cheques for that purpose were issued. I produce cheque No. 2/G.026813 dated 10 Sep 42 on Barclays Bank Limited at Horley in the sum of £16:12: -, payable to the Men's Canteen, No.14 Cdn. Gen. Hospital, stamped "Nursing Sisters' Mess, No.14 Cdn. Gen. Hospital" and signed Esther M. Hopper and Cecil M. MacDonald, I identify the signature Esther M. Hopper as my own but I do not know for what purpose this cheque was issued, and the endorsement on the back is not in my handwriting (this cheque is marked exhibit P). L/Sgt. Smith, H.M., (now Cpl.) whom I recognize as the accused, was the accountant of

our Mess and in addition to handling funds, as I have stated, he prepared our Financial Statements. I identify the accused as L/Sgt. (now Cpl.) H.M. Smith. The abovementioned cheque (marked exhibit P) is shown as a deposit on 29 Sep 42 in the Men's Canteen Account at Barclays Bank.

E. M. Hopper

(E.M. Hopper)Lieut. (N/S),
No.14 Cdn. Gen. Hospital, RCAMC.

The accused declines to cross-examine.

Fourtseenth Witness:

Lieut. (H/S) Monkhouse, H.B., No.14 Cdn. Gen. Hospital, R.C.A.M.C., having been duly sworn states:

I am Home Sister of the Nursing Sisters' Mess, No.14 Cdn. Gen. Hospital, R.C.A.M.C., and held that position between the dates 1 Jul 42 and 30 Apr 43. In that capacity it is part of my duties to disburse Petty Cash which is used to pay for goods delivered to the door and to pay small accounts renedred. When I needed cash for this purpose I would either speak to the Treasurer or to L/Sgt. Smith and while I would not see the cheque, L/Sgt. Smith would turn over an amount of money to me, usually between £20 and £30, as to the disbursement of which, I kept a record in a Petty Cash Book. I consider myself to be an assistant to the Treasurer. The Mess had two sources of cash income, one being from cash sales of drinks to guests at dances who were not members of this Unit, and the other being the occasional payment of Mess Accounts in cash by members. Most Mess Accounts were paid by cheque, So far as I recall, I usually received the sum of £20 unless I asked for more. After a dance L/Cpl. Hughes would turn over the proceeds of cash sales to the President and Chairman of the Entertainment Committee, who would count it and turn it over to me that night or the following morning. I entered this amount in the Daily Cash Takings Book, in which were also entered the daily total of chits. This money I would turn over to L/Sgt. Smith, usually on that day or the day following but I received no receipt from him and not having the Bank Book in my possession I made no check to see whether that amount was deposited. Likewise, in the case of Mess Accounts, which were paid either to the Treasurer or to me, I turned over the cheques and the cash to L/Sgt. Smith, but obtained no receipt and do not know what amount he deposited. From 1 Jul 42 until some time around the end of Mar 43 I considered that Cpl. H.M. Smith was the person responsible for depositing funds in the Mess Account and generally doing our banking and preparing our Financial Statements. I identify the accused as L/Sgt. (now Cpl.) H.M. Smith. I produce Daily Cash Takings Book (marked exhibit Q) in which I wrote an entry of a receipt of £9: -: 9 on Sep 5, 42 and Deposit Slip Book (marked exhibit Q.A) in which, for the months of Sep and Oct 42, I am unable to find a corresponding entry to show that amount deposited by Cpl. Smith.

H B Monkhouse Lieut (H/S)

(H.B. Monkhouse)Lieut. (H/S),
No.14 Cdn. Gen. Hosp., RCAMC.

The accused declines to cross-examine.

Fifteenth Witness:

Major G.W. Halpenny, No.14 Cdn. Gen. Hospital, R.C.A.M.C., having been duly sworn states:

During the period 1 Jul 42 to 30 Apr 43 I was Chairman of the Men's Canteen Committee, No.14 Cdn. Gen. Hospital and during the same period up to the election on 15 Apr 43, when Major Petrie was elected to succeed me, I was Chairman of the Regimental Institutes Committee, though for all practical purposes I remained Chairman of the latter Committee until 30 Apr 43 because of the efforts being made to straighten out the financial situation. The Men's Canteen business is conducted by N.A.A.F.I. which turns over to the Canteen Committee 6% of the gross sales monthly. These payments were by cheque and the cheques were received by L/Sgt. (now Cpl.) Smith, the accused whom I recognize. He was supposed to deposit them in the Horley branch of Barclays Bank. These cheques did not require the endorsement of the members of the Committee. In addition the Men's Canteen has two other sources of cash receipts. Dances are held and an admission fee is charged, the proceeds were collected by L/Sgt. Smith from a member of the Dance Committee, which sum would amount to not more than five pounds after the orchestra had been paid in cash. I did not check the bank deposits in the Canteen Account for the purpose of finding out whether L/Sgt. Smith actually deposited the full amount he received. I have now checked the bank statement. I produce book of Barclays Bank Limited deposit slips, these slips being made in a handwriting which I recognize as that of L/Sgt. (now Cpl.) Smith (exhibit Q.1). Exhibits E.3, E.4 and E.6 show receipts of cash for dances. I recognize the signature of Cpl. Smith on receipts which are now marked Q.2, Q.3 and Q.4, purporting to acknowledge receipt of cash from dances. I have examined the bank statements and the bank deposit slips and have been unable to find any corresponding bank deposits. The second source of cash receipts handled by the Men's Canteen Committee, was through the sale of daily newspapers to patients and personnel of this unit. An arrangement has been in existence whereby the Men's Canteen Committee purchases 75 to 100 newspapers a day from Mallinson & Sons, Horley, and for convenience these are sold through the N.A.A.F.I. The proceeds from the sale of these newspapers was kept separate by Mrs. France, the Manageress of the N.A.A.F.I. Canteen, usually until the monthly bill for these newspapers was received by L/Sgt. Smith. He would then check the total amount of money on hand against the total daily sales and the corresponding daily charge on the bill, collect the money and would usually pay this bill from Mallinson & Son with this cash. A bill was rendered by Mr. Mallinson, dated 28 Feb 43, which included the sum of £12:18: 3 for the January account which had accordingly not been paid, and was subsequently paid, partly by cash and partly by cheque. (Receipted account in the sum of £27:19: -, is marked exhibit Q.5).

During the period 1 Jul 42 to 30 Apr 43 I was Chairman of the Regimental Institutes, No.14 Cdn. Gen. Hospital. During that time L/Sgt. (now Cpl.) H.M. Smith, whom I recognize as the accused, was the accountant of the P.R.I. Account. As such it was his responsibility to collect cash and deposit it in the bank on receipt. This account was part of the Men's Canteen Account although under the jurisdiction of a separate committee until the 1 Nov 42 when a separate bank account was opened in Horley, with Barclays Bank and a separate Financial Statement was rendered monthly. The source of revenue for this account came from work done by the Unit Barber and Unit Tailor. The money was collected by L/Sgt. Smith from the barber at the end of the month and this amount was checked against the daily signatures for haircuts, kept by the barbers. The barber also collected money for work done by the tailor on the presentation of the necessary slip, given by the tailor for work done. This amount was checked against the daily work book kept by the tailor. These two sources of cash revenue were taken by L/Sgt. Smith, a signed receipt given by him, and then the tradesmen were paid their tradespay in cash and the remainder was supposed

to have been deposited in the bank in the P.R.I. Account. Bank statements L.1 and L.2 show that no deposits were made from the original deposit of Nov 28, 1942, £39: 7: 4, until the end of April.

G.W. Halpenny Major.

(G.W. Halpenny)Major,
No.14 Cdn. Gen. Hosp., RCAMC.

The accused declines to cross-examine.

Sixteenth Witness:

Mrs. I.J. France, Manageress, N.A.A.F.I. Canteen, No.14 Cdn. Gen. Hospital, R.C.A.M.C., having been duly sworn states:

I am the Manageress of the N.A.A.F.I. Canteen at No.14 Cdn. Gen. Hospital, R.C.A.M.C. I know L/Sgt. H.M.Smith of this unit and knew that he was the accountant of the Men's Canteen, No.14 Cdn. Gen. Hospital, R.C.A.M.C. As a result of an arrangement made with the Men's Canteen which had contracted for the delivery of a number of newspapers each day, the papers were delivered to me to be sold by retail and I collected the money and kept a record of same. At the end of each month L/Sgt. Smith checked the amount of money I had received and gave me a receipt for it. He would usually check my book with Mallinson's Bill. My book contains the following receipts:-

for the latter part of June and the month of July 42	£ 7:14: 5
2 Sep 42 L/Sgt. Smith collected	11:16: 1
the payment for Sept. papers was collected by Sgt. Payne	8:19: 2
18 Nov 42 L/Sgt. Smith collected	11: 2: 8
10 Dec 42 L/Sgt. Smith collected	10: 6: -
for Dec papers, no date, L/Sgt. Smith collected	10: 3: 4
for Jan papers, no date, L/Sgt. Smith collected	12: 8: -
12 Mar 43 Sgt. Payne collected	14:10: -
2 Apr 43 QMS Plumpton collected	17:11: 4

Mrs I.J. France

(Mrs. I.J. France)Manageress,
N.A.A.F.I. Canteen,
No.14 Cdn. Gen. Hosp., RCAMC.

The accused declines to cross-examine.

Seventeenth Witness:

E-15212 Pte. Anctil, L.P., No.14 Cdn. Gen. Hospital, R.C.A.M.C., having been duly sworn states:

During the period 1 Jul 42 to 30 Apr 43 I have been employed as a barber with the unit. Each customer paid 6d for a haircut and I collected the money from him and he signed his name in my book.

Until about March 1943 when I would go to the Registrar's Office around the first of each month I would turn over the money I had collected to Sgt. H.M. Smith who would give me my tradespay and keep the balance, and give me a receipt. I would not know what became of the money after that. After sometime in March 1943 someone else collected the money. I produce the following receipts which I obtained from Cpl. H.M. Smith and covering takings of the Barber and Tailor Shops:-

17 Jul 42	£ 9: 9: -	(exhibit	R.1)
31 Jul 42	13:12: -	("	R.2)
17 Aug 42	10:12: 6	("	R.3)
1 Sep 42	13: 3: 6	("	R.4)
17 Sep 42	10:19: 6	("	R.5)
2 Oct 42	11:12: 6	("	R.6)
4 Nov 42	21:10: -	("	R.7)
	(Signed by Sgt. Payne)		
1 Dec 42	20: 1: 5	("	R.8)
31 Dec 42	22:17: 6	("	R.9)
29 Jun 43	20: 5: 4	("	R.10)
1 Apr 43	31: 5: -	("	R.11)

Undated and unsigned, a chit which I recognize to be in the handwriting of Cpl. Smith
20: 7: - (" R.12)

L. Philippe Anctil

(L.P. Anctil)Pte.,
No.14 Cdn. Gen. Hosp., RCAMC.

The accused declines to cross-examine.

Eighteenth Witness:

D-95840 Pte. North, G.A., No.14 Cdn. Gen. Hospital, R.C.A.M.C., having been duly sworn states:-

I have been the tailor for the unit ever since we arrived in England. The customer found out from me what the work would cost and obtained a chit for that amount of money from Pte. Anctil upon payment of the amount. The customer gave me the chit when I returned his clothes. I kept a book, recording each job and the price and I checked this over with L/Sgt. Smith at the end of every month. I handled no cash. I was paid tradespay.

G. A. North

(G.A. North)Pte.,
No.14 Cdn. Gen. Hosp., RCAMC.

The accused declines to cross-examine.

Nineteenth Witness:

Capt. J.H.W. Price, R.C.A.P.C., att/No.14 Cdn. Gen. Hospital, RCAMC., having been duly sworn states:

Orders of this unit require that all personnel of the unit pay 6d apiece per month into the Barrack Damage Account and this amount has been collected by me through the pay account and turned over to the Commanding Officer, receipt being acknowledged by him on the Acquittance Roll. Acquittance Roll No.336 dated 13 Feb 43 shows receipt of 10 shillings by Colonel A. Ross and Acquittance Roll No.350 dated 25 Feb 43 shows £5:15: -, paid by me to Colonel A. Ross on the Barrack Damage Account. I have examined bank statements M.1 and M.2 and I can find no entry which would appear to be a deposit of either of these amounts up to 30 Apr 43.

(J.H.W. Price)Capt., RCAPC.,
att/No.14 Cdn. Gen. Hosp., RCAMC.

The accused declines to cross-examine.

Twentieth Witness:

M-24164 S/Sgt. Dixon, C., Regimental Funds Board, C.M.H.Q.,

I certify that owing to the exigencies of the service and the loss of time involved the attendance of this witness cannot readily be obtained and a statement signed by him is attached hereto as exhibit S. The accused has been advised of his rights in this regard but after hearing the statement read over he does not demand to cross-examine the witness.

(D.C. Cuddy)Capt.,
J.A.G. Branch, C.M.H.Q.,
Officer detailed to take the
Summary of Evidence.

Twenty-first Witness:

Mr. K.E. Mallinson, Newsagent, Horley, Surrey, having been duly sworn states:

For some period of time I have supplied newspapers to No.14 Cdn. Gen. Hospital, R.C.A.M.C., and during the latter part of 1942 and the early part of 1943 it was customary for me to render an account after the end of each month, following which I would receive payment, either by cheque or cash, and I have seen L/Sgt. Smith before, when he came into my place of business in this regard. I am shown receipted accounts which were prepared from my books, as follows:-

Account dated 31 Oct 42, marked "Paid in Cash 19 Nov 42" (marked exhibit T.1).

Account dated 30 Nov 42, marked "Paid in Cash 10 Dec 42" (marked exhibit T.2).

Account dated 31 Dec 42, marked "Paid in Cash 8 Jan 42" (marked exhibit T.3)

The account for the Jan 1943 papers was not paid in February and was accordingly carried forward in the sum of £12:18: 2 into the account dated 28 Feb 43 which is exhibit Q.5, and is receipted by my wife, Mrs. K.E. Mallinson, whose handwriting I recognize, as a payment in cash, 12 March 1943.

K. E Mallinson

(Mr. K.E. Mallinson)
Newsagent,
Horley, Surrey.

The accused declines to cross-examine.

Warning to the Accused:

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence.

The accused does not wish to make any statement or to give any evidence, nor does he wish to call any witnesses.

I certify that this Summary of Evidence consisting of fourteen pages was taken down by me in the presence of the accused and that Rule of Procedure 4 (C), (D), (E), (F) and (G) has been complied with.

D J Cuddy

(D.J. Cuddy) Capt.
J.A.G. Branch, C.M.H.Q.,
Officer detailed to take
Summary of Evidence.

In the Field,
2 Sep 43.

"D"

No. 95765 Name SMITH, H.M. Sqn., Battery, or Company — Corps R.C.A.M.C. — Date of enlistment 29th May 1940 — G.C. Badges — Service or Proficiency Pay — M.F.M. 6 (A.F. B.122) 40/P & T/8136 (2065)

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. — Signature O.C. Company, etc. Wm Colin Hayes — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	Previous sheet			destroyed on completion of two years service		(O.R.O. 2064)(5)(b)			
Smallfield Surrey	9-3-43	L/Sgt.		WOAS, AWL from 0831 hrs 9-3-43 to 2200 hrs 11-3-43 (AWL 2 days 13 hrs 30 mins) (A.A.SEC.15(1) Aut. forf. 2 days pay under art 149(a) FRAI	RSM Hardy, R.E	Reverts to his substt. rank of Cpl.	12th March 1943	Albert Ross, Colonel R.C.A.M.C.	
Smallfield Surrey	8-5-43	Cpl.		WOAS, AWL from 1331 hrs 1-5-43 to 2215 hrs 8 April 43(AWL 7 days 8 hrs 45 mins.)(A.A.Sec 15(1)	RSM Hardy, R.E	Aut.forf. 8 days pay. Severely Reprimanded	12-5-43	Albert Ross, Colonel R.C.A.M.C.	

"CERTIFIED TRUE COPY"

(Burnett S. Johnston) Colonel RCAMC, C.A.(c's)

O.C., No. 14 Canadian General Hospital

(P.T.O.)

Patrick J. Mahaney Esq.

ARMY FORM B.206.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
D-95765	Cpl.	SMITH, H. M. (Harvey Milne)	No. 14 Cdn. Gen. Hospital, RCAMC.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, preminence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For Absent Without Leave	2 times	2 times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

~~Number of instances of gallantry or distinguished conduct.~~ —

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted. —

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.~~

~~3. The accused is not under sentence at the present time, or The accused at the present time is under sentence for ——— beginning on the ——— day of ———~~

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and One days in military custody, making a total of One days, of which One day ~~was~~ was spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 40 Years

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 29 May 40

~~7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is ———~~

~~8. The accused is entitled to deferred pay or gratuity in respect of ——— service~~

~~9. The accused is entitled to reckon ——— service for the purpose of determining his position on~~

10. The accused is ~~in possession of, or~~ entitled to, no military decoration or military award ~~he is in possession of or entitled to (state any military decoration or award).~~

~~11. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the appointment of ——— rank of ———~~

~~12. (In the case of an officer.) The accused holds in the army the rank of ——— dated ——— and in his regiment (or corps or department) the rank of ——— dated ———~~

(71)(4) W4.20(4)/502 75,000 12/40 A.A.H.W.Ltd. Gp.4/9

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. D-95765 Rank Cpl. Name SMITH, H.M. of 14 C.G.Hosp. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		—— NIL ——		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 1st 14th day of September, 1943.

(Wm. Colon Major)

(Burnett S. Johnston) Colonel, R.C.A.M.C.,
C.C. No. 14 Canadian General Hospital, R.C.A.M.C.

13 The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

		Date of Promotion.
In the rank of	Lance Corporal	9 Months 1 May 41
In the rank of	Lance Sergeant	1 year 13 Feb 42
In the rank of	Corporal (Reverted from L/Sgt.)	1 year 12 Mar 43

(Insert date in the case of a trial by field general court-martial the information may be inserted from such records as are available.)

(Strike out if any matter in any of the above paragraphs cannot be stated from the regimental books the paragraphs must be struck out in the case of a trial by field general court-martial the information may be inserted from such records as are available) and the foregoing statement amended accordingly.)

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 14th. day of ~~14th~~ Sept 43, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. The officers under instruction)

were duly sworn.

Signed this 14th day of Sept 1943.

Patrick J. Wealands Lieut.

President of the Court Martial.

* See footnote (#) on page 762 M.M.L. 1949

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison until further orders.)~~ ? QMC.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or ... such

Signed this 15th day of Sept 1943

F. A. McCracken.

Confirming Officer.

Promulgated and extracts taken in the case of D 95765 - Cpl. Smith H.M.

(Dated) 17 Sept. - 43 (Signed) Burnett S Hunter Col.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(#) When several cases are promulgated in one unit on the same day the Officer need only sign once.

Summary of Evidence

Summary of Evidence in the case of D-95765 Cpl. Harvey Milne Smith, No.14 Cdn. Gen. Hospital, R.C.A.M.C.

The Commanding Officer has directed that the evidence be taken under oath.

The rights of the accused at the taking of a summary of Evidence are explained to him.

First Witness:

Lieut-Col. C.A. McIntosh, No.14 Cdn. Gen. Hospital, R.C.A.M.C., having been duly sworn states:

I was President of the Audit Board for all Messes, Canteens and Regimental Institutes of No.14 Cdn.Gen. Hospital during the period 1 Jul 42 to 30 Apr 43. Since about August 1942, Cpl. Smith, H.M., has been employed as Accountant of all Messes, Canteens and Regimental Institutes in this Unit. I do not believe he was ever officially detailed as such in Unit Orders but he has been employed only in that capacity for the period of time I have mentioned, and until relieved of those duties in Mar 1943 or the early part of April 1943. In practice he collected all cash and, so far as I know, made all bank deposits. He also kept all the accounts and prepared all the Financial Statements "Abstract of Receipts and Disbursements" for the various Messes, Canteens and Regimental Institutes. Bank accounts were carried with Barclays Bank Limited branch at Horley, Surrey, by the Sergeants' Mess, Officers' Mess, Nursing Sisters' Mess, Men's Canteen, The P.R.I. Account and the Barrack Damages Account, and these were the only bank accounts used during the period 1 Jul 42 to 30 Apr 43 except by the Men's Canteen which maintained another account with the Bank of Montreal, Waterloo Place, London. I produce a piece of paper upon which certain writings appear but in particular the following words: - "Received the sum of six pounds, five shillings, a/c Barrack Damages. H.M. Smith 1/3/43". I have seen the signature of Cpl. H.M. Smith on many occasions and I identify the signature H.M. Smith as being in his handwriting. (Piece of paper is marked - exhibit A). I produce "Abstract of Receipts and Disbursements" of the Sergeants' Mess, No.14 Cdn. Gen. Hospital, dated 31 Aug 42 (marked exhibit B.1); 30 Sep 42 (exhibit B.2); 31 Oct 42 (exhibit B.3); 30 Nov 42 (exhibit B.4); 31 Dec 42 (exhibit B.5); 31 Jan 43 (exhibit B.6); and of the Officers' Mess, No.14 Cdn. Gen. Hospital, dated 31 Aug 42 (exhibit C.1); 30 Sep 42 (exhibit C.2); 31 Oct 42 (exhibit C.3); 30 Nov 42 (exhibit C.4); 31 Dec 42 (exhibit C.5); and 31 Jan 43 (exhibit C.6); and of the Nursing Sisters' Mess, No.14 Cdn. Gen. Hospital, dated 31 Aug 42 (exhibit D.1); 30 Sep 42 (exhibit D.2); 31 Oct 42 (exhibit D.3); 30 Nov 42 (exhibit D.4); 31 Dec 42 (exhibit D.5); 31 Jan 43 (exhibit D.6); and of the Men's Canteen, No.14 Cdn. Gen. Hospital, dated 31 Aug 42 (exhibit E.1); 30 Sep 42 (exhibit E.2); 31 Oct 42 (exhibit E.3); 30 Nov 42 (exhibit E.4); 31 Dec 42 (exhibit E.5); 31 Jan 43 (exhibit E.6); and of the P.R.I. Account, No.14 Cdn. Gen. Hospital, this account having functioned separately from the Men's Canteen only from Nov 1942, 30 Nov 42 (exhibit F.1); 31 Dec 42 (exhibit F.2); 31 Jan 43 (exhibit F.3); and the Barrack Damages Account, No.14 Cdn. Gen. Hospital, dated 31 Dec 42 (exhibit G.1); 31 Jan 43 (exhibit G.2);. I consider that Cpl. Smith was the person who actually deposited the money and prepared the Financial Statements for the Messes, etc., previously mentioned. There was no Committee for the Barrack Damage Account and the Account was administered by the then Commanding Officer of the Unit, Colonel A. Ross.

(C.A. McIntosh) Lt-Col.,
No.14 Cdn Gen Hosp., RCAMC.

The accused declines to Cross-examine.

FLASH NUMBER THREE

FLASH NUMBER THREE

FLASH NUMBER THREE

FLASH NUMBER THREE

FLASH NUMBER THREE

FLASH NUMBER THREE

WW-13 1

TPR SMITH H.L.W.

K-1133 Tpr Smith, H. L. W.
3 CACRU

WW-134

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

On Active Service, this twenty third day of November, 19 43. (Order convening the Court.)

Whereas it appears to me, the undersigned, an officer in Command of "E" Group, CANADIAN REINFORCEMENT UNITS, , on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

*[I am unable to appoint
*(1) Three Officers to form the Court.)
*(2) A Field Officer as President.]

for the following reasons, namely :—]

Proceedings Reviewed

E. McDonald Capt
Reviewing Officer (J.A.G.) C.M.H.Q.
16 Dec 43

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and units and the unit to which they belong may alone be named. In the latter event the rank, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Lt-col	F. D. Tweedie	HQ CRU

Members.

Rank.	Name.	Regiment.
Capt	G. H. R. Howell	5 CIRU
Lt	W. G. McLean	5 CIRU

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [illegible] Brig
Commanding "E" Gp, CRU
Convening Officer.

SCHEDULE

Number, Rank (a) Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
K-1133 Tpr Smith, H. L. W. 3 CACRU	FIRST CHARGE A.A. Sec 15 (1) See charge sheet attached	Guilty	Guilty. To forfeit all ordinary pay for the period of 60 days. 24 Nov 43 D.O. Tweedie Lt Col President.	Finding and sentence Confirmed. JHR

*Question to be asked of accused, if he pleads not guilty (R. of P. 29 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) J. Rutherford (Signed) T. D. Tweedie Lt Col.
(J. RUTHERFORD) Brig "Z" Group, CRU H.Q. C.R.U.
Commanding *Convening Officer* (e) *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 24th day of Nov 43, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The Interpreter~~)
*(4. ~~The officers under instruction~~)

*Omit if not applicable. DO

were duly sworn.

Signed this 24th day of Nov 1943.

F. D. Tweedie Lt Col
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no author ity to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~) JHR

Signed this 29th day of Nov 1943

J. Rutherford Brig.
Confirming Officer.

K1133 Tpr. Smith H. L. W. 3 CACRU

Promulgated and extracts taken in the case of

(a) (Dated) 29 Nov 1943 (Signed) Adjutant 3 C.A.C.R.U.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(29750) Wt. 47503/242. 35,000. 7/43. A.A. & P. W.Ltd. Gp. A/93
(21750) Wt. 13064/1259. 40,000. 7/42.

CHARGE SHEET

The accused, K.1133 Tpr. Hugh, Lloyd, William, SMITH, on the strength of No. 3 Canadian Armoured Corps Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
N.D.A. Sec 15(1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

in the Field on 24 Oct 43 did absent himself without leave from 9 Cdn Armd Regt (BCD) from 0800 hrs 24 Oct 43 until he surrendered himself at 2120 hrs, 17 Nov 43. (Total time absent 24 days, 13 hrs, 20 mins).

G.W. Little Col

In the Field
20 Nov 43

(G.W. Little) Colonel
Commanding 3 CACRU

To be tried by F.G.C.M. in the Field.

23 Nov 43

(illegible) (RCD) Brig
Comd
"E" Gp, CRU

F.G.C.M.

Medical Officer's Certificate
K.R.(Can) para 557.

K1133

I certify that I have this morning examined No. .....

Pte. Smith, H.L.W. .....and in my opinion he is fit to
(rank) (name)

undergo trail by Court Martial.

Station In the field.....

Date 24-11-43.....

(Sgd) .....
(Medical Officer)

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD IN THE FIELD, ENGLAND
ON THE 24th DAY OF NOVEMBER 1943

The accused: K 1133 Tpr Smith H.W.L. Unit: 3 CACRU

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs P 22 and 23.

The accused is br ught before the Court
The Medical Certificate is laid before the Court
The order convening the Court is read by the President and the accused having been asked, stated that he had no objection to the President or any Member of the Court.
The Court is duly sworn.

The following constitute the Court:

President:	Lt-col F.D.Tweedie	Unit: HQ CRU
Members:	Capt A.M.R.Howell	Unit: 5 CIRU
	Lieut W.G. McLean	Unit: 5 CIRU

Prosecutor: Lieut H.S.J. Upham Unit 3 CACRU

Defending Officer: Lieut G.B.C.Fenson Unit: 3 CACRU

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge and RP 35 (B) is complied with.
The accused does not desire to make a statement in reference to the charge RP 37(B).
The Summary of Evidence is read and marked Ex "A".
The Prosecutor produces MFB 355, AFB 296, and MFM 6, marked Ex "B", & " C" respectively.
The Court complied with RP 46(B)
Pursuant to RP 37 the Accused:

Addresses the Court by his Defending Officer: (Attached)

Overseas RO 3262 complied with.
The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION CHARACTER EVIDENCE AND ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER

Plea in Mitigation in the Case of
K1133 Tpr Hugh Lloyd William Smith

Tpr Smith joined the active force in July 1941 and has served continuously ever since. While his MFMC is only fair, it cannot be said that he is by any means a bad character. Some time ago in this country, he met a girl and eventually he was informed by her that she was with child by him, a fact which he admits. He received several letters from both her mother and sister. These letters tell the only too frequent story of the results of such a situation. The girl was worrying, she had lost her job and was finding difficulty in gaining admission to a nursing home. Naturally such a situation could not help but prey on his mind and he therefore applied for compassionate leave and was granted three days. Needless to say he found this period inadequate and worried as he was, he did not think of either asking for an extension or of the seriousness of absence without leave. When he had adjusted his affairs as well as he could he gave himself up to the provost corps.

I submit these letters as documentary evidence for the inspection of the Court, they represent the type of letter the accused has received.

G B Clayton Lt (SCARA)
Defending Officer
23 Nov 1943

LIST OF EXHIBITS IN THE CASE OF

K1133 Tpr. Smith, H.L.W.

FOR THE PROSECUTION

1. Exhibit "A" - Leave Pass signed by Captain D.?. Kinlock, 9 C.A.R. (BCD)

2. Exhibit "B" - No. 3 C.A.C.R.U. Part II Order No. 264 para. 7 (d) dated 12 Nov 43.

3. Exhibit "C" - Statement of Evidence signed by A3129 Sgt. Burrows, C.F. No. 6 Provost Coy.

FOR THE DEFENCE

NIL

(C.L.Nelson) A/Capt.
Officer detailed to take
The Summary of Evidence

[illegible]

Statement of EVIDENCE in the case of:
K.1133 TPR. SMITH H.L.W.
9th ARM'D REGT A2 SQUAD B.C.DRAGOONS

Sir,

A T LONDON on the 17 Nov.43 at about 2120 hrs., I was on duty at No.6(Area) Provost Company Canadian Provost Corps Detention office when the a/m soldier surrendered himself to me as being an absentee.

I placed him under arrest and he was detained in the Detention cells. He was sober and properly dressed.

London
17 Nov.43

A-3129 BURROWS G.F. SGT.
6(Area)Provost Company.

F.D.T.

REMARKS

CHARGE

Army Form B 252
(See King's Regulations)

9th ARMOURED REGT — Regiment
B.C. DRAGOONS A SQUAD. — Battery / Squadron / Troop or Company

CHARGE against No. K.1133 Rank TPR.

Name SMITH H.L.W.

Place LONDON Date of Offence 17 Nov.43. 0800 hrs

OFFENCE WOAS absent without leave from ?~~20.Oct.43~~ until surrendering himself to the Canadian Provost Corps at about 2120 hrs., in the DETENTION OFFICE.

L. S. Grayson
CAPT.
L. S. GRAYSON D.A.P.M.
LONDON AREA.

Names of Witnesses :—

Sgt Burrows G.F. CANADIAN PROVOST CORPS 6 Coy.

Signature of O.C. Battery, Squadron, Troop or Company)

Punishment Awarded)

By whom Awarded)

Adjutant.

P.T.O.

30138 Wt.W3127/4-1961 2,000,000 10/42. K. & H., Ltd. Gp67/47

Exhibit "B"

3 CANADIAN ARMOURED CORPS REINFORCEMENT UNIT
PART II ORDERS

by

Last Order No 263 Dated 11 Nov 43 — Colonel G.W. LITTLE, M.V.O.,M.C., Commanding Officer — This Order No 264 Dated 12 Nov 43

"A"

1. STRENGTH INCREASE:

Capt. R.A. GORDON is T.O.S. from 9 C.A.R., w.e.f. 8 Nov 43, and is posted to "A" Sqn reinfs. (Auth: 9 C.A.R. Pt II DO 75, d/11 Nov 43).

2. ATTACHMENTS:

(a) Capt N.N. CRAWFORD-BROWN, is att'd f.a.p./from Comm Pay Detach, to Admin Wing w.e.f. 8 Nov 43, for pay duties (supernumary). (Auth: C.P.D. Pt II DO 72, d/9 Nov 43)

(b) Capt. C.B.M. SLIMON c.t.b.a. f.a.p. from Comm Pay Detach w.e.f. 8 Nov 43, on proc to No. 2 C.A.C.R.U: (Auth: A-5530, d/5 Nov 43)

3. COURSES

(a) Lieut. A.S. HUTCHINGS ret from CMHQ Crse 857 Ser 463, w.e.f. 10 Nov 43.

4. ATTACHMENTS:

(a) Lieut. H.D. SCULLY is att'd f.a.p. to R.C.A.F., w.e.f. 7 Nov 43. (Auth: RCAF Attachment EG-4-O, d/9 Oct 43)

(b) Capt. R.C. MERRYWEATHER is att'd f.a.p. to Cdn School Artill, w.e.f. 9 Nov 43 (Auth: 410/MERRYWEATHER RC/1, d/30 Oct 43)

5. LEAVES:

The u/m officers proceeded on P.L., dates as shown, and are granted M.A. in lieu of rations under FR&I (O) 789 (3) and (4), as amended by O.R.O. 2459

9 days; 1 Nov 43 to 10 Nov 43

Lieut. A.J. ARCHIBALD
Lieut. E.J. BUTLER
Lieut. B.B. BENOIT
Lieut. R.P. CORE

5. LEAVES: Cont.

9 days; 1 Nov 43 to 10 Nov 43 (continued)
Lieut. B.H. PARSONS
Lieut. J.E.C. STEPHEN
Lieut. E.G. STANBURY
Lieut. R.H. WETTLAUFER

7 days; 2 Nov 43 to 9 Nov 43
Lieut. S.G. CHECKLAND

9 days; 30 Oct 43 to 8 Nov 43
Lieut. C.L. COLLIVER

9 days; 4 Nov 43 to 13 Nov 43
Lieut. B.L. HIGGINSON

9 days; 5 Nov 43 to 14 Nov 43
Capt. W.L. MacPHERSON
Lieut. J.G. MOORE

9 days; 8 Nov 43 to 17 Nov 43
Lieut. L.A. GALLAY
Lieut. H.S. UPHAM
Lieut. R.B. HOAR

9 days; 5 Nov 43 to 14 Nov 43
Major C.B. LUNDAHL

6. STRENGTH DECREASE:

(a) The u/m Officers are S.O.S. to 22 C.A.R. (Spec Incr), w.e.f. 9 Nov 43. (Auth: EA2/790, d/6 Nov 43)
Lieut. J.R. JOHNSON
Lieut. G.L. CAMIRAND
Lieut. E.H. CHEVRIER

(b) The U/M Officers are S.O.S. to 21 C.A.R. (Spec Inc), w.e.f. 9 Nov 43. (Auth: EA2/789, d/6 Nov 43)
Lieut. H.V. CHAPMAN
Lieut. D.M. FOSTER
Lieut. R.J. CLARKE

(c) The u/m Officers are S.O.S. to H.Q. Sqn, 4 C.A.B., Spec Incr w.e.f. 9 Nov 43. (Auth: EA2/791, d/6 Nov 43)
Lieut. M.V. SAWYER
Lieut. A.W. FERRIS
Lieut. E.H. GRAND

6. STRENGTH DECREASE: Cont.

(d) Lieut. S.R. CONWAY is S.O.S. to Exercise "Peke", w.e.f. 11 Nov 43. (Auth: 444/PEKE/1, d/31 Oct 43)

(e) Amendment: Pt II DO 259, d/6 Nov 43, para 3(d), insofar as it pertains to Capt. R.C. MERRYWEATHER, amend "S.O.S." to read "Att'd f.s.p."

"B"

7. STRENGTH INCREASE:

(a) The u/m ORs are T.O.S. w.e.f. dates shown, on adm to Hosps as shown, from 2 C.A.R., and are posted to "A" Sqn reinfs. (Auth: 2 C.A.R. Pt II DO 62, d/10 Nov 43)

F-77736	Tpr	MacLEOD, M.M.	No. 13 Cdn Gen Hosp	6 Nov 43
G-49270	"	LEAVITT, G.L.	No. 18 Cdn Fd Amb	10 Nov 43
H-396	"	SKELTON, W.K.	No. 18 Cdn Fd Amb	9 Nov 43

(b) The u/m ORs are T.O.S., w.e.f. dates shown, on adm to hosps as shown, from 9 C.A.R., and are posted to "A" Sqn reinfs. (Auth: 9 C.A.R. Pt II DO 73, d/6 Nov 43)

K-967	Tpr	BLEZARD, J.	No. 13 Cdn Gen Hosp	5 Nov 43
K-52	"	BENT, S. (Gnr Op "C")	" " "	4 Nov 43
H-62743	"	JOSEPH, J.	" " " "	3 Nov 43
M-63528	"	MARION, L.J.	No. 1 Cdn Spec Hosp	2 Nov 43

(c) K-23004 Tpr LOVETT, R.L., Dvr Mech MV "C", is T.O.S. from 9 C.A.R., w.e.f. 27 Oct 43, on comm to Cdn Detn Bks (Awarded 60 dys detn 26 Oct 43), and is posted to "A" Sqn reinfs. (Auth: 9 C.A.R. Pt II DO 73, d/6 Nov 43)

Shoemaker "C"

(d) K-1133 Tpr SMITH, H.L.W., is T.O.S. from 9 C.A.R., w.e.f. 25 Oct 43 (Ineffective Personnel), A.W.L. from 0800 hrs, 24 Oct 43, and is posted to "A" Sqn reinfs. (Auth: 9 C.A.R. Pt II DO 73, d/6 Nov 43)

(e) K-102 Tpr ANDREWS, A.W. is T.O.S. from 9 C.A.R., w.e.f. 2 Nov 43, on adm to St. Andrew's Hosp, Thorpe, (Br Hosp), and is posted to "A" Sqn reinfs. (Auth: 9 C.A.R. Pt II DO 75, d/11 Nov 43)

7. STRENGTH INCREASE: Cont.

(f) The u/m ORs are T.O.S. from 5 C.A.R., w.e.f. dates shown, on adm to No. 13 Cdn Gen Hosp, and are posted to "A" Sqn reinfs. (Auth: 5 C.A.R. Pt II DO 55, d/6 Nov 43)

B-63269 Tpr BRUCE, D.A. 7 Nov 43
G-19300 " BRYMER, E.M. 6 Nov 43
D-103855 " ROBSON, H. 5 Nov 43

(g) G-420 Tpr BAUGHAN, A.G., is T.O.S. from 5 C.A.R., w.e.f. 5 Nov 43, on being adm to No 2 Cdn C.C.S., and is posted to "A" Sqn reinfs. (Auth: 5 C.A.R. Pt II DO 55, d/6 Nov 43)

(h) A-57903 Tpr LAYNG, H.J., is T.O.S. from 5 C.A.R., w.e.f. 2 Nov 43, (Ineffectiver personnel - A.W.L. from 1200 hrs, 1 Nov 43), and is posted to "A" Sqn reinfs. (Auth: 5 C.A.R. Pt II DO 55, d/6 Nov 43)

(i) C-75701 Tpr CLARKE, J.D., is T.O.S. from 5 C.A.R., w.e.f. 10 Nov 43, on comm to Detn Bks. (Awd 28 days detn on 6 Nov 43), and is posted to "A" Sqn reinfs. (Auth: 5 C.A.R. Pt II DO 57, d/11 Nov 43).

(j) The u/m ORs are T.O.S. from 5 C.A.R., w.e.f. 9 Nov 43, and are posted to "A" Sqn reinfs. (Auth: 5 C.A.R. Pt II DO 57, d/11 Nov 43).

F-29700 Sgt DOCKRILL, R.J.E. F-29902 Sgt HUSTON, L.R.
F-29730 Sgt KEHOE, L.D.

(k) The u/m ORs, are T.O.S., w.e.f. dates shown, on adm to hospitals shown, and are posted to "A" Sqn reinfs. (Auth: 5 C.A.R. Pt II DO 57, d/11 Nov 43)

G-85 Tpr FITZPATRICK, G.S. No. 18 Cdn Fd Amb 9 Nov 43
M-63656 " BRELAND, P.H. No. 13 Cdn. Gen. Hosp 6 Nov 43

(l) The u/m OR is T.O.S. from 2 C.A.R., w.e.f. dates shown, and is posted to "A" Sqn reinfs. (Auth: 2 C.A.R. Pt II DO 62, d/10 Nov 43)

A-617 Tpr WARBACK, J.J. 8 Nov 43

(m) K-47802 Pte HILBORN, W.J., is T.O.S. from 10 C.I.B. Coy (trnnsfer) w.e.f. 10 Nov 43, and is posted to "A" Sqn reinfs (Auth: 2 Echn ltr 99/6/Armd/2(A7)99/20/CIB Coy, d/2 Nov 43)

7. STRENGTH INCREASE: Cont.

(n) A-103756 Pte PAUL, J.E. is T.O.S. from No. 1 C.O.R.U. (remustered) w.e.f. 9 Nov 43, and is posted to "A" Sqn reinfs. (Auth: Demand 99/6Armd/2(A7), d/4 Nov 43)

(o) The u/m ORs are T.O.S. from No. 10 C.A.R., w.e.f. 9 Nov 43, and are posted to "A" Sqn reinfs. (Auth: EBI/1795, d/7 Oct 43)

M-104075	Tpr	BORECKI, A.	B-49420	Tpr	COOPER, L.A.
M-100894	"	TROTTIER, L.A.	H-36467	"	HAZELL, M.B.
L-36703	"	LaLIBERTÉ, P.	M-26755	"	PIMNIUK, P.E.

(p) Amendment: Pt II DO 257, d/4 Nov 43, para 2(a), insofar as it pertains to K-38088 Cpl SMITH, R.R.A., add "Dvr Op "C"".

(q) Amendment: Pt II DO 261, d/9 Nov 43, para 4(c), insofar as it pertains to F-29731 L/Sgt SMOLTZER, C.R., amend "to P.E. Trg Sqn" to read "to "A" Sqn reinfs".

(r) Amendment: Pt II DO 261, d/9 Nov 43, para 4(b), insofar as it pertains to L-54808 Tpr GRUNDLER, E.G., amend "w.e.f. 8 Nov 43" to read "w.e.f. 7 Nov 43".

8. ATTACHMENTS:

(a) H-26531 Tpr KEEHN, R.H., c.t.d.a. to No. 1 CDN Mil Detn Bks, w.e.f. 11 Nov 43.

(b) D-124713 Spr HAMEL, L., is att'd f.a.p., whilst attending CMHQ Crse 719, serDSO, w.e.f. 8 Nov 43, from 3 Bn., R.C.E.. (Auth: HQ 1st Cdn Army ATCA/3-4-1/2 & ATCA/3-4-1/3)

(c) The u/m ORs are att'd f.a.p. to No. 1 Cdn Detn Barracks, on being comm to Detn, w.e.f. dates shown

B-62200	Tpr	INGLEMAN, W.A.	9 Nov 43
D-131762	"	GUAY, F.V.	9 Nov 43
A-54654	"	FORBES, J.R.D.	9 Nov 43
B-60557	"	HOOD, J.H.	9 Nov 43
M-63922	"	HARMESON, L.	10 Nov 43

8. ATTACHMENTS: Cont. . . . . .

(d) The u/m ORs c.t.b.a. f.a.p. from the 11th Fld Regt, on compl of CMHQ Orse 749, Ser FD3, w.e.f. 9 Nov 43

B-12071 Gnr CLARKE, W.G. C-357 Gnr ASTLEY, A.

(e) The u/M ORs c.t.b.a. f.a.p. from the 15 Fd Regt, R.C.A., on compl of CMHQ Orse 749, Ser FD3, w.e.f. 9 Nov 43

L-54911 Gnr RUSK, D.P. L-10509 Grn ZARON, M.

(f) L-154154 Pte SEHN, E. c.t.b.a. f.a.p. from 2nd Tk Transp Coy., R.C.A.S.C., w.e.f. 6 Nov. 43, on compl of CMHQ Orse 749, Ser FD3.

(g) The u/m ORs c.t.b.a. f.a.p. from the 8th Cdn Fld Sqn., R.C.E., w.e.f. 6 Nov 43, on compl of CMHQ Orse 749, Ser FD3,

B-25791 Spr SMITH, J. B-27526 Spr JAMES, L.A.

(h) E-6668 Tpr MICHAUD, R., c.t.b.a. f.a.p. from No. 1 C.F.R.U., on compl of CMHQ Orse 719, Ser 78P, w.e.f. 6 Nov 43.

(i) H-3219 Pte CHALKMAN, E.M., c.t.b.a. f.a.p. on proceeding on Orse at No. 1 C.O.R.U., w.e.f. 5 nov 43.

(j) The u/m ORs c.t.b.a. f.a.p. from Calgary Highlanders, on compl of CMHQ Orse 749, Ser FD 3, w.e.f. 6 Nov 43

M-12034	Pte	BEGGS, W.D.	M-16321	Pte	FREEMAN, W.C.
M-12210	"	GOWANS, J.	M-10748	"	GOGAIN, A.R.
M-104035	"	KIRKWOOD, D.	M-65300	"	MacKINNON, J.D.
M-10596	"	NORMAN, J.R.	K-49151	"	ROBINSON, G.
M-17838	"	SMITH, G.	K-69290	"	WHITE, T.L.

(k) The u/m ORs c.t.b.a. f.a.p. from the Calgary Highlanders, on compl of CMHQ Orse 749, ser FD3, w.e.f. 9 Nov 43

M-105084 Pte LAYDEN, W.R. M-104687 Pte ROLLINSON, J.M.

(l) L-74751 Pte McFARLANE, H.C., c.t.b.a. f.a.p. from 66th Transp Coy R.C.A.S.C., on compl of CMHQ Orse 749, Ser FD3, w.e.f. 6 Nov 43.

(m) M-102738 Spr HOPPUS, G.A., c.t.b.a. f.a.p. from 9th Cdn Fld Sqn., R.C.E., on compl of CMHQ Orse 749, Ser FD3, w.e.f. 6 Nov 43

6. ATTACHMENTS: Cont.

(n) The u/m ORs c.t.b.a. f.a.p. from 42nd Bty, 7th L.A.A. Regt., R.C.A. on compl of CMHQ Orse 749, Ser FD3, w.e.f. 6 Nov 43

C-1675 Gnr NELSON, M. B-22582 Gnr SUMMERHAYES, D.
B-22400 " WHITEHEAD, L.

(o) The u/m ORs c.t.b.a. f.a.p. from 66 Bridge Coy., R.C.A.S.C., on compl of CMHQ Orse 749, Ser FD3, w.e.f. 6 Nov 43

A-89231 Pte BARWIN, H.W. B-56087 Pte PHILLIPS, G.F.

(p) The u/m ORs c.t.b.a. f.a.p. from units as shown, on compl of CMHQ Orse 749, Ser FD3, w.e.f. 6 Nov 43

U-1822	Pte	PENNEY, L.J.	66 Bridge Coy., R.C.A.S.C.
K-7296	"	MURRAY, W.H.	12th Fld Hygiene, R.C.A.M.C.
D-8074	"	TOUSIGNANT, F.	13th Cdn Provost Corps
L-13557	"	TRACEY, R.D.	South Sask., Regt.
H-100782	"	DYCKE, H.	South Sask Regt
H-45914	"	LECLAIRE, M.	Lake Sup Regt

(q) The u/m ORs c.t.b.a. f.a.p. from units as shown, on compl of CMHQ Orse 749, Ser FD3, w.e.f. 5 Nov 43

B-28056	Spr	FLOWERS, A.	2nd Fld Survey, R.C.E.
L-57758	L/C	HOLTEN, S.S.	67th Cdn L.A.A. Regt., R.C.A.
L-57863	Gnr	LEAPARD, L.C.	67th Cdn L.A.A. Regt., R.C.A.

(r) 636674 Sgt BRUNNING, W., is att'd f.a.p., except pay, from A.C.C.I.S.C. w.e.f. 10 Nov 43, and is att'd to Admin Wing. (Auth: ACCIS OR 2023/21, d/8 Nov 43)

(s) M-44824 Cdt PIEPGRASS, L.E. c.t.b.a. f.a.p. to (100) Sandhurst, on sdm to No. 6 Cdn Gen Hosp, w.e.f. 12 Oct 43.

(t) Amendment: Pt II DO 261, d/9 Nov 43, para 5(f), insofar as it pertains to the u/m ORs, amend "22 C.A.(Recce) Regt" to read "29 C.A. R.R.".

M-45190 Tpr BERNARD, N.J. M-45599 Tpr CLARKIN, J.A.

8. ATTACHMENTS: Cont.

(u) B-44837 Cpl MacULLOUGH, G.I., is att'd f.a.p. to Records' Office C.M.H.Q., w.e.f. 19 Oct 43. (Auth: CMHQ Pt II DO 198, d/23 Oct 43)

(v) Republication: H-101266 Pte RICE, B., is att'd f.a.p. from No. 1 C.A.S.C.R.U. from 28 Oct 43 to 1 Nov 43. (Auth: No. 1 C.A.S.C.R.U. Pt II DO 269, d/6 Nov 43)

(w) Republication: The u/m ORs are att'd for Rations & Quarters from No. 2 C.A.C.R.U., w.e.f. 31 Oct 43. (Auth: No. 2 C.A.C.R.U. Pt II DO 282, d/6 Nov 43)

A-43038 Tpr MENARY, V. A-44261 Tpr SMITH, A.S.T.

9. COURSES:

(a) The u/m ORs returned from Pre-C.C.T.U. Crse & c.t.b.a. to No. 1 Cdn Pre-OCTU School, w.e.f. 10 Nov 43

C-40040	Sgt	GROLEAU, G.J.	C-40051	A/Sgt	LAMOUREAUX, P.E.
C-41361	L/Sgt	THOMPSON, R.A.	D-27003	Gdsm	GREER, R.E.
K-37400	Cpl	FINCH, G.S.	B-61403	Cpl	WEST, J.W.
H-102	Sgt	CADE, J.D.	P-3475	Sgt	MACKIE, H.G.
H-39166	L/Cpl	MacDONALD, J.A.D.	P-3521	Sgt	MACEY, J.S.
K-908	Sgt	POWNALL, D.F.	D-27183	Cpl	CUNNINGHAM, J.T.

(b) L-36570 Tpr BEATTY, H.J. proceeded on Crse 1083 (Fitter MV) at No. 1 C.O.R.U., w.e.f. 5 Nov 43. (Auth: CRU 402/Trades/1/16, d/4 Sep 43)

(c) B-62576 Cpl WILSON, W.A. returned from Gas Course, from C.T.S., w.e.f. 10 Nov 43.

(d) The u/m ORs returned from No. 1 Cdn-OCTU Sel Centre, w.e.f. 10 Nov 43

H-39	Sgt	TURK, N.C.	H-306	A/L/C	NICHOL, N.M.
H-284	A/L/S	EBY, N.A.	P-3455	Cpl	PETRIT, A.C.
K-53639	A/Sgt	McGREGOR, A.E.	H-139	A/L/S	REAMILL, J.R.
H-296	A/Sgt	MORTH, C.L.A.			

9. COURSES: Cont.

(e) B-19534 Tpr LUKE, J.C. proc on Crse at No. 1 C.O.R.U. (Dvr 1/C (W)), w.e.f. 6 Nov 43. (Auth: EG/4-6-3-6, d/23 Oct 43)

(f) H-63793 Tpr MUDRIE, M., proc on Crse at No. 5 C.I.R.U., CMHQ Crse 738, Ser 9, w.e.f. 7 Nov 43. (Auth: EG/4-6-3-7, d/27 Oct 43)

10. COMMAND:

(a) K-65334 Tpr LESOWSKI, V.M., proc on Command to Jack Oldings Ltd w.e.f. 5 Nov 43. (Auth: A16266, d/27 Oct 43)

(b) The u/m ORs proc on command to No. 1 Cdn. C.C.T.U. Sel Centre, w.e.f. 7 Nov 43. (Auth: EA7/9263, d/1 Nov 43)

H-294	A/L/Sgt	EBY, N.A.	H-308	A/L/Cpl	NICHOL, W.M.
P-3455	Cpl	PETTIT, A.C.	H-39	Sgt	TURK, W.O.
K-53639	A/Sgt	McGREGOR, A.E.	H-298	A/Sgt	NORTH, C.L.A.
H-139	A/L/Sgt	REAHILL, J.R.			

11. HOSPITALS:

(a) The u/m ORs are disch from hosps as shown, w.e.f. dates shown

G-420	Cpl	BROUGHAN, A.G.	No 2 C.C.S.	9 Nov 43
G-65	Tpr	FITZPATRICK, G.E.	No. 18 Fld Amb.	9 Nov 43
B-48619	Gdsm	EMPTAGE, H.M.	No. 10 Cdn Gen Hosp	9 Nov 43
H-336	Cpl	IRVINE, W.	No. 13 Cdn Gen Hosp	8 Nov 43
B-62130	Tpr	ZIP, S.V.	No. 1 Cdn Spec Hosp	6 Nov 43
P-3456	Sgt	AIKENS, F.E.	No. 17 Cdn Gen Hosp	10 Nov 43
B-61643	Tpr	MCNIN, E.	No. 6 Cdn Gen Hosp	10 Nov 43
D-122981	"	TIMMONS, H.	No. 17 Cdn Gen Hosp	10 Nov 43
C-58548	Gdsm	FITZPATRICK, A.E.	No. 17 Cdn Gen Hosp	10 Nov 43

(b) The u/m ORs are adm to hosps as shown, w.e.f. dates shown

K-48071	A/Sgt	LINDSAY, J.D.	4 C.M.C.	11 Nov 43
B-103695	Tpr	WAISER, T.L.	No. 17 Cdn Gen Hosp	10 Nov 43
F-30579	"	WRIGHT, R.O.	No. 17 Cdn Gen Hosp	8 Nov 43

(c) The u/m ORs are transferred from hosps to hosps as shown, w.e.f. dates shown

M-63915 Tpr HEPTONSTALL, W., from No. 6 Cdn Gen Hosp to No. 17 Cdn Gen Hosp, w.e.f. 9 Nov 43

G-49121 " MURCHIE, A.J. from No. 2 Cdn Gen Hosp., to Alton Conval Hosp., w.e.f. 5 Nov 43

11. HOSPITALS: Cont.

(d) Cancellation: Pt II DO 261, d/9 Nov 43, para 7(a), insofar as it pertains to M-44824 Cdt PIEPGRASS, L.E., delete all reference.

(e) Cancellation: Pt II DO 261, d/9 Nov 43, para 7(b), insofar as it pertains to B-62343 Tpr RAMSAY, H.W., delete all reference.

12. LEAVES:

Amendment: Pt II DO 264, d/10 Nov 43, para 8, insofar as it pertains to L-58749 Tpr GREGERSON, S.R., amend "9 days; 28 Oct 43 to 6 Nov 43" to read "14 days; 28 Oct 43 to 11 Nov 43".

13. APPOINTMENTS, PROMOTIONS, REVERSIONS:

(a) M-50609 A/Cpl DUPUIS, C.L., reverts to the permanent grade of Trooper, w.e.f. 10 Nov 43, at own request, and is to draw increased Regt'l Rates of pay @ $1.50 per diem.

(b) The u/m ORs are appointed Acting Sergeants with pay, whilst specifically covering the vacancies of Sgt Instructors "I" Wing, w.e.f. 1 Nov 43

P-3479 Cpl GOING, C.J. B-69550 A/Cpl MOORE, J.P.

(c) L-104431 Tpr BEECHING, W.C., is appointed A/L/Cpl with pay, whilst employed as Records' Clerk, w.e.f. 12 Nov 43

14. TRADESMEN'S RATES OF PAY:

(a) D-130140 Tpr MATTHEWS, H.C. ceases to draw tradesmen's rates of pay as Dvr Op "C", w.e.f. 16 Jul 43.

(b) K-801 Tpr OLSEN, B.E.N. is granted an increase in Tradesmen's rates of pay as Dvr Mech Tk "C", @ $1.65 per diem, w.e.f. 13 Aug 43, on completion of 4 months' efficient service with good conduct. (Auth: GO 486/42).

(c) K-801 Tpr OLSEN, B.E.N. is granted an increase in Tradesmen's rates of pay as Dvr Mech Tk "C", @ $1.75 per diem, w.e.f. 13 Oct 43, on completion of 6 months' efficient service with good conduct. (Auth: GO 486/42).

15. PAY & ALLOWANCES:

Cancellation: Pt II DO 260, d/8 Nov 43, paras 10 (a) and (b), insofar as they pertain to K-801 Tpr OLSEN, B.E.N., delete all reference.

16. ESTABLISHMENT & POSTINGS:

(a) W-30609 A/Cpl DUPUIS, C.L., is posted from Spec Inst P.E. Instr to Admin Wing reinfs (Batman), w.e.f. 9 Nov 43. (Cat C-2)

(b) H-26292 Sgt O'BRIEN, G.J., is posted from P.E. "I" Wing to Admin Wing reinfs, and attchd to cover the vacancy of Sgt Instr "I" Wing, w.e.f. 11 Nov 43. (Cat C-2)

(c) The u/m ORs are posted from P.E. "I" Wing, Cpl Instrs, to P.E. "I" Wing, Sgt Instrs, w.e.f. 1 Nov 43

P-3479 Cpl GOING, C.J. B-69550 A/Cpl MOORE, J.P.

(d) B-4837 Cpl McCULLOUGH, G.I., is posted from Perm Estab, R.H.Q., to "A" Sqn reinfs, (whilst att'd f.a.p. to C.M.H.Q.), w.e.f. 12 Nov 43.

(e) K-69209 Tpr ROSS, I.C., is posted from "A" Sqn reinfs to Perm Estab, R.H.Q., Trooper Orderly, w.e.f. 12 Nov 43.

(f) L-104431 Tpr BREDBRIDGE, M.C., is posted from P.E. R.H.Q. (Tpr Orderly C.D.), to P.E. R.H.Q. (Cpl-Records), w.e.f. 12 Nov 43.

17. PUNISHMENTS:

(a) K-[illegible] Sgt [illegible], R.L. ("A" Sqn)

Offence: [illegible]

Awarded: 4 days' pay by K.A. Sec 40(k)(2), and stoppages of pay to the sum of $[illegible]

Forfeiture: 4 days' pay [illegible] 39(2)

Total forfeiture: 4 days' pay and stoppages to the sum of $[illegible]

(Awarded 13 Oct 43)

(b) D-141 Tpr MILLAY, L. ("A" Sqn)

Offence: A.A. Sec 15(1) A.W.L. from 2200 hrs, 7 Oct 43, until 0600 hrs, 8 Oct 43. (Absent 8 hrs)

17. PUNISHMENTS: Cont.

(b) Continued (D-141 Tpr RILEY, L.)

Awarded: 3 extra parades

Forfeits: 1 days' pay FR&I 149(1)(a) (Awarded 8 Oct 43)

(c) D-30 Tpr SCRAIRE, P.H. (Admin Wing)

Offense: A.A. Sec 15(1) A.W.L. from 2200 hrs, 5 Nov 43, until 0600 hrs, 6 Nov 43. (Absent 8 hrs)

Awarded: 7 days' pay A.A. Sec 46(2)(d)

Forfeitures: 1 days' pay FR&I 149(1)(a)
7 days' pay FR&I 149(2)

Total forfeitures: 8 days' pay (Awarded 7 Nov 43)

(d) B-137425 Tpr WALKER, J.L. ("B" Sqn)

Offense: A.A. Sec 15(1) A.W.L. From 2359 hrs, 23 Oct 43, until 2200 hrs, 24 Oct 43. (Absent 22 hrs, 1 min)

Awarded: 1 days' pay A.A. Sec 46(2)(d)

Forfeitures: 1 days' Pay FR&I 149(1)(a)
1 days' pay FR&I 149(2)

Total forfeitures: 2 days' pay (Awarded 25 Oct 43)

(e) K-91 Tpr WELLS, L.K. (Instr Wing)

Offense: A.A. Sec 40

Awarded: 2 days' pay A.A. Sec 46(2)(d)

Forfeitures: 2 days' pay FR&I 149(2) (Awarded 6 Nov 43)

18. STRENGTH DECREASE:

(a) Amendment: Pt II DO 263, d/11 Nov 43, para 20(a), insofar as it pertains to K-38625 Tpr LAWRENCE, W.W., amend by adding "Dvr Mech Tk "C"".

18. STRENGTH DECREASE: Cont.

(b) Amendment: Pt II DO 262, d/10 Nov 43, para 6(b), [illegible] as it pertains to K-38088 Cpl SMITH, P.R.A., amend to read "K-38088 Cpl SMITH, R.R.A."

(c) The u/m ORs are S.O.S. to Exercise "PEKE", w.e.f. 13 Nov 43. (Auth: 444/PEKE/4 d/31 Oct 43)

H-64004 Tpr BRATCHELL, K.P. B-48781 Tpr RAYNER, H.W.
B-63288 " ROBILLARD, R. D-141 " RILEY, L.
B-56011 Sgt BULLBROOK, T.W. (Mech Stmn "C")
L-36841 Cpl OZIRNY, A. (Clerk "C")
A-102840 Tpr SPARKS, C.J.

(d) The u/m ORs are S.O.S. to 5 C.A.R., w.e.f. 9 Nov 43. (Auth: EA 5c/2799, d/8 Nov 43)

G-420 Cpl BAUGHAN, A.G. G-85 Tpr FITZPATRICK, G.S.

(e) The u/m ORs are S.O.S. to No. 1 N.E.T.D., w.e.f. 9 Nov 43. (Auth: 408/DR/Comd/1, d/4 Nov 43)

H-63755 Tpr VERMETTE, V. B-74281 Tpr JONES, R.L.

(f) K-91011 S/Sgt PRIDHAM, C.P., is S.O.S. to No. 1 C.G.[illegible].U., w.e.f. 8 Nov 43. (Auth: MT 6449, d/6 Nov 43)

(g) The u/m ORs are S.O.S. to No. 1 C.O.R.U., w.e.f. 6 Nov 43. (Authorities shown)

A-399 L/Cpl LARKIN, B.L. 408/TransL/2, d/30 Oct 43
L-101456 Tpr WILSON, M.C. 408/TransW/2, d/30 Oct 43

(h) [illegible] Tpr McDADE, M.J., is S.O.S. to No. 1 N.E.T.D. from "F" Sqn, w.e.f. 5 Nov 43. (Category "E").

(i) H-45881 Tpr GOLDAMER, L.G., is S.O.S. to No. 1 N.E.T.D., whilst in hospital, w.e.f. 8 Nov 43. (Category "E")

(j) H-66601 Tpr CALDWELL, J.T., is S.O.S. TO 7 Bn X 4 List C.A.C., w.e.f. 9 Nov 43. (Auth: MRC/139, d/9 Nov 43)

(k) B-62393 Tpr BABIN, J.E.G. (OAC Op "C") is S.O.S. to 5 C.A.R, w.e.f. 11 Nov 43. (Auth: EA2/375, d/10 Oct 43)

16. STRENGTH DECREASE: Cont.

(l) The u/m ORs are S.O.S. to 2 C.A.R. , w.e.f. 10 Nov 43. (Auth: EA2/964, d/10 Nov 43)

H-294 A/L/Sgt EBY, N.A. H-308 A/L/CPl NICHOL, W.M.
H-39 Sgt TURK, W.C.

(m) Amendment: Pt II DO 258, d/5 Nov 43, para 26(c), insofar as it pertains to K-46021 Tpr BRANIGAN, J., add "Gnr Gp "C".

(H.D.W. MacPhee) Lieut.,
Records Officer,
No. 3 C.A.C.R.U.

Certified true copy

H. Larsson Capt & Adjt.
3 C.A.C. Regt.
22 Nov 43

Exhibit "A"

CANADIAN ARMY OVERSEAS

LEAVE PASS

Pass No. 750 Date 21 Oct 43

No. K.1133 Rank Tpr Name Smith. H.L.

has permission to be absent from his unit from 0800 hrs 21 Oct 43

to 0800 hrs 24 Oct 43 for the purpose of proceeding to

Northampton

9 ARMD RD (BCD)
20 OCT 1943

Orderly Room Stamp

for O. C. "A" SQDN. 9th ARMOURED REGT. (BCD)

(Unit Signature Stamp)

ENDORSEMENTS

	Sec. 19(f)	R.T.O.—Station Master—Local Police

INSTRUCTIONS

1. If you are travelling with free warrant have this pass stamped or endorsed in the space provided above by the R.T.O. station-master or local police at the place where you spend your leave. If you are unable to return to your unit due to interruption of transportation facilities have it endorsed to that effect by one of these officials.

2. Arms and equipment will not be checked at railway stations except during a warning between trains.

3. Carry this pass and your pay book (M.N.D.A.) at all times while on leave.

4. **Illness on leave.**
(a) Apply to the nearest unit of the Canadian Army, or
(b) If none in the area, apply to the nearest unit of the British Army, request necessary treatment and that the O.C. concerned give the facts to your Unit. If unable to rejoin your unit before the end of your leave obtain a written report from the M.O. and hand to your C.O. on rejoining, or
(c) If no military unit in the area, apply to a civilian doctor or the nearest Emergency Medical Service hospital. Obtain a letter verifying the facts and send to your C.O. at once. If unable to rejoin your unit before the end of your leave obtain a certificate and hand to your C.O. on rejoining.

5. Turn this pass in on rejoining your unit.

CFA 21
40/P & S/1309
(In pads of 100)(2421)

LIST OF WITNESSES IN THE CASE OF

A1133 Tpr. SMITH, H.L.W.

FOR THE PROSECUTION

1. A3129 Sgt. Burrows, G.F. - 6 (Area) Provost Company

FOR THE DEFENCE

NIL

(C.L. Nelson)A/Capt.
Officer detailed to take
The Summary of Evidence

In the Field
20 Nov 43

I, K1133 Tpr. Smith, H.L.W. ~~do desire~~ do not desire to have an officer detailed to represent me at my trial by Court Martial.

I desire the services of _____ if this officer is available.

H L W Smith
K1133 Tpr. Smith, H.L.W.

701.

Summary of Evidence in the case of No. K1133 Trooper Smith, H.L.W., a soldier of the Canadian Army Overseas on the strength of No. 3 Canadian Armoured Corps Reinforcement Unit.

The Commanding Officer directs that the evidence be taken on oath.

First Witness for the Prosecution

Documentary: A leave pass signed by Capt. D. ?. Kinlock, for O.C., "A" Sqn. 9 C.A.R. (BCD). This pass has been shown to the accused, marked by me as Exhibit "A" for the Prosecution and attached to the Summary of Evidence.

(C.L. Nelson) A/Capt.
Officer detailed to take
The Summary of Evidence

Second Witness for the Prosecution

Documentary: No. 3 C.A.C.R.U. PART II ORDER number 264, para. 7 (d). dated 12 Nov 43. A copy of this order has been shown to the accused, marked by me as Exhibit "B" for the Prosecution and attached to the Summary of Evidence.

(C.L. Nelson) A/Capt.
Officer detailed to take
The Summary of Evidence

Third Witness for the Prosecution

A3129 Sgt. Burrows, G.F., a soldier of the Canadian Army Overseas on the strength of 6 (Area) Provost Company:

I certify that in my opinion due to the exigencies of the service, loss of time and expense involved, the attendance of this witness is not readily procurable. A statement of his evidence, signed by him, has been read to the accused, marked by me as Exhibit "C" and attached to the Summary of Evidence.

Ex A
J.O.L.

(C.L.Nelson) A/Capt.
Officer detailed to take
The Summary of Evidence

I do not require the attendance of this witness for the purpose of cross examination.

K1133 Pte. Smith, H.L.W. (accused)

(2)

The accused was cautioned as follows:

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to give evidence on oath or to make a statement.

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence of the accused and that Rules of Procedure 4 (c) (d) (e) and (f) have been complied with.

(C.L.Nelson) A/Capt.
Officer detailed to take
the Summary of Evidence

In the Field
20 Nov 43

J.D.M.

M.F.M. 6
(A.F. B.122)
40/P & /8136 (2965)

No. K1133 Name Smith, H.L.W. Sqn., Battery, or Company | Corps C.A.C. | Date of enlistment 9 Jul 41 | G.C. Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No. 1 | Signature O.C. Company, etc. D.?.Kinlock Capt. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field				Sheet No. 1 destroyed 10 Jan 42. Last Entry - Nil Drunkenness - N.I.					
Field	31 Jan 42	Tpr.		A.A. Sec. 15(1) A.W.L. from 2359 hrs. 31 Jan 42 to 1030 hrs. 1 Feb 42. (absent 10 hrs. 31 mins.)	K853 A/L/Cp Parenteau R.E.	Admonished	2 Feb 42	Capt. J.L. Cann	Forfeits 1 day 's pay FR&I 149 (1)(a)
Field	29 Mar 42	Tpr.		A.A. Sec. 19 - Drunkenness	Documentary	10 days C.B.	4 Apr 42	Lt.Col. J.H. Larocque	
Field	2 Jul 42	Tpr.		A.A.Sec.15(1) WOAS AWL from 0100 hrs. 2 Jul 42 to 1055 hrs. 7 Jul 42 (absent 5 days 9 hrs. 55 mins)	K809 S.S.M. Koronko, P.	168 hrs. Det.	9 Jul 42	Lt.Col. W.C. Murphy	Forfeits 6 days pay FR&I 149(1)(a) Forfeits 7 days pay FR&I 149(1)(a)

Ex C 181

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	6 Jan 43	Tpr		AA.Sec.40 WOAS conduct to the prejudice, etc. At 2115 hrs. 6 Jan 43 was improperly dressed having worn leather jerkin when walking out of camp lines.	Sgt Thornber S.E. Cpl Russell W.R. Tpr. Hornsberger F.H.	7 days C.B.	9 Jan 43	Major C.B. West	
Field	28 Jan 43	Tpr.		A.A.Sec.40 conduct to the prejudice, etc. Fell out from Sqn. route march without getting permission to do so from troop Sgt.	A/Sgt. J.C. McLeod	7 days C.B.	1 Feb 43	Capt. D.L. Kropf	
Field	30 Jul 43	Tpr.		A.A.Sec. 40 WOAS conduct to the prejudice, etc. using profane language to an N.C.O.	K831 Cpl. Johnson, F.	5 days C.B.	4 Aug 43	Major J.L. Tyrer	
Field	17 Oct 43	Tpr.		A.A.Sec.15(1) WOAS AWL from 1400 hrs. 17 Oct 43 to 1130 hrs. 18 Oct 43 (absent 19 hrs. 30 mins)	S.S.M. Worthington C.O. Sgt. J.C. McLeod	14 days C.B.	20 Oct 43	Lt.Col. H. Angle	Forf 1 day pay FR&I 149(1)(a)

CERTIFIED TRUE COPY FROM THE REGIMENTAL BOOKS IN MY CUSTODY

24-11-43 (C.L.Nelson)Capt.&Adjt. Training Wing #3 CACRU

M.F.D. 385
40/F & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Ex B
7.8.41.

Number	Rank	Name	Regiment (or unit)
K.1133	Tpr.	SMITH, H.L.W.	3 CACRU

1. The following is a fair and true summary of the entries in the Regimental and Squadron Conduct sheets or Company conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For	A.A.Sec 15(1)	1 times	A.A.Sec 15 (1)	3 times
For	A.A.Sec 40	times	A.A.Sec 19	1 times
For		times	A.A.Sec 40	times
For		times		times

Number of instances of gallantry or distinguished conduct

or,

There are no entries in the conduct sheets of the accused.

NOTE:—If the charge is for striking a superior officer the number for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act, Section 47 of the Army Act, and dispensations with trial under A.A. s.74 are set out in the statement annexed to this statement.

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for [illegible] beginning on the [illegible] day of [illegible]

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 5 days in military custody, making a total of 5 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his attestation paper is 25 years old

6. The date of his attestation specified in his attestation paper 9 July 1941

7. The service which the accused is allowed to reckon towards discharge is 2 yrs 3 months 28 dy

8. The accused is entitled to reckon 2 yrs 3 mos 28 dys service for the purpose of determining his pension, etc.

9. The accused is in possession of no decorations or war service medals or his war record is not in his possession or entitled to.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer held the substantive rank of [illegible]

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ... Permanent Force unit ... dated ..., and in his regiment (or corps), the rank of N/A dated ...

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

... Date of promotion.

In the rank of ... years.

In the rank of N/A years.

In the rank of ... years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Army Act, and of cases in which trial has been dispensed with of accused, Number ... Rank ...

Name ... of ... Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
	N/A			

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 24 day of Nov 43

(Signature) Capt

(Rank) (Unit)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ... signed by the president, and annexed to the proceedings.

HL-76

Gov. Smith H.O.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: G 3729 Gunner Harold Osborn Smith

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 5c. 40	Not Guilty		Is guilty of the charge with the exception that the vehicle is found to be the property of the United States Army Air Corps.
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 12 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for sixty (60) days

(Sgd) _____ Judge-Advocate, if any. 22 Dec 44 Date awarded. (Sgd) R. T. Dawson Capt President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(F), RP 120(F), MML p 760.)

Date _____ (Sgd) _____ Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be ~~not committed to prison or detention barracks~~ until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) _____ Brig
COMMANDER
ON ASE RFT GROUP
Confirming Officer.

Date 28 Dec 44 Commanding

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
G3729 Pte SMITH, H.O. R.C.A. 4 Bn - 1 C.B.R.Gp.	4 Jan 45	Adjutant 2 Can Reinforcement Units

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160. 4h-76.

CPA26 (To lieu of APA21) 40/P & B/1000 (40-01)

FIELD GENERAL COURT-MARTIAL

4/38B

Convened by Order of Lt Col L J Flynn Comd 1 C B R G dated 20 Dec 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 162, 183, fns, KR Can 308, 318, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
G 3729	Gunner	Harold Osborn	Smith	4 Cdn Rft Bn

PROCEEDINGS REVIEWED
18 Jan 45
DEFENCE OFFICE JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date) 22 Dec 1944

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 26-17

A1. The President, Members, waiting Member, ~~JA, if any~~, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 52, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (~~not~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 0915 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial. (1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ (2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ ~~be interpreted?~~ Ans ~~(The Interpreter is sworn.)~~ Do you object to S/Sgt Rabjones as shorthand writer? Ans No Sir. The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No Sir.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any~~, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Capt	R T Dawson	4 Cdn Rft Bn
Member	A/Capt	W A Stevens	4 Cdn Rft Bn
Member	Lieut	C A Richardson	4 Cdn Rft Bn
Judge-Advocate			
Prosecutor	Capt	H. Hopper	4 Cdn. Rft Bn
Defending Offr	Capt	C. Beatty	4 Cdn Rft Bn

Questions by President: Is the Prosecutor a lawyer? Ans No Sir. Is the Defending Offr a lawyer? Ans No Sir.

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Di p 23.)

A8. The accused G 3729 Gnr Smith H.O. before arraignment make(s) (no) ~~a~~ plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), (GB), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~not~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~not~~ object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See paras 1 of Instrs p 2. 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 3. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is adjourned to~~) considers the Instrs on Procedure after Arraignment at top of p 3. The proceedings are continued on Record Form No.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

M94

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (*i*) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (*ii*) *to record the pleas as the findings of Court. After deciding between* (*i*) *and* (*ii*), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. No Sir.....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes his (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the Nil charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the Nil charge(s), ~~and allowed on the charge(s)~~, and that, accordingly, the trial will proceed on the former, ~~but the accused is (are) found Not Guilty on the latter charge(s).~~(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para* D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. Gives evidence on oath. Do you intend to call witnesses on your behalf ? Ans. No Sir. ~~Are they witnesses as to character only ? Ans.~~.....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. Cf AA* 95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1. 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statements, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President ~~announces the finding(s), if any, of Not Guilty, and~~ states to the accused that the finding(s) of the Court on the Nil charge(s), being subject to confirmation, will be promulgated later.(1) *Or,* ~~The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated.~~ Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*c*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No Sir.....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), ~~and certified true copy/copies of Conduct Sheet(s)(2)~~, purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A. ~~and Ex.....~~ respectively.(3)
(1. *MFD* 203 *or MFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 158. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes Sir.....(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the J.A. thereon~~.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 91, 118, 119(4), *KR Can* 308, 330, 563-566. *Overseas* 80 *RPP*, 2313, *MML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(3), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

THE ACCUSED, NUMBER G3728 GUNNER HAROLD OSBORN SMITH OF 4 CDN RFT BN, 1 CDN BASE RFT GROUP, A SOLDIER OF THE CANADIAN ARMY OVERSEAS, ALLIED ARMIES IN ITALY, IS CHARGED WITH:

1ST CHARGE
A A Sec 40

WHEN ON ACTIVE SERVICE
CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

In the Field, in Italy, on 10 Dec 44, was improperly in possession of one Willy's Bantam No. 20521813, the property of the United States Air Ministry.

L. J. Flynn

In the Field
20 Dec 44

(L J Flynn) Lt-col
Commanding
4 Cdn Rft Bn - 1 Cdn Base Rft Group - CMF

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

L. J. Flynn

In the Field
20 Dec 44

(L J Flynn) Lt-col
Commanding
4 Cdn Rft Bn - 1 Cdn Base Rft Group - CMF

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(b).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apprnt, A/R or A/Apprnt.	Full Christian Names.	Surname.	Unit.
G3728	GUNNER		HAROLD OSBORN	SMITH	4 Cdn Rft Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (they) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 20 Dec 44 endorsed by me, ~~or his commanding officer~~, "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable that such offence should be tried by any other field general court~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint ~~(other Offrs for the Court)~~ a Fd Offr as President, for the reasons I have attached hereto. As no suitable

(AA 49, RP 104(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate of the Court convened hereby~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Capt	R T SAWSON		4 Cdn Rft Bn

MEMBERS.

A/Capt	W A STEVENS		4 Cdn Rft Bn
Lt	C A RICHARDSON	(Named or detailed. RP 106.)	4 Cdn Rft Bn

WAITING MEMBER.

Lt	D J DOOLEY	(Named or detailed, if any. RP 106.)	4 Cdn Rft Bn

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

n Active Service in the Fd

ITALY

(Country.)

20 Dec 44

(L J Flynn)

(Signed personally. RP 105 fn 2.)

Lt-col

(Rank.)

Commanding 4 Cdn Rft Bn - 1 Cdn Base Rft Group

Convening Officer.

CMF

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

CPA66 (to take place of AFA61)
60/P.M.R./1567 (46011)

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

DEC. 22ND 1944

K.R. (CAN) Para 552

I hereby certify that I have this morning examined No C 3728

GNR. SMITH. H.O. on strength 4 Cdn

Rft Bn, 1 C B R Gp, and in my opinion he is FIT/~~UNFIT~~ to undergo

trial by Court Martial

Capt

Medical Officer 4 Cdn Rft Bn.

FIRST WITNESS FOR PROSECUTION

1st Lieut J R Gruver, U.S.A.A.F., having been duly sworn, states:

I am 1st Lieut J R Gruver, of the 85th Fighter Squadron, 79th Fighter Group. On the evening of 10 Dec 44 at approx 1930 hrs, I, accompanied by three other officers left the billets and went to where we had parked a jeep, Squadron Jeep No.1 Ser No. 20521813. I found that the jeep was missing from where it had been parked so I went around the corner to the H.Q. parking area to see if it was moved there. It was not there. I spotted a jeep touring in this area which looked like ours so, still accompanied by the other three officers, I climbed into a second jeep and started to follow. We finally caught up with them and I drove up alongside. Their jeep was being driven very slowly. I ordered them to stop but instead they accelerated and started off down the road pretty fast. We followed them. We finally caught up to them at a conner. We took them to the Military Police and preferred charges against them. This jeep is the property of the U.S.A.A.C.and is assigned to our squadron. I recognize the accused as one of the occupants of this jeep. He was not driving but was sitting beside the driver.

Cross-examination by the Defence

Q How many men were in the vehicle?
A There were just two men in the vehicle.

Q What was the condition of these two men?
A It appeared as if these men were pretty well under the weather.

Q When you finally stopped them, did you have any trouble getting them under control?
A They stopped due to the fact that they did not make a corner. They started out again and I had just time enough to jump out of my jeep and cut off the switch of their jeep and to grab the drivers arm so he could not turn.

R P 83B complied with.

SECOND WITNESS FOR THE PROSECUTION

1st Lieut C H Odle, U.S.A.A.F., having been duly sworn states:

I am 1st Lieut C H Odle, Jr. of 85 Fighter Squadron, 79th Fighter Group, U.S.A.A.F. At approx 1930 hrs 10 Dec 44 I was one of four officers who left billets and went downstairs to get our jeep and go to a party. The jeep was not where it had been parked. We then went around the corner to H.Q. While there a jeep went by which looked like the one that we had lost. We got in another jeep and went after it and finally caught up to the missing jeep. In it were two men. We took these two men to the British M.P's. I recognize the accused as one of the two men found in the jeep.

Cross-examination by the Defence

Q Were you in the jeep with Lieut Gruver following the stolen jeep?
A Yes Sir.

Q What was the condition of these two men?
A In my opinion they were both drunk.

R P 83B complied with.

ADDRESS BY DEFENCE

Mr President. The charge reads that the accused was improperly in possession of a jeep which is the property of the United States Air Ministry. I submit that there is no evidence put forward that the United States Air Ministry owns this jeep. Lieut Gruver says it belongs to the U.S.A.A.C. I would submit that there is no such thing as a United States Air Ministry. For that reason the accused is not guilty of the charge as framed.

REPLY BY PROSECUTION

I submit that the U.S.A.A.F. number will establish beyond any doubt the ownership of that jeep. Positive proof will have to be produced from the records of the U.S.A.A.F. but the poor technicality of the title, to my mind, has no bearing whatever on the charge and I think the point of ownership can, without a doubt, be proven by the number which has been quoted by Lieut Gruver.

In answer to that last statement, the charge against the accused is that he was "In the field, in Italy, on 10 Dec 44, was improperly in possession of one Willy's Bantam No. 20521813" and I read the charge as "improper possession".

The accused, G3728 Gnr Smith H O, having been duly sworn, states:

On 10 Dec 44, just after supper, I left and went up town. I got some stuff to drink at an Italians house and then I left and started walking through town. I met Gnr Freeman and he asked me if I knew where I could get something to drink. I told him "yes" and we went to another Italian's house and got something to drink and I had one too many. From then on I do not remember anything until I was in the guard room. It was around 2100 or 2130 hrs when I woke up in the guard room.

R P 83B complied with.

SUMMING UP BY PROSECUTION

In summing up I would like to draw the attention of the court to "Evidence and Punishment" page 25 para 48. I contend that the prosecution has proven beyond any doubt that an offence against military law took place but evidence has also been revealed that the accused was under the influence of alcohol at the time. It is a matter for the court to decide just how much consideration should be allowed in this case. I would further refer the court to "Archibald's Criminal Pleading, Evidence and Practice" as to the rule on Drunkeness.

SUMMING UP BY THE DEFENCE

The accused has disclaimed all knowledge of this incident but he admits that at the time there was a possibility that he could have done a thing similar to that with which he was charged. The section of M M L quoted by the prosecuting officer I think covers the situation fully.

ADDRESS BY DEFENCE IN MITIGATION OF PUNISHMENT

The accused has been overseas for 2 years and arrived at his field unit in Sicily on 25 Jul 43. In his three years service the only outstanding award on his conduct sheet is one of 7 days C.B. He has been in action with his unit from the time he joined them on 25 Jul, coming up at that time through 4 Bn until approx 1 Dec 44 when he was one of 40 to leave the unit when the War Establishment of the unit was decreased. Due to the fact that his MFM 6 is supplementary only it must be considered as having nothing on it. In actual knowledge there is very little on it, 7 days C.B. In addition to that the accused has no recollection whatsoever of the circumstances surrounding this jeep and although, as has been brought out, drunkeness is not an excuse, I would ask the court to make not a heavy sentence award in this case.

Exh 'A' RH

ARMY FORM B.206.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C3728	Gunner	HAROLD OSBORN SMITH	4 Cdn Rft Bn

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number in column 1 of the conduct sheets, provision being given to the most serious charge in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—In the charge in his disposition the entries for disappearance must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	No MFM 6 available times	times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct,

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, *or*

~~PREVIOUS CONVICTION† OF THE ACCUSED by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule hereto.~~

3. The accused is not under sentence at the present time, ~~*or the record of the present trial is not complete up to the day of*~~

4. The accused has been in confinement, awaiting trial on the present charges, for from 2200 hrs 10 Dec 44 days in civil custody, and 12 days in military custody, making a total of 12 days, of which N.I days were spent in hospital.

5. The present age of the accused according to his ~~*attestation*~~ record of service is 23

6. The date of his ~~*attestation*~~ specified in his ~~*attestation*~~ record of service is 27 Nov 41

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N/A

8. The accused is entitled to deferred pay or gratuity in respect of N/A service.

9. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or is in possession of or entitled to (state any military decoration or reward)*) N/A

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated and in his regiment (*or corps or department*) the rank of dated

(P 14626) Wt. 13602/144 225,000 8/41 A.&E.W.,Ltd. Gp.698

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. G3728 Rank GUNNER Name Smith H C of 4 Cdn Rft Bn Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		No MFM 6 available		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 20th day of December 1944

(A E Davidson) Capt & Adjt
4 Cdn Rft Bn - 1 C B R G

If the accused has served as a non-commissioned officer continuously, without reduction, to the present date,

Date of Promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

(Insert "Yes" or "No"—If any matter in any of the above paragraphs appears to stand from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs remained amended accordingly.)

Summary of Evidence in the case of G3728 Gunner Harold Osborn SMITH, of 4 Cdn Rft Bn, 1 C B R G, who is charged with WOAS Conduct to the Prejudice of Good Order and Military Discipline (A A Sec 40).

By direction of the Commanding Officer, the evidence is taken upon oath.

1st Witness: Lieut J R Gruver, 79th Fighter Group U.S.A.A.F.

A written statement of the evidence of this witness purporting to have been signed by him has been read over to the accused and is attached hereto as Exhibit 'A'.

I certify that owing to the exigencies of the service and the time and the expense involved, the attendance of this witness at the taking of the summary cannot readily be procured.

(R R Brown) Capt
Officer taking Summary

The accused does not demand the presence of this witness for cross-examination.

2nd Witness: Lieut C Odle, 79th Fighter Group U.S.A.A.F.

A written statement of the evidence of this witness purporting to have been signed by him has been read to the accused and is attached hereto as Exhibit 'B'.

I certify that owing to the exigencies of the service and the time and the expense involved, the attendance of this witness at the taking of the summary cannot readily be procured.

(R R Brown) Capt
Officer taking Summary

The accused does not demand the presence of this witness at the taking of this summary for cross-examination

Question to the Accused:

Do you wish to make a statement or to give evidence upon oath. You are not obliged to give evidence or to make a statement unless you wish to do so but anything you say or any evidence you give may be taken down in writing and may be used in evidence.

Answer by the Accused:

I have nothing to say at this time.

I certify that R P 4 (c) (d) (e) (f) and (g) have been complied with.

I certify that this summary was taken down by me in the presence and hearing of the accused.

In the Field
20 Dec 44

(R R Brown) Capt
Officer taking Summary

Exhibit A 188

Statement of Evidence of 1st Lieut Jay R Gruver of 79 Fighter Group, American Air Force.

I am 1st Lieut J R Gruver of 79 F.G. U.S.A.A.F.

At approx 1930 hrs 10 Dec 44 accompanied by Capt J Slatton and Lieuts W Erck and C Odle, I left my billet to get a jeep, No.20521813 which I had left parked on the road in front of my billet. The jeep was not there. We then went to H.Q. to see if the jeep had been taken there. It was not at H.Q. While standing in front of H.Q. building I saw a jeep which looked like ours pass on the road. Again accompanied by the other officers, I got into another jeep and gave chase. We found the stolen jeep, and ordered the driver to stop. He did not do so but accelerated and attempted to get away. We followed, and eventually caught the other jeep. The two occupants of the jeep, whom I could recognize, were Canadian soldiers. We took them to the British Military Police under arrest. This jeep is the property of the United States Air Ministry.

Jay R. Gruver
(Jay R Gruver)
1st Lt A.C.

Exhibit A

Exhibit B'

Statement of Evidence of 1st Lieut C Odle, of 79 Fighter Group U.S.A.A.F.

I am 1st Lieut C Odle of 79 F.G. U.S.A.A.F.

At approx 1930 hrs 10 Dec 44 I was with Lieut Gruver when he found his jeep missing. I was with him during the chase after the missing jeep and there when the jeep was finally caught. I can recognize the two Canadian soldiers who were the occupants of this jeep.

(C Odle)
1st Lt A.C.

Exhibit B'

RECEIPT FOR CHARGE SHEET & SUMMARY OF EVIDENCE

I hereby certify that I have this date 30 Dec 1944 received from 4 Cdn Rft Bn, 1 C B R Gp, 1 copy of Charge Sheet and Summary of Evidence referring to charge (s) of Conduct to Prejudice AA Sec 40 for which I was remanded for Court Martial.

H O Smith
(Sig of Accused)

REQUEST FOR DEFENDING OFFICER

I hereby request that Capt C Beatty if available, act in my defence. If this officer is not available I request that the Commanding Officer of 4 Cdn Rft Bn, 1 C B R Gp appoint an officer to act in my behalf.

H O Smith
(Sig of Accused)

Pursuant to Chap V Sec V Sub Sec 35 of MAL, I hereby certify that I have been duly warned that the Prosecutor is an officer possessing legal qualifications.

(Sig of Accused)

29 U.

Pte SMITH. I.T.

Correspondence to be PINNED here

29-0

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this twenty-eighth day of November, 1916;

Whereas it appears to me, the undersigned, an officer in Command of the 9th Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[~~and that it is not practicable to delay the trial for reference to a superior qualified officer.~~]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

*[~~I am unable to appoint :—~~

*(~~1. Three Officers to form the Court.~~)

*(~~2. A Field Officer as President.~~)

~~for the following reasons, namely :—~~]

19

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	D. C. Cameron	43rd Battn.

Members.

Rank.	Name.	Regiment.
Captain	J. M. Creed	102nd Battn.
Lieutenant	C. A. Peck	102nd Battn.

* Must be signed personally by the Officer actually in command at the time, and all alternatives in the composition of the Court to be initialled by him.

*Signed E. W. Wadsworth

Commanding Comd. 9th Canadian Infantry Brigade.

Brig.-Gen. Commanding 9th Canadian Infantry Brigade

SCHEDULE.

Number, Rank (a). Name and Unit o. Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
F-57623 Pte. SMITH, IVAN JAMES NORTH NOVA SCOTIA R. S. HAMILTON	1st Charge. Wilfully maiming himself with intent to render himself unfit for military service Sec 15 (2) Army Act.	Not Guilty	Guilty One year Detention A. C. Cameron Lt Col 30 Nov 42	Confirmed Ewll
	2nd charge Alternative. In act to the prejudice she thereby himself duly making himself unfitness unfit for service Sec 40 Army Act	Not Guilty	Withdrawn	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary) :—

(Signed) E W Tallentire Brig (Signed) A. C. Cameron
Commanding 4 Can Inf Bde Commanding Officer (c) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 30 day of Nov 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) See
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 30 day of Nov 19 42

A. C. Cameron
President of the Court Martial.

C. Certificate in case of death sentence.

* See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

Signed this 1 day of Dec 1942.

E W Tallentire Brig
Confirming Officer.

Promulgated and extracts taken in the case of F57623 Pte Smith I. J.

(a) (Dated) 2 Dec 1942 (Signed) J. G. Chapman Capt.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

B2.

CHARGE SHEET

The accused, No. F87623 Private Smith, I.J., North Nova Scotia Highlanders, a soldier of the Canadian Army (Overseas) is charged with:-

1st CHARGE
SECTION 18 (2)
ARMY ACT

Wilfully injuring himself with intent thereby to render himself unfit for service

in that he

in the field on the 16th August 1942 at approximately 2130 hours did wilfully shoot a bullet through his left hand with intent thereby to render himself unfit for military service.

or in the alternative

The accused, No. F87623 Private Smith, I.J., North Nova Scotia Highlanders, a soldier of the Canadian Army (Overseas) is charged with:-

2nd CHARGE
SECTION 40
ARMY ACT

An act to the prejudice of good order and military discipline,

in that he

in the field on the 16th August 1942 at approximately 2130 hours did shoot a bullet through his left hand, thereby rendering himself temporarily unfit for service.

(C. Petch) Lt. Col.,
Officer Commanding,
North Nova Scotia Highlanders.

In the Field
28 November 1942.

To be tried by Field General Court Martial.

In the Field
28 November 1942.

(E.W. Haldenby) Brigadier
Comd. 9 Cdn Inf Bde.

Ex. "C"

NORTH NOVA SCOTIA HIGHLANDERS
C.A.

I certify that I have this morning examined and in my opinion
F/7623 Pte Smith J. J.
he is fit to undergo trial by Court Martial.

R.C. Ralph Capt. for
O.C. Gilchrist (Capt) R.A.M.C.
Att. N.S.H.C.A. Highlanders

Date. 30 Nov 42

Pte

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for General and District Courts-Martial

Proceedings of a Field General Court-Martial held at

on the 30th day of November 19 42 by order of

Brig E.W. Haldenby, M.C., V.D. Commanding 9th Cdn Inf Bde

dated the 28th day of November 19 42

President.

Major D.C. Cameron S.D.& G. Highrs.

Members.

Capt. E.M. Childs H.L.I. of Can.

Lieut. C.A. Bean H.L.I. of Can.

, Judge Advocate.

Trial of* # F87623 Pte. IVAN JAMES SMITH

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that is not available to serve owing to

Bea , waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† Capt. C.V. Matson

Counsel‡ or defending officer† Capt. A.J. Davis

At 1015 o'clock the Trial commences.

The order convening the Court is read, and is marked signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. No Sir

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).

† Here state Rank and Name, and Regiment (if any).

‡ Qualification to be stated.

A.P.2.

11

B

The President, members and judge advocate are duly sworn.

The following officers under instruction are duly sworn.

Capt. L.M. Rhodenizer

Charge-Sheet

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

Instruction. *If the accused has elected to be tried under Army Act, sec. 48 (8) the fact should be here recorded.*

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Not guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Not guilty *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

Answer.

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

Answer.

The accused having pleaded Guilty to charge, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

C

Proceedings on Plea of Not Guilty

*Instruction. (See R. P. 39 (A)) Question.

*Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No, Sir.

The prosecutor makes an opening address [hands in a written address, which is read, marked "A", signed by the President, and attached to the proceedings.]

The prosecutor proceeds to call witnesses.

First witness for prosecution.

Detective Sergeant Allan Hoare,

being duly sworn, is examined by the prosecutor.

I am Allan Hoare, Detective Sergeant of the West Sussex Constabulary, stationed at Horsham.

On Saturday 22 August of this year, in the afternoon I interviewed the accused, W/7623 Pte. Smith, I.J. at No 1 Canadian General Hospital, Horsham. I told him who I was and that I was making investigations about an allegation of an assault upon him. He appeared somewhat confused, and I pointed out to him the seriousness of making any false allegations, and he elected to make a statement, which I took down in writing and which he signed. I produce this statement.

(Det. Sgt. Hoare then read the statement which has been attached to the proceedings and marked Exhibit "A".)

Cross-examined by the defence:

Q. Did Pte. Stewart see this statement?
A. I think I read certain parts of the statement to him.
Q. Not all of this?
A. I can't be sure if I did, Sir.
Q. Did he say that it was correct?
A. Stewart? Stewart made a statement as well. I interviewed him after. That statement was produced at the last Court-Martial. I have a copy of it.

Cross-examined by the Court:

Q. Was this statement of Stewart's given in the presence of the accused?
A. No Sir, he was still in hospital.
Q. Did you caution him?
A. No Sir, we don't caution people until we make up our minds to charge them. It is not the custom over here.
Q. What about Smith?
A. The same applies to Smith. We didn't caution him.

A.E.C.

Second Witness for prosecution — Capt. H.R. Robertson, No 1 Canadian General Hospital.

Having been duly sworn, is examined by the prosecution.

I am Capt. H.R. Robertson of No. 1 Canadian General Hospital.

Q. Do you know the accused?
A. Yes.
Q. Could you tell us anything you know about the accused?
A. Yes. He was admitted on the 16th of August with a wound of the left hand. The wound extended from the back of the hand and was filled with a black pulverized substance. There was a fracture of the second metacarpal. The wound was treated surgically and has since healed, leaving him with a slight disability, which should be-come less.
Q. Could this wound have been caused by a bullet?
A. Yes.
Q. Could you state that it was caused by a bullet?
A. No. The only definite proof that it was caused by a bullet would be to find the bullet in it, which there was not, though the black powder round the wound and its general character suggested that it was caused by a bullet fired at close range.

Cross-examined by the defence:

Q. Did you notice any other marks which might have been made by a blank round?
A. No.
Q. Would you say that that was the only wound or mark on his hand?
A. As far as I know. There was plenty of blood and I might have easily missed some other small marks.

Cross-examined by the Court:

Q. Is there any likelihood of permanent injury?
A. There will be some permanent limitation of the left index finger, but nothing that would prevent him from doing any job.

Third Witness for prosecution — F88952 Pte. Stewart, G.A.

having been duly sworn, is examined by the prosecution.

I am F88952 Pte. Stewart, G.A., North Nova Scotia Highlanders.

Q. Do you know the accused?
A. Yes.
Q. Will you tell the court what happened on the evening of about the 23rd of August.
A. Do I have to say anything, sir?
Q. Yes.
A. Pte. Smith and I were going to the pub about the same time Sunday evening, and he showed me his left hand, which had a black mark on it, and was swollen up. I asked him how it happened and he said it was from a blank round. I asked him why he had done it, and he said he had something on his mind. We went on to the pub and had several drinks and left the pub about one-half past eight or one-quarter after nine - something like that time - I don't know the exact time.

V

C 2 (Cont'd)

When we got up to the gate, he took a live round out of his pocket and tried to set it off with a match. We then came back to the billets and got his rifle, went over into the field and he asked me to catch the butt or feel the butt, I'm not sure which he said, and he pressed the trigger and he laid on his side and he said his hand was bleeding bad and asked me to tie it up. He asked me if I would take his rifle back and put a pull-through through it. I cam right back to our billets, and that's all I know.

Cross-examined by the Prosecution:

Q. How many drinks did you have at the Crabtree?
A. Four whiskies and six beers, sir.
Q. Who did you say went and got the rifle?
A. Smith, Sir.
Q. Where were you when he got the rifle?
A. I'm not sure whether I was with him or not, Sir, or whether I went up stairs or stayed down.
Q. When you went downstairs again and went over into the field, who asked you to go into the field?
A. Smith, Sir.
Q. Do you remember who put the round into the rifle?
A. No sir.
Q. Did you see him put it in?
A. No, sir.
Q. You know you didn't put it in?
A. Yes, Sir.
Q. When you had hold of the rifle, what position were you in?
A. Down like that, sir. (Rifle was produced and Stewart demonstrated to the court.)
Q. Did Pte. Smith say anything else?
A. He said for me not to mention it, sir.
Q. He asked you if you would put a pull-through through his rifle?
A. Yes.
Q. Where was Pte. Smith the last time you saw him?
A. In the field, sir.
Q. Will you just show us exactly how the rifle was?
A. Yes, Sir. (Demonstrates to the Court.)

Cross-examined by the Court:

Q. You were standing?
A. Yes, sir, as far as I can remember.

Cross-examined by the Defence:

Q. You saw a mark of a blank round, you said, on his left had before you went into the pub?
A. Yes, sir.
Q. Did you know that Pte. Smith intended to do this before you went with him that night?
A. No, sir.
Q. Could it not have been possible that you realised what was going to happen, and that you would probably be implicated for provoking, and therefore you made up this story about the black mark?
A. No, sir, it was just what he told me.
Q. When you got to the field, and the rifle was procured, did you not then know what was going to happen?
A. No, sir.

Acc/

VI

C 2 (Cont'd)

Q. What did you think was going to happen?
A. I didn't know, sir.
Q. When you went into the field and had your hand on the rifle, did you know what was going to happen?
A. No, sir.
Q. Did you give the accused a kiss and tell him to pull the trigger?
A. No sir.
Q. Will you tell the court what you thought was going to take place when you both went into the field with your rifle - in your own words?
A. Well, sir, I did not think anything at all. I thought he might be going to fire it at a rabbit or something, I didn't know, I did not think anything else.
Q. Had you ever made any statement to anyone stating that you might want to get out of the army?
A. No, sir.
Q. Did you say you would put the pull-through through the rifle, or did he ask you?
A. He asked me, sir.
Q. What did you do about it?
A. I put the pull-through through it and then took the rifle back.
Q. Was it customary for you to hold the rifle as you say you did without knowing what was going to be fired at:
A. I did not know, sir, what was going to be fired at.

Cross-examined by the Court:

Q. Did you know at any time on the 16th of August what Pte. Smith was thinking of?
A. No, sir.
Q. When you got back to the gate and Smith attempted to set off this live round with a match, whose idea was it to get the rifle.
A. Smith's, Sir.
Q. Did you at any time caution him that he might be hurt?
A. No, sir, I did not realize it at the time, sir.
Q. Did the accused at any time during the proceedings say anything about pulling the trigger?
A. No, Sir.
Q. In other words, it was a complete surprise to you when the rifle went off. Did you know it was loaded?
A. No Sir.
Q. When you were holding the butt of the rifle, could you see where Smith's hands were?
A. No, Sir.
Q. But you knew he must be holding the rifle?
A. Yes Sir. Before I had hold of it he had hold of it with both hands.
Q. On the ground?
A. Yes, Sir.
Q. Did it not dawn on you at the time that it was a peculiar way to discharge a rifle?
A. No, Sir, I never thought anything about it.
Q. Did you realize after this had taken place that a crime had been committed?
A. Yes Sir, I did.
Q. Would you tell the court just exactly what you thought about it?
A. I did not think anything of it at the time.
Q. What consequence did you think it would have as far as Smith was concerned?
A. I didn't know it would have any, sir.
Q. You said in your evidence that you were cautioned to say nothing about the incident. Was that caution made before or after the shot was fired?
A. After the shot, sir.

DEC

VII

C 2 (Cont'd)

Q. There was nothing said previously by Smith of this?
A. No, Sir, not until after the shot was fired.
Q. After the shot was fired?
A. Yes, Sir.
Q. You said that after you bandaged Pte. Smith's hand you left him in the field. Is that correct?
A. Yes, Sir, I left him in the field.
Q. Did it occur to you that he might be seriously injured?
A. No, Sir. It was dark, sir, and I did not know, Sir.
Q. Did you care?
A. It wasn't my offence, Sir, and I didn't worry much about it. I couldn't help it, and couldn't fix it up.

Fourth Witness for Prosecution

F59689 Pte. Johnston, R.B., North Nova Scotia Highlanders,

having been duly sworn, is examined by the prosecution.

Q. What is your name?
A. Pte. Johnston, R.B. Number F59689.
Q. Do you know Pte. Smith?
A. Yes Sir.
Q. Is he here?
A. Yes Sir. (points him out).
Q. Will you tell the court any incident that you can remember that happened on the 16th of August this year, inconnection with Pte. Smith?
A. I went down to the Crabtree pub and Pte. Stewart and Pte. Smith were at the pub. I spoke to Pte. Stewart. I went in the pub and came back out, and I went back to barracks. I passed Pte. Smith and Pte. Stewart on the road.
Q. In your opinion, would you say that Ptes. Stewart and Smith were drunk?
A. No, Sir.
Q. Would you say that they had been drinking?
A. Yes, Sir.
Q. But not drunk?
A. No, Sir.

Cross-examined by the defence:

Q. Were you handy to Pte. Smith at any time that evening?
A. Yes, Sir. When I came into the pub I spoke to pte Stewart who was standing alongside of Pte. Smith.
Q. Were they drinking then?
A. They didn't have any with them, but they had been drinking.
Q. Did you notice Pte. Smith's hand?
A. No, Sir.
Q. Was there anything in his actions which might lead you to believe that Pte. Smith had an injury to his hand?
A. No, Sir.

Cross-examined by the Court:

Q. You stated that they were drinking?
A. As I went into the pub. When I came out, Pte. Stewart was looking bad, and Smith and I asked him if he was sick. He was spitting, but he said no, he was not sick, that he just had the hiccups.

Fifth Witness for Prosecution

F59815 C.S.M. Yoreston, W.W.

A.P.L.

VIII

Having been duly sworn, is examined by the prosecution.

I am F59815 C.S.M. Yorston, W.W. of "D" Coy, North Nova Scotia Highlanders.

Q. Do you know Pte. Smith?
A. I do.
Q. Is he here?
A. Yes.
Q. Would you tell the Court what happened on the 22nd of August?
A. On the morning of the 22nd of August, I was in my Orderly Room. Detective Sgt. Hoare and Constable Lemm came to the Orderly Room and asked to interview Pte. Stewart. I got Pte. Stewart. They had their interview, and from the Orderly Room they proceeded to the spot where an incident had taken place some time previous - roughly about 300 yards from the Orderly Room. They were looking for an empty .303 case. They asked me if I would like to go along. They found the spot where a bullet had entered a tree, about roughly 2 feet off the ground. I was down on my knee probing into the tree, seeing if I could feel the lead, and they were looking for the empty case at the time. When I got up Constable Lemm picked up the .303 empty case, which he took away with him. Some time after he returned the empty casing to me, which I can not swear is the same case he took away with him. I know nothing more about the case.
Q. You say this empty case was picked up at the spot where Pte. Stewart said the incident had taken place?
A. Yes.

Cross-examined by the defence:

Q. Had you any occasion to inspect Pte. Smith's rifle at the time of the incident?
A. No, I did not. I was away on 48 hours, and did not return until the following Monday.

Cross-examined by the Court:

Q. How did you know they were looking for a .303 case?
A. I think Constable Lemm or Detective Sgt. Hoare told me that they were looking for it, and asked me if I would like to come along.

Pros. closed. See page IX DLC

The Accused, having been duly sworn, elects to ~~make a statement~~ give evidence

I am F87623 Pte. Smith, I.J., North Nova Scotia Highlanders.

Q. (Defence) - Will you tell the story to the court of the events leading up to and at the time of the incident of the injuring of your hand.
A. Pte. Stewart, Sir, wanted to put this bullet in my hand so we could both get out of the Army. I didn't want to get out of the Army, but Pte. Stewart did, and figured he could get out on account of his feet, and wanted me to get out with him. We were talking about this the day before it happened. He wanted me to do it, when we went to the pub that evening. We were drinking all that day. We were not talking about it there, but Stewart suggested it on the way back. Stewart wanted me to get a rifle, when I was going to put this .303 off with a match, and he would not let me. He said we would go and get a rifle and we both went up and got the rifle. We got the rifle, and he took the rifle from me and carried it down to the field. We both went to the field, and I'm not sure which one of us put the round in the rifle. He had hold of the rifle, and the butt was on the ground. He told

DLC/R

IX

D

The prosecution is closed.

Defence

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. Yes

Question. Do you intend to call any other witness in your defence?

Answer. No

Question. Is he a witness as to character only? *Answer.* N/A

INSTRUCTIONS TO THE COURT

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says†

[Hands in a written address which is read, marked signed by the President and attached to the proceedings.]

Instruction. † In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court above.)

X

D 2

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

For evidence of accused see lower half of page VIII

DCC

DCC

XI

me to put my hand on the rifle. He was going to pull the trigger, but I wouldn't let him. I put my hand on the trigger, told him I had the second pressure, he gave me a kiss and told me to pull the trigger. Before I pulled the trigger, he told me he was going to put a pull-through through the rifle so no one would catch on how it happened. I remember I was laying on the ground and told him to put a handkechief on my hand. He left, and I never saw him after that. I met a soldier on the road and told him my hand was cut. He took me into the billets. That is all I know.

Q. Smith, how old are you?
A. 20 next July.
Q. What education have you?
A. Grade five.
Q. Have you had the advantage of your own parents advice when you were young?
A. No.
Q. Why?
A. Don't know where they are. I have never seen them
Q. Were you adopted, then?
A. Yes, Sir.
Q. Do you like the Army?
A. Yes, Sir.
Q. You still want to serve in the Army?
A. Yes, Sir.
Q. Did anyone try to influence you to attempt to get out of the Army?
A. Yes, Sir.
Q. Who?
A. Pte. Stewart.

Cross-examined by the prosecution:

Q. How long have you been in the Army?
A. A year last 13th August.
Q. You have been over here how long?
A. I came over here last March.
Q. Do you ever remember of having part of the Manual of Military Law read to you in a lecture?
A. No, Sir.
Q. Never remember anybody reading of these Military Laws to the Company as a whole?
A. No, Sir.
Q. You are more or less of a pal to Stewart?
A. Yes.
Q. Ran around with him practically ever since you came over here?
A. Yes, Sir.
Q. Was the 16th of August the first time Stewart suggested that you commit some act that would get you out of the Army?
A. No, Sir.
Q. Did you take up this before?
A. Yes, Sir.
Q. Did you talk about it say a month or two months before this happened?
A. Yes, Sir.
Q. Did you make any plans in these conversations?
A. No, Sir.
Q. This being the case, Smith, Why did you still chum around with Pte. Stewart, when you found him to be a bad influence?
A. I couldn't seem to keep away from away from him. We go drunk together, and so on.
Q. You say it was therefore Stewart's continued pressure on you that made you finally come to the point where you said yes?
A. That's right, sir.

XII

Q. Were you prompted by Pte. Stewart to put the live round off with a match?
A. No, Sir, I was not.
Q. It was purely your own idea?
A. Yes, Sir.
Q. You knew if that round had gone off it was going to hurt your hand?
A. I never thought of it that way at the time.
Q. Pte. Stewart took the rifle from you before you went over into the field?
A. Yes, Pte. Stewart took the rifle from me.
Q. Between the time that you went into the house until the time you handed your rifle to Pte. Stewart, did you see the rifle in Pte. Stewart's possession?
A. Yes, Sir.
Q. Did you gointo the house and get the rifle yourself?
A. No, Sir, we both went in to get it. I carried it down and Stewart took it from me.
Q. Did you put the round in the rifle?
A. No, Sir, I don't remember doing it. It could have been me, it could have been Pte. Stewart, I don't know.
Q. Did you or did you not ask Pte. Stewart if he would clean your rifle up and at the same time not to say anything about what had happened?
A. No, Sir, I certainly did not.
Q. Didn't you know, Smith, that you were going to get into all this trouble by putting a bullet into yourhand?
A. I did it because he was all the time nagging at me to do something.
Q. That is a pretty poor excuse, because you have N.C.Os and Officers to go to in these cases.

Cross-examined by the Court:

Q. This evening when you and Stewart went and got the rifle, did you know what he wanted to do with it?
A. Yes, just what he told me.
Q. You knew that by firing the bullet through your hand you would injure yourself and get out of the Army?
A. I did not know this, Sir, but Pte. Stewart said so.
Q. When you got down to the field, Stewart had a hold of the rifle first. He told you to put your hand over the muzzle. You knew then that if you pulled the trigger you would be hurt?
A. Yes, Sir.
Q. You knew where your left hand was?
A. Yes, Sir.
Q. You say you don't know who put it in, but you say you know there was a round in the rifle?
A. No sir, I don't remember who put the round in the rifle.
Q. You didn't know?
A. No, Sir. He told me.
Q. Smith, when the rifle was secured, whose rifle was it?
A. My rifle, Sir.
Q. What did you do with the round .303 that you were going to set a match to before you went into the house?
A. I gave it to Stewart.
Q. Was there noone else in the room where the rifle was procured?
A. No, Sir.
Q. Was there no other people sleeping there?
A. Yes, there were people sleeping there but there was nobody else in.
Q. What was the purpose of trying to ignite or explode the .303 with a match? What was yourreason for trying to do this?
A. I don't know, Sir. We were always setting off rounds like that.
Q. Did you ever see anyone do that?
A. Yes, I have seen them put off in trees. (explains).

XIII

E

Finding*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused is

Guilty of the 1st Charge

and the 2nd Charge is withdrawn.

Proceedings on Conviction *before Sentence*

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

F59815 C.S.M. Yorston, W.W. is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes, Sir.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked , signed by the President, and annexed to the proceedings. 5215

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes, Sir.

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes, Sir.

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes, Sir.

[*Observation.*—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the proceedings must call the attention of the Court to the fact and the Court must inquire into the nature and amount of that additional punishment.]

Cross-examined by the accused.

Question to the accused.

Do you wish to address the Court? *Answer.* No.

The Court is closed for the consideration of the sentence.

F

Sentence

The Court sentence the accused

Sentence.

To undergo detention for a period of
~~Twelve months~~ one year

D.P.P.

A. P. Cannon
Lieut-Col
30 Nov 42

F59815 C.S.M. Yorston, W.W. is recalled by the Defence as a character witness.

Q. Will you give a statement as to the character of Pte. Smith.
A. Well, Sir, as far as I can remember he came to my company some time in May and he was with me up until the time he went to hospital. As to his character while he was with me, he was a good dependable worker. I never had any trouble with him at all.
Q. Has he had any crimes against him while you were his C.S.M.?
A. No, not to my knowledge.

Summary of evidence in the case of No. F87623 Private Smith, I.J., North Nova Scotia Highlanders, C.A.(O).

By direction of the Commanding Officer, the summary of evidence is taken on oath.

1st Witness for the Prosecution

No. F88952 Pte. Stewart, G.A., North Nova Scotia Highlanders, C.A.(O), having been duly sworn, states:-

I am F88952 Pte. Stewart, G.A., North Nova Scotia Highlanders.

Shortly after supper on the sixteenth of August, Pte. Smith and I went to the Crabtree Inn, which is about a mile from "D" Coy billets. On the way to the Inn Pte. Smith showed me his left hand which showed a black mark in the centre of the palm. I asked him what happened and he told me he did it with a blank round. I asked him why and he said he had something on his mind, but he wouldn't tell me what it was.

We stayed at the Crabtree Inn and had a few drinks, four whiskies and six beers to be exact. We left the "pub" sometime between 2030 hrs and 2130 hrs, I'm not sure of the exact time, and started back to our billets. When we got to our gate, Pte. Smith tried to put off a live .303 round with a match. I don't remember whether or not I asked him what he was doing, but when we got back to the house he got his rifle and then he asked me to go over into the field with him. When we got there he asked me to hold or feel the rifle butt which was on the ground. I did this and then I heard the rifle go off and Pte. Smith lay over on the ground and said his hand was bleeding badly. He asked me to tie it up for him, which I did. He asked me to put a pull-through through his rifle and put it back in the house for him and also not to say anything about what happened. I then left Pte. Smith in the field and didn't see him again that night.

Cross-examined by the accused:

Q. When we were at the gate and I tried to put off the round with a match, didn't you say we would go and get a rifle?

A. No, Sir, not that I can remember.

Q. Did I ask you to go over into the field with me?

A. Yes, Sir.

Q. Did I ask you to hold the rifle butt?

A. Yes, Sir.

Q. Didn't you say that you would put a pull-through through the rifle so it wouldn't smell?

A. No, Sir, not until after he asked me if I would.

Q. Did I ask you not to say anything about what happened?

A. Yes, Sir.

The accused declines to further cross-examine this witness.

(Sgd) G.A. Stewart

2nd Witness for the Prosecution

Detective Sergeant Hoare, A., West Sussex Constabulary, having been duly sworn, submits a statement taken down by him at an interview with Pte. Smith on the twenty-second of August.

A true copy of this statement is attached as Appendix "A" to this summary.

The accused declines to cross-examine this witness.

3rd Witness for the Prosecution

No. F59689 Pte. Johnston, R.B., North Nova Scotia Highlanders, C.A.(O)., having been duly sworn, states:-

I am F59689 Pte. Johnston, R.B., North Nova Scotia Highlanders. On the evening of the sixteenth of August I came out of the Crabtree Inn and saw Pte. Smith and Pte. Stewart just outside. I spoke to Pte. Stewart, asking him if he was sick, as he was spitting. He said wasn't, that he just had the hiccups. I went back into the "pub" and shortly afterwards I passed Pte. Smith and Pte. Stewart on my way back to "D" Coy billets. Pte. Smith and Pte. Stewart were going in the same direction as myself but I didn't speak to either. When I was talking to Pte. Stewart at the "pub" I could tell that both he and Pte. Smith were drinking, but I wouldn't say they were drunk.

(Sgd) R.B. Johnston.

The accused declines to cross-examine this witness.

4th Witness for the Prosecution

No. F59815 C.S.M. Yorston, W.W., "D" Coy, North Nova Scotia Highlanders, C.A.(O), having been duly sworn, states:-

I am No. F59815 C.S.M. Yorston, W.W., company sergeant-major of "D" Coy, North Nova Scotia Highlanders.

On the twenty-second of August, in company with Detective Sergeant Hoare, Constable Leem and Pte. Stewart, I went to the spot indicated by Pte. Stewart, where the accused and Pte. Stewart had been when the accused had his accident. While there, I saw Constable Leem pick up a .303 casing which he took away with him. I have no further knowledge of Pte. Smith's accident.

(Sgd) W.W. Yorston.

The accused declines to cross-examine this witness.

The accused having been duly cautioned in accordance with Rule of Procedure 4 (E) declines to make a statement.

Certified that Rule of Procedure 4 (C) (D) (E) (F) and (G) have been complied with.

Taken down by me in the presence and hearing of the accused this twenty-eighth day of November, 1942, in the Field.

(Sgd) C.V. Matson, Capt.,
N.N.S. Highrs., C.A.(O).

COPY.

Additional evidance in the case of No.F.87623 Pte.Smith,I.J.

Capt.H.R.Robertson,R.C.A.M.C. having been duly sworn states:-

I am Capt H.R.Robertson,R.C.A.M.C. and am a medical Officer at No.1 Gen.Hosp. I attaended Pte,Smith on 16th Aug 1942. when he was admitted with a through and through wound of the left hand, with a compound fracture of the second metacarpal. The nature of this wound was that of a bullet wound and it was filled with a black powder~~xxx~~ substance. Pte.Smith was discharged from this hospital on 19th Nov.

(H.R.Robertson) Captain.
R.C.A.M.C.

The accused declines to cross examine this witness.

Certified that Rule of Procedure 4(c)(d)(e)(f) and (g) have been complied with.

(C.V.Watson)Captain.
North N.S.High'rs.

EXHIBIT "A"

WEST SUSSEX CONSTABULARY

No. 80.

Statement Form.

.....DIVISION. .....DETACHMENT.

.....19 .

Name Ivan James Smith F. 87623

Address North Nova Scotia Highlanders
3rd Canadian Division

Profession or

Occupation ..... Age 19.

Last Sunday night the 16th August 1903. I went to the Cabaret with Pvate Guy Stewart. We had some drinks & I can't remember the time we left. We were both feeling pretty good.

After we had walked some distance back to the field camp we got over a fence into a field. I had a round of .303 ammunition in my pocket & I said I was going to fire it with a match. He told me not to do it & said he would go back & get my rifle. We went back to the camp together I got my rifle & he took it off of me. We went back into the field & one of us put the round in the rifle I am not sure which one of us put it in

Ivan Smith

The statement has been read over to me & is true.

Ivan Smith

831-GM-03

He put the butt of the rifle on the ground + he had his hand on the trigger I told him to take his hand off, + I put my finger on the trigger. The butt of the rifle was still on the ground. He had hold of the rifle as well. We stood one on each side of the rifle He I told him I had the second pressure. He gave me a kiss + told me to pull it + I did I dont know what happened next

The next I remember I was lying on the ground + my hand was covered in blood. I told Stewart to get a bit of rag + he tied my handkerchief round my hand.

Stewart had my rifle + before I pulled the trigger he said he was going to put a couple of pull 'throughs' through it + put it back

I went + climbed over the fence + knocked my head getting over

I met another soldier on the road. I told him I had cut my hand + did not say a civilian had stabbed me. I cannot remember anymore until I came round in the hospital

I don't know what happened to my rifle.

Appendix "A"

WEST SUSSEX CONSTABULARY

NAME: Allan HOARE — HORSHAM DIVISION

ADDRESS: Police Station, Horsham.

OCCUPATION: Detective Sergeant

On Saturday the 22nd August 1942 I interviewed Private No. F.87623, Ivan James Smith, at No. 1 Canadian General Hospital, Horsham. He was in bed suffering from an injury to his hand.

I told him who I was and that I was making enquiries regarding an alleged assault. He appeared to be somewhat dazed and I pointed out to him the seriousness of a false allegation. He elected to make a statement which I took down in writing and he signed. The statement is as follows:

"Last Sunday night, the 16th August 1942, I went to the Crabtree with Private Guy Stewart. We had some drinks and I can't remember the time we left. We were both feeling pretty good.

After we hadwalked some distance back to the camp, we got over a fence into a field. I had a round of .303 ammunition in my pocket and I said I was going to fire it with a match. He told me not to do it and said he would go back and get my rifle.

We went back to the camp together. I got my rifle and he took it off of me. We went back into the field and one of us put the round in the rifle. I am not sure which one of us put it in. He put the butt of the rifle on the ground and he had his hand on the trigger. I told him to take his hand off and I put my finger on the trigger. The butt of the rifle was still on the ground. He had hold of the rifle as well. We stood one each side of the rifle. I told him I had the second pressure. He gave me a kiss and told me to pull it and I did. I don't know what happened next.

The next I remember I was lying on the ground and my hand was covered in blood. I told Stewart to get a bit of rag and he tied my handkerchief round my hand. Stewart had my rifle and before I pulled the trigger he said he was going to put a couple of pull throughs through it and put it back.

I went and climbed over the fence and knocked my head getting over. I met another soldier on the road. I told him I had cut my hand. I did not say a civilian had stabbed me.

I cannot remember any more until I came round in hospital. I don't know which way Stewart went.

This statement has been read over to me and is true."

LIST OF EXHIBITS

Exhibit "A" - Statement taken by Detective Sergeant Hoare, A. of West Sussex Constabulary

LIST OF WITNESSES

For the Prosecution

1st Witness - F88952 Pte. Stewart, G.A.

2nd Witness - Detective Sergeant Hoare, A.

3rd Witness - F59689 Pte. Johnston, R.B.

4th Witness - F59815 CSM Yorston, W.W.

For the Defence

N I L

I, F 87623 Pte. Smith, I.J., do desire the services of an officer, Captain A.J. Davis, to defend me at my Court Martial.

Pte I.J. Smith

(F87623 Pte. Smith, I.J.)

28 Nov 42

No. F87623 Name SMITH, I.J. Sqn., Battery, or Company | Corps N.N.S. Highrs | Date of enlistment 13 Aug 4 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.B. 122) 175M—7-41 (1219-30) H.Q. 1775-39-1452

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. | Character Exc. B

Place	Date of offence	Rank	Class of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
		Pte.		A.A. Sec 19. Drunkenness 1st offence		Admonished			

Certified Correct
Taken from MFM 6
J.G. Chapman Capt.
MFM 6 not available

H.C.S.

Ex. "B"

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
F87623	Pte.	Smith, I.J.	North Nova Scotia Highlanders

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, preference being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTIONS.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For Drunkeness, A.A. Sec 19	1 times	1 times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

~~Number of instances of gallantry or distinguished conduct.~~

~~or~~

~~There are no entries in the conduct sheets of the accused.~~ JRC

2. The accused has not been previously convicted, or

~~Previous convictions† of the accused by a court-martial or a civil court; summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.~~ JRC

3. The accused is not under sentence at the present time, or ~~The accused at the present time is under sentence for~~ ~~beginning on the~~ ~~day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for 110 days in civil custody, and 6 days in military custody, making a total of ~~days~~ days, of which ~~days~~ days were spent in hospital.

5. The present age of the accused according to his ~~enlistment~~ attestation paper is 21

6. The date of his ~~enlistment~~ attestation specified in his ~~enlistment~~ attestation paper is 13 Aug 41

7. ~~The service which the accused is allowed to reckon towards discharge or transfer to the reserve is~~

8. ~~The accused is entitled to deferred pay or gratuity in respect of~~ service

9. ~~The accused is entitled to reckon~~ service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award ~~or is in possession of or entitled to (state any military decoration or award)~~.

11. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer held the rank of~~

12. ~~(In the case of an officer.) The accused holds or the army (the navy) or~~ ~~and to his regiment (or corps or department) the rank of~~ ~~dated~~

1**(2540) Wt.30293/5662 25M/10 12/40 A.& E.W.Ltd. Gp.679

A.F.C.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. F87623 Rank Private Name Smith, T.J. of N.N.S.Highrs Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, showing these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted
		------ NIL ------		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 30th day of November 1942

(J.V. Chapman) Capt. & Adjt.
North Nova Scotia Highlanders.

(Insert here any remarks considered necessary, whether additions to the preceding entries or otherwise.)

Dated December [illegible] 1942

(Correction.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be obtained from such entries as are available and the paragraphs concerned amended accordingly.)

MMM-140 (case #2)
TPR SMITH J.
See 5-53 for 1st case

RECEIVED 5 JUN 1944 JAG BRANCH C.M.H.Q.

Correspondence to be PINNED here.

RECORDED AT CMHQ IN AD 160 MMM-140

m-2

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this twenty-sixth day of March, 1944.

Whereas it appears to me, the undersigned, an officer in Command of REME 1st Canadian Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

F121

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[illegible]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

*[illegible]

*[illegible]

*[illegible]

[illegible]

PROCEEDINGS REVIEWED 6 June 44

R. Deanwills Capt.

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

181-135

CANADIAN SECTION 10 APR 1944 G.H.Q. 2nd ECHELON

1/44

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	M Turner	HQ RCASC

Members.

Rank.	Name.	Regiment.
Captain	E B Smeed	3 CIB Wksp
Captain	R W Stewart	4 Cdn Recce Regt

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed A. DeMaio Lt.-Col.
(A DeMaio)
Commanding REME 1 Cdn Div
Convening Officer.

F127

SCHEDULE

Number, Rank (a) Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
A.3840 Trooper George Charles WRIGHT 4 Canadian Recce Regiment (4 PLDG)	First Charge AA Sec 40	Not Guilty	Guilty, and to undergo detention for a period of thirty (30) days, and to forfeit ~~one~~ thirty (30) days pay. Sentence confirmed by Murray Turner Major. 28 March 44	Confirmed A. DeMaio Lt.-Col. CREME 1 Cdn Div. 30 March 44.
A.3887 Trooper Jack SMITH 4 Canadian Recce Regiment (4 PLDG)	First Charge AA Sec 15 (1) Second Charge AA Sec 24 (2)	Guilty Guilty	Guilty Guilty. and to undergo detention for a period of one (1) year and detain (6) months and to pay ~~one~~ as pay ~~amount~~ stoppages of the value of £2-6-0 at the rate of £2-6-0 75% value of last Regt Maintenance 27 March 44 Murray Turner Maj	I confirm the finding and sentence of the Court but remit six (6) months detention. A. DeMaio Lt Col CREME 1 Cdn Div 30 March 44

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) A. DeMaio (A DeMaio) Lt.-col. (Signed) Murray Turner Major
Commanding REME 1 Cdn Div *Convening Officer (e)* Maj. Gen. Div. *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B.

Certificate of President as to proceedings.

I certify that the above Court assembled on the 27 + 28 day of March 1944, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The Interpreter~~)
*(4. ~~The officers under instruction~~)

*Omit if not applicable.

were duly sworn.

Signed this 28 day of March 19 44

Murray Turner Major
President of the Court Martial.

C.

Certificate in case of death sentence.

*See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D.

Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*Be so omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~(1) direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~

Signed this 30th day of March 1944.

A. DeMaio Lt.-col.
Confirming Officer.
CREME 1 Cdn Div

Promulgated and extracts taken in the case of A3887 Tpr. SMITH. J.

(a) (Dated) 31 Mar 44. (Signed) L.W. Starling Major 4 Can. Recce. Regt (4 P.L.D.G.)

Promulgated and extracts taken in the case of A 3840. Tpr. WRIGHT G.C.

(Dated) 31 Mar 44 (Signed) L.W. Starling Major 4 Can. Recce. Regt (4 P.L.D.G.)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a 1st Can. Court-Martial held at Zuld

on the 27 day of March 1944 by order of

Lt-Col A Clemais

Commanding RCME 1 Can Div

dated the 26 day of March 1944

President.

Major Murray Turner RCASC 1 Can Div

Members.

Capt. C. B. Smith RCASC 3 CIB 4 Bde.

Capt A. W. Stewart 4 Can Armd Regt

Trial of* A 3887 Spr. Jack SMITH, Judge Advocate J.

4 Can Armd Regt (4 PLDG)

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that is not available J.

to serve owing to —

, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† ~~Capt~~ Lt K. E. Richardson 4 PLDG

~~Counsel‡ or~~ defending officer† Lt W. B. Redford 4 PLDG

At 0930 o'clock the Trial commences.

The order convening the Court is read, and is marked "A", signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? Answer No Sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q6274. Wt. W1626/76. 35,000 pads. 6/43. K. & H., Ltd. (46275). Forms A 9/2a.

B

The President, members ~~and judge-advocate~~ are duly sworn. 2

~~The following officers under instruction are duly sworn.~~ 2

Charge-Sheet.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

Instruction. *If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.*

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Guilty Sir *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Guilty Sir *Answer.*

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~ *Question.* 2

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~ *Question.* 2.

Answer.

The accused having pleaded Guilty to Both charges, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

CHARGE SHEET

The Accused: A3887 Tpr Jack SMITH a soldier of the 4 Cdn Recce Regt (4P.L.D.G.) Cdn Army Overseas, CMF is charged with WHEN ON ACTIVE SERVICE:

1st CHARGE
AA SEC 15 (1) When on Active Service Absenting himself without leave in that he on 26 Feb 44 at 0915 hrs did absent himself without leave until 1700 hrs 13 Mar 44. (time absent - 16 days 7 hrs 45 minutes)

2nd CHARGE
AA SEC 24 (2) When on Active Service - Losing by neglect his Equipment - clothing and Regimental necessaries in that he on 14 Mar 44 was deficient equipment as under:

1 Greatcoat	$ 17.22	£3.17.9½
1 Jersey Pullover	1.51	0. 6.9
1 Knife table	.18	0. 0.9½
1 Fork table	.09	0. 0.5
1 Spoon table	.08	0. 0.4½
1 holdall	.18	0. 0.9
1 Razor	.42	0. 1.10½
Total	$19.67	£4. 8. 0
75% of value	$14.76	£3. 6. 0

In the Field
23 Mar 44

F.D. Adams
(F.D. Adams) Lt.Col.,
O.C. 4 Cdn Recce Regt (4PLDG)

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
26 Mar 44

H. Dumais Lt.-col.
CREME 1 Cdn Div

Murray Turner
Maj

"B"

LIST OF WITNESSES

For the Prosecution

A 3408 Sgt Smith, L.R.
P 15411 Sgt Epps, R.H.
B 72808 SQMS Smale, J.A.

All members of 4 Cdn Recce Regt (4 PLDG

For the Defence

N/A

Prosecuting Officer

Capt. K.E. Richardson
4 Cdn Recce Regt (4 P.L.D.G.)

Defending Officer

Lieut W.St.J. Radford
4 Cdn Recce Regt (4 P.L.D.G.)

MEDICAL OFFICER'S CERTIFICATE

I certify that I have this morning examined A 3887 Tpr J. Smith of the 4 Cdn Recce Regt (4 P.L.D.G.) and in my opinion, he is FIT/UNFIT to stand trial by Court Martial.

In the Field
21 Mar 44

.....
(W.B. Hoggarth) Major

I wish to have the u/m Offr defend me at my trial.

Lieut W.St.J. Radford
4 Cdn Recce Regt (4 P.L.D.G.)

J. Smith
(J. Smith)

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused A 3887 Spr Jack Smith 4 Cav Res Regt is found guilty of Desertion

†The summary (or abstract) of evidence is read, marked "B 3" signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

yes sir through my defending officer

Answer. The accused in mitigation of punishment says:—

[or hands in a written statement, which is read, marked 'B 4', signed by the President, and attached to the proceedings.]

J

Instructions.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

No sir.

Answer.

Evidence as to character.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out. Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it

Lt. K.E. Richardson is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* yes Sir.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked E 2762 signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* yes sir

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* yes sir

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

Answer. yes sir

[Instruction.—If by reason of the nature of the service of the accused in a departmental corps or otherwise, the finding of the Court renders him liable to any additional punishment or disqualification to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Cross-examined by the accused. N/A

Question to the accused.

Do you wish to address the Court? *Answer.* no Sir

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused A3887 Spr. Jack Smith Sentence.
4 Can Corps Sigs. (4 Fd Coy S). to undergo
detention for a period of (1) one year
and three (3) months and to be put under stoppage of Pay
until he can make good the sum of £ 3-6-0 75% value of lost necessaries

W Turner Maj
Pres.

27 Jul 44

ON ACTIVE SERVICE

CANADIAN LEGION

WAR SERVICES

194

Plea in Mitigation of Sentence in the case of H.3887, Tpr. Smith, J.

Tpr. Smith claims to have a personal weakness that, when he becomes under the influence of liquor, he gets a desire to go away for a few days. He has never had proper parental care due to the death of his father at the age of 3 years. His education was neglected in the fact that he left school to work when he was only in the 8th grade. I feel that this man deserves some consideration due to these unfortunate circumstances.

W. St. J. Redford
Capt

SUMMARY OF EVIDENCE
in the case of

A3887 Tpr. Smith Jack

A3 777

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS FOR THE PROSECUTION

A3408 Sgt. Smith L.R. having been duly sworn states: I am a Sgt. of the 4 Cdn Recce Regt (4PLDG) No. 2 troop.

On 26 Feb 44 I was on troop Roll call parade at 0915 hrs. A3887 Tpr Smith J was absent from that parade. Tpr. Smith was absent from all Roll call parades from 26 Feb 44 until we went to GUGLIONESI 7 Mar 44.

Signed.....

The accused declines to cross-examine the witness.

SECOND WITNESS FOR THE PROSECUTION

P15411 Sgt. Epps R.H. having been duly sworn states:

During the time the Regiment was at GUGLIONESI I was in charge of the Sqn. rear party. From 7 Mar 44 until 13 Mar 44, Tpr. Smith J. was absent. He reported to me at 1700 hrs. 13 Mar 44.

I took kit deficiencies of Tpr. Smith J. and they were as follows:

1 greatcoat, 1jersey pullover, 1 knife, fork and spoon, 1 holdall and 1 razor.

Q. Did you personally assure yourself that Tpr. Smith was absent ?
A. Yes, I was at 2 troop every day and checked.
Q. Was there an nominal roll left of the rear party ?
A. Yes.
Q. Was Tpr. Smith's name on that nominal roll ?
A. Yes.
Q. Are you a Sgt. in No. 2 troop - Tpr Smith's troop?
A. Yes, and while the regiment was at GUGLIONESI I was acting as Troop Sgt. of No. 2 troop and as Sgt-Major of Sqn. rear party as well

Signed.....

The accused declines to cross - examine the witness.

THIRD WITNESS FOR THE PROSECUTION

B72808 SQMS Smale 4 Cdn Recce Regt (4PLDG) having been duly sworn states: I am SQMS "A" Sqn. 4 Cdn Recce Regt (4 PLDG). I swear that these are certified prices of articles deficient in A3887 Tpr Smith's kit.

1 greatcoat	$ 17.22	£ 3	17	2
1 jersey pullover	1.51		6	9
1 knife table	.18			9
1 fork table	.09			5
1 spoon table	.08			4
1 holdall	.17			9
1 razor	.42		1	10
Total	19.67	4	8	6
75% of value	14.76	3	6	0

Signed.....

The accused was cautioned as follows: Do you wish to make any statement or to give evidence on oath ? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

After the above caution, the accused declined to make a statement.

I certify that the foregoing Summary of Evidence consisting of 2 pages was taken down by me in the presence of the accused and that rules of Procedure 4(c)(d)(e) and (f) have been complied with.

Signed.....

Summary of Evidence in the case of
A3887 Pfc. Smith, Jack

The Commanding officer directed that evidence be taken on oath.

First Witness for Prosecution A3408 Sgt. Smith, E.R. having been duly sworn a state: I am a Sgt. of the 41st Engr. Regt. (SEP.D.E.) Hdr. 2 Troop. On 6 Mar 44 at 0715 hrs. I was on roll call parade. Pfc. Smith, J. was absent from that parade. Pfc. Smith was absent from all roll call parade from 6 Mar 44 till such time as we went to Engineer 7 Mar 44.

Second Witness for Prosecution A3408 Sgt. Smith, E.R. having been duly sworn on oath. Sgt. Smith, E.R. 41st Engr. Regt. (SEP.D.E.) Hdr. 2 Troop. I am a Sgt. of the 41st Engr. Regt. (SEP.D.E.) Hdr. 2 Troop. I was on roll call parade at 0715 hrs. on 6 Mar 44. Pfc. Smith, J. was absent from that parade. Pfc. Smith was absent from all roll call parade from 6 Mar 44 till such time as we went to Engineer 7 Mar 44.

The accused declines to cross-examine this witness.

Third Witness for Prosecution A3408 Sgt. Smith, E.R. having been duly sworn on oath. Sgt. Smith, E.R. 41st Engr. Regt. (SEP.D.E.) Hdr. 2 Troop. I am a Sgt. of the 41st Engr. Regt. (SEP.D.E.) Hdr. 2 Troop. During the time that the Regiment was at Engineer. I was in charge of the Sp Regt Party. From 7 Mar 44 until 13 Mar 44. Pfc. Smith, J. was absent. He reported to me at 1700 hrs. 13 Mar 44.

Cross-Examination of Pfc. Smith, J. and Pfc. Smith, J. differences of Pfc. Smith, J. and they were as follows:

I quit eat. I pray prisoner. I take. I razor. I knife. I dig upon. I take. I razor. I knife. I dig upon.

Q. Did you personally see yourself the Pfc. Smith, J. present?
A. Yes, I was at 2 Tp. every day + observed.
Q. Was there a nominal roll kept of the men party
A. Yes
Q. Was Pfc. Smith's name on that nominal roll?
A. Yes

~~The Court declines to cross-examine the witness~~

Q. Were you a Sgt in the 2 Tp. - Tp Smith's Troop ✓
A. Yes, and until the Regiment crossed as Engineers
I was acting as Tp Sgt. of No. 2 Troop + as
Sergeant Major of Sqn. Res party as well. [illegible]
The Accused declined to cross-examine the witness

Third witness for the prosecution
B 72808 S/Sgt W.S. Smale 4th Bn Essex Regt (A.P.C.) having been duly sworn states: I am S.S.M. S. A Sqn 4th Bn Essex Regt (A.P.C.)
I produce that there are certified proves of articles deposited in A3647 Tp Smith's kit.

	19.22	3 - 17 - ½
1 great coat -	1.51	0 - 6 - 9
1 jersey pullover	.18	0 - 0 - 9½
1 knife table	.09	0 - 0 - 5
1 fork table	.08	0 - 0 - 4½
1 spoon table	.17	0 - 0 - 9
1 holdall	.42	0 - 1 - 10½
1 razor		4 - 5 - 0
	19.67	
75% of Value	14.76	3 - 6 - 0

[illegible] S/Sgt 4th Bn Essex Regt (A.P.C.)

The Accused was cautioned as follows:-
Do you wish to make any statement or to give evidence on oath? You are not obliged to say any thing or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.
After the above caution, the accused declined to make any statement

I certify that the foregoing Summary of Evidence consisting of 3 pages was taken down by me in the presence of the accused and that rules of procedure 4 (C) (D) (E) and (F) have been complied with.

H. H. Richardson Capt
41st Div Arty Hq & (A.P.O. 37)

25 Mar 1944

M.F.M. 6
(A.F.B. 122)
40/P & S/136 (2637)

No. A3887 Name [illegible] Sqn., Battery, or Company — Corps C A C — Date of enlistment [illegible] 40 — G.C. Badges N/A — Service or Proficiency Pay N/A

Date of last entry in Company Conduct Sheet N/A — No. and date of last drunk N/A — Period not reckoning towards freedom from extra fine N/A — Sheet No. 1 — Signature O.C. Company, etc. — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	11.11.40	Tpr		AA Sec 15. AWL 168 hrs	Sgt Cavendish	8 days F.P.	14.11.40.	Y Troop	
"	26.1.41	"		AA Sec 15 AWL 12 hrs		10 days F.P.	4.2.41	OC 2/41	10 days pay
"	1.2.41	"		AA Sec 15 AWL 2 days 7 hrs		"			
"	17.6.41	"		AA Sec 15 AWL 1 day 13½ hrs.		2 days pay		OC 2/41	
"	1.7.41	"		AA Sec 15 AWL 2 days 3½ hrs		2 days pay		OC 71/41	
"	17.7.42	"		AA Sec 15 AWL 2 days 13½ hrs.		10 days pay		OC 23/42	
"	—	"		AA Sec 18(4)		6 months detn	31 Oct 42	F G C M.	
				AA Sec 40					
"	4.11.43	"		AA Sec 18(6) AWL 9 hrs.	Sgt Cavendish	5 days F.P.	12 Nov 43	OC [illegible]	10 days detn
						5 days pay			

CERTIFIED TO BE A TRUE AND EXACT COPY ACCORDING TO THE RECORDS IN MY POSSESSION.

In the Field
21 Mar 44

Murray Turner
Major.

(C.D. Lough) Capt. & Records Offr.,
4 Cdn Recce Regt (4 P.L.D.G.)

(P.T.O.)

M.F.B. 555
40/P & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
A 3887	Tpr	Jack SMITH	4 Cdn Recce Regt

1. The following is a fair and true summary of the entries in the Regimental [illegible] Conduct sheets [illegible] of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
For AA SEC 15	1 times	6 7 times
For	times	times
For	times	times
For	times	times

[illegible]

or,

[illegible]

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. [illegible]

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for N/A beginning on the day of

4. The accused has been in confinement awaiting trial on the present charges, for days in civil custody, and 6 days in military custody, making a total of 6 days in custody, of which no days were spent in hospital.

5. The present age of the accused according to his record of service is 25 years 5 months 14 days

6. The date of his attestation specified in his record of service is 1 Apr 40

7. The service which the accused is allowed to reckon towards discharge is N/A

8. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in possession of or entitled to). State any air force decoration or reward.

military military

CVSM & C

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

.....dated....., and in his regiment (or corps), the rank of

.....dated.....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

N/A Date of promotion.

In the rank of.....years.

In the rank of.....years.

In the rank of.....years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Army Act, and of cases in which trial has been dispensed with of accused, Number 2997 Rank Tpr

Name J. SMITH of 4 Cdn Recce Regt (4 PLDG) Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.C.C.M.	In the Field 31 Oct 43	AA Sec 18(4) AA Sec 40	6 months Detn	

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 2/Nov day of March 1944

Lt Col Commanding

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

Murray Turner Major

53-S
JPI SMITH. J

O. H. M. S.

13
63
SW

M. F. B. 270

Correspondence to be PINNED here.

#203
A.A.
53-S.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this 31 st day of October, 19 42

Whereas it appears to me, the undersigned, an officer in Command of R.C.A. 1 Cdn Div, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable

*~~[I am unable to appoint :—~~

*~~(1. Three Officers to form the Court.)~~

*~~(2. A Field Officer as President.)~~

*~~(3. Three Officers having more than one year's service.)~~

~~for the following reasons, namely :—]~~

Proceedings Reviewed [illegible] (Brig.)

(29)

President.

Rank.	Name.	Regiment.
Lt.-col.	C.B. Climo	1 Coy C.D.C.

Members.

Rank.	Name.	Regiment.
Capt.	Campbell, K.L.	4 P.L.D.G.
Capt.	Smith, S.M.	4 P.L.D.G.
Waiting Capt.	McKinnon, W.B.	9 Cdn Fd Amb

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature]
(A.E.D. Tremain) Brigadier
Commanding R.C.A. 1 Cdn Div
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
A.3887 Tpr. SMITH, Jack 4 P.L.D.G.	1st charge A.A. 18(4)	not guilty	guilty	Confirmed. The finding and sentence of the Court. [illegible] Brigadier.
	2nd charge A.A. 40 (Alternative)	not guilty	not guilty. To undergo 6 Months detention 9 Nov. 42. [illegible] A.C.	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— no Sir.

(Signed) [illegible] (A.E.D. Tremain) Brigadier
. . . . *Commanding* R.C.A. 1 Cdn Div
Confirming Officer (*d*)

(Signed) [illegible] A.C.
President.

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 5th to 9th day of Nov., 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. ~~The officers under instruction~~)
were duly sworn.

* Omit if not applicable.

Signed this 9th day of Nov., 1942.

[illegible] A.C.
President of the Court Martial.

C. Certificate in case of death sentence.

* See footnote (*b*) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~(I direct that the soldier named in the margin be not committed to prison until further orders.)~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 10 day of Nov 1942

[illegible] Brigadier
Confirming Officer

Promulgated and extracts taken in the case of

(*a*) (Dated) 12 Nov 42 (Signed) [illegible] Capt & Adjt 4 CDN. RECCE. BN. (4 P.L.D.G.)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible]

B

CHARGE SHEET

In the Case of

A 3887 Tpr Jack Smith, of the 4 Cdn Recce Regt (4 P.L.D.G.) a soldier of the Canadian Army (Active Force), is charged with, when on Active Service:-

1st Charge
Sec 18(4)
A.A.

STEALING GOODS, THE PROPERTY OF A PERSON SUBJECT TO MILITARY LAW

in that he

in the field, on or about 15 Oct 42, stole an overcoat, valued at £4-4-0, the property of F 39580 Tpr Crouse, E. W., 4 Cdn Recce Regt (4 P.L.D.G.), a person subject to Military Law.

2nd Charge
Sec 40.
A.A.
(Alternative)

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field, on or about 15 Oct 42, was in improper possession of an overcoat, valued at £4-4-0, the property of F 39580 Tpr Crouse E. W., 4 Cdn Recce Regt (4 P.L.D.G.), a person subject to Military Law.

In the Field
27 Oct 42.

(J. D. Adams) Lt.-Col.,
O.C., 4 Cdn Recce Regt (4 P.L.D.G.)

To be tried by Field General Court Martial

~~(H. D. H. Salmon)~~ ~~Major General,~~
~~C.O.C.~~ 1st Canadian Division.

"A"

MEDICAL OFFICER'S REPORT

I certify that No. A 3887 Tpr Smith, J.
of 4 Cdn Recce Regt (4 P.L.D.G.) *is in a* Fit *state of health,*
and Fit *to undergo Trial by Court Martial.*

J Macleau Capt
Medical Officer

Station In the Field

Date 5 Nov 42

M.F.B. 246
60 F A 8/42

I CERTIFY that No. A3887 Tpr Smith J. 4 Cdn R. Cce Regt (4 Bde H.Q.) Regiment

is* fit to undergo trial by Court-Martial.

9 NOV 1942 *Signature of the Medical Officer* Capt.

* Insert "fit" or "unfit."

(a) Here insert name of :—
  (i) Officer who investigated the charges.
  (ii) Company, etc., Commander who made preliminary enquiry into the case.
  (iii) Officer who took down the Summary of Evidence [R.P. 19 (B) (iii)].

(b) To be filled in if there has been a Court of Inquiry respecting any matters connected with the charges ; otherwise to be struck out [R.P. 19 (B) (iii)].

(c) To be filled in by the Commanding Officer.

(d) Any items not applicable to be struck out.

(e) One copy to be sent to the President ; one copy to be filed with the application for trial.

(f) Original summary of evidence to be sent to the President.

(g) 3, 4, 6 and 7 to be returned to the Officer Commanding the unit of the accused with the notice of trial.

(h) 5 and 8 to be sent to the President.

If the accused has elected to be tried under A.A. 46 (8) the fact should be recorded at the top of this form.

(11362) Wt.22637/516 20,000 8/42 A.&E.W.Ltd. Gp.698
(13428) Wt.46726/761 120,000 1/43 " " Forms/3116/18

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for General and District Courts-Martial

Proceedings of a F. G. Court-Martial held at Trial. on the 5th to 9th day of Nov. 1942 by order of Brigadier A E D Tremain Commanding R.C.A 1st Cdn Div dated the 31st day of Oct 1942

President.
Lt Col. C. P. Climo
1 Corps C.D.C.

Members.
Capt. H. F. Campbell
4th P.L.D.G.
Capt A.M. Smith.
4th P.L.D.G.

, ~~Judge Advocate.~~

Trial of* A 3787 Pte. Smith, Joseph, 4th P.L.D.G.

The order convening the Court, the charge-sheet and the summary ~~(or abstract)~~ of evidence are laid before the Court.

~~The Court satisfy themselves that is not available to serve owing to~~

~~, waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† Lieut W.H. Powell, 4 P.L.D.G.

Counsel‡ or defending officer† Lieut E.J. Thorne, 4 P.L.D.G.

At 1000 o'clock the Trial commences.

The order convening the Court is read, and ~~is marked~~ signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. No sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

---

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

M.F.D. 371
80-7-8 5000

B

The President and members and ~~judge-advocate~~ are duly sworn.

~~The following officers under instruction are duly sworn.~~

The court adjourned from 1030 hrs 5 Nov 42 to 1000 hrs 9 Nov. 42

Charge-Sheet

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Not guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Not guilty *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

Answer.

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

Answer.

The accused having pleaded Guilty to charge, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

9-11-42.

Mr Smith J.

#46

The Medical Certificates have been presented.

The Court opens at 1000 hrs. 9-11-42 -

The accused on the first charge pleades " Not Guilty " to and charge Not Guilty.

Prosecutor.

The only remarks I have to make is that this is a slightly different case in that it has the added fact of this having stolen from his Commade in arms in that he has stolen and sold a coat belonging to a fellow soldier

(1) 9-11-42.
~~Sudan.~~
42

Pte Smith J.

The Medical Certificates have been presented.

The Court opens at 1000 hrs. 9-11-42 -

The accused on the first charge pleads " Not Guilty. Second charge Not Guilty.

Prosecutor.

The only remarks I have to make is that this is a slightly different case in that it does not add fact of his having stolen from his Comrade in arms in that he has stolen and sold a coat belonging to a fellow-soldier

1st witness

CR 2019 4/Sgt McCardle J.E.
No 1 Provost Coy RCASC

Q: will you tell the court everything you know of the charge

A: On the date mentioned I read a complaint & in company with the Civilian police I searched the house & Sgt Baker and found the Blue Overcoat in question and later on the identification parade Mr Baker pointed out Tpr Smith as the one who had sold him the overcoat & Smith was cautioned and stated that he had nothing to say

Q without telling us any thing Baker might have said can you tell us exactly what circumstances the coat was found

A: ~~in the~~ she coat was found hanging up in the kitchen

Q: Did you indicate to Mr P that an overcoat was stolen

A yes sir

Q: Tell us anything that was said by Mr B. in the presence of Smith

A: he said that is the man that sold me the blue Overcoat.

Q: You are quite positive of that

A: yes sir.

Q Did Mr B indicate weather or had been to his house before to sell property

A no sir

Q Is the coat found in Mr B's home

A yes sir

Q: was the coat brought there to the Identification at Pks?

A: yes sir.

~~Q~~

Q: did any one tell us anything about the custody of the coat up until this time

A: It has been in the custody of the Hastings police.

Q Do you know of any marks on that coat by which it may be identified.

A No sir

Defense Cross Examined.

Q If there are no marks how can you identifying it

A The coat was taken from Mr. B's house and to the Police Station and from there to here.

Q Can you recall how many people were pushed out by Mr B, at the parade

A There were ~~[redacted]~~ seven men pushed out as selling things.

Q Did you make note at the time.

A: yes sir. 1

Q: Did you discuss or gain information regarding money handing by Mr. B

A: No sir.

Q: Are you certain the word sold was used

A: yes sir.

No Re examination

(6)

2nd witness.

~~Pte~~ F 39580 Pte Crouse C.W.
4th P.P.C.L.I. 17th Can

Q Is this your own coat
A yes

Q when did you last have it
A Oct 5.

Q where was it at that time
A Hanging in my room in my billets

Q when did you first miss it
A Oct 16th

~~Q Did you explain why~~

Q was your hat turned in to the stores
A yes

Q why was the coat not turned in
A I left it lent someone to go from

Q when you missed the boat what did you do.

A I reported to the troop Sgt

Q I.e. Sgt Smith in the same troop.

A yes sir

Q How close does he sleep to yours.

A The next room.

Q Is he a friend of yours.

A yes sir I have known him about 6 mo

Q He did Smith know that you missed the boat

A I am not sure

Q Are you sure this is the boat

A Yes I am positive.

The boat is (Exhibit O)

Q How long have you had the coat

A Since last Feb

Q How much did you pay for it

A 85 Shillings

Q where did you buy it

A Harrogate ~~N~~ London

Q when did you last wear it.

A On my last leave,

Q How have you been carrying it since last Feb

A In a suit case

Q was it unusual that it should be hanging above your bed

A yes I had loaned my suit case.

Q were you present at the identification parade on 19 Sept

Q

Defense Cross examines

Are there any marks by which you could identify the coat

A no sir

Q when you bought the coat did you notice whether there were many like it,

A no sir

Q what size do you wear

A 38 in coats

Prosecutor re examines

Q at the time did you have a fitting

A yes sir

Q Do you remember the salesman telling you the size

A No sir, I just walked out with it on.

Q: Looking at Everything about the coat are you still sure it is your coat?

A: Yes sir.

3rd Witness Thomas

Mr Alfred Baker 766 Ft Ridge Dr Adelaide

Q Do you know a trooper Jack Smith.

A Not by name sir

Q Do you recognize the accused as the man who sold you a blue coat

A yes sir.

Q Tell the court the circumstances surrounding the sale.

A ~~He~~ it was in the 1st week Oct but he ~~had~~ said not to deliver coat until then.

(11)

Q Did he mention a coat at the time.

A yes sir he mentioned a blue coat and a suit.

Q Did he mention what color they were,

A yes sir Blue, he described the coat and suit.

Q How many days later did he come back

A 10 days sir, he said he could not get out then ~~and~~ but he would bring it the next night he said it would be a longer. He asked if I would advance him Ten Shillings and I did give him Ten Shills. before I saw the coat or any thing.

Q what time of Day was it?

A In the evening sir

Q Was the 10 Shilo to be part of the purchase price.

A yes sir I was to give him 2 Pds for the boat and Suit.

Q was it definately understood that the ~~the~~ Shilo was to be part of the Purchase Money

A yes sir.

~~Q After he gave you was anything said after the 10 Shilo~~

Q he came back how long after that

A About 10 or 14 days, he walked into the yard, he said, "you he said I thought I was going to see you" I asked him where it was. He said I left it on the bank near your back door.

Q What happened after that

A I am not sure whether I went and got the coat or whether the two went back

Q Where did the conversation take place

A On my yard about 50 yds away from where the coat was. He actually handed the coat to me.

Q What conversation occurred

A He asked if I could advance another 12 Shillings, he said he would give me a good bargain. When I bought the suit that leaves me 18 Shillings to advance. I gave him the 12 Shillings.

Q Did you have any suspicions as to whether the coat belonged to the Smith.

No sir.

Q this 12 Shillings, was it understood that it was to be on the suit and the coat.

A yes.

Q Did he come back to see you again

A No sir

Q How long after this time did the Police come?

A It was on a Thursday and the Police came on Monday.

Q So this the coat (Ex. C)

A yes, I voluntary handed this coat over to the Police and told them I had bought it from one of the men.

Q are you quite certain that is the coat

A Yes sir I think it is. I hardly ever saw the coat, my wife brought it in and

bring it up and I never saw no more of it x

Q ~~At the identification~~ Are you absolutely certain that this man Mr Smith is the man who sold you the boat

A yes unless he has a double

Defense cross examines

Q You had never seen him before he came to your house

A no sir

Q Did any body send him to you,

A No sir.

Q Do you lend much money to the boys?

A About 685.

Q ~~When the man came to call~~ ~~the court~~, You came to this ~~court~~ you were surprised to see him ~~I am~~ days later when he came back

A Yes sir.

Q The Defense talks about Mr. B. loaning money on such a short aquantance,

Q Did you appear on any other parades besides the Delenlifeasko parade.

A Yes sir

Q Did you ever lend this man any money

A No sir.

~~the defense~~

(17)

Mr D. states that ~~the~~ he was offered a ring as security for money loaned.

Prosecution Re-examines

Q. When the identification parade was held it was 4 or 5 days later on a Tuesday. Did you have any difficulty in identifying Sgt Smith as the man who sold you the coat.

A No sir.

Defence asks one question.

Q Did you pick this man out of the identification parade first?

A Yes as far as I can remember sir, I may be wrong.

(9)

Q Do you still owe him some money

A yes sir

Q Did he pick you out first at the administration parade

A No sir I was either the 3rd or the fourth

Prosecution x examine

Q Did you hear the rumor that (Mr B) was not only loaning money but buying things

A No sir

Q You are quite sure about that

A Yes I am quite sure -

Q How did you hear that he would loan money

A I heard that Mr Flood and Mr Foulkes had borrowed money

Has the ~~defence~~ Prosecution any witness to call. No Sir.

Has the defence any witness to call.

The President of the Court

Q Do you apply to give evidence yourself or a witness

A yes

Defence

Q Will you tell the court what actually did take place on the occasions you did see Mr Baker.

A On the first occasion I went up to his yard and borrowed 2 Shillings from him and went up some time later and asked for 6 Shillings more and he suggested that I give him 2 Shillings back.

Q The time you honored Money from Mr B was it the first time you had spoken to him?

A Yes sir.

Q How soon after you honored the Orders did you come and pay him back?

A I do not sure how long it was.

Q Was there any question about any security for the loan?

A Yes he asked me if I could get him a pair Patrols.

Q How well do you know the house?

A I have gone around with him and know him family well.

Q When you are going on 7 days leave how soon do you have to put your name in for it.

A I am not sure sir,

Q When did Pa leave go on leave

A I just forget exactly what time,

Q you do recollect his having been away

A Yes sir

The Court,

Q How many days was it from the time you payed the $5 back until he borrowed it next

About a week —

The second time he got the money down in Smithfield

The court is adjourned until 1315 hrs.

The court re opens at 1335 hrs 9-11-42.

The Prosecutor is closing

He again draws the courts attention to para 50 Pge 118 MML

He draws the courts attention to the finding that the coat was stolen, taken to Mr B.'s house and sold by the accused—

That Brouse is positive that the coat belongs to him.

That he knows the coat as well as any person would know their own garment

He thanks without any shadow of doubt that the coat belongs to Mr Brouse.

The finding of the coat in Bakers home is proven by Lt Mc Candless Brings up the circumstances surrounding the sale of the coat

Baker had definately identified the accused as the man who had sold him the coat

that the accused had offered to sell a coat and suit to Mr Baker.
That he had been told by Smith that it was a proper bargain
Mr Baker remembers the circumstances of Smith coming to the house the first time and that an advance of 10£ was given to Smith on account.
Things that were said when the coat was delivered.
Smith said when I bring the suit it will leave me 18 shillings to draw
The accused states that he did go to Bakers home
That he had borrowed money under
Smith states that Baker asked for interest
He not only took the coat but pawned it
The crime is that he saw Baker before he bought the coat and made a bargain with him getting a 10£ advance
Baker has the coat as the evidence points out

The Prosecutor brings up McArdle's and Baker's evidence -

That Baker pointed out the accused as a man who had robbed them an evening.

I suggest that what Baker says is the truth, and that he wants to be very frank with the court -

Mr Baker was examined as to that when Smith returned with the overcoat.

About the evidence of the accused with regard to credibility.

That this case is a very serious charge.

The Defence's closing address

We have a similar situation in that the Prosecutor

That Mr Baker does not remember
points of the case

1st Just he denied that he had lent
money to the accused

[redacted]

[redacted]

[redacted]

That Baker was angry because
he had loaned money and
could not get any of it

[redacted]

In that he thinks he frightened
Smith out of the grounds before
anyone else. When the evidence says
he was the 3rd to be seated.
The Defence again refers to
Mr Browns poor memory.

The court is closed to consider the finding.

The court is reopened —

President:

Mr. Smith this court finds you not guilty of the second charge

~~Q Has the prosecution a witness~~ ~~present~~ ~~to~~ ~~P~~ 96

The prosecutor produces the M J M 6, which is certified by the adjutant and a short statement of the particulars of service ~~[redacted]~~ of the accused. After being accepted by the ~~defense~~ Defending Officer. and the accused:

Q Does the accused wish to address the court under RP 96 D. ~~[redacted]~~ which says:

A No Sir

The court is closed to consider the sentence.

-:-

Adjourned
H. Ct.

Exhibit C.

Blue garment.



Proceedings

Ex. 41.

Summary of Evidence in the case of

A 3887 Tpr. Jack Smith. of the 4th Cdn Recce Regt
(4PLDG) Canadian Army Overseas

By direction of the commanding Officer the evidence is taken under oath

First Witness for Prosecution F3958 Tpr Crowe E.W.

I was away on leave from the fifth to the fifteenth of October. I left the coat hanging in my ~~hut~~ room in my billet where I went away. When I returned on the fifteenth Oct. it was gone. I reported the loss to the Tp Sgt. On Tuesday 20 Oct I was called to the police station and they produced a navy blue coat (Exhibit A) which I identified as mine. E.W. Crowe

The accused declines to cross examine the witness.

Second witness for the prosecution C 42019 ~~L~~/Cpl McArdle J.E.

No 1. Provost Coy R.C.M.P. having been duly sworn states: On the 19th Oct 1942 as a result of a complaint received from the 4PLDG Regt that a civilian suit and two overcoats had been stolen from the billets of "A" Sqdn I made inquiries in and around the district. As a result of these inquiries in company with the civil police Hastings the town of Alfred Baker "The Ridge" Hastings was searched and a blue overcoat found therein. On the 20th Oct in my presence Alfred Baker pleaded out Tpr Smith J. as a Sqdn parade as the man who sold him the coat. This man I questioned after cautioning him and he said "I have nothing to say". This soldier I placed under close arrest and turned him over to the Regtl Police. J.E. McArdle

The accused declines to cross examine the witness.

Third witness for the prosecution - Mr. Alfred Thomas Baker.
a civilian residing at 765 The Ridge, Baldslow, Hastings
having been duly sworn states: This soldier came in
to my yard about two weeks ago and said that he
had a suit and overcoat which he wanted me to buy from him.
I gave him ten shillings and he said he would bring the
suit and overcoat to me. About a week ago, just a day
or two before the police searched my home he came back
with the overcoat which he left outside my house.
I went out and got the coat. He told me where to pick up
the coat on my garden path. It was a navy blue overcoat.
I gave him another twelve shillings at that time for the coat.
I was supposed to give him two pounds for the coat and
suit. When the police searched my house and discovered the
coat I offered to pick out the soldier who sold it to me
from an identification parade. I did so and I am
certain that this is the man who sold me the overcoat.

Alfred Thomas Baker

The accused elects to question the witness.

Question 1. What day was it that I came down in the
evening and borrowed that five shillings from you?

Answer 1. I cannot remember the exact night.

Question 2. What night did I come down and borrow the ten
shillings from you?

Answer 2. I cannot remember the exact night.

Question 3. What interest was I supposed to give you on the
five shillings I borrowed.

Answer 3. You said you would give me seven or eight shillings
back for it.

Question 4. When I borrowed the ten shillings from you
you asked me to bring a pair of boots size eight
for the ten shillings and I told you that boots
cost on a pound in A.M. store and you said you
would make up the difference. Is that right?

Answer 4. No. Nothing was said about boots.

~~Question~~ 5.
The accused having been duly cautioned in accordance with R.P.4 elects to reserve his defence

A3867 Tpr J. Smith

Taken down by me in the presence and hearing of the accused this 24th day of Oct. 1942.

Certified that R.P. 4(C)(E)(F) and (G) have been complied with.

W.F. Johnston Lieut & Adjt.
4th Cdn Recce Regt (4 PLDG.

The Royal Canadian Regiment TOS. 4th Can Res Bn (4 Bn Dn) 8 Feb 41 "E"

No. A3887 Name Smith Jack | Sqn., Battery, or Company "A" | Corps | Date of enlistment 1-4-40 | G.C. Badges | Service or Proficiency Pay | Sheet No. One | Signature O.C. Company, etc. J Power | Character Very Good

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Attached 2 R.T.U. CASF Taints from R.C.R. Depot D.O. 123 15-5-40						Withdrawn Major			
Camp Borden	14-5-40	Pte		About without leave from 1400 hrs 14-5-40 until 0600 hrs 6-6-40 (5 days 8 hrs)	Sgt Graham Cpl Lanyon	2 days C.B.	6-6-40	Capt GG Mullen	Forf 6 days Pay for CASF Duties
Field	1 Nov 40	Pte		AA Sec 15(1) WOAS Absk from 2000 hrs 1 Nov 40 to 1130 hrs 2 Nov 40	Cpl Hennen	7 days Detn	4 Nov 40	Lieut Sporting Major	Forf 8 days Pay
"	31 Jan 41	"		WOAS Absk 2330 hrs 31 Jan 41 until 1130 hrs 1 Feb 41	Capt Clarke RS.		6 Feb 41	Capt Keating Major	Forf 1 days Pay
"	1 Feb 41			WOAS Absk from 1200 hrs 1 Feb 41 until 1700 hrs 3 Feb 41	Cpl Sutherland	10 days Pay 10 days F.P.	6 Feb 41	Lieut Sporting Major	Forf 2 days Pay 10 days Pay FP Total 12 days Pay

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Guild	29/8/41	Tpr		AWL from 2230 hrs 29-8-41 to 2115 hrs 31-8-41	Sgt Patterson Cpl Hudson	2 days Pay Fine 5 days pay 14 CB	1-9-41	Lt W.B. Barling Troop	7 days forf Pay
Guild	24/Oct/41	Tpr		WOAS Conduct to the prejudice etc. was absent from parade after being duly warned	Sgt Turcher Sgt McKie	3 days CB	25 Oct 41	Lt W.B. Barling Troop	
Guild	15/Nov 41	Tpr		WOAS. AWOL from 2300 hrs 15 Nov 41 to 0500 hrs 17 Nov 41 AA Rule 1(ii) 1 day 9 hrs	Sgt Patterson	14 days CB	19 Nov 41	Lt W.B. Barling Troop	Forf 2 days Pay.
Guild	14 Jan 42	Tpr		WOAS Conduct to the prejudice of good order and discipline in that he when ordered by a Police Officer to produce his motor vehicle for a check he was unable to do so AA Rule 40	Sgt Potts RE	14 days CB.	14 Jan 42	W.W.B. Barling Troop	
Guild	31 Jan 42	Tpr		WOAS Absent from 2215 hrs 31 Jan 42 till 0730 hrs 1 Feb 42 AA 15	Cpl Jordan SSM Sleo.	7 days CB.	2 Feb 42	H.P.	Forf 1 days Pay
"	17 Apr 42	Tpr		WOAS Absent from working party 7 AM on 15th Nov, 17 Apr 42 to 2145 hrs 19 Apr 42 2 days 13 hrs 30 mins AA Rule 15	Sgt Gow Sgt McKie	10 days CB 14 days CB	30 Apr 42	Lt W.B. Barling Troop	1 days Pay Total 15 days Pay.

No. 1/3847 Name Sillis, J. Sqn., Battery, or Company 4 Corps 4 Can Armd Regt (4 Pr D.G.) Date of enlistment 1-4-40 G.C. Badges

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. | Service or Proficiency Pay | Character

M.F.M. 6 (A.F.B. 133) 3001—8.39 (1702) H.Q. 1771-45-18

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	7-9-42	Tpr		Desrt. 0115 hrs 15(1) AWL from 2230 hrs 1 Sep 42 until 2315 hrs 7 Sep 42 (absent 45 days)	Sgt Littler				

Certified A true and Exact Copy of the Original in every material detail.

J. Johnston Lieut + Adjt
4 CDN ARMD REGT (4 PR D.G.)

P.T.O.

"D"
Admitted

A 3887 Tpr Smith, J.

(a) The accused was held in custody awaiting trial on the present charge for 16 days no days in civil custody and ... days in military custody making a total of 16 days of which no days were spent in hospital.

(b) The present age of the accused according to his attestation paper is 24 years.

1 Apr 40

(c) The accused is in possession of no military decorations or medals.

(d) The accused is not entitled to any military reserve pay.

As at 1000 hrs
5 Nov 42

(J. D. ADams)
Lt.-Col.
O.C. 4 Cdn Recce Regt (4 P.L.D.G.)

W-86

Pte SMITH J

Correspondence to be PINNED here.

W. 86

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

'A.

On Active Service, this Fourth day of January, 1943.

Order convening the Court.

Whereas it appears to me, the undersigned, an officer in Command of 5 Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to order the said offence to a superior qualified officer;~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*~~I am unable to appoint~~

*~~more than one Officer to form the Court~~

*~~a qualified officer to preside~~

*~~more Officers having more than one years~~

~~service~~

~~in the above reasons, namely:-~~

In my opinion, military exigencies, namely, the dispersion of units, and difficulties of communication and other difficulties render it inexpedient to observe the provisions of those rules inconsistant with Appendix "A" to D.R.O. 772 on the trial of the person named in the annexed schedule.

105

President.

Rank.	Name.	Regiment.
Major	F.J. Gilmour	H.Q. 2 Cdn.Div.

Members.

Rank.	Name.	Regiment.
Major	W. Lavigne	R de Mais
Capt	D.E. DeGrandpre (WAITING MEMBER)	R de Mais
Lieut	S.T. Rea	R.C.A.S.C.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed D.V.Whitehead Brigadier
5 Cdn Inf Bde.

Commanding Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
M/11877 Private SMITH, James Calg.Highrs.a soldier of the Canadian Army Overseas.	FIRST CHARGE A.A. SEC 15 (1) (see charge sheet attached)	Guilty	Guilty	
	SECOND CHARGE A.A. SEC 10 (4) (see charge sheet attached)	Guilty	Guilty	
	THIRD CHARGE A.A. SEC 15 (1) (see charge sheet attached)	Guilty	Guilty	
			To undergo detention for 45 days & be put under stoppages of pay until he makes good the sum of £1/7/4 in respect of cost & return to unit 6 Jan 43 J Gilmour Maj	J Campion Brig.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) G.V.Whitehead (Signed) J Gilmour Maj
(G.V.Whitehead) Brigadier — President.
Commanding 5 Can.Inf.Bde.
Convening Officer (*e*)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 6th day of January 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. ~~The officers under instruction~~)
were duly sworn.

* Omit if not applicable.

Signed this 6th day of January 1943.
J Gilmour Maj
President of the Court Martial.

C. Certificate in case of death sentence.

I certify that the terms of *A.C.I. 580 of 1918 have been complied with.

* See footnote (*b*) on page 762 M.M.L. 1929.

Signed this 7th day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

~~All duties that the soldier named in the margin be not committed to prison until further ordered~~ GVW

Signed this 7 day of Jan 1943.
G.V.Whitehead Brig
Confirming Officer

Promulgated and extracts taken in the case of M11877 Pte Smith J.

(*a*) (Dated) 9th Jan '43 (Signed) [illegible] Capt

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

20/39 W. stop—421 and 6 Cpr. P.S. G.Co.

CHARGE SHEET

The accused M11877 Pte. James Smith, The Ca lgary H Highlandrs, a soldier in the Canadian Army in the Firld, is charged with;-

FIRST CHARGE ARMY ACT Sec.15(1) When on Active Service absenting himself without leave,
in that he
in the field, did absent himself without leave from tattoo roll call on 9 Dec. 42 till 2355 hrs. 9 Dec. 42.
Time absent-55 mins.

SECOND CHARGE ARMY ACT Sec.10(4) When on Active Srvice breaking out of barracks
in that he
in the Field, on 10 Dec. 42 did break out of Kelani billet when under open arrest.

THIRD CHARGE ARMY ACT Sec.15(1) When on Active Service, absenting himself without leave,
in that he
in the Field, did absent himself without leave from 0600 hrs. 10/12/42 until apprehended at 1500 hrs. 22/12/42 at Oxford.
Time absent-12 days 9 hrs.
Expenses incurred in returning accused-
£1-7-4.

Dated this 26 day of Dec 1942

To be tried by
I.L.C.M.

D. MacLauchlan Lieut-Col.
(D.G.MacLauchlan) Lt.-Col.
The Calgary Highlanders, C.A.(O)

D. Whitehead Brig
COMD. 5 CDN. INF. BDE.
JAN 5 1943

B.2 J. Whitmore Major

CERTIFICATE IN ACCORDANCE WITH SECTION 163 (1) (JJ) OF THE ARMY ACT.

A

I certify that No. M.11877 Rank Pte. Name SMITH. J.

"C" Coy. CALGARY HIGHLANDERS Unit, was arrested at OXFORD

on 22/12/42 at 15.00 hrs.

A.C.I. 2253/1942.

Major,
APM 169 (HQ) Provost Coy.

THE CALGARY HIGHLANDERS C.A.(O).

MEDICAL CERTIFICATE.

I certify that I have this morning examined No. M 11877

Pte Smith J of THE CALGARY HIGHLANDERS, and in my opinion he is

is Fit ~~Unfit~~ to undergo trial by Court Martial.

tation In the field.

Medical Officer.

Date. 6 Jan 43.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

Army Form A 9.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at In the Field on the 6th day of January 1943 by order of Brigadier G. V. Whitehead Commanding 5 Cdn. Inf. Bde dated the 4 day of January 1943

President.

Maja J. J. Gilmour RCA
H.Q. 2nd Cdn Div.

Members.

Major W. Lavigne R. de Mais
Capt. D. E. DeGrandpre R. de Mais

Trial of* M 11877 Pte James Smith, ~~Judge Advocate~~ Coly Highrs

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ ~~is not available to act owing to~~ ~~is not available~~

~~waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lieut E. B. O'Meara Coly Highrs

~~Counsel~~ or defending officer† Lt R. T. Kerfoot Coly Highrs

At 1400 o'clock the Trial commences.

The order convening the Court is read, and is marked A signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No Sir

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

GAZETTE. W.O. W 14626/2B. 20,000 sets. 8/40. E. & H.-L. Ltd. (4667/11). Forms A 9/20.

J Gilmour
1944
Jan

B

The President, members ~~and judge-advocate~~ are duly sworn.

~~The following officers under instruction are duly sworn.~~

Charge-Sheet.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

Instruction. If the accused has elected to be tried under Army Act. sec. 46 (B) the fact should be here recorded.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first][1] charge against you, which you have heard read ? *Question to the accused.*

Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read ? *Question.*

Guilty *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read ? *Question.*

Guilty *Answer.*

Are you guilty or not guilty of the fourth charge against you, which you have heard read ? *Question.*

✓ *Answer.*

The accused having pleaded Guilty to all charge[s], the provisions of Rule of Procedure 35 (B) are here complied with.

Instruction.

[1] If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[~~The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" is read to him again.~~]

The accused M11877 Pte James Smith, Coly Highrs is found guilty of all three charges.

†The summary (or abstract) of evidence is read, marked "D" signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. No - My defending officer will The defending officer ~~The accused~~ in mitigation of punishment ~~says~~:-

[*or* hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

J Johnson
Maj
Pres

DD

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

No.

Answer.

Evidence as to character.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The ~~Court is closed for the consideration of the~~ finding.

~~The Court find that the accused~~

Proceedings on Conviction before Sentence.

*When the Court is already open this sentence will be struck out. Evidence of character, &c.

*~~The Court being re-opened, the accused is again brought before it.~~

Lieut. E. B. O'Meara is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes. A.F.B. 296 1 Conv. by F.M.M.G.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked 2 & 7, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

Answer. Yes

~~Cross-examined by the accused.~~

[Intervening—If by reason of the nature of the offence of the accused or a previous one, the Court would have power to award any additional punishment to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.* No.

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused to undergo detention for 45 days & be placed under stoppages of pay until he has made good the sum of £1/7/4 in respect of costs & return to his unit

J J Tibbins
Maj &
Pres.

Sentence.

Plea for Mitigation of Punishment

Charge against M 11877 Pte Smith.

The accused is only 21 years of age. He was overcome by homesickness and went to visit relatives in Oxford.

This is his first long A.W.L.

He admits his guilt freely and is willing to take his punishment and to soldier in future

(Defending Officer) Lieut
The Calgary Highlanders C.A.D.

"I" Coy
Maj
Pres

ABSTRACT OF EVIDENCE

In the case of M-11877 Pte Smith, J. Calgary Highlanders taken by Lieut. E.W.B. O'Meara at the direction of the Commanding Officer, in accordance with O.R.O. 772.

FIRST WITNESS

M-10553 L/Sgt Bailey, E.J. of 14 Platton, The Calgary Highlanders, states that on 9 December 1942 when he checked the platoon at 2300 hours, Pte Smith was absent, and that Smith reported to him at 2335 hours. He was placed under open arrest. L/Sgt Bailey further states that on checking the platoon at 0600 hours, 10 December 1942, he again found Smith to be absent. He did not see him or hear of him again until he was informed that Smith had been apprehended on 22 December 1942, at Oxford.

SECOND WITNESS

Major Taylor, A.P.M. 159 (HQ) Prov. Coy. Documentary.

THIRD WITNESS

M-11277 Sgt. Florence, J. states that on 24 December 1942 he went to Bognor Railway Station at 1530 hours where he received Pte Smith from the Provost Corps. He brought him back to the unit where he has since been kept in close custody.

E W B O'Meara Lieut

28th Dec '42.

E.W.B. O'Meara, Lieut.,
The Calgary Highlanders, C.A.(O)

ABSTRACT OF EVIDENCE

FOURTH WITNESS

M.10928 R.S.M. Stanley, E.V., Bn.Hqs., The Calgary Highlanders, will state, that M.11877 Pte. Smith, J. name did appear on the Absentee Report daily from 0630 hrs 10 Dec 42 until apprehended at 1500 hrs 22 Dec 42.

E V Stanley R.S.M.
M.10928 E.V. Stanley.

D J Watson
Major

Expense Voucher Re—: Ref: K.R. & O. (Can) 539 B

Reg. No. M11827 Rank Pte Name Smith, J Unit Cal. Highs

The following expenses were incurred in apprehending and returning the M/N Soldier to this Unit from London from Oxford

Date	Particulars	Amount		
24 Dec 41	Escorts return fare from LONDON To Oxford (½ portion)		4	11
	Prisoners single fare to LONDON From Oxford		4	11
	Prisoners fare from To			
	Escorts & Prisoners expenses for [illegible], Meals, Bus fares (½ portion)		2	0
	Total £		11	10

"K" Thompson Sergeant

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

S D Lemmon Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

CMHQ 1000-55
40/P & S/483

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No M-11877 Rank Pte. Name Smith, J Unit Can. Regt

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars	Amount		
24/Oct/41	Escorts return fare from LONDON To Bognor Regis		10	4
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Bognor Regis		5	2
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		15	6

"I" [illegible] mvr pres

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

[signature] Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000/55
40/P & S/463

No. M4187 Name SMITH J. Sqn., Battery, or Company Corps Date of enlistment 3/6/40 G.C. Badges N/A Service or Proficiency Pay N/A

Date of last entry in Company Conduct Sheet N/A No. and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No. 2 Signature O.C. Company, etc. Character

M.F.M. 6 (A.F.B. 132)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
1ST Sheet destroyed 3-12-40 on completion of 6 months service									
Carrie BKS	10-1-41	PTE		Absent from place of parade A-A Sec. 15 (2)	Cpl Brissen	4 days C.B	10-5-41	Drunkenness Nil Maj J W Henderson	
In the Field	12-5-41	"		absent from place of parade A-A Sec 15 (2)	L/C Robinson	1 days pay	19-5-41	Capt DJ Leach	
In the Field	16-5-41	"		Failing to appear at place of parade A-A Sec 15 (2)	C.S.M. Coogan Cpl Spence	7 days C.B 4 days C.B	26-5-41	Maj W Henderson	
In the Field	22-8-41	"		A.W.L. 9 days 45 min A-A Sec 15 (1)	L/C Haybut	28 days pay stoppages 7 days C.B.	23-8-41	Lieut. J.G.S.H.	
In the Field	3-11-41	"		A.W.L. 1 hour A-A Sec 15 (1)	Sgt Rhodes	7 days C.B.	10-11-41	Capt. D.J. Leach	
In the Field	29-11-41	"		Neglect to prejudice failed to get out bed until 1030 A.M. AA Sec 40	C.S.M. Roberts J.W.	2 days forfeiture of pay	3-1-42	Capt. D.J. Leach	
In the Field	18-2-42	"		Neglect to prejudice failed to make up his Kit properly A-A Sec 40	Sgt. Bowen V.O	5 days C.B.	19-2-42	Maj. Constable	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	7-7-42	Pte		Neglect to the prejudice of good order & military discipline. Dirty Rifle - A.A. Sec. 40	4c. Shantz H.G. Sgt. Bowen V.O	7 days C.B.	9/8/42	Capt. Hayland	
Field	1-8-42	"		Neglect to prejudice - damaged a blanket A.A. Sec. 40	Cpl. 45 Marshall E	3 days Pay	2/8/42	Maj. Mitchell	Stoppage to cover cost of blanket
Field	2-8-42	"		Quit the Ranks A.A. Sec. 15 (d)	Lt Lynch L.T.	Admonished	4/8/42	2 i/c Maj. Hamilton	
Field	29-8-42	"		Neglect to the prejudice of good order and military discipline - appeared on parade unshaven	Pte Maguire W.A.	7 days C.B.	1/9/42	Capt. A.D. Hayland	
Field	2-11-42	"		Conduct to the prejudice of good order & military discipline. entered a canteen where parade was dismissed AA. Sec 40	W/13553 Pte Bailey E.J. W/11123 Pte Collins C.F.	7 days ~~pay~~ C.B.	4/11/42	Lieut. S.A. Patterson	

Certified a true Copy.
W.C. Howard Lieut Adjt

(Substitute for A.F.B. 296)
or M.F.B. 355.

STATEMENT OF CHARACTER AND PARTICULARS
OF SERVICE OF THE ACCUSED

No. M11877 Name Pte. Smith, James Unit The Calgary Highlanders, C.A.(O

Age 21 Married or Single single No. of Dependents nil

Date of Attestation 3 July 40

No. of Days Spent in Close Arrest (To date of trial)

Civil nil Military 22 Dec Hospital nil Total 16 days

Dates of Promotions, Reductions and Confirmations of Rank, if any

N/A

Authenticated Copy of M.F.B. 6 will Accompany this form

(Officer i/c Records)
W.E. Howard Lieut Adjt

Dated at

This 6 day of Jan 1943

(To be dated and signed as of date of trial.)

F. Chubbuck
Maj
Pres

4C·14

PTE SMITH J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : D93812 Pte James Smith 9 Cdn F d Amb

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	A.A. 19	Not Guilty	Not Guilty	
2nd	A.A. 40 alternative	Not Guilty	Guilty	
3rd				
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lass of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... beginning ~~on (date)~~ .....

(I. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 1 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo detention for a period of sixty (60) days

(Sgd) ..... 2 Oct 44 (Sgd) J T MacDougall

Judge-Advocate, if any. Date awarded. President. (RP 45, 50)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 4.)

My decision on the finding(s) and sentence set forth in Part I is :

I confirm the finding and sentence of the Court.

~~I direct that the accused be committed to ..... detention barracks and further ordered that~~ (1. AA 57A. Delete if not used.)

(Sgd) .....

Date 3 Oct 44 Commanding ADMS 1 Cdn. Inf. Div. Col.

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D93812 Pte Smith, Jas	4 Oct 44	

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 44-14

FIELD GENERAL COURT-MARTIAL

CFA86 (In lieu of AFA8) 40/P.S. 8/1698 (29864)

RECEIVED 26 OCT 1944 JAG BRANCH C.M.H.Q.

Convened by Order of Col. W. L. Colle Com ADMS 1 Cdn Inf Div dated 24 Sept 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 300, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D93812	Private	James	Smith	9 Cdn Fd Amb

PROCEEDINGS REVIEWED

R. Livesmore Lieut

27 Oct 44

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) 2 Oct 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~Judge-Advocate~~, ~~Prosecutor~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fms ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number therein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) as attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is [are] amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is [are] brought before the Court. At 0910 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is [are] fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the OC.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : ~~Do you object to ..... as Interpreter ? Ans~~

~~The Interpreter is sworn.~~(1) Do you object to D93574 Cpl R.E. Smythe as shorthand writer ? Ans No

The shorthand writer is sworn.(2)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No (2)

(1. RP 109. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~J.A. if any, and Offrs under instr, if any~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	MAJ	J. T. MacDOUGALL	5 CDN FD AMB
Member	CAPT	R. G. HART	1 CDN FDS
Member	CAPT	J. C. DICKISON	5 CDN FD AMB
Judge-Advocate			
Prosecutor	LIEUT.	J. P. ROSPUTNEK	9 CDN FD AMB
Defending Offr	CAPT.	J. BROOK	9 CDN FD AMB

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. Lists of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused D93812 Pte James Smith before arraignment make(s) (no) ~~no~~ plea (3)

(3. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 24, 25(A), 112), or in bar of trial (RP 26), or as to accused's mental fitness to stand trial (AA 132, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RxP cited. Insert in All caps and name of the accused making the plea.)

A9. The accused is [are] arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~not~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A84 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 2. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement (1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) *not* changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. no, sir (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes ([redacted]) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not~~ establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on ~~the latter charge(s).~~(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. I wish to give evidence myself on oath Do you intend to call witnesses on your behalf ? Ans. yes sir Are they witnesses as to character only ? Ans. no, sir
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court in [redacted] recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the alternative charge(s), being subject to confirmation, will be promulgated later.(1) ~~The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated.~~ Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (a), RP 45, 122(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. no sir
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement of [redacted] as to Character and Particulars of Service(1), and certified true copy (~~extract~~) of Conduct Sheet(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3)
(1. MFB 355 or AFB 2560. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement and Conduct Sheet, and in mitigation of punishment ?(1) Ans. Yes, through my defending officer.
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(4), RP 122(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and then adjourns~~.
(1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its generous, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 336, 563-564. Overseas AO 309, 2323. MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 43(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused D-93812 Pte. James SMITH of 9 Cdn. Fd. Amb. R.C.A.M.C., a soldier of the Canadian Army, Overseas, charged with, while on active service

DRUNKENESS

1st.Charge AA Sec.19. in that he, in the field on 13 Sep 44, while on duty as an Ambulance Orderly, at 9 Cdn Fd Amb., Casualty Collecting Post, was drunk.

CONDUCT TO THE PREJUDICE OF GOOD ORDER & MILITARY DISCIPLINE

(Alternative)

2nd.Charge AA Sec.40. in that he, in the field on 13 Sep 44 became unfit for duty by reason of previous indulgence in alcoholic stimulants.

In the Field
21 Sep 44.

(J.H. Sturdy) Lt.Col.
O.C. 9 Cdn. Fd. Amb.

In the Field
24 Sep 44

To be tried by Field General Court Martial.

(W L Coke) Colonel
ADMS 1 Cdn Inf Div

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(8).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D 93812	Private		James	SMITH	9 Cdn Fd Amb

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 22 Sep 44 endorsed by me, ~~for by an offr of my staff or comd~~, "To be tried by Field General Court-Martial".

2. ~~And whereas it appears to me that it is not practicable that the said offence(s) should be tried by an ordinary General Court-Martial, and that it is not practicable to delay the trial for reference to a superior authority~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~And I am unable to appoint [illegible] Offrs serving in the Court (including the Officer President), but the nearest Field Force Headquarters is [illegible]~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~And I also appoint as Judge-Advocate [illegible] who is [illegible]~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	J T MacDOUGALL		5 Cdn Fd Amb

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Captain	R G Hart		1 Cdn FDE
Captain	J C Dickison		5 Cdn Fd Amb

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Captain	W M Byers		4 Cdn Fd Amb

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ITALY
(Country.)

Date 24 Sep 44

(Signature of Offr. RP 105 fn 2.)
(W L Coke)
Commanding ADMS 1 Cdn Inf Div
Convening Officer.

Colonel
(Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAMS (To take the place of AFA3) 40-7 & 8-1507 (4031)

(See overleaf for oaths and notes for use on trial.)

9 Canadian Light Field Ambulance

MEDICAL CERTIFICATE 2 Oct 44

I certify that this date 2 Oct 44, I have examined No. D-93812 Pte. J. Smith and found him ~~unfit~~ fit to undergo trial by Court Martial.

unfit G.W.W.

Lt. G. W. Woodhall

Medical Officer
9 Can Lt Fd Amb RCAMC

Proceedings of a Field General Court Martial
in the case of D 93812 Pte. James Smith, 9
Canadian Field Ambulance R.C.A.M.C.

The Prosecution makes no opening address.

1st Witness for the Prosecution. D 93620 S/Sgt F.W. Young 9 Canadian Field Ambulance, having been duly sworn, states:-

Q. Do you know the accused?
A. Yes.
Q What was the nature of his duty at the C.C.P. on 13 Sep 44?
A. The accused was detailed as an ambulance orderly.
Q. On the evening of 13 Sep 44, will you state to the court in your own words, the condition of the accused at that time.
A. On the evening of 13 Sep 44 between ~~8~~ 2130 and 2200 hrs we were loading up the Ambulance. The Driver was Pte. Ackerman, the accused was the orderly. Upon loading the ambulance the accused kept asking for patients and in trying to load the stretcher cases, I had to take over one end of a stretcher as the accused was unsteady and it appeared to me that he might drop the stretcher. He then left and went into the M.I. Room and stared asking in a loud voice for more casualties. I then told him to go out to the ambulance and to stay there, that we would bring them out when they were ready.

Q. Would you explain more fully to the court as to his condition at that time and why you found it necessary for yourself to take his place loading casualties?
A. As I already stated, it was dark out, I couldn't see his features, but the way he was speaking and the way he seemed to be staggering I didn't want to take a chance on his handling the stretcher.
Q. Was anyone else ordered to take over from the accused as orderly for the ambulance?
A. The accused was replaced when the ambulance returned to the CCP without an orderly.
Q. Would you describe his manner more fully at that time.
A. The accused was speaking in a loud voice. His speech was not the same as normal. I do not know exactly how to explain the exact tone of it, it was not slurred.

Cross-examination:-

Q. At the time in question was it very dark?
A. It was very dark.
Q. Could you see the accused when you were loading the ambulance with casualties?
A. Yes you could see the accused but not light enough to see all features.
Q. Is it not true that the night of 13 Sep 44 was an exceptionally dark night?
A. Yes it was true that it was a dark night but being outside you got accustomed to the dark and it was quite possible to see the outline and what you were doing.
Q. Were you very busy at the CCP at that time?
A. They were coming in steadily. As fast as we could clear them out they were loaded into ambulances and cleared back to our A.D.S. At that time we cleared three ambulance loads.
Q. How long were you outside the CCP at the time of the incident?
A. About 10 - 15 minutes.
Q. Did the accused drop a stretcher?
A. No.
Q. How could you tell he was unsteady?

A. As I have already stated, I had been out long enough to see the outlines and I knew that the accused had been drinking, so I noticed him unsteady.
Q. How did you know he had been drinking?
A. Half an hour previously the accused had been involved in an argument through no fault of his own. I then asked the accused if he was drunk. He then replied, "No I am not drunk, I have only had 6 drinks."
Q. If his speech was not slurred can you describe how it was different from normal?
A. No.
Q. When the ambulance returned from the A.D.S. you state the accused remained at the A.D.S.. Is it true that he was instructed to do so?
A. I instructed the ambulance driver to leave the accused at the A.D.S. and I would replace him by another orderly on his return.
Q. At the time of the incident at the CCP was there not considerable confusion and anxiety?
A. I would hardly say there was confusion, I admit we were busy.

Re-examination:
None.

The Court proceeds to question the witness:-

Q. Did the accused act as an orderly for the trip you mentioned or did you have someone else take that job.
A. Yes. Another man was to have gone down but the accused's ambulance had pulled out before he got to it.
Q. At the time you were loading the ambulance how far was the ambulance from the door of the CCP?
A. Between 30 and 40 feet.
Q. To your knowledge when was the accused first placed under arrest?
A. I don't exactly know but the R.S.M. came up the next morning to get the details of what happened.
Q. Did what the accused said, make sense?
A. Yes.
Q. How long have you known the accused?
A. About 2 years.
Q. Do you know him well personally?
A. I know him enough to speak to him but never had anything personal to do with him outside of normal duties.
Q. Did you at any time on the night of 13 Sep 44 see the accused in a goodlight.
A. Yes, around the same time.
Q. Would you describe his appearance and conduct, then, when you saw him in good light.
A. I didn't pay very much attention to what he looked like. All I wanted to do was get him out of the M.I. Room.
Q. Why did you want to get him out of the M.I. Room?
A. Because I knew he had been drinking and he came in asking for more patients and I didn't want him to cause any trouble in the M.I. Room.
Q. Did you see the accused drinking at any time?
A. No.

R.P. 83(b) was complied with.

2nd Witness for the Prosecution. Major W.S. Hoggarth, 9 Canadian Field Ambulance, having been duly sworn, states:-

Q. Do you know the accused, Major Hoggarth?
A. Yes.
Q. Did you see him the night of 13 Sep 44.
A. Yes.

Q. Would you tell the Court in your own words the condition of the accused when you saw him?

A. First, having known and seen him before I had a good mental picture of his normal state. Sometime between 1600 and 1800 hrs I noticed him both in the CCP and outside the CCP in a state that I thought at the time appeared to be due to the overindulgence in spirits. Sometime between 1730 and 2000 hrs I talked to him inside the Car Post. I told him to the effect that he had better go to bed and keep out of the way as he was only not doing his duty but was definitely incapable of doing his duty and making himself a nuisance. He was definitely in a nasty and antagonistic frame of mind which was not normal for him. He would not do what I told him, and seeing there was no use of further talk with him, several of the other chaps seeing this, including, I think, the S/Sgt managed to get him outside away from me. When at approximately 2130 hrs he got back into the Car Post, could not stand or walk properly, could not talk properly or coherently and had a very, what one might call, spiteful and threatening attitude and look in his eye. I felt there was nothing else we could do under the circumstances but put him under arrest and get him back to the A.D.S. out of our way. His conduct without a doubt was due to the overindulgence of alcohol.

Q. Were any orders given to replace the accused in his duty?

A. I do not remember giving a specific order to that effect bit it was just routine that he would be replaced at his duty.

Cross-examination:-

Q. On 13 Sep 44 are you certain that you first saw the accused between 1600 and 1800 hrs?

A. I am not certain of the time but it would be approximately somewhere there.

Q. Is it true that enemy action or even confusion and anxiety at the car post because of internal troubles may have affected you reactions regarding the present case?

A. If anything I tried to avoid more trouble

Q. Do you admit there was already considerable trouble at the CCP before this case was ever brought to your attention?

A. No.

Q. Did you see the accused in the act of drinking?

A. No.

Q. Are you aware that there is good reason to believe thatthe accused was not at the CCP before 2000 hrs on 13 Sep 44, at any time.

A. I know that he arrived sometime during the late afternoon but I don't pretend to remember what time it was.

Re-examination:-

None

The Court proceeds to question the witness:-

Q. Giving the date and hours as close as you can, when did you give the order to place the accused under arrest?

A. 2130 hrs 13 Sep 44.

Q. You gave the order to S/Sgt Young ?

A. I believe so.

Q. Did you pursue the matter at all on the morning of 14 Sep 44?

A. I think I was in at the A.D.S. that morning and spoke

to the R.S.M.

Q. Did the accused definitely refuse to do what he was told when you were speaking to him before 2000 hrs?

A. He did not say in words, "I refuse to do it", but kept on talking, did not agree to do it and did not do it.

R.P. 83 (B) was complied with.

D-93620 S/Sgt Young F.W. recalled at the request of the Defence is cross-examined:-

Q. S/Sgt. Young can you tell the Court what time the accused first appeared at the CCP on 13 Sep 44?

A. I can't state the exact time, I think it was between 2000 and 2030 hrs.

Q. Was he at the CCP in the late afternoon, to your knowledge?

A. I couldn't say for sure but the driver could answer that definitely.

Re-examination:-

Q. Is it possible that the accused could have been at the CCP without you being notified of the exact time when he arrived.

A. Yes it is possible that he could come up without notifying me.

The Court proceeds to question the witness:-

Q. Were you ordered to place the accused under arrest?

A. No.

Q. Did Major Hoggarth give you any orders regarding the accused?

A. Major Hoggarth, to the best of my knowledge did not give me any orders regarding the accused.

R.P. 83 (B) complied with

Defence does not wish to make an opening address.

1st Witness for the Defence. D 93612 Pte. Smith J. 9 Canadian Field Ambulance having been duly sworn, states:-

Q. Pte. Smith would you tell us in your own words what took place on 13 Sep 44?

A. We left the A.D.S. about 1930 hrs and got up to the CCP a little after 2000 hrs so I had a few drinks up there and I got into an argument. Later on I went into the M.I. Room to see some of the patients that had just come in. That was when I saw Major Hoggarth and he called me over and he asked me if I was drinking. I told him I had a few to drink and he told me that, "I had trouble with you last night and I don't want trouble with you tonight." Then I saw S/Sgt. Young and he told me to unload my ambulance ahead of the rest and to get everything ready to return back to the A.D.S. So I loaded the ambulance and as I was doing so I gotthe stretcher about three quarters of the way up when the handle of the stretcher elevator broke, so we had a little trouble with the lower case. After the ambulance was loaded I returned to the A.D.S.

Q. Were you fit to perform your duties?

A. Yes.

Q. What were your duties on the ambulance between the CCP and the A.D.S.

A. I had to look after the patients on the way down. On account of the dark night I had to give the driver a hand to pass the vehicles on the road because there were slit trenches on one side of the road and vehicles on the other.

Q. Up to this time had you been relieved of your duties?

A. No.

Q. Were you at the CCP on the late afternoon of 13 Sep 44?
A. No.

Cross-examination:-

Q. Were you orderly for the same ambulance all day?
A. Yes.
Q. How many trips did you make from the A.D.S. to the C.C.P.?
A. That was the first one at 2000 hrs.
Q. What were you drinking that day?
A. Vino.
Q. How much vino did you think you drank?
A. I had three small glasses.
Q. Where was that, at the A.D.S. or CCP?
A. At the C.C.P.
Q. Were you riding in the front of the ambulance all the way down from the CCP to the A.D.S.
A. I had to get out and look at the patients a couple of times on the way down.
Q. Is it not your duty as an orderly to ride with the patients in the back of the ambulance car?
A. It depends on how serious the cases are. When they are walking wounded we don't bother.
Q. What were you doing to help the driver of the ambulance car?
A. I had to direct him out of the gate at the CCP and the road was very narrow.
Q. Did you get out of the ambulance car on the road at any time besides to look at the patients?
A. Yes, I got out to direct the driver.
Q. In what way did you direct the driver?
A. I had to direct him clear of vehicles and slit trenches.
Q. Were you walking in front of the ambulance when passing slit trenches?
A. Yes.

The Court proceeds to question the witness.

Q. You stated you went out to the CCP after tea. Which was that, supper or evening tea?
A. Evening tea.
Q. At what time were you placed under arrest?
A. At 0900 hrs 14 Sep 44.
Q. Why do you state that time?
A. I went out with the ambulance at 0700 hrs and came back at 0900 hrs and was told by the R.S.M. that I was under arrest.
Q. Did you have stretcher cases on the ambulance when you returned to the A.D.S. on the night of 13 Sep 44?
A. Yes - two.
Q. Pte. Smith, did anybody tell you on the night of 13 Sep 44 that you were going to be placed under arrest or that you were under arrest?
A. No.
Q. You considered your return on the ambulance as regular duty?
A. Yes.
Q. Did you make any other trips that night?
A. No, I went up to bed.
Q. Did the ambulance to which you were detailed, make anymore trips that night?
A. Yes.

R.P. 83(b) was complied with.

Witness for the Defence. B 83704 Pte. Ackerman G.J., 9 Canadian Field Ambulance, having been duly sworn, states:-

Q. Pte. Ackerman, do you know the accused?
A. Yes.
Q. What were your duties on the night of 13 Sep 44?

A. To drive the ambulance carrying patients from the CCP TO THE A.D.S.
Q. Was the accused ambulance orderly attached to your ambulance?
A. Yes.
Q. When did you first see him on 13 Sep 44?
A. About 1945 hrs.
Q. Did you see him during the day at any time before that?
A. Yes, we were together most of the day because we had made a trip to the CCP that afternoon and back to the A.D.S. I saw him at lunch time, then the next time was at 1945 hrs.
Q. At what time did you make this trip to the CCP in the daytime?
A. It was after dinner.
Q. How long did you stay there?
A. About an hour and a half.
Q. Are you certain that you and Pte. Smith were at the CCP on the afternoon of 13 Sep 44?
A. Yes.
Q In what condition was he?
A. In normal condition.
Q. At what time did you return to the A.D.S. in the afternoon?
A. I think it was close to supper which would be around 1700 hrs.
Q. Was he fit for duty at that time? in your opinion ?
A. Yes.
In what condition was the accused when you arrived at the CCP on the night of 13 Sep 44?
A. Normal.
Q. Can you tell us in your own words what happened at the CCP
A. At the CCP I spent most of my time in the evacuation room until I was notified there were patients to go out. The accused while elevating the top stretcher case broke the handle of the elevator so that we had some difficulty. One stretcher case was put on the ground for a few minutes while we got things organised. There were a few shells that landed fairly handy which caused more excitement and then of course there were a lot of orders flying around. With a little difficulty we got the bottom stretcher case in. Then the walking came and they were loaded and I left the back of the ambulance. The accused, the orderly was putting up the steps. He guided me out of the laneway for it was one of the darkest nights I had ever driven in action. The next trouble took place about a mile and a quarter, roughly, from the CCP . The road was very narrow. I was going to pull off but the orderly said, "Just a minute I believe there are slit trenches beside the road", and they there were. He then backed me up and got me as close to them as possible for there were several ammunition trucks coming through and there was no other way of getting out. We got out of there and came to the A.D.S.
Q. How would you say he performed his duties on the night in question?
A. Perfectly.
Q. How long have you known the accused?
A. Two and a half years.
Q. How much time did you spend with him on the night of 13 Sep 44?
A. During the trip to and from the A.D.S. and several times at the CCP.
Q. Would you describe his condition on the night of 13 Sep 44.
A. He was his usual self.

Cross-examination.

Q. Was the accused with you in the evacuation ward of the CCP X during the afternoon of 13 Sep 44?

Re-examination :-

Q. Could the visit to the CCP that you described on the afternoon of the 13 Sep 44 have really taken place on the 12 Sep 44 ?
A. I don't think so.
Q. To the best of your knowledge could it have been on the 12 Sep 44?
A. It was on the 13 Sep 44.

The Court proceeds to question the witness:-

Q. Did S/Sgt Young say anything else to you when he said to leave the accused at the A.D.S.?
A. There was a lot of disturbance and I don't recall him saying anything else except, "Smitty is your orderly and leave him behind at the A.D.S."
Q. Did you hear anyone else speak to the accused when you were loading the ambulance ?
A. Yes.
Q. Who spoke to him ?
A. Quite a few.
Q. To your knowledge was he relieved of his duties at any time while you were at the CCP.
A. No.

R.P. 83(B) COMPLIED WITH.

3rd Witness for the Defence.

D 93658 Pte. Powell P. , 9 Canadian Field Ambulance, having been duly sworn, states:-

Q. Pte. Powell, do you recognize the accused?
A. Yes.
Q. Did you see him on 13 Sep 44?
A. Yes
Q. What were you doing at the time?
A. At the time I saw him I was in the evacuation room as he came in from the A.D.S. sometime shortly after 2000 hrs.
Q. Would you describe in your own words what took place on that night.
A. The accused helped me to load the stretcher cases.
Q. Did you hear him speak?
A. Yes.
Q. Describe his manner of speech.
A. All he said to me, was, "put him on the left side."
Q. How did he sound to you?
A. As always.
Q. Were you very busy at the time?
A. Yes. A few jeeps came in and we had a number of stretcher cases.
Q. Was there any excitement at the time among the personnel of the C.C.P.
A. Yes.
Q. Did you see the accused on the afternoon of the 13 Sep 44 at the CCP?
A. Not that I can remember.

Re-examination:-
None.

R.P. 83(B) was complied with.

4TH WITNESS FOR THE DEFENCE

D 93576 Sgt. Styan L.A., 9 Canadian Field Ambulance, having been duly sworn, states:-

Q. Sgt. Styan, how long have you known the accused?
A. I have known the accused since early 1941.
Q. Would you make a general statement as to the character of the accused?-
A. I have known the accused since February 1941, back in England. As an N.C.O. I have always found him willing to carry out his share of the duties laid out for him. The accused joined the army in June of 1940 at the age of 18. Some overseas and became a member of 9 Canadian Field Ambulance in February 1941 During the training in

England, he was in Eastbourne during a big bombing raid which resulted in 11 unit personnel becoming casualties. He was one of the three of the 11 men to survive a direct hit by a bomb on a shelter. He suffered injuries which put him in hospital. After returning from hospital, he again joined 9 Canadian Field Ambulance and was with us when we came into Sicily. During Sicily he served as an S.B. in a section attached to an infantry unit. He also came into Italy and has served in all the big actions up to the present date. He has always been an efficient ambulance orderly evacuating from the CCP. He is always willing to evacuate his casualties at any time of day through the heaviest shell fire. Never has he refused any orders given by men and I have always found his work satisfactory.

No CROSS-EXAM.
R.P.86(8) COMPLIED WITH.

CLOSING ADDRESS BY DEFENDING OFFICER

The evidence submitted does not, in my opinion, prove that the accused was unfit to perform his duties as a result of previous indulgence in alcoholic beverages. The men who worked with the accused state definitely, not only that he was fit but that he performed an excellent job. Certainly if he was fit to perform his duties, then he cannot be considered to have been intoxicated. By his own admission the accused had only three small glasses of vino, an insufficient number to render the man unfit. The fact that confusion and anxiety and excitement seemed to be the order of the night could indicate that Pte. Smith has been unfortunately the victim of an injustice.

I would like to point out that the accused landed in Sicily at the very beginning of the campaign. Since that time he has been in very little trouble. Since the officer personnel of a unit is constantly changing it has been necessary in this case to call upon one of the unit's best N.C.O.'s to testify on his behalf.

The defence closes and asks the court to agree that certainly there is a reasonable doubt that the accused was drunk and that it has in no way been proved that he was unfit for duty. His C.O. and his senior N.C.O. apparently considered he was fit to act as Nursing Orderly in care of battle casualties in the evacuation back to the A.D.S. On the trip the accused did a very good job in guiding the ambulance through great difficulties.

CLOSING ADDRESS BY THE PROSECUTION

I would like to bring out a few of the facts concerning this case as presented by several of the witnesses. First of all, three witnesses have testified that the accused was at the CCP on the afternoon of 13 Sep 44. At that time the O.C. CCP saw the accused and got the impression at that time that the accused was not his normal self. Secondly, the accused admits himself to having been drinking. The senior N.C.O., that evening, saw the accused while he was working at his duty and saw fit to have the accused replaced by another orderly because the conduct and appearance of the accused gave him the impression that he should be replaced. The O.C. also saw him that evening and was convinced that the accused was not capable of carrying out his duties and ordered him to go to bed. The Senior N.C.O. and Officer Commanding have both the responsibility to see that the CCP is running smoothly and all the men are efficient, at their duties. They did not consider the accused's conduct that evening such that would enable him to carry out his duties properly due to the fact that he was under the impression that the accused was drinking intoxicating liquor.

STATEMENT IN MITIGATION BY THE DEFENDING OFFICER.

The accused has performed his duties well since the beginning of the invasion of Sicily. His few offences were of a minor nature. On the night in question, the defence feels that other factors may have contributed to his being placed under arrest on the following day. The defence asks the Court to consider the sentence of the accused in the light of the fact that he apparently performed his duties in the evacuation from the CCP in a satisfactory manner.

M.F.B. 955
40/P & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D-93612	PRIVATE	SMITH. .J.	9 Cdn Fd Amb RCAMC

1. The following is a fair and true summary of the entries in the [redacted] JPR Regimental [redacted] JPR Conduct sheets [redacted] JPR of the accused, exclusive of convictions by a Court-Martial or a Civil Court, [redacted] JPR of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For AA Sec 19	1	times	AA Sec 19	1 times
For AA Sec 15(1)	1	times	AA Sec 15(1)	4 times
For		times	AA Sec 9(2)	1 times
For		times	AA Sec 40	5 times

[redacted] JPR

[redacted] JPR

There are no entries in the conduct sheets of the accused.

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

[redacted] JPR

[redacted] JPR

[redacted] JPR

3. The accused is not under sentence at the present time.

[redacted] JPR

4. The accused has been in confinement awaiting trial on the present charges, for NIL days in civil custody, and NIL days in military custody, making a total of NIL days in custody, of which NIL days were spent in hospital.

5. The present age of the accused according to his record of service is 22 JPR

6. The date of his attestation specified in his record of service is [redacted] JPR 18 June 40. JPR

7. The service which the accused is allowed to reckon towards discharge is 4 yrs 3 mos

8. The accused is entitled to reckon 4yrs3mos service for the purpose of determining his pension, etc.

9. The accused [redacted] JPR in possession of [redacted] JPR. State any military decoration or reward. CVSM & Clasp 1939-43 Star

10. [redacted]

A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

.....dated....., and in his regiment (or corps), the rank of

.....dated.....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

.....Date of promotion.

In the rank of.....years.

In the rank of.....years.

In the rank of.....years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Army Act, and of cases in which trial has been dispensed with of accused, Number..... Rank.....

Name..... of..... Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 20th 2 day of September 1954

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

MFM 6
(AFB 122)
40/P&S/126 (3488)

No D 93812 Name SMITH J. | Sqn, Battery, or Company | Corps RCAMC | Date of enlistment 18 Jun 40 | GC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field	12 May 41	Pte		AA Sec 15(1) Awl for 3 days 19 hrs 31 mins.	S/Sgt Braddock Sgt Coughlin	10 Days C.B.	26 May 41	Lt Col H.A. Des Brisay	AF 3 days pay FR&I 1449(1)(a)
Field	12 Sep 41	Pte		AA Sec 15(1) Awl from 2359 hrs 12 Sep 41 to 1330 hrs 22 Sep 41 (Closed 9 days 13 hrs 31 mins)	Sgt Hancock Cpl Gannon	28 Days F.P.	23 Sep 41	Lt Stevenson Capt	AF 10 days pay FR&I 1449(1)(a) AFF 28 days pay FR&I 1449(1)(a) Total for 38 days
Field	18 Mar 42	Pte		AA Sec 40 Failed to appear at a place of duty	Cpl Cook	14 Days F.P.	18 Mar 42	Lt Col V.C. Hunter	For 14 days FR&I 1449 (1)(b)

(170)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	11 Feb 43	Pte		AA Sec 40 Conduct to the prejudice of good order etc, appearing on parade unproperly dressed.	Cpl Zorf Pte Johnston	7 days C.B.	11 Feb 43	Major G.C. Whitegoodry	
Field	13 Feb 43	Pte		(1) AA Sec 15(1) AWL from 2245 hrs 18 Feb 43 to 2355 hrs 18 Feb 43 (1 hr 10 mins) (2) AA Sec 10(4) Breaking barracks while a defaulter.	Cpl Cyclist W	21 days F.P	15 Feb 43		Forf 21 days Pay FR & RP (1) RB
Field	17th Feb 43	Pte		AA Sec 40 WOAS Conduct to the prejudice etc. in that he at approximately 2220 hrs did cause a disturbance while under the influence of intoxicating beverages	Sgt Cyclist (1) Cpl Cyclist (2)	7 days C.B.	18 Feb 43	Lt Col F.C. Bowman	

(SHEET 2)

No 93812 Name SMITH J. | Sqn, Battery, or Company | Corps RCAMC | Date of enlistment | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAM/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	10 Apr 43.	Pte		AA sec 9(2) WOA 43 Disobeying a lawful Command given by his Superior Officer in that he on 10 Apr 43 at 1415 hrs while confined to barracks failed to carry out the duties assigned to him by the Orderly NCO when ordered to do so by L/Cpl Greene Sgt Gale	L/Cpl Greene Sgt Gale	21 days F.P.	11 Apr 43	Maj. O.C. Lt. Hospl.	
Field	26 May 43.	Pte		AA Sec 40 Conduct to the prejudice of in that he while in protective custody at WHR guard room awaiting escort from Regiment did break & wreck by the guard room to the value of $5/and 19	Sgt Tupton W.D. WHR	8 days C.B.	28 Apr 43.		Stoppages to amt $5.19 cts (Rct 15812)

(2TO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	5 Jan 43	Pte		AA Sec 40 Conduct to the prejudice etc - fall'ng on parade.	Sgt Stragg's W	7 days C.B.	5 Jan 43	Major P.K. Tisdale	
Field	13 Feb 44	Pte		AA Sec 15 (1) WOAS Awl from 2400 hrs 13 Feb 44 until 1080 hrs. 14 Feb 44 (Absent 13 hrs.)	Sgt Dobbin T.H.	7 days C.B.	15 Feb 44	Major R. Baker.	A.F. 1 Days Pay 14/2/44 (Wa)
Field	4 Apr 44	Pte	1	AA Sec 19 Drunkenness.	S/Sgt. Neath Cpl. H. Kippin	Fined $3.00	18 Apr 44	Lt. Col W.E. Mace	

Certified True Copy

J. H. Thompson Capt

SUMMARY OF EVIDENCE

Summary of Evidence in the case of D 93612 Pte. Smith J., 9 Canadian Field Ambulance a member of the Canadian Army Overseas, Central Mediterranean forces.

By the direction of the Commanding Officer the summary of evidence is taken under oath.

1st Witness for the Prosecution — D 93620 S/Sgt. Young F.W. having been duly sworn, states:-

I am D 93620 S/Sgt. Young F.W., 9 Canadian Field Ambulance. At 0930 hrs 13 Sep 44 while on duty at the CCP 9 Cdn Fd Amb, while evacuating casualties, upon calling for the ambulance of which Pte. Smith J. was orderly, I found that Pte. Smith J. was unfit for duty due to previous indulgence of intoxicating liquor. I then instructed the driver to leave Pte. Smith J. back at the A.D.S. and to replace Pte. Smith J. with another orderly. The ambulance returned without an orderly so I replaced Pte. Smith J. with an orderly from the C.C.P.

Question - by Pte. Smith J.

(1) (Q) Do you know who loaded the ambulance with casualties before going to A.D.S.?
(A) By S/Sgt Young
Three of us with Pte. Smith J. loaded the ambulance.

(2) (Q) By Pte. Smith J.
Did you hear Major Hoggarth call me over and say that "I had trouble with you the other night, and I don't want to have trouble with you tonight" and accused me of being yellow and threatened to send me to the infantry - so I told Major Hoggarth "that was fine" and I showed him my pay book to show why I couldn't get into the infantry due to my category.
(A) By S/Sgt. Young.
No, I did not hear Major Hoggarth, as I was not in the M.I.R. at that time.

2nd Witness for the Prosecution — Major W.B. Hoggarth, 9 Canadian Field Ambulance having been duly sworn, states:-

I am Major Hoggarth W.B., Officer Commanding CCP 9 Cdn Fd Amb. At approximately 2130 hrs 13 Sep 44, the accused was drunk, in that he was totally unfit to carry out his duties due to previous consumption of alcohol.

whilst on duty (JPR)

The accused does not wish to cross-examine the witness.

The accused was duly cautioned in accordance with R.P. - 4(E) as follows:- "Do you wish to make any statement on to give evidence under oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement or give evidence under oath but reserves his defence.

I certify that Rules of Procedure 4(C)(D)(E)(F) and (G) was complied with.

I certify that the foregoing summary consisting of two pages was taken down by me in the presence of the accused, in the Field 15 Sep 44.

(J.P. Rosputinek) Lieut.
Officer detailed to take the summary

In the Field
15 Sep 44

Summary of Evidence

Summary of evidence in the case of D 93812 Pte Smith J. member of the Canadian Army Overseas, Central Mediterranean Forces.

By the direction of the Commanding Officer the summary of evidence is taken under oath.

First Witness for the prosecution.

D93620 S/Sgt Young F.W. having been duly sworn states:

I am D93620 S/Sgt Young F.W. 9 Cdn Fd. Amb, ~~was~~ at 0930 hrs 13 Sept 44 while on duty at the CCP 9 Cdn Fd Amb, while evacuating casualties, upon calling for the ambulance driver (Pte Smith J) which Pte Smith J was orderly ~~was found~~ unfit for duty due to previous indulgence of intoxicating liquor, I then instructed the driver to leave Pte Smith J back at A.D.S. and to replace Pte Smith J with another orderly, the ambulance returned without an orderly so I replaced Pte Smith J with an orderly at the C.C.P.

Question by Pte Smith J.

(1) (Q) Do you know who loaded the ambulance with casualties before going to A.D.S.

(A) By S/Sgt Young.

There of us with Pte Smith J. loaded the ambulance.

(2) (Q) By Pte Smith J.

Did you hear Major Hogarth call me over and say that "I had trouble with you the other night" and "I don't want to have trouble with you to-night" and accused me of being yellow and threatened to send me to the infantry - so I told ~~him~~ Major Hogarth, "that was fine" and I showed him my pay-book to show why I couldn't get into the infantry due to category.

(A) by S/Sgt Young.

no. I did not hear Major Hogarth, as I was not in the M.I.R. at that time.

F.W. Young S/Sgt.

2nd Witness for the prosecution

Major Hoggarth W.B. 9 Cdo Pl and having been duly sworn states:

I am Major Hoggarth W.B. Officer Commanding C.C.P. 9 Cdo Pl and, at approximately 2130 hours 13 Sept 44 the accused was drunk, in that he was (whilst on duty) totally unfit to carry out his duties due to previous consumption of alcohol.

P. Hoggarth Maj.

The accused does not wish to cross-examine the witness.

The accused was duly cautioned in accordance with Rule of Procedure 4(c) as follows:. "Do you wish to make any statement or to give evidence under oath?. You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement or give evidence under oath but reserves his defence.

I certify that Rules of Procedure 4(c)(d)(e)(f) & (g) was complied with.

I certify that the foregoing summary consisting of 2 pages was taken down by me in the presence of the accused, in the field 15 Sept 44.

In the field
15 Sept 44.

J.S. Roseveare Lt
Officer detailed to take the summary
15 Sept 44

I certify that I have received ONE Copy of:-

1. SUMMARY OF EVIDENCE.
2. Charge Sheet.

James Smith
(James Smith)

Statement by the accused as to whether or not he desires to have an Officer assigned by the Convening Officer to represent him at the Trial.

I desire (~~do not desire~~) to have an officer appointed by the Convening Officer to defend me at my Trial by Field General Court Martial.

I desire to have.....N/A.....

.....

James Smith
(James Smith)

UU-12
TPR SMITH J.

K-76112 Tpr Smith, J.
3 CACRU

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this twentieth day of October, , 1943.

Whereas it appears to me, the undersigned, an officer in Command of "E" Group, Canadian Reinforcement Units, , on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; [redacted]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

[redacted]

for the following reasons, namely:—)

R. Deanlille Capt 17 Nov 43.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Lt.-Col	D.L. Redman, VD	CRU

Members.

Rank.	Name.	Regiment.
Captain		2 CACRU
Lieut.		2 CACRU

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed W.W. Commanding

(R.J. RUTHERFORD) Brig., "E" Group, CRU
Convening Officer.

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
K-76112 Tpr Smith, J 3 CACRU	FIRST CHARGE A.A. Sec 15 (1) See charge sheet attached	Guilty	Guilty Sentence To undergo detention for a period of Forty Five (45) Days. 21st Oct 1943	Finding and Sentence Confirmed [illegible]

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) [illegible] (Signed) [illegible]
H.S. RUTHERFORD Brig.,
Commanding "G" Group, CRU.
Convening Officer (*c*) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (If necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 21st day of October 1943 and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. ~~The witness~~
3. ~~The Interpreter~~)
*(4. The officers under instruction)

*Omit if not applicable.

were duly sworn.

Signed this 21st day of Oct 1943

[illegible]
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 767 M.M.L. 1929.

~~I certify that the terms of A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19~~

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~)

Signed this 22 day of October 1943.

[illegible]
Confirming Officer.

K 76112 Tpr. Smith J. 3 CACRU

Promulgated and extracts taken in the case of

(a) (Dated) 23 Oct 43 (Signed) [illegible] Capt & Adjt 3 CACRU

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] A.A.S.W.,Ltd. Gp.4/44

C H A R G E S H E E T

The Accused, No. K-76112 Tpr. Smith, John, a soldier of the Canadian Army Overseas on the strength of No. 3 Canadian Armoured Corps Reinforcement Unit, is charged with

FIRST CHARGE
A.A. Sec. 15 (1) While on Active Service, Absenting Himself Without Leave

in that he

On the 25 Sep 43 at No. 3 C.A.C.R.U. while a defaulter Absented himself Without Leave from 1800 hrs 25 Sep 43 until he surrendered himself to the Unit Provost at 2310 hrs 30 Sep 43.

(Time absent 5 days, 5 hrs, 10 minutes.)

(G.W. Little) Col.
Commanding
No.3. C.A.C.R.U.

In the Field
18 Oct 43

To be tried by F.G.C.M. in the Field.

(T.J. RUTHERFORD) Brig.,
Comd "E" Group, CRU

20 Oct 43

Medical Officer's Certificate
K.R.(Can) para 557.

I certify that I have this morning examined No. K 76112
Tpr. Smith J ..... and in my opinion he is fit to
(rank) (Name)
undergo trail by Court Martial.

Station Field

Date 21-10-43 (Sgd) [illegible]
(Medical Officer)

PROCEEDINGS OF A FIELD GENERAL COURT-MARTIAL
HELD AT Delfgen Bks — Blackdown — Hants
ON THE 21 DAY OF Oct 1943

The accused ~~[illegible] Pte DH~~ K 26112 Tpr J Smith ....., Unit... 3 CACRU.....

R.

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 and 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked stated that he had no objection to the President or any Member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President Lt Col M. Redman. M.D. ..... Unit... HQ CRU....
Members Capt. R. Cummings ..... Unit... 2 CACRU..
Lieut. J.C. Chappell ..... Unit... 2 CACRU..

The officers under instruction are duly sworn:-

Lieut. M. Bourque ..... Unit... 3 CACRU.....
..... Unit.....
Prosecutor Lieut M. Magill ..... Unit... 3 CACRU...
Defending Officer Lieut RS Satchitte. Unit... 3 CACRU..

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
R The Prosecutor produces MFB 355, ~~AFB 296~~ and MFM 6.
The Court complies with R.P. 36(B).

Pursuant to R.P. 37 THE ACCUSED:-

RM (a) ~~Makes a statement in mitigation of punishment.~~
RM (b) ~~Calls witnesses as to character.~~
RM (c) ~~Calls witnesses in mitigation of punishment.~~
RM (d) Addresses the Court by his Defending Officer. all attached

Overseas R.O. 3262 complied with.
The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE and ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER.

RM

Plea in Mitigation of Punishment

K 76112 Smith J.

Tpr. Smith joined the army in June 41. He has been with the 8 C.D.s from July 41 and has gotten along well in the army up until this time. He was sent down here from the Regt on course and was kept around camp for a period of 5 or 6 days with very little to do. This type of thing is asking for trouble and should hold this person entirely responsible. Well, he got caught out and was charge with being A.W.L. 17hrs. For this he recieved 21 days field punishment. Saturday afternoon he buzzed off again, coming back on Thursday to avoid getting into too much trouble. (22 days in custody already his first court martial

He is a sensible, smart, young soldier, and it would appear to me that his time would be better spent learning his job as a soldier rather than spending an undue long time under sentence. Therefore I would ask that the court be as lenient as possible.

R. Lutes Capt
Defending Officer

Summary of Evidence

in the case of

K-76112 Tpr. Smith, J., a soldier of the Canadian Army Overseas on the strength of No.3 C.A.C.R.U.

By direction of the Commanding Officer this summary is taken on oath.

First Witness For the Prosecution

C-31251 L/Cpl. Lambert, J.D.K., a soldier of the Canadian Army Overseas on the strength of No.3 C.A.C.R.U., being duly sworn states:

I am a Regimental Policeman at No.3 C.A.C.R.U. At 1800 hrs., Saturday 25 Sep 43, I was desk man on duty. Tpr. Olson, another provost, formed up defaulters' parade and I called the roll. Tpr. Smith, J., who should have answered his name, did not do so. Tpr. Smith at that time was undergoing 21 days Field Punishment to which he had been sentenced by Lt/Col. Mick on 25 Sep 43. He knew that he should have been present on defaulters' parade. Tpr. Smith failed to answer his name on ensuing defaulters' parades that night. His name was entered in the absentee book and I did not see him again until 1 Oct 43 when he was under close arrest in the Guard Room.

J D K Lambert

C-31251 L/Cpl. Lambert, J.D.K.

Accused declines to cross-examine this witness.

M.L. Magill

M.L. Magill, Lieut.
Officer detailed to take the Summary of Evidence

Second Witness For the Prosecution

M-65640 L/Cpl. Miller, S.G., a soldier of the Canadian Army Overseas on the strength of No.3 C.A.C.R.U., having been duly sworn states:

I am a Regimental Policeman on the strength of No.3 C.A.C.R.U. At 2310 hrs, 30 Sep 43, I was desk man in the unit guard. Tpr. Smith, J., reported to me and stated that he had been absent without leave. I had record of his having been absent continuously since 1800 hrs Saturday 25 Sep 43. This absence was recorded in the Absentee book in the unit guard room. I therefore placed him under close arrest.

S G Miller

M-65640 L/Cpl. Miller, S.G.

Accused declines to cross-examine this witness.

M.L. Magill

M.L. Magill, Lieut.
Officer detailed to take the Summary of Evidence.

M

Summary of Evidence (cont'd)

Third Witness For the Prosecution — Documentary. A certified true copy of No.3 C.A.C.R.U. D.O. II, No.225, dated 28 Sep 43, of which Sec.16 "Absent Without Leave" declares K-76112 Tpr. Smith, J., to be absent from 1800 hrs. 25 Sep 43.

This Order has been shown to the Accused, marked by me as Exhibit "A" for the Prosecution, and attached to the Summary.

M.L. Magill, Lieut.
Officer detailed to take the Summary of Evidence.

The Accused does not desire to call any witnesses for the defence.

M.L. Magill, Lieut.
Officer detailed to take the Summary of Evidence.

The Accused was cautioned as follows:

Do you wish to give any evidence on oath or to make any statement not on oath? You are not obliged to give any evidence on oath or to make any statement, but any evidence you may give or any statement you may make will be taken down in writing and may be given in evidence.

The Accused declines to give evidence on oath or to make a statement.

M.L. Magill, Lieut.
Officer detailed to take the Summary of Evidence.

I certify that the foregoing Summary of Evidence, consisting of two (2) pages was taken down by me in writing in the presence and hearing of the accused and that Rules of Procedure 4(C), (D), (E), (F), and (G) have been complied with.

In the Field
13 Oct 43

M.L. Magill, Lieut.
Officer detailed to take the Summary of Evidence.

RHS

3 CANADIAN ARMOURED CORPS REINFORCEMENT UNIT
PART II ORDERS
by

Last Order No. 224, Dated 27 Sep 43 — Colonel G.W. LITTLE, M.V.O., M.C., Commanding Officer — This Order No. 225, Dated 28 Sep 43.

"A"

1. STRENGTH INCREASE:

(a) Major C.D. MacDOUGALL, is T.O.S. from No. 1 N.A.T.D. w.e.f. 26 Sep 43 and is posted to Reinfs "A" Sqn (Auth: 44/DESPATCH/2/5(AGRs), d/31 Aug 43)

(b) Capt. G.I. EDGELOW, is T.O.S. from HQ "E" Group CRU w.e.f. 25 Sep 43 and is posted to Reinfs "A" Sqn (Auth: Sup Pt II DC 61, d/24 Sep 43)

(c) Major M.C. FINLEY, is T.O.S. from CMHQ w.e.f. 23 Jul 43 on proceeding to Snr Officers School Bracebnose College. (Auth: CMHQ Pt II DC 51, d/23 Jul 43)

2. ATTACHMENTS:

(a) The u/m Officers are att'd f.Sup./from No. 1 C.A.C.R.U. w.e.f. 25 Sep 43 and are att'd to Admin Wing (Auth: CRU/A/4307, d/24 Sep 43)

except regimental duty.

Major B. LUNDAHL, (CDC) Capt. B. CROSS, (CDC)

(b) The u/m Officers are att'd f.n.p. from No. 1 C.A.C.R.U. w.e.f. 25 Sep 43 whilst attending Gunnery Cres at CAC School (3CADRU) (Auth: EG/4-6-5, d/2 Sep 43).

Lieut. E.M. HIGGS, Lieut. R.C. McGIRR,

(c) The u/m Officers c.t.d.n. to AFV School w.e.f. 18 Sep 43.(Auth: CRU/A/4052DEMONSTRATIONS/2/3, d/30 Aug 43)

Major E.A.W. MILES, Capt. P.W.H. HIGGS,
A/Capt. L.H. TAYLOR

3. COURSES:

(a) The u/m Officers returned from CMHQ Cres 419 Ser 37 at No. 3 CADRU w.e.f. 25 Sep 43.

Lieut. A. ROMANOW, Lieut. R.E. SHAW,

(b) Major M.C. FINLEY, returned from Sr. Officers School, Bracebnose Col. w.e.f. 17 Sep 43.

4. HOSPITALS:

(a) The u/m Officers are adm to No. 17 Cdn Gen Hosp w.e.f. dates shown.

Capt. A.S. STEWART, w.e.f. 22 Sep 43.
Lieut. T.E. WILLIAMSON, w.e.f. 22 Sep 43.
Lieut. L.K. MURRAY, w.e.f. 9 Sep 43.

(b) Lieut. L.K. MURRAY, is discharged from No. 17 Cdn Gen Hosp w.e.f. 25 Sep 43.

5. APPOINTMENTS, PROMOTIONS, REVERSIONS:

Lieut.(A/Capt) W.T. WOODS, CAC vacates the appointment of Instr and to relinquish the rank of acting Capt. w.e.f. 23 Jul 43. (Auth: C.A.O.R.O. 3848, d/24 Sep 43)

6. QUALIFICATIONS:

The u/m Officers attended Wireless Crse DO/15 from 2 Aug 43 to 11 Sep 43 and qualified "O-1".

Major P.F.L. SAKE,
Capt. J.B. ROBINSON,
Lieut. H.S. ROADHOUSE,
Lieut. J. MCKINLEY-KEY,
Lieut. L.S.L. DUNN,
Major R.W. PEARSON,
Lieut. W.B. PORTER,
Lieut. B.G. MERNARD,
Lieut. G.H. MELLEYY,

7. CHANGE OF ADDRESS OF NEXT OF KIN:

A/Major G.W. HJALMARSON, changes address of next of kin to:
Mrs. Marguerite Thelma Lile HJALMARSON (Wife)
75 Kendall Avenue, Toronto, Ontario, Canada.

8. ESTABLISHMENT:

(a) Capt. H.C. HODGES, CAC vacates the appointment of Instr Spec Inc w.e.f. 9 Sep 43 (C.A.O.R.O. 3846, d/24 Sep 43)

(b) A/Capt. J.P. BRADY, is posted from Reinfs "B" Sqn to PE-Spec Inc w.e.f. 14 Aug 43.

"B"

9. STRENGTH INCREASE:

(a) D-122 Sgt. ANFOSSI, M.S. is T.O.S. from HQ 5 CAD w.e.f. 26 Sep 43 and is posted to Reinfs "A" Sqn (Auth: EA7/6594, d/13 Sep 43)

(b) H-56239 Gdsm. McRAE, R.A. is T.O.S. from 22 CAR w.e.f. 26 Sep 43 and is posted to Reinfs "A" Sqn (Auth: EA7/7157, d/24 Sep 43)
(On transfer)

(c) T.O.S./from No. 1 C.O.R.U. w.e.f. 23 Sep 43 and are posted to Reinfs "A" Sqn (Auth: as shown).

B-74289 Tpr. McGRATH, J.T. (Auth: EA7/7201, d/20 Sep 43)
L-74952 Tpr. SOWA, W. (Auth: EA7/7195, d/20 Sep 43)

(d) B-48904 Gdsm. CATEL, J.W. is T.O.S. from 21 CAR w.e.f. 22 Sep 43 on adm to No. 10 Cdn Gen Hosp and is posted to Reinfs "A" Sqn (Auth: 21 CAR Pt II DO 42, d/1 Oct 43)

(e) L-36763 Cpl. BECK, F.S. (Fitter "A") is T.O.S. from 22 CAR w.e.f. 16 Sep 43 and is posted to Reinfs "A" Sqn (Auth: 22 CAR Pt II DO 43, d/27 Sep 43)

(f) T.O.S. from 22 CAR w.e.f. 21 Sep 43 on adm to No. 13 Cdn Gen Hosp and is posted to Reinfs "A" Sqn (Auth: 22 CAR Pt II DO 43, d/27 Sep 43)

D-26299 Gdsm. CCADY, C.T. (Dvr Mech (TK) "C") D-109866 Gdsm. MUNN, E.F.

(g) T.O.S. from 22 CAR w.e.f. 22 Sep 43 on adm to No. 10 Cdn Gen Hosp and is posted to Reinfs "A" Sqn (Auth: 22 CAR Pt II DO 43, d/27 Sep 43)

B-49438 Gdsm. CHEETHAM, C.M. D-26042 Gdsm. CHEVRIER, B.J. (Dvr Op "C")

(h) T.O.S. from 26 CAR w.e.f. 22 Sep 43 on adm to No. 10 Cdn Gen Hosp and are posted to Reinfs "A" Sqn (Auth: 26 CAR Pt II DO 44, d/2 Oct 43)

K-37523 Tpr. COVENTRY, J.L. (Mtr Mech "B")
K-38016 Tpr. BABBE, K. (Oper CAC "C")

9. STRENGTH INCREASE: (Cont)

(i) T.O.S. from 5 CAR w.e.f. 23 Sep 43 on rdn to No. 6 Can Gen Hosp and is posted to Reinfs "A" Sqn (Auth: 5 CAR Pt IIDC 44, 4/30 Sep 43)

B-60112 Tpr. ELLIS, F.J. Electrician "A"
G-395 Tpr. WILLIAMSON, J.W. Clerk "C".

(j) T.O.S. from No. 1 C.A.R.U, w.e.f. 24 Jan 43 on completion of C.O.C. Crse 307 (Authy: as shown)

K-37360 Tpr. McMULLEN, R.R. (Cbs Sheet A/748, 4/6 Sep 43)
C-2398 Cpl. WILLIAMS, F.G. (Cbs Sheet A/753, 4/4 Sep 43)
D-121067L/C. LAMBERT, F. (Cbs Sheet A/745, 4/6 Sep 43)
D-27067 Gdsm. MARKS, R.A. (Cbs Sheet A/746, 4/6 Sep 43)
A-42350 Tpr. HIGHALL, A.F. (Cbs Sheet A/766, 4/7 Sep 43)

(k) Amendment: Pt II DC 191, 4/10 Dec 42 para 4(h) insofar as it pertains to A-42350 Tpr. HIGHALL, A.F. change "w.e.f. 7 Dec 42" to read "wef 6 Dec 42". (Cbs Sheet A/766, 4/7 Sep 43)

(l) Amendment: Pt II DC 193, 4/12 Dec 42 para 8(k) insofar as it pertains to D-27067 Gdsm. MARKS, R.A., change "w.e.f. 7 Dec 42" to read "w.e.f. 6 Dec 42". (Auth: Cbs Sheet A/777, 4/6 Sep 43)

(m) Amendment: Pt II DC 193, 4/12 Dec 42 para 8(h) insofar as it pertains to C-2398 Cpl. WILLIAMS, F.G. change "w.e.f. 7 Dec 42" to read "w.e.f. 6 Dec 42" (Cbs Sheet A/753, 4/4 Sep 43)

(n) Amendment: Pt II DC 191, 4/10 Dec 42 para 4(k) insofar as it pertains to D-121067 L/Cpl. LAMBERT, F. change "w.e.f. 7 Dec 42" to read "w.e.f. 6 Dec 42" (Cbs Sheet A/745, 4/6 Sep 43)

(o) Amendment: Pt II DC 194, 4/14 Dec 42 para 4(f) insofar as it pertains to K-37360 Tpr. McMULLEN, R.R. change "w.e.f. 7 Dec 42" to read "w.e.f. 6 Dec 42" (Cbs Sheet A/748, 4/6 Sep 43).

(p) Amendment: Pt II DC 205, 4/7 Sep 43 para 4(a) insofar as it pertains to B-48541 Tpr. ROBBINS, W.R.M. add (Dvr Mech (TK) "C").

(q) Amendment: Pt II DC 166, 4/22 Jul 43 para 4(a) insofar as it pertains to B-31866 Tpr. ILLINGWORTH, J.J. add (Dvr CAC "C")

(r) Amendment: Pt II DC 205, 4/3 Sep 43 para 4(f) insofar as it pertains to the u/m C/Rs add (Dvr Mech (TK) "C")

B-48566 Tpr. BUCKTIN, S.R. B-46723 Tpr. CRAVN, J.J.
B-49251 Tpr. GABLE, A.W. B-50078 Tpr. HAWKINS, A.D.L.

(s) Amendment: Pt II DC 193, 4/20 Aug 43 para 7(e) insofar as it pertains to B-49457 Tpr. KILBY, R.J.S. add (Dvr Mech (TK) "C")

(t) Cancellation: Pt II DC 189, 4/16 Aug 43 para 6(f) insofar as it pertains to A-59340 Tpr. CLANCY, P.J. delete all reference. (Cbs Sheet #306, 4/9 Aug 43 and PC/A/59340(Pay SD), 4/18 Sep 43)

(u) Cancellation: Pt II DC 11, 4/16 Jan 43 para 7(e) insofar as it pertains to A-59340 Tpr. CLANCY, R.J. delete all reference. (Cbs Sheet #306, 4/9 Aug 43 and PC/A/59340(Pay SD), 4/18 Sep 43).

10. ATTACHMENTS:

(a) A-116868 Gnr. HADRIAN, J. c.t.b.n. f.n.p. from No. 3 C.A.R.U. w.e.f. 20 Sep 43 on adm to No. 17 Can Gen Hosp.

(b) The u/m O/Rs are att'd f.n.p. from No. 2 C.A.C.R.U. w.e.f. 26 Sep 43 whilst attending Gunnery Crse at CAC School. (Auth: HQ/4-6-5, d/2 Sep 43).

B-49379 Sgt. BULL, D.H. B-49426 Sgt. ADAMS, W.M.
F-86295 Sgt. McCANN, G.A.

11. COURSES:

M-42122 Cpl. MARK, H.G. returned from CRU Crse 6 Sor 26 at No. 1 C.G.R.U. w.e.f. 25 Sep 43.

12. LEAVES:

Republication: No. 1 Pre-OTU RMC Pt III DO 90, d/1 Sep 43.

F-77727 Sgt. ENGLAND, L.A. granted 11 days F.L. with MA in lieu of rations under PRAI (') 789 (3)6(4) from 29 Aug 43 to 8 Sep 43 (Incl)

13. APPOINTMENTS, PROMOTIONS, REVERSIONS:

Republication: 5 CAR Pt II DO 44, d/30 Sep43.

G-395 A/L/Cpl. WILLIAMSON, J.W. reverts to the rank of Tpr on being SOS on adm to hosp and to draw tradesman's rates of pay as Clerk "C" $61.75 per diem. w.e.f. 22 Sep 43.

14. TRADESMEN'S QUALIFICATIONS:

(a) The u/m O/Rs having been trades tested passed as Dvr Mech (MT) "C" w.e.f. 15 Sep 43 (Auth: T.T.B. No. 2136, d/25 Sep 43)

B-133628 Tpr. PALMER, G.W. B-134671 Tpr. MAZER, J.B.
M-17279 A/Sgt. WILSON, E.H.

(b) The u/m O/Rs having been trades tested passed as Dvr Mech (MT) "C" w.e.f. 21 Sep 43. (Auth: T.T.B. No. 10248, d/17 Sep 43)

B-69212 Tpr. BERGER, A. H-26313 Cpl. REID, H.J.
B-90030 Cpl. BAIN, R.

15. TRADESMEN'S RATES OF PAY:

A-59340 Tpr. CLANCY, R.J. is granted tradesman's rates of pay as Mtr Mech "B" w.e.f. 6 Jan 43. (Auth: The Shoot #5306, d/4 Aug 43 and PT/A/59340(21 MT PE), d/10 Sep 43)

16. ABSENT WITHOUT LEAVE:

(a) The u/m O/Rs are A.W.L. from times and dates as shown.

B-60557 Tpr. HOOD, J.R. from 2359 hrs 24 Sep 43.
K-76112 Tpr. SMITH, J. from 1800 hrs 25 Sep 43.

(b) M-65117 Pte. MURRELL, A.H. returned from A.W.L. at 0645 hrs 25 Sep 43.

(c) Cancellation: Pt II DO 216, d/20 Sep 43 para 13(b) insofar as it pertains to B-133298 Tpr. TOMLINSON, C.F. delete all reference.

17. POSTINGS:

The u/m O/Rs are posted from Reinfs Sqns as shown to Reinfs as shown w.e.f. dates shown.

K-69361 Tpr. PICKERING, C.S. from "F" Sqn to "E" Sqn w.e.f. 23 Sep 43.
B-79243 Sgt. PRICE, C. from "A" Sqn to "E" Sqn w.e.f. 24 Sep 43.
F-86966 A/L/S. GOODWIN, C.J. from "B" Sqn to "D" Sqn w.e.f. 27 Sep 43.

16. PUNISHMENT:

(a) On 4 Sep 43 tried by F.G.C.M.

Charges: I A.A. 15(1) AWL from 0600 hrs 17 May 43 until apprehended at 2300 hrs 11 Aug 43. (Absent 86 days 17 hrs)
II A.A. 24(2).

Finding: Guilty on both charges.

Sentence: 1 year and 6 months detention and placed under stoppage of pay to make good the sum of £13-10-10 to cover cost of loss of kit (£12-18-11) and cost of apprehension (11s-11d)

Confirmation: Finding and sentence confirmed by Commander "X" Force CRU Brig.T.J. RUTHERFORD, 9 Sep 43.

Close arrest: Placed under close arrest from 2300 hrs 11 Aug 43 to 2359 hrs 3 Sep 43 (Total Time 23 days59 mins)

Forfeitures: 67 days pay FR&I 149(1)(a)
24 days pay FR&I 149(1)(c)(i) 1 day to run concurrent with forf. for A.W.L.
587 days pay FR&I 149(1)(b)

Stoppage of pay: Placed under stoppage of pay to make good:
Cost of Apprehension 11s 11d
Cost of Loss of Kit £12 18s 11d
Total £13 10s 10d

Total Forfeiture: 658 days pay.

G-218 Tpr. COLWELL, W.L.

(b) Republication: 9 CAF Pt II 20 56, d/14 Sep 43.

A-42223 Tpr.HUTCHISON,G.D. on 7 Sep 43 awarded a forf of 10 days pay and to pay cost of apprehension for an offence under AA 15(1) AWL from 1400 hrs 3 Sep 43 to 1035 hrs 6 Sep 43. (Absent 2 days 20 hrs 35 mins). Forf 3 days pay under FR&I 149(1)(a). Forf 10 days pay under FR&I 149(2). Total Forf 13 days pay and cost of apprehension £0-11-10 under FR&I 178(6)

(c) D-137495 Tpr.CHAPLEAU, J.R. (Admin Wing)
Offence: I A.A. 40 II A.A. 40
Awarded: 7 days F.P. and to forfeit 7 days pay.
Forfeitures; 7 days pay FR&I 149(2) (Awarded 24 Sep 43)

(d) L-26414 Gnr. NELSON, W.N. (Admin Wing)
Offence: I A.A. 15(1) A.W.L. from 1130 hrs 14 Sep 43 to 1340 hrs 15 Sep 43 (Absent 2 hrs 10 mins)
II A.A. 8
Awarded: 14 days F.P. and forf 14 days pay.
Forfeitures: 14 days pay FR&I 149(2) (Awarded 17 Sep 43)

(e) D-122879 Tpr. CHUBEY, S. (E SQN)
Offence: A.A. Sec 15(1) ...W.L. from 2359 hrs 19 Sep 43 to 1300 hrs 22 Sep 43. (Absent 2 days 13 hrs 1 min)
Close Arrest: Placed under close arrest from 1300 hrs 22 Sep 43 to 1300 hrs 23 Sep 43.
Awarded: To forfeit 3 days pay A.A. 46(2)(d)
Forfeitures: 3 days pay FR&I 149(1)(a)

18. PUNISHMENTS: (Cont)

(e) Cont.

Forfeiture: (Cont)1 days pay FR&I 149 (1)(c)(i) (to run concurrent with forfeiture for AWL)
9 days pay FR&I 149(2)

Total Forf: 12 days pay (Awarded 23 Sep 43)

(f) B-132456 Tpr. McDONALD, J.M. (E SQN)

Offence: I A.A. 19 (2nd Offence) A.A. Sec 40

Awarded: 5 days F.P. and to forfeit 15 days pay AA Sec 46(2)(d)
Fined $5.00.

Forfeitures: 15 days pay FR&I 149(2) (Awarded 20 Sep 43)

(g) L-56609 Spr. HARDEN, L.E. (Admin Wing)

Offence: I A.A. 15(1) AWL from 1130 hrs 15 Sep 43 to 1340 hrs 15 Sep 43 (Absent 2 hrs 10 mins)

II A.A. 8

Awarded 14 days F.P. and to forfeit 14 days pay.

Forfeitures: 14 days pay FR&I 149(2) (Awarded 17 Sep 43)

(h) K-48670 Tpr. LIFTON, E.M. (C SQN)

Offence: A.A. 15(1) A.W.L. from 1200 hrs 15 Sep 43 to 2350 hrs 15 Sep 43 (Absent 11 hrs 50 mins)

Awarded: 2 days F.P. and to forfeit 2 days pay.

Forfeitures: 2 days pay FR&I 149(2)
1 days pay FR&I 149(1)(c)

Total Forfeitures: 3 days pay (Awarded 16 Sep 43)

(i) M-105400 Tpr. STEWART, A.J. (C SQN)

Offence: A.A. 15(1) A.W.L. from 1200 hrs 15 Sep 43 to 2350 hrs 15 Sep 43 (Absent 11 hrs 50 mins)

Awarded: 2 days F.P. and to forfiet 2 days pay:

Forfeiture 1 days pay FR&I 149(1)(c)
2 days pay FR&I 149(2)

Total Forfeiture: 3 days pay (Awarded 16 Sep 43)

19. STRENGTH DETAILS:

(a) B-96815 Tpr. SMITH, R.A. is S.O.S. to No. 1 C.C.R.U. w.e.f. 23 Sep 43 (Auth: ESI/829, 22 Sep 43)

(b) B-133069 Tpr. DELL-DEGAN, S.B. is S.O.S. to No. 1 N.E.T.D. w.e.f. 23 Sep 43 (Auth: No. 1 N.E.T.D. Pt II SO 148, d/24 Sep 43)

(c) K-1142 A/Cpl. COSTELLO, R.S.L. is S.O.S. to No. 16 Can Gen Hosp wef 24 Sep 43. (Auth: RNO/K-1142, d/21 Sep 43)

(d) S.O.S. to No. 1 C.G.R.U. w.e.f. 6 Dec 42 whilst attending CWAC Cruse 807 (Auth: As shown)

K-37360 Tpr. MacMULLEN, M.B. (Auth: Obs Sheet A/746, d/5 Sep 43)
C-2392 Cpl. WILLIAMS, F.G. (Obs Sheet A/753, d/5 Sep 43)
D-117067L/C. LONGHURST, F. (Obs Sheet A/746, d/5 Sep 43)
D-27067 Gdsm. MARKS, R.A. (Obs Sheet A/777, d/6 Sep 43)
A-42350 Tpr. BUCKLE, A.F. (Obs Sheet A/766, d/7 Sep 43)

(H.D.M. MacPHEE) Lieut.
Records Officer,
No. 3 C.A.C.R.U.

Certified True Copy.

(K.A. Dixson) Capt
Adjt No 3 C.A.C.R.U.

18. PUNISHMENTS: (Cont)

(e) Cont.

Forfeiture: (Cont)1 days pay FR&I 149 (1)(c)(i) (to run concurrent with forfeiture for AWL)
9 days pay FR&I 149(2)

Total Forf: 12 days pay (Awrded 23 Sep 43)

(f) B-132486 Tpr. McDONALD, J.M. (E SQN)

Offence: I A.A. 19 (2nd Offence) A.A. Sec 40

Awarded: 5 days F.P. and to forfeit 15 days pay AA Sec 46(2)(d)
Fined $5.00.

Forfeitures: 15 days pay FR&I 149(2) (Awrded 20 Sep 43)

(g) L-56609 Spr. HARDEN, L.E. (Admin Wing)

Offence: I A.A. 15(1) AWL from 1130 hrs 15 Sep 43 to 1340 hrs 15 Sep 43 (Absent 2 hrs 10 mins)
II A.A. 8

Awarded 14 days F.P. and to forfeit 14 days pay.

Forfeitures: 14 days pay FR&I 149(2) (Awrded 17 Sep 43)

(h) M-48670 Tpr. LIFTON, E.M. (C SQN)

Offence: A.A. 15(1) A.W.L. from 1200 hrs 15 Sep 43 to 2350 hrs 15 Sep 43 (Absent 11 hrs 50 mins)

Awarded: 2 days F.P. and to forfeit 2 days pay.

Forfeitures: 2 days pay FR&I 149(2)
1 days pay FR&I 149(1)(a)

Total Forfeiture: 3 days pay (Awrded 16 Sep 43)

(i) M-105400 Tpr. BERNARD, A.J. (C SQN)

Offence: A.A. 15(1) A.W.L. from 1200 hrs 15 Sep 43 to 2350 hrs 15 Sep 43 (Absent 11 hrs 50 mins)

Awarded: 2 days F.P. and to forfeit 2 days pay.

Forfeiture 1 days pay FR&I 149(1)(a)
2 days pay FR&I 149(2)

Total Forfeiture: 3 days pay (Awrded 16 Sep 43)

19. STRENGTH DECREASE:

(a) B-9[illegible]16 Tpr. SMITH, R.A. is S.C.S. to No. 1 C.C.R.U. w.e.f. 23 Sep 43 (Auth: ESI/[illegible], 22 Sep 43)

(b) B-133069 Tpr. DEL-DEGAN, S.S. is S.C.S. to No. 1 N.E.T.D. w.e.f. 23 Sep 43 (Auth: No. 1 N.E.T.D. Pt II DO 146, d/24 Sep 43)

(c) K-1142 A/Cpl. COSTELLO, R.S.L. is S.C.S. to No. 16 Con Gen Hosp w.e.f. 24 Sep 43. (Auth: RED/K-1142, d/21 Sep 43)

(d) S.C.S. to No. 1 C.C.R.U. w.e.f. 6 Dec 42 whilst attending CNBT Course 607 (Auth: As shown)

K-37360 Tpr. McMULLEN, R.E. (Auth: Obe Sheet A/748, d/6-9-43)
C-2392 Cpl. WILLIAMS, F.G. (Obe Sheet A/755, d/6 Sep 43)
D-121087L/C. LOMBERT, F. (Obe Sheet A/765, d/6 Sep 43)
D-27067 Gnsm. MARKS, R.J. (Obe Sheet A/777, d/6 Sep 43)
A-42350 Tpr. BROWNELL, A.P. (Obe Sheet A/766, d/7 Sep 43)

(H.D.M. MacPHEE) Lieut.
Records Officer,
No. 3 C.A.C.R.U.

Certified True Copy.

(K.A. Paxson) Capt
Adjt No 3 C.A.C.R.U.

16. PUNISHMENT:

(a) On 4 Sep 43 tried by F.G.C.M.

Charges: I A.A. 15(1) AWL from 0600 hrs 17 May 43 until apprehended at 2300 hrs 11 Aug 43. (Absent 86 days 17 hrs)
II A.A. 24(2).

Finding: Guilty on both charges.

Sentence: 1 year and 6 months detention and placed under stoppage of pay to make good the sum of £13-10-10 to cover cost of loss of kit (£13-18-11) and cost of apprehension (11s-11d)

Confirmation: Finding and sentence confirmed by Commander RNR Group CRU Brig.T.J. RUTHERFORD, 9 Sep 43.

Close arrest: Placed under close arrest from 2300 hrs 11 Aug 43 to 2359 hrs 3 Sep 43 (Total Time 23 days59 mins)

Forfeitures: 67 days pay FR&I 149(1)(a)
24 days pay FR&I 149(1)(c)(i) 1 day to run concurrent with forf. for A.W.L.
567 days pay FR&I 149(1)(b)

Stoppage of pay: Placed under stoppage of pay to make good:
Cost of Apprehension 11s 11d
Cost of Loss of Kit £12 16s 11d
Total £13 10s 10d

Total Forfeiture: 658 days pay.

G-816 Tpr. COLWELL, W.L.

(b) Republication: 9 CAR Pt II pp 56, 2/14 Sep 43.

A-42223 Tpr.HUTCHISON,G.B. on 7 Sep 43 awarded a forf of 10 days pay and to pay cost of apprehension for an offence under II A.A. 15(1) AWL from 1400 hrs 3 Sep 43 to 1035 hrs 6 Sep 43. (Absent 2 days 20 hrs 35 mins). Forf 3 days pay under FR&I 149(1)(a). Forf 10 days pay under FR&I 149(2). Total Forf 13 days pay and cost of apprehension £0-11-10 under FR&I 172(6)

(c) D-137495 Tpr.CHAPLMAN, J.R. (Admin Wing)
Offence: I A.A. 40 II A.A. 40
Awarded: 7 days F.P. and to forfeit 7 days pay.
Forfeitures: 7 days pay FR&I 149(2) (Awarded 24 Sep 43)

(d) L-26414 Gnr. WELSON, W.H. (Admin Wing)
Offence: I A.A. 15(1) A.W.L. from 1130 hrs 15 Sep 43 to 1340 hrs 15 Sep 43 (Absent 2 hrs 10 mins)
II A.A. 6
Awarded: 14 days F.P. and forf 14 days pay.
Forfeitures: 14 days pay FR&I 149(2) (Awarded 17 Sep 43)

(e) D-122879 Tpr. CHUBEK, S. (E Sqn)
Offence: A.A. Sec 15(1) ...W.L. from 2359 hrs 19 Sep 43 to 1300 hrs 22 Sep 43. (Absent 2 days 13 hrs 1 min)
Close Arrest: Placed under close arrest from 1300 hrs 22 Sep 43 to 1300 hrs 23 Sep 43.
Awarded: To forfeit 6 days pay A.A. 46(2)(a)
Forfeitures: 3 days pay FR&I 149(1)(a)

LIST OF WITNESSES

For the Prosecution -

1. C-31251	L/Cpl.	Lambert, J.D.K.	#3 C.A.C.R.U.
2. M-65640	L/Cpl.	Miller, S.G.	#3 C.A.C.R.U.

For the Defence - Nil

-oOo-oOo-

LIST OF EXHIBITS

For the Prosecution - A - Certified copy of #3 C.A.C.R.U. Part II D.O. #225 dated 28 Sep 43.

For the Defence - Nil

-oOo-oOo-

I, K-76112 Tpr. Smith, J., acknowledge having received one copy of the charge sheet and Summary of Evidence in connection with my forthcoming Trial by Court Martial. I do/~~do not~~ desire to have an officer assigned to defend me. I desire ~~Lieut. D.D. Sutcliffe~~..... if he is available.

J. Smith

.....
K-76112 Tpr. Smith, J.

Time 1020 hrs

Date 17 Oct

No. K76112 Name SMITH, John | Sqn., Battery, or Company | Corps C.A.C. | Date of enlistment 23 Jun 1941 | G.C. Badges | Service or Proficiency Pay N/A

M.F.M. 6
(A.F. B.122)
50/P & /8136 (2965)

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No. 1 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden	12 Jul 41	Tpr.		A.A. Sec. 15(1) AWL 3 days 7 hrs 15 mins.	Documentary	96 hrs. Det.	19 Jul 41	Lt.-Col. C.C.Oswell	Forf 4 days pay ART 149 (1)(A) forf 4 days pay ART 149(1)(b) Forf 1 days pay ART 149 (1)(c) Stoppage of pay ART 172(8) $2.50
Camp Borden	1 Oct 41	Tpr		A.A.Sec.15(1) AWL 24 hrs. 15 mins.	Sgt. Looney		25 Oct 41	Major M. P. Johnston.	Forf 2 days pay under FRAI 149(1)(a)

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	8 Mar 42	Tpr.		A.A.Sec.15(1) AWL 1 day 14 hrs. 5 mins.	Documentary	96 hrs. Detention	11 Mar 42	Lt.-Col. Larocque	Forf 2 days pay under FR&I 149(1)(a) Forf 4 days pay under FR&I 149(1)(b)
Field	23 Mar 42	Tpr.		Leaving his guard without orders from his superior officer.	K-9 L/C Hawkey F.H. K2474 Sgt. Scott, G.M.	28 days Detention	27 Mar 42	Lt.-Col. Larocque	
					RELEASED FROM THE DETENTION BARRACK, Witley, ON 18 APR 42 SENTENCE HAVING EXPIRED. REMISSION EARNED UNDER RULES FOR DETENTION BARRACKS AND MILITARY PRISONS, 4 DAYS. COMMANDANTS INITIALS A.D.				
Field	23 Mar 42	Tpr.		A.A.Sec 40 Neglected to take care of his rifel.	M1610 Sgt. Roth, L.T. M82674 Sgt. Woolsey, J.D.	14 days Detention	24 Mar 43	Lt.-Col. J.H. Larocque	

M.F.M. 6
(A.F. B.122)
40/P & /8130 (2965)

No. K76112 Name SMITH, John | Sqn., Battery, or Company | Corps C.A.C. | Date of enlistment 23 Jun 41 | G.C. Badges | Service or Proficiency Pay N/A

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No. 2 | Signature O.C. Company, etc. J.C. LETCHER Capt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	26 Jun 42	Tpr.		Broke Window in "C" Sqns. Bks. Rooms to value of two shillings	Lieut. R.H. Poole	Stoppage of pay (2/)	28 25 Jun 42	Major W. Murphy	
Field	20 Apr 43	Tpr		A.A. Sec 15(1) AWL 1 hr 5 mins.	K1011 Cpl. Forsyth, G.D.	168 hrs. detention	21 Apr 43	Major A.P. Ardagh	
Field	28 Jun 43	Tpr		A.A. Sec 11 Riding M/C in Bk Lines	B24188 Sgt. MacLean, AI	5 days C.B. grounded from M/C	29 Jun 43	Major C.A. West	
Field	2 Sep	Pte		AA Sec 15(1) AWL 17 hrs		21 days F&R Reinst	25 Sep 43	Lt Col R.W.	W.O.M.

CERTIFIED TRUE COPY

(C.L.Nelson) Capt. & Adjt.
Training Wing 3 CACRU.

6 Oct 43

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field		Pte		9 A Jan 15 (J) AWL 17 hrs		21 days FP No 1	25 Sep 43	28 Coy R.A.S.C.	RTM.

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 266

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
K-76112	Trooper	SMITH, J.	No. 3 C.A.C.R.U.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery, Service and General Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, Air Force Act and of cases in which trial has been dispensed of summary awards under Section 47 of the Army Act with.

	Within last 12 months		Since enlistment or appointment	
For A.A. 18(1)	3	times	6	times
For A.A. 40	1	times	2	times
For A.A. 11	1	times A.A. 6(b)	1	times
For		times		times

Number of instances of gallantry or distinguished conduct: Nil.

There are no entries in the conduct sheets of the accused.

Note.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act and dispensations with trial under A.A. 73 are set out in the Schedule Section 47 of the Army Act annexed to this statement.

3. The accused is not under sentence at the present time.

The accused at the present time is under sentence of [illegible] beginning on the day of

4. The accused has been in confinement awaiting trial on the present charges, for 14 days, of which Nil days were spent in hospital.

civil custody and 14 days in military custody, making a total of 14 days in custody,

5. The present age of the accused according to his record of service is 22 years

6. The date of his attestation specified in his record of service is 23 Jun 41

7. The service which the accused is allowed to reckon towards discharge is 2 years 114 days

8. The accused is entitled to reckon 2 years 114 days service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no military decoration, or Air Force award

possession of or entitled to) no military air force decoration or award

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of N/A Air Force

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit
N/A dated N/A, and in his regiment (or corps), the rank of
N/A dated N/A.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

N/A Date of promotion.

In the rank of N/A years.

In the rank of N/A years.

In the rank of N/A years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused. Number Rank Unit
Name of Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ~~15th~~ 26th day of October 1943 (G.B. JAMESSE) Lt. A/Records Officer, No. 3 C.A.C.R.U.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

0.5 6. Smith J.

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this 20th day of August, 19 41

Whereas it appears to me, the undersigned, an officer in Command of , on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*[I am unable to appoint

*(1. Three Officers to form the Court.)

*(2. A Field Officer as President.)

*(3. Three Officers having more than one year's service.)

for the following reasons, namely —]

PROCEEDINGS REVIEWED.

President.

Rank.	Name.	Regiment.
Major	R.J. Cassidy,	4 Fd Coy, R.C.E.

Members.

Rank.	Name.	Regiment.
Captain,	W.H. Ellis,	1 Cdn Div Signals.
Lieutenant	J.A.L. Burd,	4 Cdn Recce Sqn(4PLDG)
Lieutenant	E.M. Biggs,	4 Cdn Recce Sqn(4PLDG)

WAITING

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed G.R. Pearkes.
(G.R. Pearkes) Major General,
Commanding 1st Canadian Division.
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
A.9584 Pte., SMITH, J., 1 Cdn Div Sup Coln RCASC.	1st Charge. A.A. Sec 15(1)	Not guilty.	Guilty. 60 days Detention	I confirm the finding & sentence of the Court. Ed Pearkes M.G.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*): —

(Signed) Ed Pearkes (Signed) Robt Cassidy
(C.R. Pearkes) Major General, (R.T. Cassidy) Major
Commanding 1st Canadian Division 1 Cdn Div Sup Coy, R.C.E.
Convening Officer (*d*) President.

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 25 day of August, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) Clerk
*(4. ~~The officers under instruction~~)

were duly sworn.

* Omit if not applicable.

Signed this 27th day of August 1941.

Robt Cassidy
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 702 M.M.L. 1939

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*I direct that the soldier named in the margin be not committed to prison until further orders.~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 30th day of August 1941.

Ed. Pearkes M.G.
Confirming Officer.

Promulgated and extracts taken in the case of A 9584 Pte Smith J.

(a) (Dated) 3 Sep 41 (Signed) J.G. Toney A/Mn 1 Cdn Div Sup Coy RCASC Capt.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused, A.9584 Pte. Smith, J., 1 Cdn. Div. Supply Column, R.C.A.S.C., soldier of the Canadian Army (Overseas) is charged with, while on Active Service:

ABSENT WITHOUT LEAVE

Sec 15 (1) Army Act

in that he, at Blindley Heath, Surrey did absent himself without leave from 1000 hours 31 Jul 41 to 1100 hours 4 Aug 41 (4 days, 1 hour)

(W. J. Hastie) Major
O.C. 1 Cdn. Div. Sup. Col. R.C.A.S.C.

PROCEEDINGS OF A FIELD-GENERAL
COURT-MARTIAL

In The Case Of

A.9584 Pte. SMITH, J.
1 Cdn. Div. Sup. Col. RCASC

The charge is read to the accused and the accused pleads "not guilty" to the charge.

THE CASE FOR THE PROSECUTION

Prosecutor's opening address:-

I will proceed to show by means of witnesses that the accused was granted a pass and he didn't return to his billets at the required time.

1st WITNESS FOR THE PROSECUTION

A.9082 Sgt. TICKNOR, W.C. 1 Cdn Div Sup Col RCASC having been duly sworn, states:-

Questioned by the Prosecuting Officer,

Q. Will you tell the Court your evidence in connection with Pte. Smith?
A. On 30 Jul 41 I issued Pte. Smith a midnight pass for the same day. At the time I was guard commander in the vehicle park. I wasn't at the house to check at 2359 hrs. but when I returned to billets the next morning he was not there. I reported Pte. Smith on the parade state as absent without leave. When he returned, Sgt. Ross placed him under arrest. He turned the papers over to me, the papers that Pte. Smith had brought from the hospital with him. I turned these papers, along with the charge of A.W.L., into the Echelon orderly room.

Q. You made a check on the house where the accused was residing in the morning?
A. Yes sir, at approximately 0715 hrs.

Q. You were the guard at the car park. Is that some distance?
A Approx. ½ to ¾ miles.

There were no questions by the Defending Officer.

Questioned by the Court,

Q. You issued the pass in the evening?
A. Yes sir.

2nd WITNESS FOR THE PROSECUTION

A9194 Pte. BERLE, R.J., 1 Cdn Div Sup Col RCASC, having been duly sworn, states:-

Questioned by the prosecuting officer:-

Q. Will you tell the court the evidence in connection with the accused?
A. On the night of 30 Jul 41 I was orderly corporal and I handed in the ~~xxxx~~ reports and the list

tattoo

of midnight passes. Pte. Smith's name was in this list. At 2359 hrs. Pte. Smith was not in. At approx. 0630 hrs. 31 Jul 41 he was still not in so I reported it to Sgt. Ross.

There were no questions by the Defending Officer.

3rd WITNESS FOR THE PROSECUTION

A.9203 Sgt. ROSS, D.E., 1 Cdn Div Sup Col RCASC, having been duly sworn, states:-

Questioned by the Prosecuting Officer,

Q. Will you tell the Court what evidence you have in connection with the accused, Pte. Smith?
A. On the morning of 31 Jul 41, Cpl. Berle, who had been orderly corporal the previous night, reported that Pte. Smith was A.W.L. I was the sergeant in charge of the house owing to the fact that the sergeant of "H" section was guard commander. I heard nothing of the accused and saw nothing of him until the morning of 4 Aug 41 when at approx. 1100 hrs. I intercepted him on the road leading to Sunhill House. I stopped and talked with him, placed him under open arrest and ordered him to the house. I also picked up his pass and two other documents showing that he had been to a hospital. There was also another pass in the form of an extension, including these documents that I picked up. I immediately contacted Sgt. Ticknor and turned over these documents to him because he was Pte. Smith's section sergeant. I then reported to the echelon commander that Pte. Smith had returned and that I had placed him under open arrest. He ordered me to send Smith to our M.O. and I did.

There were no questions by the Defending Officer.

4th WITNESS FOR THE PROSECUTION

Lieut. B.L. PRYCE, 1 Cdn Div Sup Col RCASC, having been duly sworn, states:-

Questioned by the Prosecuting Officer,

Q. Will you tell the Court what evidence you have in connection with the accused?
A. I have documentary evidence,
(1) A pass issued by myself to Pte. Smith on 30 Jul 41 from after duty to 2359 hrs for proceeding to London.
(2) A pass by the London Provost giving Pte. Smith the right to be absent from his quarters from 30 Jul 41 to 1000 hrs 31 Jul 41 for proceeding to London, which is signed by the D.A.P.M.
(3) A certified casualty ticket made out to Pte. Smith giving his symptons and that he was admitted to hospital at 0930 hrs 1 Aug 41.
(4) A morning sick report for Pte. Smith from Millbank Hospital dated 2 Aug 41. The date that this expir expired was 31 Jul 41.
(5) Another sick report which states on the back, "Queen Alexandra Hospital. To return

4th WITNESS PROSECUTION (Contd)

forthwith and report to the M.O. of his unit". The date is 2 Aug 41 and time 1250 hrs.

(6) A schedule, made out by M.S.M. Emery, A/R.T.O., Redhill, which gives a complete schedule of trains leaving Victoria Station, London and arriving at Redhill and of trains from Redhill to Godstone and signed by the R.T.O.

(7) A Green Line Bus schedule from London to Redhill and Redhill to Godstone, signed by the superintendent of the bus line.

(8) Another time table which is self-explanatory.

Q. You referred to the hospital casualty ticket as a pass. Is that correct.
A. Not as a pass, but it does state on the back of one, "pass expired ...."

There were no questions by the Defending Officer.

The Case For The Prosecution is closed.

THE CASE FOR THE DEFENCE

There are no witnesses for the Defence, but the accused wishes to make a statement not on oath.

Statement By the Accused.

On 1 Aug 41 I reported to St. Thomas Hospital at 0930 hrs. At 1000 hrs. they took me to the casualty room and braced my feet. At 1300 hrs. they braced my feet again and at 1600 hrs and again at 2000 hrs. They told me to report to Millbank Hospital which I did, the following morning at 0900 hrs. where I had my feet dressed three times from 0900 hrs to 1205 hrs.

Questioned by the Court,

Q. Is your billet in Sunhill house?
A. Yes sir.

Q. Were your feet bothering you when you asked for the pass?
A. Yes sir.

Q. Why did you want to go to London?
A. My sister is living there and I had not heard of them at all for three months and I wanted to see if they were okay.

Q. Did you consider a six midnight sufficient?
A. Yes.

Q. What led you to ask for an extension?
A. I asked the bus conductor when I could get a bus back that night. He told me the last bus was at 2130 hrs. I went to Victoria Station at 8:40 p.m. and waited till 9:40 p.m. and I asked another conductor if I could get another bus out that night. He told me I couldn't get one till 6:25 the next morning. From Victoria Station I went

to Henrietta Street and arrived there at 11 p.m. and told them I couldn't get a bus out that night . They phoned up our orderly room and asked for an extension till 1000 hrs 31 Jul 41.

Q. Where did you go then?
A. I returned to mysisters.

Q. Did you remain there for the night?
A. Yes sir.

Q. Where did you go the following morning?
A. I stayed there till about 0900 hrs sir and I went to investigate about my brother whom I have not seen for 23 years.

Q. You knew your pass was up at ~~2300~~ 1000 hrs.
A. Yes sir.

Q. What happened the rest of the day?
A. I went to Bernardo's home to get information on my brother. They told me he was at Brampton State Institution.

Q. Did you return to your sister's?
A. When I got back it was around 1930 hrs.

Q. Where did you spend the night?
A. At my sister's. The next day I took a bus to St. Thomas hospital and arrived there 1 Aug 41.

Q. Is that where you got this ticket?
A. Yes sir.

Q. Whom did you see there?
A. The civilian doctor sir.

Q. Do you know if he signed this at all?
A. He just gave me this card sir.

Q. You continued to go back to St. Thomas hospital during the day?
A. Yes sir.

Q. Why did you have to go back so often?
A. My feet were in bad shape sir.

Q. How did you get to Millbank?
A. I took a street car. One of the medical orderlies told me to go there.

Q. Is Millbank a military hospital?
A. Yes sir.

Q. What time did you leave Millbank Hospital?
A. 1205 hrs. 2 Aug 41.

Q. Did the Doctor mark that on your ticket?
A. The orderly did.

Q. All this time you knew you had no pass?
A. Yes sir.

Q. Did you not think of making an attempt to contact your unit?
A. The Provost stopped me and I produced these passes and they told me I was okay.

Q. You finished up at noon on 2 Aug 41. Where did you go after that?

I went back to my sister's. I was told to report to my own M.O. here.

Q. On 30 Jul 41 you stated that you went to Victoria Station at 8:40. You didn't try to go back by train?
A. No sir, I had xx a return ticket on the Green Line bus. That's the reason I didn't come back by train sir.

Q. On 31 Jul 41 you wanted to see your brother. Why was it suddenly so important to see your brother?
A. I didn't know where my brother was until the 31 Jul when I found out. I got the information from my sister's.

The Case For The Defence is closed.

Prosecutor's Closing Address :-

It has been shown that Pte. Smith was given one pass which was afterwards extended to 1000 hrs on the 31 Jul 41. Nothing further was done about a further extension of that pass to take care of any hospital treatment or any sickness that might have arisen. There is a definite period during which the accused was not present at his duties and not otherwise accounted for. Even accepting the hospital as a possible excuse there is a period of approx. 24 hours between the expiring of the A.P.M.'s pass and the entrance to the hoppital on 31 Jul 41.

Defending Officer's Closing Address :-

I wish to point out that Pte. Smith has been charged with A.W.L. 4 days, 1 hour, when actually the charge should read a matter of some 49 hours from the time he was dismissed from Millbank Hospital. It is a fact that Pte. Smith was negligent in as much as he did not get proper passes to cover his time between the expiration of the provost pass and dismissal from the hospital but the documents from the hospitals in question definitely prove that he was not trying to evade his responsibilities but was sincere in his effort in xx getting medical treatment.

I wish to point out that he is not guilty of A.W.L. for the time stated in the charge but for the lesser time of approx 49 hours. We have not the documents available to prove that the treatments were taken but they could be produced from these two hospitals. The fact that he has documents showing that he visited them proves that he was there and no doubt took treatment.

The Court adjourns for consideration of finding.

The Court re-assembles and the accused makes the following statement:-

Ever since I have been in this unit I have tried to get transferred because I do not belong xxx to the army service corps, sir.

Q. Do you not like your work here?
A. I am not satisfied with this unit. I was transferred here against my wish sir.

Q What unit did you come over with?
A. With the Holding Unit sir. I was sent from there to the Supply Column.

Q. This is the only unit you have served with in England?
A. Yes sir. I served with the R.C.R.s in Canada and I would like to get back with them.

Q. Did you take the opportunity of over-staying your pass as a means ~~xx~~ that it might get you transferred?
A. No sir.

There are no witnesses for character produced by the Defending Officer.

The Court is closed for consideration of sentence.

No objection was made by the accused or defending officer as to proceedings preliminary to trial and the accused was asked if there was anything in connection with the trial or proceedings that he was not satisfied with. He answered "No."

Prosecutor

Summary of evidence in the case of A 9584
Pte. Smith, J., 1 Cdn Div Sup Col., RCASC

- - - - - - - - - - - -

By direction of the Commanding Officer
the summary of evidence is taken on oath.

R.J.C.

A 9082 Sgt. Ticknor, W.C., 1 Cdn Div Sup Col., after having been duly sworn states:-

I am Sergeant of "H" Sec. I issued Pte. Smith with a pass for 2359 hours, 30 Jul 41. At that time I was Sergeant of the Car Park Guard. The following morning when I returned to the billets at 0715 hrs. I personally checked and found that Pte. Smith was absent from his quarters. I heard no more about it until the morning of his return which was the 4th of August 1941 and at that time he had been placed under open arrest by Sergeant Ross. I then turned in a charge against Pte. Smith as being A.W.L.

The accused declines to cross-examine this witness.

W.C. Ticknor, Sgt.

A 9203 Sgt. Ross, D.E., 1 Cdn Div Sup Col., R.C.A.S.C. after having been duly sworn states:

I am Sergeant of "G" Section at Sunhill which was were Pte. Smith was billeted. On the morning of the 31st Jul 41 I was notified by Cpl. Searle who was Orderly Corporal the previous night that Pte. Smith had not reported in on his midnight pass which expired at 2359 hrs 30 Jul 41. At 0830 hours Pte. Smith was still unaccounted for and I reported his absence to No. 2 Echelon Orderly Room. I heard no more regarding Pte. Smith until Monday 4 Aug 41 when at 1100 hours I met him on the road leading to Sunhill. I approached him and he gave me his pass along with another pass issued by the Provost which was an extention of ten hours and one minute. He also turned over to me two certificates which showed that he had been to different hospitals. The last certificate clearly indicated that Pte. Smith was released from hospital on 2 Aug 41 to be returned to his Unit forthwith. I immediately confined him to his billet and I then came to No. 2 Orderly Room and reported Pte. Smith's return to Capt. Meers. Capt. Meers advised me to leave Pte. Smith under open arrest and have him report to the Medical Officer of our Unit. I carried out Capt. Meers orders. The pass and papers given to me by Pte. Smith were turned over to Sgt. Ticknor who was the Section Sergeant of "H" Section the Section which Pte. Smith belonged to.

The accused declines to cross-examine this witness.

D E Ross Sgt

D.E. Ross, Sgt.

A 9194 Pte. Searle, R.J., 1 Cdn Div Sup Col., R.C.A.S.C. after having been duly sworn states:-

On the 30 Jul 41 I was orderly Corporal at Sunhill House being a Corporal at that time. I gathered the Tattoo Reports at 1100 hours and a list of midnight passes were handed to me. I turned the Tattoo Reports into the Orderly Officer and stayed up till approximately 0010 hours and checked those who were in and those out and Pte. Smith was absent. He was also absent at 0600 hours, 31 Jul 41 when I first noticed it so I reported it to Sgt. Ross.

The accused declines to cross-examine this witness.

R J Searle Pte

R.J. Searle, Pte.

Lieut. B.L. Pryce, Acting for Administrative Officer, 1 Cdn Div Supply Col., R.C.A.S.C. having been duly sworn gave evidence as follows:-

I am the Officer in charge of "H" Section and produce the following documentary evidence in the case of A 9584 Pte. Smith, J.

1. Section Pass
2. Pass issued by the A.P.M., Canadian London Area.
3. St. Thomas's Hospital Surgical Casualty ticket.
4. Morning sick report, Queen Alexandra Military Hospital
5. Train Schedule from R.T.O., Redhill.
6. Bus schedule Green Line Bus Co.
7. M.P.M. 6

I wish also to state that I personally checked the bus and train schedule from London to here and found that A 9584 Pte. Smith, J. had ample time to return to his Unit on or before 1630 hours, 2 Aug. 41.

B.L. Pryce Lieut

(B.L. Pryce) Lieut.

The accused was asked if he wished to make any statement after having been duly warned in accordance to Rules of Procedure para. 4 E. He declined.

- - - - - - - - - - - - - - - - - -

I certify the above Summary of Evidence has been taken down in accordance to the regulations set forth in Rules of Procedure in the A.A.

11 Aug 41
/CAP

B Pryce Lieut.
(B.L. Pryce) Lieut.
1 Cdn Div Sup Col., RCASC

RJC

25 Aug 41

This is to certify that A.9584 Pte. Smith, J.
has been examined and is free from all vermin
and disease and fit to undergo trial by F.G.C.M.

J. R. Magee, Capt
Medical Officer
1 Cdn. Div. R.C.A.S.C.

In the field
25 Aug 41

If a calling-out of the whole Army Reserve is ordered every soldier on pass must return immediately to his unit without waiting for instructions.

ORDERLY ROOM

1 CDN. DIV. SUP. COL., R.C.A.S.C.

1 CDN. ARMY (Overseas)

No.....

PASS

(Army Form 1213) (In pads of 100)

No. ..... (Rank) Pte (Name) Smith J

has permission to be absent from his †quarters/duty, from

A.D 30/7/41 to 2359 HRS 30/7/41

for the purpose of proceeding to* London

(Station) Field

(Date) 30/7/41

B Wright Lieut

Commanding

PTO

* Destination not required unless absence is to exceed 24 hours, unless notification is desirable owing to local conditions or is necessary to enable purchase of a rail ticket at reduced rate.

† Delete whichever is not practicable.

CROWN COPYRIGHT RESERVED

A Soldier on pass who requires medical advice must apply personally if possible to the nearest Military, R. Naval or R. Air Force hospital or other Medical formation, showing this pass. If, however, he resides more than two miles from such hospital etc., he may apply to a civilian doctor, to whom he will show this pass, and the doctor will then be allowed the following rates for medical attendance on the soldier at the latter's residence.

VISIT AND MEDICINE	If not more than 2 miles away	Greater distances
Day ...	4s. 6d.	An addition of 6d. for each mile or part of a mile with a limit of £1 4 6d.
Night 22·00 to 07·00 hrs.	6s. 6d.	

When the soldier visits the surgery of a civilian doctor, the fee payable in respect of such visits will be 4s. per visit.

The Soldier will at once report the employment of the civilian doctor by a letter addressed to his Commanding Officer to whom the civilian doctor will submit his claim on Army Form O. 1067 for payment.

If hospital treatment is necessary, the soldier will at once report the fact, if possible, to the nearest Military, R. Naval or R. Air Force hospital, Military Reception Station or Medical Inspection Room for Troops, and is to state that to his Commanding Officer, when arrangements will be made, wherever possible, for any necessary treatment to be given from military sources. If a soldier is admitted to a R. Naval or R. Air Force hospital, he will report the fact immediately to his Commanding Officer. If, in the event of emergency, a soldier is admitted to a civil hospital, he will report the fact immediately to his Commanding Officer, who will at once notify the Assistant Director of Medical Services concerned.

When a soldier on pass is prevented by sickness, which must be properly certified, or by other unavoidable causes, from rejoining his Corps by the date on which his pass expires, he is to report himself before that date—

To the nearest General or other Officer on the staff of the Army or to the Commanding Officer of any unit or detachment of the Regular Army, or to some of these be within convenient distance] to a Justice of the Peace.

If in Time, he is to furnish the medical certificate to his C.O.

A soldier on leave of furlough who requires emergency dental treatment must apply for it to the nearest military, Royal Naval or Royal Air Force Hospital or Dental Centre.

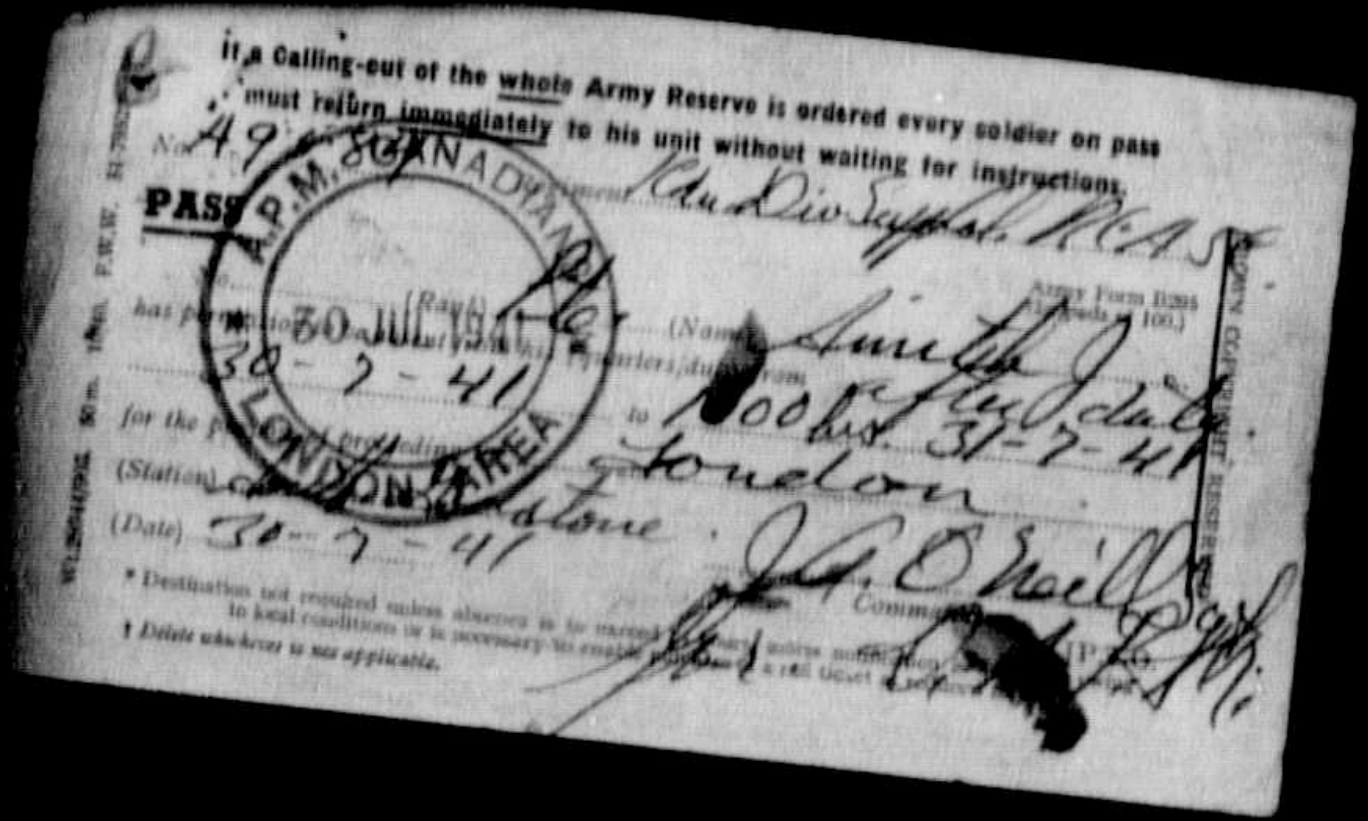
If he resides more than two miles from such hospital or dental centre, he may apply to a civilian dental practitioner to whom he will show this pass; the dental practitioner will be paid only for strictly emergency treatment and at the rates admissible under the National Health Insurance Act (Dental Benefit Regulations).

The soldier will at once report the employment of the civilian dental practitioner to his Commanding Officer, and the practitioner will submit his claim for payment on Army Form O 1067, and forward it to the Deputy Director of Medical Services at the headquarters of the Command in which the soldier is temporarily quibling.

These instructions, where applicable, will also be held to refer to a member (other than an officer) of the Auxiliary Territorial Service or of a Voluntary Air Detachment called out for service.

If his pass exceeds 24 hours a soldier is to leave his address with the Captain of his company, and he must at all times be prepared to report on the shortest notice, if ordered to do so.

Note.—The above instructions are not applicable to a soldier on Field Service overseas.



If a Calling-out of the whole Army Reserve is ordered every soldier on pass must return immediately to his unit without waiting for instructions.

No. 49

PASS

A.P.M. CANADIAN LONDON AREA

30 JUL 1941

(Rank) Lt Col

(Name) Quartermaster Dep. Dir. Supplies & Transport H.Q. A.F.

Army Form B.2118 (Modified by A.C.I. 100.)

has permission to be absent from his quarters/duty from

to 1000 hrs. 31-7-41

for the purpose of proceeding

(Station) London

(Date) 30-7-41

J. O'Neill Lt Col

Commanding

* Destination not required unless absence is to extend beyond limits necessary to local conditions or is necessary to enable passholder to catch train.

† Delete whichever is not applicable.

W.L.&S.(P.W.E.) 8m. 12/41. P.W.E. H.7957

A Soldier on pass who requires medical aid must apply for it, personally if possible, to the nearest Military, R. Naval or R. Air Force hospital or other Medical formation, showing this pass. If, however, he resides more than two miles from such hospital, etc., he may apply to a civilian doctor to whom he will show this pass, and the doctor will then be allowed the following rates for medical attendance on the soldier at the latter's residence.

VISIT AND MEDICINE.

	If not more than 2 miles away.	Greater distances.
	s. d.	
Day	4 6	An addition of 6d. for each mile or part of a mile with a limit of £1 a visit.
Night 22.00 hours to 07.00 hours	6 0	

When the soldier visits the surgery of a civilian doctor, the fee payable in respect of such visits will be :—3s. per visit. The soldier will at once report the employment of the civilian doctor by a letter addressed to his Commanding Officer to whom the civilian doctor will submit his claim on Army Form G. 1067 for payment.

If hospital treatment is necessary, the soldier will at once report the fact, if possible, to the nearest Military, R. Naval or R. Air Force hospital, Military Reception Station or Medical Inspection Room for Troops, and failing that to his Commanding Officer, when arrangements will be made, wherever possible, for any necessary treatment to be given from military sources. If a soldier is admitted to a R. Naval or R. Air Force hospital, he will report the fact immediately to his Commanding Officer. If, in the event of emergency, a soldier is admitted to a civil hospital, he will report the fact immediately to his Commanding Officer, who will at once notify the Assistant Director of Medical Services concerned.

When a soldier on pass is prevented by sickness, which must be properly certified, or by other unavoidable causes, from rejoining his Corps by the date on which his pass expires, he is to report himself before that date—

To the nearest General or other Officer on the staff of the Army or to the Commanding Officer of any unit or detachment of the Regular Army; or (if nowhere these be within convenient distance) to a Justice of the Peace.

If in Eire, he is to furnish the medical certificate to his C.O.

If his pass exceeds 24 hours a soldier is to leave his address with the Captain of his company, and he must at all times be prepared to rejoin on the shortest notice, if ordered to do so.

Soldiers passing through London can obtain board and lodging at moderate rates at the Union Jack Club, opposite Waterloo Station.

NOTE.—The above instructions are not applicable to a soldier on Field Service overseas.

82. 15,000 3/40 M.P.C.

ST. THOMAS'S HOSPITAL.

SURGICAL CASUALTY TICKET.

THE BEARER OF THIS MUST ATTEND AT 9.30 A.M.

ON

Name of Casualty Officer in full R.I.S.B 9

Diagnosis Soldiers feet.

Name Jack Smith Age 30

Residence Godstone Occupn. H.E

Instruction for all cases in Splints R.C.A.S.C.

You are to attend on _____ and at any time if you are in pain.

Signature. _____

DATE	REMEDIES
1.8.44.	Lotio Plumbi et Sapo. tds (1)
5 - AUG	
- AUG	

These Cards are of NO USE UNLESS STAMPED by the Lady Almoner.

Unit R C A S C 1 Div Supply Column

Squadron, battery or company Godalming Sundry

MORNING SICK REPORT

MEDICAL INSPECTION REPORT*

Station and Date Aldershot – 2 AUG 1941

Army Form B 256

Army No.	Rank and Name (Christian name in full. Surname first. If under name if married)	Age	Service	Religion	If for duty?	Whether a Defaulter	Lines or Barracks	Room or Mess	Disease	Disposal Medical Officer's Remarks and Signature
5584	Dvr Smith J.	30	14/12	RC					Since 31.7.41 Sore feet Both feet & ank.	
	This man and cases that he was supplied with Ung. Sulph. Iod. 15%. Has spent 2/5 at Hospital sick Thur. 31.7.41								feet washed & foam dressing applied.	
	SICK ON LEAVE PASS EXPIRES 31 JUL 1941.				Mardell				Feet bound tog. Mardell	
									TO	

*Strike out whichever is not applicable. †State nature of duty for which warned. In the case of men for medical inspection, the remark, such as "for trial by Court Martial," or "passing the station," &c., should be stated against their names.

Orderly N.C.O.

W1 45445/1130. 5,000m 4/41. [illegible] 31-6078

To be Discharged from Hospital to-morrow.

Unit	Squadron, battery, or company	Army No.	Rank and Name

THE QUEEN ALEXANDRA MILITARY HOSPITAL.

To rejoin forthwith and report to the M. O. of his unit.

Date 2 AUG 1941

Time 12.30 noon

Initials J. Smith

82. 15,000 3.40 M.P.C.

ST. THOMAS'S HOSPITAL.

SURGICAL CASUALTY TICKET.

THE BEARER OF THIS MUST ATTEND AT [redacted].30 A.M.

ON

Name of Casualty Officer in full RISB 9

Diagnosis Soldiers feet.

Name Jack Smith Age 30

Residence Godstone Occupn. H E

Instruction for all cases in Splints R C A S C

You are to attend on _____ and at any time if you are in pain.

Signature. _____

DATE	REMEDIES
1.8.41.	Lotio Phenobi (et Soap.) 4 do (1)
5 - AUG	
1 - AUG	

These Cards are of NO USE UNLESS STAMPED by the Lady Almoner.

KEEP THIS CARD CLEAN.

Army Form B 256

Unit R C A S C Div Supply Coln

Squadron, battery or company Godstone Sundry

MORNING SICK REPORT
MEDICAL INSPECTION REPORT*

Station and Date Aldbrook – 2 AUG 1941

Army No.	Rank and Name (Christian name in full. Initials not permissible. If married underline)	Completed Years of Age	Completed Years of Service	Religion	If for duty?	Whether a Defaulter	Lines or Barracks	Room or Mess	Disease	Disposal Medical Officer's Remarks and Signature
54	Dvr Smith J.	30	14/12	RC					Since 31.7.41 Scabies Both legs & arms.	
	This man was admitted to Hospital suffering from "Impetigo"								Feet swollen & painful discharging	
	SICK ON LEAVE PASS EXPIRES 31 JUL 1941.								To return to unit from Hospital	

*Strike out whichever is not applicable. †State nature of duty for which warned. In the case of men for medical inspection, the reason, such as "for trial by Court Martial," or "passing the station," &c., should be stated against their names.

Orderly N.C.O.

Wt. 35443/1730. 7,500m 4/41 [illegible] & Co. 51-0070.

To be Discharged from Hospital to-morrow.

Unit	Squadron, battery, or company	Army No.	Rank and Name

THE QUEEN ALEXANDRA MILITARY HOSPITAL.

To rejoin forthwith and report to the M. O. of his unit.

Date 2 AUG 1941

Time 12.5 p.m. noon

Initials J. Smith

Unit: RCASC. 1st Saskatoon Coy

Squadron, battery or company: Sandhurst

MORNING SICK REPORT

MEDICAL INSPECTION REPORT

Army Form B 256

Station and Date: Debert 2 - 8 1941

Army No.	Rank and Name (Christian name in full Surname first. If quarter name if married)	Completed Years of Age	Completed Years of Service	Religion	If for duty†	Whether a Defaulter	Lines or Barracks	Room or Mess	Disease	Disposal Medical Officer's Remarks and Signature
[illegible]	S Medd J	30	5	[illegible]					Sinus 3.1.41 Sent for Admission	
	This man alleges that he was supplied with R.D. from June 15th. Has spent 2/6 in Hospital Mess. Has not been paid since.								Estimated Inoculation Arm supplied.	
	SICK ON LEAVE PASS EXPIRES.....				Classified				To get back to unit Sick Parade	Admitted

*Strike out whichever is not applicable.
†State nature of duty for which warned. In the case of men for medical inspection, the reason, such as "for trial by Court Martial," or "passing the station," &c., should be stated against their names.

Orderly
N.C.O.

W.L. 15443/1733. 1,000m 4/41 G.B. & Co. [illegible]

To be Discharged from Hospital to-morrow.

Unit	Squadron, battery, or company	Army No.	Rank and Name

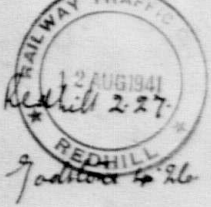
THE QUEEN ALEXANDRA
MILITARY HOSPITAL.

To report to [illegible] and report
to the [illegible] of Unit

Date 2 AUG 1941

Time 12-50 noon

Initials



1.48. Victoria arr. Redhill 2.27.

4.15. Ex Redhill arr. Godstone 4.26.

2.48. Victoria arr. Redhill 3.27.

Saturdays only.

3.06. Ex Redhill Godstone 3.16 Pass

4.06 " " " 4.16 Pass

W. A. Emery Clerk

a/R.T.O

Redhill.

12-8-41.

Point

Hour	R.	R.	R.	R.
0	Green Line			
1				
2				
3	Regd London to			
4				
5				
6	Redhill.			
7	15 r 45.			
8				
9				
10				
11				
12	Arrive At			
13				
14	Redhill 9 r 35.			
15				
16				
17				
18	Journey Time			
19				
20	1 Hr. 20 Mins.			
21				
22				
23				
24				
25				
26				
27	Dep From			
28				
29	Reading to			
30				
31				
32	Godstone			
33				
34	410 - All Rds			
35				
36				
37	At 21 r 51			
38				
39	Past each Hour.			
40				
41				
42				
43				
44	Journey Time			
45				
46	25 Mins.			
47				
48				
49				
50				
51				
52				
53	Mrs Hawkins			
54				
55				
56				
57	Lunch 1 Hr.			
58				
59				

M 101/22
(Blank) 12-39—Stock

1 CDN. DIV. SUPPLY COLUMN

Chronological timetable in the case of A 95 84, Pte. Smith, J.

Original leave pass: from A.D., 30 Jul 41 to 2359hrs, 30 Jul 41.
A.P.M. pass: same time 1000hrs, 31 Jul 41.
St. Thomas's Hospital ticket, dated 0930 hrs 1 Aug 41
Milbank Hospital report dated 2 Aug 41, 1250 hrs.

Train and Bus schedule from London to Godstone.

	Train	Bus
Milbank Hospital:	1250 hrs.	1250 hrs.
Victoria Stn.	1345 hrs.	1345 hrs.
Redhill Stn.	Ar. 1427 hrs.	1505 hrs.
	Lv. 1506 hrs.	1521 hrs.
Godstone	1516 hrs.	1546 hrs.

Distance from South Godstone Station to "Sunhill" is approximately one and one-half miles.

No. A.9584 Name [illegible]

Date of last entry in Company Conduct Sheet

Place	Date of offence	
England		
Aldershot	30 Sep 40	Pt
Aldershot	6 Feb	Pt

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE
England	15 Mar 41	Pte		Sec 15(1)AA - AWL fro[illegible] 15 Mar 41 to 1830 hrs
England	24 Mar	Pte		Sec 15(1)AA - AWL fro[illegible] 15 Mar 41 to 1950 hrs
Field	1 May 41	Pte		(1) WOAS AWL from 235[illegible] 41 to apprehended by [illegible] (2) Improperly dresse[illegible] was wearing civilian [illegible]

Date of enlistment | G.C. Badges | Service or Proficiency Pay | Character

Sheet No. 2 | Signature O.C. Company, etc.

M.F.M. 6 (A.P.B 123)

Formation	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
aynes	28 dys Field Punishment Frfts 28 days pay FR&I Can 149 1 b	10 Jun 41 Total 32 days pay	Major Jarvis	Frfts 4 days pay FR&I Can 149 1 a
ng Unit w.e.f. 4 Jul 41				

No. A.9584 Name SMITH, J. | Sqn., Battery, or Company | Corps RCASC 1 Cdn Div Sup Col | Date of enlistment | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.B. 133)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
England				This soldier having completed six months service from previous sheet destroyed C.O. 34					no entries
Aldershot	30 Sep 40	Pte		Sec 15(1)AA - AWL from 2130 hrs 30 Sep 40 to 2240 hrs 30 Oct 40		35 dys detention Frfts 35 dys pay FR&I Can 149 1 b	17 Dec 40	FGCM	frfts 31 days pay FR&I Can 149 a 1 Frfts 48 days pay FR&I Can 149 1 c
Aldershot	6 Feb	Pte		Sec 15(1)AA - AWL from 0830 hrs 6 Feb 41 to 2000 hrs 11 Feb 41	Sgt Wood	11 dys detention Frfts 11 days FR&I Can 149 1 b Total 17 days forfeiture	14 Feb	Lt.-Col Pocock	Frfts 6 days pay FR&I Can 149 1 a

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
England	15 Mar 41	Pte		Sec 15(1)AA - AWL from 0630 hrs 15 Mar 41 to 1830 hrs 22 Mar 41	Cpl Ripley	27 dys detention - frfts 27 days pay FR&I Can 149 1 b Total frfture 28 days pay	25 Mar 41	Lt.-Col. Pocock	Frfts 2 days pay FR&I Can 149 1 a
England	24 Mar	Pte		Sec 15(1)AA - AWL from 0630 hrs 15 Mar 41 to 1950 hrs 23 Mar 41	Cpl Ripley	27 dys detention - frfts 27 dys pay FR&I Can 149 1 b Total 36 days pay	25 Mar	Lt.-Col Pocock	Frfts 9 days days pay FR&I Can 149 1 a
Field	1 May 41	Pte		(1) WOAS AWL from 2359 hrs 24 Apr 41 to apprehended by C.M.P. (2) Improperly dressed i.e. he was wearing civilian clothes	C.M.P.	14 days Field Punishment Frfts 14 days FR&I Can 149 1 b Total 21 days pay	13 May 41	Major Jarvis	Frfts 7 days pay FR&I Can 149 1 a

No. A9584 Name SMITH, J. Sqn., Battery, or Company 1 Cdn Div Sup Col., RCASC Corps RCASC Date of enlistment Sheet No. 2

G.C. Badges: Signature O.C. Company, etc.

Service or Proficiency Pay: Character

M.F.M. 6 (A.F.B. 122)

Date of last entry in Company Conduct Sheet: No. and date of last drunk: Period not reckoning towards freedom from extra fine

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	2 Jun 41	Pte		Sec 15(1)AA - AWL from 0800 hrs 2 Jun 41 to 1200 hrs 5 Jun 41	RSM Haynes	28 dys Field Punishment Frfts 28 days pay PRAI Can 149 1 b Total 32 days pay	10 Jun 41	Major Jarvis	Frfts 4 days pay PRAI Can 149 1 a
				S.O.S. on posting to No. 1 RCASC Holding Unit w.e.f. 4 Jul 41					

CERTIFIED TRUE COPY

R. Carey Capt

for CON. DIV. SUPPLY COLUMN R.C.A.S.C.

(P.T.O.)

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order disposing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 25th day of May 1945

Administrative Officer,
1 Cdn. Div. Sup. Col.

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

A.9584 Pte SMITH, J. of the 1 CDN. DIV. SUP. COL., R.C.A.S.C.

Note.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced to Court with this statement but are not to be accessed to the proceedings.

This Para. 664, K.R. 1936.

*The numbers herein stated should correspond with the number of Entries in the Conduct sheets, prominence being given to the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

Instructions.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	*Within last 12 months.	*Since Enlistment.
For Absent without leave	FIVE times	times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct

or,

There are no entries in the Conduct sheets of the accused.

2. The accused has not been previously convicted.

or,

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

Wt. 40944/764 30,000 2/45 W. & L. Ltd. 51—6554

3. The accused is not under sentence at the present time,

or,

~~The accused at the present time is under sentence for~~ .....
~~beginning on the~~ ~~day of~~ .....

4. The accused has been in confinement, awaiting trial on the present charges for ..... days in Civil Custody,

and TWENTY-ONE days in Military Custody.

Total TWENTY-ONE days.

Of which ..... days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ / attestation paper is 30

6. The date of his ~~commission~~ / attestation specified in his ~~record of service~~ / attestation paper is 22 FEB 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is .....

8. The accused is entitled to deferred pay or gratuity in respect of ..... years' service.

9. The accused is entitled to reckon ..... years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward [*or* is in possession of *or* entitled to .....]

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of .....

12. (*In the case of an officer.*) The accused holds in the army the rank of ....., dated ....., and in his regiment (*or* corps *or* department) the rank of ..... dated .....

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

		Date of Promotion.
In the rank of	, years,	.....
In the rank of	, years,	.....
In the rank of	, years,	.....

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ....., signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name 4.9584 Pte SMITH, J. of the 1 CDN. DIV. SUP. COL., R.C.A.S.C.

Note.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.

Description of Court by which Trial, or Civil Court having cognizance of the charge or dispensing with Trial	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
F.G.C.M.	17 Dec 40 Aldershot	Sec 15(1) A.A. - AWL from 2130 hours 30 Sep 40 to 0240 hours 30 Oct 40	35 days detention	

(Continued overleaf).

SK-50

Pte. Smith, J.A.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A 11734 PTE JOHN ALEXANDER SMITH PERTH R.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 10 (2)	Not Guilty	Guilty	
2nd	AA 8 (2)	Not Guilty	Guilty	
3rd	AA 8 (2)	Not Guilty	Guilty	
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for ..... beginning on (date) .....~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 70 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

TO UNDERGO DETENTION FOR ONE (1) YEAR

(Sgd) [signature] Judge-Advocate, if any. 27 APRIL 45 Date awarded. (Sgd) H.B. Bates Maj President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding and sentence of the Court and remit six months detention.

~~I direct that the accused be not committed to prison or detention barracks until further orders~~ (1).

(1. AA 57A. Delete if not used.)

Date 29 Apr 45. (Sgd) [signature] Brig. Commanding 11 Cdn Inf Bde. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
A11734 Pte J A Smith	7 May 1945	A W B Robertson Capt FOR ADJT PERTH REGT

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED IN AB 168 5K-55

RECEIVED 4 JUN 1945 CMHQ

CFAB6 (To face of AFAB1 40/P Ar G/1698 (40/01) 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Brig I S Johnston, DSO ED Comd 11 Cdn Inf Bde dated 19 Apr 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A 11734	Pte	John Alexander	SMITH	Perth R.

PROCEEDINGS REVIEWED 6 June 45 [signature] Lt

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED [signature] Maj D.J.A. Cdn. Sec. 1 Ech 21 Army Gp.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 27 APRIL 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 31/84.

A1. The President, Members, waiting Member, JA, if any, ~~and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (✓) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ..... as interpreter? Ans .....

The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO SIR.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 98, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	H.B. BATES		C.O. HIGHRS
Member	CAPT	D.R.M. NEISH		C.O. HIGHRS
Member	LIEUT	D.M. SMITH		P.L. FUS
Judge-Advocate	CAPT	J.A. BOURNE	ADJA	5 CAN ARMD DIV
Prosecutor	LIEUT	R.M. STOREY		PERTH R.
Defending Offr	CAPT	J.D. COWIE		PERTH R.

Questions by President: Is the Prosecutor a lawyer? Ans NO. Is the Defending Offr a lawyer? Ans NO.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dis p 32.)

A8. The accused ..... before arraignment make(s) (no) (a) plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(F), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does (does) not object to any charge.(2) There is (no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~(the accused and)~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "D".

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS. 1358

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on the.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereof proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. NO.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (~~an~~) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the 1ST & 2ND charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the 1ST & 2ND charge(s), and allowed on the ~~charge(s)~~, and that, accordingly, the trial will proceed ~~on the former, but the accused is (are) found Not Guilty on the latter charge(s)~~.(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. GIVE EVIDENCE ON OATH. Do you intend to call witnesses on your behalf ?
Ans. YES. Are they witnesses as to character only ? Ans. NO.
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A91. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 45(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 102(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the 1ST & 2ND charge(s), being subject to confirmation, will be promulgated later.(1)
~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated.~~ Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO SIR.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for cross-examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "Y" and Ex "Z" respectively.(3)
(*1. MFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. YES BY DEFENDING OFFR.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(4), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its generals, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 64, 138, 182, RP 46-52, 69, 118, 119(A), KR Can 308, 336, 563-566, Overseas RO 309, 1323, MML p 60, 1157-159. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 98(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

I certify that I have this day examined No. A.11.724

Rank Pte Name Smith J.A. of the

RAMC and found him fit for Trial by Field General

COURT-MARTIAL.

Date 27/4/43

W Buchanan Capt

RLAMC attd 13 H

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A 11734	Private	John Alexander	SMIH	PERTH

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 22 Mar 45 endorsed by me, (~~or by my predecessor in command~~) "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I have waived the appointment of the senior officer, the officer next in seniority to the officer who has ordered my convening of this Court, and the officer who has ordered my convening of this Court.~~
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	H A BOTES	C P H

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	D.E.M.Welsh	C P H
Capt	J E CHARETTE	I R C

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	D M SMITH	P L F

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	J A BOURNE	Hq 5 Cdn Armd Div

On Active Service in the Fd

in Holland
(*Country.*)

Date 19 Apr 45

(Signed personally. RP 105 fn 2.) — Brig (*Rank.*)

Commanding 11 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (FGAD (To take of AFAS) 40/7 & 8/Staff (4031))

(*See overleaf for oaths and notes for use on trial.*)

CHARGE SHEET

The accused, A11734 Pte. John Alexander Smith, The Perth Regt. C.A.(~~R.C.R.~~) a soldier of the Canadian Army, is charged with;

1st Charge
Section 10(3)
Army Act.

While on Active Service, resisting an escort whose duty it was to have him in charge

In that he

In the field at approximately 2100 hrs. on the 16th February 1945, while under escort of A11588 Sgt. Minzen C.W. of The Perth Regt. C.A. (~~R.C.R.~~) resisted the escort by kicking and struggling and saying "You nor anyone else can put me in the jug." or words to that effect.

2nd Charge
Section 8(2)
Army Act.

While on Active Service, using threatening language to his Superior Officer

In that he

In the field at approximately 2100 hrs. on the 16th February 1945, after being placed under close arrest did say to A11614 R.S.M. Curtis C.W. "You yellow son - of - a - bitch, I'll get you through the guts where it will hurt the most yet." or words to that effect.

3rd Charge
Section 8(2)
Army Act.

While on active service, striking his Superior Officer

In that he

In the field at approximately 2100 hrs. on the 16th February 1945, after having been handcuffed, did strike A11614 R.S.M. Curtis over the shoulder.

(M.N Anderson) Lt-Col
Comd - Perth Regt, CAC

In the field
16 October 1942

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(Ian. S. Johnston) Brig
Comd 11 Can Inf Bde.

IN THE FIELD
22 MAR 45.

CHARGE SHEET

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(W W Andrew) Lt-Col
Comd - Perth Regt, CAC

In the field
16 Feb 1945

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(Ian. S. Johnston) Brig
Comd 11 Can Inf Bde.

IN THE FIELD
22 MAR 45.

A7. Capt J.C. Charette I.R.C., not being available as a member, the waiting member takes his place on the Court.

D3

First Witness for Prosecution — A 11588 Sgt Mingen C.W., The Perth Regt, having been duly sworn states:—

I am Provost Sgt of Perth Regt. I recognize the accused as Pte Smith. At approximately 2100 hrs 16 Feb 45 I received certain information about Pte Smith. I went to C.M.P. H.Q. to bring him back to barracks. At that time I had him under close arrest. I reported to R.S.M. at the barracks, when I got him there, and after I saw the R.S.M. I told accused he was under close arrest. He replied "you or no one else will ever put me in the jug." I took him by the arm and tried to get him to go upstairs with me. He swung at me with his fist and hit me on the neck. R.S.M. Curtis then came in and told me to put Smith in hand cuffs and take him upstairs. Smith refused to go and started to kick and struggle so that it took four men to handcuff him

after putting the handcuffs on him he cursed and swore at R.S.M. Curtis but I cant definitely say what words were used. The accused then turned and swung at R.S.M. Curtis with the handcuffs and hit him over the shoulders with the handcuffs which he had on. The R.S.M. tried to duck but was hit over the shoulders. After a lot of further struggling, we took the accused upstairs. When we got back to the billets was when I told the accused he was under close arrest.

Cross Examination :-

When I saw the accused at the billets, it was in a room which was partly occupied by men in detention and partly by drivers. There was an armed guard on each door. This was after the accused was in the kitchen where I told him he was under arrest. In the kitchen there were cooks making sandwiches and the were blowers going. The accused had been drinking but was not drunk. The accused asked for friends and also made himself a sandwich. He would not be fit for guard duty. He was under the influence of alcohol. There was noise in

the Kitchen but one could hear ordinary conversation. accused was standing near a table making sandwiches. Accused had been under arrest at C.M.P. H.Q. I didn't tell him he was, but I had to sign for him to get him out of C.M.P. H.Q. I can't say if he was told he was under arrest before I told him in the Kitchen. There was an interval from time I told accused he was in arrest until he hit me. During that interval I left the room. R.S.M., Cpl Brine, Sgt Sachs returned with me. At this time R.S.M. said to put accused in handcuffs. The accused struggled and pushed us away. I didn't have cuffs in my hands then. The struggle ended in the form of us putting Smith down and putting handcuffs on him. R.S.M. had his arm under accused's chin.

Questioned by Court:-
when accused swung at R.S.M. accused had both hands in cuffs. He swung up and sideways at R.S.M. + hit him over the shoulders. Accused did not struggle when he was being taken from C.M.P. H.Q. to barracks. He hit an M.P. on leaving C.M.P. H.Q.

When the RSM returned to the kitchen, he tried to coax accused first.

Questioned by DA

accused was in my custody during the incident. He accused kicked but didn't connect with anyone. When I saw the accused in CMP office he was sitting in office with several MPs present. The events took place in Silligno, Italy.

(RP 33 (D) complied with)

Second Witness for Prosecution

A 11706 Cpl Bryce A, Perth R. having been duly sworn, states:-

I am a member of R.P. of Perth R. I recognize the accused as Pte Smith. At about 2100 hrs on 16 Feb 45, Sgt Mingen came to my quarters. We went down to the kitchen together - that is Sgt Mingen went first and I followed shortly. I saw accused having a cup of tea. When I got there Mingen was not present. I told accused to come upstairs but he would not come. He asked to see Cpl Ball. I found Cpl Ball and by then Sgt Mingen was back. RSM Curtis was there and told Sgt Mingen to place Pte Smith under

close arrest. Sgt Mungen went out and told Smith he was under close arrest. Smith said "you or anyone else can put me in the jug" or words to that effect. Pte Smith then asked to finish his tea and Sgt Mungen said to go upstairs. Accused dropped a glass, stooped to pick it up and suddenly swung at Sgt. Mungen. R.S.M. then grabbed Smith around the neck and Sgt. Mungen, Sgt Asche and R.S.M. held Smith on the floor. R.S.M. told me to go upstairs and get the handcuffs. When I returned they still had Smith on the floor. I put the cuffs on both wrists. As I was going out of the door with Smith, I had him by the arm. He suddenly twisted away from me with his hands in the air and swung at R.S.M. We all held Smith on floor till he quieted down, and then Sgt Mungen and I took him up. The first time accused was on the floor he said "you have fucked me long enough Sgt Maj but I'll get you yet."

Cross Examination

Pte Smith had been drinking but was not drunk. I think he was not drunk

from my experience. I doubt if I would put him on duty. He was not fit for duty. His speach was a bit thick. There were quite a few people in the Kitchen. I dont recall about noise. There was Provost and two guards upstairs when Sgt came to get one. I was only one Sgt asked to go downstairs. I never heard any of men working in kitchen being asked to help put Smith in arrest. When Smith was not being held, he made no attempt to escape from the room. The words I used when I first saw accused were "Come on Smitty, we had better go upstairs" Smith did not actually hit Sgt Minzies as far as I could see. R.S.M. was standing pretty close. There wasnt much of a struggle to put Smith on the floor. Dont remember if R.S.M. said anything to Smith. There was no struggle on the way upstairs.

Cross-examined by J.A.:-

I didnt see a blow hit R.S.M.

(R.P. 93(c) complied with)

Court adjourns until 1330 hrs.

Court re-assembles at 1330 hrs pursuant to adjournment.

Third Witness Prosecution

A 11614 RSM Curtis G.F., Perth R. having been duly sworn, states:-

I am RSM of Perth R. I recognise Pte Smith, the accused. On 16 Feb 45 at Filigno Italy, at about 2100 hrs I ordered Pte Smith to be handcuffed. He immediately swung at Provost Sgt, Sgt Mingen, saying "you or no one else can put me in the digger." I assisted in handcuffing Pte Smith. While he was being handcuffed his cursing was directed at me. He said "you yellow-bellied son of a bitch, I'll get you through the guts yet, where it hurts most" or words to that effect as Cpl Brice was taking accused away, the accused broke away and struck me on the top of the left shoulder with his closed fists. Accused was resisting by daring Sgt Mingen to get him. When Sgt Mingen was struck by accused, he was walking towards accused. The blow did not hit Sgt Mingen. Sgt Mingen was the accused's escort.

Cross Examination:-

There were about 6 or 8 others in the room. I don't remember if blows were going accused

had been drinking but was not drunk. I would not have put the accused on a guard, in his condition. I am sure Smith heard and understood he was under arrest. Sgt Mirozen was only about two pairs away from accused. I heard Smith say words about being put in digger. After Smith made a pass at Sgt Mirozen, which I blocked, there was a rough-and-tumble. It would be 4-5 seconds from time Smith was ordered to be handcuffed until he was handcuffed. Handcuffs were upstairs in guardroom. Cpl. Brine went for them. It was approximately 4-5 minutes that we held Smith on ground. 4-5 minutes from time we started to handcuff him till he was taken away. Three or four were helping me. After I stopped the blow aimed at Sgt Mirozen, I clinched with Smith and put him on the floor. It was almost immediately that we all grabbed him and put him on the floor. I had Smith around the neck. The only thing I said to Smith was that I didn't have to fight with his kind. This was when he wanted to fight with me outside. ~~Two Pte soldiers in the room were ordered to assist in making the arrest.~~ I told two Ptes to assist the

Provost Sgt to take accused upstairs under arrest but before they had time to act the accused swung at the Provost Sgt and we all grappled with accused. The two Ptes would be about 4 or 5 feet from accused and myself. When I say Sgt Minzies was the escort, it was because he got him from Provost and brought him to the billets. This was told to me.

Questioned by Court

The blow did not strike Sgt Minzies. A blow from accused did strike me on shoulder. I didn't see accused struggling with Provost Sgt before I ordered handcuffs to be put on accused.

Questioned by J.A. When the accused struck me, his hands were handcuffed together. I did not order Sgt Minzies to arrest accused. I considered he already was under close arrest.

(RP 83 (b) complied with)

Fourth Witness
Prosecution

A 31844 Sgt Asche A.W., Perth Regt, having been duly sworn states:-

I recognize accused as Pte Smith J.A. At approx. 2100 hrs 16 Feb 45 I was standing in doorway of HQ Coy Kitchen while on duty as Bn O.S. Sgt Mingen approached Smith and warned Smith he was being placed under close arrest. Smith said "you can't do this to me" or words to that effect. Smith then struck at Sgt Mingen. His blow was deflected by RSM Curtis. RSM Curtis, Sgt Mingen & I got Smith under control on floor where he continued to struggle. Cpl Bris placed the handcuffs on Smith. When Smith was allowed to get up, he threatened the RSM saying "you yellow son of a bitch" or something like that and "I will get you yet" or words to that effect. Sgt Mingen & Cpl Bris let go of accused and Smith lunged at RSM and struck him on left shoulder with his two arms while the handcuffs were around his wrists. RSM & I grabbed Smith and he was taken to guardroom by Cpl Bris and Sgt Mingen.

Smith was held on floor 1½ to 2 minutes. Cpl Brine had to go for handcuffs.

Cross Examination

There were quite a number of people in the room. I think blowers were going. The closest of these men was 6 to 8 feet from the struggle. I did not hear any order given to the soldiers to assist in arresting accused. I was inside door and 4-5 ft from Sgt Minzen when accused struck at him. I would have heard RSM if he gave an order to pass at that time. I went in with a view to helping put Smith under close arrest if I was needed. I was DOS

Questioned by Court:- accused was struggling. I saw accused hit RSM as far as I could see. He did not hit Sgt Minzen. Accused was under influence of intoxicants and was not fit to carry out any duty.

Questioned by JA:-

I would say accused was drunk. To best of my knowledge accused was both hitting and struggling on floor. Sgt Minzen was holding accused left arm at that time. (RP 83(d) complied with)

D4 Motion for dismissal 1st & 2nd Charges

Defending Offr :-

1 Accused was in kitchen not under escort.
2 Mingen said not warned he was under arrest when on way to billets.
3 Mingen's ~~accused~~ job was to apprehend accused, not to have him in charge.
4 Re 2nd Charge. Refers MML middle p 25 and states the abusive language should not be subject of a charge.
5 Refers to KR Can 542. re minor charges.

Prosecutor :-

1 Refer to accused's statement about being "put in the jug"
2 Language not merely "abusive & violent" but "threatening".
3 Refers MML p 25, para 48.

JA's address :-

1 Question for Court is whether there is more than a scintilla of evidence, which is not disbelieved and which would legally support the two charges. Court not called upon at this stage to decide which parts of evidence are true. Must be some evidence on each particular alleged in 1st and 2nd Charges.
2 It is for Court to say if accused was under escort of Lgt Mingen, and if

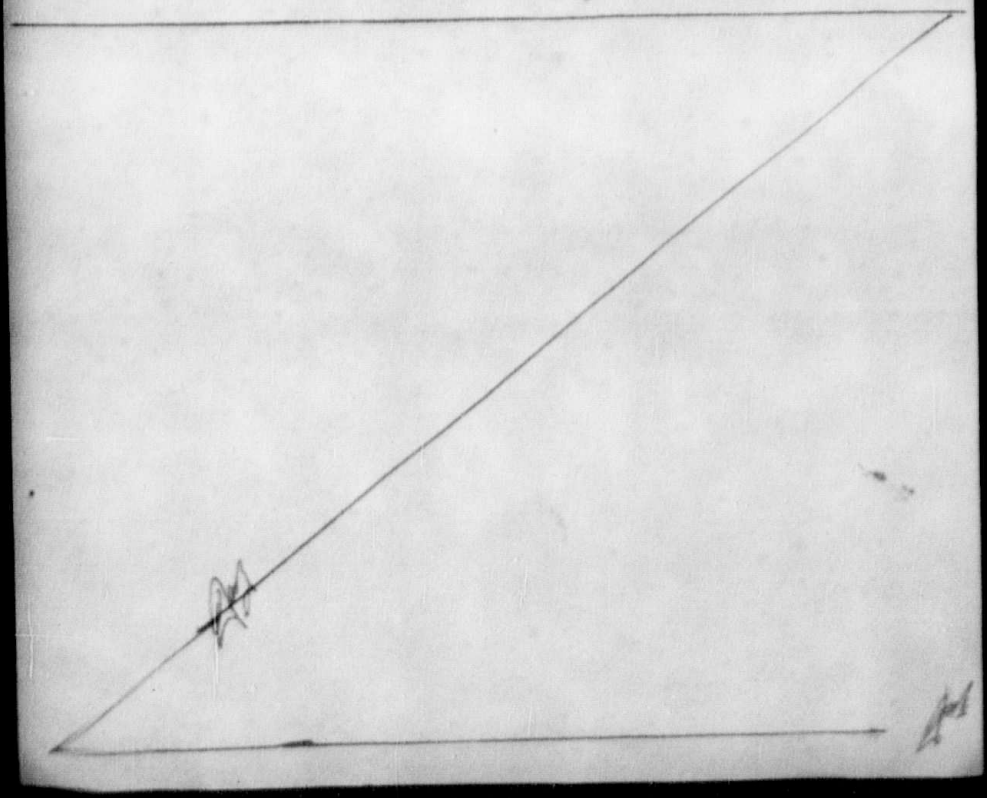
Sgt Wingen had a duty to have accused in charge, according to evidence.

3/ Quotation in M.M.L. middle p 25 is not a bar to charge in question being laid. accused is not charged with drunkenness.

4/ M.R. Can 542 is not a bar to the charges in question being laid. The convening officer has exercised his discretion and it should not now be questioned.

5/ Court not called upon to apply doctrine of "reasonable doubt" at this stage.

John A. Fraser Capt



D5

First Witness
defence

The accused, having been
duly sworn, states:—

On evening of Feb 16, 45, I saw Sgt Wingen at CMP office. He came in and went to Sgt and talked to him. I was sitting on the bench. Sgt Wingen said "come on, will go back to barracks" We went back to barracks in a H.C.P. I got out and went into kitchen. I don't know where Sgt Wingen was then. I had a cup of tea and was standing at the table. Next I remember was someone grabbing me by the arm and jerking me. I turned and saw it was Sgt Wingen. The next thing I knew I was on the floor. The R.S.M had me around neck. Sgt Isele and Sgt Wingen each had an arm and the Medical Sgt had my feet. R.S.M said "You're not so fucking tough We have had your kind before." R.S.M told Sgt Price to get the handcuffs. When he came back they put the handcuffs on me, and they let me up. I asked to finish my tea but I was refused and given a push. A fuming around with the handcuffs. I

don't know if I hit anyone. I was then held by the arm, & I went upstairs.

Cross Examination :-

I was at C.M.P. H.Q. for having a bottle of liquor. I had been drinking and was sick, so went to get another bottle. I fell down in front of the truck in the middle of the road. I was picked up, the bottle was taken away and I was taken to C.M.P. H.Q. I don't remember making the statement to Sgt Mingen about being put in the jug. I did ask for Cpl Ball, I don't remember when. I saw him later. I don't remember speaking to Cpl Bruce. When I was pushed I swung my hands. Don't know of hitting anything. I don't remember hearing Sgt Mingen say I was under arrest. I was not under arrest. It was not necessary to go through kitchen on the way to the guardroom. I might have been doing a lot of loud talking but not to any one man. When my arm was jerked the time I had the cup of tea, I swung around and saw Sgt Mingen.

Questions by Court

driver was the only one besides myself & Sgt Wenger on way back from CMP to fence when Sgt Wenger went to fence. I don't know who Sgt Wenger was. He first time I saw him was when he had me by CMP did not say anything in pursuance of Sgt Wenger "we'll get rid of you". I was handcuffed. I did not resist arrest. I was locked up in CMP Office.

Questions by TA:-

I did not know RSM was standing behind me when I swung around with my arms handcuffed. I might have been struggling on the ground because RSM had my neck & I had a hard time breathing.

(RP 83(D) complied with)

Second Witness Defence

A11670 Pte Bartley RC, Perth R. having been duly sworn, states:-

On evening of 16 Feb 45 I was in H.Q. Coy kitchen. I saw accused in the kitchen. He was drunk, I would say. Many people in room. There was at least one blower going

don't know if I hit anyone. I was then held by the arm, & I went upstairs.

Cross Examination :—

I was at C.M.P. H.Q. for having a bottle of liquor. I had been drinking and was sick, so went to get another bottle. I fell down in front of the truck in the middle of the road. I was picked up, the bottle was taken away and I was taken to C.M.P. H.Q. I don't remember making the statement to Sgt Mingen about being put in the jug. I did ask for Sgt Ball, I don't remember when. I saw him later. I don't remember speaking to Sgt Brice. When I was pushed I swung my hands. I don't know of hitting anything. I don't remember hearing Sgt Mingen say I was under arrest. I was not under arrest. It was not necessary to go through Patchen on the way to the guardroom. I might have been doing a lot of loud talking but not to any one man. When my arm was jerked the time I had the cup of tea, I swung around and saw Sgt Mingen.

Questions by Court

driver was the only one besides myself & Sgt Weingen on way back from C.M.P. I don't know who Sgt Weingen went when we arrived. The first time I saw R.S.M. was when he had me by neck. I asked permission of Sgt Weingen to finish my tea, after I was handcuffed. C.M.P. did not say I was under arrest. Said "we'll get rid of you." I was not locked up in C.M.P. office.

Questioned by D.A. —

I did not know R.S.M. was standing behind me when I swung around with my arms handcuffed. I might have been struggling on the ground because R.S.M. had my neck & I had a hard time breathing.

(RP 83(2) complied with)

Second Witness Defence A11670 Pte Bartley R.C., Perth R. having been duly sworn, states.

On evening of 10 Feb 45 I was in H.Q. Coy Kitchen. I saw accused in the kitchen. He was drunk, I would say. Many people in room. There was at least one blower going

& there was talking. It wasn't possible to hear words spoken in a normal voice unless one was up close. Pte Smith was alone when he entered kitchen and came over and asked me for a cup of tea. He didn't seem in a hurry. Sgt Meinzen came in and asked accused to go to bed, saying "come to bed Smitty" Smith didn't go. I went out for water and when I came back a whole bunch were there. Before I left Sgt Meinzen went away too. When I got back I saw Smith, Sgt Meinzen and others. Next thing I knew they were all on the floor. I didn't see accused swing at Sgt Meinzen.

Cross Examination :—

I was on fatigue in the kitchen. I was in detention. I would call accused drunk. He may or may not have known what he was doing. When Sgt Meinzen told Smith to go to bed, it was not in loud voice, but I heard it. I went out for water and it was when I got back. I saw them all on the floor. May have been 10 or 15 minutes from time Sgt Meinzen came in till they were all on floor. Could have been 5 minutes. Sgt ~~Smith and~~ Meinzen & Pte Smith were talking when I got back with the water. It was

about a minute later they were all on the floor. There was a group around accused when I got back with water. The accused was on the floor on two occasions. I did not see accused strike anyone. I did not always have a clear view

(RP 83(b) complied with)

Defending Offr's closing address :-

1 Evidence shows accused not under arrest

2 Swinging around to get Morgan was not intentional, but to see who touched him.

3 Submits accused came to floor without a struggle. He only struggled on the ground because he could not breathe

4 RSM should not have been in contact with a drunken soldier. Was provocation to struggle.

5 Did not mean to swing at RSM in particular. He did not know he was there. No intention

6 Words referred to in 2nd charge was as a result of provocation and affected by accused's drunken condition.

Prosecutor's Closing Address :—

1. Refers to discrepancies in evidence of five defence witnesses.
2. Reviews evidence on each charge.
3. Submits ample evidence to justify conviction on three charges.

(20)

SUMMING UP BY JA

1. Duty of JA to advise on law.

2. Court is sole judge of facts.

3. Credibility of witnesses is for Court. May believe or disbelieve whole or part of a witness's evidence.

4. Accused innocent until proven guilty.

5. Burden of proof is on Prosecution.

6. Accused entitled to benefit of reasonable doubt.

7. Reasonable doubt defined.

8. Duty to have in charge defined and fn 3 to AA 10(3) referred to. IT IS FOR COURT TO SAY IF THERE WAS SUCH DUTY, IF ACCUSED UNDER ALLEGED ESCORT

9. AA 8(2) explained and fn 1 p. 432 referred to re alternative findings. IN CONNECTION WITH 2ND & 3RD CHARGES.

9A. MUST BE INTENTION TO STRIKE AND ACTUAL STRIKING.

10. RSM is superior offr of a pte soldier.

11. Refers to RP 44(D) re special finding.

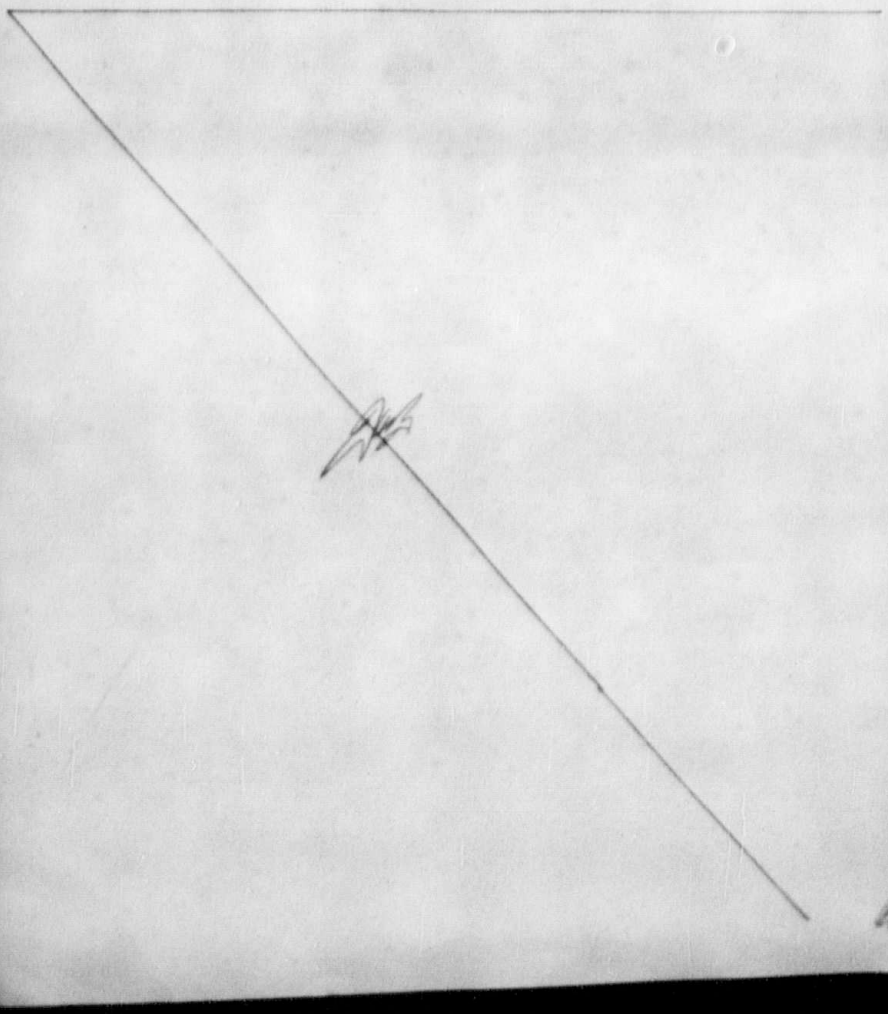
12. Refers to MML p 25 para 47 as to effect of accused being under influence of liquor, ON HIS RESPONSIBILITY FOR ALLEGED OFFENCES.

13. President, Prosecutor and Defending Offr state they wish nothing added to JA's direction.

John A. Fraser Capt

E3 Plea in Mitigation

1. If superiors had acted properly, the events would not have occured. There was provocation, and levity respecting the arrest.
2. RSM should not have been close to drunken person.
3. Language due to provocation from treatment. He was also influenced by drink.
4. Accused was once a Cpl. Has a good record.



Army Form B 296 EX "Y"

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or as case may be)
A.11734	Pte	SMITH J.A.	The Perth Regiment

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with:-

	Within last 12 months	Since Enlistment
For.. Drunkeness	2 times	2 times
For.. AWL	1 time	1 time
For.....		
For.....		
For.....		

2. The accused has not been previously convicted, or

3. The accused is not under sentence at present time, or

4. The accused has been in confinement, awaiting trial on the present charges for.....Nil.....days in civil custody, and.....10.....days in military custody, making a total of .....days of which ...Nil.....days were spent in hospital.

5. The present age of the accused according to his records of service / attestation paper is..30.....

6. The date of his attestation specified in his records of service / attestation paper is ..12 Jun 40.....

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is..4 yrs 319 days.

8. The accused is entitled to deferred pay or gratuity in respect of 4 yrs 319 days.....service.

9. The accused is entitled to reckon 4 yrs 319 days service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (or is in possession of or entitled to (state any military decoration or reward) GVSM and Clasp.

11. (If the accused is a warrant officer) The accused enters the mess

12. (If the accused is an officer) The accused enters the mess

SCHEDULE OF CONVICTIONS BY A COURT MARTIAL OR CIVIL COURT, OF SUMMARY AWARDS UNDER SECTION 47 OF THE ARMY ACT AND OF CASES IN WHICH TRIAL WAS HELD DISPENSED WITH OF ACCUSED

No. ..... Rank ..... Name ..... Regiment (or as case may be).

(INSTRUCTION - A verbatim extract from the regimental books, stating these convictions and awards, must be inserted)

Description of Court by which tried, or status of officer dispensing with trial	Date and place of trial or summary award under Sec 47 of Army Act, or date of order dispensing with trial	Charge upon which convicted, or in respect of which trial was dispensed with.	Sentence of court or authority dispensing or order of dispensing authority.

In the rank of ..... years.....
In the rank of ..... years.....
In the rank of ..... years.....

Date of Promotions

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ..... day of ..... 19..

(Signature) Capt. A.A.G.
The ..... Regiment.

Sheet #2 destroyed 12 Jun 42

No. A11734 Name SMITH, J A | Sqn, Battery, or Company | Sp | Corps C.I.C. | Date of enlistment 12 Jun 40 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/T&S/136 15413

Date of last entry in Company Conduct Sheet | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No | Signature OC Company, etc J S Whyte Capt | Character EX "2"

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field	19Jul	L/Cpl		AA Sec 15 (1) WOAS AWL 9 Hrs 45 min.		Reprimanded	20 Jul42		FORF 1 Day
Field	18 Oct 44			AA 19 Drunkenness in that he was drunk at approx 1645-Hrs 18 Oct 44		Reverted at own request (Admonished)	18 Nov 44	Lt-Col MW Andrew	
				AA 40 Conduct to prej etc in that at 1645-Hrs 18 Oct 44 was molesting a civilian					
Field	7 Dec 44	Pte	2nd	AA 19 WOAS Drunkinness in that he was drunk on meal parade AA 40 conduct to prej of good order and Mil Disc - creating a disturbance on meal parade 1706-Hrs 7 Dec 44	Sgt Grant GE Cpl Bowler	$5.00 Fine 14-Days F.P. 14-Days Pay FMR 149 (2)	22 Jan 45	Lt-Col MW Andrew	

OVER

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

I certify that this a true copy of the original document held in my possession as custodian of the Regimental documents.

R B J Baker

(R J Baker) Capt-A/Adjt,
The Perth Regiment.

SUMMARY OF EVIDENCE

R.A.F
The Perth Regt. C.A.
19 Feb. 1946

The summary of evidence in the case of A11934 Pte. John Alexander Smith, The Perth Regt. A soldier of the Canadian Army, (C.W.A.) is charged with;

1. While on active service, Resisting an escort.
A.A. Section 10(3)

2. While on active service, using threatening language to his Superior Officer.
A.A. Section 8(2)

3. While on active service, Striking his Superior Officer.
A.A. Section 8(2)

R.A.F

The Commanding Officer directs that all evidence be taken on oath.

1st Witness

A11566 Sgt. Minzen C.W. The Perth Regt. C.A.(C.W.F.) having been duly sworn states;

Sir; I am A11566 Sgt. Minzen C.W. The Provost Sgt. of The Perth Regt. C.A.(C.W.F.) On 18th February 1946 at approximately 2100 hrs, after having one A11934 Pte. Smith J.A. turned over to me from the C.M.P. of Foligno, Italy, I attempted to put Pte. Smith J.A. under close arrest. I walked into the kitchen and told him he was under close arrest and to come with me to the guard room. Pte. Smith then said "You nor anybody else can put me under close arrest". I went to take him by the arm and he swung at me, saying, he would not go up. The R.S.M. Mr. Curtis gave me instructions to put Pte. Smith in handcuffs and take him upstairs. Pte. Smith refused to be put into the cuffs and fought until it was necessary for four of us to put them on him. After the cuffs had been put on, Pte. Smith spread at Mr. Curtis and swung his fists at him as he did so. I finally escorted Pte. Smith to the guard room.

Questions by the officer taking the summary of evidence,

Q.1. In swinging at you did Pte. Smith J.A. make contact with your body?

A.1. Yes Sir, on the side of the neck.

Q.2. Can you remember any of the curses uttered by Pte. Smith?

A.2. Not exactly.

Q.3. But swear words were definitely used?

A.3. Yes Sir.

The accused declines to cross examine the witness.

C W Minzen
A11566 Sgt. Minzen C.W.

2nd witness

A11706 Cpl. Bryce A. The Perth Regt. C.A. (C.N.V.) having been duly sworn states;

Sir; I am A11706 Cpl. Bryce A. the Provost Cpl. of the Perth Regt. C.A. (C.N.V.) On the 16th Feb. 1945 at approximately 2100 hrs., Sgt. Minzen, the Provost Sgt. called me to go downstairs to the kitchen and help him bring Pte. Smith J.A. up to the guard room. Sgt. Minzen went over to Pte. Smith who was standing at one of the tables drinking tea. He told Pte. Smith he was under close arrest and that he had better come upstairs to the guard room. Sgt. Minzen took Pte. Smith by the arm. Pte. Smith said you nor anybody else is taking me to the guard room. Sgt. Minzen said he was and pulled Smith towards him, at which point, Pte. Smith swung at Sgt. Minzen. The R.S.M. Mr. Curtis, Sgt. Minzen and Sgt. Ische held Pte. Smith and I put the handcuffs on him. Pte. Smith then asked to finish his cup of tea and Sgt. Minzen said no, that he should come upstairs to the guard room. I had Pte. Smith by the arm at the time and he suddenly twisted around with his hands in the air and brought them down at the R.S.M. We all held onto him until he quietened down, then took him upstairs.

Questions by Officer taking summary of evidence.

Q.1. Did Pte. Smith hit the R.S.M. when he swung at him with his cuffed hands?

A.1. I cannot say for sure, it all happened so quickly.

Q.2. Did Pte. Smith use threatening language during the issue.

A.2. Yes Sir.

Q.3. Did Pte. Smith appear to have been drinking?

A.3. Yes Sir, his speech was thick and his actions unsteady.

The accused declines to cross examine the witness.

A. Bryce

A11706 Cpl. Bryce A.

(3)

rd Witness

A1614 R.S.M. Curtis C.F. The Perth Regt. C.A.(C.N.F.) having been duly sworn states;

Sir; I am A1614 R.S.M. Curtis C.F. of The Perth Regiment C.A.(C.N.F.) On the night of 10th Feb. 1945 at approximately 2100 Hrs. Pte. Smith J.A. was in H.Q. Coy. kitchen, violently resisting arrest with the Provost Sgt., Sgt. Minzen. I ordered him to be handcuffed. He immediately began to fight. I insisted that the cuffs be put on him. After he was handcuffed he directed All his cursingand swearing at me, stating "You yellow bellied son of a bitch, I'll get you through the guts where it hurts the most yet. (or words to that effect). After Pte. Smith got on his feet he asked if he could finish his cup of tea. He made a move to go to the table, instead he lunged at me, striking me on top of the shoulder with his both fists. Sgt. Minzen escorted Pte. Smith J.A. to the guard room, once he was again under control.

Questions by the Officer taking the summary of evidence.

Q.1. Did Pte. Smith appear to be his normal self?

A.1. No Sir.

Q.2. Why?

A.2. He had no doubt been drinking.

The accused cross examines the witness.

Q.1. Would you explain to the Officer what type of hold you had on me and for how long I was held?

A.1. I had the left arm and hand behind the neck, the right forearm across his throat gripping the fingers of the left. I held him for approximately five minutes as someone had to go upstairs for the handcuffs.

A1614 R.S.M. Curtis C.F.

th witness

A37044 Sgt. Ische A.W. H. Coy. The Perth Regt. C.A. (C.N.F.) having been duly sworn states;

Sir; I am A37044 Sgt. Ische A.W. of the H. Coy. The Perth Regt. C.A.(C.N.F.) On the night of 10th Feb. 1945 I was acting as Sgt. Orderly Sgt. and at approximately 2100 Hrs. I was standing in the doorway of H.Q. Coy. kitchen, when the R.S.M. Mr. Curtis, instructed Sgt. Minzen to place Pte. Smith J.A. under close arrest. The provost sgt. was struck at by Pte. Smith who violently resisted arrest. The R.S.M., the provost sgt. and myself got Smith under control on the floor where another provost N.C.O. Cpl. Bryce placed the handcuffs on him. Smith was then allowed to get up and when he got up he threatened the R.S.M., using profane language and using the expression, "I'll get you yet." He then twisted away from the provost holding him and struck the R.S.M. The R.S.M. and I again got him under control and turned him over to the provost Sgt.

Questions by the Officer taking the summary of evidence.

Q.1. Do you think the type of hold displayed by the

(don't..)

by the R.S.M. on Pte. Smith was necessary to subdue the accused?

A.1. Yes Sir.

Q.2. In other words, Pte. Smith was quite violent.

A.2. Yes Sir.

Q.3. How long would you say the R.S.M. kept this hold on Smith?

A.3. About one and a half minutes Sir.

The accused declines to cross examine the witness.

A. W. Ische
A37644 Sgt. Ische A.W.

Question to the accused by officer taking the summary of evidence.
"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or to give evidence but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement or give evidence.

Rules of procedure 4 have been complied with.

Taken before me in the presence and hearing of the accused this 18th day of Feb. 1945.

[illegible]
[illegible] officer detailed to take the summary of evidence.

I do/do not wish the convening officer to detail an officer to represent me at my forthcoming trial by Field General Court Martial.
I request the services of
if available.

J. A. Smith
A11734 Pte. Smith J.A.

In the field
19 Feb. 1945.

CCC-66

SGT- SMITH J.A.B.

CCC-66

FIELD GENERAL COURT-MARTIAL

(AFA98 (In lieu of AF A3) 40/P S. O. 1808 (3804))

Convened by Order of Brigadier C.E. Hamer Comd 7 C.I.B. dated 10 Dec.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname	Unit
K57134	Sgt.	John Alexander Barnes	SMITH	C Sqn 8

PROCEEDINGS REVIEWED

21 Jan 44

REVIEWING OFFICER, JAG BRANCH G.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) England on (*date(s)*) 10 Dec. 43

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A92, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56; 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1905 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 44(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~The man object to~~ as interpreter ? Ans ~~—~~

~~The Interpreter is sworn.~~ ~~Do you object to~~ as shorthand writer ? Ans ~~—~~

~~The shorthand writer is sworn.~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?

Ans N/C.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(3). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	W.M. Swaffield	1st Hussars Regt
Member	Capt.	K.S. Crabtree	1 C. Sqn R.
Member	Capt	B.A. Strasden	R. Wpg Rif.
Judge-Advocate	Nil	Nil	Nil
Prosecutor	Major	R.M. Sandman	1 C. Sqn R.
Defending Offr	Lt.	F.H. Weeks	1 C. Sqn R.

Questions by President: Is the Prosecutor a lawyer ? Ans N.C. Is the Defending Offr a lawyer ? Ans Nil (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused K57134 Pte. John Alexander Barnes SMITH before arraignment make(s) (no) (a) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or be one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 42; where several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete (2) and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K57134 Sgt. John Alexander Barnes Smith C Sqn 8

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	GUILTY	
2nd	Not Guilty	GUILTY	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and on loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

~~Time in confinement awaiting present trial: a total of ~~ ~~days, of which ~~ ~~days were spent in hospital~~ (1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To be reduced to the rank of Private

(Sgd) ~~—~~ Judge-Advocate, if any. 10 Dec 43 Date awarded. (Sgd) W.M. Swaffield Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ~~—~~ (Sgd) ~~—~~ Commanding ~~—~~

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: Confirmed. CCC

~~I confirm the finding and sentence of the Court, CCC and direct that the sentence be executed.~~

I ~~hereby direct that the accused be not committed to prison or detention barracks until further ordered.~~ (1) day

(1. Insert date. Delete if not used.)

(Sgd) C.E. Hamer Brigadier

Date 11 Dec 43. Commanding 7 Cdn Inf Bde Gp. Confirming Officer

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
K57134 Sgt. Smith J.A.B.	11 Dec 43	[illegible] Lt. (A/Capt.) R.A.O.C., A/O.C., 1st Bn. C. Sect. A.F.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 58.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (*i*) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (*ii*) *to record the pleas as the findings of Court. After deciding between* (*i*) *and* (*ii*), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP* 35 *fn* 2. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans .....(5)

(*1. RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 120(*A*) *fn* 5 *para* 3. *MML p* 54 *para* 47. 4. *See para E*3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on ground that you have not had sufficient opportunity to prepare your defence? Ans NO (1)

(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. ~~The Prosecutor makes (an) (no) opening address.(1)~~

(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP* 39(*C*), *114, KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3)~~ The Court is re-opened, and the President announces that the ~~submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~ NO

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)*

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans To give evidence on oath. Do you intend to call witnesses on your behalf? Ans yes Are they witnesses as to character only? Ans no

(*1. RP* 155. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A*95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E*1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the 1st & 2nd charge(s), being subject to confirmation, will be promulgated later.(1) ~~On the President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)~~

(*1. AA* 54(*3*) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(*3*), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself on oath or to call any witnesses as to your character?(1)

Ans no

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 165(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3)

(*1. MFB* 355 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans yes (2)

(*1. RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or add anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA* 54(*6*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) *RP* 74(*2*)

(*1. Where several accused tried separately see* [redacted]. *One sentence only, comprised of the punishments and combination of punishments laid down in AA* 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

C H A R G E S H E E T

The accused, K57134 Sergeant John Alexander Barnes SMITH, Special Increment, 1st Bn. The Canadian Scottish Regiment, a soldier of the Canadian Army, (Overseas), being on Active Service, is charged with:

FIRST CHARGE
A.A. SEC 40

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field, on the evening of 7th December, 1943, used obscene language in a public place.

SECOND CHARGE
A.A. SEC 40

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field, spoke in a disrespectful manner to a superior officer.

(F.N. CABLEDU) Lt.-Colonel
O.C., 1st Bn. C.Scot.R. (AF)

In the Field
9 December 1943

To be tried by Field-General Court Martial.

.....
(Signature of Convening Officer)

Date: 10 Dec 43

Place: In the field.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/P&S/1697 (2068)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K57134	Sgt		John Alexander Barnes	SMITH	1 C Scot R

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 10 Dec 43 endorsed by me, (~~or by an offr of my staff (or me)~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [illegible] Clay
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

[illegible] Clay
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

[illegible] Clay
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	N.M. Swaffield		Regina Rif

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	B.D. Strachan		R Wpg Rif
Capt	K.S. Crabtree		1 C Scot R

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	A.C. Peck		1 C Scot R

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (*Country.*)

Date 10 Dec 43

(Signed personally—RP 105 fn 2.) Brigadier (Rank.)

(C.C. Mann)
Commanding 7 Canadian Infantry Brigade Group
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(*See overleaf for notes and notes for use on trial.*)

MEDICAL OFFICER'S REPORT

I certify that No. K 57134 Sgt. Smith J.A.B.

of 1 R Scot R. is in a Fit state of health,

and able to undergo Trial by Court Martial.

H.E. Young Capt RAMC
Medical Officer

Station Field

Date 16th Dec 43

examined by me this date

M.F.B. 246
(F.P. & S.S.T.)

11 Dec 43
(0025 hr)

1st witness for Prosecution K57099 CQMS D'ill H.J.

having been duly sworn states: I am K57099 CQMS D'ill H.J.

B Coy. 1 C. Scot R.

Pros Did you relate the instance which occurred between yourself and the accused on evening 7 Dec 43

Ans On the day + date stated at approx 2030 hrs Sgt Dickson and myself entered one of the local Pubs. As I entered Sgt. Smith J.A.B. spoke to me. He said Good evening Quarters D'ill you little shrimp. I ignored this remark + proceeded to the doorway leading into the bar from which drinks are served. I ordered two drinks and as I had my back turned Sgt Smith ~~spoke~~ spoke to me and said "take your hat off CQMS D'ill". I turned around and looked at him. He said again "take your hat off you ignorant cunt CQMS D'ill" in a very loud voice. I ignored his remark and continued to drink. He seemed angered + repeated the statement several times. I continued to ignore him saying once "button up your lip Sgt Smith." On hearing I did not intend paying any attention to his conduct seems

he turned his face & in the direction of Pte Ramsay who sat in the next chair to him. He spoke to him and said "Isn't RMS Dill an ignorant cunt. He won't take off his hat." He discontinued his remarks at this point but continued to use obscene language in his general conversation to his party. On several occasions he used the words, cunt, bastard & others in the same category. His remarks were for the hearing of two male civilians, two Pte soldiers, one L/Cpl, 1CSM, the bar lady and bar maid. As Sgt Smith was about to leave he turned to me & said "goodnight RMS Dill you ignorant cunt. I said "Sgt Smith, if tomorrow you care to repeat these remarks I should be glad to deal with you personally but while you're under the influence of liquor and in a public place I do not wish to cause a scene." Sgt Smith then left the bar Sgt Dickson & myself remained. ~~One of the civilians had prior to Sgt Smiths departure & returned. He sat down beside me and took up conversation~~

Def. Are you accustomed in your mess to be called names pertaining to your stature such as "Shrimp"

Ans. No Sir

Def Have you ever been called Chief Wahoo

Ans Not Sir. I have been tagged & am still being called Wahoo but not Chief Wahoo

Def: Would you take it as an offence if you were called shrimps

Ans No Sir

Def Would you have taken it as an offence from Sgt Smith

Ans No Sir

Def Then you would not take it as an offence if Sgt Smith called you a ~~SS~~ shrimp

Ans No Sir

Def Did you notice that Sgt Smith was drunk

Ans Sgt. Smith was under the influence of Liquor. I'm not at liberty to say he was drunk

Def You had conversation with Smith the next morning

Ans Yes

Def Did you ask Smith if he was sober then

Ans No Sir

Def ~~Do you know Sgt Smith fairly well~~ Have you ever ~~known~~ seen Sgt Smith be under the influence of Liquor before

Ans Yes

~~Def What were his How does he act~~

Def. On these occasions was he ~~drunk~~ offensive to you

Ans No Sir he was no offensive but ~~chose~~ showed no desire to choose me as his company

~~Ques Assuming that offensive On the evening of 4 Dec why did you not take steps to have Sgt Smith disconsolate~~

Ques did you speak to Smith the next morning

Ans Yes Sir

Ques ~~Did he remember~~ Did he deny using obscene language

Ans He said he didn't remember doing it

Ques Did he offer to go and see the owners of the Pub & enquire as to his behaviour the previous evening & to apologise to the owner if what you had said was correct did he also offer to apologise to yourself if that were so.

Ans Yes Sir

Ques Did he further tell you that he bore no ill will towards you

Ans Yes Sir

2nd Witness K 57046 L/Sgt Dickson having been duly sworn
states 2nd K 57046 L/Sgt Dickson R. "B" Coy 1 C Seat R:

Pros. Did you go to a pub on the night of 7 Dec with C&MS Dill

Ans Yes Sir

Pros Was the accused in the pub when you were there

Ans Yes Sir

Pros What conversation did you hear between C&MS Dill & the accused

Ans We entered the Pub & the accused to C&MS Dill to take his hat off, to which Dill made no reply. The accused then said he would not drink with a man with his hat on. Dill did not reply or remove his hat. The accused then said take your hat off you ignorant cunt. He repeated this several times. He then stopped talking to CM Dill. Later on he went to the door then turned around to CM Dill & said I don't give a damn if you are a CM

CM. Dill replied he would see about it in the morning or words to that effect. The accused then left the pub

Pros What other persons were in the rooms at the time

Ans There were two civilians, the lady who owns the

pub and her daughter & some soldiers

Pros Were the civilians within easy hearing range of ~~the~~ the conversation as you were

Ans Yes Sir

Def Was Sgt Smith drunk

Ans Its not for me to say

Def had he been drinking

Ans yes Sir

Def Are you certain there were two women in the bar

Ans yes Sir

2nd Witness K6265 L/Cpl Maclean D and B Coy 1c Scott R.

Having been duly sworn states:

I am ~~K 65~~ K6265 L/Cpl Maclean D and B Coy 1 C Scot R

Pros Were you in a pub on 7 Dec in Rhyde

Ans yes Sir

Pros Did you overhear a conversation between @ CMS Dill & the accused

Ans ye Sir

Pros What did you hear

Ans: Sgt. Smith requested that A M S Jill remove his headgear. A M S Jill kept it on. The second time Sgt Smith asked Jill to remove his headgear the language used was foul & obscene. The words were "you ignorant cunt". I then got up and left the premises.

Pros did you hear Smith using any other obscene language at the time

Ans No

Def How long were you in the pub before Jill came in

Ans Approx 10 min

Def Did he seem in good spirits

Ans He seemed jovial

Def Would you say he was under the influence of liquor

Ans Yes

Pros

Statement of the accused having been duly sworn states:

Name K 57134 Sgt Smith J A B, A Coy 1 C Scot R

Def Where were you on the night 7-8 Dec 43

Ans I was in the Star Public House

Def Did you go in alone

Ans I was with C S M Kilner

Def Had you been drinking

Ans Not before I entered the pub

Def Relate to the court what happened in the pub

Ans I had some drinks with C S M Kilner and two privates who used to be in my P C & M Pl came into the pub and I said good evening C & M Pl you little shrimp This was said as a joke as often happens in the Army I then asked him to take his hat off as there were ladies present. He ignored me so I paid no more attention to him.

Def Did you request Pte Ramsay & Bulpit to remove their hats

Ans Yes Sir. I had some more drinks and then left with C S M Kilner & proceeded to the Crown Public House.

Def Did you say anything disrespectful or obscene to Cpls

Ans Sgt. Smith requested that QMS Jill remove his headgear. QMS Jill kept it on. The second time Sgt Smith asked Jill to remove his headgear the language used was foul & obscene. The words were "you ignorant cunt". I then got up and left the premises.

Pros Did you hear Smith using any other obscene language at the time

Ans No

Def How long were you in the pub before Jill came in

Ans Approx 10 min

Def Did he seem in good spirits

Ans He seemed jovial

Def Would you say he was under the influence of liquor

Ans Yes

Opens

8.

Statement of the accused having been duly sworn states:

Self x 57134 Sgt Smith J A B, A Coy 1 C Scot R.

Def Where were you on the night 7-8 Dec 43

Ans I was in the Star Public House

Def Did you go in alone

Ans I was with C S M Kilmer

Def Had you been drinking

Ans Not before I entered the pub

Def Relate to the court what happened in the pub

Ans I had some drinks with C S M Kilmer and two privates who used to be in my P.C. C S M Dill came into the pub and I said good evening C S M Dill you little shrimp. This was said as a joke as often happens in the mess I then asked him to take his hat off as there were ladies present. He ignored me so I paid no more attention to him.

Def Did you request Ptes Ramsay & Belyk to remove their hats

Ans Yes Sir. I had some more drinks and then left with C S M Kilmer & proceeded to the Crown Public House.

Def Did you say anything disrespectful or obscene to C S M

Jill before leaving

Ans No Sir

Def ~~What~~ What did CQMS Pill say to you next morning

Ans At approx 0855 hrs I was talking to CSM Kilmer my CSM about the trng. for the day CQMS Jill noticed me standing in the road. He said "Are you sober now" I asked him what he meant and he called me into his room + explained that I had sworn + the previous night + spoke to him in a disrespectful manner in a public house. This was the first I heard of it I told him I would go to the Sta + ascertain if this was true. If so I would apologise to the lady owner + the CQMS.

Def What is your attitude towards CQMS Jill

Ans I have no feeling either one way or the other regarding Jill

Def Have you ever insulted him about his wife

Ans Yes Sir

1st witness for defence K6214U

Having been duly sworn states: I am K6214U CSM Kelman C.M.
"F" Coy. C Scot R.

Def Where were you on the night 7/8 Dec

Ans I was in a pub with Sgt Smith of AB.

Def Did you see QM Dill in the pub

Yes

Def Did you hear Sgt Smith use obscene or disrespectful to QMS Dill.

Ans No

Def Do you think you would have heard any remark if Smith had made them

Ans Yes I was in the same room which was not very large.

Pros Did you pay any attention to Dill.

Ans I greeted him when he entered

Pros Did you give him any of your attention after that

Ans No Sir

Pros. Could remarks made by others in the room to Dill have escaped your notice

Ans They could Sir

Pros. Could remarks made by Smith to Hill have escaped your notice

Ans yes Sir.

2nd witness K45018 Pte Belyk, R., having been duly sworn states:

I am K45018 Pte Belyk, R,

Def Were you in Star pub night 7/8 Dec

Ans Yes

Def Did you see Sgt Smith

Yes

Def Did he say anything to you

Ans He told us to take our hats off & the lamp & as a fear

Def Where did you sit in the pub

Ans Several chairs from Sgt Smith

Def Did you see C.Q.M.S Hill enter the pub

yes

Def Did you hear Sgt Smith use obscene or disrespectful language to Hill

Ans No

Def Do you believe you could have heard any thing that was spoken had it been

Ans Yes

Pros. When Hill was in Butte did you pay close attention to what Smith said

No

Pros Do you think you noticed every thing Smith said at that time

No

Pros Is it possible that Smith made remarks to Hill which you did not hear

Ans ~~No~~ YES

Statement by accused in mitigation of punishment

Prior to
~~For~~ the last 2 weeks I was attached to 1 C I R U for 5 mo as rotation N C O., The last six weeks of which I was acting as C S M - E Coy. During this period I was informed at 1100 ~~hrs~~ hrs one day that I had been recommended A/C S M to proceed to 1 C B D R U. At 1400 hrs same day I was informed that I had been taken off the list as ~~and~~ echelon intimated I must return to 1 C Sqdt R as Sgt. I attended seven military schools & have usually qualified G I.

CLOSING ADDRESS OF THE DEFENCE IN THE COURT MARTIAL OF SGT. SMITH J.A.

Sgt. Smith has been charged with using obscene language in a Public place and secondly of speaking disrespectfully to a superior officer.

The evidence has shown that the accused is firm in his conviction that he did not make such remarks. Also two witnesses who were present in the small room where these remarks were supposed to have been made did not hear anything that was incorrect.

It has also been brought out that bears no ill will towards CQMS Fill an offered to apologise to CQMS Fill if it were true that such remarks had been made.

On the basis of this evidence I believe that he prosecution has not proved beyond a reasonable doubt the guilt of the accused; and also that the prosecution has not proven guilty intent (A.A. Sect 40 Note) and therefore has not established a charge, second charge.

CERTIFICATE IN ACCORDANCE WITH RP64 MML

I certify that in the interest of fostering a spirit of good relationship between the 1 C Scot R and the Civilian population of the new billeting area of the unit concerned and for the benefit of the reputation of the Cdn Army as a whole, it is expedient and in the best interests of public service that the trial by F.G.C.M. of K57134 Sgt Smith JAD be held at 1900 hrs 10 Dec.

C C Mann

Date 10 Dec 43.

(C.C. Mann) Brigadier,
Convening Officer

Summary of evidence in the case of K57134, Sergeant Smith J.A.B., Spl. Incr., 1st Bn., The Canadian Scottish Regt., a soldier of the Cdn Army Overseas.

The accused is informed of his rights.

The O.C. directs that the evidence be taken on oath.

1st Witness for the Prosecution.

K57099 CQMS Fill H.J., B Coy, 1st Bn. C.Scot.R. (AF), having been duly sworn, states:

"Sir, on the night of 7th December 43, Sgt. Dickson and myself visited one of the ~~Xxxx~~ local Pubs. On entering the Pub, I was greeted by the accused, Sgt. Smith J.A.B., with the remarks 'Good evening, Quartermaster-Sergeant Fill, you little shrimp.' I ignored these remarks and continued up to the bar and ordered drinks from the barmaid. While I was still at the bar, Sgt. Smith made another remark: 'Take your hat off.' I turned around and ignored the remark, facing Sgt. Smith. His next remark was 'Take your hat off, you ignorant cunt'. I then said "Button up your lip, Sgt. Smith". He then turned to one of the Privates in the bar with him, and said 'Isn't he an ignorant cunt, he won't take his hat off', and looked up at me and said 'Go on, leave your hat on, you're just xplain ignorant, anyway'. I ignored all these remarks, and Sgt. Smith ceased to continue the conversation, further. But in his general conversation to those in the Pub, he used obscene language in the presence of two civilians, two barmaids, three private soldiers, one Lance-Corporal, Sgt. Dickson and myself, and also spoke loud enough so as he could be heard in the adjoining room of the bar, where a large crowd were enjoying a few drinks. I cannot say whether his remarks were heard or noticed by any of those drinking in the adjoining bar. One of the expressions used by Sgt. Smith was 'isn't it fucking awful'. He used the word 'bastard' on several occasions, and his general conversation included many words in the same category. Before leaving the pub, Sgt. Smith turned to me and made this statement. 'Let's leave the ignorant cunt, and go to the dance.' I then told him to remember what he had said, and if in the morning he still thought in the same lines I should be glad to deal with him personally, but while he was in a public place and under the influence of liquor, I did not care to cause a disturbance. He then left the bar. The following morning at approximately 0855 hrs, I went into Sgt. Smith's room, or the room in which I heard his voice, and asked him if he was busy. He said no, so I asked him to come into my room. I then said 'do you remember what you said last night, Sgt. Smith'. He said 'no'. I said it's a good thing, because I should have you repeat these words and deal with you personally. I then pointed out to him the very seriousness of a senior NCO using such language in a public place, and said I did not know whether I should let it go by or lay a charge, which would no doubt be very serious. I later spoke to Major Lendrum, my Coy Commander, and received his permission to speak to Sgt. Smith's Coy Commander, Capt. Henderson. I explained to Captain Henderson the evidence as set out, and he informed me he would take the case up to the Commanding Officer. Sir."

Questioned by Major R.M. Lendrum.

Q. "Would you say that the accused was drunk in the Pub?"

A. "No, sir."

Q. "If, in your opinion, Sgt. Smith was acting in an improper manner in the Pub, why did you not, as a senior NCO therefore order him to his quarters, or place him in arrest?"

(cont'd)

A. "Well sir, having known Sgt. Smith for sometime, I felt that should I put him under arrest or order him to his quarters, he would make further scenes and in the end quite a disturbance would be caused in carrying out the order, so I thought it better to let the matter ride by saying nothing at the moment and taking my action later."

Questioned by the accused.

Q. "Who was the Private with me?"

A. "Pte. Ramsay of "C" Coy."

Q. "Would you state some previous occasion where I was order to do a thing and did not do it?"

A. "I cannot refer to any specific case in which Sgt. Smith has ever refused to obey an order given by me or anyone else, but judging by his temperament on many occasions in the Sergeants' Mess, when under the influence of liquor, he showed a definite dislike to me and found it very convenient to cast sarcastic remarks in my direction, and when I ~~xx~~ ignored these, he seemed very persistent in carrying them through to see how far he could try my patience. On all these occasions I have ignored him, but felt that I could not ignore him any longer, as he continued to do this wherever he met me when he was under the influence of liquor, and in my own mind, I felt that if I were to give him a direct order, it would only make the case far more serious than at that particular moment. So I chose what I thought to be the better means of dealing with this particular case."

The accused declined to further cross-examine the witness.

W.R. Fill. CQMS.
.....
Signature of Witness

2nd Witness for the prosecution.

K57146 L/Sgt. Dickson R., B Coy, 1st Bn. C.Scot.R. (AF), having been duly sworn, states:

"Sir, I am K57146 L/Sgt. R. Dickson, B Coy, 1st Bn. C.Scot.R. On the evening of 7 December 1943, CQMS Fill and myself went into a pub in Ryde. I do not know the name of the pub. We went over to order a drink, and Sgt. Smith said to CQ Fill "Take your hat off, you ignorant cunt'. He repeated this, I cannot say how many times. There were two civilians in the pub at the time, also the lady who ran the pub and her daughter. We sat in there for a while, then Sgt. Smith got up to go out, stopped at the door, and came back and spoke to Quartermaster Fill again and said 'I don't give a damn if you are a Quartermaster.' Sir."

The accused declined to cross-examine the witness.

R. Dickson. L/Sgt.
.....
Signature of Witness

The accused, K57134 Sergeant Smith, J.A.B., A Coy, 1st Bn., C.Scot.R. (AF), having been duly cautioned in accordance with rule of Procedure 4 (E), elects to make a statement:

"Sir, I am K57134 Sgt. J.A.B. Smith. Last night I was in a public house with CSM Kilner. This morning Quartermaster Fill called me from CSM Kilner's room, and took me outside to his own room. He then said "Do you know what you said to me last night?' I said 'No'. He then explained that I had called him foul names in a public house and used foul language. This was the first I knew that this had happened. He then told me the seriousness of this offence, and I told him that I could

(cont'd)

not believe that this had happened. I then told him that if it had happened, I had no personal greivance against him. After this I went back to CSM Kilner's room and asked him if I had been cursing and swearing in the public house, and also running down the Quartermaster. CSM Kilner replied not as far as he knew. That is all I have to say sir."

.....
Signature of Accused.

1st Witness for the Defence.

K62114 Company Sergeant-Major Kilner, C.M., 1st Bn., C.Scot. R. (AF), having been duly sworn, is questioned by the accused.

Q. "Was I cursing and swearing in the public house?"

A. "There was quite a hubbub in the room. I do not know if Sgt. Smith was actually cursing and swearing. There were quite a few people in there, and it might have been Sgt. Smith cursing and swearing or it might have been anyone. I was not paying particular attention."

Q. "Was I in your company?"

A. "We were in the same room together."

Q. "Was I calling Quartermaster Fill an 'ignorant cunt'?"

A. "I was not paying any attention. I do not know whether you made that statement to Quarters Fill or not."

The accused declined to further cross-examine the witness.

.....
Signature of witness.

Questioned by Major R.M. Lendrum.

Q. "There was quite a row in the pub and you did not hear any cursing and swearing?"

A. "No sir. I did not notice any."

Q. "Were you in the Pub at the time that CQMS Fill came in there?"

A. "Yes sir. CQ Fill and Sgt. Dickson came in together."

Q. "Did he speak to you at all while he was there?"

A. "When Quartermaster Fill came in the door, I greeted him."

.....
Signature of Witness

1st Witness for the Prosecution.

K57099 CQMS Fill H.J., 1st Bn. C.Scot.R. (AF), being recalled, was questioned by Major R.M. Lendrum.

Q. "In your evidence, you mention there were certain soldiers in the Pub when you were there. You did not mention that there was also in the pub at that time CSM Kilner, who is the senior NCO of the accused's Coy. Why did you not mention this in your evidence?"

A. "It was an oversight on my part, I forgot at the moment of giving my evidence to mention CSM Kilner as being present in the pub on the occasion."

(cont'd)

Q. "Why did you not report the incident you have spoken of to CSM Kilner on the spot?"

A. "I felt that CSM Kilner was part of the party with Sgt. Smith, and knowing CSM Kilner to be Sgt. Smith's Coy Sgt.-Major, I felt that if he did not feel it his duty to check the conduct of Sgt. Smith, then I would let the matter ride, but on thinking the case over later, I felt that it was too serious to be overlooked, as not only did Sgt. Smith use obscene language to a superior, but also his conduct and language was such as to bring the Regiment's name into ill-repute, and so I felt that I should seek his Coy Commander's opinion as to what action should be taken in this particular case."

.....
Signature of witness.

Certified that Rule of Procedure 4 (C)(D)(E)(F)&(G) have been complied with.

This summary of evidence, consisting of four pages, taken down by me in the presence and hearing of the accused, this 8th day of December 1943, in the Field.

.....
Signature of Officer
taking summary.

Additional summary of evidence in the case of K57134 Sgt. Smith, J.A.B., 1st Bn. C.Scot.R. (AF)

3rd Witness for the Prosecution.

K62651 L/Cpl. MacLean D.A.A., 1st Bn. C.Scot.R. (A F), having been duly sworn, states:

"Sir, I am K62651 L/Cpl. MacLean D.A.A., B Coy, 1 C Scot R On the evening of 7 Dec 43, I entered a pub in Ryde. In this pub was Sgt. Smith, whom I recognize as the accused; possibly ten minutes later CQMS Fill entered the same premises. Sgt. Smith asked CQMS Fill to remove his headgear. CQMS Fill kept his hat on. Sgt. Smith made his request once more, and the language used was 'Take your hat off, you ignorant cunt'. After that I left the room."

Questioned by the accused.

Q. "Where was I standing when I made this remark?"
A. "Seated about ten feet from where CQMS Fill was standing."
Q. "Where was CQMS Fill standing?"
A. "He was standing in front of a fireplace."

The accused declined to further cross-examine the witness.

.....
Signature of Witness.

Certified that Rule of Procedure 4 (C)(D)(E)(F)&(G) have been complied with.
This additional summary of evidance, taken down by me in the presence and hearing of the accused this 9th day of December, 1943, in the Field.

.....
Signature of Officer
taking summary.

No. K57134 Name SMITH JAB | Bqn., Battery, or Company: A | Corps: Infantry | Date of enlistment: 5-9-39 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F. B.122) (Rev. /8136 (2965)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character 4 B

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	26-1 1943	Sgt		AWL 2 days. A.A. 15(1)		Severe Reprimand	25-1-43		2 days pay FR&I 149(1)(A)
1 CIRU	5-7-1943	Sgt		AWL from 0800 hrs 5 Jul 43 to 2200 hrs 6 Jul 43. (Absent 1 day, 14 hrs.) A.A. 15(1)	Cpl Risto F.A.	Severe Reprimand	8 Jul 43	Lt.Col. H.Hewitt	2 days pay FR&I 149(1) (A)

Certified to be a true copy from the Regimental books in my custody, this document being one that was substituted for the original that was lost, the entries thereon being all that could be obtained from officer i/c Records at that time.

(R.S. GRAY) Capt. & Adjt.

(P.T.O.)

M.F.B. 555
(2M—5-41 (379-8)
H.Q. (779-39-630)
A.F.B. 266

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

8 A.

Number	Rank	Name	Regiment (or unit)
K57134	Sergeant	Smith, J.A.B.	1 C. Scot. R.

1. The following is a fair and true summary of the entries in the Field [illegible] Conduct sheets [illegible] of the accused, exclusive of convictions by a Court-Martial or a Civil Court, [illegible] of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For A.A. 15(1)	2 times	2 times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct Nil

[illegible]

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. [illegible]

Previous convictions of the accused by a court-martial or a civil court, of summary awards under [illegible] Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

[illegible]

4. The accused has been in confinement awaiting trial on the present charges, for no days in civil custody, and no days in military custody, making a total of no days in custody, of which no days were spent in hospital.

5. The present age of the accused according to his attestation paper is 39 yrs 5 mos

6. The date of his attestation specified in his attestation paper 5 Sep 39

7. The service which the accused is allowed to reckon towards discharge is 4 yrs 3 mos 4 days

8. The accused is entitled to reckon 4/3/4 service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no military decoration, or military reward

[illegible]

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of Air Force N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ..... Permanent Force dated ..... and in his regiment (or corps), the rank of ..... unit dated N/A .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

In the rank of Sgt 2 years. 15 Jan 42 Date of promotion.
In the rank of N/A years.
In the rank of N/A years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number K57134 Rank Sgt. Name Smith, J.A.B. of 1st Bn. Canadain Scottish Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
		NIL		

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this Ninth day of December, 1943

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... and signed by the president, and annexed to the proceedings.

W.H. (CADELDU) Lt.-Colonel
O.C., 1st Bn. C.Scot.R. (AF)

"The record of conviction on the second charge in these proceedings has been removed and the accused relieved from all consequences of his trial thereon, and same has been promulgated."

In the Field
22 January 1943

(J.M. CAMPBELDU) Lt.-Col.
O.C., 1st Bn. C. Scot. R., (A.F.)

"The Judge Advocate General, Canadian Army Overseas, having advised that the conviction on the second charge in these proceedings involve substantial injustice to the accused, I hereby direct that the record of such conviction be and the same hereby is removed and the accused relieved from all consequences of his trial thereon.

In the Field
19 Jan 44.

(C.C. Mann) Brigadier
7 Canadian Infantry Briga

Upon it appearing to me, an authority having power to mitigate, remit or commute the punishment awarded by the sentence herein, that the finding upon the second charge is invalid and has been set aside, I, having regard to the finding upon the first charge, do not mitigate the punishment as awarded by the court and confirmed by the confirming officer.

R. O. G. Mortimer

~~(R F L Keller)~~
Major-General
o/c GOC 3 Cdn Div

In the field
11 Feb 1944

Upon it appearing to me, an authority having power to mitigate, remit or commute the punishment awarded by the sentence herein, that the finding upon the second charge is invalid and has been set aside, I, having regard to the finding upon the first charge, do not mitigate the punishment as awarded by the court and confirmed by the confirming officer.

In the field
4 Feb 1944

R. O. S. Morton maj
~~(R F L Keller)~~
~~Major-General~~
a/ GOC 3 Cdn Div

XXX-107

Pte Smith J.03.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: FB9544 Pte Burton Joseph SMITH

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st		Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 10 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

to undergo six months detention

(Sgd) ~~Judge Advocate, if any~~ Date awarded. 4 Aug 44 (Sgd) W Woodard Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(7). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding sentence of the court but remit two (2) months detention

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

Date 6 Aug 44 (Sgd) Commanding

~~Confirming Officer~~ Brig F/COMMANDER 1 CDN BASE RFT GROUP

PART IV. PROMULGATED AND EXTRACTS TAKEN. (AA 57A, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
FB9544 Pte Smith B.S.	8 Aug 44	W Bergman Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 26 SEP 1944 JAG BRANCH C.M.H.Q.

RECORDED AT CMHQ IN AB 160. XXX-107

FIELD GENERAL COURT-MARTIAL

CPA86 (To item of AFA31 40/P & S/1698 (40(1)) 4/38B

Convened by Order of 6th Lt Lee 7 Comd 1 CDN RFT GP dated 3 Aug 44.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

Number.	(a) Prmnt R. ~~(b) Appmt, A/rank or A/Appmt.~~	Full Christian Names.	Surname.	Unit.
FB9544		Joseph Burton	SMITH	1 Can Base Rft Gp

PROCEEDINGS REVIEWED 28 Sep 44 JAG W.T. Thurman Wing

PROCEEDINGS OF TRIAL.

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

Held in the Fd in (country) Italy on (date(s)) 4 Aug 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any~~ Orig'l Offrs under instr if any assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~not~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 1345 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to~~ ~~as interpreter? Ans~~

The Interpreter is sworn.(1) ~~Do you object to~~ ~~as shorthand writer? Ans~~ ~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any, are sworn~~ are present. The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	W.J. Woodard	1 Can Base Rft Gp
Member	Lieut	F.D. Sherwood	1 Can Base Rft Gp
Member	Lieut	W.H. Eddis	1 Can Base Rft Gp
~~Judge Advocate~~			
Prosecutor	Lieut	M.B. Finnerty	1 Can Base Rft Gp
Defending Offr	Lieut	G.E. Henshaw	1 Can Base Rft Gp

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans Yes (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 19 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused before arraignment makes(s) ~~offers~~ no plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 60(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB num and name of the accused making the plea.)

A9. The accused is ~~were~~ arraigned ~~severally~~ on all charges in the charge sheet.(1) The accused does (~~not~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and one separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete: and make appropriate record per Notes.)

A10. ~~The Court is cleared and considers the Instrs as to Procedure after Arraignment at top of p 6.~~ The proceedings are continued on Record Form 2.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his pleas of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No (5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

~~B3. The Court considers the accused's statement (1). The Court decide (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
~~(1. Court may be closed to consider the statement. Delete whole or part not used.)~~

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~ not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. ..... (1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Can* 535. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. ..... Do you intend to call witnesses on your behalf ? Ans. ..... Are they witnesses as to character only ? Ans. .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*B*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 40(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record see Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*B*). *See Notes in Part I of Schedule.* 2. *RP* 44(*G*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(3) (*d*), *RP* 45, 120(*A*). 2. AA 54(7), *RP* 45, 117. *This alternative announcement is not applicable when there are forms of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1) Ans. No.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 6. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statements as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(d) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB* 355 *or AFB* 294. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. No
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the J.A. if any (2)~~.
(1. *When several accused tried separately see RP* 43 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges or all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 142. *RP* 48-50, 49, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas RO* 309, 2323, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(3), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), 69(*c*), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Convening Offr see KR Can* 567. *As to assembly and disposal of record after trial see insirs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

F 89544

The accused, Private Joseph Burton Smith, 4 Battalion, CHRD (RCASC), a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
ARMY ACT
SEC 15(1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, In Italy, absented himself without leave from 0830 hours, 27 June 44, until apprehended by the Military Police at approximately 1945 hours, 25 July 44.

Lieut-Colonel,
(F.F. Northup)
Commanding Officer,
No.1 Cdn.Convalescent Depot.

In the Field
2 Aug 44

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
3 Aug 44

(S. A. LEE) Colonel
A/Comd 1 Cdn Base Rft Gp
Cdn Army - CMF

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
FB9544	Pte		Joseph Burton	SMITH	1 Cdn Conv Depot

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 5 Aug 44 endorsed ~~by me, (or~~ by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge Advocate (except the Offr mentioned hereunder~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	W G HOUGHART (CIC)	1 Bn 1 CBRD

MEMBERS.

Capt or Lieut to be detailed by OC 1 Cdn Convalescent Depot

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
" " " " " " " " " " " " "		

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lieut to be detailed by OC	1 Cdn Convalescent Depot	

~~JUDGE ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy (Country.)

(Signed personally. RP 105 fn 2.) Colonel (Rank.)

(S. A. LEE)

Date 5 Aug 44

2/ Commanding 1 Cdn Base Rft Dp - CMF

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (CF 440, 11b Secs of AFAs) (See overleaf for oaths and notes for use on trial.)

No. 1. Canadian Convalescent Depot. Canadian Army. C.M.F.

I hereby certify that I have this morning examined E.89544 .....

.....Pte. Smith. B.J. .....

and find him fit to undergo trial by Court Martial.

Date....1 August 43..... Signed....H.J. Adams. Capt.....

"A"

SUMMARY OF EVIDENCE

Summary of Evidence in the case of F 89544 Pte Smith J.B 4 Bn CBRD(RCASC) presently a convalescent at 1 Canadian Convalescent Depot, a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken on oath.

First Witness For the Prosecution

Capt J.O. Howitt, RCA, Adjt. 1 Cdn Conv Depot, an Officer of the Canadian Army Overseas having been duly sworn states as follows:-

The findings of the Court of Inquiry declare that F 89544 Pte Smith J.B. (RCASC) went absent at 0830 hrs 27 June 44 and was still so absent on 21 July 44. A certified true copy of the Record of the Declaration of the Court of Inquiry is submitted herewith as Exhibit "A".

The findings of the Court of Inquiry declare that F 89544 Pte Smith J.B. (RCASC) is deficient in clothing, necessaries and equipment to the value of $45.00, 75% of which is $34.35. A certified true copy of the Record of the Declaration of the Court of Inquiry is attached as Exhibit "A".

Second Witness For the Prosecution

6979367 L/Cpl Murphy G., Salerno Rest Camp Military Police owing to the exigencies of the service cannot be called to give evidence, therefore a written statement purporting to be signed by him is attached hereto and marked Exhibit "B".

The accused does not demand the attendance of this witness for cross-examination.

N.S. Bergman Capt
(N.S. Bergman)
Officer detailed to take Summary of Evidence.

The accused was asked, "Do you wish to give any statement or to give evidence upon oath. You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement and reserves his defence.

Taken down before me in the presence of the accused this 2nd day of Aug 44. I hereby certify that R.P.(c)(d)(e)(f) and (s) have been complied with.

In the Field
2 Aug 44.

N.S. Bergman Capt.
(N.S. Bergman)
Officer detailed to take Summary of Evidence.

EXHIBIT "A" Exhibit "A"

In Lieu of Army Form B 115

Record of The Declaration of a Court of Inquiry on the Illegal Absence of a Soldier

RECORD of the Declaration of a Court of Inquiry assembled at

1 Cdn Convalescent Depot on the 21 day of July 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or clothing of No. F-89544 Pte Smith, J.B. R.C.A.S.C.

DECLARATION

The Court Declare, THATF-89544 Pte Smith J.B. RCASC went absent 0830 hrs 27 June 44 and is still absent this date 21 July 44.

F-89544 Pte Smith J.B. is deficient in clothing, necessaries and equipment to the value of $45.80 . 75% of which is $34.35.

Clothing	Actual Price	Depreciated Price
Anklets, Web	.99	.75
Blouse B.D.	5.25	3.93
Boots, Ankle (2Prs)	10.92	8.19
Caps F.S.	.56	.42
Shorts K.D.	1.34	1.00
Trousers K.D.	1.58	1.18
Necessaries		
Blankets G.S. (3)	9.21	6.91
Bags Kit universal	1.02	.76
Braces	.28	.21
Drawers, Cell, short	.43	.32
Fork	.07	.05
Nets Mosquito	8.49	6.36
Hosetops drab	.43	.32
Knives, clasp	.86	.64
knives, table	.15	.11
Shirts, bush	1.75	1.31
socks, worsted (2Pr)	.74	.56
Spoon	.07	.05
Towels, Hand (2)	.64	.48
Basins tinned	.15	.11
Plates tinned	.15	.11
Brushes shaving	.37	.28
Brushes tooth	.11	.08
Razor Safety	.06	.04
F.F.Dressing	.24	.18
Equipment		
Belt Web	.67	.50
Total	$45.80	$34.35

Names of President and Members

President - - Capt E.J.Brady - H & PER No.1 CCD
Members - - Lieut H.W.Hockin - 9 C A R 1 CCD
Lieut R W Murray - 3 Cdn Armd Recce Regt - 1 CCD

(F.F.Northup) Lieut-Colonel
Signature of Commanding Officer.....

CERTIFIED TRUE COPY.

[redacted]
Signature of Officer having custody of the Original Record.

EXHIBIT "B" Exhibit "B"
7/46

6979367 L/Cpl Murphy. E. Salerno Rest Camp Military Police having been duly sworn states:

On 25 July 1944, at 1945 hrs, I saw F 89544 Pte. Smith J.B. walking out of camp. He looked rather suspicious to me, so I stopped him and asked him to produce his pass, which he failed to do. I asked him if he had his Pay Book. He told me that he was from No.1 Canadian Convalescent Camp. I asked him where he had left the Convalescent Camp and he stated the above date 25 July 1944. He had on his person a number of cigarettes. I then brought him to the orderly room where he stated that he had just left the Convalescent Camp that day. Lt. R.S.M. then questioned him and then phoned the Convalescent Camp and was informed that F 89544 Pte. Smith J.B. was about instant leave. Lt. R.S.M. then place him under close arrest.

[signature] 46

ARMY FORM B 200.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
F 89544	Pte	Smith, J. B.	4th Can Gen Tpt Coy RCASC

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be expanded from the conduct sheet.

The conduct sheet(s) mentioned should be produced in court with the statement but not annexed to the proceedings.

† See para. 671, K.R., 1940.

* The entries herein stated should correspond with the entries or extracts in the conduct sheet, preference being given to the most serious offence in each entry, and to any recorded award with a penalty or disqualification.

Interpolate.—If the charge is to be struck from the roster for disobedience insert in stated words and dated.

	* Within last 12 months.	*Since Enlistment.
For AA Sec 15 (1)	4 times	4 times.
For AA Sec 10 (2)	1 times	1 times.
For	times	times.
For	times	times.
For	times	times.

~~Number of instances of gallantry or distinguished conduct~~

or

There are no entries in the conduct sheets of the accused.

~~2. The accused has not been previously convicted, at~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, or ~~The accused at the present time is under sentence for~~

~~beginning on the~~ day of

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 100 ~~City~~ days in military custody, making a total of ~~# 10 Det~~ days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 22 Yrs 87 days

6. The date of his ~~enrolment~~ attestation specified in his ~~record of service~~ attestation paper is 13 Aug 41

~~7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is~~

~~8. The accused is entitled to deferred pay, or gratuity in respect of service~~

~~9. The accused is entitled to reckon service for the purpose of determining his pension~~ etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (or is in possession of or entitled to (*state any military decoration or reward*)) Canada Volunteer Service Medal and Clasp

11. ~~(In the accused is a warrant officer.) The accused before he was made a warrant officer was held substantive~~ rank of

12. ~~(In the case of an officer.)~~ The accused holds in the army the rank of dated and in his regiment (or corps or department) the rank of dated

(74300) W 11602/185 120,000 8/41 A.S.E.W. Ltd. Gp.698

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. ..... Rank ..... Name ..... of ..... Regiment (or as the case may be).

(INSTRUCTION.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 4th day of August 44

[illegible] Lieut

If the accused has served as a non-commissioned officer continuously, without reduction, up to the present date,

Date of Promotion.

To the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

(INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through in ink in the case of a trial by field general court-martial the information may be obtained from such sources as are available and the paragraph inserted accordingly.)

No F89544 Name Pte Smith, J B | Sqn, Battery or Company | Corps RCASC | Date of enlistment 13 Aug 41 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
C.M.F.		Pte		(1)AA 10 (2) AA 15(1)AWL from 1600 hrs 21 Dec 43 to 1400 hrs 29 Dec 43(7 days 22 hrs)		14 days F.P. Forf 14 days pay FR&I 149(1)(b) Forf 8 days pay FR&I 149(1)(a)	30 Dec 43		
C.M.F.		Pte		AWL 1 day(AA 15(1)		Awd forf 7 days pay	16 Mar 44		Total Forf 8 days pay
C.M.F.		Pte.		AA15(1) AWL 15 Hrs(2)AA 11		Forf 14 days pay	5 May 44		Total forf 15 days pay
C.M.F.		Pte		AA 15(1) AWL 1 day 8 hrs		5 days CB	26Jun44		Forf 2 days pay

(Certified extracts from DUPLICATE MFM 4) (J.E.Campbell)Capt. for Officer i/c Ddn Sec CE, 2nd Echelon AAI

(PTO)

List of Witnesses for the Prosecution

Capt. J.O. Howitt	1 Cdn Conv Depot
L/Cpl. G. Murphy	Salerno Rest Camp

List of Witnesses for the Defence

NIL

List of Exhibits

Exhibit "A" Declaration of Court of Inquiry.

Exhibit "B" Statement of 6979367 L/Cpl Murphy G.

mmm 17

SGT SMITH J.C.

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused :

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AWL	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of list see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

~~Time in confinement awaiting present trial : a total of days, of which days were spent in hospital.~~ (2)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

(2. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

The court sentence the accused M45502 Sgt Jmes Charles SMITH 2nd Cdn Armd Recce Regt to be reduced to the ranks.

(Sgd) Judge-Advocate, if any. 15 May 44 Date awarded. (Sgd) J.A. Farmer Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 31(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(2). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be not committed to prison or detention (barracks) until further ordered.~~

(1. AA 57A. Delete if not used.)

Date 20 May 44 (Sgd) J.C. Jefferson Brig Commanding 10 Cdn Inf Bde Confirming Officer.

Date 16 May 44

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
J. James Charles Smith	22 May 44	C.V. Allsopp Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 31 MAY 1944 JAG BRANCH CMHQ

RECORDED AT CMHQ IN AB 169 MMM-77

CPA86 (1st Issue of AFA2) 40/P.R.S./1606 (2864)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig J C Jefferson Comd 10 Cdn Inf Bde dated 13 May 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M45502	Sjt	John Charles	SMITH	2 Cdn Armd Recce Regt

PROCEEDINGS REVIEWED 2 Jun 44 J.A.J. James Lt

W.T. Julian Wgn

REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS REVIEWED Date 29 May 44 D.J.A. Sec. G.H.Q. 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 15 May 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns' RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc. which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is duly amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 22, 24.)

A3. The Court is opened. The accused is brought before the Court. At 10.35 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2).~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused : Do you object to~~ ~~as interpreter ? Ans~~

~~The Interpreter is sworn.~~(1) Do you object to Sgt 3207 Lpr Lucas, W.R. as shorthand writer ? Ans No

The shorthand writer is sworn.(2)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ? Ans No

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	J.A. Farmer	A/Lt-Col. of G.
Member	Lieut	J.M. Blackaby	10 Cdn Inf Bde Sig Regt
Member	Lieut	R.G. Saville	10 Cdn Inf Bde Sig Regt
Judge-Advocate	—	—	—
Prosecutor	Capt	C.W. Gilmore	29 Cdn Recce Regt
Defending Offr	Major	R.A. Bradburn	29 Cdn Armd Recce Regt

Questions by President : Is the Prosecutor a lawyer ? Ans Nil Is the Defending Offr a lawyer ? Ans Nil (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 71.)

A8. The accused M45502 Sgt SMITH J C before arraignment makes(s) no objection(s).(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB cash and name of the accused making the plea.)

A9. The accused is duly arraigned (separately) on all charges in the charge sheet.(1) The accused does (does not) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 24, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A9s to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B + E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s) and call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) (his) plea(s) of Guilty to the ..... charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A , initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D6.)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans .....

Do you intend to call witnesses on your behalf ? Ans .....

Are they witnesses as to character only ? Ans .....

(1. *RP* 155. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fn* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*a*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA* 54(3) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans .....

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statements as to Character and Particulars of Service(1), and certified true copy of Conduct Sheet(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (a) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier's having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)

(1. *MFB* 355 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans .....

(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should prevent accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried separately see RP* 76(*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas RO* 309, 2323. *MML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(1), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 64(1)(*b*), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see insert on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

~~11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of~~ Permanent Para unit ~~dated ranks in his regiment (or corps) the rank of dated~~

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:— 17 Mar 41 Date of promotion.

In the rank of L/Cpl 4 months ~~years~~
In the rank of Cpl 8 months ~~years~~
In the rank of L/Sgt 2 months
In the rank of Sgt 11 months years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

~~Particulars of convictions and dispensations with trial~~ Act, and of cases in which trial has been dispensed with of accused. Number Rank Unit Regiment

of

Name

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 10th day of May 1944 Liddlecoppleft. Adjt 29 C.A.F.R.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

Exhibit B.

M.F.B. 355
72M—5-41 (372-S)
H.Q. 1773-39-630
A.F.B. 200

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
M65502	Sergeant	James Charles SMITH	29 Con Armd Recce Regt (S Alta R)

1. The following is a fair and true summary of the entries in the Service and General Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	Absent Without Leave	1x times	Absent without leave	3 times
For		times		times
For		times		times
For		times		times

Number of instances of gallantry or distinguished conduct

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

3. The accused is not under sentence at the present time.

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and Nil days in military custody, making a total of Nil days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his attestation paper is 24 yrs 11 mos

6. The date of his attestation specified in his attestation paper 24 Jun 40

9. The accused is in possession of or entitled to a military decoration, or military reward (or is in possession of or entitled to). State any military decoration or reward. GVSM

Exhibit C. 303.

M.F.291. 6 (A.F.B. 122) 500M—11-40 (2498) H.Q. 1773-39-1432

No. M45502 Name SMITH, J C | Sqn., Battery, or Company: RHQ | Corps: C A C | Date of enlistment: 26 Jun 40 | G.C. Badges: | Tradesmen's Rates of Pay: | Character: "A F Coffin Major"

No. and date of last drunk: | Period not reckoning towards freedom from extra fine: | Sheet No. 3 | Signature O.C. Company, etc.:

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Nanaimo	16-4-41	L/Cpl		Previous sheet destroyed 24 Jun 42 last entry 16 Apr 41					
Nanaimo	16/4/41	L/Cpl		Absenting himself without leave in that he was found in possession of a pass allowing him to be out of camp until 0100 hrs 16/4/41	Sgt Angus L/Cpl O'Hara L/Cpl Ronsel 21 Pro Coy	Reprimanded	17/4/41	Maj W P Bristowe	
Field 4	Dec42	Sgt		AWL from 1200 hrs 4/12/42 to 2300 hrs 4/12/42. Absent 11 hrs.	Sgt Smith G J	Admonished	5 Dec 42		Forf 1 days pa FR&I Sec 149 (1)(a)
Field 15	Feb44	Sgt		AA Sec 15(1) AWL from 2359 hrs 15 Feb 44 to 1000 hrs 16 Feb 44 Absent 10 hrs 1 minute	Lieut A W Watson	Severely Reprimanded	17Feb44	LtCol G D Wotherspoon	1 days pay.

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks.
				CERTIFIED TRUE COPY OF ORIGINAL HELD IN MY CUSTODY. R.H.Allsopp Capt & Adjt (R H Allsopp) Capt & Adjt Officer i/c Regimental Documents 29 Can Armd Recce Regt (S Alta R)					

SUMMARY OF EVIDENCE in the case of M45502 Sgt John Charles SMITH
29 Cdn Armd Recce Regt (SAltaR)

QUESTION TO THE ACCUSED:

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

ANSWER BY THE ACCUSED:
I have nothing to say.

J C Smith

Certified that R.P. 4(C), (D), (E) and (F) have been complied with.

I certify that the foregoing summary of evidence consisting of two pages was taken down by me in writing in the presence and hearing of the accused this 10th day of May, 1944.

G L Shell

(G L Shell) Capt
Officer detailed to take
Summary of Evidence.

In the Field
10 May 44.

Original.

SUMMARY OF EVIDENCE

in the case of

M45502 Sgt John Charles SMITH
29 Cdn Armd Recce Regt (S Alta R)

CHARGE ABSENTING HIMSELF WITHOUT LEAVE AA 15(1)

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS: Lieut A W Watson, Hq Sqn, 29 Cdn Armd Recce Regt (S Alta R), having been duly sworn, states:

I was on 4 May 44, and still am, Troop Leader of RHq Troop 29 Cdn Armd Recce Regt (S Alta R), of which the accused, M45502 Sgt Smith, J C is a member and troop sergeant. Last Thursday, 4 May 44, RHq Troop was authorized to proceed on 24 hour pass. This was cancelled shortly after noon. Later in the day at approximately 1700 hrs this leave was reinstated. I could not locate Sgt Smith, J C, the accused, whom I recognize here, so I left Sgt Smith's pass with SSM R J MacTavish at his quarters and proceeded on my 24 hour leave. I returned at 1700 hrs the following day 5 May 44. On the morning of 6 May 44, at 0800 hrs Sgt Smith J C was absent. I then checked the regimental area and the accused's quarters. I found no trace of him. To the best of my knowledge he was not in camp. I instructed SSM R J MacTavish to place the accused on charge when he returned. I did not see Sgt Smith J C again until 0800 hrs Monday, 8 May 44. The accused's Sgt Smith, J C, pass was made out from A.D. 4 May to 2359 hrs 5 May 44.

The Accused declines to cross-examine this witness.

SECOND WITNESS: M40546 SSM R J MacTavish, Hq Sqn, 29 Cdn Armd Recce Regt (S Alta R), having been duly sworn, states:

I was on 4 May 44, and still am Squadron Sergeant-major of Hq Sqn, 29 Cdn Armd Recce Regt (S Alta R). On Thursday, 4 May 44, at approximately 1700 hrs, Lieut A W Watson gave me passes for M45433 L/Sgt MacGregor, K G, J70550 Sgt Donald T, and M45502 Sgt Smith, J C, the accused, whom I recognize here, saying they were to proceed on leave. About ten (10) minutes later I gave the passes to L/Sgt MacGregor, K G and told him to give the passes to the others. On the 6 May 44 at approximately 1130 hrs I returned from the ranges and was questioned by Capt J L Shell as to whether Sgt Smith, J C had returned. At that time I did not know he was absent. I despatched L/Sgt MacGregor K G, to search for Sgt Smith, J C and he returned one half hour later and said he could find no trace of Sgt Smith J C. At approximately 1400 hrs Saturday 6 May 44, Lieut A W Watson ordered me to place Sgt Smith J C on charge when he returned. I did not see or hear of Sgt Smith, J C until Monday morning, 8 May 44, at which time I saw him in the NAAFI in the company of Lieut A W Watson.

R MacTavish

The accused declines to cross-examine this witness.

THIRD WITNESS: M45433 L/Sgt MacGregor, K G, RHq Troop, 29 Cdn Armd Recce Regt (S Alta R), having been duly sworn, states:

I was on 6 May 44, and still am a sergeant of RHq Troop, 29 29 Cdn Armd Recce Regt (S Alta R), of which the accused Sgt Smith, J C, whom I recognizedhere, is a member. On 6 May 44 I was ordered by SSM R J MacTavish to go in search of Sgt Smith, J C at his quarters. I went to the hut and called out for Sgt Smith, J C. I received no reply and went back and reported to SSM R J MacTavish. I did not see Sgt Smith, J C again until the morning of Monday, 8 May 44.

K G MacGregor

The accused declines to cross-examine this witness.

RECORD OF NOTES TAKEN AT THE TRIAL BY FIELD GENERAL COURT-MARTIAL
of [illegible] Sgt James Charles SMITH, RS Coy Aust Recce Regt (3 Aust R)

E.4
STATEMENT OF
ACCUSED : The accused, Sgt Smith, has been with RHQ Tp for a period of approximately nine months and during that time there has been considerable difficulty within his troop. Sgt Smith requested either a transfer or a reversion because of the unfavourable conditions within this troop and he asked both the Sqn Sergeant-major and Major Nash that he either be permitted to transfer or revert because he found it absolutely impossible to carry on his duties within the troop. Owing to the considerable difference of opinion which existed at all times between the troop leader and Sgt Smith and because because the request for transfer or reversion was refused, I therefore submit that Sgt Smith was put in a position of having to take some action on his own part and that he was put into the frame of mind whereby he was not in a position to exercise the best of judgement. I submit therefore that although he did go and admits to going A.W.L., that he did so in an effort to force action which he considered necessary. Sgt Smith has pleaded guilty but I feel that any punishment he is given, you should bear in mind that he was not given proper consideration in his request for removal from a job which he considered it was impossible for him to do his duty. At this point I wish to state that it is my intention and desire to call Major Nash and SSM MacTavish if need be, in proof of my statements.

E.5
STATEMENT OF
ACCUSED : The sergeant was in charge of RHQ Tp for a period of nine months, during this time he must have proved satisfactory to have held the job, particularly so as he was not permitted to transfer or to revert when he found it impossible to work and to carry out his duties under the troop officer holding the appointment during that time.

J A Bannigan

The ~~waiting~~ member to be detailed by OC 10 Cdn Inf Bde Wksp RCOC did not appear at the trial. His place was taken by the waiting member Lt R.G. Saville, Alq R.

15 May 44

J.A. Farmer

(J.A. Farmer) Maj
President

9 Cav.

15 May 44

This is to certify that I have today examined M45502 Sgt SMITH J C, and find him fit to undergo trial by FGCM.

W H Smith Jr Capt
Medical Officer

902.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA8) 40/PAS/1697 (2008)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 82, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
M45502	Sjt		James Charles	SMITH	29 Cdn Armd Recce Regt

902.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has/~~have~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 13 May 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [redacted]

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [redacted]

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

[redacted]

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	J A Farmer	A and S H of C

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	To be detailed by CO	10 Cdn Inf Bde Wksp RCOC
Lt	To be detailed by CO	10 Cdn Ind MG Coy

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt	To be detailed by CO	Alq R

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
---	-------	-------

On Active Service in the Fd

in England
(Country.)

Date 13 May 44

(Signature necessary. RP 105 fn 2.)
(J C Jefferson) Brig
Commanding 10 Cdn Inf Bde
Convening Officer.

Brig
(Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

J.A.D

CHARGE SHEET

The accused, M45502 Sgt SMITH, J.C., a soldier of the Canadian Army Overseas placed on Active Service, is charged with:-

FIRST CHARGE
A.A. Sec 15(1)

ABSENTING HIMSELF WITHOUT LEAVE

in that he,

at Maresfield Camp, on 5 May 44, absented himself without leave from 2359 hrs 5 May 44 until 0800 hrs 8 May 44.

(Absent 2 days, 8 hrs, 1 min).

F.D. Wotherspoon
(F D Wotherspoon) Lt Col
Officer Commanding
29 Cdn Armd Recce Regt

In the Field
11 May 44

To be tried by FGCM

J C Jefferson
(J C Jefferson) Brig
Comd 10 Cdn Inf
Fd
13 May 44

65B.

10/Smith J.E/1.

Pte. J.E. Smith.

No 2 Cdn Inf. Hold. Unit.

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

On Active Service, this 10th day of May, 1941.

A. Order convening the Court

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS, CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial;

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

President.

Rank.	Name.	Regiment.
Major	W.A. Lucas	No.1 RCASC Hldg Unit

Members.

Rank.	Name.	Regiment.
Captain	G.C. D'Arcy	No.2 Cdn Arty Hldg Unit
Lieutenant	A.S. Keator	No.1 Cdn Gen Hldg Unit
Lieutenant	I. MacLean	No.1 Cdn Sigs Hldg Unit

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

**Signed* [signature] Brigadier

Commanding Cdn Base Units, Cdn Army.

Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
D-81810 PTE. SMITH, J.E. (1st Battn B W (RHR) of C reinforcement) No.2 Cdn Inf Mldg Unit.	First Charge A.A. Sec 9(2) as per charge sheet	Guilty	Guilty SENTENCE To undergo detention for a period of 6 months.	Confirmed L.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)]:—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) L. J. Rhp. Brigadier (Signed) W. A. Lucas. Major

Commanding Cdn Base Units, Cdn Army. *President.*
Convening Officer (e)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 14th day of May 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~Interpreter~~) Court Stenographer
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 14th day of May 19 41

W. A. Lucas Major
President of the Court Martial.

* See footnote (b) on page 764 M.M.L. 1939.

C. Certificate in case of death sentences.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

Signed this day of 19

~~President of the Court Martial~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

~~I direct that the soldier named in the margin be not committed to prison until further orders.~~ 2

Signed this 21st day of May 1941

L. J. Rhp. Brigadier
Confirming Officer.

Promulgated and extracts taken in the case of D 81810 Pte Smith, J.E., Black Watch of Can (R.C.) (a)

(Dated) 24th day of May 1941 (Signed) L. Ehlanger Major for Comdg HQ Cdn Base Units

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused D81810 Private Jack Edward Smith, 1st Battalion The Black Watch (RHR) of Canada, Reinforcement, No. 2 Canadian Infantry Holding Unit, a soldier of the Canadian Army (Overseas) is charged with:

First Charge
Sec. 9 (a)
Army Act

Disobeying a lawful command given by his superior officer,

in that he,

at Camp 102, Witley, Surrey, on April 25th 1941, when ordered by Corporal Henry to go on duty as a runner at Headquarters "A" Group Holding Units, did not do so.

(F.S. MATHEWSON) Lt.-Col.
Officer Commanding
No. 2 Cdn. Inf. Holding Unit.

Camp 102
Witley, Surrey
2nd May 1941

To be tried by Field General Court Martial

..... Brigadier
Commanding Con Base Units.

Bordon, Hants
This 10th day of May 41.

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 552

I certify that I have this morning examined

D-81810 Pte. Smith, J. E.

No ...

R. H. R. (Can.)

of.....and in my opinion he

is ~~unfit~~ fit to undergo Trial by Court Martial.

Station Witley Camp 102

Date 14-5-41

.....
Medical Officer

D 81810 Pte. Smith, J. E. (1st Btn B W (RHR) of C Reinforcement) No. 2 Cdn Inf Hldg Unit, tried by Field General Court-Martial at Witley, 14 May 1941.

The order convening the Court, the charge sheet and the summary of evidence are laid before the Court.

Prosecutor: Lieut. L. Cannon.
Defending Officer: Lieut. E. R. Bennett.

At 1000 hours the Trial commences.

The names of the President and members of the Court are read over in the hearing of the accused and they severally answer to their names.

Q1 - Do you object to be tried by me as President, or by any of the officers whose names you have heard read?
A1 - No, sir.

The President and members are duly sworn.

Q2 - Do you object to B 88521 Sgt. James Lonergan, R.C.A., C.M.H.Q., acting as Court Stenographer?
A2 - No, sir.

The Court Stenographer is duly sworn.

Officers under Instruction are sworn.

The charge sheet is signed by the President and annexed to the proceedings.

The accused is arraigned upon the charges in the above mentioned charge sheet.

Q3 - Are you guilty or not guilty of the charge against you, which you have heard read?
A3 - Guilty.
R. P. 35 (B) complied with.
Q4 - Do you wish to call witnesses as to character?
A4 - No, sir.
Q5 - Do you wish to speak in mitigation of punishment?
A5 - (Defending Officer: I am directing my remarks to the court so that you will better understand the circumstances of the case and that it may in some way help you to come to a correct decision as to punishment. Technically this charge cannot be defended. He was given a lawful command;he refused categorically to obey the order. How he got in that frame of mind cannot possibly be explained by his conduct as a soldier prior to that time. He served with the unit since the outbreak of war. Suddenly it was found he had bad feet. The man was boarded category C2 on account of his feet, and he thought that on this account he was exempt from the duty he was sent on as a runner. Previous to this order he had not been asked to do this particular duty. I bring this out not to excuse him but to say something in mitigation. He apparently thought he should not be called upon to do this particular kind of job on account of his bad feet. But of course a soldier has to do what he is told to do, and complain afterwards, if necessary. This man has now served exactly 17 days in detention and I hope that the court will take that into consideration.

President: This court is closed for consideration of the findings.

Court is reopened.

Q6 - Have you any evidence to produce as to character and particulars of service of the accused?

PROSECUTOR IS SWORN.

A6 - I produce A.F.B. 296 and M.F.M. 6.

Q7 - Is the accused the person named in the statement which you have just read?

A7 - Yes.

Q8 - Have you compared the contents of the above statement with the regimental books?

A8 - Yes.

Q9 - Are they true copies from the regimental books, and is the statement of entries in the conduct sheet a fair and true summary of those entries?

A9 - Yes.

Accused declines to cross-examine.

Q10 - Have you any witnesses as to character?

A10 - No.

Q11 - Do you wish to address the court?

A11 - No.

Court is closed for the consideration of the sentence.

SUMMARY OF EVIDENCE

in the case of

D81810 Private Jack Edward Smith, 1st Battalion The Black Watch (RHR) of Canada, Reinforcement, No. 2 Canadian Infantry Holding Unit, a soldier of the Canadian Army (Overseas)

Evidence taken on oath by order of the Commanding Officer.

First Witness Prosecution — G17344 Cpl. Henry, R.L. having been duly sworn, states:

On April 25th, 1941, I was Orderly Corporal in Headquarters Company, No. 2 Canadian Infantry Holding Unit. About 0915 hours, I ordered Private Smith to report to "A" Group Headquarters for duty as a runner. He said he did not want to go, and said he wanted to see the Sergeant Major. We both went to see the Sergeant Major, C.S.M. Robinson. I explained to the Sergeant Major that Private Smith wanted to see him before he would go on duty as runner at "A" Group Headquarters. The Sergeant Major asked him why he did not want to go. Private Smith said nothing. The Sergeant Major then told him to report to "A" Group as runner immediately. Pte. Smith said: "I refuse, Sir." The Sergeant Major told me to put Private Smith in the Guard Room. I did so.

R L Henry Cpl.

Accused declines to cross-examine this witness.

Second Witness Prosecution — D82038 C.S.M. Robinson, S. having been duly sworn, states:

I am Company Sergeant Major of Headquarters Company, No. 2 Canadian Infantry Holding Unit, and was acting as such on 25th April 1941. About 0915 hours I told Corporal Henry, Orderly Corporal, to send Private Smith to "A" Group as a runner. A few minutes later, Cpl. Henry brought Private Smith into my office and said that Private Smith refused to go as a runner. I asked Private Smith what was the matter with him. I received no reply. I then told him he had better go to "A" Group and do the job as he was told to do. He said "I refuse to be a runner." I ordered him arrested.

S Robinson C.S.M.

Accused declines to cross-examine this witness.

Accused, having been warned in terms of R.P. 4 (e) states: "The reason I refused to go to "A" Group H.Q. as a runner was my medical category. My feet were not in condition to do the duties of a runner."

Compliance with R.P. 4 (c) (d) (e) certified.

Malcolm MacPherson
(MALCOLM MACPHERSON) Lieut.
Officer Detailed by O.C. No. 2 Cdn. Inf. Holding Unit to take Summary of Evidence.

mp 102
tley, Surrey
th April 1941

LIST OF WITNESSES

in the case of

D81810, Private Jack Edward Smith, 1st Battalion The Black Watch (RHR) of Canada, Reinforcement, No. 2 Canadian Infantry Holding Unit, a soldier of the Canadian Army (Overseas)

PROSECUTION

C.S.M. Robinson, S.	No. 2 Canadian Infantry Holding Unit
Cpl. Henry, R.L.	No. 2 Canadian Infantry Holding Unit

LIST OF EXHIBITS

D81810 Private Jack Edward Smith, 1st Battalion The Black Watch (RHR) of Canada, Reinforcement, No. 2 Canadian Infantry Holding Unit, a soldier of the Canadian Army (Overseas)

NIL

Camp 102
Witley, Surrey
2 May 1941

Army Form B.122

No. D81810 Name Smith J E (Sqn., Battery, or Company) D Corps 5th Can Recce Squadron (Date of enlistment) Sheet No.

Date of last entry in Company Conduct Sheet | No. and date of last drunk | G.C. Badges | Long Service and G.C. Par. | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of and entry in Conduct Sheet	By whom awarded	Remarks
Toronto	28/3/40	Pte		When on active service AWL from 0830 hrs 28/3/40 to 0805 hrs 29/3/40 AA Sec 15(1)	D81164 Pte Wilson J	5 days C.B. fined 4 days pay	29/3/40	Lt-Col	forfeits 1 days pay for absence
Toronto	10/5/40	Pte		WOAS AWL from 2359 hrs 10/5/40 to 0300 hrs 11/5/40 Sec 15(1)	D81103 Cpl Degan G J	2 days C.B.	11/5/40	A W Wright Maj	
At Sea	14/6/40	Pte		WOAS AWL from 2200 hrs 14/6/40 to 0630 hrs 17/6/40	D81870 Cpl Jackson F R	5 days C.B.	20/6/40	A W Wright Maj	forfeits 3 days pay
Botwood Nfld	30/7/40	Pte		WOAS being found beyond the limits fixed by Camp Standing Orders in that he at 0130 hrs on July 30/40 was found					

Captain Staff Adjutant

Major

O.C.

Wt. 52763/3238 4/40 1,000,000 S.P.Co. 51-6637

Pl.	Date	Rank	Cause of Depriv-ation	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				on Grand Falls a place beyond the limits fixed by Camp Standing Orders	Maj A W Wright	5 days C.B	1/8/40	A W Wright Maj	
Botwood Nfld	30/7/40	Pte		W.O.A.S. Neglect to the prejudice of good order and military discipline in that he at 0130 hrs 30/7/40 neglected to immediately obey an order when ordered to proceed to the station at Grand Falls AA Sec 40	Maj A W Wright	5 days C.B	1/8/40	A W Wright Maj	
Botwood Nfld	30/7/40	Pte		W.O.A.S. AWX from 0100 hrs 30/7/40 to 1830 hrs 30/7/40 AA Sec 12(1)	D81029 Cpl Smith G.B	Admonished	1/8/40	A W Wright Maj	Forfeit 2 days pay
[illegible]	16/10/40	Pte		[illegible] AA Sec 40	D81029 Cpl Smith G.B	7 days C.B	17/8/40	A W Wright Maj	Forfeit 2 days pay
				W.O.A.S. AWX from 1600 hrs 4/10/40 to 2230 hrs 7/10/40	D81274 Pte Murray W.H.	Admonished	17/8/40	A W Wright Maj	
				Neglect to the prejudice of good order and military discipline in that he W.O.A.S. neglected to return his quarters on 16/10/40 for Officer Inspection AA Sec 40		7 days C.B	5/11/40	[illegible]	Forfeit 3 days pay

(P.T.O.)

Army Form B.122

No. D81810 Name Smith J E Sqn., Battn., or Company D Corps 5th Cdn Recce Squadron Date of enlistment

Date of last entry in Company Conduct Sheet | No. and date of last drunk | G.C. Badges | Long Service and G.C. Part | Signature (O.C. Company, etc.)

Sheet No.

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award	By whom awarded	Remarks
Toronto	28/3/40	Pte		When on active service AWL from 0830 hrs 28/3/40 to 0805 hrs 29/3/40 AA Sec 15(1)	D81184 Pte Wilson	5 days C.B. fined 5 days pay	29/3/40	Lt/Col Commanding	forfeits 1 days pay for absence
Toronto	10/5/40	Pte		WOAS AWL from 2359 hrs 10/5/40 to 0300 hrs 11/5/40 Sec 15(1)	D81103 Cpl Deegan EJ	2 days C.B.	11/5/40	A/W Wright Maj	
At Sea	14/6/40	Pte		WOAS AWL from 1200 hrs 14/6/40 to 0630 hrs 17/6/40	D81820 Cpl Jackson JR	5 days C.B.	20/6/40	A/W Wright Maj	forfeits 3 days pay
Botwood Nfld	30/7/40	Pte		WOAS being found beyond the limits fixed by Camp Standing Orders in that he at 0130 hrs on July 30/40 was found					Captured by Military Police

P.T.O.

W: 52587/3238 4/40 1,000,000 S.P.Co. 34-6627

		Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				in Grand Falls, a place beyond the limits fixed by Camp Standing Orders	Maj A W Wright	5 days C B	1/8/40	A W Wright Maj	
Botwood Nfld	30/7/40	Pte		W.O.A.S. Neglect to the prejudice of good order and military discipline in that he at 0130 hrs 30/7/40 neglected to immediately obey an order when ordered to proceed to the station at Grand Falls AA Sec #2	Maj A W Wright	5 days C B	1/8/40	A W Wright Maj	
Botwood Nfld	30/7/40	Pte		W.O.A.S. A.W.L. from 0100 hrs 30/7/40 to 1830 hrs 30/7/40 AA Sec 15(1)	D81029 Cpl Smith G	Admonished	1/8/40	A W Wright Maj	

Army Form B.122

No. Name | Sqn., Batty., or Company | Corps | Date of enlistment | Sheet No

Date of last entry in Company Conduct Sheet | No. and date of last drunk | G.C. Badges | Long Service and G.C. Pay | Signature (O.C. Company, etc.)

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of [illegible]	By whom awarded	Remarks
Aldershot No	16/8/40	Pte		W.O.A.S. d.w.l. from 0100 hrs 16/8/40 to 2100 hrs 16/8/40	D/81858 Pte Howard T. J. D/81079 Cpl Truett S.B.	7 days C.B.	17/8/40	O.C. Wright Maj	Frs 1 days pay
Aldershot No.	16/8/40	Pte	1	W.O.A.S. Drunkenness A.A. Sec 19	Do	Admonished	17/8/40	O.C. Wright Maj	
Aldershot England	5/10/40	Pte		W.O.A.S. A.W.L. from 1600 hrs 5/10/40 to 1230 hrs 7/10/40	D/81174 Pte Murray W.	7 days C.B.	8/10/40	Maj Dingwall	Frs 3 days pay
Aldershot England	16/10/40	Pte		Regret to the prejudice of good order and military discipline will have to be W.O.H.S. regarded to leave his quarters on 16/10/40 for offence Inspection A.A. Sec 40					

[P.T.O.

W. 12743/8238 4/40 1,000,000 S.P.Co. 31-6627

No.	Age	Rank	Corps & Depot regiment	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order directing trial	By whom awarded	Remarks
Aldershot England	15/11/40	1/G		W&AS AWL from 2200 hrs 15/11/40 to 1800 hrs 19/11/40 Sec 15(1)	D81021 Pte Jolley R.C. D81437 Cpl Arbuthnot J	28 days detention	20/11/40	Lt Patch Maj	fts 4 days pay
Aldershot England	15/11/40	Pte		Conduct to the prejudice of good order and Military discipline in that he W&AS improperly used Govt property M/C # C 431783 and petrol for his own use	Do				
Aldershot England	2/1/41			W&AS AWL from 2359 hrs 2/1/41 to 1600 hrs 4/1/41 AA 15(1)	D81021 Pte Jolley R.C.	14 days CB Restricted pay 2/-	9/1/41	Lt Patch Maj	fts 4 days pay

Army Form B.122

No. Name

Date of last entry in Company Conduct Sheet

Squ., Batty., or Company

Corps

Date of enlistment

Sheet No.

No. and date of last drunk

G.C. Badges

Long Service and G.C. Pay

Signature, O.C. Company, etc.

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of entry in Defaulter Sheet	By whom awarded	Remarks
Aldershot England	5/3/41	Pte		W.O.A.S. AWL from 2330 hrs 4/3/41 to 2330 hrs 5/3/41	D 81641 Cpl Sandberg T	2 days C.B	7/3/41	J.B. Brownrigg Lt-Col	
Aldershot England	15/3/41	"		(4 O.A.S. AWL in that he at 1500 hrs 13/3/41 absented himself without leave, whilst on duty as Coy orderly had to be replaced returned 1330 hrs 18/3/41 Sec 15(2)	D 81403 L/Cpl Maxwell-Brown D D 81646 Cpl Lundberg T	fine 14 days pay	19/3/41	J.B. Brownrigg Lt Col	(to 4 days pay) (fine 18 days pay)

Certified true extract
Malcolm Mat[illegible]

[P.T.O.

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

D81810 Pte Jack Edward Smith of the 1st Bn the Black Watch (RHR) of Canada R. reg # 2 C 3H 2e

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with:—

Note.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be referred to the proceedings.

†See Para. 964, K.R. 1935

	*Within last 12 months.	*Since Enlistment.
For a w. l.	4 times	10 times.
For Sec 11 A A	1 times	1 times.
For Drunkenness 16/3/40	times	1 times.
For Other Crimes	3 times	3 times.

*The numbers inserted should correspond with the number of Entries in the Conduct sheets, permanence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

~~Number of instances of gallantry or distinguished conduct.~~

or,

~~There are no entries in the Conduct sheets of the accused.~~

2. The accused has not been previously convicted,

or,

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this fifth day of May 1941

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

3. The accused is not under sentence at the present time,

or,

~~The accused at the present time is under sentence for~~ .....
~~beginning on the day of~~ .....

4. The accused has been in confinement, awaiting trial on the present charges ~~for days in Civil Custody~~,

and 8 days in Military Custody.

Total 8 days.

~~Of which days were spent in hospital~~.

5. The present age of the accused according to his ~~record of service~~ / attestation paper is 19

6. The date of his ~~commission~~ / attestation specified in his ~~record of service~~ / attestation paper is 3rd Nov 1939

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is .....

8. The accused is entitled to deferred pay or gratuity in respect of ..... years' service.

9. The accused is entitled to reckon ..... years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward [*or* is in possession of *or* entitled to .....]

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of .....

12. (*In the case of an officer.*) The accused holds in the army the rank of ....., dated ....., and in his regiment (*or* corps *or* department) the rank of ..... dated .....

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

		Date of Promotion.
In the rank of	years,	.....
In the rank of	years,	.....
In the rank of	years,	.....

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ....., signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

of the .....

Army Number, Rank and Name .....

NOTE.—*A verbatim extract from the regimental books, stating these conditions and dispensations with trial, must be inserted.*

Description of Court by which tried, or name of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

(*Continued overleaf.*)

5 V-127.

Vita Smith, J. F.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C.100149 Pte John Franklin SMITH

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	A A Sec 40	Guilty	Guilty	
2nd	A A Sec 40	Guilty	Guilty	
3rd	A A Sec 40	Guilty	Guilty	
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and as loss of kit see RP 44 fn 6.)

At present under sentence for ~~beginning on: (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 0 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E7.)

Sentence Awarded by the Court:

To undergo Detention for a period of Nine (9) Months.

(Sgd) Judge-Advocate, if any. 9 Nov 1945 Date awarded. (Sgd) President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

(Sgd) A Tulloch Major

Date 11 Nov 45 Commanding A/Comd 2 Cdn Gen Tpt Column RCASC

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

C.100149 Pte John Franklin SMITH 15 Nov 45 (W. J. Greber) Major

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 16 5V-127

CPA86 (To Issue of AFAN) 40-P-M-R-(1944-45)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Major A. F. Tulloch HQ Comd 2 Cdn Gen Tpt A/Comd Column RCASC dated 7 Nov 45

RECEIVED 27 Nov 45 JAG BRANCH

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or continued rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C100149	Pte	John Franklin	SMITH	64 Cdn A Tpt Coy RCASC

PROCEEDINGS REVIEWED 28 Nov 45 Capt JAG

REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Holland on (date(s)) 9 Nov 1945. 38/94

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Fms RAs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is [now] amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17(c). 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is [now] brought before the Court. At 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is [now] fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to as interpreter? Ans ~~The Interpreter is sworn.(1) Do you object to as shorthand writer? Ans~~ ~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	C.J.DELANEY	64 CDN G.T.Coy
Member	CAPT.	J.G.McLAUGHLIN	1 CDN BASE TPT.
Member	LIEUT.	R.A.CRUIKSHANK	63 CDN G.T.Coy
Judge-Advocate			
Prosecutor	LIEUT.	J.P.McAVOY.	64 CDN ARMY TPT Coy
Defending Offr	CAPT.	D.T.THOMPSON.	64 CDN ARMY TPT Coy

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See A6 p 3.)

A8. The accused Pte Smith J.F. before arraignment make(s) (no) plea(s).(1)

(1. If a special plea is made for separate trial on one or more charges (RP 61(E), 108), or as to the jurisdiction of the Court (RP 24, 25(A), 113), or in bar of trial (RP 26), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is [now] arraigned [separately] on all charges in the charge sheet.(1) The accused does [does] not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A86 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and [consider] the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] *3.*

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No Sir (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) changes(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~(2)
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty have not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A , initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 Before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans .....
Do you intend to call witnesses on your behalf ?
Ans .....
Are they witnesses as to character only ? Ans .....
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, B6(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No Sir
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (extract) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 255 or AFB 296. 2. MCM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes Sir in mitigation of punishment
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)
(*1. When several accused tried separately see RP 39(F). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its provisos, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 128, 182, RP 46-50, 88, 118, 119(A), KR Con 308, 330, 563-566, Overseas AO 309, 2323, MML p 66, 757-759. As to sentences assigned for civil offences by the law of England see AA 44(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

4.

ORDERLY ROOM
NOV 9 1945
64 ARMY TPT. COY. R.A.S.C.

MEDICAL OFFICER'S CERTIFICATE

I certify that I have this date examined No. C.100149 Pte Smith, J.F. and do find him medically fit to undergo trial by Court Martial.

R.J. Sommerville Capt.
Medical Officer

Date 9/Nov. 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C100149	Pte		John Franklin	SMITH	64 Cdn A Tpt Coy RCASC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 6 NOV 45 endorsed by me, (or by an offr of my staff for me)," To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; [and that it is not practicable to delay the trial for reference to a superior competent offr.]
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint ~~(a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	C. J. Delaney	66 Cdn Gen Tpt Coy RCASC

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	To be detailed by OC 1 Cdn Base Tpt Coy RCASC	
Capt or Lt	To be detailed by OC 1 Cdn Corps Tpt Coy RCASC	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lt	To be detailed by OC 63 Cdn Army Tpt Coy RCASC	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
	NONE	

On Active Service in the Fd

in HOLLAND

(Country.)	(Signed personally. RP 105 fn 2.)	(Rank.)
		Major

Dat 6 NOV 45

HQ Comd 2 Cdn Gen Tpt Column RCASC
Commanding

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for notes and notes for use on trial.)

CHARGE SHEET

The accused, C-100149 Private John Franklin SMITH, 64 Army Transport Company, R.C.A.S.C., a soldier of the Cdn Army Overseas is charged with:-

FIRST CHARGE
Sec 40
Army Act

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field in Holland and Belgium on 21 Sep 45, improperly and without authority did use CM Veh CL4268394 for his own private purposes.

SECOND CHARGE
Sec 40
Army Act

WHEN ON ACTIVE SERVICE, NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field in Belgium on 21 Sep 45, did drive CM Veh CL 4268394 in a negligent manner.

THIRD CHARGE
Sec 19
Army Act

WHEN ON ACTIVE SERVICE - DRUNKENNESS

in that he

in the Field, in Belgium, at approx 1650 hours 21 Sep 45, was drunk.

(R.C. Evans) Captain
A/Officer Commanding
64 Army Transport Company, R.C.A.S.C.

In the Field
15 Oct 45

To be tried by Field General Court-Martial.

(A.F. Tulloch) Major
A/CRASC
HQ Comd 2 Cdn Gen Tpt Coln

6 Nov 45

Plea of Mitigation of Sentence

in the case of the accused Pte Smith

I would like to present to the Court a brief review of the soldier's military career in order to equip the Court with as much information before considering sentence.

Pte Smith is 25 yrs of age and is single. He enlisted on the 17 Apr 1942 and has throughout the course of the war a very creditable operational service record in the R C A S C.



The accused first saw action in Nov 1943 with the 1 Cdn Div in Italy. He continued throughout the Italian campaign and later in March 1945 arrived with 1 Div in North West Europe.

During his overseas Army career Pte Smith has had only 1 minor entry on his conduct sheet and that in Early 1943 for 1 hours absence.

Undoubtedly Pte Smith's actions were caused by drunkenness. This was his first offence and he is ready to admit his mistake. Liquor & vehicles are not a good combination and I am sure this trouble has been a lesson which he will never forget.

Pte Smith is engaged to a Dutch girl and expects to be married in this country as soon as it is possible to do so. It can therefore be readily seen that the future of this soldier will definitely be dependent on the favours of the court.

Pte Smith has seen a good deal of hard front line service and from his good record it is safe to assume that he has done a good job.



I ask the Court to give consideration to these & in factors together with the evidence before passing sentence

D. T. Thompson Capt
64 Cdn Transport Pl Coy
R C A S C

Plea of Mitigation of Sentence
in the case of the accused Pte Smith

I would like to present to the Court a brief review of the soldier's military career in order to equip the Court with as much information before considering sentence.

Pte Smith is 25 yrs of age and is single. He enlisted on the 17 Apr 1942 and has throughout the course of the war a very creditable operational service record in the R C A S C.



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Pte Smith has seen a great deal of hard front service and from his good record it is safe to assume that he has done a good job.

I ask the Court to give consideration to these & other factors together with the evidence before passing sentence.

D. T. Thompson Capt
64 Cdn Army Pl Coy
RCASC

Summary of Evidence in the case of C-140142 Pte Smith JG
of 64 Army Tpt Coy RCASC

First witness for the prosecution

F- 96124 Pte Moisse GB of 64 Army Tpt Coy RCASC having been duly sworn states:—

Exhibit A

I am F-96124 Pte Moisse GB of 64 Army Tpt Coy RCASC. On 21 September 45, I, accompanied with Pte Bradford and Pte Smith left EFL lines in Nijmegen in vehicle CL 4268394 at about 1200 hrs. I did not inquire of either Bradford or Smith whether or not the vehicle had been properly authorized to leave the lines and I only knew they were going to Belgium, I did not know where in Belgium. It was not until we were on the road that I found we were going to Marseyck. The vehicle CL4268394 was in Smith's name but Bradford drove it all the way to Maastricht. We arrived in Maastricht about 1400 hrs and parked the vehicle beside a cafe and all went in. We had a few drinks and I was dancing when I noticed Bradford leave. From when I was dancing I could not see if he took the vehicle. Bradford returned in about 30 to 45 minutes. Then he and I went to another cafe. I noticed the vehicle parked beside the cafe as we went in. Smith did not accompany us to the second cafe. When we returned to the first cafe ~~I noticed the vehicle was not there and on inquiry from Smith I learned that Bradford had taken the vehicle and was in the cafe.~~ Bradford was arrested by the Provost Corps and I remember being awakened up and being put into a Truck. The next thing I remember is waking up in EFL lines in Nijmegen the next day.

The accused declines to cross-examine this witness.

J. G. Moisse
F- 96124 Pte Moisse GB

~~Smith case~~

-2-

2nd witness
~~for the prosecution~~

F- 78987 Pte BRADFORD J.G. of 6th Aust Tpt Coy

Recalled having been duly sworn states:—

Exam F- 78987 Pte Bradford JG of 6th Aust Tpt Coy

Recalled On 21 Sept 45 at approximately 1200 hrs Pte Smith and myself proceeded to Macquarie from Bathurst Nyngan in CM vehicle QLH 268394. I saw it was not an authorized Unit. I was driving the vehicle

The accused declined to cross examine this witness

J G Bradford

F- 78987 Pte Bradford JG

Third witness for the prosecution

Henri Jean Guillaume Albert PLAGHKI, merchant, Bosschestraat 34, Maastricht, Belgium

I certify that in my opinion the attendance of the witness is, owing to the expense and loss of time involved not readily procurable, and a written statement of his evidence signed by him, has been read to the accused and is attached hereto as exhibit 'A'

J.R. Robertson Capt
Officer detailed to take the Summary of Evidence

I do not require the attendance of ~~Herbert~~ Henri Jean Guillaume Albert PLAGHKI for the purpose of cross examination.

J.S. Smith
CAPTAIN J.S. SMITH RE

~~Sergeant~~

~~Statement~~ of witness for the prosecution

~~Sergeant~~ Franciscus Van BAELEN, First Sgt of Belgian Gendarmerie Forces marechale Belgium ~~Police~~.

I am FRANCISCUS VAN BAELEN.

~~Police~~ First Sergeant of Belgian Gendarmerie Forces in Maasrick, Belgium. On 21 Sept 45 at approximately 1630 hrs I saw a military vehicle at a distance of about 75 meters from the house of SCHAEFKENS, in the direction of the market at Maasrick. I saw a child, Maria ROSVELDS, lying between the pieces of broken glass on the pavement opposite the house of VERSTAPPEN. Further he drove through the Boschstraat from right to left and at the Statsie caught a male person, Armand LATOUR, on ~~at~~ a bicycle and beat him on the ground opposite the house VERLAEK. Then he drove on arriving through the Boschstraat to the Hoofd post a low speed. I followed him and coming up I commanded him to halt. He did not obey this order. I then noticed that he was in an obvious state of drunkenness. In order to compel him to halt thus avoiding worse accidents, I fired at the left front tire three times. He ran then stopped against a tree at the market. I ordered the driver once more to get out of his truck but he stayed and tried to continue his way. I forced the driver out of his truck as he was not conscious of the facts he had committed. ~~I confirm~~

~~I recognise the signature at Maasrick~~

I recognise this man as the same driver of veh CAM 268 384 on 21 September, now known to me

No 5

The accused was cautioned as follows —

Q- Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence

A- I do not wish to make a statement.

J J Smith

C-160149 Pte Smith JF

The accused does not call any witnesses.

I certify the foregoing Summary of Evidence consisting of six pages, was taken down by me in the presence of the accused and that R.P.A Cap (d)(e)(f) and (g)(3) have been complied with.

J Robertson Capt
64 Army Pte Coy
RCASC.

To the Field
16 Oct 43

73 Special Investigation Section
Corps of Military Police.

Doc admitted as evidence Exhibit A. JJR

Statement of: PLAGHKI, Henri Jean Guillaume Albert,
Merchant,
43 Boschstraat, MAASEIK.

who states:

"On 21st September 1945 at about 16.00 hours I was in my shop, when I saw a military truck colliding the house of SCHAEPKENS opposite me. This vehicle caused damage to the house and I went up to it immediately. The driver had got out already. He was tall and slim and a dark-haired soldier. Length about 1.75 M. I assisted him in extinguishing a start of fire in his truck.

When I arrived, there was a second truck of similar type.

After extinguishing the fire, I went back to my shop.

Some time later I saw the truck driving on again under its own power.

That same day, some time afterwards, I again saw a military truck coming along from the direction of the Boschpoort, which I at once recognized as the same truck causing the accident with SCHAEPKENS.

From the direction of the Market square a car came, drawn by a horse, for which the military truck had to pull out. He drove on the pavement past the houses and again turned to the road. Then I saw a little girl lying on the pavement before the house of VERSTAPPEN. The truck halted on the road and I told the driver not to drive on. I had to step aside, however, as he still drove on again. Then I walked along with the truck, which drove slowly, up to the market square. There his left frontttyre was shot by the police and the truck collided a tree. Like the truck causing the first accident, the bumper had been damaged as well as the accumulator. The driver, however, was not the same as he causing the first accident with SCHAEPKENS. This one was smaller and fair-haired. He also was in a worse state of drunkenness than the first one.

I would be able to identpfy both drivers.

The weather was fair that day and the road was dry.

There was nothing on the road that caused the driver to swerve.

signed: H. Plaghki.

Continued/.....

The above is a true translation from Dutch into English to the best of my ability.

Interpreter.

Above statement taken at Maeseyck on 27th September, 1945, and signature witnessed by me.

M.G. Bark, Sergt.
73 Special Investigation Section,
Corps of Military Police.

EXHIBIT 'A'

73 Special Investigation Section
Corps of Military Police

Verklaring van: Plaghki, Henri, Jean, Emilienne, Albert
Chauffeur
Baeckstraat 43
Haasrode

die verklaart: Op 21 Sept. 1945 om omstreeks 16.00 uur bevond ik my in mijn winkel, toen ik een militair voertuig zag, dragen Engelse legenover my stilhouden van Chauffeur dag rijden. Het voertuig veroorzaakte schade aan het huis en ik ben er onmiddellijk op toegelopen. De chauffeur was reeds uitgestapt. Hij was een militair gekleed en kaki uniform. Ik heb geen acht geslagen op kentekenen op zijn uniform. Het was een lange slanke persoon met donker haar. Leeftijd ongeveer 40 jaar. Ik heb hem gevraagd een stuk van brand en zijn wagen te bekijken.

Toen ik aankwam stond er een tweede wagen, van dezelfde nationaliteit.

Na het bekijken der brand ben ik weer teruggegaan naar mijn winkel.

Enigen tijd later zag ik het voertuig weer op eigen kracht verder rijden.

Even later, op dezelfden dag, zag ik weer een militair voertuig aankomen uit de richting van de Keerpoort, hetwelk ik onmiddellijk herkende als dat zelfde dat het ongeval bij Chauffeur had veroorzaakt.

Vanuit de richting van de markt kwam een wagen bespannen met een paard, waarvan de militaire vrachtwagen moest uitwijken. Hij reed het trottoir op langs de huizen en verdween uber of naar de Engelse weg. Toen zag ik een meisje liggen op het trottoir voor het huis van Verstaeten. De wagen stond stil op den weg en ik heb de chauffeur gevraagd niet verder te

rijden. Ik moest echter opeys stappen en
keer verderreed. Ik ben toen plat af
welke langzaam reed, meegelopen tot
Daar werd door de politie zijn linker
geschoten en reed de wagen tegen een
Evenals bij de wagen die het eerste ongeluk
was ook hier de schokbeuken beschadigd evenals de
Dat. De chauffeur was echter met dezelfde als die welke
het eerste ongeluk bij Schaesberg veroorzaakte. Deze was
kleiner en had blond haar. Ook was hij in een erger
staat van dronkenschap dan de eerste.
Beide chauffeurs zouden kunnen identificeeren.
Het weer was heldere dienstag en de weg was droog
Er was mets op den weg, dat den chauffeur noodzaakte op den weg heen en weer te rijden.
Dit is de waarheid.

Above statement taken at manager on 27th September, 1945. and signature witnessed by me. M. J. Bank. Sgt.

rijden. Ik moest echter opeisstaan omdat hij toch zwer verdraaid. Ik ben toen plat achter de wagen welke langzaam reed, meegelopen tot aan de markt. Daar werd door de politie zijn linkerovenband kapot geschoten en reed de wagen tegen een boom.
Evenals bij de wagen die het eerste ongeluk veroorzaakte, was ook hier de schotheid beschadigd evenals de accu. ook. De chauffeur was echter met dezelfde als die welke het eerste ongeluk bij Claudius veroorzaakte. Deze was kleiner en had donker haar. Ook was hij in een erger staat van dronkenschap dan de eerste.
Beide chauffeurs zou ik kunnen identificeren.
Het weer was helder diezendag en de weg was droog. Er was niets op den weg, dat den chauffeur noodzaakte op den weg een zwenk te maken.
Dit is de waarheid.

J Ver

Above statement taken at Maaseyk, on 27th September, 1945, and signature witnessed by me.

M. J. Bark. Lt.

Exhibit 'B'

ARMY FORM B.296

Statement as to Character and Particulars of Service of Accused.

Number	*Rank*	*Name*	*Regiment (or as the case may be)*
C-10014	Private	John Franklin SMITH	64 Army Transport Company, R.C.A.S.C.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with:—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		* Since Enlistment.	
For	Absence Without Leave	Nil times	Two	times
For		times		times
For		times		times
For		times		times
For		times		times

Nature of ~~misconduct~~ offence ~~punished~~ as described under

~~There are no entries in the regimental books of the accused.~~

2. The accused has not been previously convicted, ~~as~~

~~Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 53 of the Army Act are as set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time. ~~As the accused at the present time is under sentence for~~ ~~beginning on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and Nil days in military custody, making a total of Nil days of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ is ~~as entered in~~

6. The date of his ~~attestation~~ specified in his ~~record of service~~ is 17 April 1942 ~~as entered in~~

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 3 years 6 months 5 days

~~The accused is entitled to deferred pay at the daily rate of~~ ~~per~~ 25 June

~~The accused is entitled to reckon~~ ~~service for the purpose of increase of pension~~

~~The accused is in possession of an authority as to military character which~~ ~~he is in possession of an~~ ~~awarded as under any military decoration or award~~

~~(If the accused is a warrant officer.) The accused holds~~ ~~a~~ ~~warrant~~ ~~officer's~~ ~~rank~~ ~~and the regimental~~

~~(In the case of an officer.) The accused is the~~ ~~on the~~ ~~list~~ ~~and~~ ~~his regiment (or corps or department) is~~ ~~shown~~

Wt.57837/1319 3M. 5/44. P. Ltd. T11-3.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. C-100[illegible] *Rank* Private *Name* SMITH, J.P. of 5th Army Tpt Coy Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		NIL		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 9th day of November 1945

Lt Adjt

...has served as a non-commissioned officer continuously, without reduction, up to the present date.

Date of Promotion

In the rank of ... years.

In the rank of ... years.

In the rank of ... years.

(INSTRUCTION—If any entries in any of the above paragraphs cannot be copied from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the reference may be inserted from each column in the paragraph concerned provided accordingly.)

NoC-1001hg Name SMITH J F | Sqn, Battery or Company | Corps | Date of enlistment 17/4/42 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Last Entry 13-10-42					
Valcartier, Que	19-5-43	Pte		AWL from 08 0 hrs 18 May 43 to 1500 hrs 19 May 43. A.A. Sec 15 (1)	Sjt Morrison W	Two (2) days summary forfeiture 7 days C.B.	20 May 43	F L Reid Lt-Col	2 days automatic forfeiture
Field	13 Nov 43	Pte		Sec 15 (1) AA WOAS AWL from 1715 hrs to 1900 hrs 13 Nov 43. Absent 1 hr 45 mins	Sjt E A Clifford Sjt W F Hearns	5 days C B	15 Nov 43	C A Watson Lt-Col	
				CERTIFIED TRUE COPY ..... Officer having custody of original					
				Exhibit "E"					

(PTO)

A·A·100

SPR SMITH J.F

COUNTER NUMBER 5-4 5-5'5-2

HOUR 17.05

OPERATOR'S INITIALS HMB

RELIEVING OPERATOR AF

AA-100

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

"A." Order convening the Court

On Active Service, this Eighteenth day of March, 19 43.

Whereas it appears to me, the undersigned, an officer in Command of Second Canadian Division, Candian Army Overseas, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to delay the trial for the convening of a superior qualified officer.~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers ~~hereunder named~~ appointed or detailed hereunder.

* Omit if not applicable.

*(1. ~~Three Officers to form the Court.~~

*(2. ~~A Judge Advocate to direct.~~

*(3. ~~Three Officers having more than one year's~~

Proceedings Reviewed [illegible] Reviewing Officer 7th 43

38

President.

Rank.	Name.	Regiment.
Major	F.J.Gilmour	RCA,att'd HQ 2 Cdn Div

Members.

Rank.	Name.	Regiment.
Major	M.J.H.Lamarre	Fus M R
Capt.	J.A.Manahan	Cams of C
~~Waiting Member~~ Capt	R.S.Wells	S Sask R

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed (J.H.Roberts)Major-General
Commanding 2 Cdn Div
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B25259, Spr James Francis SMITH, 2 Cdn Fd.Coy, R.C.E.	Charge Sec. 15(1) Army Act (See Charge Sheet attached)	Guilty Guilty *	110 days detn & stoppages of £2/8/1 in respect of costs of return unit. 19 March 43 J.H. Tilmour Maj RCA	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) J.H. Tilmour Maj RCA attd HQ 2 Cdn Div
President.

(Signed) J.H.Roberts Major-General
Commanding 2 Cdn Div.
Convening Officer (a)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 19th day of March 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 19th day of March 1943
J.H. Tilmour Major
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of * A.C.I. 570 of 1918 have been complied with.

* See footnote (b) on page 762 M.M.L. 1929.

Signed this 21st day of March 19 43
President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison until further orders.)

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 20th day of March 1943.
J.H. Roberts Maj-Gen
Confirming Officer.

Promulgated and extracts taken in the case of B25259 Spr Smith, J.F.

(*a*) (Dated) 21st March 1943 (Signed) C Gray Capt

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] W1 40013—982 200 M 43pt P.M. G. Inc.

A.A-100

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

"A."
Order convening the Court

On Active Service, this Eighteenth day of March, 19 43.

Whereas it appears to me, the undersigned, an officer in Command of Second Canadian Division, Candian Army Overseas, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to delay the trial for xxxx

CHARGE SHEET

The accused, No. B25259 Spr. James Francis Smith of the 2 Cdn. Fd. Coy., R.C.E., a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15(1)
Army Act.

Absence without leave, in that he, In the Field, absented himself without leave from 1400 hrs. 17 Jan 1943 until apprehended by the Military Police at 0745 hrs 3 March 1943. Costs of return to unit £2-8-1.

(Absent 44 days 17 hrs. 45 mins)

In the Field
14 Mar 43

Officer Commanding
2 Cdn. Fd. Coy. R.C.E.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(J.H.Roberts)Major-General
G.O.C.,2 Cdn Div

In the field
18 Mar 43

"B" Fulmour
Major
DAQMG

(Squadron / Battery / Company / Detachment)

2nd Fires Coy R.C.E. — Unit or Battalion

MORNING SICK REPORT

March 19. 43. 1943.

Regt'l No.	RANK AND NAMES (Christian Name in full)	Age	Religion	Whether for duty a prisoner or defaulter	Married or Single	DISEASE	Medical Officer's Remarks and Initial
B 252598	Spr Smith J. F.					This soldier is physically fit & free from infectious disease. Fit to stand Court Martial.	

Medical Officer

Orderly N.C.O.

M. F. E. 293
4500M-3-41 (6682-9-90)
N.Q. 1772-39-348

(OVER)

A Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field Gen'l Court-Martial held at In the Field
on the 19 day of March 1943 by order of
Major General J H Roberts
Commanding 2 Cdn Div
dated the 18 day of March 1943

President.
Major F Fulmore, RCA att'd HQ 2 Cdn Div

Members.
Major M J R Lamarre Fus. M. R.
Capt. J. A. Manahan Cams R C

Trial of* B 25254 Spr James Thomas Smith 2 Cdn Fd Coy R.C.E.

Judge Advocate FFF

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ ~~is not available~~
~~and the Judge Advocate~~
~~, acting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lt. J R. Matheson 2 Fd Coy RCE.

Counsel‡ or defending officer† Lt. H G. Hughes 2 Fd Coy RCE

At 1020 o'clock the Trial commences.

The order convening the Court is read, and is marked "A" signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No Sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

FFF

(23)... 60,000 pds. 1/40. E. & H. Ltd. GAZETTE. Forms A 9/40.

B

The President, members and ~~judge-advocate~~ are duly sworn. HS

The following officers under instruction are duly sworn.

Capt R.S. Wells

Charge-Sheet.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Guilty. *Answer.*

HS ~~Are you guilty or not guilty of the second charge against you, which you have heard read?~~ *Question.*

Answer.

HS ~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~ *Question.*

Answer.

HS ~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~ *Question.*

Answer.

The accused having pleaded Guilty to the charge, the provisions of Rule of Procedure 35 (B) are here complied with. HS

Instruction.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused B 25259 Spr James F Smith. is found guilty of the Charge

†The summary (or abstract) of evidence is read, marked "G" signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

No Sir.

Answer. ~~The accused in mitigation of punishment says:—~~

~~(or hands in a written statement, which is read, marked ——, signed by the President, and attached to the proceedings.)~~

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

The defending officer addresses the Court hands in a written statement which is read & attached to the proceedings as exhibit "J".

HR

Do you wish to give evidence yourself or to call any witnesses as to character? — *Question to the accused.*

~~No sir~~ Yes Sir — *Answer.*

HR

B25232 Sgt Major P. N. Brown — *Evidence as to character.*

2 7th Coy R.E.E. duly sworn states:

I have known the accused 3 yrs. In 1942 he seemed to have been led astray by 2 unsuitable men in the Coy. He returned from an escapade & stayed absent for 1 day or 2 more & after this lost one. He has been a good soldier but seems to have this inclination to go away occasionally.

RP 834 completion unit

J. P. Gibbons
Sgt
7/7
Pres

E

Finding.*

*To be struck out except in cases where trial has taken place on plea of "Not Guilty."

~~The Court is closed for the consideration of the finding.~~

~~The Court find that the accused~~

*When the Court is already open this sentence will be struck out. Evidence of character, &c.

Proceedings on Conviction *before Sentence.*

*The Court being re-opened, the accused is again brought before it.

Lt. J R Mathieson is duly sworn.

Question by the President. Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes AFB 296 & Cert Copy of M F M 6

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked A 1 signed by the President, and annexed to the proceedings.

Question by the President. Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question. Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question. Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes

Cross-examined by the accused. No.

[Instructions as to evidence as to character of the service of the accused in a documentary form, if admitted, the finding of the Court subject here noted to any exceptional punishment in the case to be awarded by the Court, the proceedings must be adjourned by the direction of the Court to the next day, and the Court must reopen with the witness and proceed to the additional punishment.]

Question to the accused. Do you wish to address the Court? *Answer.* No

The Court is closed for the consideration of the sentence.

Summary of Evidence in the case of
B 25259 Spr. Smith, J.F., 2 Cdn. Fd. Coy, R.C.E.
a soldier of the Canadian Army Overseas.

The accused was informed of his rights (R.P. 4 (E)).

The C.O. directs that the evidence be taken on oath.

FIRST WITNESS for the Prosecution Capt C.T. Tracy, 2 i/c 2 Cdn Fd. Coy, R.C.E (Sworn) states;

I present -

Certificate of apprehension, purporting to be signed by Maj. C.T. Butler, D.A.P.M., Central Midland District - (attached as Exhibit "A").

Certificate of Costs of Return, purporting to be signed by Capt. W. Fern, D.A.P.M, London Area. (attached as Exhibit B, 2 sheets).

~~Leave pass found in the possession of the accused purporting to be signed by Capt H.E. Woods, O.C. A Coy, No. 1 Cdn Engineers Holding Unit, attached as Exhibit "C" and~~ [redacted] which relate to the accused whom I now recognize.

The accused declined to cross-examine.

[signature] Capt

SECOND WITNESS for the prosecution B 2518 Cpl. Campin, B.G. 2 Cdn. Fd. Coy, R.C.E. (Sworn) states:

On 17 Jan 43 at 1400 hrs. I called the roll of HQ Sec, Spr. Smith, whom I recognize, failed to answers his name. He has been reported absent from all parades since that

time.

The accused declined to cross-examine the witness.

W. Campin, Cpl
B25187

THIRD WITNESS for the prosecution S/Cpl. Mansell, N, C.M. Police.

A written statement of this witness' evidence, purporting to be signed by him, has been read to the accused, and is included in this summary of evidence. (Attached - A.F. 252 as Exhibit "D"). Having regard to the exigencies of the service and the expense and loss of time involved, the attendance of this witness cannot, in my opinion, be readily procured -

The accused does not demand the attendance of this witness for cross-examination.

FOURTH WITNESS for the prosecution S/Cpl. Handcliffe, W.E. C.M. Police:

A written statement of this witness' evidence, purporting to be signed by him, is appended to the evidence of the THIRD witness upon Exhibit "D". has been read to the accused. having regard to the exigencies of the service, and the expense and loss of time involved, the attendance of this witness cannot, in my opinion, be readily procured.

~~The accused does not demand the attendance of the witness for cross-examination~~

The accused did not call any witnesses for his defence.

Certified that R.P. 4 complied with.

In the field,
14 Jan 43.

J. R. Mathieson Lieut
Adjt. 21st. Coy. R.C.E. C.A.O.

Certificate in accordance with the Army Act, Section 163 (1) (ii)

I certify that No. B.252553 Rank Pte. Name SMITH, J.E.

Unit 2nd C.O. Cay. N. Canadian Engineers was arrested at Birmingham

at 17.45 hrs. on 3rd March 1943

Station Birmingham

Date 3rd March 43

Signature of Provost Marshal, A.P.M. or other officer into whose custody the a/n person was taken on arrest

A.P.M. CENTRAL MIDLAND DISTRICT

"K" 748

Exhibit "A"

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. B25259 Rank Spr. Name Smith, J.F. Unit 2 Fld Coy R.C.E.

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his~~ Unit From London from Birmingham

Date	Particulars	Amount £	s	d
5 May 43	Escorts return fare from LONDON To Birmingham		17	0
	Prisoners single fare to LONDON From Birmingham		8	6
	Prisoners fare from To			
	Escorts & Prisoners expenses for ~~Bed~~, Meals, Bus fares		9	10
	Total £	1	15	4

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

"B"

C.M.H.Q. 1000/55
40/P & S/483

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No B.15259 Rank Spr. Name Smith, J.F. Unit 2 Fld. Coy

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars	Amount		
5 Mar 43	Escorts return fare from LONDON To Petworth		8	6
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Petworth		4	3
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		12	9

I certify that the above statement of Expenses is Correct. and that the amounts are fair and just.

M" 7.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000/43
60/P & S/483

"B"

132
16
112

CANADIAN LEGION

WAR SERVICES 19

Sp. Smith
2 Cdn Fd Coy R.C.E.

Sir.

Considerations to be drawn to the attention of the court.

1. Spr. Smith is 32 yrs old has been in the army for 4 yrs and chose friends not too wisely - was easily led & was under bad influence.
2. Rec'd first A.W.L. but was have been pardoned. this time, knowing he was in for trouble, he put off returning to face the music.
3. He has been a bad man when he fulfilled his duties conscientiously and satisfactorily.

CANADIAN LEGION

WAR SERVICES 19

4. Spr. Smith is a neat smart soldier has caused no trouble in the unit except for the present crime.

5. Conclusion -

He is fundamentally a good soldier and if the court can see its way clear to deal with his case as leniently as possible and give this man a break I feel he will not allow anything else to mar his record.

H. L. Taylor Lieut
2 Cdn. Fd. Coy.

Subetitute for
AFE 296 or
MFE 355

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED.

NO. B25259....Rank. Spr..Name. Smith, James Francis..Unit. 2 Cdn..Fd..Coy..RCE.

Age. 22 years. Married or single..single.....No. of dependents..None.....

Date of Attestation...26 Feb 1940.....

No of days spent in close arrest (To date of Trial)...16 Days.....

Dates of promotions, appointment and confirmation of rank, if any.....

Nil

(A certified true copy of MFM 6 must accompany this form)

Dated at In the Field.....

This..19th..Day of Mar..1943

C. D. Gray Capt
Officer Commanding i/c
Records
2 Cdn. Fd. Coy. R.C.E.

"H 708

No. B25259 Name Smith, J.F. Sqn., Battery, or Company 2 Cdn. Fd. Coy. R.C.E. Corps Date of enlistment 28-2-40 G.C. Badges

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Service or Proficiency Pay | Character

M.F.M. 6 (A.F.B. 122) 125M—7-41 (1218-20) H.Q. 1171-39-1655

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Cove	7 Oct 40	Spr.		A.A. Sec. 40, Appeared unshaven on parade	Lt. Henselwood S/t. Crease	2 days CB.	10 Oct 40	Major E.C. Thorne	
Cove	14 Oct 40	"		A.A. Sec. 15(1) A.W.L. from 2300 hrs 14 Oct 40 until 1430 hrs. 16 Oct 40	Cpl. Aspinall	7 days C.B.	12 Oct 40	Major E.C. Thorne	Ffts 2 days pay FRI.
Cove	17 Feb 41	"		A.A. Sec. 15(1) A.W.L. from 0815 hrs 17 Feb 41 to 1800 hrs 22 Feb 41	Sgt. Crease	14 days Detn	24 Feb 41	Major E.C. Thorne	ffts 20 days pay FRI.
Aldershot	28 May 41	"		A.A. Sec. 15(1) A.W.L. 21hrs 15 mins	L/C. West L/C. Gooding	14 days C.B. 4 days pay	31 May 41	Capt. Fraser	ffts 4 days pay FRI

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Rye	21 Jul 41	Spr.		A.A. Sec. 15(1) A.W.L. from 2245 hrs 21 Jul 41 until 1515 hrs 7 Aug 41	Sgt. McArthur	28 days pay	12 Aug 41	Capt. D. Fraser	Forf 17 days pay
Field			(1)	A.A. Sec. 40 Conduct to the prejudice, etc. using Gov't vehicle for private purposes	Cpl. Cleasby	Stoppages of pay 4-15-11		Capt. D. Fraser	
			(2)	A.A. Sec. 2 11 neglect to obey standing orders, in that he left a vehicle unattended.		5 days pay			
Field	22 Aug 42	"		A.A. Sec. 15(1) A.W.L. from 0730 hrs 22 Aug 42 to 1610 hrs 24 Aug 42	Sgt. Twigg CSM. Brown	6 days pay	25 Aug 42	Major Fraser	Ffts 3 days pa FRI.
Field	20 Sep 42	"		A.A. Sec. 15(1) A.W.L. from 2359 hrs 20 Sep 42 until 1330 hrs 21 Sep 42	Sgt. Ruffell Spr. Dickenson	2 days pya	22 Sep 42	Major Fraser	Ffts 1 days pay FRI.

2

No. B25259 Name Smith, J.F. Sqn., Battery, or Company 2 Cdn Corps Fd. Coy. R.C.E. Date of enlistment 25-2-40 G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 122) 175M—7-41 (1215-20) H.Q. 1777-39-1602

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	26 Sep 42	Spr.		A.A. Sec. 15(1) A.W.L. from 0830 hrs. 26 Sep 42 until 2200 hrs. 4 Oct 42	L/C. West. Sgt. Ruffell	28 days Detn	5 Oct 42	Major C. Fraser	fts 7 days pay FRI.

Certified true copy received by telephone from Records, C.M.H.Q.

for Officer Commanding 2 Cdn. Fd. Coy. R.C.E.

PTO

CCC-99

PTE SMITH J.G.

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B46140 Pte Joseph Graham Smith

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	With the exception that length of absence was until 2330 hrs 29 Dec 43.
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 13 days, of which 10 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of 120 days

(Sgd) W B Lawdon Major — Judge-Advocate, if any. Date awarded 11 Jan 44

(Sgd) E C Peckham Major — President. (RP 45, 50)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 547-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the Finding and Sentence

~~I direct that the accused be put into prison or detention barracks until further orders.~~ (1) JLR.

(1. AA 57A. Delete if not used.)

Date 14 Jan 44 (Sgd) J.L. Rodger Brig — Commanding E Rodger Brig Comd 10 Corps Inf Bde — Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B46140 Pte Smith. Joseph. Graham	15 Jan 44	Sheldon Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CCC 99

CPA96 (In lieu of AFA3) 40/P & S/1608 (3804)

FIELD GENERAL COURT-MARTIAL

Convened by Order of E. E. Rodger Brig Comd 10 Corps Inf Bde dated 4 Jan 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B 46140	Pte	Joseph Graham	Smith	A & S Hd of C

PROCEEDINGS REVIEWED

24 Jan 44 Capt

REVIEWING OFFICER, LEGAL BRANCH, GHQ

PROCEEDINGS REVIEWED

Date 9 Feb 44

FIRST CORRESPONDENCE

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 11 Jan 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (~~was~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~was~~) brought before the Court. At 0940 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~was~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to ... as interpreter?~~ Ans ~~...~~

~~The Interpreter is sworn.~~ (1) Do you object to ~~MissSJones~~ as shorthand writer? Ans No

The shorthand writer is sworn.(2)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans ~~No~~ (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 23, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	E C Peckham	Inns of Court R.
Member	Capt	W B Lawdon	10 Corps Inf Bde HQ
Member	Lt	W S Simonds	Ally R
Judge-Advocate	Major	W A D Gunn	HQ 4 Corps Admin Zone
Prosecutor	Lt	A F Tolhurst	A & SH of C.
Defending Offr	Lt	A J Henderson	A & SH of C

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused Pte Joseph Graham Smith before arraignment make(s) (no) (~~a~~) plea(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 132, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~severally~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records this plea in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and see separate copies of CF A94 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is advised and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B and E.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p ~~3~~ 3

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of J A see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court de see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of J A or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No Sir. (5)
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement (1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A , initialled and read aloud by the President.(1)
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. RP 37(A) (2).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. ..... Do you intend to call witnesses on your behalf ? Ans. ..... Are they witnesses as to character only ? Ans. .....
(1. RP ~~may~~ 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(E).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. AA 54(2) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No Sir.
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (extract) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. X and Ex. Y respectively.(3)
(1. AFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes through my Defending Offr.(2)
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. Where several accused tried separately see RP 94(b). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 130, 182, RP 46-50, 94, 118, 119(A), KR Can 300, 330, 563-566. Overseas RO 209, 2313, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused B46140 Pte. Smith, Joseph Graham
A & S H of C, a soldier of the Cdn Army/~~R~~placed on
Active Service

is charged with

A.A. Sec 15(1) ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the field on 20 Dec 43 absented himself without leave from 1200 hrs 20 Dec 43 till 2350 hrs 29 Dec 43 (Total absence 9 days 11 hours 30 minutes)

(A.J. Hay) Major
A/Commanding Officer
A & S H of C

In the field
5 Jan 44

To be tried by F.G.C.M.

(N E Rodger) Brig
Fd 5 Jan 44 Comd 10 Cdn Inf Bde

G.C. Peckham
Major
Pres.
Will summon usual
judge advocate

FIELD GENERAL COURT-MARTIAL

CFA 95 (In lieu of AFA 3)
40/Pam/1097 (2nd)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B46140	Pte		Joseph Graham	SMITH	A & S H of C

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence~~(s)~~ set forth in the Charge Sheet~~(s)~~ attached and on *(date)* 8 Jan 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial". JSR

2. And whereas I am of opinion that it is not practicable that such offence~~(s)~~ should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~ JSR
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ JSR
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major *(Rank.)*	E C Peckham *(Must be named. RP 106.)*	Linc & Welld R *(Unit.)*

MEMBERS.

Capt	W B Bawdon	10 Cdn Inf Bde Sp Gp
Lieut *(Rank.)*	W L Liscombe *(Named or detailed. RP 106.)*	Alq R *(Unit.)*

WAITING MEMBER.

Lieut *(Rank.)*	R N Sherrill *(Named or detailed, if any. RP 106.)*	Alq R *(Unit.)*

JUDGE-ADVOCATE.

Maj *(Rank.)*	W A D Gunn *(Must be named, if any. RP 106.)*	HQ 4 Cdn Armd Div *(Unit.)*

On Active Service in the Fd

in England *(Country.)*

J.E. Rodgs *(Signed personally. RP 105 fn 2.)*

Brig *(Rank.)*

Date 9 Jan 44

Commanding 10 Cdn Inf Bde
Convening Offcer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

E.C. Peckham Lt-Col
W.L. Liscombe Capt
Judge Advocate

MEDICAL OFFICER'S REPORT

I certify that No. B46140 Pte. SMITH, J.C.
of A & S H of C is in a FIT state of health,
and ABLE to undergo Trial by Court martial.

A. M. Boeglin Capt.
Medical Officer

Station Ackfield Sussex.

Date 11-1-44

E. C. Fetherston major
Pres
Witness urges
judge advocate

M. F. B. 246
RSM—6-41 (793)
H.Q. 1172-99-489

SUMMARY OF EVIDENCE

Summary of Evidence in the case of B46140 Pte. Smith J.G. of the Argyll and Sutherland Highlanders of Canada, a soldier of the Canadian Army Overseas. By direction of the Commanding Officer the evidence is taken on oath.

FIRST WITNESS for the prosecution B45974 C.S.M. Alderson, J. of the Argyll and Sutherland Highlanders of Canada, a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:

On the 20th of December 1943, I was and still am C.S.M. of "A" Coy, Argyll and Sutherland Highlanders of Canada. The accused B46140 Pte. Smith, J.G. was on leave in possession of a pass which terminated at 1200 hrs 20th of December 1943. He failed to return to barracks at that time. The pass was not turned in to the Coy Orderly Room on that date or since until the night of the 29th of December 1943.

The accused declines to cross-examine this witness.

J. Alderson C.S.M.
Signature of Witness

SECOND WITNESS for the prosecution B45794 L/Sgt. Page, T.H. of the Argyll and Sutherland Highlanders of Canada, a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:

On the 20th of December 1943, I was and since then down to the present time have been sergeant of #9 platoon "A" Coy of the Argyll and Sutherland Highlanders of Canada, of which B46140 Pte. Smith, J.G. is a member. On the morning of the 20th of December 1943 and on each morning from then to and including 29th of December 1943 I called the roll of #9 platoon and on none of these occasion was the accused present. My quarters are in the same building as those of the accused and I did not see him at anytime from 1200 hrs the 20th of December 1943 till the morning of the 30th of December 1943.

The accused declines to cross-examine this witness.

T.H. Page
Signature of Witness

THIRD WITNESS for the prosecution B46579 Cpl. Grey, J.B. of the Argyll and Sutherland Highlanders of Canada, a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:

I am a corporal in "A" Coy of the Argyll and Sutherland Highlanders of Canada. On the 29th of December 1943 I was Orderly Corporal of said "A" Coy. At 2330 hrs on that date B46140 Pte. Smith, J.G. reported in to me and handed me his pass.

The accused declines to cross-examine this witness

Cpl. J.B. Grey
Signature of witness

THE ACCUSED WAS CAUTIONED AS FOLLOWS "Do you wish to make a statement or to give evidence on oath. You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused elects to make a sworn statement.

The accused B46140 Pte. Smith, J.G. of the Argyll and Sutherland Highlanders of Canada, a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:

This is my third Christmas away from home and as I couldn't be at home I was very anxious to spend the holiday season with my aunt at Manchester, whom I visited on my leave. I didn't return right after Christmas day because I was afraid I would be picked up by the Provost Corps on account of the travel ban. The ban was lifted on the 28th of December 1943 and I started back to my unit sometime before 0200 hrs 29th of December 1943.

J G Smith
Signature of witness

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence of the accused and that Rules of Procedure 4 (c) (d) (e) and (f) have been complied with.

B Parker Lieut
Officer detailed to take the Summary of Evidence.

Exhibit "A"

C. Parker
Major
Pres
Witness
Judge Advocate

Exhibit "X"
E.C. Peckham
Capt

M.F.B. 355
20M—11-41 (2273)
H.Q. 1772-39-620
A.F.B. 206

Witness my initials

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B46140	Pte	Smith J.G.	A & S H of C

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental and ~~Squadron, Battery~~ ~~Conduct sheets~~ or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial ~~or~~ a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	A.W.L.	4 times	A.W.L.	18 times
For	Breaking Barracks	1 times	Breaking Barracks	2 times
For	Conduct to the prejudice	1 times	Conduct to the prejudice of parade	4 times
For	Neglect to obey standing order	1 times	Failure to appear at place	2 times
			Drunkenness	1 times
			Disobeying lawful order	1 times
			Neglect to obey standing order	2 times
			Leaving guard without orders	1 times

Number of instances of gallantry or distinguished conduct: NIL or: ~~There are no entries in the soldier's record of this nature~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

~~Previous convictions of the accused by a Court-Martial or award of summary punishment under the Army Act~~ ~~Air Force Act~~ ~~Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule appended to this statement.~~

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for~~ ~~reckoning on the~~ ~~days~~

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 13 days in military ~~Air Force~~ custody, making a total of 13 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his record of service is 22

~~6. The date of his~~ ~~attestation~~ ~~attestation paper~~

7. ~~The service which the accused is allowed to reckon towards discharge is~~ N A

8. The accused is entitled to reckon 3½ yrs. service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward ~~(or is in possession of or entitled to)~~. State any ~~air force~~ military decoration or reward. NIL

10. ~~If the accused is a non-commissioned officer: The accused before his last enlistment held the rank of~~ ~~Air Force~~ ~~in the regimental rank of~~

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Flying Officer dated 1st Sept. 43, and in his regiment (or corps), the rank of dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date—

.....Date of promotion.

In the rank of.....years.

In the rank of.....years.

In the rank of.....years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Act, and of cases in which trial has been dispensed with if accused, Number ..... Rank ..... Unit

Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 11th day of January 1944 D. F. Selden Capt. & Adj't.
for O. C., 1st Bn. The A. & S. H. of C. (F. L.)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

(CERTIFIED TRUE COPY) O'Sheldon Capt (Officer having custody of original document)

M.F.M. 6
(A.F.B. 122)
20M—11/40 (3015)
H.Q. 7772-45-18

No. B46140 Name SMITH, J.G. Sqn., Battery, or Company "A" Corps Rqsh of C.T. Date of enlistment 16/7/40 G.C. Badges Service or Proficiency Pay Character

Date of last entry in Company Conduct Sheet 8/10/40 No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Niagara	6/10/40	Pte		AWL from 0100 hrs 6/10/40 to 1600 hrs 7/10/40	C.S.M. Fogson	14 days C.B.	8/10/40	Lt-Col Greenfield	forfeits 2 days pay under RR FRI
Niagara	16/2/41	"		a.w.l. from 2130 hrs 16/2/41 until 1600 hrs. 18/2/41	11 Sgt. Solomon	2 days C.B.	19/2/41	Major Bliss	forfeits 2 days pay under FRI
Queenston	26/2/41	"		a.w.l. from 1200 hrs 26/2/41 to 2300 hrs 26/2/41	C.S.M. Fogson	1 days C.B.	26/2/41	Major Bliss	forfeits 1 days pay under FRI
Allanburg	15/3/41	"		a.w.l. from 2130 hrs 15/3/41 to 2130 hrs 16/3/41	C.S.M. Fogson	14 days C.B. 3 days pay	17/3/41	Lt-Col Greenfield	forfeits 1 days pay under FRI
Niagara	17/5/41	"		AWL from 2359 hrs 17/5/41 to 1500 hrs 18/5/41	CSM Fogson	7 days C.B.	26/5/41	Major Bliss	forfeits 1 days pay under FRI

P.T.O.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Nanaimo	4/6/41	Pte		Failing to appear at parade 0615 hrs 4/6/41	Sgt.Cassidy	2 days C.B.	4/6/41	Major Bliss	(No Forf)
Nanaimo	30/6/41	"		AWL from 2359 hrs 30/6/40 to 2230 hrs 3/7/41	Cpl Rennie	14 days C.B.	4/7/41	Major Bliss	forfeit 3 days pay under FRI
Newcastle Jamaica B.W.I.	31/8/41	"		(1)A.W.L. from 0045 hrs 31/8/41 to 0700 hrs 31/8/41 (2)Neglect to obey camp standing Orders 31/8/41	CSM Pogson	7 days C.B.	2/9/41	Capt.Farmer	forfeits 1 days pay under FRI
Kingston Jamaica B.W.I.	11/12/41	"		Drunkenness (1st. offence)	L/C. Berkhold	Admonished	12/12/41	Capt.Farmer	
Kingston Jamaica B.W.I.	1/1/42	"		Cond to the prej(Unfit for duty due to previous indulgence in alconolic stimulants	C.S.M. Pogson	3 days C.B.	5/1/42	Lt. White	
Kingston Jamaica	28/2/42	"		(1)Breaking Barracks (2)Disobelying a lawful order given by a superior (3)AWL from 0030 hrs 28/2/42 to 0030 hrs 28/2/42	Sgt. Cooker Pte. Webb Pte. Ewing	168 hours detention	3/3/42	Lt-Col Sinclair	forfeits 2 days pay under FRI

M.F.M. 6
(A.F.B. 122)
(CERTIFIED TRUE COPY)

No. B46140 Name Smith, J.C. Sqn., Battery, or Company A Corps A &SH of C Date of enlistment 16/7/40 G.C. Badges Service or Proficiency Pay Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				(Continued from previous page)					
Kingston Jamaica	28/2/42	Pte		(4)AWL from 0030 hrs 28/2/42 to 0600 hrs 1/3/42	Sgt.Cooker	4 days ded pay	17/3/42	Lt-Col Sinclair	
Kingston Jamaica	13/3/42	Pte		A.W.L. from 2359 hrs 13/3/42 to 0050 hrs 14/3/42	Lt.J.C.H. Harstone	28 days detent	18/6/42		
Up Park Camp	14/6/42	"		(1)A.W.L. from 2345 hrs to 2350 hours 14/6/42 (2)When on active service, leaving his guard without orders(3) Cond. to the preJ.(in possession of liquor on guard)	R.S Howle L/Sgt.Butler				
Jamaica	31/10/42	"		(1)AWL from 2245 hrs 30/10/42 to 0215 hrs 31/10/43(2) Cond to the preJ (failing to comply with an order)(3)Failing to appear at place of parade(Internment Camp)	Sgt.Cooker Sgt. Heddle	7 days pay	2/11/42	Lt-Col Sinclair	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Kingston Jamaica	31/12/42	Pte		AWL from 2245 hrs 31/12/42 to 0200 hrs 1/1/43	Cpl Thompson	3 days C.B.	2/1/43	Lt.D.R. Frid	
Moneague Jamaica	19/1/43	"		AWL from 2230 hrs 19/1/43 to 2330 hrs 19/1/43	Sgt.Solomon	5 days C.B.	20/1/43	Capt. Farmer	
Moneague Jamaica	11/2/43	"		Breaking Barracks	CSM Pogson	3 days C.B.	13/2/43	Capt Farmer	
Kingston Jamaica	15/4/43	"		(1)Neg to obey S/orders(failed to turn in his pass at the Guard house as per S/Orders para 6(H)	Pte. Minor B.K.	5 days C.B. r ~~ker~~with F.D. for Charge #1	16/4/43	Capt Mills	1 days forfeiture of pay under FRI
				(2)AWL from 2245 hrs 13/4/43 to 0600 hrs 16/4/43	Cpl Thompson	5 days C.B. for Charges 2 & 3	19/4/43		
				(3)Cond to the Prej(at 2310 hrs 15/4/43 on South Camp Road Improperly dressed)	CSM Pogson				
Kingston Jamaica	14 /5/43	"		AWL from 2245 hrs 14/5/43 to 2320 hrs 14/5/43	Sgt.Berkhold L/Cpl Les	5 days C.B.	15/5/43	Capt Mills	

No. B46140 Name Smith, J.G. Sqn., Battery, or Company "A" (CERTIFIED TRUE COPY) Corps A&SH of C Date of enlistment 16/9/40 G.C. Badges

Service or Proficiency Pay

M.F.M. 6 (A.F.B. 122) 20644—11-40 (3025) H.Q 7772-45-18

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
~~Kingston~~ Niagara	~~14/11/41~~ 24/6/43	~~Pte~~ Pte		~~AWL from 2359 hrs 24/6/43 to 2000~~ AWL from 2359 hrs 24/6/43 to hrs 5/7/43	CSM Alderson DOC 31 C.F.C.	21 days ded. in pay	7/7/43	Lt-Col Sinclair	Forfeits 11 days pay FRI
* JAMAICA	17/11/41	"		AWL (from) 2200 hrs 17/11/41 to 2315 hrs 17/11/41	CSM ALDERSON	2 DAYS C.B.	24/11/41	CAPT FARMER	DR

(P.T.O.)

Address in Mitigation by Defending Officer

I just want to address a few words to the court. I have talked with the accused for some length before this case came up trying to discover just what reason he had for the crime for which he is charged. It must be admitted that his conduct sheet does not look so good, but I wish the court to bear in mind that since coming overseas he has not had one crime charged against him and he has assured me that when he came overseas he intended to keep his sheet clean and soldier to the best of his ability. In connection with his leave he applied for leave some time before Christmas so that he would be at this place over Christmas but it was not granted. He was with relatives and there was that temptation to stay there as borne out by his statement in the summary. None of his crimes at any time have been of a very serious nature. He has never caused much trouble and judging by the punishment handed out to him he has paid for them in full. I would ask the court to be lenient with him because he has intended to soldier over here.

6K

REGIMENTAL DOCUMENTS

H.Q. FILE No. .....

NAME Pte SMITH J.J. REGIMENTAL No. .....

UNIT OF ENLISTMENT ..... RANK .....

	CONTENTS	NON-EFFECTIVE BY
	COMBINED DECLARATION FORM OR ATTESTATION AND MEDICAL HISTORY (M.F.M.1 & 1A) OR (M.F.M.2 & 2A)	DEATH
	SERVICE AND CASUALTY FORM (M.F.M.4 & 4A) (A.F.B.103)	DATE
	PARTICULARS OF FAMILY (M.F.M.5)	CAUSE
	FIELD CONDUCT SHEET (M.F.M.6) (A.F.B.122)	AUTHORITY
	CERTIFICATE OF SERVICE (M.F.M.8) COPY OF, OR DISCHARGE CERTIFICATE (M.F.M.7) COPY OF	
	FORM OF WILL (M.F.M.10 OR M.F.M.10A)	
	DENTAL HISTORY SHEET	DISCHARGE
	MEDICAL REPORT OR CASE HISTORY SHEET	DATE
	MEDICAL EXAMINATION ON LEAVING THE SERVICE	REASON
	TRANSFER CLOTHING STATEMENT	AUTHORITY
	LAST PAY CERTIFICATE (M.F.D.930A)	
	PROCEEDINGS ON DISCHARGE	
	PROCEEDINGS COURT OF ENQUIRY	DESERTION
	DECLARATIONS COURT OF ENQUIRY	DATE
	PAY SHEETS	AUTHORITY
	CARDS	
	SUNDRY	

M.F.M. 2500
W.P. & S./1939

Correspondence to be PINNED here.

ADVA 6K

Army Form A.3.

RECEIVED JUL 9 1942

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court

On Active Service, this THIRTIETH day of JUNE, 19 43

Whereas it appears to me, the undersigned, an officer in Command of 5 CANADIAN INFANTRY BRIGADE GROUP CANADIAN ARMY (A.P.), on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial: *[illegible]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*[illegible]

In my opinion, military exigencies, namely the dispersion of units, difficulties of communication, and other difficulties, render it inexpedient to comply with those rules inconsistent with Appendix "A" to D.R.O. 772 on the trial of the soldier named in the margin

PROCEEDINGS REVIEWED.

President.

Rank.	Name.	Regiment.
MAJOR	T. B. DONALD	CALG HIGHRS

Members.

Rank.	Name.	Regiment.
CAPT.	P. SAVOY	Fus M R
LIEUT.	H. B. GOURLAY	SIGS 2 CDN DIV

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed (G.W.Whitehead) Brigadier
Commanding 5 Cdn Inf Bde Group
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B76362, Pte. John Joseph Smith, Tor Scot R (MG),	FIRST CHARGE A.A.Sec. 15(1) ~~ABSENTING HIMSELF~~ WITHOUT LEAVE (See charge sheet attached)	Guilty	Guilty.	
	SECOND CHARGE A.A.Sec. 24(2) ~~LOSING BY NEGLECT~~ (See charge sheet attached)	Not Guilty.	Guilty except that he was not efficient of 1 Sten Gun. Value 4/0$.	
			To undergo detention for 90 days & to be placed under stoppages of pay to the amount of £3-12-11 towards good the value of deficiencies.	I Confirm GVW I S Donald Maj 1/7/42

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?" No
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) G.V. Whitehead (G.V. Whitehead) Brigadier
Commanding 5 Canadian Inf Bde Group
Convening Officer (c)

(Signed) Thos. B. Donald Major
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 1st day of July 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 1st day of July 1942.
Thos. B. Donald Major
President of the Court Martial.

C. Certificate in case of death sentence.

* See footnote (b) on page 762 M.M.L. 1939.

I certify that the terms of *A.C.I. 570 of 1918 ~~have~~ have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~(I direct that the soldier named in the margin be not committed to prison until further orders.)~~ GVW

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 8 day of July 1942
G.V. Whitehead Brig
Confirming Officer.

Promulgated and extracts taken in the case of B. 76362 Pte Smith J.J.
(a) (Dated) 9 Jul 42 (Signed) D Training Capt

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

LRD

CHARGE SHEET

The Accused, B.76362 Pte. Smith, J.J. - Tor Scot R (MG), a soldier of the Canadian Army (A.F.), is charged with:

FIRST CHARGE
A.A. Sec. 15 (1) WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the field absented himself without leave from 1515 hours, 2 June 42 until 1630 hours, 26 June 42.

TIME ABSENT 24 days, 3 hours, 15 min.

SECOND CHARGE
A.A. Sec. 24 (2) LOSING BY NEGLECT HIS EQUIPMENT AND REGIMENTAL NECESSARIES

in that he

In the field on or about the 26th June 42, was deficient of equipment and regimental necessaries to a total value of £ 3 - 16 - 11½d.

(G. S. H. Gostling), Lt. Col.
Comd. - Tor Scot R (MG)
C.A.C.

TO BE TRIED BY F.G.C.M.

(G.V.Whitehead) Brig.
Comd 5 Cdn Inf Bde Group

In the field, 30 June 42

MEDICAL OFFICER'S CERTIFICATE.

This is to certify that 876142 Pte. Smith A.A. has been examined by me this date and found fit to undergo trial by Field General Court Martial.

(F.J.Milner), Captain, R.C.A.M.C.
Medical Officer att'd for Scot R (MG)
C.A.C.

DATE. 1 July 42

Plor. Lieut Dupeuy
Def. Lieut Anderson

(1)

1 B 7636 Pte Smith, J. J. 1st Scot R (M6)
July 4th

2 Maj J B Donald — Calg Sight
Capt P Savard — 2nd Mtd
Lieut S B Gourley — Sig & Can Dis

3 Pros Lt J St H Depuis (Lawyer) 1st Scot R
Def Lt Anderson

4 1st charge guilty
Second charge not guilty

5 R.P. 35 (B) complied with first charge
~~Summary of~~

6 5(B) No B75557
1st witness C.Q.M.S. Robertson
I am C.Q.M.S of Coy accused I know accused. I checked his kit and found deficiencies as per Exhibit "A" This has been compared with M.D.M 800 value 4/- except he is not deficient one shirt (A)

7 Court is closed for finding
Finding 2nd charge — Guilty

8 Court reopened
9 Summary of evidence read M.D.M 6 filed
A 36 296 & certified copy

10 Reg No age number 120 convictions. Has a bad habit of going AWOL Recommends asks for heavy sentence

Def has plea

Sentence 90 days

Certified a true record of the trial
1st day of July 1902.
Thos B. Donald Maj 1st Scots

Y150.

ABSTRACT OF EVIDENCE IN THE CASE OF

B.76362 Pte. Smith, John Joseph, - "H.Q." Coy. Tor Scot R (MG), a soldier in the Canadian Army (A.F.)

FIRST WITNESS

B.75650 L/Cpl. Lessel, J. - "H.Q." Coy. Tor Scot R (MG), will say:

That he was detailed to warn Pte. Smith, J.J., for Guard Duty at Toat Farm Camp, and searched for him and failed to find him in Camp at 1515 hours, 2 June 42, and Pte. Smith has not answered Roll Call since that time.

SECOND WITNESS

B.75918 Sgt. Ash, E. B. - "A" Coy. Tor Scot R (MG), will say:

That he was Guard Commander at 1830 hours, 26 June 42 at Compton Common Camp, when Pte. Smith, J. J., reported in to him as returning from absence without leave. Pte. Smith was sober and properly dressed. He placed him under Close Arrest.

THIRD WITNESS

B.75551 CQMS Robertson, J. - "H.Q." Coy. Tor Scot R (MG), will say:

That on the accused, Pte. Smith's return to camp, he inspected his kit at about 1900 hrs, 26 June 42, and found him deficient in clothing and equipment listed in Appendix "A" hereto, and to a total value of £5 - 16 - 11½.

The Accused, after being cautioned in accordance with R.P. 4 (2), declined to make a statement.

TAKEN DOWN BY ME THIS 27TH DAY OF JUNE, 1942, IN THE PRESENCE AND HEARING OF THE ACCUSED.

J.H.H. Depew

(J. H. H. Depew), Lieut.
Tor Scot R (MG) C.A.O.

Headquarters Company Toronto Scottish Regiment (MG)

"A"

26 June 42

Kit Deficiencies of B 76362 Pte. Smith J.J.

	£	s	d
Battledress trousers (1)	1	7	11
Boots, lumberman, prs. (1)		4	8
" " insoles			4
Brushes, boot (1)			9
Holdall (1)			9
Jacket, sweater (1)		8	6
Knife, clasp & lanyard		5	3½
Discs, identity (2)			2
Shirts, service (1)		4	½
Shoes, canvas prs., (1)		8	10
Vests, woollen (2)		10	2
~~Wallet, A.G.~~		1	~~5½~~
Eyeshields A.G. (2)			5
Bags, ration			2½
Vests, gym (2)		3	0
Shorts, gym (1)		1	11
Total	~~3~~ £ 3	~~18~~ 16	~~5~~ 11½

J. Robertson

C.Q.M.S. Robertson J.

Particulars of Kit Deficiencies of B.76362 Pte. Smith, J. J.

	£	s	d
Battledress trousers (1)	1	7	11
Boots, lumberman, prs. (1)		4	8
" " insoles			4
Brushes, boot (1)			9
Holdall (1)			9
Jacket, sweater (1)		8	6
Knife, clasp & Lanyard		5	3½
Discs, identity (2)			2
Shirts, service (1)		4	½
Shoes, canvas prs. (1)		8	10
Vests, woollen (2)		10	2
Eyeshields, A.G. (2)			6
Bags, ration			2½
Vests, gym (2)		3	0
Shorts, gym (1)		1	11
Total	£ 3	16	11½

No. B76362 Name Smith, J.E. Sqn., Battery, or Company HQ Corps Tor Scot R (MG) C.A. (Os) Date of enlistment 24/11/39 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet. No. and date of last drunk. Period not reckoning towards freedom from extra fine Sheet No. One Signature O.C. Company, etc. Character

M.F.M. 3 (A.F.B.122) Corrn - 4.39 (1760) H.Q. 1771-43-16

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishments awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camberly	15-6-40	Pte.		A.W.L. - from Roll Call (A.A. 40)	Sgt. Pamenter	1 days Pay. 8 days Detn.	16-6-40	Lt.Col. Thompson	
Chipstead	13-7-40	"		A.W.L. - 13-7-40 to 20-7-40. Breaking open Arrest and Breaking Close Arrest A.A. 15	CSM Plumner	28-days Detn.	29-7-40	Lt.Col. Thompson	
Tourney Bks	23-3-40	"		A.W.L. (A.A. 15)	Sgt. Pamenter	2 days Pay 4 days C.B.	26 Mar 40	Major Bolsby	
" "	26-4-40	"		A.W.L. (A.A. 15)	" "	2 days Pay 7 days C.B.	29-4-40	" "	
Merstham	5-7-40	"		A.W.L. (A.A. 15)	L/C. Norgate	7 days C.B.	6-7-40	Capt. Northey	
Aldershot	14-6-41	"		A.W.L. (A.A. Sec. 15 (1)) 9½ hrs.	Capt. Williams	28 days detn	18-6-41	Lt. Col. J.H. Christie.	For. 1 d.
"	17-6-41	"		A.W.L. While under open Arrest - 9½ hrs. - Sec. 15 (1) A.A.	Capt. Williams				" " "

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishments awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	22-10-41	Pte.		A.W.L. - 1 day, 19 hrs. Sec. 15 (1) A.A.	Sgt. Thomson,A	168 hrs. Detn.	25-10-41	Lt.Col. J.H. Christie	for. 2 days Pay
"	19-1-42	"		A.W.L. (A.A. Sec. 15 (1)) 8 hrs.	" "	1 days Pay. 7 days C. B.	21-1-42	" "	for. 1 days Pay

A CERTIFIED TRUE COPY

[illegible] Lieut.
A/Adj.

(Substitute for A.F.B. 296)
(or M.F.B. 355.)

STATEMENT OF CHARACTER AND PARTICULARS OF SERVICE OF THE ACCUSED:

No. B.76362, Name Smith J.J. Unit Tor Scot R (MG) C.A.O.

Age 24 Married or Single Married No. of Dependents 2

DATE OF ATTESTATION 24 nov. 39

No. of Days spent in Close Arrest (To Date of Trial)

CIVIL _____ MILITARY 4 HOSPITAL _____

TOTAL 4

DATES OF PROMOTIONS, APPOINTMENTS AND CONFIRMATIONS OF RANK, IF ANY:

A CERTIFIED TRUE COPY OF M.F.M. 6 MUST ACCOMPANY THIS FORM.

for (G.S.N. Gostling), Lt-Col.,
Comd - Tor Scot R (MG) A.O.D
C.A.O.

DATED THIS 1 July 42

STATION: In the field.

(To be signed and dated as of date of trial.)

4W-152

2a. Smith. J L.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: E52670 Pte James Leonard SMITH - 4 CITR - attd Cdn Det Bks

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 15(1)	Guilty	Guilty	
2nd	AA 24(2)	Guilty	Guilty	
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for 2 yrs Imp with HL beginning on (date) 12 Jul 44 (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of -- days, of which -- days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with hard labour for one year and two hundred and sixty days (1 yr 260 days) and to be put under stoppage of pay until he has made good the sum of $7.31(deficiencies) and to be discharged with ignominy from H.M.Service.

(Sgd) ..... Judge Advocate, if any. 3 Mar 45 Date awarded. (Sgd) "E.M.Miller" Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 34, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed:

~~I direct that the accused be not confirmed to undergo detention barracks until further ordered.~~ (1)
(1. AA 57A. Delete if not used.)

(Sgd) "K.G.Blackader"
(K.G.BLACKADER) Brigadier
Date 5 Mar 45 A/ Commanding Canadian Reinforcement Units.
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
E52670 Pte James Leonard SMITH	7 Mar 45	"L.S.Grayson" Maj.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

Received 27 Mar 45 JAG Branch, CMHQ. RECORDED AT CMHQ IN AB 160 4W-152

FIELD GENERAL COURT-MARTIAL

CFAA96 (In lieu of AFA81) 40/F & B/Issue 6(44) 4/38B

Convened by Order of Brig K.G.Blackader DSO MC Comd CRU dated 1 March 1945.
FD

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E52670	Private	James Leonard	SMITH	4 CITR Attd Cdn Det Bks.

PROCEEDINGS REVIEWED
27 Mar 45 "K.G.Morden" Lt.col
REVIEWING OFFICER, JAG BRANCH, CMHQ.

I declare copy of original proceedings herein. R Lamontagne Capt
19 Apr 45
J.A.G. Rev.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 3 Mar 45

RECORD FORM A--OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~sitting as above, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnns RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by CO.~~(2)
(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to be tried by any of the Members of the Court?~~ Ans ~~No~~ Capt. C.W.Couch
~~The Interpreter is sworn.~~(1) Do you object to Boudreault as shorthand writer? Ans No
The shorthand writer is sworn.(2)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans .....(2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(3). If objection, see procedure AA 51, RP 23, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	E.M.Miller, FD	HQ CRU
Member	Capt	C.W.Couch	1 CARU
Member	Lt	W.S.Brisbane	1 CARU
~~Judge Advocate~~			
Prosecutor	Lieut	K.G.W.Doull	1 Cdn Det Bks.
Defending Offr	Capt	H.J.Fitzallen	1 Cdn Det Bks.

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 2.)

A8. The accused ..... before arraignment make(s) (no) ~~no~~ plea .....(1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 14, 71), such plea, the arguments made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~adjourns~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No .(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3.* RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1) As to D.
(1. *Under B5 such parts only of the Summary of Evidence produced as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

(3) The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42.* 102(c).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 42, 117(b).* *See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 43, 120(A).* 2. *AA 54(3), RP 42, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. Yes on oath.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (extract) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB 255 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Plea by Def Offr.(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *Where several accused tried separately see RP 71 (2).* *One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 130, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-564. Overseas AO 109, 2323. MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 44(2), MML p 130. Where accused already under sentence of imprisonment or detention see AA 44(1)(b), 56(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET.

The accused, E52670 Pte James Leonard SMITH, 4 C.I.T.R., attached to Canadian Detention Barracks as a soldier undergoing sentence, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE WHEN ON ACTIVE SERVICE,
Sec 15(1)
A.A.

ABSENCE WITHOUT LEAVE

in that he,

in the Field in England, while undergoing detention did absent himself without leave from 0615 hrs 12 Sep 44 until apprehended by the Civil Authorities at approx. 2045 hours 20 Nov 44.
(Total time absent 69 days, 14 hours, 30 mins)

SECOND CHARGE WHEN ON ACTIVE SERVICE,
Sec. 24(2)
A.A.

LOSING BY NEGLECT HIS CLOTHING AND REGIMENTAL NECESSITIES.

in that he,

In the Field in England on 19 Feb 45 was deficient the following articles:-

ITEM	NO.	PRICE	25%	PRICE
Trousers denim pr.	1	2.64	.66	1.98
Blouses denim	1	2.51	.63	1.88
Drawers cell short	1	.43	.11	.32
Vests cotton gym	1	.36	.09	.27
Shirts Angola drab	1	2.03	.51	1.52
Jerseys pullover	1	1.79	.45	1.34
		$ 9.76	$ 2.45	$ 7.31

"R.Shankland"
(R.SHANKLAND) Lt.col.
Commandant
Canadian Detention Barracks.

27 Feb 45.

To be tried by Field General Court Martial.

"K.G.Blackader"
(K.G.BLACKADER)Brigadier
A/Comd
Cdn Rft Units

Farnborough, Hants
1 March 1945.

"A"

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA83)
40-7-95/1697 (2968)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, (fn, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E52670	Private		James Leonard	SMITH	4 CITR Att Cdn Det Bks

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 1 March 1945 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(~~s~~), and to consist of the Offrs appointed or detailed hereunder.

4. I ~~am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have stated hereon~~.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	E.N.Miller, ED		HQ CRU

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by CC		1 CARU
Lt	to be detailed by CC		1 CARU

~~WAITING MEMBER.~~

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE ADVOCATE.~~

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in			
England (Country.)	"K.G.Blackader" (Signed personally. RP 105 fn 2.)		Brigadier (Rank.)

Date 1 March 1945 A/Commanding Canadian Reinforcement Units. Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S REPORT.

I certify that No. E52670 of Pte Smith J.L. is in a FIT state of health, and FIT to undergo Trial by Court Martial.

"J.B.Jackson" Capt
Medical Officer.

Station L Field,

Date: 3 March 45

M.F.R.246

"M"

CASE OF

B-1 B-52670 Private SMITH, J.L., 4 CITR (ATT CDN DETN BKS)

The accused, sworn, states:-

Well, Sir, when I joined the Army back in 42, it was with the idea of coming over here to soldier. I came over with the 8 Royal Rifles, 2nd Bn. When I got over here, I was transferred to the Toronto Scottish Regiment. I never got along with this Regt and I was always in trouble. I finished up in Headley Detn Bks with a discharge. I was foolish I know, and there is probably no excuse for what I've done. I did not want a discharge; so when I saw a chance of escaping from detn, I went. My cat is "A-1" and I have had several courses on the Bren machine-gun when I was with the Toronto Scottish for a year. This time I would like to serve my sentence and I would like the charge of ignominy dropped and go overseas and do some soldiering as I heartily won't go back to Canada with a dishonourable discharge. I got married before I came over and I believe I have caused my wife enough trouble as it is.

PLEA IN MITIGATION OF SENTENCE.

The accused was sentenced to a long term of detn with discharge with ignominy. He had nothing to look forward to and I think it was the only human thing to do, what he did. About his civil convictions and the identification card, naturally he had to live and was apprehended by the civil authorities. He asks earnestly to be given a sentence without a dishonourable discharge so that he will be able to soldier and redeem himself before he goes back to Canada.

"H"

SUMMARY OF EVIDENCE.

Summary of Evidence in the case of E 52670 Pte. SMITH, J.L. 4 CITR., attached to Canadian Detention Barracks as a soldier undergoing sentence, a soldier of the Canadian Army Overseas.

I produce the following documents pursuant to Overseas RO 5352 which have been read over and shown to the accused, and which are attached hereto as Exhibits "A" and "B".
Exhibit "A" - MFB 375 - Certified true copy of a record of a Declaration of a Court of Inquiry.
Exhibit "B" - Certificate of Apprehension.

"KGW Doull" Lieut
(KGW DOULL) Lieut.
Officer detailed to take the Summary.

FIRST WITNESS FOR THE PROSECUTION.

B81687 - RQMS RICHARDS J., Cdn Provost Corps, Cdn Detention Barracks having been duly sworn, states:-

I held a kit inspection of the kit of E42670 Pte SMITH JL on 19 Feb 45 in his presence. The following articles were found to be deficient:-

ITEM	NO	FULL PRICE	LESS 25%	ASSESSED PRICE
Trousers denim prs	1	2.64	.66	1.98
Blouses denim	1	2.51	.63	1.88
Drawers cell short	1	.43	.11	.32
Vests cotton gym	1	.36	.09	.27
Shirts angola drab	1	2.03	.51	1.52
Jerseys pullover	1	1.79	.45	1.34
		$ 9.76	$2.45	$ 7.31

"J.Richards"
(J.RICHARDS)RQMS.

ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS:

"J.L.Smith"
(J.L.SMITH) Pte.

ACCUSED WAS CAUTIONED AS FOLLOWS:

Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

ACCUSED DECLINES TO MAKE A STATEMENT AND WISHES TO RESERVE HIS DEFENCE.

"J.L.Smith"
(J.L.SMITH) Pte.

CERTIFIED THAT RULES OF PROCEDURE 4(c),(d),(e),(f) and (g) have been complied with.

"KGW Doull" Lieut.
(KGW DOULL) Lieut.
OFFICER DETAILED TO TAKE THE SUMMARY.

STATEMENT OF THE ACCUSED AS TO WHETHER HE DESIRES TO HAVE AN OFFICER ASSIGNED BY THE CONVENING OFFICER TO REPRESENT HIM AT THE TRIAL.

Yes Sir.

"J.L.Smith"
(J.L.SMITH)Pte.

Ex "A" "EMM"

EXHIBIT "A"

RECORD of the Declaration of a Court of Inquiry assembled at Cdn Det Bks on the 9th day of October 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. E52670 Pte Smith JL, 6 CIRU attached to the Canadian Detention Barracks as a Soldier undergoing Sentence.

DECLARATION

The Court declare that No. E52670 Pte Smith JL 6 CIRU attached to Canadian Detention Barracks as a Soldier undergoing sentence.

illegally absented himself without leave from Canadian Detention Barracks at 0615 on the 12th day of September 44,

that he is still so absent, and that on the 9th Oct 44 he was deficient, and that he is still deficient of the following articles:— He has not been reported as apprehended nor reported to this Unit nor escorted to this unit and is still absent without leave this date.

ARTICLES		VALUE		Value	ARTICLES	VALUE
		Vogan Price				
Blouses denim	1	$ 2	64	$ 1.98		
Trousers denim prs	1	2	51	1.88		
Boots Ankle prs	1	5	46	4.10		
Drawers cell short	1		43	.32		
Vests cotton gym	2		72	.54		
Shirts angola drab	1	2	03	1.52		
Socks prs	1		37	.28		
Jerseys pullovers	1	1	79	1.34		
Brushes tooth	1		11	.08		
		$16	06	$12.04		

JC Fraser Lt President

GR Tomalin Lt Member

Member

Signed at Cdn Det Bks

this 9th day of Oct 19 44

Signature of Commanding Officer RS Shankland LT COL

Certified true copy "L.S.Grayson" (LS GRAYSON) Major
Signature of Officer having custody of original record

Canadian Detention Bks.

3/60B MFB 375-AFB 1/15 41(FBS/372 (9410)

"A"

No.144A
(Unruled)

METROPOLITAN POLICE.

"Y" DIVISON RICHMOND STATION.

Commanding Officer, No.6 21st November 1944.
Canadian Army Infantry Reinforcement Unit,
Report for the information of the C/O Canadian SIS Henrietta Street,
London, W.C.,

Respecting Private E.52670 James Leonard SMITH.

To ~~The Divisional Inspector.~~
(D.D.Inspector.

I certify that the person whose description is given below was arrested at Hill Street, Richmond, Surrey, at 8-45 pm, on the 20th November 1944.

Regimental particulars of soldier referred to above.	No.E.52670 Rank; Private. Name; James Leonard SMITH. Unit; No.6 Canadian Infantry Reinforcement Unit.
Description.	Age. 24. Height. 5' 11½". Complexion. Pale. Hair. Dark Brown. Eyes. Blue Marks. scars 3rd right and 2nd left fingers.
Signature of officer of police station where the above named person was taken on arrest.....	"Home".PS.29.....

EXHIBIT "B"

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B52670	Pte.	SMITH, J.L.	4 CITR, att CDB.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For	Sec15(1)	7	times.
For	Sec 8(1)	1	times.
For	Sec. 9(2)	~~1~~	times.
For	Sec.22	1	times.
For	Sec.24(2)	~~1~~	times.
For	Sec.40	19	times.

~~Date of last entry in Field Conduct Sheet~~

~~Date of entry in Field Conduct Sheet~~

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

imp WHL for 1 yr & disch ignom from H.M.Service.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for ~~imprisonment~~ beginning on the 12 July 44 day of

4. The accused has been in military custody and ~~in civil custody~~ ~~days in civil custody~~, ~~days in military custody~~, ~~days in civil prison~~, ~~days in civil prison~~, ~~days~~ days spent in hospital.

5. The present age of the accused is 23 YEARS.

6. The date of his attestation ~~joining up for military service~~ is 26 Mar 42.

7. The service which the accused is allowed to reckon is N/A

†State the military decorations (if any) held by accused.

8. The accused is in possession of†

9. ~~(If accused has served in the Territorial Army, state whether he has completed his first engagement, or the period for which he was originally attested.)~~ The accused has served satisfactorily, ~~without reduction,~~ to the present date.

	Date of Promotion.
~~In the substantive rank of~~	
~~In the war substantive rank of~~	
~~In the acting rank of~~	

Ex nil nil

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

W1 34906/1466 25,000 3/44 51-4755. Forms/B.296/War/3

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
FGCM	Field 1 Jun 44	A.A.40. 19 charges of improper possession of articles belonging to persons subject to mil.laws.	2 years detention	Escaped 14 Jun 44.
FGCM	Field, 12 Jul 44	A.A. Sec 15(1) AWL 0210 hrs 14 Jun 44 to 0930 hrs 19 Jun 45 (5 days 7 hrs 20 min) A.A.Sec 15(1) AWL 0025 hrs 25 Jun 44 to 1000 hrs 27 Jun 44 (3 days 9 hrs 35 min)	2 yrs imprisonment W.H.L. and to be discharged from HM Service with ignominy.	Escaped from Cdn Detention Barracks 12 Sep 44.
Sherriff's Court of Stirling, Dumbarton and Clackmannan.	Scotland 1943.	Theft of two waterproof coats and various other articles.	14 days imprisonment.	
Richmond Petty Sessions	30 Nov 44 Richmond England.	1. Theft of gas fire. 2. Unlawful possession of identity card.	2 most inprison. 2 mos imprison. to run consecutively.	

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 3 day of Mar 45

"L.S.Grayson" Maj.
(L.S.GRAYSON)
OFFICER HAVING CUSTODY OF REGTL.DOC.

No E52670 Name Smith JL | Sqn, Battery, or Company | Corps CIC | Date of enlistment 26 Mar 42 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAM/136 (3438)

Date of last entry in Company Conduct Sheet 28/8/42 | No and date of last drunk | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc WJ Armstrong Capt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Old sheet destroyed 8 Jun 43 - date of last entry 24/8/42. Cases of drunkenness - nil WJ ARMSTRONG Maj									
Field	7Jun43	Pte		WOAS AWL AA 15(1) 1 dy 2 hrs 30 mins Sentence to 14 days imp. by Sherriff Court of Stirling, Dumbarton and Clackmannan for theft of 2 waterproof coats and various other articles. Forf 14 dys pay under FR&I 149(1)(b)	Sgt Walker J	8 dys FP & 8 dys pay	10 Jun43	Lt.colRJ McPherson	
Stirling	28Aug43	"							
Field	13Oct 43	"		WOAS AA Sec 40 Failed to rise at reveille.	L/Cpl McDonald Sgt Salmon CE	1 dys pay & 1 dys CB	15/10/43	Maj Fuller ??????Lt	
Field	11Nov 43	"		AASec 9(2)did not go on wiring party when ordered to do so	L/C McDonald Pte Hobbs MN	7 dsy CB & 7 dys pay FR&I FR&I 149(2)	15 Nov43	MajCEFuller ??????Lt	
Field	5 Dec 43	"		AA Sec 15(1) AWL 15 hrs 30 min	Documentary	Forf 5 dys pay FR&I 149(2)	14 Dec 43	Major WS Forf1dyspay Dinnick FR&I 149(1b)	

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	9Jan44	Pte		AA Sec 15(1) AWL 10 dys 17 hrs	Documentary	14 dys CB &forf 21 dyspayFR&I 149(2)	25Jan44	Ltcol EG Johnson	forf 11 days pay FR&I 149(1)(a)
Field	31Jan44	"		Losing by neglect,etc.one bayonet one bayonet scabbard.Total value 13 shillings,9penceAA Sec 24(2).	CQMS McLean	3 dyspayFR&I 149(2)10 dys CB	5Feb44	Lt.col EG Johnson	??????????Lt
Field	16Feb44	"		AASec 15(1) AWL from 0515 hrs 16 Feb to 0240 hrs 26Feb44 (9dys 21 hrs 25 min).	Cpl McDonald Documentary	14 dys CB 27 dys pay FR&I 149(2)£2.5.7 FR&I 172(8)	29Feb44	Lt.Col EG Johnson	10 days pay FR&I 149(1)(a)
Field	1Mar & 19 Mar 44	"		1st charge AA S.c 15(1) from 1800 hrs 1 Mar 44 until appat 1345 hrs 19 Mar 44.Total absence 17 dys 19 hrs 45 min.2nd AA Sec 22 3rd AA Sec 8(1).	L/Cpl Madill Documentary	27 dys FP 27 dys pay FR&I 149(1b)	22Mar44	Lt.col EG Johnson	18 dys pay FR&I 149(1a)
	6Apr44	"		14 dys Imp for larceny					
	6 May44	"		AWL 1 day		7 days pay.			

No E52680 Name Smith JL | Sqn, Battery, or Company | Corps CIC | Date of enlistment | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 60/PAM/138 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	2 May 44	Pte		WOAS AA Sec 15(1) AWL from 2230 hrs 2 May 44 to 1850 hrs 3 May 44 TTA 20 hrs 20 min.	Documentary L/C Wilkes	Forf 5 days pay FR&I 149(2)	6 May 44	Lt.col GF Clingan	Forf 1 dys FR&I 149(1a) Tot forf 6 dys pay
Field	10 May 44	"		AA 40 - 19 charges under AA 40 improper possession of articles belonging to person subject to mil law.		2 yrs detn	1 Jun 44	FGCM	Forf 22 dys pay for time in arrest.
Field	14 Jun 44	"		AA Sec 15(1) AWL 0210 hrs 14 Jun 44 to 0930 hrs 19 Jun 44 5 days 7 hrs 20 mins	Documentary	To be imp WHL for a period of 1 yr and to be dis with ig from HM. Service.	12 Jul 44	FGCM	Forf 365 dys pay At 149(1b) FR&I complet ely concurrent wi th award in DO 1404d 13 Jun 44 forf 9 dys pay FRI
	25 Jun 44	"		AA Sec 15(1) AWL from 0025 hrs 25 Jun 44 to 1000 hrs 27 Jun 44 3 days 9 hrs 35 min.					

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
									149(1)(a) concurrent with award DO 140/44 Forf 19 dys pay art 149 (1)(c) FH&I concurrent with award in DO 140/44 Net forf - nil.
								c Major A/Capt.	
Richmond Petty SESSIONS	1944	Pte		1. Theft of gas fire. 2. Unlawful possession of Identity card.		2 mos imp on each to run consequtively.	30 Nov 1944.		

CERTIFIED TRUE COPY OF ORIGINAL MFM 6 HELD IN MY POSSESSION.

"L.S.Grayson"
(L.S. GRAYSON) MAJOR
OFFICER HAVING CUSTODY OF REGTL DOCUMENTS.
CANADIAN DETENTION BARRACKS.

I C
Enm

LIST OF WITNESSES FOR THE PROSECUTION.

B.81687 R.Q.M.S. RICHARDS.J., Cdn Provost Corps, Cdn Detention Bks.

LIST OF WITNESSES FOR THE DEFENCE.

NIL

LIST OF EXHIBITS:

Exhibit "A" - MFB 375 - Record of a Declaration of Court Of Inquiry.
Exhibit "B" - Certificate of Apprehension.

"KGW Doull" Lieut.
(KGW DOULL) Lieut.
OFFICER DETAILED TO
TAKE THE SUMMARY.

In the Field,
26 Feb 45.

PPP-67

PTE SMITH JL

09 RECORDED AT CMHQ AB 160 P.P.F. 67 CPA86 (In lieu of AFA31)
"R" 40/P & S/1698 (40/50)

FIELD GENERAL COURT-MARTIAL

4/388

Convened by Order of Brig G S N Gostling Comd "A" Gp CRU dated 30 May 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E52670	Pte		James Leonard	SMITH	6 CIRU CIC

RECEIVED
26 JUN 1944
JAG BRANCH
C.M.H.Q.

PROCEEDINGS REVIEWED Jun 28/1944
"R. Carr "Lt.
"WP"
REVIEWING OFFICER, JAG BR
C.M.H.Q.

Certified to be a true copy of original
J.A.R. Laroque Major
15 Sept 1944

PROCEEDINGS OF TRIAL.

"F" Held in the Fd in (*country*) England on (*date(s)*) 2nd Jun/ 31st May-44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

"R" A1. The President, Members, ~~Waiting Member, J.A.~~ if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

"R" A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

"R" A3. The Court is opened. The accused is ~~not~~ brought before the Court. At 0900 hours trial commences.

"R" A4. The Prosecutor produces a Medical Certificate that accused is ~~not~~ fit to undergo trial by court-martial.(1)

"R" ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by his CO.~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

"R" A5. President to accused: ~~Do you object to~~ Sgt J.F. Schultz as shorthand writer? Ans No-Sir

The Interpreter is sworn.(1) Do you object to ~~Sgt J.F. Schultz~~ as shorthand writer? Ans No-Sir
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO/SIR.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(8). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

"R" A7. The President, Members, ~~Waiting Member~~ and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	D.L. REDMAN	RA CRU
Member	Capt	L.C. ROBSON	6 CIRU
Member	Lt	J.A.R. LAROCQUE	6 CIRU
~~Waiting Member~~ Judge-Advocate	~~Capt~~		
Prosecutor	Lt	J. ROSENBLUM	6 CIRU
Defending Offr	Lt	G.E. PATEMAN	2 CIRU

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dr p 2.)

"R" A8. The accused E52670 Pte SMITH, J. L. before arraignment make(s) (no) ~~a~~ plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

"R" A9. The accused is ~~not~~ arraigned ~~on the charge~~ on all charges in the charge sheet.(1) The accused does ~~not~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

"R" A10. The Court ~~is cleared~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "D"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans.....(5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E2 of Record Form E.*
5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1) If any

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

In the case of E.52670 Pte SMITH, James Leonard, Toronto Scottish Regiment (MG) on the strength of No 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

FIRST CHARGE
SECTION 18 (4)
ARMY ACT

WHILST ON ACTIVE SERVICE, STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW,

in that he,

in the Field, on or about the 10th day of May, 1944, did steal one pencil flash-light ("penlight") the property of C.73659 Pte MORROW, J. A., Royal Canadian Ordnance Corps, a person subject to military law.

SECOND CHARGE
SECTION 40
ARMY ACT
ALTERNATIVE

WHILST ON ACTIVE SERVICE, AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

in the Field, on or about the 10th day of May 1944, was improperly in possession of one pencil flashlight ("penlight") the property of C.73659 Pte MORROW, J.A., Royal Canadian Ordnance Corps, a person subject to military law.

THIRD CHARGE
SECTION 18 (4)
ARMY ACT

WHILST ON ACTIVE SERVICE, STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW,

in that he,

in the Field, on or about the 10th day of May, 1944, did steal one Waterman's gray fountain pen the property of D129384 Pte MacIntosh, I., Royal Canadian Ordnance Corps, a person subject to military law.

FOURTH CHARGE
SECTION 40
ARMY ACT
ALTERNATIVE

WHILST ON ACTIVE SERVICE, AN ACT TO PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

in the Field, on or about the 10th day of May, 1944, was improperly in possession of one Waterman's gray fountain pen the property of D129384 Pte MacINTOSH, I., Royal Canadian Ordnance Corps, a person subject to military Law.

FIFTH CHARGE
SECTION 18 (4)
ARMY ACT

WHILST ON ACTIVE SERVICE, STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW,

in that he,

in the Field, on or about the 10th day of May, 1944, did steal one Waterman's fountain pen and pencil set in abrown leather case and one brown leather belt the property of K.50049 Pte TODD, T.G., Royal Canadian Ordnance Corps, a person subject to military law.

SIXTH CHARGE
SECTION 40
ARMY ACT
ALTERNATIVE

WHILST ON ACTIVE SERVICE, AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

in the Field, on or about the 10th day of May, 1944, was improperly in possession of one Waterman's fountain pen and pencil set in brown leather case and one brown leather belt the property of K.50049 Pte. TODD, T.G., Royal Canadian Ordnance Corps, a person subject to military law.

"DLR"

CHARGE SHEET

In the case of E.52670 Pte SMITH, James Leonard, Toronto Scottish Regiment (MG) on the strength of No 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

SEVENTH CHARGE
SECTION 18 (4)
ARMY ACT

WHILST ON ACTIVE SERVICE, STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW,

in that he,

in the Field, on or about the 10th day of May, 1944, did steal one Eclipse pen and one Eclipse pencil the property of L104968 Pte TETLOCK, L.S. Royal Canadian Ordnance Corps, a person subject to military law

EIGHTH CHARGE
SECTION 40
ARMY ACT
ALTERNATIVE

WHILST ON ACTIVE SERVICE, AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

in the Field, on or about the 10th day of May, 1944, was improperly in possession of one Eclipse pen and one Eclipse pencil the property of L104968 Pte TETLOCK, L.S., Royal Canadian Ordnance Corps, a person subject to military law.

NINTH CHARGE
SECTION 18 (4)
ARMY ACT

WHILST ON ACTIVE SERVICE, STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW,

in that he,

in the Field, on or about the 10th day of May, 1944, did steal one XXXXXXXXXXXXXXXXX Waterman's brown fountain pen the property of C.51579 Pte KLATT, E.A., Royal Canadian Ordnance Corps, a person subject to military law.

TENTH CHARGE
SECTION 40
ARMY ACT
ALTERNATIVE

WHILST ON ACTIVE SERVICE, AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

in the Field, on or about the 10th day of May, 1944, was improperly in possession of one Waterman's brown fountain pen the property of C.51579 Pte KLATT, E.A., Royal Canadian Ordnance Corps, a person subject to military law.

ELEVENTH CHARGE
SECTION 18 (4)
ARMY ACT

WHILST ON ACTIVE SERVICE, STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW,

in that he

in the Field, on or about the 10th day of May, 1944 did steal one Waltham Pocket Watch No.16628685 the property of D167473 Pte LAVOIE, J. B., Royal Canadian Ordnance Corps, a person subject to military law.

TWELFTH CHARGE
SECTION 40
ARMY ACT
ALTERNATIVE

WHILST ON ACTIVE SERVICE, AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

in the Field, on or about the 10th day of May, 1944, was improperly in possession of one Waltham Pocket Watch No.16628685 the property of D167473 Pte LAVOIE, J.B., Royal Canadian Ordnance Corps, a person subject to military law.

"DLR"

CHARGE SHEET

In the case of E52670 Pte SMITH, James Leonard, Toronto Scottish Regiment (MG) on the strength of No 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

THIRTEENTH CHARGE
SECTION 16 (4)
ARMY ACT

WHILST ON ACTIVE SERVICE, STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW,

in that he,

in the Field, on or about the 10th day of May, 1944, did steal one Thoren's ("Lucky") Lighter the property of E.48403 Pte SINOTTE, R.E. Royal Canadian Ordnance Corps, a person subject to military law.

FOURTEENTH CHARGE
SECTION 40
ARMY ACT
ALTERNATIVE

WHILST ON ACTIVE SERVICE, AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he

in the Field, on or about the 10th day of May, 1944, was improperly in possession of one Thoren's ("Lucky") Lighter the property of E.48403 Pte SINOTTE, R.E., Royal Canadian Ordnance Corps, a person subject to military law.

FIFTEENTH CHARGE
SECTION 16 (4)
ARMY ACT

WHILST ON ACTIVE SERVICE, STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW,

in that he,

in the Field, on or about the 10th day of May, 1944, did steal one Ronson Lighter the property of A106283 Pte GOETTLER, E.L., Royal Canadian Ordnance Corps, a person subject to the military law.

SIXTEENTH CHARGE
SECTION 40
ARMY ACT
ALTERNATIVE

WHILST ON ACTIVE SERVICE, AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

in the Field, on or about the 10th day of May, 1944, was improperly in possession of one Ronson Lighter the property of A106283 GOETTLER, E.L., Royal Canadian Ordnance Corps, a person subject to military law.

SEVENTEENTH CHARGE
SECTION 16 (4)
ARMY ACT

WHILST ON ACTIVE SERVICE, STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW,

in that he

in the Field, on or about the 10th day of May, 1944, did steal one Parker pen and pencil set in a black leather case and a gold locket with Hebrew lettering the property of D105180 Pte KAUFMAN, A.S., Royal Canadian Ordnance Corps, a person subject to military law.

EIGHTEENTH CHARGE
SECTION 40
ARMY ACT
ALTERNATIVE

WHILST ON ACTIVE SERVICE, AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

in the Field, on or about the 10th day of May, 1944, was improperly in possession of One Parker pen and pencil set in a black leather case and a gold locket with Hebrew lettering the property of D105180 Pte KAUFMAN, A.S., Royal Canadian Ordnance Corps, a person subject to military law.

"DLR"

CHARGE SHEET

IN THE CASE OF E.52670 Pte SMITH, James Leonard, Toronto Scottish Regiment (MG) on the strength of No 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

NINTEETH CHARGE
SECTION 18 (4)
ARMY ACT

WHILST ON ACTIVE SERVICE, STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW,

in that he,

in the field, on or about the 10th day of may, 1944, did steal one Ronson lighter and Parker pen and pencil set in a brown leather case the property of B.38668 Pte SHAPIRO, H. Royal Canadian Ordnance Corps, a person subject to military law.

TWENTIETH CHARGE
SECTION 40
ARMY ACT
ALTERNATIVE

WHILST ON ACTIVE SERVICE, AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

in the Field, on or about the 10th day of May, 1944, was improperly in possession of one Ronson Lighter and one Parker pen and pencil set in a brown leather case the property of B.39668 Pte SHAPIRO, H., Royal Canadian Ordnance Corps, a person subject to military law.

TWENTY-FIRST CHARGE
SECTION 18 (4)
ARMY ACT

WHILST ON ACTIVE SERVICE, STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW?

in that he,

in the Field, on or about the 10th day of May, 1944, did steal one Waterman's blue fountain pen the property of F.55949 Pte SMITH, E.W. Royal Canadian Ordnance Corps, a person subject to military law.

TWENTY-SECOND CHARGE
SECTION 40
ARMY ACT
ALTERNATIVE

WHILST ON ACTIVE SERVICE, AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

in the Field, on or about the 10th day of May, 1944, was improperly in possession of one Waterman's Blue fountain pen, the property of F.55949 Pte SMITH, E.W. Royal Canadian Ordnance Corps, a person subject to military law.

TWENTY-THIRD CHARGE
SECTION 18 (4)
ARMY ACT

WHILST ON ACTIVE SERVICE, STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW,

in that he,

in the Field, on or about the 10th day of May, 1944, did steal one Parker green fountain pen and pencil set in black leather case the property of H.39100 Pte ROSS,H., Royal Canadian Ordnance Corps, a person subject to military law.

TWENTY-FOURTH CHARGE
SECTION 40
ARMY ACT
ALTERNATIVE

WHILST ON ACTIVE SERVICE, AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

in the Field, on or about the 10th day of May, 1944, was improperly in possession of one Parker green fountain pen and pencil set inblack leather case the property of H.39100 Pte ROSS, H., Royal Canadian Ordnance Corps, a person subject to military law.

"DLR"

CHARGE SHEET

In the case of B.52670 Pte SMITH, James Leonard, Toronto Scottish Regiment (MG) on the strength of No 6 Canadian Reinforcement Unit, a soldier of the Canadian Army Overseas.

TWENTY-FIFTH CHARGE
SECTION 18 (4)
ARMY ACT

WHILST ON ACTIVE SERVICE, STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW,

in that he,

in the Field, on or about the 10th day of May, 1944, did steal one Parker pen and pencil set and brown leather case the property of D77943 Pte DENEAULT, L., Royal Canadian Ordnance Corps, a person subject to military law.

TWENTY-SIXTH CHARGE
SECTION 40
ARMY ACT
ALTERNATIVE

WHILST ON ACTIVE SERVICE, AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

in the Field, on or about the 10th day of May, 1944, was improperly in possession of one Parker pen and pencil set and brown leather case the property of D.77943 Pte DENEAULT, L., Royal Canadian Ordnance Corps, a person subject to military law.

TWENTY-SEVENTH CHARGE
SECTION 18 (4)
ARMY ACT

WHILST ON ACTIVE SERVICE, STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW,

in that he,

in the Field, on or about the 10th day of May, 1944, did steal one Waterman's blue fountain pen the property of B. 2659 Pte Rowley, W.F., Royal Canadian Ordnance Corps, a person subject to military law.

TWENTY-EIGHTH CHARGE
SECTION 40
ARMY ACT
ALTERNATIVE

WHILST ON ACTIVE SERVICE, AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

in the Field, on or about the 10th day of May, 1944, was improperly in possession of one Waterman's blue fountain pen the property of B. 2659 Pte. ROWLEY, W.F., Royal Canadian Ordnance Corps, a person subject to military law.

TWENTY-NINTH CHARGE
SECTION 18 (4)
ARMY ACT

WHILST ON ACTIVE SERVICE, STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW,

in that he,

in the Field, on or about the 10th day of May, 1944, did steal one Waterman's fountain pen the property of D142011 Pte HUGHES, R.A., Royal Canadian Ordnance Corps, a person subject to military law.

THIRTIETH CHARGE
SECTION 40
ARMY ACT
ALTERNATIVE

WHILST ON ACTIVE SERVICE, AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

in the Field, on or about the 10th day of May, 1944, was improperly in possession of one Waterman's fountain pen the property of D142011 Pte HUGHES, R.A., Royal Canadian Ordnance Corps, a person subject to military law.

"DLR"

CHARGE SHEET

In the case of E.82670 Pte SMITH, James Leonard, Toronto Scottish Regiment (MG) on the strength of No 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

THIRYT-FIRST CHARGE
SECTION 16 (4)
ARMY ACT

WHILST ON ACTIVE SERVICE, STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW,

in that he,

in the Field, on or about the 10th day of May, 1944, did steal one black fountain pen and pencil set in ablack leather case the property of L106793 Pte RADCLIFFE, T.A., Royal Canadian Ordnance Corps, a person subject to military law.

THIRTY-SECOND CHARGE
SECTION 40
ARMY ACT
ALTERNATIVE

WHILST ON ACTIVE SERVICE, AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

in the Field, on or about the 10th day of May, 1944, was improperly in possession of one black fountain pen and pencil set in a black leather case the property of L106793 Pte RADCLIFFE, T.A., Royal Canadian Ordnance Corps, a person subject to military law.

THIRTY-THIRD CHARGE
SECTION 16 (4)
ARMY ACT

WHILST ON ACTIVE SERVICE, STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW,

in that he,

in the field, on or about the 10th day of May, 1944, did steal one Waterman's blackfountain pen and one penknife the property of H. 8392 Pte NORRIS, W.C., ROYAL Canadian Ordnance Corps, a person subject to military law.

THIRTY-FOURTH CHARGE
SECTION 40
ARMY ACT
ALTERNATIVE

WHILST ON ACTIVE SERVICE, AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

in the Field, on or about the 10th day of May, 1944, was improperly in possession of one Waterman's black fountain pen and one penknife the property of H. 8392 Pte NORRIS, W.C., Royal Canadian Corps, a person subject to military law.

THIRTY-FIFTH CHARGE
SECTION 16 (4)
ARMY ACT

WHILST ON ACTIVE SERVICE, STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW,

in that he,

in the Field, on or about the 10th day of May, 1944, did steal one Waterman's grey fountain pen the property of B. 9230 Pte THOMAS, J.V., Royal Canadian Ordnance Corps, a person subject to military law.

THIRTY-SIXTH CHARGE
SECTION 40
ARMY ACT
ALTERNATIVE

WHILST ON ACTIVE SERVICE, AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

in the Field, on or about the 10th day of May, 1944, was improperly in possession of one Waterman's grey fountain pen the property of B. 9230 Pte THOMAS, J.V., Royal Canadian Corps, a person subject to military law.

"DLR"

CHARGE SHEET

In the case of E.52670 Pte SMITH, James Leonard, Toronto Scottish Regiment (MG) on the strength of No 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

THIRTY-SEVENTH CHARGE
SECTION 16 (4)
ARMY ACT

WHILST ON ACTIVE SERVICE, STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW,

in that he,

in the Field, on or about the 10th day of May, 1944, did steal one Waterman's pen and pencil set the property of B110305 Pte ROBERTS, C.V., Royal Canadian Ordnance Corps, a person subject to military law.

THIRTY-EIGHTH CHARGE
SECTION 40
ARMY ACT
ALTERNATIVE

WHILST ON ACTIVE SERVICE, AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he,

in the Field, on or about the 10th day of May, 1944, was improperly in possession of one Waterman's pen and pencil set the property of B110305 Pte ROBERTS, C.V., Royal Canadian Ordnance Corps, a person subject to military law.

"W.E. Morgan"
(W.E. MORGAN), Colonel
Commander
6 Cdn Inf Rft Unit

In the Field
23 May 44

To be tried by Field General Court Martial.

"G S N Gostling"

(G S N Gostling) Brig
"A" Gp Cdn Rft Units
C A (O)

31 May 44
Field

"DIR"

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E52670	Pte		James Leonard	SMITH	6 CIRU CIC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 30 May 44 endorsed by me, (~~or by an offr of my rank or upwards~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; [~~and that it is not practicable to delay the trial for reference to a superior qualified convg offr~~]
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed "GSO" or detailed hereunder.

~~I do hereby appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reason I have attached hereto.~~
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

~~I (do) appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-Col	D L REDMAN, ED	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	to be dtailed by OC 6 CIRU	
L/T	to be detailed by OC 6 CIRU	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	to be detailed by OC 6 CIRU	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (*Country.*)

"G S N Gostling" (*Signed personally. RP 105 fn 2.*) Brigadier (*Rank.*)

Date 30 May 44

(G S N Gostling)
Commanding "A" Gp Cdn Rft Units CA(O)
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (Pads (In Duplt of AFW 3121 & 3121A) (4/41)) (*See overleaf for points and notes for use on trial.*)

"DLR"

Medical Officers' Certificate
K.R. (Can) para 547

I certify that I have this morning examined No: E52670 Pte SMITH, J.L.
of 6 C.I.R.U. M & S and in my opinion he is fit to undergo
trial by Court Martial. "DLR"

Station

Date June 2 1944

??????????? Capt.
(Medical Officer)

OFFICERS UNDER INSTRUCTION

Major	L.V.	Perry	No 6 CIRU
Major	G.J.	Graham	No 6 CIRU
Major	P.M.A.	Seimard	No 6 CIRU
Major	G.M.	Dugal	No 6 CIRU
Major	W.	Lavigne	No 6 CIRU
Major	P.H.	Lamert	No 6 CIRU
Lt	C.	Charboneau	No 6 CIRU

"DLR"

F.G. C. M. IN THE CASE OF

E 52670 Pte SMITH, J.L., CIC, No 6 CIRU

2 JUNE 1944

Note D-3

EVIDENCE FOR THE PROSECUTION

1st WITNESS FOR THE PROSECUTION
C 73659 Pte MORROW, J.A., RCOC, on strength No 6 CIRU, having been duly sworn states:

I am C 73659 Pte Morrow, J.A., RCOC, on strength "G" Coy, 6 CIRU. On the night of 9 May 1944 I was living in hut 57. I went to bed about 2200 hours that night, I awoke next morning around reveille and found that I had lost my flashlight It had been in my tunic pocket hanging beside my bed. It was a silver coloured flashlight with a clip on the side of it, a pencil or pen light. (Witness is shown a flashlight) That is my flashlight, I recognize it by the colour of it, the rings on it, the clip on the side of it. (Flashlight is marked Exhibit "1" by the Court) I saw the flashlight next on the 11 May in the guard room and I identified it as mine.

DEFENDING OFFICER DECLINES TO EXAMINE THIS WITNESS

In the opinion of the Court it is unnecessary to comply with RP 83(3)

2nd WITNESS FOR THE PROSECUTION
D 129384 Pte MacINTOSH, I., RCOC, on strength No 6 CIRU, having been Duly sworn states:

I am D 129384 Pte MacIntosh, I, RCOC, on strength No 6 CIRU, in "G" Coy, on the night of the 9 May 44 I was living in hut 57. I went to bed that night at approximately 2230 hours and I woke early in the morning. In the meantime I lost a Waterman's fountain pen, it was grey coloured pen. It was in my battle dress pocket hanging on a hanger at the head of my bed. I looked for my pen in the morning and it was gone. I saw it next at 1500 hours on the 11 May at the guard room, (Witness is shown a fountain pen) That is it, it is my pen, I have a pencil that matches it (shows Court a pencil) I know it also by the red bars, it is a Waterman's pen. (Fountain pen is marked Exhibit "2" by the Court).

DEFENDING OFFICER DECLINES TO CROSS-EXAMINE THIS WITNESS

In the opinion of the Court it is necessary to comply with RP 83(3)

3rd WITNESS FOR THE PROSECUTION
K 50049 Pte TODD, T.G., RCOC, on strength of No 6 CIRU, having been duly sworn states:

I am K 50049 Pte Todd, T.G., RCOC, on strength "G" Coy, No 6 CIRU. On the night of 9 May 44 I was living in hut 50. That night I went to bed about 2200 hours. I awoke next morning early and missed a leather case containing a Waterman's pen and pencil set , the pen and pencil were brown and the case was brown leather. I lost also a brown leather belt. The leather belt had a brass buckle, I saw the belt on Pte Smith, J.L., he and Pte Shaw, the accused (Pte Smith) were in a pub in Otley at the time. The pen and pencil set I saw next in the guard room on 11 may 44. The set was sort of brown with streaks in it, my name was on the flap of the case and there was two fib marks on the barrel of the pen and pencil. (Witness is shown a pen and pencil set and continues) These are mine I recognise them by the marks on them, and the case has my name on it. (Set marked Exhibit "3" by the Court)

"DIM"

(Witness is shown brown leather belt) I see the spots on this belt, I am sure it is mine, there is also a slice underneath the buckle (belt is marked Exhibit "4" by the Court) I missed these articles between going to sleep and waking the next morning. I left my pen and pencil in my tunic pocket hanging above my bed and the belt was in the loops in my trousers and were with my tunic on the coat hanger, I know Smith J.L., I also know Pte J.E. Shaw of the RCOC, Pte Smith is in Court in this room (pointing to him). On the 10 May I saw the accused in Whittaker's public house in Otley with Pte Shaw, that was about 2100 hours. Goettler, Martin, and Hamilton were with me. I saw the accused wearing my belt (Exhibit "4") I went to the police station later. I identified the belt on the Identification parade and not in the police station. When the accused had this belt on Shaw was with him and them were sitting five or six feet from me. They were drinking and smoking, they appeared to be under the influence of liquor. They were together most of the time, they parted for a little while at one time, I thought perhaps one of them went to the latrine, that was just before the Provost came, I really did not notice where they went. I know where the lavatory is and don't think that the accused and Shaw went there together during the time I was there.

CROSS-EXAMINED BY THE DEFENDING OFFICER

I would not consider that the accused was drunk, I think that when a man is drunk he is not in his proper senses and these men seemed to be quite normal, they were feeling pretty good I guess but not drunk. They were in this pub about 15 minutes that I know of.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

4th WITNESS FOR THE PROSECUTION

L 104988 Pte TETLOCK, RCOC, on strength of No 6 CIRU, having been duly sworn states:

I am L 104988, Pte Tetlock, L.S., RCOC, on strength of "G" Coy, 6 CIRU, on 9 May 44 I was living in hut 58. I went to bed about 2146 hours that night and when I awoke next morning I had lost a black Eclipse pen and pencil set. I saw them next in the guard room on 11th May 44. I had left them in my tunic pocket hanging on the wall. It is a set and the pencil has a black spot at the bottom. The pen fills with a plunger and not a lever. (Witness is shown a pen) That is my pen. (Pen marked Exhibit "G") (Witness is shown a pencil) That is my pencil. (Pencil marked Exhibit "G" by the Court). I never had a leather case for this set. It was given to me last Christmas.

DEFENDING OFFICER DECLINES TO CROSS-EXAMINE THIS WITNESS

In the opinion of the Court it is unnecessary ot comply with RP 83(B)

5th WITNESS FOR THE PROSECUTION

C 51879 Pte KLATT, E.A., RCOC. on strength No 6 CIRU, having been Duly sworn states:

I am C 51879 Pte Klatt, E.A., RCOC, on strength "G" Coy, No 6 CIRU, on the 9 May 44 I was living in Hut 57. I went to bed about 2200 hours that night and I awoke next morning and found I had lost my Kit, that is my writing kit. My kit bag was open and I knew by that something was wrong, I had not left it open, upon looking at it I found my writing kit was gone and with it a Waterman's fountain pen, it was brown and in a black and gold card board box that was torn.

I next saw my pen and the box on the 11 May about 1330 hours or so at the identification parade. The pen had green ink in it, the box was torn though and that was about the only way I had of identifying it. (Witness is shown a box which he examines) The box is definitely mine, there are other pens I suppose, like it, but it is similar to the one I lost. (The box with pen is marked Exhibit "7" by the Court).

DEFENDING OFFICER DECLINES TO CROSS-EXAMINE THIS WITNESS

In the opinion of the Court it is unnecessary to comply with RP 83(B)

6th WITNESS FOR THE PROSECUTION

D 167473 Pte LAVOIE, J.B.? RCOC, No 6 CIRU, having been duly sworn states:

I am D 167473 Pte Lavoie, J.B, RCOC, on strength "C" Coy No 6 CIRU. On the night of 9 May I was in hut No 59. I went to bed about 2200 hours or there abouts that night. When I awoke next morning I found that I had lost my watch, it was an American Waltham pocket watch. I had left it in my battle dress tunic pocket hanging on the wall near my bed. Besides being a Waltham pocket watch I could identify it by some marks I got on it while working in Montreal in a garage, my watch fell into a grinder and made some marks on the back of my watch. I was also working with acid and there was a stain on the watch. (Witness is shown a watch) He examines it and continues - This is my watch, the marks are there on the back of it, the number is 10628885 (Watch is marked Exhibit "8" by the Court) The next time I saw the watch was about 1300 hours on the 11 May 44, it was in No 2 Guard HQUse.

DEFENDING OFFICER DECLINES TO CROSS-EXAMINE THIS WITNESS

In the opinion of the Court it is unnecessary to comply with RP 83(B)

7th WITNESS FOR THE PROSECUTION

R 46405 Pte SINOTTE, R.E., RCOC, on strength No 6 CIRU, having been duly sworn states:

I am R 46405 Pte Sinotte, R.E., RCOC, on strength "C" Coy No 6 CIRU. On the night of 9 May I was in hut 58. I went to bed about 2200 hours that night. In the morning I found that I had lost a "Lucky"lighter. It had my initials, "RS", on it. I saw it again on the 11 May 44 when we had that parade at the guard room. It is a "Lucky"lighter, it is marked on it "Lucky lighter". It was in my trousers pocket which were hanging on the wall near my bed. (Witness is shown a lighter) It is my lighter, it is a Thorens make lighter. (Lighter is marked Exhibit "9" by the Court).

DEFENDING OFFICER DECLINES TO CROSS-EXAMINE THIS WITNESS

In the opinion of the Court it is unnecessary to comply with RP 83(B)

8th WITNESS FOR THE PROSECUTION

A 102253 Pte GOETTLER, E.L., RCOC, on strength No 6 CIRU, having been duly sworn states:

I am A 102253 Pte Goettler, E.L., RCOC, on strength "C" Coy of No 6 CIRU, on the night of 9 May I was in hut 57. I went to bed about 2230 hours that night and when I woke the next morning I found I had lost a Ronson lighter. It was in my trousers pocket hanging up on the end of my bed. It had my initials on it "ELG". It was crome coloured. I saw it next the following evening, I was called to identify it at the Otley civilian police station.

"ELG"

("itness is shown a lighter) (Witness examined lighter) This is my lighter, here are my initials engraved on it. (Lighter marked Exhibit "10" by the Court). I know E 52670 Pte J. L. Smith of the Toronto Scottish, he is here in the Court, he is the man without a hat. I also know G 32231 Pte J.E. Shaw, he is not in theCourt. On the 10th May 44 I Was in Whittakers Pub in Otley and I saw the accused in the pblic bar at about 2130 hours. I was not alone, Martin, Todd and Hamilton were with me. The accused was with Pte Shaw and some other friends, they were drinking beer. I saw the accused drinking and smoking, I saw him use a lighter a time or two, one that I would presume to be a Ronson. Smith, the accused was dressed in battle dress, he was wearing a tam. He had a large brown belt with a brass buckle and in my presence Pte Todd said he was sure it was his belt. Later I left the pub and the accused and Shaw left also. I went to the wash room and when I went in I was alone, but Smith and Shaw came in a little after I did, they came in together, the were standing close to me, about a foot from me. While we were there I happened to hear Pte Smith make a statement that he intended to go to Leeds that evening and did not care if he was AWL. The remark was made by Smith to Shaw. There is no question about them being there together or this remark, it was about 2145 hours, between then and 2200 hours, this was in Whittakers pub. I later went to the police station in Otley and identified my Ronson lighter, Exhibit "10". Todd identified his pen and pencil set. There was a table with numerous articles and the accused was there,it was not a complete identification of all the articles, it was just for us to identify our own articles if they were there. The real identification parade was held the next day at 1300 hours at the guard room.

Smith was using a lighter in the pub, he was flipping it off and on and fooled around with it in such a manner that drew my attention to it, it was how he handled it, he did not appear to be accustomed to using a Ronson lighter. I saw them drinking and I would say thattheir condition showed them to be slightly under the influence of liquor, although it is pretty hard to judge a man's condition.

CROSS-EXAMINED BY THE DEFENDING OFFICER

I am not in a position to say whether they were drunk or not, I think it is pretty hard for a man to judge another man's condition. During the period we were there we had only one or two glasses of beer. His actions made me think that he had drank considerable, he appeared to be feeling pretty good, I would not say he was "high", he was not sober, he was not drunk, he was perhaps just on thevergo of being drunk.

In the opinion of the Court it is unnecessary to comply with RP 82(B)

9th WITNESS FOR THE PROSECUTION
D 105180 Pte KAUFMAN, A.S., RCOC. on strength No 6 CIRU, having been duly sworn states:

I am D 105180 Pte Kaufman, A.S., RCOC, on strength "G" Coy, No 6 CIRU. On the 9 May 44 I was living in hut No 87 and went to bed at approximately 2230 hours that night. When I awoke next morning I discovered that some personal belongings of mine were missing amongst them was Parker Pen and pencil and a gold locket which I had kept in my wallet. It had a chain and a Hebrew word engraves on it, in Hebrew. My pen and pencil set was a Parker , it was in a black leather case. (Witness is shown a pen and pencil set and continues after studying them) this is my set. (Set marked Exhibit "11" by the Court).

(Witness is shown a locket) This is my locket with the gold chain and Hebrew word on it. (Locket is marked Exhibit "12" by the Court) I had these articles in a pocket in my tunic hanging near my bed on the hook. The next morning I found the tunic laying on the floor. I saw the pen and pencil set the next day in No 2 Guard room on a identification parade. My wallet is still missing.

DEFENDING OFFICER DECLINES TO CROSS-EXAMINE THIS WITNESS

In the opinion of the Court it is unnecessary to comply with RP 83(B)

10th WITNESS FOR THE PROSECUTION
B 38668 Pte SHAPIRO, H. RCOC, on strength No 6 CIRU, having been duly sworn states:

I am B 38668, Pte Shapiro, H, RCOC. on strength "G" Coy No 6 CIRU. On the 9 May 44 I was living in hut 58 and I went to bed that evening about 2215 hours. The next morning I found that I had lost a Ronson lighter. It had my name engraved on it "H Shapiro" right across it. Also I was missing a Parker pen and pencil set in a brown leather case. Pen and pencil were mottled green colour. (Witness is shown a pen and pencil set) They are not mates, they are mine, a set wasgiven to me and I lost the pencil and replaced it with this one. (Set marked Exhibit "13" by the Court). (Witness is shown a lighter) It is my lighter, it has my name engraved on it. (Lighter marked Exhibit "14" by the Court) I left my lighter in my trousers pocket and the set in my tunic pocket hanging on my bed. I next saw my property on the identification parade on 11 May 44 at the guard room.

DEFENDING OFFICER DECLINES TO CROSS-EXAMINE THIS WITNESS

In the opinion of the Court it is unnecessary to comply with RP 83(B)

11th WITNESS FOR THE PROSECUTION
F 88949 Pte SMITH, E.W., RCOC, on strength No 6 CIRU, having been duly sworn states:

I am F 88949 Pte Smith, E.W., RCOC, on the strength "G" Coy, No 6 CIRU and on the night 9 May 44 I was in hut 60, I went to bed that night at about 2215 hours, when I awoke next morning I found my blue Waterman's fountain pen gone. It was in my tunic pocket hanging by my bed. The next time I saw the fountain pen was on the identification parade at 11 May 44 in the guard room. (Witness is shown a pen) That is my pen (Pen marked "15" by the Court)

DEFENDING OFFICER DECLINES TO CROSS-EXAMINE THIS WITNESS

In the opinion of the Court it is unnecessary to comply with RP 83(B)

12th WITNESS FOR THE PROSECUTION
E39100 Pte ROSS, E., RCOC, on strength No 6 CIRU, having been duly sworn states:

I am E 39100 Pte Ross, on strength "G" Coy, No 6 CIRU and on the night of 9 May 44 I was living on hut 59, that night I went to bed about 2200 hours. In the morning I discovered I had lost a pen and pencil. It was a parker set and I had it in a black case made from leather, it was green pen and pencil. I had left it in my tunic pocket hanging on the w all. I was at the indentification parade at the guard room on 11 May and saw it again then. (Witness is shown a pen and pencil set) This is mine. (Set marked Exhibit "16" by the Court)

DEFENDING OFFICER DECLINES TO CROSS-EXAMINE THIS WITNESS

In the opinion of the Court it is unnecessary to comply with RP 83(B)

"DIR"

13th WITNESS FOR THE PROSECUTION
B 77943 Pte DENEAULT, L., RCOC, on strength No 6 CIRU, having been duly sworn states:

I am B 77 943 Pte Deneault, L. RCOC, on strength "G" Coy, No 6 CIRU, on the night of 9 May 44 I was living in hut 59 and went to bed about 2230 hours that evening. Next morning I happened to be first one up and put on my pants. Because of being lucky at getting some English money the night before I put my hand in my pocket to see how much I had left and found it was gone, then I noticed my fountain pen and pencil was also gone. It was a maroon set in a brown leather case. I had left it in my jacket pocket and had hung it just above my bed on a nail. I saw it next on May 11th, in the guard room. (Witness is shown a set) The Clip is a little off centre, mine was like that, it is filled with green ink and was a Parker set and was a gift from Canada. (Set marked Exhibit "17" by the Court)

DEFENDING OFFICER DECLINES TO CROSS-EXAMINE THIS WITNESS

In the opinion of the Court it is unnecessary to comply with RP 83(B)

14th WITNESS FOR THE PROSECUTION
B 2659 Pte ROWLEY, W.F., RCOC, No 6 CIRU, having been duly sworn states:

I am B 2659 Pte Rowley, W.F., on strength "G" Coy, No 6 CIRU. On 9 May 44 I was living in hut No 58 on that night I went to bed about 2200 hours. In the morning I found out that I had lost my blue Waterman's fountain pen. It was in my battle dress blouse hanging on the peg near my bed. The next time I saw it was while I was on an identification parade on the 11 May 44. (Witness is shown a pen and pencil set, he looks at it and writes with it) It is my pen. (Set marked is marked Exhibit "18" by the Court)

DEFENDING OFFICER DECLINES TO EXAMINE THIS WITNESS

In the opinion of the Court it is unnecessary to comply with RP 83(B)

15th WITNESS FOR THE PROSECUTION
D 142011 Pte HUGHES, H.A. RCOC, on strength No 6 CIRU, having been duly sworn states:

I am D 142011 Pte Hughes, H.A. RCOC, on strength "G" Coy No 6 CIRU. On the night of 9 May 44 I was in hut 57, and went to bed that night about 2230 hours. The next morning I discovered I had lost a fountain pen, it was a green one with strip es and a red nib, it was a Waterman's pen. I had put it in my tunic pocket and hung the tunic near my bed. I saw it again next at the guard room No 2 Camp, 6 CIRU (Witness is shown a pen) It is mine Sir. (Pen marked Exhibit "19" by the Court).

DEFENDING OFFICER DECLINES TO CROSS EXAMINE THIS WITNESS

In the opinion of the Court it is unnecessary to comply with RP 83(B)

16th WITNESS FOR THE PROSECUTION
D 106793 Pte RADCLIFFE, T.A., RCOC, on strength No 6 CIRU, having been duly sworn states:

I am D 106793 Pte RADCLIFFE, T.A., RCOC, on strength "G" Coy No 6 CIRU. On the night of 9 May 44 I was in hut No 58 and went to bed that night at about 2200 hours. Next morning I discovered my pen and pencil set were gone out of my tunic pocket. It was a Munroe set in a brown leather case, it was a black set. My tunic was hanging up at the head of my bed. I saw them next in the afternoon of the 11 May 44, I identified them on that parade. My pencil has a scratch around it where it was broken, the pen was all right. The case had the name "Munroe" written on it. (Set marked Exhibit "20" by the Court).

DEFENDING OFFICER DECLINES TO CROSS EXAMINE THIS WITNESS
In the opinion of the Court it is unnecessary to comply with RP 83(B)

17th WITNESS FOR THE PROSECUTION
H 8392 Pte MORRIS, W.C., RCOC, on strength No 6 CIRU, having been duly sworn states:

I am H 8392 Pte Morris, W.C., RCOC, on strength "G" Coy 6 CIRU, on the 9 May 44 I was living in hut 58 and that night I went to bed about 2230 hours. In the morning when I awoke I discovered I had lost a Waterman's fountain pen it had been in my tunic, the pen, I also found that I had lost a jack knife, which was in my trousers pocket. The pen was black, the knife was silver. I saw them next on the 11 May at the identification parade, the pen was burned on one end. (Witness is shown a fountain pen) This is my pen (Pen is marked Exhibit "21" by the Court) (Witness is shown a knife) This is my jack knife, it had a covering on but I took it off. (Knife is marked Exhibit "22" by the Court)

DEFENDING OFFICER DECLINES TO CROSS EXAMINE THIS WITNESS

In the opinion of the Court it is unnecessary to comply with RP 83(B)

18th WITNESS FOR THE PROSECUTION
B 9250 Pte THOMAS, W.V., RCOC, on strength No 6 CIRU, having been duly sworn states:

I am B 9250 Pte Thomas, W.V., RCOC, on strength "G" Coy, No 6 CIRU, on the 9 May 44 I was living in hut 59, on that day I and a group of Ordnance soldiers had just come from Canada and were tired, most of the boys went to bed early but I had a late pass and it was around 2350 hours when I went to bed I did not turn on the lights but undressed and went to bed in the dark. It was about a quarter of an hour before I went to sleep and when I awoke next morning I found I had lost a fountain pen, it was a Waterman's foun tain pen, and grey. I had been using green ink in it. It had been in my breast pocket in my tunic and was lying on my bed. (Witness is shown a fountain pen) This is my pen. I saw it next at No 2 Guard Room on the 11 May when I was called to identify it. (Pen marked Exhibit "23" by the Court).

DEFENDING OFFICER DECLINES TO CROSS EXAMINE THIS WITNESS

In the opinion of the Court it is unnecessary to comply with RP 83(B)

19th WITNESS FOR THE PROSECUTION
B 110305 Pte ROBERTS, C.J. RCOC, on strength No 6 CIRU, having been duly sworn states:

(DEFENDING OFFICER STATES HE HAS NO OBJECTION TO THIS WITNESS BEING CALLED ALTHOUGH HE WAS NOT INCLUDED IN THE SUMMARY)

"DLR"

I am F 110305 Pte Roberts, C.J., RCOC, on strength "G" Coy, No 6 CIRU, on the night of 9 May 44 I was sleeping in hut 58, I went to bed at about 2230 hours that night, and when I got up the next morning I found I had lost a pen and pencil set, it was a Waterman's set and brown coloured with streaks in it, there was no case. I kept them in my tunic pocket hanging on the wall near my bed. The next time I saw the set was on the 11 May in the guard room on the identification parade. I has a black end on the pencil. (Witness is shown a pen and pencil) That is my pen and my pencil. (Pen and pencil marked Exhibit "24" by the Court)

DEFENDING OFFICER DECLINES TO CROSS EXAMINE THIS WITNESS

In the opinion of the Court it is unnecessary to comply with RP 83 (8)

20th WITNESS FOR THE PROSECUTION

C 9731 Pte HARTIN, W.E., RCOC, on strength of 6 CIRU, having been duly sworn states:

I am C 9731 Pte Hartin, W.E., RCOC, on strength "G" Coy, No 6 CIRU. I know Pte J.L. Smith, Toronto Scottish, he is here in the Court (pointing to the accused) I also know Pte J.E. Shaw, he is not in the Court at the present time. On the evening of May 10th, 44, I was in Otley, in Whittaker's public house with Grainger. I saw Pte Shaw and Smith there, they were together and about five or six feet away having a glass of beer. We saw the accused stand up and I noticed a belt he was wearing, I noticed the belt was the same as my own, and one of the boys had lost one that morning. Smith nor Shaw did not come over with my draft, there was three belts on the draft, Owens, Todd and myself had them. We saw the accused wearing this belt, or at least one that looked like the one that Todd had lost. He got up and gave one of the chaps a light, he lighted it with a Ronson which he then held up and asked if anyone wanted to buy a lighter. The bartender came in and the accused asked him if he knew of anyone who wanted to buy a pen and pencil set. I went out and when I came back Smith and Shaw were still there. After that Goettler and some more of the boys came in. Smith and Shaw later got up and went out to the latrine, I think they went out together and were in the latrine together. The belt was still on the accused when they came back, Todd saw it and indentified it in my presence. The accused and Shaw later left the pub and Smith was still wearing the belt, I could see it. After the left the pub they were picked up and put into the police station wagon. I did not go with them. (Witness is shown Ex "24") I can identify this belt as the belt that the accused was wearing that night, it is Todd's belt. The accused and Shaw were drinking beer, but I would not say they were drunk. They were feeling pretty good, but not drunk. I don't know how many Provost there were, but they took them away in a station wagon. At the time I saw the accused using the lighter I was about six feet away from him.

CROSS/EXAMINED BY THE DEFENDING OFFICER

I saw the accused in the pub about a half an hour while I was there, They did not appear to be drinking heavily that I noticed I did not pay much attention to their drinking, I did not see him offer a pen and pencil set for sale, but I heard him offer or ask the bar tender if he knew where he could sell it, or if anyone wanted it. I did not actually see a pen and pencil set in his, the accused hand.

In the opinion of the Court it is not necessary ot comply with RP 83(8)

21st WITNESS FOR THE PROSECUTION
C 53938 L/Cpl HORTON, H. E., C Pro C, att to No 6 CIRU, having been duly sworn states:

I am C 53938 L/Cpl Horton, H.E., No 7 Coy, C Pro C, att to No 6 CIRU. I know Pte J. E. Shaw, he is not in the Court I also know Pte Smith, J.L., of the Toronto Scottish, the accused. On the 10 May 44 I was on duty in my capacity as a Provost in Otley, accompanied by L/Cpl MacLeod, also of the Cdn Provost Corps. At 2145 hours I was proceeding along the street in front of Whittaker's pub when we saw a crowd in front of this pub. At that time I am not sure whether the station wagon was there or whether it came shortly after. There was a complaint made which caused Pte Smith and Shaw to be detained and taken to the police station. I took Pte Smith to the car and I sat in the car with him. L/Cpl MacLeod brought Pte Shaw over to the car later and put him in. With Smith and Shaw in the car we proceeded to the civilian police station in Otley. I was seated in the center seat on the left hand side with Pte Shaw on the right, Smith was in the rear seat alone. Cpl McConnel was alone in the fron t seat. McConnel was in command of the car, four people and only four people were in the car when we went to the police station and there were only four of us there when we arrived at the police station. When we arrived at the police station we waited for L/Cpl MacLeod to come. While we were waiting for L/Cpl MacLeod I saw Pte Shaw taking something from his tunic and putting it behind the seat, or in between the seat and the back cushion. I could hear Pte Smith moving around in the back seat. Cpl McConnel was on a roving patrol and has charge of the vehicle, he was on duty and saw this fuss at the pub and stopped evidently about the same time that MacLeod and I were becoming interested in Smith and Shaw.

In front of the Police station L/Cpl MacLeod came up to the car and we, the accused, Shaw and myself, got out of the station wagon and went into the office with L/Cpl MacLeod while Cpl McConnel stayed behind. When we got into the police station the accused was asked to empty his pockets. McConnel later came into the station and laid a black sock on the table with some articles in it. The sock was opened at the top and the articles were taken out. They were pens and pencils and various articles. They were also laid on the table, but separate from the quantity which had been in the black sock. This belt similar to Exhibit "4". I do not know what was among the accused personal effects, I did not study them very closely. Shaw, in the presence of the accused took something from inside his tunic and put it behind his seat or behind him or made motions as if he were doing so. The accused was also moving about in the rear seat, the car was not in motion and no one else was moving in it.

I believe the accused had been drinking, he was in the back seat and I di not get a chance to smell his breath.

This station wagon is kept outside our billets and there is not always a guard on it.

CROSS-EXAMINED BY THE DEFENDING OFFICER

I was sitting in the centre seat beside Shaw and saw him take something out of his tunic and put it behind the seat cushion and between the back cushion and the seat and push it down. The accused was in the back seat, the accused was doing the same thing that I saw Shaw doing and the accused could see

"DLL"

Shaw doing this, Shaw was sitting right in front of him, it is perhaps possible that the accused did not see him.

I said I was under the belief that the accused had been drinking but I do not think he was drunk, I would not say that Shaw was drunk, I do not believe that either one of them were drunk. My idea of a man drunk is when he can not stand up and move around and I have seen some drunks. As long as a man can conduct himself and walk around straight I don't think he is drunk and unless he gives me any trouble I don't bother him. Shaw asked me to open the windown because he was going to be sick, he thought he was going to be sick.

In the opinion of the Court it is unnecessary to comply with RP 83(B)

22nd WITNESS FOR THE PROSECUTION
C 18420 Cpl McConnell, J.M., C Pro C, att to No 6 CIRU, having been duly sworn states:

I am C 18420 Cpl McConnell, J.M., No 7 Provost Coy, attached to No 6 Cnd Inf Rft Unit. On the 10 May I was on roving patrol in Otley in my duty as a Provost. I know Pte Shaw, he is not in the Court this morning, I also know Pte Smith, he is in the Court (pointing to the accused) On the 10th May at about 2145 hours I saw the accused, I had the occasion to escort the accused to the police station that night, he was with Shaw, I was accompanied on that escort by L/Cpl Horton, also of the Provost Corps. L/Cpl MacLeod was at the scene where these two men were delivered to me, but he walked to the police station while the accused and Shaw and L/Cpl Horton went in the station wagon with me. In the station wagon that I was driving, I was alone in the front seat, L/Cpl Horton was in the centre seat and the accused was in the rear seat. Shaw was in the centre seat with L/Cpl Horton. We stopped in front of the police station for a few minutes and I noticed while we were there that Pte Shaw and Pte Smith were moving around as if they were trying to place something behind the cushions of the seats. The accused had his hands placed behind him and was moving from side to side, he seemed to be forcing something down between the cushions of the seat and the back and kept bending over from one side to the other. L/Cpl MacLeod came up and he and L/Cpl Horton escorted the accused and Shaw into the police station. As soon as they left the car I searched the seats. Behind the seat where Smith was sitting I found the articles of which I have a list (Witness refers to list and reads) -

one Parker pen and pencil set, green and white
one Parker pen and pencil set, green
one black pen and pencil set, with name "Munroe" on case in gold letters

one Parker pen and pencil set, green
one Waterman's pen and pencil set, blue — one Parker pen & pencil set, red
one Ronson lighter, initials, "ELO"
one Waltham watch, 15 jewels, No 10628685
one brown leather belt

I found these articles behind the back seat where the accused had been sitting. (Witness examines Exhibit "4") that is the belt I found. (Exhibit "8") That is the watch, (Ronson lighter) That is the lighter I found there behind the accused seat. I also found some articles behind Shaw's seat. They were in a black cotton sock. The sock was similar to this sock (sock marked Exhibit "25" for identification only). I made a list of the contents that were in the sock and will refer to it (witness refers to list and reads)

two black Waterman's pens
two brown Waterman's pens
one black Waterman's pen
one black Eclipse pen
one grey and red Waterman's pen

one grey and purple Waterman's pen
one black Eclipse pencil
one brown Waterman's pen and pencil
one Thoren's lighter, initials "RS"
one pen flash-light
one pen knife with two blades, metal
one gold locket and chain

(Witness examines Exhibit "9") This is the Thoren's lighter (Exhibit "12") this the gold locket that I found behind Shaw's seat in the cotton sock. (Exhibit "22") that is the pen knife that I found in the sock. (Witness examines all the exhibits "1" to "25") With the exception of "14" I would say that the Exhibits "1" to "25" are the same articles as I found behind the accused and Shaw 's seats in the station wagon on the 10 May while it was parked in front of the Otley Police Station. I took these articles into the police station and turned them over to L/Cpl MacLeod. The accused and Shaw were present and saw me hand them over.

I would say that the accused and Shaw had been drinking.

Besides these articles I found one RASC brooch, and one small medal that were not identified at the identification parade and for that reason are not produced here, they are now in the hands of the Provost. I did not think that they had any reference to this case.

CROSS-EXAMINATION BY THE DEFENDING OFFICER

Q You say that the accused was drinking, did you smell his breath?
A I did not smell his breath, but he was talking a lot and his speech seemed a bit thick, and he just didn't seem to care what happened, he appeared to be feeling good and reckless.

In the opinion of the Court it is not necessary to comply with RP 93(3)

23rd WITNESS FOR THE PROSECUTION
F 58286 L/Cpl MacLeod, N.S., C Pro C, att No 6 CIRU, having been duly sworn states:

I am F 58286 L/Cpl MacLeod, N.S. No 7 Cdn Prov Coy, attached to No 6 CIRU. I know E 58670 Pte Smith, J.L., he is in Court, that is he (pointing to the accused) I also know Pte Shaw, J.E., he is not in the Court. On the 10 May 1944, at 2145 hours I was doing patrol duty, accompanied by L/Cpl Horton, we were on duty as Provost in Otley. I went, at that time, to Whittaker's public house and I saw the accused and Pte Shaw at that hour. They were in the street in front of of the pub. I spoke to Shaw and as a result of my conversation I detained Pte Shaw and placed him in the station wagon, L/Cpl Horton detained the accused and placed him in the station wagon also. When Shaw entered the station wagon I noticed a bulge in the tunic, and the bulge was not there when he emerged from the car, at the police station. The station wagon left from the pub and went to the police station in Otley, I walked down the street to the traffic lights and back to the police station. The personnel were seated in the car in this manner - The accused was in the back seat by himself, Pte Shaw in the centre seat on the right hand side, L/Cpl Horton in the centre seat beside Shaw on the left hand side, and in the front seat alone was Cpl McConnell, I came up to the station wagon, which was then immobilized in front of the police station, and when I arrived the people were all in the station wagon and no one else. I opened the door on the left hand side of the car and ordered them to get out, I walked to drivers seat and asked Cpl McConnel to search the car after we left, and then I and the two soldier and L/Cpl Horton proceeded into the police station.

"DIA"

When we got inside and into the duty room I said "soldier, you have asked me why you have been held, well you are believed to be in possession of stolen property, empty your pockets." Amongst his personal effect was a lighter with "H Shapiro" engraved on it in gold letter, it was the lighter identified in my presence by Pte Shapiro on the identification parade in No 2 Guard Room. (Witness is shown a lighter) Yes that is the lighter (which had been marked Exhibit "14") I made a list of the personal effects of the accused and of Shaw's, I made this list at the time I checked the stuff, I wrote down each article and had them sign for it. I have the list here, (Witness produces a list in the case of Pte Shaw, and read it to the Court) (List markax Exhibit "26" by the Court). I also made a list of of the accused property, this is the list and it is signed by the accused in my presence. (Witness produces a list and reads to the Court) List signed by the accused marked Exhibit "27" by the Court).

After leaving Cpl McConnel in the car I saw him again inside the police station, he entered the police station with a black sock that looked as if it was full of something which he handed to me. This black sock is similar to the one marked Exhibit "25" for identification. He brought in a quantity of articles in this sock which I found, after emptying on the table, to be various articles such as fountain pens, ever-sharp pencils cigarette lighters etc. I made a list of the contents of the sock, I have the list here. Besides the stuff in the sock Cpl McConnell handed me a quantity of loose articles of which I also made a list and kept it separate from the things in the sock. The articles were then put under lock and key, still separated, they remained under lock and key until I took them to the identification parade, which was held at No 2 Guard Room. At the identification parade, in the presence of the Sgt Major, of the Provost Corps and myself the owners of the property were paraded in to identify their articles.

(Witness produces lists and reads) The following soldiers identified the following articles which were in the cotton sock -

Pte Hughes	identifies	one Waterman's pen, green strips
Pte Kaufman	"	gold chain and locket with Hebrew letter
Pte Minotte	"	Thoren's "Lucky Lighter" initials "HS"
Pte MacIntosh	"	Waterman's pen, blue
Pte Smith	"	Waterman's pen, blue
Pte Roberts	"	Waterman's pen and pencil set, brown
Pte Thomas	"	Pen, light grey
Pte Rowley	"	Waterman's pen, blue
Pte Norris	"	Waterman's pen, black
		Pen Knife, two blades, silver coloured
Pte Tetlock	"	Eclipse pen and pencil set, black
Pte Marrow	"	Pencil flashlight, with clip on side
Pte Platt	"	Waterman's pen, brown with gold clip

I also have the list of the articles which were found in the accused seat in the rear of the station wagon. I saw them identified by the following soldiers, these articles were the ones that Cpl McConnel handed to me loose,-

Pte Ross	Identifies	Parker Pen and Pencil set, green ink
Pte Denotte	"	Parker pen and pencil set, blue and black
Pte Todd	"	Leather belt, brown with brass buckle
Pte Gottlieb	"	Waterman's pen and pencil set, brown
Pte Radcliffe	"	Black pen and pencil set, in leather case with "Monroe" written on the cover
	"	Black pen and pencil set, Parker
Pte Kaufman	"	Waltham Watch, No 10628695
Pte Savoie	"	Ronson lighter, and Parker pen and pencil
Pte Shapiro	"	set, mottled green coloured.

Todd — Ronson Lighter, initialed engraved on it

Pte Shapiro had already identified the lighter at the police station.
I did not see the accused drinking that night, but his breath smelled of alcohol, he walked straight, but acted as though he were feeling pretty good. I can not say he was drunk.

CROSS-EXAMINED BY THE DEFENDING OFFICER

Q Did the accused appear to have a Devil may care attitude as though he didn't give a dam, sort of in high spirits?
A I do not think he took that attitude, very few men that I've ever handled have adopted that attitude, he was talkative in that he was talking quite a lot, I do not recall any of the things he said.
I saw the personal effects of the accused in the police station and there was two lighters among them. I don't know just how to describe the other one, it was one that the back bends back on it, I believe, I do not know the make of it, it was a brass coloured lighter, I didn't pay much attention to it, one lighter was obviously a much better machine and it was identified and therefore supposedly someone else's property, that was what I was interested in. This other lighter was believed to be his and left it with his personal belongings, I have a receipt for it as his personal property. I am not sure that I could recognize it if I saw it again. (Defending officer produces a lighter, and shows it to the witness) I am not sure that is the lighter. (Defending officer offered this lighter as evidence, the President ruled that it might be admitted and marked it Exhibit "23" for identification only) I can not identify that lighter as there are no outstanding marks on it and I did not look at it for identification purposes. At the time the accused turned over his personal belongings to me I took them and got his signature for them and turned them over to the guard commander for safe keeping. At the time of the identification parade Pte Shapiro stated that he had lost a lighter, a Ronson, with the name engraved on it, I had noticed it at the police station and had never thought it was the property of the accused, but I had no reason to doubt whether it was his property of not.

In the opinion of the Court it is unnecessary to comply with KP 83(2), PROSECUTOR STATES THAT HE WAS NOT CALLING L/CPL WELSH OR LT MacCLYMONT ALTHOUGH THEY HAD GIVEN EVIDENCE ON THE SUMMARY.

DEFENDING OFFICER STATES THAT HE DOES NOT REQUIRE THE PRESENCE OF THESE TWO WITNESSES FOR CROSS-EXAMINATION.

CASE FOR THE PROSECUTION IS CLOSED

DEFENDING OFFICER ASKED FOR AN ADJOURNMENT UNTIL AFTER LUNCH FOR THE PREPARATION OF HIS DEFENCE. UPON QUESTION BY THE PROSECUTOR THE DEFENDING OFFICER STATED THAT NEITHER OF THE ACCUSED EVER SAW EACH OTHER, THEY HAD NOT DONE SO SINCE THE BEGINNING OF THE TRIAL AND WOULD NOT DO SO.

TRIAL IS ADJOURNED UNTIL 1315 HOURS.

COURT IS RE-ASSEMBLED AT 1315 HOURS.

ACCUSED DESIRES TO GIVE EVIDENCE ON OATH.

"DLH"

EVIDENCE FOR THE DEFENCE NOTE D-5

1st WITNESS FOR THE DEFENCE the Accused (E52670 Pte SMITH, J.L.) on strength No 6 CIRU, having been duly sworn states;

On the evening of 10 May I was at the Royal Oak public house. I was drinking and had occasion to go outside to the lavatory where I offered a Ronson lighter for 12/- and I bought it. The chap who sold it to me was just an ordinary soldier, I Can't describe him positively, he was slightly shorter than I am, he was wearing a black beret with no badge. I do not know what unit he belonged to , he was just a Canadian Soldier and I know nothing further about him. I bought the lighter because it was cheap for 12/- and I saw a chance of making a bit money. I did not think there was anything wrong with the transaction, I never thought it might be stolen. I did not examine the lighter, just looked at it, it was a Ronson lighter and I put it in my pocket, I noticed it had a name engraved on the side of it. After I bought that lighter we left that pub and I recall us going pub crawling and ended up at the pub where were picked up, at Whittaker's public house. I had that lighter in the pub and when I went to the police station it was among my personal belongings. I had tried to sell it in Whittakers pub, I asked if there was anyone there who would like to buy a lighter, I addressed my remark to no one in particular, no one offered to buy it so I put it back into my pocket. It was taken out of my pocket with my personal effects at the police station, when I emptied my pockets there on the table. A L/Cpl of the Provost Corps picked it up and turned away with it and I asked him to put it back with my personal belongings. I could identify this lighter, it has a name written on it and is a Ronson lighter(witness looks at Ex "14") that is the lighter I bought. This was not the only lighter in my possession. I had a lighter of my own, a utility affair that came from Manchester, it was a brass lighter and about 2½ inches long and maybe an inch wide, and the cover of it had to be put on a certain way. The top came off to light it was altogether a simple affair. (Witness is shown lighter marked Ex "28" for identification) That is my lighter. (Lighter previously marked Ex "28" for identification is now marked Exhibit "28" by the court and accepted in evidence) That night I loaned £2-10/- to Pte Shaw in the Royal Oak pub. He did not tell me why he wanted the money, he did not tell me and I did not ask him. I have known Shaw approximately five or six days. We had chummed around for a few days and he had shown me his pay book and I knew he was good for the money. A little after Shaw borrowed the money from me he came back into the bar. He had a black sock full of something with a belt wrapped around the outside of it. I did not examine any of the articles at that time. Shaw asked me if I would take some of the articles that were in the sock and carry them for him. I never gave the transaction a thought at the time, I was feeling pretty good, I had been drinking since 1130 hours that day and I had done it pretty regular until the pubs closed in the afternoon. I started again after they opened at 1800 hours and had very little supper. I would not like to say that I knew exactly what I was doing and I would not like to say that I did not know what I was doing. These articles that I was carrying for Shaw in my pockets were merely in my pockets to make carrying them easier. We left the Royal Oak and went several other pubs and when we left the last pub which was Whittaker's the Provost outside arrested me and took me over to the police station in their car. I asked at the time of getting into the station wagon why I was being detained and I was given no answer. I decided that the articles was what they were after and I tried to hide them under the seat of the station wagon.

I did not know what to think about the whole thing. At the time I just thought that having that stuff on me was bad and knowing that the Provost Corps did not give many chances I did not want to take any chances. It occurred to me in the station wagon that the stuff might have been stolen and I did not want to be found with it. I did not stow the Shapiro lighter away because I had bought it and I never thought anything different about it except that some soldier was hard up and wanted to sell it.

There was some one in the seat with me, that is in the back seat, it was a L/Cpl from the Provost Corps beside me and leaning to the front seat. I was in the rear seat before the car was in motion. After that I am not sure whether he stayed beside me or not. I was not very interested in whether he was there or not, it may have been my condition from drinking, it is very possible that it was. My own purpose of being out that night was for a good time, to get a few drinks and get back to camp, I was having a fine time alright until the Provost picked me up. My attitude was one of having a good time and I never thought of anything but just having a few drinks and a good time in general.

CROSS-EXAMINATION BY THE PROSECUTOR

It was Exhibit "4", the leather belt that I had around my waist in the pub, I had received it from Shaw among the articles which were handed to me by him. There was also a gold watch Exhibit "6", I would not like to say that was the watch, but it was a watch similar to that. There is also a Ronson lighter amongst the exhibits that could have been amongst those articles I was carrying, but I am not sure. I heard the witness's evidence about finding articles behind my seat and that of Shaw, he is not wrong when he says they were put there by me and L/Cpl MacLeod is right whenhe says they were placed by me and Shaw and they were in a sock, I believe the sock is the same one, it looks like the sock we had. The lighter that was identified by Pte Shapiro is the lighter that I purchased from bank corps man, Exhibit "14". When I was asked by Shaw to loan him £2-10/ I did not consider it unusual or an out of the way request, although he had not borrowed that much he had borrowed money from me before. Shaw had loaned me money previously and I had paid it back and I had not thought that this was imposing or unusual. When I say he loaned me money it was actually an evening out with him on his money, he footed the bill, and I squared with him later. At the time I did not know the purpose for which he borrowed the money but when came back he told me he had bought the stuff and that he had wanted my money to buy the stuff. He said he had bought some stuff and he wanted my money to help him pay for it, and now he asked me if I would help him carry it for him, it was too bulky of him to manage. The articles he handed over to me were the same as I pushed behind the seat and were the same articles which have been identified in this case. It was not my understanding that if I found buyer I could sell them, there was no understanding at all. I was to carry them for him and when he sold them he was to pay me back the money he borrowed and would probably let me have some more for loaning it to him. There was not any any talk of sharing the profits, he said he would let me have some of the profits. I am not sure that I asked the bar tender where I could sell a pen and pencil set. Aside from these articles I had no pen and pencil set that I could sell. I was to hold the articles until he asked for them, they were his.

When I purchased the Shapiro lighter I was not in a condition to decipher the name on it, I was not afraid that it would interfere with the salebility of it, it was just that I didn't bother or couldn't if I had tried.

"PLR"

The only time that I saw the articles that were in the sock was at the police station when they were emptied out on the table. I had looked into the sock, but could not tell very well what was in it or how much. I did not estimate the worth of these articles and never came to any conclusion as to the sort of a bargain that Shaw had made by paying £7 or whatever it was he had paid for them, I really was not thinking along the lines of business I was out having a good time and was having it, I really began to think seriously of these articles when I was in the station wagon, I do not know whether believes that I would have them think that I am trying to get them to believe that I was so drunk that night that I didn't know what I was doing or not, but being picked up by the Provost sort of shook me and brought me around to where I was thinking again.

I would say it was the red headed corporal of the Provost that sat beside me in the station wagon, but it is quite possible that he moved to sit beside Shaw in the centre seat.

While I was in Whittaker's pub I went to latrine a few times but always alone, and at no time with Shaw, we had our beer on the table and did not want to leave it, and in spite of what the witnesses have said here today I never went inside the lavatory with Shaw in Whittaker's pub that night.

I could identify the man who sold me the lighter if I were to see him again, Shaw did not describe the man from whom he bought the stuff he had, he just came and told me that he had purchased some stuff from a fellow outside, he later told me that it was a tank corps man wearing a beret, and I never said anything about it might be the same man who sold me the lighter. I do not know to this day just what sort of a looking chap it was that sold Shaw the stuff in the black sock, and I know nothing the fellow, I did not hear Shaw's evidence and do not know what he told the Court.

Q Will you tell the Court any further false evidence that has been stated or given by other witnesses during your trial?

A I hardly recall anything further that I've heard that was incorrect.

RE-EXAMINED BY THE DEFENDING OFFICER

Q The Prosecutor has spoken to you about the talk of you getting your share back out of this stuff at the time they were handed over to you, in this case who was doing the talking about giving you any further money besides your own that Shaw had borrowed from you?

A Shaw told me that he would give me back the money he had borrowed from and me and let me have a bit extra for having loaned it to him. I made no further comment, I took it just as he suggested and let it go at that.

2nd WITNESS FOR THE DEFENCE

K EVANS Pte MILES, W.L., No 6 CIRU, having been duly Sworn states:

On the evening of the 10 May I saw the accused in the Royal Oak pub. I was in the latrine and was offered a cigarette lighter which I did not buy, and at that time Smith walked into the latrine as I was getting ready to leave and enquired about the the lighter and asked the price of it, I left at this time. He was getting his money out and was in the act of buying it when I went out. I heard no conversation that I could recite. There was something said about the price, it was offered to me for 15 shillings and came down to 12 bob. It was offered to Smith for 12 or 12 and 6. The man that was offering this lighter for sale would be about 20 years old fairly short, fair complexion. He was wearing a tank corps

beret and he was quite young, I do not know whether he had a badge on or flashes, I don't believe he did, he was just a soldier in the armoured corps. I stayed there a short while and left. I did not see the accused actually buy the lighter or put it in his pocket. I saw the accused again about 2000 hours outside, I asked him for a couple of bob until pay day, and he brought some money out of his pocket and picked out four Canadian quarters which he gave me and I spent them as shillings.

I know that the lighter was Ronson and knew it was silver plated, I did not look at it closely, it seemed like a fairly new one and in good condition.

I had a glass of beer with the accused and borrowed some money from him then I left Pte Smith and Shaw, I did not see him with the lighter and I did not know whether he had it or not.
(Witness is shown a lighter)
OBJECTION BY THE PROSECUTOR
OBJECTION OVER-RULED
It was this style of lighter and also the same as that one on the table is the same, (witness is shown another lighter, Ex "10") it could have been either of these lighters, they are exactly alike.

CROSS-EXAMINED BY THE PROSECUTOR

I had been granted the chance to identify this soldier by going through the company, I went up and down the files and I could not see anyone there like him.

I cannot identify this lighter, it could have been any Ronson lighter. It is true that there might have been hundreds or thousands like it, there was nothing on the lighter to make me remember it that I saw. I do not know whether the accused bought the lighter, I said "he might have bought it" and if he did buy I admit that he might already have sold it in any other pub and got another.

In the opinion of the Court it is unnecessary to comply with KR 83(B)

DEFENDING OFFICER READ HIS FINAL ADDRESS ON THE FINDING, IT IS ATTACHED

PROSECUTOR READ HIS FINAL ADDRESS ON THE FINDING, IT IS ATTACHED

COURT IS CLOSED TO CONSIDER THE FINDING

COURT IS RE-OPENED

NOTE E-3

PLEA IN MITIGATION

Mr President and Members of the Court

The accused, in his private life, before joining the Army for this war has had rather an unfortunate life, He was not had normal up bringing that a lad of today usually recieves. He lost his father at the age of eight and his mother at the age of 13. There after he lived for a number of years in boarding schools, the conditions in these boarding schools were such that it amounted to confinement, they were not allowed outside this school or to mix with other people as the young likes to do. From [redacted] went to the mining district, the Larund gold mining district. His life there was with people of a very rough and ready character, towns that in a lot of

"DLR"

cases have their own law. Where people do things and assess what the law is and apply it in their own way. Living under these rather rough, semi lawless people he had to fend for himself. This did not give him a proper view of life, the way we understand it and especially the code of law in the army. And then we must remember that every one is influenced by his environment in which they live, they acquire their own sense of what is right and what is wrong.

He joined the army at the age of 21 years, has been in the army approximately two years and he desires nothing more than to get into action, to get into actual grips with the enemy. The man who sits before you in this Court today as the accused is, frankly enought, the type of man we require for our fighting forces and can only be described as six feet of fighting manhood and that is the way I ask you to look at this type of fellow and give him a chance to get into action as quickly as possible. This man is married, has a wife back home who is absolutely dependent on the income she receives from the country and from his assigned pay. She is dependent on him because she is not a very strong woman and can not get out and work for herself. I hope too that this will be taken into consideration not for his benefit but for the woman who believes in him and is dependent on him.

I am sure that when this man has completed his punishment, which I hope will be light, will become one of the best soldiers in the Canadian Army, where competition in that * a lesson and will refrain from more trouble, I would ask the Court that a recommendation be attached to the finding to the effect that this man be given the opportunity to fight for his and our country as is his desire.

* in that direction is strong. I am sure that he has now been taught

"DLR"

In the case of Pte G ITC

Defending Officer's Closing Address

It has been well established that on the night in question, the accused was well on the way to being drunk. It has been proven that he was just out for a good time and was mainly concerned with that one object. It is true that drink affects different individuals in different ways. In this case, it is quite obvious that the accused after drinking large quantities arrived at a very happy frame of mind regarding the world in general. He developed a devil-may-care attitude you might say and was in no way capable of realizing the consequences of his act in aiding Pte. Shaw as he did.

It has been borne out by the evidence that he did not knowingly of his own accord, enter into any joint transaction with Pte. Any idea of sharing profits was that of Shaw's. All the accused wanted was to get his money back that he loaned to Shaw.

Evidence has proven that at least one item, namely Exhibit "14" was purchased in good faith by the accused. This innocence is borne out by the fact that he did not stow it away in the station-wagon with the other items.

I would refer you now to MML p124 Ch VII para 8e which provides that in such a case as this it remains that the onus of proving guilt lies entirely with the prosecution and if the accused offers a reasonable explanation of how the stolen articles came into his possession providing such explanation is consistent with innocence, even if the Court has not been convinced of its truth, then the accused is entitled to an acquittal. In this instance the Court has no reason to dispute the truth of the explanation by the accused since it was given on oath and has not been disproven by the prosecution.

In view of the aforementioned facts, Gentlemen I request that you carefully consider them with the evidence and feel that, in the interest's of justice, the accused will be acquitted.

"G.E. Pateman" Lt.

Defending Officer.

SMITH

Closing REMARKS BY THE PROSECUTOR: The Prosecution has through the various witnesses, from the following facts:-

On the evening of 9 May 44, a group of Ordnance Soldiers attached to No 6 Canadina Infantry Reinforcement Unit, retired early in their respective huts, Nos. 57, 58 and 59. The last one to retire, a Private Thomas, entered his hut No 59 at approximately 2345 hrs. As the lights were then out, Private Thomas went to bed in the dark.

The next morning, 10 May 44, nineteen of these soldiers discovered that during the night a quantity of their property had been stolen. This consisted of a flashlight, pens, pencils, lighters, leather belt, watch and lockst. (exhibit "A to "Y" inclusive)

That evening, 10 May 44, some of these soldiers were in Whitaker's pub, Otley. The accused Pte Smith and xxxxx Pte Shaw were there, both drinking. Smith was wearing a belt, identified as part of the stolen property (Exhibit "D") (Evidence of Ptes Martin, Todd and Goettler)

Smith stood up and exhibited a Ronson lighter and asked of the crowd in general, "Does anyone want to buy a lighter?". Then the bartender came in and Smith asked him if he knew where could sell a pen and pencil (Evidence of Pte Martin)

The provost were called and the accused were both ushered into a station wagon outside the pub.

As Shaw entered the Station wagon, an unusual bulge was noticed in front of his tunic. (Evidence L/Cpl MacLeod) Smith was still wearing Pte Todds belt. (Evidence of Pte Martin)

The station wagon drove off and stopped for a few minutes in front of the Otley Police Station. At that time, the accused Ptes Shaw and Smith were seen removing articles from their persons and were seen placing the articles behind the cushions of their respective seats in the station wagon. (Evidence of Cpl McConnell and L/Cpl Barton) On leaving the station wagon, Pte Shaw no longer had the bulge in his tunic. (Evidence of L/Cpl MacLeod)

After Smith and Shaw had vacated the vehicle, the two seats were searched. A quantity of articles wrapped up in a black cotton sock was found in Shaw's seat. Another quantity, including several pen and pencil sets and including Pte Todd's belt was found in Pte Smith's seat. (Evidence of Cpl McConnel and L/Cpl MacLeod) All articles were later indentified as property stolen from 19 Ordnance soldiers. (Evidence of L/Cpl MacLeod and others)

Exhibits "L" and "M" were the property of the witness Pte Kaufman. One was found in Shaw's seat, the other in Smith's seat. (Evidence of Cpl McConnel and L/Cpl MacLeod)

The accused and Shaw were both searched and among the personal effects found on Smith was a Ronson lighter (Exhibit "O"), the property of the witness Sharpirp. (Evidence of L/Cpl MacLeod)

I refer the Court to MML p 124 para 66 (Doctrine of recent possession of stolen goods)

MML p 73 para 14) Proof of intention
p 109 para 23)
p 107 para 17 - common intent
p 108 para 19 - Knowledge of intended offence.
p 108 para 20, 21 - Accessory before and after fact
p 81-82 para 42: Circumstantial evidence.

I ask the Court to consider all the actions of Shaw and Smith.

The accused has admitted possession of the articles not in the cotton sock. He admits a bargain, common design, agreed upon between Shaw and accused. Shaw was not called to give evidence. Accused admits that all the prosecution evidence is correct. Accordingly improper possession is established as regards all the articles behind Smith's seat. As regards the remainder of the articles, Smith had a common intent with Shaw and they were both in possession of these remaining articles. Smith was an accessory, and is therefore guilty. Just as much as he would be if he were alone in the transaction. Then is circumstantial evidence, very strong in nature, of theft. Drunkenness is no defence or excuse. The accused says he cannot say he did not know what he was doing that night.

The story, of the accused about Shaw buying these articles is untrue. His story about buying the Sharpio lighter is highly unlikely. It is more likely on afterthought in view of his recollection of White being at hand when a discussion was that between accused and someone else regarding a lighter. Even if Smith bought a lighter, it is not likely that it was the Sharpio lighter.

Case of E.52670 Pte J.L. Smith, 6 C.I.R.U.

Exhibit #26

List of articles found on the person of

C 62331 Pte SHAW, J.E.

3 packages of cigarettes
1 steel mirror
3 rubbers
1 pocket book
1 belt
MBM - MK 1 Part 1

Found in car by Cpl. McConnell, J.M.

9 fountain pens
1 locket
2 eversharp pencils
2 cigarette lighters (1 Ronson & 1 Thorens)
1 flashlight
1 belt
6 pen-pencil sets
1 watch

Certified to be a true copy of original exhibit which is on file in FGCM of C.62231 Pte J.E. Shaw, 6 C.I.R.U. tried 1 Jun/44.

"D.L. Redman" Lt-Col., Pres.

Case of xx E.52670 Pte J.L. Smith 6 C.I.R.U.

Exhibit #27

List of articles found on the person of

E.52670 Pte. Smith, J.L.

Canadian money

1 - 50¢ piece
2 - 25¢ "
12 - 10¢ "
10 - 5¢ "
25 - 1¢ "

English money

two shillings and 6 pence (2/6)
1 - 6d piece
1 - 1d "

2 lighters
1 pr. scissors and case
1 set dice
1 case & photos
3 packages of cigarettes
1 comb
MBM MK 1 - Part 1-3

Certified to be a true copy of original Exhibit which is on file in FGCM of C.52231 Pte J.E. Shaw xxxx 6 C.I.R.U. tried 1 Jan/44

"D.L. Redman" Lt.-Col. Pres.

1. I acknowledge that I have been served with a copy of the Summary of Evidence taken prior to my trial by Court-Martial. I further acknowledge that I have been served with a true copy of the charge (s) upon which I am being brought to trial by CM.

2. I desire the services of an officer to represent me at my trial by CM. I request the services of:

Lt. J.K. Kidd Toronto Scottish Regt.

if he is available

In the Field
23 day of May 1944
1700 hrs

"James L. Smith"

LIST OF WITNESSES

In the case of E.52670 Pte SMITH, James Leonard, Toronto Scottish Regiment (MG) on the strength of No. 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

For the Prosecution

Lieut.	D. M.	MacCLYMONT,	Cdn Inf Corps,	No. 6 Cdn Inf Rft Unit
B.77129	L/Cpl	WELCH, J.,	Toronto Scottish Reg't,	No. 6 Cdn Inf Rft Unit
C.73659	Pte	MORROW, J.A.	RCOC	No. 6 Cdn Inf Rft Unit
D129384	Pte	MacINTOSH, I.	RCOC	No. 6 Cdn Inf Rft Unit
K.50049	Pte	TODD, T. G.	RCOC	No. 6 Cdn Inf Rft Unit
L104968	Pte	TETLOCK, L.S.	RCOC	No. 6 Cdn Inf Rft Unit
C.31579	Pte	KLATT, E.A.	RCOC	No. 6 Cdn Inf Rft Unit
D167473	Pte	LAVOIE, F.B.	RCOC	No. 6 Cdn Inf Rft Unit
E.48403	Pte	SINOTTE, R.E.	RCOC	No. 6 Cdn Inf Rft Unit
A108253	Pte	GOETTLER, E.L.	RCOC	No. 6 Cdn Inf Rft Unit
D105180	Pte	KAUFMAN, A.A.	RCOC	No. 6 Cdn Inf Rft Unit
B.38668	Pte	SHAPIRO, H.	RCOC	No. 6 Cdn Inf Rft Unit
F.55949	Pte	SMITH, E.W.	RCOC	No. 6 Cdn Inf Rft Unit
E.39100	Pte	ROSS, E.	RCOC	No. 6 Cdn Inf Rft Unit
B.77943	Pte	DENEAULT, L	RCOC	No. 6 Cdn Inf Rft Unit
B.2659	Pte	ROWLEY, W.F.	RCOC	No. 6 Cdn Inf Rft Unit
D142011	Pte	HUGHES, R.A.	RCOC	No. 6 Cdn Inf Rft Unit
L106793	Pte	RADCLIFFE, T.A.	RCOC	No. 6 Cdn Inf Rft Unit
H.8392	Pte	NORRIS, W.C.	RCOC	No. 6 Cdn Inf Rft Unit
B.9230	Pte	THOMAS, J.V.	RCOC	No. 6 Cdn Inf Rft Unit
C.18420	Cpl	McCONNELL, J.M.	Cdn Pro Corps,	att to No. 6 C.I.R.U.
F.55286	L/C	MacLEOD, M.J.	Cdn Pro Corps,	att to No. 6 C.I.R.U.
C.9731	Pte	HARTIN, W.E.	RCOC	No. 6 Cdn Inf Rft Unit
C.53938	L/C	HORTON, H.E.	Cdn Pro Corps,	att to No. 6 C.I.R.U.

Defence

NIL

In the Field
19 May 44

LIST OF EXHIBITS

In the case of E.52670 Private SMITH, James Leonard, Toronto Scottish Regiment (MG), on the strength of No. 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

Exhibit "A": Pencil flashlight sometimes called a "pen light"
Exhibit "B": Waterman's gray fountain pen
Exhibit "C": Waterman's fountain pen and pencil set in brown leather case
Exhibit "D": Brown leather belt
Exhibit "E": Eclipse fountain pen
Exhibit "F": Eclipse pencil
Exhibit "G": Waterman's brown fountain pen
Exhibit "H": Waltham Pocket watch No. 16828885
Exhibit "J": Thoren's "Lucky" lighter with initials "R.S." engraved on it
Exhibit "K": Ronson Lighter with initials "E.L.C." engraved on it
Exhibit "L": Parker pen and pencil set in black leather case.
Exhibit "M": Gold locket with Hebrew lettering inside
Exhibit "N": Parker pen and pencil set in brown leather case
Exhibit "O": Ronson lighter with name "H. Shapiro" engraved on it
Exhibit "P": Waterman's blue fountain pen
Exhibit "Q": Parker pen and pencil set
Exhibit "R": Parker pen and pencil set in brown leather case
Exhibit "S": Waterman's blue fountain pen
Exhibit "T": Fountain pen
Exhibit "U": Black fountain pen and pencil set in black leather case, with the word "Monroe" engraved on it.
Exhibit "V": Waterman's black fountain pen
Exhibit "W": Silver coloured knife
Exhibit "X": Waterman's grey fountain pen
Exhibit "Y": Waterman's pen and pencil set
Exhibit "Z": Black cotton sock

SUMMARY OF EVIDENCE

In the case of E.52670 Pte SMITH, James Leonard, Toronto Scottish Regiment (MG), on the strength of No. 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, this Summary of Evidence is taken on oath.

First Witness for the Prosecution — B.77129 L/Cpl WELSH, H., Toronto Scottish Regiment (MG), on the strength of No. 6 Cdn Inf Rft Unit, having been duly sworn states as follows:-

I am a member of the Regimental Police of No. 6 Cdn Inf Rft Unit. I was on duty at the No. 2 Camp Guard Room 6 CIRU at 0830 hrs, 11 May 44 when both of the accused No. E.52670 Pte SMITH, J.L., and No. C.32231 Pte SHAW, J. were brought in from No. 3 Guard Room by other members of the Regimental Police. The instructions were to hold these men for charges which would be laid. Later members of the Canadian Provost Corps turned into us a quantity of personal effects and entered it in the Guard Room Receipt Book and gave a copy of each list to the accused. At approximately 1300 hrs 11 May 44, a parade of nineteen soldiers was held. They identified the exhibits "A to Y"(Inclusive) as their property. I identify exhibit "O", a cigarette lighter with "H. Shapiro" engraved on it, as the cigarette lighter that was turned in as part of the personal effects of E.52670 Pte SMITH, J.L., one of the accused. This exhibit "O" is included in the above-mentioned list of his personal effects and the accused E.52670 Pte SMITH, J.L. has been given a copy of this receipt.

The accused declines to cross-examine this witness.

"J. Welch", L/C

Second Witness for the Prosecution — Lieut. D.M. MacCLYMONT, Cameron Highlanders of Ottawa(MG) on the strength of No. 6 Cdn Inf Rft Unit, having been sworn states as follows:-

I am Lieut. D.M. MacCLYMONT, second in command of "C" Company, No. 6 Cdn Inf Rft Unit. Both of the accused, E.52670 Pte SMITH, J.L. and C.32231 Pte SHAW, J., are on the strength of my company. On 16 May 44 I received from L/Cpl. MacLeod of No. 2 Detachment, 7 Provost Coy, Canadian Provost Corps attached to no. 6 Cdn Inf Rft Unit the exhibits "A to Y" (Inclusive) with the exception of exhibit "O" a cigarette lighter. I received exhibit "O", a cigarette lighter from the Regimental Police at No. 2 Guard Room of No. 6 Cdn Inf Rft Unit, for the purpose of having it present at this Summary of Evidence.

The accused declines to cross-examine this witness.

"D.M. McClymont" Lieut

Third Witness for the Prosecution — C.73659 Pte MORROW, J.A., Royal Canadian Ordnance Corps, on the strength of No. 6 Cdn Inf Rft Unit, having been duly sworn states as follows:-

I am on the strength of "C" Coy, No. 6 Cdn Inf Rft Unit. On the night of 9 May 44 I was living in Hut No. 57, 6 Cdn Inf Rft Unit. I went to bed at approximately 2200 hrs and I had then in my tunic pocket, my pencil flashlight, sometimes called a "pen light". My tunic was hanging on the wall near my bed. Next morning when I awoke at about 0630 hrs, I could not find my pencil flashlight. It was gone. The next time I saw my flashlight was at the identification parade held at 1300 hrs on 11 May 44 at No. 2 Guard Room of No. 6 Cdn Inf Rft Unit. I identify exhibit "A" as my said pencil flashlight.

The accused declines to cross-examine this witness.

"Morrow J.A." PTE

DLR

In the case of E.52670 Pte SMITH, James Leonard, Toronto Scottish Regiment (MG) on the strength of No. 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, this Summary of Evidence is taken on oath.

Fourth Witness for the Prosecution

D129384 Pte MacINTOSH, I., Royal Canadian Ordnance Corps, on the strength of No. 6 Cdn Inf Rft Unit, having been duly sworn, states as follows:-

I am on the strength of "G" Coy, No. 6 Cdn Inf Rft Unit. On the night of 9 May 44, I was living in hut 57, 6 Cdn Inf Rft Unit. I went to bed at approximately 2215 hrs that night. In my battle dress trousers pocket I had my Waterman's brownish gray fountain pen. My trousers were on a hangar at the head of my bed. Next morning I looked for my pen. It was gone. I saw it at the identification parade held at 1300 hrs 11 May 44 at No. 2 Guard Room of No. 6 Cdn Inf Rft Unit. I identify Exhibit "B" as my pen.

The accused declines to cross-examine this witness.

"Ian McIntosh" PTE

Fifth Witness for the Prosecution

K.50049 Pte TODD, T.G., Royal Canadian Ordnance Corps, on the strength of No. 6 Cdn Inf Rft Unit, having been duly sworn, states as follows:-

I am on the strength of "G" Coy, No. 6 Cdn Inf Rft Unit. On the night of 9 May 44 I was living in hut 59, 6 Cdn Inf Rft Unit. I went to bed at approximately 2230 hrs that night. Before going to bed I left my Waterman's fountain pen and pencil set in a brown leather case, in my battle dress tunic pocket on a coat hanger at the head of my bed. Also before going to bed I left a brown leather belt in my battle dress. When I looked for these articles next morning I could not find them. The next time I saw them was at an identification parade held at 1300 hrs 11 May 44 at No. 2 Guard Room at No. 6 Cdn Inf Rft Unit. I identify exhibit "C" as my xx set "TG". I also identify exhibit "D" as my belt.

"JR"

The accused declines to cross-examine this witness.

"Pte Todd T.G." PTE

Sixth Witness For the Prosecution

L104968 Pte TETLOCK, L.S., Royal Canadian Ordnance Corps, on the strength of No. 6 Cdn Inf Rft Unit, having been duly sworn, states as follows:-

I am on the strength of "G" Coy, No. 6 Cdn Inf Rft Unit. On the night of 9 May 44, I was living in hut 59, 6 Cdn Inf Rft Unit. That night I went to bed at approximately 2215 hrs leaving my Eclipse pen and pencil set in my tunic on the wall. Next morning I looked for my pen and pencil set but I could not find them anywhere. The next time I saw them was at an identification parade held at approximately 1300 hrs 11 May 44 at No. 2 Guard Room at No. 6 Cdn Inf Rft Unit. I identify exhibit "E" as my pen. I also identify this pencil, exhibit "F", as my property.

The accused declines to cross-examine this witness.

"Pte. Tetlock, L.S." PTE

Seventh Witness For the Prosecution

C.31579 Pte KLATT, E.A., Royal Canadian Ordnance Corps, on the strength of No. 6 Cdn Inf Rft Unit, having been duly sworn, states as follows:-

I am on the strength of "G" Coy, No. 6 Cdn Inf Rft Unit. On the night of 9 May 44, I was living in hut 57, 6 Cdn Inf Rft Unit. I went to bed at approximately 2200 hrs leaving my Waterman's brown pen in a cardboard box in my Kit Bag. The next time I saw them was at an identification parade held at approximately 1300 hrs 11 May 44 at No. 2 Guard Room at No. 6 Cdn Inf Rft Unit. I identify the Waterman's brown pen, marked exhibit "G" as my property.

The accused declines to cross-examine this witness.

"E. Watt" C-31579 PTE

In the case of R.52670 Pte SMITH, James Leonard, Toronto Scottish Regiment (MG on the strength of No. 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, this Summary of Evidence is taken on oath.

Eighth Witness for the Prosecution: D167473 Pte LAVOIE, J.B., Royal Canadian Ordnance Corps, on the strength of No. 6 Cdn Inf Rft Unit, having been duly sworn, states as follows:

I am on the strength of "G" Coy, No. 6 Cdn Inf Rft Unit. On the night of 9 May, 44, I was living in hut 59. I went to bed at approximately 2230 hrs. In my battle dress tunic pocket I left my Waltham Pocket watch No. 16828685. The next morning I could not find it. The next time I saw it was at an identification parade held at approximately 1300 hrs 11 May 44 at No. 2 Guard room at No. 6 Cdn Inf Rft Unit. I identify exhibit "H" as my watch

The accused declines to cross-examine this witness.

"J.B. Lavoie" Pte

Ninth Witness For the Prosecution: R.46403 Pte SINOTTE, R.E., Royal Canadian Ordnance Corps, on the strength of No. 6 Cdn Inf Rft Unit, having been duly sworn, states as follows:

I am on the strength of "G" Coy, No. 6 Cdn Inf Rft Unit. On the night of 9 May 44, I was living in hut 58, 6 Cdn Inf Rft Unit. That night I went to bed at about 2300 hrs leaving my "Lucky" lighter with initials "RS" engraved on it, in my trousers. Next morning my lighter was gone. The next time I saw it was at an identification parade held at approximately 1300 hrs 11 May 44 at No. 2 Guard Room at No. 6 Cdn Inf Rft Unit. I identify exhibit "J" as my lighter.

The accused declines to cross-examine this witness.

"Sinotte R." Pte

Tenth Witness For the Prosecution: A108253 Pte GOETTLER, E.L., Royal Canadian Ordnance Corps, on the strength of No. 6 Cdn Inf Rft Unit, having been duly sworn, states as follows:

I am on the strength of "G" Coy, No. 6 Cdn Inf Rft Unit. On the night of 9 May 44, I was living in hut 57, 6 Cdn Inf Rft Unit. I went to bed at approximately 2230 hrs leaving my Ronson lighter with the initials "E.L.G". engraved on it, in my battle dress pocket. The next morning my lighter was gone. The next time I saw it was at an identification parade held at approximately 1600 hrs 11 May 44 at No. 2 Guard Room At No 6 Cdn Inf Rft Unit. I identify exhibit "K" as my lighter.

The accused declines to cross-examine this witness.

"Pte Goettler E.L." Pte

Eleventh Witness For the Prosecution: D105180 Pte KAUFMAN, A.S., Royal Canadian Ordnance Corps, on the strength of No. 6 Cdn Inf Rft Unit, having been duly sworn, states as follows:

I am on the strength of "G" Coy, No. 6 Cdn Inf Rft Unit. On the night of 9 May 44, I was living in hut 57, 6 Cdn Inf Rft Unit. I went to bed at approximately 2230 hrs. Before going to bed I left (1) a black leather wallet containing personal papers (2) a Parker pen and pencil set ina black leather case (3) a gold locket with Hebrew lettering, in my tunic which was hanging on the wall. The next morning I found my tunic on the floor and all of the above mentioned articles were gone. I attended the identification parade held at approximately 1500 hrs 11 May 44 at No. 2 Guard Room, No. 6 Cdn Inf Rft Unit. I hereby identify exhibit "L" as my Parker pen and pencil set. I also identify exhibit "M" as my gold locket. The wallett is still missing.

The accused declines to cross-examine this witness

"A.S. Kaufman" Pte

In the case of E.52670 Pte SMITH, James Leonard, Toronto Scottish Regiment (MG) on the strength of No. 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, this Summary of Evidence is taken on oath.

Twelfth Witness B.30660 Pte SHAPIRO, H., Royal Canadian Ordnance Corps, on the For the night of 9 May, 44, I was living in hut 58, No. 6 Cdn Inf Rft Unit. Prosecution I went to bed sometime between 2200 h rs and 2230 hrs. Before going to bed I put my Ronson lighter, bearing my name engraved on it and my P arker pen and pencil set contained in a brown leather case, in to my battle dress tunic pocket. The next morning, the lighter and pen and pencil set were gone. The next time I saw them was at an identification parade held at approximately 1300 hrs 11 May 44 at No. 2 Guard Room at No. 6 Cdn Inf Rft Unit. I identify exhibit "N' as my Parker pen and pencil set and I identify exhibit "O" as my Ronson lighter.

The accused declines to cross-examine this witness.

"H. Shapiro" PTE

Thirteenth Witness F.55949 Pte SMITH, E.W., Royal Canadian Ordnance Corps, on For the the strength of No. 6 Cdn Inf Rft Unit, having been duly sworn, sta- Prosecution tes as follows:

I am on the strength of "G" Coy, No. 6 Cdn Inf Rft Unit. On the night of 9 May 44, I was living in hut 59, No. 6 Cdn Inf Rft Unit. That night I went to bed at about 2215 hrs leaving my Waterman's blue fountain pen in the right breast pocket of my tunic. Next morning, it was missing. The next time I saw it was at an identif- ication parade held at approximately 1300 hrs 11 May 44 at No. 2 Guard Room at No. 6 Cdn Inf Rft Unit. I identify exhibit "P" as my pen.

The accused declines to cross-examine this witness

"E.W. Smith" PTE

Fourteenth Witness H.38100 Pte ROSS, H., Royal Canadian Ordnance Corps, on the For the strength of No. 6 Cdn Inf Rft Unit, having been duly sworn, states Prosecution as follows.-

I am on the strength of "G" Coy, No. 6 Cdn Inf Rft Unit. On the night of 9 May 44, I was living in hut 59, No. 6 Cdn Inf Rft Unit. I went to bed at approximately 2200 hrs. Before going to bed, I left my Parker pen and pencil set in its black leather case in my tunic pocket. In the morning it was gone. I saw it next at an identification parade held at approximately 1300 hrs 11 May 44 at No. 2 Guard Room at No. 6 Cdn Inf Rft Unit. I identify exhibit "Q" as my pen and pencil set.

The accused declines to cross-examine this witness.

"E.Ross" PTE

Fifteenth Witness B.77945 Pte DENEAULT, L., Royal Canadian Ordnance Corps, on For the of No. 6 Cdn Inf Rft Unit, having been duly sworn, states as follows Prosecution

I am on the strength of "G" Coy, No. 6 Cdn Inf Rft Unit. On the night of 9 May 44, I was living in hut 59, No. 6 Cdn Inf Rft Unit. That night I went to bed at approximately 2230 hrs. Before going to bed, I left my Parker pen and pecil set and brown leather case, in my tunic pocket. Next morning I could not find it. It was missing. The next [illegible] I saw it was at an identification parade held at approximately 1300 hrs 11 May 44 at No. 2 Guard Room at No. 6 Cdn Inf Rft Unit. I identify exhibit "R" as my pen and pencil set and leather case.

The accused declines to cross-examine this witness.

"L. Deneault" PTE

SUMMARY OF EVIDENCE

In the case of H.52670 Pte SMITH, James Leonard, Toronto Scottish Regiment (MG) on the strength of No. 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, this Summary of Evidence is taken on oath.

Sixteenth Witness B.2659 Pte ROWLEY, W.F., Royal Canadian Ordnance Corps, on the strength of No. 6 Cdn Inf Rft Unit, having been duly sworn states as follows:-

For the Prosecution

On the night of May 9 May 44, I was living in hut 56, No 6 Cdn Inf Rft Unit. That night I went to bed at about 2200 hrs leaving my Waterman's blue fountain pen in my tunic. The next morning it was not there. It was gone. The next time I saw it was at an identification parade held at approximately 1300 hrs 11 May 44 at No. 2 Guard Room at No. 6 Cdn Inf Rft Unit. I identify exhibit "S" as my fountain pen.

The accused declines to cross-examine this witness

"W.F. Rowley" PTE

Seventeenth Witness D.142011 Pte HUGHES, R.A., Royal Canadian Ordnance Corps, For the Prosecution on the strength of No. 6 Cdn Inf Rft Unit, having been duly sworn states as follows:-

I am on the strength of "G" Coy, No. 6 Cdn Inf Rft Unit. On the night of 9 May 44, I was living in Hut 57, No. 6 Cdn Inf Rft Unit. I went to bed at approximately 2230 hrs. Before going to bed I left my fountain pen in my tunic pocket. I had also left one copy of Standing Orders pamphlet in my overcoat pocket. In the morning they were both missing. I saw my pen on an identification parade held at approximately 1300 hrs 11 May 44 at No. 2 Guard Room at No. 6 Cdn Inf Rft Unit. I identify exhibit "T" as my fountain pen.

The accused declines to cross-examine this witness.

"R.A. Hughes" PTE

Eighteenth Witness L106793 Pte RADCLIFFE, T.A., Royal Canadian Ordnance Corps, For the Prosecution on the strength of No. 6 Cdn Inf Rft Unit, having been duly sworn, states as follows:-

I am on the strength of "G" Coy, No. 6 Cdn Inf Rft Unit. On the night of 9 May 44, I was living in Hut 58, No. 6 Cdn Inf Rft Unit. I went to bed at about 2200 hrs that night. My black fountain pen and pencil set was in a black leather case with "Monroe" engraved on the front. I put them in my tunic pocket. The next morning they were gone. The next time I saw them was at an identification parade held at approximately 1300 hrs 11 May 44 at No. 2 Guard Room at No. 6 Cdn Inf Rft Unit. I identify exhibit "U" as my fountain pen and pencil set and case.

The accused declines to cross-examine this witness.

"T.A. Radcliffe" PTE

Nineteenth Witness H.8392 Pte MORRIS, W.C., Royal Canadian Ordnance Corps, on the strength For the Prosecution of No. 6 Cdn Inf Rft Unit, having been duly sworn states as follows:-

I am on the strength of "G" Coy, No. 6 Cdn Inf Rft Unit. On the night of 9 May 44, I was living in hut 58, No 6 Cdn Inf Rft Unit. I went to bed at about 2230 hrs that night. Before going to bed I left my Waterman's black fountain pen and my silver coloured knife in my tunic pocket. In the morning they were missing. The next time I saw these articles was at an identification parade held at approximately 1300 hrs 11 May 44 at No. 2 Guard Room of No. 6 Cdn Inf Rft Unit. I identify exhibit "V" as my fountain pen and exhibit "W" as my knife.

The accused declines to cross-examine this witness.

"W.C. Morris" PTE

SUMMARY OF EVIDENCE

In the case of R.52670 Pte SMITH, James Leonard, Toronto Scottish Regiment (MG) on the strength of No. 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, this Summary of Evidence is taken on oath

Twentieth Witness R.9230 Pte THOMAS, J.V., Royal Canadian OrdnanceCorps, on the For the strength of No. 6 Cdn Inf Rft Unit, having been duly sworn, states Prosecution as follows:-

I am on the strength of "G" Coy, No. 6 Cdn Inf Rft Unit. On the night of 9 May 44, I was living in hut 59, No. 6 Cdn Inf Rft Unit. I had a late pass that expired at 2359 hrs and I returned to my hut at about 2345 hrs. The lights were out and I went to bed in the dark But before getting into bed I noticed that my Waterman's grey fountain pen was in my tunic pocket. When I awoke next morning, it was gone. The next time I saw it was at an idenfication parade held at approximately 1300 hrs 11 May 44 at No. 2 Guard Room at No. 6 Cdn Inf Rft Unit. I identify exhibit "X" as my pen. In my presence at the said identification parade, R.110305 Pte ROBERTS, G.V., Royal Ordnance Corps, identified Exhibit "Y" as his Waterman's pen and pencil set.

The accused declines to cross-examine this witness.

"J.V. Thomas" PTE

Twenty First G18420 Cpl McCONNELL, J.N. No. 7 Provost Coy, "G" Section Detachment, Canadian Provost Corps, attached to No. 6 Cdn Inf Rft Unit, Witness having been duly sworn states as follows:- For the Prosecution

I am G.18420 Cpl McCONNELL, J. N., of No. 7 Provost Coy. "G" Section Detachment, Canadian Provost Corps, attached to No. 6 Cdn Inf Rft Unit. I recognize the two accused soldiers, R.52670 Pte Smith, J.L. and C.32231 Pte Shaw, J.E. While on patrol in the town of ORNEY, at approximately 2145 hrs 10 May 44, I had occassion to escort the said accused soldiers to the Civil Police station. While in the Police station I noticed both the accused soldiers removing some articles from their persons and placing them behind the seat cushions in the station wagon. Upon arriving at the Police Station L/Cpl's MacLeod and Horton escorted theaccused soldiers inside. Immediately after the accused soldiers had vacated the station wagon, I searched the two seats where they had been sitting. In the centre seat where the accused, C.32231 Pte. Shaw, J. had been sitting, I found the following articles wrapped in a sock, down behind the cushion:-

1 Black cotton sock
1 Eclipse pencil
1 Waterman's pencil
1 Pen light
1 locket
1 Waterman's Fountain pens
1 Eclipse fountain pen
1 Thoren's Lighter - "Lucky"
1 Penknife

In the back seat where the accused R.52670 Pte Smith, J.L. had been sitting, I found the following articles:-

4 Parker pen and pencil sets
1 Ronson Lighter initialed "E.L.M.G." "J.W."
1 Waterman's pen and pencil set
1 Waltham watch No.16628855
1 Black pen and pencil set
1 Leather Belt

I turned all these articles over to L/Cpl MacLeod, N.J. I have examined the exhibits "A" to "I" (inclusive). With the exception of exhibit "G" all these are the same articles which I found in the said station wagon on 10 May 44 directly after the two accused soldiers, R.52670 Pte Smith,J.L. and C.32231 Pte Shaw, J.E. had emerged from the said station wagon.

The accused declines to cross-examine this witness

"J.N. McConnell" G18420 Cpl

In the case of E.62670 Pte SMITH, James Leonard, Toronto Scottish Regiment (MG) on the strength of No. 6 Canadina Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, this Summary of Evidence is taken on

Twenty-Second Witness For the Prosecution

F.55286 L/Cpl MacLEOD, M.J., No. 7 Provost Coy. No. 2 Detachment Provost Corps, attached to No. 6 Cdn Inf Rft Unit, having been duly sworn states as follows:-

I am F.55286 L/Cpl MacLeod, M.J. of No. 7 Provost Coy, "C" Section Detachment Canadian Provost Corps, attached to No. 6 Cdn Inf Rft Unit. I recognise both the two accused soldiers E.62670 Pte Smith J.L. and C.32231 Pte Shaw, J.E. While on patrol in the town of OTLEY at approximately 2145 hrs 10 May 44 in company with L/Cpl Horton we went to Whitaker's Public House, Otley. When the accused, E.62670 Pte Smith, J.L. and C.32231 Pte Shaw, J.E. were leaving the said pub, I detained them with the assistance of L/Cpl Horton. When the accused, C32231 Pte Shaw was entering our station wagon, I noticed an unusual bulge in the front of his tunic and this bulge was not there when he emerged later from the vehicle on our arrival at the Otley Police Station. On leaving the station wagon and going into Police Station, B16420 Cpl McConnel, J.M. searched the car. Cpl McConnel delivered to me the articles, that is, the exhibi "A" to "Y" (Inclusive) with the exception of the exhibit "O" which Pte Smith turned in to me as part of his personal effects.

The accused declines to cross-examine this witness

"MJ. MacLeod" L/Cpl

Twenty-third Witness For the Prosecution

C.9731 Pte MARTIN, W.E., Royal Canadian Ordnance Corps, on the strength of No. 6 Cdn Inf Rft Unit, having been duly sworn, states:-

I am C.9731 Pte Martin, W.E., of the Royal Canadian Ordnance Corps on the strength of "C" Coy. No.6 Cdn Inf Rft Unit. On the evening of 10 May 44 at approximately 2120 hrs I was in Otley in Whittaker's Public House, drinking a glass of beer with Pte Grainger. I recognise both the accused, C.32231 Pte Shaw, J.E. and E.62760 Pte Smith, J.L. That night they were seated at another table about five or six feet away. The accused Pte Smith, J.L. stood up and I saw that he was wearing a leather belt similar to my own. Our group of Royal Canadian Ordnance Corps other ranks had come to No 6 Cdn Inf Rft Unit a few days previously and the only three who had belts of this kind were myself, Pte Todd, T.C. and Pte Owens. I knew that Pte Todd had missed his belt since Reveille that day, 10 May 44, and accordingly I watched Pte Smith. He and Shaw had been drinking quite a bit. Smith got up from his seat and took a cigarette lighter from his pocket and lighted a chap's cigarette. Pte Smith then said, "Does anyone want to buy a lighter?" while flicking it on and off. The bartender then came in and the accused Pte Smith asked him if he knew where could sell a pen and pencil. I did not hear the reply. I immediately got some of my friends from outside. Ptes/and Hamilton and I went into the Pub and watched the accused Smith and Shaw for some time. Shortly after this Pte Goettler, E.L. and some other soldiers came in. The leather belt was still on the accused, Pte Smith. In my presence Pte Todd identified this belt as his own property. I now identify this same belt that the accused, Pte Smith, wore that evening. It is exhibit "D".

The accused declines to cross-examine this witness.

"Martin W.E." PTE

In the case of E.52670 Pte SMITH, James Leonard, Toronto Scottish Regimental (MG) on the strength of No. 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on oath.

Fifth Witness For the Prosecution RECALLED

K.50041 Pte TODD, T.G., Royal Canadian Ordnance Corps, on the strength of No. 6 Cdn Inf Rft Unit, recalled, still under oath, states:-

On the evening of the 10th May, 1944, at approximately 2125 hrs in company with Ptes Martin, Hamilton and Goettler I saw the accused Pte Smith ~~was wearing~~ my leather belt, the one that I have already identified as exhibit "P". About ten or fifteen minutes after that the accused Ptes Smith and Shaw left the said Public House and were taken to Otley Police Station. I went along with Pte Goettler and saw my property and other articles there.

The accused cross-examines this witness.

Q. How can you be so positive that the belt was yours?

A.1 They were made by a leathercraft club in Debert, Nova Scotia and sold by the Salvation Army Canteen at Derbert, and have been made only for about six ~~months~~ or nine months. It had a speck on it darker than the rest of the belt. At a distance it looks like a hole.

The accused declines to further cross-examine this witness.

"Pte T.G. Todd" PTE

Tenth Witness For the Prosecution RECALLED

A 108253 Pte GOETTLER, E.L., Royal Canadian Ordnance Corps, on the strength of No. 6 Cdn Inf Rft Unit, recalled, still under oath, states:-

On the evening of 10 May 44 Pte Martin and I went into Whittakers Public House, Otley and joined a group at a table. Pte Todd pointed out his belt on the accused Smith. The accused Pte Smith and Pte Shaw were seated at a table close to ours. A little later, the accused Pte Smith rose from his seat and lighted a cigarette with a Ronson Lighter. Shortly after that the accused left. We went to the Police Station. There were some articles on the table in the Police Station and Pte Todd identified his pen and I identified my lighter which is marked exhibit "R".

The accused declines to cross-examine this witness.

"Pte Goettler E.L." PTE

Twenty-Fourth Witness For the Prosecution

C.53938 L/Cpl HORTON, H.E., No. 7 Provost Coy. No. 2 Detachment Canadian Provost Corps, attached to No. 6 Cdn Inf Rft Unit, having been duly sworn states as follows:-

I am C.53938 L/Cpl HORTON, H.E. of No. 7 Provost Coy. No. 2 Detachment Canadian Provost Corps, attached to No. 6 Cdn Inf Rft Unit. I recognise both the accused soldiers E.52670 Pte Smith, J.L. and C32231 Pte Shaw, J.E. While on patrol in the town of OTLEY, at approximately 2145 hrs 10 May 44 in company with L/Cpl MacLeod we went to Whitaker's Public House, Otley. When the accused, E.52670 Pte Smith, J.L. and C.32231 Pte Shaw, J.E. were leaving the said pub, I detained them with the assistance of L/Cpl MacLeod. We entered a station wagon driven by Cpl. McConnell for the purpose of proceeding to the Police Station, Otley. We were seated as follows: in the centre seat was myself and Pte Shaw. In the rear seat was Pte Smith alone. I saw Pte Shaw remove some articles from his person and I saw him place them behind his seat. I did not notice what Pte Smith was doing at that time but I ~~did~~ did notice he was moving about in the seat.

The accused declines to cross-examine this witness

C53938

"L/Cpl Horton H.E. L/Cpl

In the case of R.53670 Pte SMITH, James Leonard, Toronto Scottish Regiment (MG) on the strength of No. 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on oath.

Twenty-Second Witness For the Prosecution RECALLED

R.55286 L/Cpl MacLeod, M.J., No. 7 Provost Coy. No. 2 Detachment Canadian Provost Corps, attached to No. 6 Cdn Inf Rft Unit, having been recalled and re-sworn states as follows:-

I am R.55286 L/Cpl MacLeod, M.J. No. 7 Provost Coy. "C" Section Detachment Canadian Provost Corps, attached to No. 6 Cdn Inf Rft Unit. As I have already stated I recognise the accused R.52670 Pte Smith and G.32231 Pte Shaw, J.E. The articles handed to me by G.15420 Cpl McConnell, J.M. were in two sections. That is to say, one quantity was contained in a black cotton sock which I hereby produce as Exhibit "Z" and the other quantity was made up of other articles. I put each quantity in a separate compartment under lock and key until the identification parade which was held at approximately 1300 hrs 11 May 44 in the Guard Room of No. 2 Camp, No. 6 Cdn Inf Rft Unit. At that time both Sgt Mason, Canadian Provost Corps, and myself were present. As regards the articles in the black cotton sock, the following soldiers identified the following articles which are marked with the exhibit number besides them.

SOLDIER	ARTICLES	EXHIBIT NO
R.55949 Pte Smith, E.W.	Waterman's Black fountain pen	"P"
B.9250 Pte Thomas, J.V.	Waterman's grey fountain pen	"X"
B. 2659 Pte Rowley, W.F.	Waterman's blue fountain pen	"V"
H. 8392 Pte Norris, W.C.	Waterman's black fountain pen	"R"
	Pocket knife	"Z"
L104968 Pte Tetlock, L.S.	Eclipse Fountain pen	"P"
	Eclipse pencil	"A"
C.73669 Pte Morrow, J.A.	Pencil	"G"
C. 3159 Pte Klatt, E.A.	Waterman's Fountain pen, brown	"W"
D142011 Pte Hughes, R.A.	Waterman's stripped fountain pen	"J"
R.[illegible] Pte Sinotte, R.E.	Thoren "Lusky" Lighter (Initialed R.S)	"L"
D128384 Pte MacIntosh, I.	Waterman's Grey stripped fountain pen	"S"
D106180 Pte Kaufman, A.S.	Gold locket and chain with Hebrew lettering	"I"
R110305 Pte Roberts, C.V.	Waterman's brown pen and pencil set	"Y"

As regards the other articles not in the black sock and which were handed to me separately by Cpl. McConnel, the following soldiers identified the following articles which are marked with exhibit number beside them.

D106180 Pte Kaufman, A.S.	Parker Black pen and pencil set	"T"
L106793 Pte Radcliffe, T.A.	"Munroe" pen and pencil set	"U"
K.80041 Pte Todd, T.G.	Waterman' pen and pencil set	"D"
B.39666 Pte Shaw, J.E.	Brown leather belt	"V"
R.77943 Pte Deneault, L.	Pen and pencil set Maroon and black mottled	"Q"
R.39100 Pte Ross, E.	Parker green pen and pencil set	"O"
D107473 Pte Lavoie, J.B.	Waltham Pocket watch 15 jewels No. 12462835	"H"

"M.J. MacLeod L/Cpl."
"JM"

In the case of E.82670 Pte SMITH, James Leonard, Toronto Scottish Regiment (MG) on the strength of No. 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on oath.

Twenty-Second Witness For the Prosecution RECALLED (Continued)

At the time the accused Ptes Smith and Shaw were taken to Otly Police Station, I informed them that they were believed to be in possession of stolen property and I ordered the accused to empty their pockets. Among the articles of the personal effects turned over to me by the accused Pte Smith was a Ronson lighter with the words "H Shapiro" engraved on it in gold letters. This lighter was identified in my presence on the previously mentioned identification parade by B.38668 Pte Shapiro, H. and it is exhibit "C".

The accused declines to cross-examine this witness.

"W.J. MacLeod L/Cpl

The accused is then warned as follows: "Do you wish to make a statement or to give evidence on oath? You are not obliged to say anything or to give any statement unless you wish to do so, but whatever you may say or any evidence you may give will be taken down in writing and may be given in evidence.

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence, consisting of ten pages, was taken down by me in the presence and hearing of the accused, and that rules of Procedure 4 (c), (d), (e), and (f) have been duly complied with.

"J Rosenblum" LIEUT
Officer detailed to take the Summary of Evidence.

In the Field
19 May 44

"DLR"

No E-52670 Name SMITH J. Sqn, Battery, or Company HQ Compiled from MFM - 4 Original not Available Corps Cdn Inf Corps Date of enlistment 26 Mar 42 GC Badges n/a Service or Proficiency Pay n/a

MFM 6 (AFB 122) 40/PAM/136 (3428)

Date of last entry in Company Conduct Sheet n/a No and date of last drunk n/a Period not reckoning towards freedom from extra fine n/a Sheet No 1 Signature OC Company, etc Maj. Graham Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field		Pte		AA. 15(1)AWL 2 days		8 days F.P. 8 dys pay	10 Jun 43	DO-86/43	Forf 2 dys pay for AWL
Field		Pte		Civil Offence (theft)		14 days Impt	28 Aug 43	Civil Court	
Field		Pte		A.A. 9(2) Desobeying a lawful command given by his superior officer		7 days pay 7 days C.B.	15 Nov 43	DO-38/43	
Field		Pte		A.A.15(1) AWL 10 days 7 hrs		21 days pay 14 days C.B.	21 Jan 44	DO-[illegible]/44	Forf 11 dys pay for AWL
Field		Pte		A.A.40Conduct to the prejudice of good order and military discipline		14 days C.B. 3 dys pay	5 Feb 44	DO-10/44	
Field		Pte		A.A.15(1)AWL 9 dys 21 hrs 25 mi		14 days C.B. 27 days pay	29 Feb 44	DO-17/44	Forf 10 days pay for AWL

certified true copy dated: 2 Jun 44

"M.P. Menard"
Officer having custody of original documents.

(720)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field		Pte		A.A.15(1)AWL 17 dys 19 hrs 25 mi (cost		27 days F.P.	22 Mar 44	DO- 4/44	Forf 18 dys pay
Field		Pte		of appr L2.S.4)		27 days pay.			
				Civil offence (Larceny)		14 days Impt	6 Apr 44	Civil Court	for AWL

Certified true copy consisting of one page dated: 2 Jun 1944

EX "C"
"DLR"

"M.P. Menard"
Officer having custody of
original documents.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field		Pte		A.A.15(1)AWL 17 dys 19 hrs 25 mi (cost of appr 12.3.4)		27 days F.P. 27 days pay.	22 Mar 44	DO- 4/44	Forf 18 dys pay for AWL
Field		Pte		Civil offence (Larceny)		14 days Impt	6 Apr 44	Civil Court	

Certified true copy consisting of one page dated: 2 Jun 1944

"M.P. Menard"
Officer having custody of original documents.

EX "C"
"DLR"

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B-52670	Private	James Leonard SMITH	Canadian Infantry Corps.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† Sec para. 217, K.R. 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheet(s) produced, reference being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instructions.—If the charge is a civil offence state the nature of the offence. Drunkenness must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For A.A. 15(1)	4	times.	4	times.
For A.A. 40	1	times.	1	times.
For A.A. 9 (2)	1	times.	1	times.
For		times.		times.
For		times.		times.

Number of instances of gallantry or distinguished conduct,

or

"MP1" [illegible] "MP1"

"MP1" [illegible] "MP1"

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, "MP1" [illegible] "MP1"

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 22 days in military custody, making a total of 22 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his attestation paper is "MP1" 22 years old

6. The date of his "MP1" attestation "MP1" is recorded in his "MP1" attestation paper "MP1" 26 Mar 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 yrs 248

8. The accused is entitled to deferred pay or gratuity in respect of 1 yr 248 dys service

9. The accused is entitled to reckon 1 yr 248 dys service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, "MP1" [illegible] "MP1" Cdn Vol Med & Clasp

[illegible]

"MP1" [illegible] "MP1"

(Pads) 40-12962/344 125,000 8/40 A.A.&W.Ltd. Gp.A/58

EX "B"
"PLF"

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. E-52670 Rank Private Name James Leonard, SMITH of Cdn Inf Corps Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted.
Civil Court	Field 26 Aug 43	Civil offence (Theft)	14 days Impt	
Civil Court	Field 6 Sept 44	Civil offence (Larceny)	14 days Impt	

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 8 day of Jun 44

"H.P. Menard" Lt
officer having custody of original documents

(INSTRUCTION—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph concerned amended accordingly.)

XXX The accused has served as a non-commissioned officer continuously, without reduction, up to the present date. XXX

XXXX

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans NO - SIR (1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

"B" D2. The Prosecutor makes (an) ~~XXX~~ opening address.(1) ATT

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1) NOTE ATT

(1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans To give evidence Do you intend to call witnesses on your behalf? Ans Yes Sir Are they witnesses as to character only? Ans No - Sir

(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1) NOTE ATT

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) "B" of the Court on the EVEN -NUMBERED charge(s), being subject to confirmation, will be promulgated later.(1) ~~XXXX~~ The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, "B" and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans No - Sir

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 27(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

"B" E2. The Prosecutor produces Statement~~X~~ as to Character and Particulars of Service(1), and certified true "B" copy (~~XXXX~~ of Conduct Sheet~~X~~(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer "B" to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier~~X~~ having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex "C" respectively.(3)

(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.)

"B" E3. President to accused: Do you wish to address the Court on the Statement~~X~~ and Conduct Sheet~~X~~, and in mitigation of punishment?(1) Ans By Def Officer NOTE-ATT (2)

(1. RP 27(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 27(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which "B" is dated and signed by him ~~and the JA if any~~.(2)

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 328, 330, 563-566, Overseas RO 309, 1323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : E52670 Pte SMITH, James Leonard 6 CIRU CIC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
19 charges Under AA Sec 18(4).	Not Guilty	Not Guilty	
19 charges ALTERNATIVE Under AA Sec 40.	Not Guilty	Guilty	

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

"A" To undergo detention for a period of Two (2) years beginning on (date) By

(1. Insert sentence being served, or delete, if not applicable. See RP 46(3). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 21 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo detention for a period of
Two (2) years

(Sgd) ..... Judge-Advocate, if any. 2 June/44 Date awarded. (Sgd) "D.L. Redman" LtCol. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) "GHSG" Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 739-741, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be duly committed to [illegible] with further notice.~~ "GHSG"
(1. AA 57A. Delete if not used.)

(Sgd) "G.S.N. Gostling"
(G.S.N. Gostling) Brig
Date 10 Jun 44 Commanding "A" Gp Cdn Sft Units CA(O)
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
E52670 Pte Smith, James Leonard 6 CIRU - CIC	12 June 44	"L.G.H. Barett" Capt Adjt., 6 CDN INF. RFT. UNIT

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

SSS-122

PTE SMITH J.L

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : E52670 Pte James Leonard SMITH - 6 CIRU - CIC

Charge. (Insert " alternative " where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	Guilty	Guilty	
2nd AA Sec 15(1)	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for Two (2) years detention beginning on (date) 1st June 44 (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 34 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To be imprisoned with hard labour for a period of one (1) year and to be discharged with ignominy from His Majesty's Service.

(Sgd) _____ Judge-Advocate, if any. 12 July 1944 Date awarded. (Sgd) "Pierre Loranger" Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

I reserve the findings & the sentence for confirmation by superior authority.

Date 14 Jul 44 (Sgd) "GSN Gostling" Brig. Commanding "A" GP. CRU.

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(C). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 52A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

I direct that the accused be not committed to prison or detention barracks until further order.(1) "JRSL"

(1. AA 57A. Delete if not used.)

(Sgd) "J.R. Stewart Lough" Brigadier

Date 18 Jul 44 Commanding ADV. H.Q. C.R.U. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
E52670 Pte James Leonard SMITH	JUL 20 1944	"O. I. Baretti" Capt.

ADJT 6 CDN. INF. RFT. UNIT

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 4 AUG 1944 JAG BRANCH C.M.H.Q.

RECORDED AT CMHQ IN AB 160. SSS - 122

FIELD GENERAL COURT-MARTIAL

CPA86 (1st Issue of AFA8) 40/P&S/1868 (6700) 4/38B

Convened by Order of Brig GSN Gostling, ED Comd "A" GP CRU dated 10 JUL 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E52670	Pte		James Leonard	SMITH	6 CIRU CIC

PROCEEDINGS REVIEWED Aug 4th 1944
"R. Carr Lt."
"JCAG"
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

Certified true copy of original proceedings herein. 15/9/44
J.C. Campbell Major
15 Sept 44
J.A.G. Rep.
12 JAG Rep 1944

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) England on (*date(s)*)

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 495, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

"PL"

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

"PL"

(1. As to use of Summary of Evidence see RP 47 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 10.00 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

"PL" A5. President to accused : Do you object to the interpreter ? Ans "PL"

"PL" "The Interpreter is sworn." Do you object to the shorthand writer ? Ans "PL"

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	MAJOR	P P LORANGER, MC	6 CIRU
Member	Capt	H.M. House	6 C.I.R.V.
Member	Lt	L.J. Belliveau	6 C.I.R.V.
~~Waiting Member~~	~~Capt~~ "PL"	~~Hy Hay-Hollymond~~ "PL"	~~6 C.I.R.V.~~
Prosecutor	Lieut	M.P. Minard	6 C.I.R.V.
Defending Offr	Lieut	H.W. Watson	6 C.I.R.V.

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Vol II p 2.)

A8. The accused E52670 Pte SMITH, J.L. before arraignment make(s) (XXX) plea

No (1)

"PL"

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in All rank and name of the accused making the plea.)

A9. The accused is (XXX) arraigned (separately) on all charges in the charge sheet.(1) The accused does (XX) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 21, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and see separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (*ii*) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No (5)

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

"PL" B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is recorded accordingly. "PL"

(*1. Court may be closed to consider the statement. Delete where or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty was (were) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex I, initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

"PL" C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (b).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using "PL" Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

"PL" D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)

(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(*1. RP 37(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 93(C).*)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 73 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.))

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans ..... Do you intend to call witnesses on your behalf ?

Ans ..... Are they witnesses as to character only ? Ans .....

(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note that further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(*1. AA 54(7) (b), RP 45, 120(A). 2. AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using "PL" Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans No

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 5 and Ex 4 respectively.(3)

(*1. MFB 355 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans No (2)

(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(*1. When several accused tried concurrently see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 343-346. Overseas AO 364, 2203. MML p 60, 727-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 136. Where accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 364. 2. RP 50. As to release from arrest for Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see notes on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

12 July 44
"pL"

CHARGE SHEET

The accused No E-52670 Private James Leonard SMITH, of The Canadian Infantry Corps, on the strength of No 6 Canadian Infantry Reinforcement Unit, a soldier of The Canadian Army Overseas, is charged with:

FIRST CHARGE
SECTION 15(1)
ARMY ACT

WHILST ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he,

In the Field, whilst in confinement, did absent himself without leave from 0210 hrs 14 Jun 44 until he was arrested at 0930 hrs 19 Jun 44. (Total absence 5 days 7 hrs 20 mins).

SECOND CHARGE
SECTION 15(1)
ARMY ACT

WHILST ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he,

in the Field, whilst in confinement, did absent himself without leave from 0025 hrs 14 Jun 44 until he was arrested at 1000 hrs 27 Jun 44. (Total absence 5 days 9 hrs 35 mins)

"W.E. Morgan"

(W.E. Morgan) Col
Commanding Officer
No 6 Cdn Inf Reinf Unit

in the Field
4 Jul 44.

To be tried by Field General Court Martial.

"GSN Gostling"

(GSN Gostling) Brig
Comd
"A" Gp Cdn Rft Units
C A (O)

Field
10 Jul 44

12 July 44
"PL"

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
ES82670	Pte		James Leonard	SMITH	6 CIRU CIC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 10 Jul 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~ "SC"
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
MAJOR	P P LOCHANSKY, MC		6 CIRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by OC 6 CIRU	
Lt	to be detailed by OC 6 CIRU	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	to be detailed by OC 6 CIRU	

~~JUDGE ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

"CSN Gostling" (Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Date 10 Jul 44

Commanding "A" Gp Cdn Rft Units C & (O) (C S N Gostling) Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (Page 1 to Para 1 of Art 1)
AF/P & R/1601 (1st Rev)

(See overleaf for oaths and notes for use at trial.)

12 July 44

"pen"

Medical Officers' Certificate
K.R. (Can) para 557

I certify that I have this morning examined No: E52670 Pte. SMITH, J.L.
(Rank) (Name)

of 6 C.I.H.U. and in my opinion he is fit to undergo

trial by Court Martial.

Station in the field. Sgd "A. D. Brown" Capt.

Date 12-7-44

"EX 1" 12 July 44 "PL"

SUMMARY OF EVIDENCE

E52670 Infantry

In the case of Private James Leonard SMITH, of The Canadian Infantry Corps, on the strength of No 6 Canadian Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of The Commanding Officer this Summary of Evidence is taken on oath.

First Witness E-5066 L/Cpl Boucher, J.M. of the Cdn Inf Corps, on the strength of No 6 C.I.R.U., having been duly sworn states as follows:

"On the night of 13/14 Jun 44 I was on Regt'l Police duty at the guard room, No 3 Camp 6 C.I.R.U. At approximately 0210 hrs I was making my rounds at the guard room. I found the wire netting pulled out of the window in the cell of the accused, whom I now recognize. I unlocked the door of the cell and went inside. I called the roll and found that the accused was missing. A search was made immediately, but the accused was nowhere to be found. At the time the accused broke out of the guard room he was serving sentence awarded him by F.G.C.M.

The accused declines to cross-examine this witness.

"J.M.Boucher" L/Cpl
(J.M. Boucher)

Second Witness Lieut M.P. Menard, of The Cdn Inf Corps, on the strength of No 6 C.I.R.U., having been duly sworn states as follows:

"I hereby produce the following documents relating to the accused, No E-52670 Pte Smith, J.L.,

(a) Certificate in accordance with P.C.2797 of 10 Apr 42, purporting to be signed by the N.C.O. i/c of a detachment of The Cdn Provost Corps. This document is attached to this Summary of Evidence and is marked as Exhibit "A".

(b) Certificate in accordance with P.C.2797 of 10 Apr 42, purporting to be signed by the N.C.O. i/c of detachment of the Cdn Provost Corps. This document is attached to this Summary of Evidence and is marked as Exhibit "B".

The accused declines to cross-examine this witness.

"M.P. Menard" Lieut
(M.P. Menard)

Third Witness for the Prosecution B-76637 L/Cpl Miller, M.M., of The Cdn Inf Corps, on the strength of No 6 C.I.R.U., having been duly sworn states as follows:

"On 24 Jun 44 I was in charge of 3 prisoners being held in custody of The Police at Otley, as our own Regt'l Guard Room was not considered safe enough to hold them. I was on duty at the office of said Police Station at the request of the civilian police. At approximately 0025 hrs 24 Jun 44 we heard shouts and yelling coming from the cell blocks. We ran outside to see what the commotion was and we found that two prisoners had escaped. One of the prisoners who was missing was the accused, whom I now recognize. I reported the breakout to the adjutant 6 C.I.R.U.

The accused declines to cross-examine this witness.

"M.M. Miller" L/CPL
(M.M. Miller)

"EX 1" 12 July 44
"PL"

SUMMARY OF EVIDENCE

In the case of No E-52670 Private James Leonard SMITH, of The Canadian Infantry Corps, on strength of No 6 Canadian Infantry Reinforcement Unit, a soldier of The Canadian Army Overseas.

Fourth Witness for the Prosecution

C-20744 Pte Caulin, G.A., of The Cdn Inf Corps, on the strength of No 6 C.I.R.U., having been duly sworn states as follows:

"At approximately 0025 hrs 24 Jun 44 while on duty guarding prisoners held in Otley Police Station, I was walking on the street near said police station, when one of the three prisoners being held in custody in the cell, shouted out the window to bring them some water. I went and got the keys, opened the maindoor. Upon opening the door I was pushed aside, and two of the prisoners escaped. One of these prisoners who escaped was the accused, whom I now recognize. I shouted for help and chased after them. They were nowhere to be found."

The accused declines to cross-examine this witness.

"G.A.Caulin" Pte.
(G.A.Caulin)

The accused was then cautioned as follows: "Do you wish to make a statement or to give evidence on oath?" "You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you may say or any evidence you may give will be taken down in writing and may be used in evidence."

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (C),(D), (E),(F), and (G) have been duly complied with.

"C. Major" A/Capt.
(Officer detailed to take the Summary of Evidence)

In the Field
4 Jul 44.

"A"

????

CERTIFICATE IN ACCORDANCE WITH P.C.2797 of 10 Apr 42.

I Certify that No. E-52670 Rank Rfm. Name SMITH, J.L.

Unit No. 6 C.I.R.U. was arrested at LEEDS, (Place)

at 0930 (hour) on 19-June-44 (date) and that at the time of his

arrest he was wearing (Military Uniform) or (XXXXXXXXXXXXXXXXXXXXXX).

Signature of Provost-Marshall, Assistant Provost-Marshall or other

officer of the Commanding Officer of the portion of His Majesty's

Forces or the officer, warrant-officer, non-commissioned officer

in charge of the detachment of the Canadian Provost Corps, Canadian

Army into whose custody the above named person was taken on arrest.

(Strike out part inapplicable).

"J. Faucher" Sgt. 1/c

K-53452. FAUCHER.J.

6(AREA) Cdn.Provost Corps.

NO.4.Detachment.

LEEDS

19-JUNE/44

"EX 2" 12 July 44

"PL"

"B" 12 July 44 "PL"

CERTIFICATE IN ACCORDANCE WITH P.C.2797 of 10 Apr 42. ????

I Certify that No. E-52670 Name SMITH, J.L.

Unit. No. 6. C.I.R.U. was arrested at LEEDS (Place)

At 1000 (hour) on 27 JUNE/44 (Date) and that at the time of his arrest he was wearing (Military Uniform) or (XXXXXXXXXXXXXXX).
Signature of Provost-Marshall, Assistant Provost- Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadians Army into whose custody the above named person has taken on arrest.
(Strike out part inapplicable).

LEEDS
27-June-44

"J. Faucher" Sgt i/c
XXXXXXXXXXXXXXXXX
XXXXX XX XXXXXXX
K-53542.FAUCHER.J.
No.4.DETACHMENT 6(AREA)Cdn.Provosts Corps

No E52670 Name James Leonard SMITH Bqn, Battery, or Company

COMPILLED FROM MFM 4 ORIGINAL NOT AVAILABLE

Corps Cdn Inf Corps | Date of enlistment 26 Mar 42 | GC Badges n/a | Service or Proficiency Pay n/a

MFM 6 (AFB 122) 80/PAS/156 (3438)

Date of last entry in Company Conduct Sheet 27 Apr 43 | No and date of last drunk | Period not reckoning towards freedom from extra fine n/a | Sheet No | Signature OC Company, etc Maj. J. Graham | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE EX "4" 12 July 44 "PL"	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with Trial	By whom awarded	Remarks
				LAST SHEET DESTROYED 26 Sep 42					
Field 7	Jun 43	Pte		AA.15(1)AWL & cost of appr £0.8.0 (1 day, 2 hrs, 30 min)		8 days F.P. 8 days pay.	10 Jun 43	DO- 86/43	Forf 2 dys pay for AWL
Field 14	Oct 43	Pte		AA.40 Conduct to the prejudice etc		1 day pay.	15 Oct 43	DO- 34/43	
Field		Pte		Civil offence (theft)		14 dyas Impt	28 Aug 43	Civil Court	
Field 14	Nov 43	Pte		AA.9(2) Disobeying a lawful command given by his superior officer		7 days pay. 7 days C.B.	15 Nov 43	DO/ 38/43	
Field 13	Dec 43	Pte		AA.15(1)AWL 15 hrs, 30 min		8 days pay. 7 days C.B.	14 Dec 43	DO- 42/43	Forf 1 day pay for AWL
Field		Pte		AA.15(1)AWL 10 days, 17 hrs		21 days 10 days C.B. 3 Days pay.	25 Jan 44 8 Feb 44	DO- 8/44 DO- 11/44	Forf 11dys pay for AWL
Field		Pte		AA.40 Conduct to the prejudice		10 days CB		"L.P. Menard" Lt.	

Certified true copy dated 12 July 44. officer having custody of original documents

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE "C" "4" 12 July 44 "FL"	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field		Pte		AA.15(1) AWL 9 days, 21 hrs, 25 mi & Cost of appr £2.5.7		27 days pay. 14 days C.B. Stop; £2.5.7	29 Feb 44	DO- 17/44	Forf 10 days pay for AWL
Field		Pte		Civil Offence (Larceny)		14 Days Impt	6 Apr 44	Civil Court	Forf 2 days pay for time in arrest
Field		Pte		A.A.15(1)AWL 17 dys, 19 hrs, 45min &cost appr £2.3.4. AA.22 Breaking out of barracks AA.8(1)Striking his superior officer being in the excution of his office		27 days F.P. 27 days pay.	22 Mar 44	DO 4/44	Forf 18 days pay for AWL
Field	2 May 44	Pte		AA.15(1)AWL 20 hrs, 2 mi		5 days pay.	6 May 44	DO-109/44	Forf 1 day pay for AWL
Field	10 May 44	Pte		AA.40(19 charges under AA.40, improper possession of articles belonging to person subject to military law)		2 Yrs, Detn	1Jun 44	FGCM	Forf 22 dys pay for time in arrest

Cetified true copy consisting of one page dated: 12 July 44 "M.P. Menard" Lt. officer having custody of original documents.

EX "S"
12 July "PI"

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
E-52670	Private	James Leonard SMITH	Canadian Infantry Corps.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The entries herein stated should correspond with the number of awards in the conduct sheets, production of which gives to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instructions.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For A.A. 15 (1) AWL	5 times.	6 times.
For A.A. 40	21 times.	21 times.
For A.A. 9 (2)	1 times.	1 times.
For A.A. 8 (1)	1 times.	1 times.
For	times.	times.

Number of instances of gallantry or distinguished conduct, Nil

or

"MPM" [illegible] "MPM"

"MPM" The accused has not been previously convicted. "MPM"

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

"MPM" 3. The accused is not under sentence of imprisonment. The accused at the present time is under "MPM" sentence of 2 yrs detention beginning on the 1st day of Jun 44

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 14 days in military custody, making a total of 14 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his "MPM" attestation paper is 22 yr's old

6. The date of his "MPM" attestation specified in his "MPM" attestation paper is 26 Mar 42

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1yr, 293 days

8. The accused is entitled to deferred pay or gratuity in respect of 1 yr, 293 days service.

9. The accused is entitled to reckon 1 yr, 293 days service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, "MPM" [illegible] "MPM" Cdn Vol Med & Clasps

"MPM" [illegible] "MPM"

"MPM" [illegible] "MPM"

(47-1296) W1—1000/1/44 125,000 4/42 A.F.&W.1.10. Gp.466

EX "5"
12 July "PT"

ARMY FORM B.206.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B-52670	Private	James Leonard SMITH	Canadian Infantry Corps.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with:—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 627, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, permission being given to the most serious offence in each entry, and to any suggested award of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For A.A. 15 (1) AWL	5	times	6	times.
For A.A. 40	21	times	21	times.
For A.A. 9 (2)	1	times	1	times.
For A.A. 8 (1)	1	times	1	times.
For		times		times.

Number of instances of gallantry or distinguished conduct, Nil

or

"MPM" [illegible] "MPM"

"MPM" The accused has not been previously convicted. "MPM"

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

"MPM" The accused at the present time is under "MPM" sentence of 2 yrs detention beginning on the 1st day of Jun 44

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 14 days in military custody, making a total of 14 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his "MPM" attestation paper "MPM" is 22 yrs old

6. The date of his "MPM" attestation "MPM" specified in his "MPM" attestation paper "MPM" is 26 Mar 42

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1yr, 293 days

8. The accused is entitled to deferred pay or gratuity in respect of 1 yr, 293 days service.

9. The accused is entitled to reckon 1 yr, 293 days "MPM" service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, [illegible] "MPM" Cdn Vol Med & Clasps [illegible]

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. E-52670 Rank Private Name James Leonard SMITH of Can Inf Corps Regiment (or as the case may be).

(INSTRUCTION.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
Civil Court	Field 28 Aug 43	Civil offence (Theft)	14 dys Impt	
Civil Court	Field 6 Apr 44	Civil Offence (Larceny)	14 dys Impt	
F.G.C.M.	Field 1 Jun 44	A.A.40 (12 charges under AA.40, being improperly in possession of articles belonging to persons subject to military law).	2 yrs Detention	

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 12th day of July 44

"H. P. Menard" Lt.

Officer having custody of original documents

(Instruction.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

[illegible] (The accused has served as a non-commissioned officer continuously, without reduction, to the present date.) [illegible]

[illegible]

12 July 44 "PL"

LIST OF EXHIBITS

In the case of No E-52670, Private James Leonard SMITH, Cdn Inf Corps, on the strength of No 6 Canadin Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

Exhibit "A": Certificate in accordance with PC 2797 of 10 Apr 44.

Exhibit "B": Certificate in accordance with PC 2797 of 10 Apr 44.

In the Field
3rd Jul 44.

12 July 44

"P1"

LIST WITNESSES

In the case of No-E-52670, Private James Leonard SMITH, Cdn Inf Corps, on the strength of No 6 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

Prosecution

E-5066, L/Cpl BOUCHER J.M., Cdn Inf Corps. No 6 CIRU.
Lt M.P. Menard, Cdn Inf Corps, No 6 CIRU.
B-76637, L/Cpl MILLER M.M., Cdn Inf Corps, No. 6 CIRU.
C-20744, Pte GAULIN G.A., Cdn Inf Corps, No 6 CIRU.

Defence

Nil

In the Field
3 Jul 44.

12 July 44.
"PL"

1. I acknowledge that I have been served with a copy of the Summary of Evidence taken prior to mt trial by Court-Martial. I further acknowledge that I have been served with a true copy of the charge (s) upon which I am being brought to trial by CM.

2. I desire the services of an officer to represent me at my trial by CM. I request the service of:

.....

if he is available.

In the Field
6th day of July 1944.
0830 hrs

"J.L. Smith"

12 July 44

Case of Pte SMITH, J.L.

Waiting Member

Capt. D. McMcClymont.

"P.L."
Maj. & Pres.

COUNTER NUMBER 585697

HOUR 17.15

OPERATOR'S INITIALS GP

RELIEVING OPERATOR _____

END

FIRST

SIDE


44.93


44.93

START

SECOND

SIDE

4C-16
GNR SMITH J.R.

RECORDED AS CMTQ (in no 160) 4C-16

RECEIVED 25 OCT 1944 JAG BRANCH G.H.Q.

FIELD GENERAL COURT-MARTIAL

CFAFM (In lieu of AFA21) 42 (in R.1608 (2004))

Convening Order of ERIC W.E. HUSKYNS Comd 1 CON AGRA dated 19 SEP 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F14249	GNR	-	JAMES RUSSEL	SMITH	1 CON MEDIGM REGT RCA

PROCEEDINGS REVIEWED

J.C.R. Livesmore Lieut

21 Oct 44.

REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) 22 SEP 44.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet (1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to an interpreter? Ans~~

~~The Interpreter is sworn.(1) Do you object to an shorthand writer? Ans~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(8). If objection, see procedure AA 51, RP 25, 71, 108, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	J.M. CAPE	1 CON MED REGT
Member	CAPTAIN	H.E. CAVELL	HQ 1 CON AGRA
Member	LIEUT	F.L. JONES	ATT 2 CON MED REGT
Judge-Advocate	—	—	—
Prosecutor	CAPTAIN	D.J. TEEK	1 CON MED REGT
Defending Offr	LIEUT	A.F. WALLS	1 CON MED REGT

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused GNR SMITH JR before arraignment make(s) (no) plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form C-D-E-E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F 14249 GNR SMITH J.R.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 40	GUILTY	GUILTY	
2nd	AA Sec 9(2)	NOT GUILTY	GUILTY	
3rd	AA Sec 19	NOT GUILTY	GUILTY	
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A) Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 426 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: TO UNDERGO

SIX MONTHS' DETENTION

(Sgd) Judge-Advocate, if any. 22 SEP 44 Date awarded. (Sgd) J.M. Cape Major President. (RP 45, 50)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 54-56, 120, MML pp 759-761, KR Can 562-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 33, MML p 65. Quashing after promulgation: KR Can 572. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the findings & Sentence

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) B.B. Hucksale Brig

Date 24 Sep 44 Commanding 1 Can Army Group R.A. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
F 14249	27 Sept 44	J.C. Farrington Lieut.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (*i*) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (*ii*) *to record the pleas as the findings of Court. After deciding between* (*i*) *and* (*ii*), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*II*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. YES (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty ~~to Not Guilty on~~ / of charge(s). The accused is (are) so informed, ~~and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly~~.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. No (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 13-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. NEITHER Do you intend to call witnesses on your behalf ?
Ans. No Are they witnesses as to character only ? Ans. —
(*1. RP 155, 117. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(6).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court ✓ (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s) of Not Guilty and states to the accused that the finding(s) of the Court on the 1ST, 2ND & 3RD charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(2) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. The alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. No
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 27(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 143(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 225 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. IN MITIGATION (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything there or previously stated which would affect the amount of punishment. RP 27(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) 3rd
(*1. When several accused tried separately see RP 120. One sentence only, comprised of the punishment or punishments laid down in AA 40, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 326, 363-366, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 364. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see notes on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, No F-14249 Gunner James Russell SMITH, 2 Battery, 1 Canadian Medium Regiment, RCA, a soldier of the Canadian Army Overseas, is charged with:

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

First Charge
Section 40
Army Act

in that he,

in the Field, in Italy, on 28 AUG 44, struck No G-3614 Pte L.A. Milner, thereby causing him injuries.

WHEN ON ACTIVE SERVICE, DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER,

Second Charge
Section 9(2)
Army Act

in that he,

in the Field, in Italy, on 28 AUG 44, when under arrest and when ordered by BSM C.W. Fuller, 1 Cdn Med Regt, RCA, his superior officer, to enter a vehicle in which he was being transported, did not do so.

WHEN ON ACTIVE SERVICE, DRUNKENNESS,

Third Charge
Section 19
Army Act

in that he,

in the Field, in Italy, on 28 AUG 44, was drunk.

D.K. Todd

(D.K.Todd) Lt-Col RCA
Comd 1 Canadian Medium Regiment, RCA

In the Field,
9 SEP 44

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

H.C. Hawkesworth

(W. H. Hawkesworth) Brigadier
Comd 1 Cdn Army Group, RA

In the Field

19 Sept 44

CFA 95 (In lieu of AFAS 40) PAM/1097 (5668)

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F-14249	Gunner	James Russel	Smith	1 Cdn Med Regt

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has ~~there~~ committed the offence(s) set forth in the Charge Sheet attached and on (date) endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial";

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person, and to consist of the Offrs appointed or detailed hereunder.

~~I am unable to appoint (a) three Offrs to form the Court, (b) a Pl Offr as President, for the reason I have endorsed hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~I also appoint as Judge Advocate (here as the Offr mentioned hereunder).~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	J. M. Cape (2)		5 Cdn Inf Bde

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	To be detailed by		HQ 1 Cdn Army Gp RA
Lieut	To be detailed by		2 Cdn Med Regt

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Lieut	To be detailed by		1 Cdn Med Regt

JUDGE ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy (Country.)

Date 19 Sept 44

(Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

(Name in block letters.) Commander, 1 Cdn Army Group, RA

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL CERTIFICATE

This is to certify that I Captain H.F. Owen, Medical Officer 1st Canadian Medium Regiment, this morning, 22nd Sep 44 did Medically Examine F.14249 Gnr Smith, J.R. 2nd Bty., 1st Cdn Medium Regiment and found him to be fit ~~unfit~~ to be tried by Field General Court Martial.

H.F. Owen, Capt.

(H.F. Owen) Capt., RCAMC
Medical Officer 1 Cdn Medium Regiment.

Mrc

EVIDENCE FOR PROSECUTION

1 1ST WITNESS P6626 B.S.M. FULLER C.W.

2ND CHARGE
(a) Gave accused a direct order at least twice "Gnr Smith I give you a direct order to enter this Bell"
(b) This order was not complied with immediately as the inference intended but only after handcuffs had been procured & after the padre had spoken to accused.

3RD CHARGE
(c) "At about 1830 hrs on the 28 Aug Bdr. Sharpe told me that Gnr Smith JR was in the wagon line kitchens in an intoxicated state. I went to the wagon lines and found Gnr Smith under the influence of liquor and was shaved. I consider that Gnr Smith was incapable of carrying out his duties as an AEC driver due to intoxication."

CROSS EXAMINATION

Question 1. "was accused unsteady on his feet"
Answer 1. "He was lying on a camouflage net"
Q 2 "Did you see him walking subsequently"
A 2 "Yes, he was capable of walking"
Q 3 "was his speech normal"
A 3 "No, it was not clear, it was inclined to be thick"
Q 4 "Was accused ordered for any duty"
A 4 "No"
Q 5 "was accused lying on camouflage net because he was incapable of getting up."
A 5 "No"

Certified that RP 83 B has been complied with.

2. 2ND WITNESS LIEUT W.E. SHARPE

3RD CHARGE

(a) "At approximately 1830 hrs on 28 Aug I saw the accused Gnr Smith V R in the wagon lines. His appearance was disorderly, he was unshaven, his manner was defiant. — I did not consider him capable of carrying out his duties due to his being intoxicated. His speech was slightly garbled."

CROSS EXAMINATION

Ques 6. "Was accused detailed for any duty?"

Ans 6. "Not by the Battery could post."

Ques 7. "Was accused capable of walking?"

Ans 7. "Yes"

Ques 8. "Was accused steady on his feet?"

Ans 8. "Yes"

RE EXAMINATION

Ques 9. "Had he not been ordered to move would you have allowed the accused to drive?"

Ans 9. "No".

Certified that R.P. 88 B has been complied with.

Mute

3. 3RD WITNESS B 21475 GNR SMITH J.H.

* CROSS EXAMINATION

3RD CHARGE

Ques 10. "Did accused offer any violence"?
Ans. 10. "No"
Ques 11. "Would you have driven with the accused"?
Ans 11. "Yes"

* No new evidence produced in examination re Chief.

Certified that RP 83 B has been complied with.

4. 6TH WITNESS B 21108 A/SGT EVANS W.J.

3RD CHARGE

"I did not consider the accused capable of driving due to intoxication and as M.T. N.C.O. I would not have allowed him to do so."

Certified that RP 83 B has been complied with.

STATEMENT BY ACCUSED (AS UNDER RECORD FORM B PARA 82 - NOT ON OATH)

5. "On the day mentioned I went to the kitchen to get my dinner and the meat was poor. I asked PTE MILNER if there was anything better to eat and he got angry. It developed into an argument. I mentioned to him about getting food from the kitchen and he made a rush towards me from behind the table and I hit him."

Certified that RP 83 B has been complied with.

4.

JMC

NOTES ON ADDRESS TO COURT IN MITIGATION.

6. (a) Accused has been 5 years in army.
(b) He hit the cook as a result of a heated argument.
(c) While he did not carry out the order immediately he carried it out eventually.

JMC

SUMMARY OF EVIDENCE

EXHIBIT A
PAGES 1-5 INCL

Summary of Evidence in the case of:

F14249 Gnr Smith J.R.
2nd Medium Battery RCA
1st Medium Regiment RCA C.M.F.

By direction of the Commanding Officer, this Summary of Evidence is taken on oath.

First Witness [redacted] Lieut W.E. Sharpe, 2nd Med Bty, 1st Cdn Med Regiment RCA having been duly sworn states:-

"I am Lieut W.E. Sharpe, 2nd Med Bty, 1st Cdn Med Regiment RCA C.M.F. At approximately 1400 hrs 28 Aug 44 I was approached by Private Milner. He stated to me that in the course of performing his duties as B.H.Q. cook he was struck by Gnr. Smith J.R. I observed that Milner had a bad cut above his eye. I signed a sick report and sent him to the M.O. telling him I would inquire into the matter. I reported this incident to B.S.M. Fuller and told him to gather what evidence he could and I would meet him that evening. At approximately 1830 hrs I went to B.H.Q. wagon lines in search of B.S.M. Fuller. As I was looking for B.S.M. Fuller I passed Gnr Smith J.R. who appeared to me to be under the influence of liquor. On coming back through the wagon lines I found B.S.M. Fuller talking to Gnr. Smith J.R. Their conversation was about Gnr Smith being Driver i/c of H.Q. diesel. Gnr Smith stated that he was not going to driver H.Q. diesel any longer. He further stated that if the regiment moved and the B.S.M. expected him to drive H.Q. diesel he was crazy. The B.S.M. then said to Gnr Smith J.R., "if you are ordered to drive the diesel you will do so". Gnr Smith replied, " if you order me to drive the diesel you can stick it up your ass". After a few minutes Gnr Smith J.R. demanded to be paraded to me. He requested to be paraded before the C.O. The C.O., being forward this was not possible. He then requested being paraded to the M.O. I arranged for this and he, accompanied by B.S.M. Fuller, saw the M.O.

Questions by the Accused.

Q.1 Sir, did I not get paraded to you about being issued a pair of boots explaining that I could not drive the diesel without boots ?
A.1 Yes, you asked me about boots but I do not remember you mentioning anything about diesel driving.
Q.2 Did you know that at the time I had no boots at all ?
A.2 Yes.

(W.E. Sharpe) Lieut RCA
2nd Med. Bty., 1st Med Reg't RCA.

Second Witness P6626 B.S.M. Fuller C.W., 2nd Med Bty, 1st Cdn Med Regiment RCA having been duly sworn states:-

I am P6626 B.S.M. Fuller C.W., 2nd Med Bty, 1st Cdn Med Regiment, RCA C.M.F. On the 28th of August 1944 at approximately 1830 hrs Mr. Sharpe approached me and told me that Gnr Smith J.R. was at the wagon line kitchen under the influence of liquor and unshaved. I went to Gnr Smith and found him in a state of intoxication and unshaved as Mr.Sharpe had mentioned to me. Gnr Smith was to the best of my knowledge incapable of carrying out his duties as an A.E.C. and Mat. driver due to intoxication. I told him at this time to get cleaned up and at the same time asked him questions concerning that mornings work. During the course of the reply Gnr Smith brought up the matter of diesel driving. I told him orders have to be obeyed and he said "if the regiment moves out tonight and I am ordered to drive it you can shove it up your ass". Gnr Smith J.R. then asked Mr. Sharpe a couple of questions and then came back to the question of [illegible]

He was told once more if ordered to drive a vehicle he would do so. During the course of operations Gnr Smith had to be placed under close arrest as he was bothering everyone of any authority by asking why he was under open arrest. After being placed under close arrest he demanded to see the M.O. He was taken to the M.O. under escort. After seeing the M.O. he refused to enter the W.D. vehicle used for transporting him. After refusing several times to enter the vehicle I left him with a guard and returned to the Bty C.P. for handcuffs. I returned to the R.A.P. and Gnr Smith still refused to enter the vehicle. The Padre who was there called him over and talked with him a while. After this conversation was finished Gnr Smith entered the vehicle and returned to Battery line.

Question by the Accused

Q.1 Was I ordered to drive the diesel on the evening of 28 Aug 44?
A.1 To the best of my knowledge you were not ordered to drive it.
Q.2 Who brought the large wicker bottle containing approximately 15 gallons of "vino" into the lines on the afternoon of the 27th of August 1944?
A.2 I, B.S.M. Fuller brought this "vino" into the lines on 27th of August 1944 for battery consumption.
Q.3 Was there any "vino" in this bottle on the morning of 28 August 1944 ?
A.3 Yes. Approximately 2 litres.
Q.4 Do you know how much "vino" was taken out of that bottle before it was returned to your jeep on the morning of 28 August 1944?
A.4 No.
Q.5 Was B Troop and A Troop invited over to drink this "vino" on the night of 27 August 1944?
A.5 Yes. Personnel other than B.H.Q. were drinking from the said bottle.
Q.6 Who invited A and B Troops ?
A.6 I notified personnel of A and B Troops in the wagon lines that there was liquor in the lines.

P.W. Fuller

(P6626 BSM Fuller C.W.)
2nd Med Bty, 1 Med Regt RCA C.M.F.

Third Witness [redacted]

F1524 Bdr. Mullin T.W., 2nd Med Bty, 1st Medium Regiment RCA C.M.F. having been duly sworn states:-

I am, F1524 Bdr. Mullin T.W. I was N.C.O. in charge of the guard for Gnr Smith J.R. who was placed under close arrest at approximately 1930 hrs 28 August 1944. At this time and date Gnr Smith J.R. requested to see the M.O. which was granted. We went to the M.O's. in the B.S.M's. jeep. After seeing the M.O. Gnr Smith J.R. was ordered several times by B.S.M. Fuller to enter the jeep for transportation to Bty lines. He refused to do so.

T.W. Mullin

(F1524 Bdr. Mullin T.W.)
2nd Med Bty, 1 Med Regt RCA C.M.F.

The accused declines to cross-examine this witness.

FOURTH WITNESS [redacted]

B21475 Gnr Smith J.H., 2nd Med Bty, 1st Medium Regiment RCA C.M.F. having been duly sworn states:-

I am, B21475 Gnr Smith J.H. I was escort for Gnr Smith JR on the 28th of August 1944. After supper Gnr Smith J.R. went to the R.A.P. TO SEE THE M.O. Having seen the M.O. Gnr Smith J.R. was asked to get into the jeep to return to the Battery line. When he didn't get in, he was

ordered, more than once, by B.S.M. Fuller, to get into the jeep. After he refused, B.S.M. Fuller left. He returned with handcuffs and ordered Bdr. Mullins to handcuff GNR Smith J.R. Gnr Smith J.R. requested that handcuffswould not be used on him and finally after a short talk with B.S.M. Fuller Gnr Smith J.R. entered the jeep.

(B21475 Gnr Smith J.H.)
2nd Bty, 1st Med Regiment RCA

The accused declines to cross-examine the witness.

Fifth Witness [redacted]

B21108 L/Sgt Evans W.J., 2nd Med Bty, 1st Medium Regiment RCA C.M.F. having been duly sworn states:-

I am, B21108 L/Sgt Evans W.J. Between 1400 and 1500 hrs 28 August 1944 I heard Gnr Smith J.R. tell B.S.M. Fuller that if he (Gnr Smith J.R.) was ordered to drive the diesel he would tell him to jam the diesel up his ass.
At dinner time 28 August 1944 I overheard Gnr Smith J.R. and Private Milner arguing not noting what the argument was about. During the argument I saw Gnr Smith J.R. hit Private Milner over the left eye with his fist. At this point I broke-up the fight.

(B21108 L/Sgt Evans W.J.)
2nd Bty, 1st Med Regiment RCA

The accused declines to cross-examine the witness.

Sixth Witness [redacted]

G3614 Private Milner L.A., 2nd Med Bty, 1st Medium Regiment RCA C.M.F. having been duly sworn states:-

I am, G3614 Pte. Milner L.A. 2nd Bty, 1st Medium Regiment RCA C.M.F. On the morning of 28 August 1944 I was posted to B.H.Q. kitchen as 2nd cook. After I had served the noon meal on 28 Aug 44 Gnr Smith J.R. and I were arguing the point of rations. He accused me of stealing rations for my own personal use and trading them for fowl. This arguing developed to a fighting point which I tried to avoid. However Gnr Smith J.R. hit me above the left eye with his fist. Sgt. Evans stepped in at this point and the argument ceased and I moved away from the kitchen area.

(G3614 Pte. Milner L.A.)
2nd Bty, 1st Medium Regiment RCA

The accused declines to cross-examine the witness.

In accordance with Rule of Procedure 4(E) the accused was asked the following question:

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused answered as follows:-

I have nothing to say.

Further evidence taken in the presence of the accused F14249 Gnr Smith J.R. on 19 Sep 44.

First Witness

Lieut W.E. Sharpe, 2nd Med Bty, 1st Cdn Med Regiment RCA having been duly sworn states:-

"I am Lieut W.E. Sharpe, 2nd Med Bty, 1st Cdn Med Regiment RCA C.M.F. On the day and date mentioned I observed that Pte. Milner had a cut and bruising above his eye. This condition he layed to being hit by Gnr. Smith J.R.

Question by the accused.

Q.1. Did you examine Milner after he was hit ?
A.1. I did not examine Pte Milner, not being a Medical Officer but visually noted his condition and had him sent to the M.O.

(W.E. Sharpe) Lieut RCA
2nd Med. Bty., 1st Med. Regiment RCA

Second Witness

P6626 B.S.M. Fuller C.W., 2nd Med Bty, 1st Cdn Med Regiment RCA, C.M.F. having been duly sworn states:-

"I am P6626 B.S.M. Fuller C.W., 2nd Med Bty, 1st Cdn Med Regiment, RCA C.M.F. In my opinion Gnr Smith J.R. was under the influence of liquor on account of his appearance i.e. not shaven where in other circumstances he would have been, when speaking to an officer did not stand to attention, was not satisfied with a direct answer when given to any question asked.

Question by the Court

Q.1. Was Gnr Smith glassy eyed?
A.1. Not as clear as normal.
Q.2. Was Gnr Smith steady on his feet?
A.2. Yes he was, in that he walked direct to any places he wished to.

The accused declines to cross-examine the witness.

(P6626 B.S.M. Fuller C.W.)
2nd Med. Bty., 1st Med. Regiment RCA

Third Witness

G3614 Private Milner L.A., 2nd Med Bty, 1st Medium Regiment RCA C.M.F. having been duly sworn states:-

"I am G3614 Private Milner L.A. , 2nd Med Bty, 1st Cdn Med Regiment, RCA C.M.F. The extent of my injuries when struck by Gnr Smith J.R. on 26 Aug 44 was one cut above my left eye about one half inch long and down to the bone. This took about one week to heal.

(G3614 Pte. Milner L.A.)
2nd Bty, 1st Medium Regiment RCA

The accused declines to cross-examine the witness.

Three

Certified that Rules of Procedure 4 (d), (c), (e) and (f) have been complied with.

This Summary of Evidence consisting of 4 pages was taken down by me in writing, In the Field in the presence and hearing of the accused on the 30th day of August, 1944.

(J.C Braithwaite) Lieut RCA
1 Canadian Medium Regiment

Certified true transcription of the original copy taken by me in longhand and signed by witnesses.

(J.C Braithwaite) Lieut RCA
1 Canadian Medium Regiment

EXHIBIT B

ARMY FORM B 296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
F.14249	Gnr.	Smith F. R.	1 Canadian Medium Regiment

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not exhibited to the prisoner's.

† See para. 617, K.R., 1940.

* The answers herein should correspond with the numbers of entries in the conduct sheet(s), qualifying being given in the case where offence is a each entry, and is not recommended special act of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the details for drunkenness must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For A.A. 15 (1)	3	times	5	times.
For A.A. 40	2	times	2	times.
For		times		times.
For		times		times.
For		times		times.

[redacted]

2. The accused has not been previously convicted by

[redacted] by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 72 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, [redacted]

N/A

4. The accused has been in confinement, awaiting trial on the present charges, for N/A days in civil custody, and NIL days in military custody, making a total of NIL days, of which N/A days were spent in hospital.

5. The present age of the accused according to his record of service is 27 Years

6. The date of his [redacted] attestation specified in his record of service [redacted] is 2 Sep 39.

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N/A

8. The accused is entitled to deferred pay or gratuity in respect of N/A

9. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

10. The accused is in possession of [redacted] no military decoration or military award [redacted]

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N/A

12. (*In the case of an officer.*) The accused holds in the army the rank of N/A dated N/A and in his regiment (or corps or department) the rank of N/A dated N/A

[redacted]

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. 7.14249 Rank Gnr. Name Smith J. R. of 1 Can Med. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted.
		N/A		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental [redacted] my custody.

Signed [redacted] 22nd day of September 44

D. K. Todd

(D. K. Todd) Lt Col RCA
Commanding 1 Canadian Medium Regt.

13. The accused has served as a non-commissioned officer continuously without reduction, to the present date,

Date of Promotion.

In the rank of , years,

In the rank of , years,

In the rank of N/A , years,

INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collated from such sources as are available and the paragraphs concerned amended accordingly.)

EXHIBIT C

M.F.M. 6

No. F.14249 Name Smith J.R. Sqn., Battery, or Company 2 Med Bty Corps 1 Cdn Med Regt Date of enlistment 2-9-39 G.C. Badges Service or Proficiency Pay N/A

(A.F.B. 122) 40/P & S/136 (2637)

Date of last entry in Company Conduct Sheet N/A No. and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No. 1 Signature O.C. Company, etc. J.S. Dunphy Major. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Temporary replacing original sheet lost					
Field	25Apr 43	Gnr		A.A. Sec 15-1	Sgt. Trueman Sgt. Dennis L/Bdr McIntosh	168 hrs det'n	7 May 43	Lt Col D. A. Todd	Forfiets 11 days pay FRI - 149 (1)(a)
Field	28Jul 43	Gnr		A.A. Sec 15-1	L/Bdr Wade	7 days C.B.	29-7-43	T.L. Soumess Major.	Forfs. 1 days Pay FRI 149(2)
Field	11Oct 43	Gnr		A.A. Sec 15-1	L/Bdr Arkwright Bdr. Wilson	7 days C.B.	11 Oct 43	Major G. Johnston	
Field	9Apr 44	Gnr		A.A. Sec 15-1 (Chg. 1)	BSM Gardiner Dec.				
	9apr44			A.A. Sec 40 (Chg. 2)	Lt.Christie	28 days F.P.	23 Apr 44		
	15apr44			A.A. Sec 15-1 (Chg. 3)	BSM.Nicols Bdr.McIntosh	28 days Pay FRI 149 (2)		Major Hartling	

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	15Apr 44			A.A. Sec 40(Orig.4)	Lt. Christie BSM Nicols				

"CERTIFIED TRUE COPY OF UNIT RECORDS IN MY POSSESSION"

Harrington

(J. R. Harrington) Lieut RCA
Officer in Charge of Unit Records.

54-2 Pte Smith, J. R. Private - [illegible] by AGSA

HC-46

PTE SMITH J.R.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A 3969 Pte James Robert SMITH 1 CASCRU

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	A.A.15(1)	Guilty	Guilty	
2nd				
3rd			D	
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 9.)

~~At present under sentence for~~ beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 8 days, of which Nil days were spent in hospital.(2)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo Detention for a period of One hundred and eighty (180) days

(Sgd) _____ Judge-Advocate, if any. 14 Oct 44 Date awarded. (Sgd) [signature] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding of the Court. I mitigate the sentence so that it shall read as follows: "To undergo detention for a period of (120) one hundred and twenty days,"

and I confirm the sentence as so mitigated.

I direct that the accused be not committed to detention or detention barracks until further orders.(1) (1. AA 57A. Delete if not used.)

(Sgd) E.B. Connelly (A.B. Connelly) Brig, Comd "B" Gp, Cdn Fit Units.

Date 17 Oct 44. Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Officer.
A-3969 Pte Smith, J.R.	20 Oct 44	(W.H. Copeland) Lt-col A/Comd No 1 Holding Wing 1 Cdn A S C Rft Unit

Rec'd Crown 250 d 23 Oct 44

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

1 Cdn. A.S.C. Reinf Unit

RECORDED AT CMHQ IN AB 160 AT 4C-46

FIELD GENERAL COURT-MARTIAL (CFA96 (In lieu of AFA8) 40-DND-01-1608 (2004))

RECEIVED 30 OCT 1944 JAG BRANCH CMHQ

Convened by Order of Brig A.B. Connelly Comd "B" Gp CRU dated 11 Oct 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) ~~Apptmt, A/rk or A/Apptmt~~	Full Christian Names.	Surname.	Unit.
A 3969	Pte	James Robert	SMITH	1 CASCRU

FINDINGS REVIEWED

JCAC Judge Advocate General 31 Oct 44

REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 14 Oct 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~if any~~ and Offrs under instr, ~~if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See Lock of Convening Order, CF AF5, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1045 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do you object to~~ ~~an interpreter?~~ Ans ~~The Interpreter is sworn.(1) Do you object to~~ ~~an shorthand writer?~~ Ans ~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans Nil (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(3). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~if any~~, and Offrs under instr, ~~if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	S.Dalton	C Pro C	1 CASRU
Member	Captain	B Hyman	RCASC	1 CASRU
Member	Lieutenant	J G Desmarais	RCE	1 CFBRU
~~Judge-Advocate~~				
Prosecutor	Lieutenant	A Bellemigne	RCASC	1 CASCRU
Defending Offr	Lieutenant	J T Weir	RCASC	1 CASCRU

~~Questions by President~~: Is the Prosecutor a lawyer? Ans Nil Is the Defending Offr a lawyer? Ans Nil (2)

(1. RP 26, 27, 109, 111. Lists of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 99 (B) and fn 2 were not followed. See SI p 3.)

A8. The accused Pte [illegible] Smith J R A3969 before arraignment make(s) (no) (~~a~~) plea (s).

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 106), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and findings are recorded per Notes. For forms of record see references on fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~separately~~ on ~~all~~ charges in the charge sheet.(1) The accused does ~~(do)~~ not object to ~~any~~ charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 21, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 73. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~re-assumes such~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (*i*) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (*ii*) *to record the pleas as the findings of Court. After deciding between* (*i*) *and* (*ii*), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(1)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No (5)
(*1. RP 37(B). 2. RP 37(D) fn 4. 3. RP 35(B) fn 5 para 3. MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement a~~ The Court decides (not) to advise accused to change his (~~their~~) plea(s) of Guilty to Not Guilty on the charge(s). ~~The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "B", initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty ~~on one or more of~~ the charge(s), the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C2.(1)
(*1. RP 37(A),(E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
~~The Summary of Evidence is read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.~~

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 73 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans.....Do you intend to call witnesses on your behalf ?
Ans.....Are they witnesses as to character only ? Ans.....
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A93. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 84(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "C" and Ex "D" respectively.(3)
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes I thought you defending officer
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or call anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 98, 118, 119(A), KR Con 308, 330, 563-566. Overseas BO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentences of imprisonment or detention see AA 44(3), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

C H A R G E S H E E T

The accused, A-3969 Private James Robert SMITH, RCASC, on strength of 1 Cdn ASC Rft Unit, a soldier of the Canadian Army Overseas, is charged with:-

WHEN ON ACTIVE SERVICE:-

SEC 15(1) Army Act

ABSENTING HIMSELF WITHOUT LEAVE

in that he

IN THE FIELD, absented himself without leave from approximately 2230 hrs 29th July 1944 until 1500 hrs 5th October 1944 when he surrendered to L-7996 L/Cpl Rack, S.J. of the Unit Regimental Police, at the Unit Guard Room.

TOTAL TIME ABSENT:- 67 days, 16 hours [redacted]

(H.P. Bonnick) Colonel
Commanding
1 Cdn ASC Rft Unit

IN THE FIELD
9TH OCT 1944

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

11 Oct 44

(A.B. Connelly) Brig
Comd "B" Gp
Cdn Rft Units.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 103(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A-3969	Pte		James Robert	SMITH	1 CASCRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 11 Oct 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~)
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(*Must be named. RP 106.*)	(Unit.)
Major	S. Dalton, C Pro C	1 CSRU

MEMBERS.

(Rank.)	(*Named or detailed. RP 106.*)	(Unit.)
Captain	B. Hyman R.C. Sigs	1 CSRU
Lieutenant	J.G. Densmore RCE	1 CSRU

WAITING MEMBER.

(Rank.)	(*Named or detailed, if any. RP 106.*)	(Unit.)
Lieutenant	J.B. Cummings RCE	1 CSRU

JUDGE-ADVOCATE.

(Rank.)	(*Must be named, if any. RP 106.*)	(Unit.)

On Active Service in the Fd

in England (*Country.*)

(*Signed personally. RP 105 fn 2.*) (Rank.)

Date 11 Oct 44

Commanding
(A.B. Connelly) Brig Convening Officer.
Cond "B" Gp Cdn Fft Units.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (CFAIS (2) Rev of AFAS) (See overleaf for oaths and notes for use on trial.)

14 October 1944

I Hereby certify that I have examined A.3969 PTE.
SMITH. J.R. and find him F.T. to undergo Trial
by Field General Court Martial.

Medical Officer
1 Cdn ASC Rft Unit

Exhibit "E" WD.

Statement in mitigation of punishment

1. Pte. Smith, J.R. volunteerily enlisted in the Canadian Army in May 1940, but was discharged in Jan. 1941 as medically unfit. At this time he and his wife were living apart, but while he was in the army, they effected a reconciliation. Again, in June 1941, he re-enlisted in the R.C.A.S.C. as B-1 category, arriving in England in May 1942. He proceeded on draft to Italy in Oct. 1943 serving in the field with the ASC. He was returned to England as a B-4, being told that upon arriving in England he would have the chance of a re-board with the possibility of being returned to Canada. However, on this board he was still classified as a B-4, with no hope of further service with a field unit.

2. All the time that he was in Italy, he received few letters from his wife, the last received being dated March of this year. He had been worrying about this for some time, so that, upon arriving in England he sent off a telegram to his wife enquiring as to the reason for the lack of mail. He had no reply to this wire. Due to his inability to read or write, it was necessary for him to have a Sjt. write a letter for him to his wife. Again there was no reply, nor were there any letters in the meantime. Since Pte. Smith had gone to Italy, he had received no mail from his two children. Up until Oct. 43 he had mail from them at regular intervals.

3. All these things, coupled with the fact that he was an illiterate, brought him to such a state of mind that he got fed up with everything, especially the fact that he had to stay in the Rft. Unit and was unfit to serve with a field unit. While in the Rft. Unit at Beverly, Yorks., he was granted leave, and did not return at the termination of it. He finally surrendered himself to the Guard-room, CASCOM, Pernborough.

(D.V. Weir) Lieut., RCASC
1 Cdn. A.S.C. Rft. Unit.

Exhibit "B"

SUMMARY OF EVIDENCE

IN THE CASE OF A-3969 Private James Robert SMITH, RCASC, on strength of 1 Cdn ASC Rft Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on oath.

1ST WITNESS For the Prosecution

Capt J.M. Stewart, RCASC, on strength of 1 Cdn ASC Rft Unit, having been duly sworn states:-

I am Capt J.M. Stewart, RCASC, on strength of 1 Cdn ASC Rft Unit and produce the following document relating to the accused, whom I now recognize:-

(a) Certified True Copy of the Declaration of a Court of Inquiry, declaring that A-3969 Pte Smith, J.R., of 1 Cdn ASC Rft Unit, In the Field, absented himself without leave from 2230 hrs 29 July 1944. Marked Exhibit "A"

THE ACCUSED DECLINED TO CROSS EXAMINE THIS WITNESS

J.M. Stewart Capt
(J.M. Stewart) Capt.

2ND WITNESS For the Prosecution

L-7996 L/Cpl Rack, S.J., RCASC, on strength of 1 Cdn ASC Rft Unit, having been duly sworn states:-

I am L-7996 L/Cpl Rack, S.J., RCASC, of the Regtl Police, 1 Cdn ASC Rft Unit, and as such was on duty at Unit Guard Room on 5th October 1944 when at approximately 1500 hrs the accused, Pte Smith, J.R., surrendered as an absentee. He was sober and properly dressed. I placed him in confinement and notified RHQ and Records Office in accordance with Unit instructions.

THE ACCUSED DECLINED TO CROSS EXAMINE THIS WITNESS

S.J. Rack
(L-7996 L/Cpl Rack, S.J.)

The accused was caution as follows:- "Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

THE ACCUSED DECLINED TO MAKE A STATEMENT AT THIS TIME

J R Smith
(A-3969 Pte Smith, J.R.)

I hereby certify that the foregoing Summary of Evidence consisting of one (1) page was taken down by me in writing at 1 Cdn ASC Rft Unit on this 7th day of October 1944 in the presence and hearing of the accused and that R.P. 4 (c)(d)(e)(f) and (g) have been complied with.

W.D. Faulafer Lt
(W.D. Faulafer) Lt RCASC
Officer taking Summary of Evidence.

IN THE FIELD
7 OCTOBER 1944

EXHIBIT "A"

Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at Blenheim Barracks Farnborough,Hants.

on the 21st day of August 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. A-3969. Pte.Smith,J.R. 1 Cdn.A.S.C. Rft Unit.

DECLARATION.

The Court declare that A-3969 Pte. Smith,J.R. 1 Cdn ASC Rft Unit ,illegally absented himself without leave from Victoria Barracks,Bevsley, Yorkshire,at2230 hrs.29th July 1944 and that he is still so absent and that on this 21st day of August 1944 he is deficient equipment,clothing,and Regimental necessities to the value of £7-16-6½, 75% of the value being £5-17-6¼,as per attached list Appendix "A".

Exhibit "C"

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	Rank.	Name.	Regiment (or as the case may be).
A-3969	Pte	SMITH J.R.	1 Cdn ASC Rft Unit

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

For Sec 15(1) A.A. ..... 4 times.

For Sec 40 A.A. ..... 1 times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet ..... 9 Feb 43

Date of last entry in Field Conduct Sheet ..... 17 Jun 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for ..... N/A .....

beginning on the ..... day of .....

4. The accused has been awaiting trial on the present charges for ..... Nil .....

days in civil custody; and for ..... 8 ..... days in military custody, i.e., ...

..... Nil ..... days in open arrest, ... 8 ..... days in close arrest;

of which ..... Nil ..... days were spent in hospital.

5. The present age of the accused is ..... 37 years .....

6. The date of his attestation ~~ORIGINAL APPOINTMENT~~ is ..... 26 Jun 41 .....

7. The service which the accused is allowed to reckon is ..... N/A .....

†State the military decorations (if any) held by accused.

8. The accused is in possession of † CVSM wef 15 Jan 44

9. (If the accused is a warrant officer or N.C.O.). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of	.....
In the war substantive rank of	.....
In the acting rank of ..... NOT APPLICABLE	.....

INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

Wt. 13479/2817 30,000 3/44 S1-422 T.Ltd. Forms B.296(War)(1)

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and Place of Trial	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		NIL		

Officer having charge of Regimental Books.

J M Stewart, Capt
Offr IC Regtl Books
1 Cdn ASC Rft Unit
14 October 1944

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 14 day of October, 1944 H Gallantine Lt.

EXHIBIT 'A'

Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at Blenheim Barracks Farnborough, Hants. on the 21st day of August 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. A-3969. Pte. Smith, J.R. 1 Cdn. A.S.C. Rft Unit.

DECLARATION.

The Court declares that A-3969 Pte. Smith, J.R. 1 Cdn ASC Rft Unit, illegally absented himself without leave from Victoria Barracks, Beverley, Yorkshire, at 2330 hrs. 29th July 1944 and that he is still so absent and that on this 21st day of August 1944 he is deficient equipment, clothing, and Regimental necessities to the value of £7-16-6½, 75% of the value being £5-17-8½, as per attached list Appendix "A".

(D.T.Weir) Lieut.R.C.A.S.C. PRESIDENT
1 Cdn ASC Rft Unit

(C.B.Cunningham) Lieut.R.C.A.S.C. MEMBER
1 Cdn ASC Rft Unit.

Names of President and Members

R.G.Desmarais) Lieut.R.C.A.S.C. MEMBER
1 Cdn ASC Rft Unit.

Signature of Commanding Officer

CERTIFIED TRUE COPY

Signature of Officer having custody of the Original Record.

(58827) W1-31046/569 100,000 2/44 A.A.G.W.Ltd. Gp.698 Form/B.115/60

"Exhibit-D" (2)

MFM 6 (AFB 122) 40/PAM/136 (3438)

No A-3969 Name Smith J.R. Sqn, Battery, or Company [redacted] Corps RCASC Date of enlistment 26-6-41. GC Badges Service or Proficiency Pay N/A Character

Date of last entry in Company Conduct Sheet | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine | Sheet No 1. | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award of or order dispensing with trial	By whom awarded	Remarks
				Sheet destroyed 10-6-42 upon completion of six months service(R.O. 2084) Date of last offence 14-10-41. Cases of drunkenness nil.					
Field	9/2/43	Pte		Sec. 15 (1) AA AWL in that he, WOAS, absented himself without permission from 2359 hrs 9-2-43 to 1030 hrs 11-2-43. TTA 1 dy, 10 hrs ,31 mins.	Opl Brown Opl Vernette	5 Days C.B.	12-2-43		Forf 2 days pay FR&I 149 (1)(a)
Field	23/8 43	"		Sec 15(1) AA AWL in that he, WOAS absented himself without leave from 2359 hrs 23-8-43 till 2330 hrs 24-8-43 TTA 23hrs 29 mins.	L 7372 Pte Benson WJ	7 Days C.B. 3 Dys stoppage of pay Documentary	26-8-43	Major W. Hamilton	Forf 1 dys pay FR&I 149 (1)(a

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	29/1/44	Pte		Sec. 40 AA in that he while on sentry beat from 2300hrs. 29 Jan 44did allow a government veh, to be taken by an unauthorized person L.W.	CSM. Sideway J. L/C.Shaw Pte Sharpe	28 Dys Pay	25/2/44	Major W. Hamilton	FR&I 149 (2)
Witley	15/6/44	"		AA Sec 15(1) AWL from 2300 hrs 13 Jun44 to 2300hrs 15 Jun 44 TTA 2days	F 42625 Sgt.Morse S.E.	3 Days Pay FR&I 149(2)	16 Jun 44	Lt.col R.H. Black	Forf.2 Dys Pay FR&I 149(1)(A)
Field	17/6/44	"		AA 33c. 15(1) WCAS AWL from 1800 hrs 17 Jun 44 to 2145 hrs 5 Jun 44 TTA 18 Dys 3 hrs 45 mins.	Sgt Morse S. E.	14 Dys C.B. 28 Dys stoppage of Pay FR&I 149 (2)	8 Jun 44		19 Days pay FR&I 149 (1) (a)

CERTIFIED TRUE COPY FROM MFM 6 IN MY POSSESSION

for Officer I/C Records
1 Cdn A.S.C.Rft Unit

CANADIAN PROVOST CORPS
No. 1.C.G.R.U.

18 Oct 44.

Commander,
"B" Group,

F.C.C.W. --- 14 Oct 44.
1. C.A.S.C.R.U.

IN REPLY PLEASE QUOTE
F.C.M.Q. 5-6-2.

1. In connection with the m/n the undermentioned Officers attended as Officers under instruction:-

Capt. H.G. Smith, R.C.A.S.C.	1.C.A.S.C.R.U.
Lieut. J.B. Cummings, R.C.E.	1.C.E.R.U.
Lieut. L.V. Bush, R.C. Sigs	1.C.S.R.U.

Field
SD/ght

(S.Dalton) Major,
Cdn Pro Corps Coy.,
No. 1. C.G.R.U.
President.

IN THE CASE OF

A-3969 Private James Robert SMITH

LIST OF EXHIBITS

(A) AFB 115 Certified True Copy of the Declaration of a Court of Inquiry, declaring the accused Pte Smith, J.R., as absenting himself without leave from 1 Cdn ASC Rft Unit wef 2230 hrs 29th Jul 44.

This is to certify that I have received a copy of the Summary of Evidence taken on 7th Oct 44 relative to my absenting myself without leave from 2230 hrs 29 Jul 44 until 1500 hrs 5 Oct 44.

J R Smith

(A-3969 Pte Smith, J.R.)

J R Smith

I, the accused, A-3969 Private James Robert SMITH, request the services of a competent officer to represent me at my forthcoming trial by Field General Court Martial.

J R Smith

(A-3969 Pte Smith, J.R.)

4M-55
Pé Smith J.S.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : A.108492 Pte Joseph Stewart SMITH Alg. R.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st Sec 9(2) AA	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 733, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ~~xxxx

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr.* *If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.[2]
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).[1] If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]

President to accused: Do you wish to make a statement? Ans. No.[5]
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E. 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.[1] The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) arraigned, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.[1]
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.[1]
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....[1]
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.[1]
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.[1]
(1. *RP* 39(*C*), *114, KR Can* 535. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.[1] The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).[2] The Court is closed, and considers the submission.[3] The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).[4]
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para* D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115*.)

D5. President to accused: You will now proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn, and you will not be subject to cross-examination.[3] But a statement which could have been made on oath will not as a rule be given the same weight as sworn testimony.[4] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. ..... Do you intend to call witnesses on your behalf? Ans. ..... Are they witnesses as to character only? Ans. .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1]
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*F*).)

D7. The Court is closed to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*B*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.[1]
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.[2]
(1. *AA* 54(3) (*c*), *RP* 45, 120(*A*). 2. *AA* 54(7), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?[1]
Ans. Yes as to character only
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces statement(s) as to Character and Particulars of Service[1], and certified true copy (copies) of Conduct Sheet(s)[2], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (b), and (ii) they purport to refer to (a) soldier's having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex "C" respectively.[3]
(1. *MFB* 255 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 538. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?[1] Ans. Yes through my defending officer.[2]
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]
(1. *AA* 54(*E*), *RP* 120(*A*).)

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.[2]
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566. *Overseas RO* 309, 2413. *MML p* 66, 727-738. *As to sentences assigned for civil offences by the law of England see AA* 44(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(18), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, A1068492 Pte Joseph Stewart SMITH, The Algonquin Regiment, a soldier of the Canadian Army Overseas, is charged with:

CHARGE
Sec 9(2)
Army Act

WHEN ON ACTIVE SERVICE DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER

in that he

in the field at 0235 hrs 18 Nov 44 when ordered by Major G.L. Cassidy, Algonquin Regiment to go on patrol did not do so.

(Signed) R A Bradburn Lt Col
Officer Commanding
Algonquin Regiment

In the Field
23 Nov 44

To be tried by Field General Court Martial.

In the Field
27 Nov 44

(Signed) G D Wotherspoon Lt-Col
A/Comd 10 Cdn Inf Bde.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(8).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 183, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A106492	Pte		Joseph Stewart	SMITH	Alq R

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(~~s~~) attached and on (*date*) 27 Nov 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(~~s~~) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. ~~I also appoint as Judge Advocate thereof the Offr mentioned hereunder.~~
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	M J McCUTCHEON	Line & Hello R

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A/Capt	H F EATON	A & S H of C
Lt	S L CASELEY	29 Cdn Armd Recce Regt

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	R A PATERSON	HQ 10 Cdn Inf Bde

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

(Country.)	(Signed personally. RP 105 fn 2.)	(Rank.)
in Holland	(Signed) G D Rotherspoon	Lt-Col

Date 27 Nov 44 A/ Commanding 10 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(*See overleaf for oaths and notes for use on trial.*)

MEDICAL OFFICER'S CERTIFICATE

I certify that I have this morning examined

No. A-108492 Private SMITH, J.S.

of The Algonquin Regiment C.A.(A)

and in my opinion he is fit to undergo trial by

Court-Martial.

Station In The Field

Date 28 Nov 44

(Signed) C.C. Jenson Capt
Medical Officer

Ex "A"

Summary of Evidence in the case of A108492 Pte SMITH, Joseph Stewart The Algonquin Regiment, Canadian Army Overseas charged with Disobeying in such a manner as to show wilful defiance of authority a lawful command given personally by a superior officer in the execution of his office.

THE COMMANDING OFFICER DIRECTS THAT ALL EVIDENCE BE TAKEND ON OATH.

FIRST WITNESS: Major G.L. Cassidy The Algonquin Regiment having been duly sworn stetes:

"On the evening of 17-18 Nov 44 a raid force composed of representatives from each of the rifle coys and commanded by Lt. Mozell of "B" Coy was organized and briefed by me for the task of getting prisoners and identifications across the Maas River on the Barwijk front. The briefing was as complete as possible and all ranks impressed with the necessity of achieving the object. At this time the force seemed enthusiastic for the job and things looked favourable.

At approx 2300 hrs the patrol got under way carrying two boats from 13 pl HQ area to the vicinity of Maas. There was a difficult obstacle (a damaged roadway) to cross, and there was a high wind. As a result of this, one boat was lost. The Comd of the patrol at this point felt that he could not carry out the task and ordered patrol to return, which they did arriving back at 13 Pl HQ approx 0200 hrs. Unfortunately they brought back the remaining boat with them. After a consultation with the C.O. it was decided that another attempt had to be made with at least the idea of getting the boats forward and hidden for use on the following night. The men were tired and apparently demoralized but I got them all together and told them plainly that the job had to be done and at once. The groups were reorganized, two reserve boats prepared and we prepared to move off. I was to accompany them this time. Just as the order was given to move out, Pte Smith in company with Cpl Maxwell said to me that he would not go because he was "dead beat", that he had had no sleep the night before and that it seemed useless to carry on. I told both of them that the task had been laid on, that orders must be carried out in spite of fatigue and pointed out that doubtless others on the patrol were equally tired, but still willing to go. Pte Smith said that he still would not go. I asked him directly if he was deliberately refusing to obey my order and he said "Yes". I asked Major Herbert if he would take Smith's name as well as Cpl Maxwell's who had similarly refused. As I left the room this was being done by Lt. Brassard."

(Signed) G.L. Cassidy Major

The accused declines to cross examine this witness.

SECOND WITNESS Lt. C.A. Mozell The Algonquin Regiment having been duly sworn stetes:

"On the evening of 17-18 Nov 44 I was the Comd of the patrol which was to cross the Maas River and was present when Cpl Maxwell and Pte Smith refused to accompany the patrol on their second effort. I heard Major Cassidy ask the accused if he deliberately refused to obey his order, Pte Smith answered "yes". Lt Brassard was then asked to take the name of the accused, this was being done as I left the room with Major Cassidy.

(Signed) C.A. Mozell Lt.

The accused declines to cross examine this witness.

THIRD WITNESS: Lt. L. Brassard, The Algonquin Regiment, having been duly sworn states:

"On the night of the 17-18 Nov 44 I was at 13 Pl HQ's where the patrol had come back to reorganize After Major Cassidy had spoken to them some of the men on the patrol said that they didn't feel like going back. Major Cassidy told them it was a duty and and order to go back. I did not hear Pte Smith say "yes" when asked by Major Cassidy if he was deliberately refusing to obey his order but I did hear him say that he had worked all night the night before and that he was beat and he was not going back. Major Cassidy then asked Major Herbert to take the names of those who were refusing to go. Major Herbert again told them it was an order to go and he told me to take the names of those who refused. I went around and asked those who refused to go back to give me their names and number. Pte Smith, J.". gave me his name and number and subsequently did not accompany the patrol."

(Signed) L. Brassard. Lt.

The accused declines to cross examine the witness.

FOURTH WITNESS: B51651 A/Sgt MacLeod, W.H. The Algonquin Regiment having been duly sworn states:

"I was present at 13 Pl HQ's on the night of 17-18 Nov 44. I heard Pte Smith state that he would not accompany the patrol back to the Moss River and when asked by Major Cassidy if he was deliberately refusing to obey his order Pte Smith answered "yes". His name and number was taken by Lt. Brassard. Smith then laid down to sleep. I received permission from Major Herbert and put him on Guard duty for the rest of the night.

(Signed) W.H. MacLeod Sgt

The accused declines to cross examine the witness.

THE ACCUSED: The accused declines to make a statement at this time.

I certify that R P 4 (c) (d) (e) (f) and (g) has been complied with.

I certify that the foregoing summary of evidence was taken down by me in the field in the presence and hearing of the accused this 22 Nov 44.

(Signed) P.M. Montes Lt.

CHARACTER

Witness. Lieut. C.E. Neil 'D' Coy. Alq. Regt.
sworn states -

Q. Do you know the accused?
A. Yes, he is a member of my platoon

Q. How long has the accused been in your platoon?
A. As near as I can reckon it, 5 weeks 2 days.

Q. Have you commanded the accused in action?
A. Yes, I have.

Q. What type of soldier has the accused been, as a soldier, in action?
A. There have been no complaints whatsoever as to his service with the platoon.

Q. Have you had any previous trouble with the accused?
A. None whatsoever.

R.P. 83(B) complied with.

M.F.B. 355
22M—9-41 (572-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
A.106492	Pte	SMITH, J.S.	Algonquin

1. The following is a fair and true summary of the entries in the Service and General / Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act / Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment	
For	[redacted]	times	RNS
For	NIL	NIL	RNS
For	NIL	NIL	RNS
For	NIL	NIL	RNS

Number of instances of gallantry or distinguished conduct

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted~~

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act / A.F.A. 73 section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule RNS annexed to this statement.

3. The accused is not under sentence at the present time.

or,

RNS ~~The accused at the present time is under sentence for [redacted] beginning on the~~

RNS ~~day of~~

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 4 days in military / Airforce custody, making a total of 4 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused ~~according to his record of service~~ is 27 years / ~~attestation paper~~ is

6. The date of his ~~enrolment specified in his record of service~~ is 12 Oct 43 / attestation ~~attestation paper~~

7. The service which the accused is allowed to reckon ~~towards discharge~~ is 1 year 1 month

8. The accused is entitled to reckon ..... service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in military / military possession of or entitled to). State any air force decoration or reward. military N/A

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of .....

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated , and in his regiment (or corps), the rank of dated .

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused, Number Rank Unit Name of Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 23 day of Nov 44

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

(Signed) R.E. Sherwill Capt Adjt
The Alq R.

No. A108492 Name SMITH, J.S. Ex "C" Sqn, Battery, or Company D Coy Corps CIC Date of enlistment 1 Oct 43 GC Badges Service or Proficiency Pay 3/17 MFM 6 (AFB 122) 40/PAR/156 (5413)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 Temp | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Temporary MFM 6 issued 23 Nov 44					
				CERTIFEID TRUE COPY from regimental documents in my possession. 23 Nov 44 (Signed) R.N. Shervill Capt Adjt Alq Regt.					

(PTO)

COPY OF PLEA FOR MITIGATION OF SENTENCE IN THE CASE OF
A.1064 92 PTE SMITH JOSEPH STEWARD. THE ALGONQUIN REGT.

As defending officer I would like the court to take a few facts into consideration in this case.

The accused joined the Army on 12 Oct 43 and was A Tpr. in the Armoured Corps until he was remustered in Infantry on Aug. 44. He joined the Algonquin Regt. in Oct the same year. His conduct sheet is clean and there is every indication of his being a good soldier in the past.

On the night of 17-18 Nov 44 the accused returned from the first patrol attempt at 0200 hrs. He went out with the first patrol at 2300 hrs. Undoubtedly at this time having worked all day, the accused was in a state of exhaustion both mentally and physically. He would therefore be much more susceptible to a nervous strain and mental distress and did not at the time fully realize the seriousness of the crime he was committing.

I wish the court primarily to consider his previous good character and clean conduct sheet, also his excellent report and conduct in action as stated by his platoon Commander. Secondly the fact for just consideration that he was in a distressed state of mind which would not be functioning properly and not aware of the seriousness of the crime.

The are the facts to be considered in this plea for mitigation of sentence.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A108492 Pte Joseph Stewart Smith Adg R.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st Sec 9(2) AA	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: ~~[illegible]~~ findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ~~[illegible]~~ beginning on (date) ~~[illegible]~~ (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 44 days, of which 140 days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo detention for eighteen months

(Sgd) ~~[illegible]~~ Judge-Advocate, if any. 28 Nov 44 Date awarded. (Sgd) MJMcCutcheon Maj President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ~~[illegible]~~ (Sgd) ~~[illegible]~~ Commanding ~~[illegible]~~

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 13, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~ (1. AA 57A. Delete if not used.) D & J

(Sgd) D & Jefferson Brig

Date 4 Dec 44. Commanding 10 Cdn Inf Bde. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
A108492 Pte Joseph Stewart Smith	8 Dec 44	[illegible] Capt Adjt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 24 JAN 1945 CMHQ

RECORDED AT CMHQ ON AUG 1945

4M-55

FIELD GENERAL COURT-MARTIAL

CFA90 (In lieu of AFA91) 40/P & S/1698 (M2)

4/388

Convened by Order of G.D. WOTHERSPOON LT COL Comd 10 C I B dated 24 Nov 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A108492	Pte	Joseph Stewart	Smith	Adg R.

PROCEEDINGS REVIEWED
T. Foster Pitcairn Lieut
G.L. Jan 45
REVIEWING OFFICER, GS BRANCH, C.M.H.Q.

PROCEEDINGS REVIEWED AT CMHQ
Cdn. Sec. 21 Army Gp
A. DJAG (E)
[illegible] Lt Col

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date) 28 Nov 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 15/28

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fme RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(2), accused is subject and amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 22, 24.)

A3. The Court is opened. The accused is not brought before the Court. At 1400 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: ~~Do~~ you object to ~~[illegible]~~ as Interpreter? Ans —
~~The Interpreter is sworn.~~(1) ~~Do you object to~~ as Shorthand writer? Ans —
~~The shorthand writer is sworn.~~(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans Nil (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(3). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj MJMcCutcheon Linc Welld R	
Member	A/Capt H.T. Eaton A&SH of C.	
Member	Lieut D.L. Barclay 29 Bde Armd Recce Regt	
Judge-Advocate		
Prosecutor	Lieut P.M. McAtee Adg Regt	
Defending Offr	Lieut J.G. Fraser Adg Regt	

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No. (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See fn to p 2.)

A8. The accused A 108 492 Pte Smith J.S. before arraignment makes ~~[illegible]~~ plea.
~~[illegible]~~ (1)
(1. If special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is duly arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 71, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*ii*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 2. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. [redacted].(5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 3 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

[redacted]

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

[redacted]

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex 'A', initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C2.(1)

(1. *RP* 37(*A*) (*ii*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*), 114, *KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?

Ans.....Do you intend to call witnesses on your behalf?

Ans.....Are they witnesses as to character only? Ans.....

(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* 465. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA* 54(2) (*c*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans. Yes as to character only

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(j) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 'B' and Ex 'C' respectively.(3)

(1. *MFB* 253 *or AFB* 296. 2. *MAM* 6. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes I have to my Reputation of Soldier.(2)

(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA* 54(8), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. *When several accused tried sepatately see RP* 71 (*b*). *One sentence only, comprised of the punishment or punishments laid down in AA* 40, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 40. *As to sentences see AA* 44, 130, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Con* 308, 330, 563-566, *Overseas RO* 309, 1323, *MML p* 60, 752-759. *As to sentences assigned for civil offences by the law of England see AA* 44(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(3) (*b*), 68(1), *KR Con* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see insets on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, A108492 Pte Joseph Stewart SMITH, The Algonquin Regiment, a soldier of the Canadian Army Overseas, is charged with:

CHARGE
Sec 9(2)
Army Act

WHEN ON ACTIVE SERVICE DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER

in that he

in the field at 0235hrs 18 Nov 44 when ordered by Major G.L. Cassidy, Algonquin Regiment to go on patrol did not do so.

(R A BRADBURN) LT Col
Officer Commanding
Algonquin Regiment

In the Field
23 Nov 44

To be tried by Field General Court Martial.

(G D Wotherspoon) Lt-Col
A/Comd 10 Cdn Inf Bde

In the Field
27 Nov 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
A108492	Pte		Joseph Stewart	SMITH	Alq R

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, had ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 27 NOV 44 endorsed by me, "~~(or by each of them)~~," To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ~~and that it is not practicable to delay the trial for reference to higher authority~~.

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I hereby appoint (a) the Officer forming the Court, to be Pres, for the reason that no other Officer is available~~.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate the Officer mentioned hereunder~~.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	M J McCUTCHEON	Line & Weild R

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A/Capt	H F EATON	A & S H of C
Lt	S L CASELEY	29 Cdn Armd Recce Regt

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	R A Paterson	HQ 10 Cdn Inf Bde

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in HOLLAND (Country.)

F.D. Wotherspoon (Signed personally, RP 105 fn 7)

Lt col (Rank.)

Date 27 Nov 44

A/ Commanding 10 Cdn Inf Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (CFAO 116 (2nd Insc of AFAO 87/7 & 87/60) (6/51)

(See overleaf for oaths and notes for use on trial.)

Appx "C"

MEDICAL OFFICER'S CERTIFICATE

I certify that I have this morning examined

No. A-108492 Private SMITH J.S.

of The Algonquin Regiment C.A.(A.)

and in my opinion he is ~~unfit~~ fit to undergo trial by Court-Martial.

Station In The Field

Date 28.Nov.44

Medical Officer

Ex - A

Summary of Evidence in the case of A108492 Pte SMITH, Joseph Stewart The Algonquin Regiment, Canadian Army Overseas charged with Disobeying in such a manner as to show wilful defiance of authority a lawful command given personally by a superior officer in the execution of his office.

THE COMMANDING OFFICER DIRECTS THAT ALL EVIDENCE BE TAKEN ON OATH.

FIRST WITNESS: Major G.L. Cassidy The Algonquin Regiment having been duly sworn states:

"On the evening of 17-18 Nov-44 a raid force composed of representatives from each of the rifle coys and commanded by Lt. Rozell of "D" Coy was organized and b briefed by me for the task of getting prisoners and identifications across the Maas River on the Barwijk front. The briefing was as complete as possible and all ranks impressed with the necessity of achieving the object. At this time the force seemed enthusiastic for the job and things looked favourable.

At approx 2300 hrs the patrol got under way carrying two boats from 13 pl HQ area to the vicinity of Maas. There was a difficult obstacle (a damaged roadway) to c ross, and there was a high wind. As a result of this, one boat was lost. The Comd of the patrol at this point felt that he could not carry out the task and ordered patrol to return, which they did arriving back at 13 Pl HQ approx 0200 hrs. Unfortunately they brought back the remaining boat with them. After a consultation with the C.O. it was decided that another attempt had to be made with at least the idea of getting the boats forward and hidden for use on the following night. The men were tired and apparently demoralized but I got them all together and told them plainly that the job had to be done and at once. The groups were reorganized, two reserve boats prepared and we prepared to move off. I was to accompany them this time. Just as the order was given to move out, Pte Smith in company with Cpl Maxwell said to me that he would not go because he was"dead beat", that he had had no sleep the night before and that it seemed useless to carry on. I told both of them that the task had been laid on, that orders must be carried out in spite of fatigue and pointed out that doubtless others on the patrol were equally tired, but still willing to go. Pte Smith said that he still would not go. I asked him directly if he was deliberately refusing to obey my order and he said "yes". I asked Major Herbert if he would take Smith's name as well as Cpl Maxwell's who had similarly refused. As I left the room this was being done by Lt. Brassard"

GLCassidy Major

The accused declines to cross examine this witness.

SECOND WITNESS: Lt. C.A. Rozell The Algonquin Regiment having been duly sworn states:

"On the evening of 17-18-Nov-44 I was the Comd of the patrol which was to cross the Maas River and was present when Cpl Maxwell and Pte Smith refused to accompany the patrol on their second effort. I heard Major Cassidy ask the Accused if he deliberately refused to obey his order, Pte Smith answered "yes". Lt Brassard was then asked to take the name of the accused, this was being done as I left the room with Major Cassidy.

CARozell Lt

The accused declines to cross examine this witness.

THIRD WITNESS: Lt. L. Brassard, The Algonquin Regiment, having been duly sworn states:

"On the night of the 17-18 Nov-44 I was at 13 Pl HQ's where the patrol had come back to reorganize After Major Cassidy had spoken to them some of the men on the patrol said that they didn't feel like going back. Major Cassidy told them it was a duty and an order to go back. I did not hear Pte Smith say "yes" when asked by Major Cassidy if he was deliberatly refusing to obey his order but I did hear him say that he had worked all night the night before and that he was beat and he was not going back. Major Cassidy then asked Major Herbert to take the names of those who were refusing to go. Major Herbert again told them it was an order to go and he told me to take the names of those who refused. I went around and asked those who refused to go back to give me their names and number. Pte Smith, J.S. gave me his name and number and subsequently did not accompany the patrol."

L. Brassard Lt

The accused declines to cross examine the witness.

FOURTH WITNESS: B51651 A/Sjt MacLeod, W.N. The Algonquin Regiment having been duly sworn states:

"I was present at 13 Pl HQ's on the night of 17-18 Nov-44. I heard Pte Smith state that he would not accompany the patrol back to the Maas River and when asked by Major Cassidy if he was deliberately refusing to obey his order Pte Smith answered "yes". His name and number was taken by Lt. Brassard. Smith then laid down to sleep. I received permission from Major Herbert and put him on Guard duty for the restof the night.

W.N. MacLeod Sgt.

The accused declines to cross examine the witness.

THE ACCUSED: The accused declines to make a statement at this time.

I certify that R P 4 (c) (d) (e) (f) and (g) has been complied with.

I certify that the foregoing summary of evidence was taken down by me in the field in the presence and hearing of the accused this 22-Nov-44.

J. M. McAtee Lt

CHARACTER

1st. Witness. Lieut. C.E. Neil 'D' Coy. Alg. Regt. Injust

Sworn states:

Q. Do you know the accused?
A. Yes, he is a member of my platoon.

Q. How long has the accused been in your platoon?
A. As near as I can reckon it, 5 weeks 2 days.

Q. Have you commanded the accused in action?
A. Yes, I have.

Q. What type of soldier has the accused been, as a soldier, in action?
A. There have been no complaints whatsoever as to his service with the platoon.

Q. Have you had any previous trouble with the accused?
A. None whatsoever.

R P 83(A) complied with

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
A108492	Gte	SMITH J S	Algonquin

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

[illegible] MAMAMAMAMAMAMAMAMAMAMAMAMAMAMAMAMAM times.

[illegible] M MSMSMSMSMSMSMSMSMSMSMSMSMSMSMSMSM times.

[illegible] M MSMSMXMXMXMXMXMXMXMXMXMXMXMXMXMXM times.

[illegible] MMSMSMXMXMXMXMXMXMXMXMXMXMXMXMXMXMM times.

Date of first entry in Field Conduct Sheet [illegible] NIL

Date of last entry in Field Conduct Sheet [illegible] NIL

[illegible] 2. [illegible] out [illegible]

*strike out if not applicable.

*3. [illegible]

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for 4 days in military custody, *i.e.*, Nil days in open arrest, 4 days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 27 years

6. The date of his attestation is 12 Oct 43

7. The service which the accused is allowed to reckon is 1 year 1 month

8. The accused is in possession of† N/A

†State the military decorations (if any) held by accused.

[illegible] 9. (*If the accused is a warrant officer or N.C.O.*) The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of	
In the war substantive rank of	
In the acting rank of	

[illegible] INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(21114) W1.44370/668 100,000 4/42 A. & E. W. Ltd. Gp.668 Forms/B.296(War)/2
(21449) W1.29256/1870 80,000 9/42

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 23 day of Nov 44

(R N Shervill) Capt Adjt
The Alq R

Ex B

No. A108492 Name SMITH J.S. Sqn, Battery, or Company HDQ Coy Corps CIC Date of enlistment 12 Oct 43 GC Badge No. Service or Proficiency Pay

MFM 6 (AFB 122) 40/PAS/196 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 THIS | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Temporary MFM 6 issued 23 Nov 44					

(CERTIFIED TRUE COPY) from regimental documents in my possession.

23 Nov 44

Captain Adjt.

A1g R6

(PTO)

Appendix C

COPY OF PLEA FOR MITIGATION OF SENTENCE IN THE CASE OF PTE. SMITH JOSEPH STEWARD. THE ALGONQUIN REGT.

As defending officer I would like the Court to take a few facts into consideration in this case.

The accused joined the Army on 12 Oct 43 and was A Tpr. in the Armoured Corps. until he was remustered in Infantry on Aug. 44. He joined the Algonquin Regt. in Oct. the same year. His conduct sheet is clean and there is every indication of his being a good soldier in the past.

On the night of 17-18 Nov. 44 the accused returned from the first partol attempt at 0200 hrs. He went out with the first partol at 2300 hrs. Undoubtedly at this time having worked all day, the accused was in a state of exhaustion both mentally and physically. He would therefore be much more susceptible to a nervous strain and mental distress and did not at the time fully realize the serioness of the crime he was committing.

I wish the court primarily to consider his previous good character and clean conduct sheet, also his excellent report and conduct in action as stated by his platoon Commander. Secondly the fact for just consideration that he was in a distressed state of mind which would not be functioning properly and not aware of the seriouness of the crime.

These are the facts to be considered in this plea for mitigation of sentence.

WWW-126

Pete Smith JV

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B.19482 PTE. JOHN VICTOR SMITH 38th ICBRD.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for ..... beginning on (date) .....~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 23 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo detention for a period of six months.

(Sgd) ..... 23 Aug 44 (Sgd) .....

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) C.W. Haedenberg Brig

Date 23 Aug 44 Commanding COMMANDER 1 CDN CASE RET GROUP Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B79482 Pte John Victor Smith	26 Aug 44	J.M. Matthews. Capt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AO 160. WWW-126

CPA80 (To face of AFA81) 40/P & S. 1/6/44 (60M) 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig. E.W. HALDENBY Comd 1 C.B.R.G.D. dated 19 Aug 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns. KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B79482	Pte		John Victor	SMITH	38th CBRD

PROCEEDINGS REVIEWED 19 Sep 44

Wm Thompson Lt Col

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 23 Aug 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fms ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2).~~

(1. KR Con 557. 2. AA 46(8), RP 90 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ..... as interpreter? Ans .....~~

~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans (2) .....

(1. RP 110. 2. If no objection, waiting member retires. RP 66(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	W.E. Dunbar	CAC	5Bn 2CBRD
Member	Lt	N.W. Hockin	CAC	6Bn 2CBRD
Member	Capt	H.A. Stephens	CIC	7Bn 2CBRD
Judge-Advocate				
Prosecutor	Capt.	S.E. Cameron (CIC)		3Bn 1CBRD
Defending Offr	Lt.	C.R. Parsons (CIC)		3Bn 1CBRD

Questions by President: Is the Prosecutor a lawyer? Ans NO. Is the Defending Offr a lawyer? Ans NO.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (3) and fn 2 were not followed. See D1 p 3.)

The Court adjourned at 0915 hrs and re-assembled at 0950 hrs.

A8. The accused ..... before arraignment make(s) (no) ~~a~~ plea(s).(1) Nil

(1. If a special plea is made for separate trial on one or more charges (RP 62(C), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial, (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

~~(1. RP 62 (1) (2) and (3) p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)~~

A10. The Court ~~is informed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60*(*C*) *; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60*(*A*) (*B*) *; duty and privileges of accused and Defending Offr see RP 60*(*C*), 87(*C*), 91, 92 *; swearing and withdrawal of witnesses from Court see RP* 81, 82 *; questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 *; calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 *; use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 *; and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No Sir.(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex B1, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if charged to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have not been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 97(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D6.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans..... Do you intend to call witnesses on your behalf ?
Ans..... Are they witnesses as to character only ? Ans.....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 895. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 42, 117(B). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(2) (b), RP 45, 120(A).* 2. *AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans Yes Sir
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier's having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex E 2 and Ex E 3 respectively.(3)
(1. *MFB 355 or MFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes Sir.(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (2). One sentence only, comprised of the punishment or punishments laid down in AA 40, 44 and its provisos, is to be awarded to cover all charges on all charge sheets on which accused found guilty. RP 48. As to sentences see AA 64, 130, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 336, 563-566, Overseas RO 308, 2323, RP 48. As to sentences assigned for civil offences by the law of England see AA 44(1)(b), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused B-79482 Private John Victor SMITH presently on strength 3 Canadian Reinforcement Battalion, 1 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas, placed on Active Service is charged with:

First Charge
Army Act
Sec 15(1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field in Italy, on 19 Jun 44 at approximately 0745 hours absented himself without leave until apprehended by Regimental Police of 1 Canadian Convalescent Depot at approximately 0150 hours 1 Aug 44.

Total Time Absent 42 days 18 hours 5 minutes.

(W.W. Mathers) Lt-Col.
Commanding Officer,
3 Cdn Rft Bn, 1 CBRD.

In the Field
14 Aug 44.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
In Italy
19 Aug 44

(E. W. HALLEDAY) Brigadier
Comd 1 Cdn Base Rft Gp
Cdn Army-CMF

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B79482	Pte		John Victor	SMITH	3 Bn 1 CBRD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 19 Aug 44 endorsed by me, ~~(or by an offr of my staff for me)~~," To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereof the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	W J DUNCAN (CA 0)	3 Bn 2 CBRD

MEMBERS.

Capt or Lieut to be detailed by OC 3 Bn 2 CBRD

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt or Lieut to be detailed by OC 7 Bn 2 CBRD		

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lieut to be detailed by OC 2 Cdn CBRD		

~~JUDGE-ADVOCATE~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy (Country.)

Date 19 Aug 44

(Signed personally. RP 105 (c) (i).) (Rank.)

(H. V. [illegible])

Commanding 1 Cdn Inf Bde Gp - CBRD

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (FAAS (To [illegible] of AFA) AD/F & S/1867 (4601))

(See overleaf for oaths and notes for use on trial.)

ooo MEDICAL OFFICER'S CERTIFICATE ooo

I hereby certify that I have this day examined

No. B28782 Rank Pte Name SMITH T.V.

and in my opinion is fit to undergo trial by

Court Martial.

Date Aug 23/44

(Medical Officer)

E1

Statement of B73385 Cpl W H Dethart
48th Highs Can. on the character of the
accused - B79482 Pte Smith S.B.

I have personally known Pte S.B. Smith of the
field unit of the 48th Highlanders of Canada, and
have always found him capable and willing.
He is of a cheerful disposition, always helping
to keep a high standard of moral in [redacted]
He always did anything asked of him in a
cheerful manner, without hesitation, and was
an excellent soldier in action. He is definitely
the type of man who I would prefer to have
with me in action.

Cpl. W.H. Dethart

Pte ____ is a soldier with more than 3 years active service in the Canadian army. He volunteered for active service overseas. He landed in Sicily when the Canadians began their invasion of the continent. He fought with them through the Campaign and came to Italy. On the 14th dec 43 he was wounded in action and sent to a hospital where he remained until May 44. During that time he contracted pneumonia as a result of his weakened state of health. He was finally returned to base hospital. The man had undergone serious trials. He had had no leave since he left England. The prospect of becoming a parade ground soldier with all its implications did not appeal to him. Besides that there was little hope at the time of rejoining his unit. This man

had shown that he was an exemplary soldier in the field and nothing in his past conduct shows that he intended to shirk his duty in the front line by absenting himself without leave. If at the time Pte — had been able to rejoin his unit he would have been happy to do so. But this was not possible at the time. He stayed at CSRD some days and then absented himself. This is my plea for leniency. I trust that the circumstances surrounding this man's absence will be weighed when a punishment is awarded —

Summary of Evidence "B"

In the case of B79482 Pte. Smith J.V. presently on strength 5 Canadian Reinforcement Battalion 1 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas placed on Active Service.

By direction of the commanding officer the evidence is taken on oath.

First Witness for Prosecution.

Lieut J K Rumball acting adjutant 3 Bn I CBRD. having been duly sworn states:—
I am Lieut J K Rumball. I produce a certified true copy of the original Record of Declaration of a court of inquiry of the original from Regimental documents which I have in my custody. This Declaration No 27 declares that B79482 Pte Smith J V of the Y & Lab 4R Highlanders of Canada illegally absented himself without leave from 3 Bn 1 CBRD at 0145 hours 17 June 44, and at 0145 hours 10 July 44 was still absent and is still so absent.
This court was convened on 12 July 44 The declaration is marked Exhibit A & attached to the summary

J.K. Rumball (Lt)
Lieut J K Rumball

The accused declines to cross examine the witness at this time

Lt. J. V. Smith
B79482 Pte Smith J.V.
Pte. 1 RCIC.

Wed

Second Witness for Prosecution

L18048 Sgt. Nash L.W. Regt. Police 1 CCD.

A statement purported to be a sworn statement signed by this witness is read to the accused and marked Exhibit B.

The accused did not demand the presence of the above witness for cross-examination.

J. V. Smith
B79482 Pte Smith J.V.

I certify that due to the exigencies of the service and loss of time involved the attendance of this witness is not readily procurable

Grchild
Lieut J.H. Child.
Officer detailed to take this summary of evidence.

Third Witness for the Prosecution.

G22780 CQMS Taylor J.H. CQMS 15 Coy 3 Bn. ICBAD having been duly sworn states:-

I am G22780 CQMS Taylor J.H. On the 9 Aug 44 I inspected the kit of Pte Smith, whom I now recognise, in his presence and found his kit to be complete.

J. H. Taylor
G22780 CQMS Taylor J.H.

The accused declines to cross-examine this witness at this time.

J. V. Smith
B79482 Pte Smith J.V.

(68)

The accused was cautioned in accordance with Rule of Procedure 4 (a) as follows.

"Do you wish to make any statement on give evidence on oath? You are not obliged to make a statement on to give evidence at this time but any evidence which you may give will be taken down in writing and may be given in evidence."

The accused declines to make any statement on to give evidence at this time.

The accused does not desire to call any witnesses for the defence at this time.

J V Smith

B79482 Pte Smith JV.

I certify that the foregoing Summary of Evidence was taken down in writing by me in the presence of the accused and that Rules of Procedure 4 (a) (b) (c) (f) and (g) have been complied with.

In the field
7 Aug 44

J A Child

Lieut J.H. Child
Officer detailed to take this Summary of Evidence

COPY B2 Exhibit A AFB 115

RECORD of the Declaration of a Court of Inquiry assembled at on the 12th day of July 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. Pte Smith, J.V B 79482

DECLARATION

The Court declare that No. B-79482 Pte Smith J.V

X4 48th HIGHLANDERS OF CANADA

illegally absented himself without leave FROM 3 Bn / C.B.R.D

at 0745 hrs 19 JUNE 1944 ~~on the~~ AND 0745 hrs 10th day of July 1944, HE IS STILL ABSENT AND IS STILL SO ABSENT

and that on the 19 June 1944 he was deficient, and that he is still deficient of the following articles:— TO THE VALUE OF $8.46 75%

ARTICLES		VALUE	ARTICLES	VALUE
Boots, ankle prs	1	4 07½		
Drawers, cellular, shorts	1	32 ¾		
Vests, cotton, gym	1	27		
Trousers K.D. prs	1	1 18½		
Shirts, Bush	1	1 31¼		
Bonnets, Tam o Shanter	1	45		
Socks prs	1	27¾		
Holdall	1	14¼		
Brushes, shaving	1	27¾		
Razor, safety & blades	1	47¼		
Brushes, tooth	1	26¼		
75% Value		$ 8. 46		

Capt S. Beatty President
ASST PER. P.E. 3 Bn 1 C.B.R.D.

Lt. H.R. Grant Member
48th Highrs of Can 3 Bn 1 C.B.R.D

Signed at In the Field

Lt. Jam McNeil Member
this 12th day of July 1944 48th Highrs of Can 3 Bn 1 C.B.R.D

Signature of Commanding Officer S&D – G. Stothart Major
FOR O.I.C. Camp 3 Bn 1 C.B.R.D

W.D. 24 M.D. No. 55 Form Obs.—4-41 (5461) H.Q. 1772-5-50

Certified True copy of the original ~~CERTIFIED TRUE COPY~~ from departmental documents in my custody Lt. Col. 14. C.B.R.D. Capt

RECORD of the Declaration of a Court of Inquiry assembled at on the day of 19 , for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No.

DECLARATION

The Court declare that No. _____

_____

illegally absented himself without leave _____

at _____ on the _____ day of _____;

and that on the _____ he was deficient, and that he is still deficient of the following articles:—

ARTICLES	VALUE		ARTICLES	VALUE	

_____ President

_____ Member

Signed at _____

_____ Member

this _____ day of _____ 19 _____

Signature of Commanding Officer _____

M.G. No. 69
2000 Bks.—6-41 (940)
H.Q. 1172-61-40

EXHIBIT B

Army Form B 253
(See King's Regulations)

...of Bde. 1. C. B.R.D. Regiment

Battery / Squadron / Troop or Company

CHARGE against No. B79482. Rank. Pte.

Name Smith. J.

Place Field 1. C. B.D. Date of Offence 1st aug 1944.

OFFENCE W.O.A.S.

A.W.O.L. ? from Cell arrested By Regt Police at 0130 hrs 1st aug 1944.

Names of Witnesses:

~~B58046~~ L/W Yeoh. Sgt. Regt Police. H. 1. C. B. D.

1-39623. R/W Belfons. Cpl. Regt Police

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.S.S. 111—100,000—11/42

P T O

EXHIBIT B3

EVIDENCE

Sir. While on duty at T. C. D at approx. 0150 hrs on 1 Aug 1944. We approached the accused, he had no pass. He told he was A.W.O.L. from C.C.R.E. I placed him under a forced arrest and notified R of C. Can Prov. Coy.

J 18043 LW Nash. Cpl.
Regt. Police # 1 C.C.D.

I have read and corroborate the above statement.

L-53625 RM Bellows. Cpl. Regt. Police
No 1 CCD.

REMARKS

E2

ARMY FORM B.206.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
B-79482	Private	SMITH, J.V.	(48th Highrs) 3 Cdn Rft Bn 1 CBRD

1. The following is a fair and true summary of the entries in the regimental and ~~squadron, battery or~~ company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the A/58 conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 427, K.R. 1940.

* The conduct sheets should correspond with the answer or entries in the numbered spaces, particulars being given in the usual manner adhered to in each entry, and to any exceptional abroad acts of gallantry or distinguished conduct.

Instructions.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For Sec 15(1)	2 times	7 times.
For Sec 11	2 times	2 times.
For Sec 19	1 time	1 times.
For Sec 22	1 times	1 times.
For Sec 40 Sec 8(2)	1 times 1	1 times. 1

~~Number of entries of gallantry or distinguished conduct.~~ 4.

~~There are no entries in the conduct sheet of the accused~~

2. The accused has not been previously convicted, or

~~The previous conviction of the accused by a court martial or civil court, summary awards under section 47 of the Army Act, and the occasions on which trial under section 79 of the Army Act was dispensed with in the case of the accused are as follows :—~~

3. The accused is not under sentence at the present time, ~~The accused is under sentence to~~

~~beginning on the~~ day of

4. The accused has been in confinement, awaiting trial on the present charges, for 0 days in civil custody, and 7½ days in military custody, making a total of 7½ days, of which 0 days were spent in hospital.

5. The present age of the accused according to his ~~attestation~~ MBM Pt I is 32 yrs 310 days

6. The date of his ~~enrolment~~ attestation specified in his ~~attestation paper~~ MBM Pt I is 3 Mar 41

7. The service which the accused is allowed to reckon towards discharge ~~or transfer to the reserve~~ 3 yrs 161 days

~~8. The accused is entitled to deferred pay or gratuity in respect of~~

9. The accused is entitled to reckon 3 yrs 161 days service for the purpose of determining his pension, etc.

10. The accused is ~~in possession of or~~ entitled to ~~(state any military decoration or reward)~~ : CVSM

~~11. (If the accused is a warrant officer.) The accused before his promotion served in the following~~

~~rank of~~

~~12. (If the accused is an officer.) The accused holds the following rank in~~

~~and has been appointed to command a company or detachment in the~~

W.A.13402/145 250,000 5/41 A.A.H.Q. Ltd. Gp.466

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. Rank Name of Regiment (or as the case may be).

(INSTRUCTION.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or date on which award under A.A. 47 or order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 17 day of August 1944

[illegible]
Lt. Col.

18—The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of years.

In the rank of years.

In the rank of years.

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

No. B79462 Name SMITH, John Victor | Sqn, Battery, or Company | Corps | Date of entry in Service | 3-3-41 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/136 (5438)

Date of last entry in Company Conduct Sheet | Date and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	1-4-43	Pte		A.A.Sec 15(1). AWL from 2200 hrs 1-4-43 til 1900 hrs 5-4-43. (Absent 3 days 21 hrs)		7 days C.B. 7 days Pay FR&I 149(2)	7-4-43		Forfs 4 days pay FR&I 149 (1)(a). Total forf 11 days pay.
Field	14-4-43	Pte		A.A.Sec.15(1). A.W.L. from 2200 hrs 14-4-43 til 2330 hrs 14-4-43 (Absent 1 hr 30 mins).		14 days F.P. Forfs 14 days pay FR&I 149 (1)(b).	16-4-43		
Field	23-5-43	Pte		A.A.Sec.15(1) AWL from 2300 hrs 23 May 43 til 1250 hrs 25 May 43.		14 days C.B. Forfs 7 days pay FR&I 149 (2).	1-6-43		Forfs 2 days pay FR&I 149 (1)(a). Total forf 9 days pay.

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award (or of order dispensing with trial)	By whom awarded	Remarks
Field	12-6-43	Pte		(1)A.A.Sec.15(1). AWL from 0630 hrs 12-6-43 til 2359 hrs 13-6-43. (Absent 1 day 17 hrs 29 mins) (2)A.A.Sec.15(1). AWL from 2230 hrs 14-6-43 til 0800 hrs 16-6-43. (Absent 1 day 9 hrs 30 mins).		7 days F.P. Forfs 7 days pay FR&I 149 (2).	17-6-43		Forfs 4 days pay FR&I 149(1)(a). Total forfeiture 11 days pay.
A)Field	19-8-43	Pte		(1)Sec.11.A.A. (2)Sec.19.A.A. Drunkenness		7 days F.P. 28 days pay FR&I 149(2).			
B)Field	20-8-43	Pte		(1)Sec.22.A.A. (2)Sec.15(1).A.A. AWL from 1430 hrs 20-8-43 til 1140 hrs 25-8-43 (Absent 4 days 21 hrs 10 mins)		28 days F.P. 28 days pay FR&I 149(2)	26-8-43		Forfs 5 days pay FR&I 149(1)(a).

No B79482 Name SMITH, John Victor | Sqn, Battery, or Company | Corps | Date of enlistment 3-3-41 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 80/PAS/196 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra flue | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	2-5-44	Pte		(1)A.A.Sec.15(1) AWL from 2230 hrs 20-5-44 til 0030 hrs 31-5-44 (Absent 2 hrs) (2)A.A.11. (3)A.A.8(2) (4)A.A.40		Forfs 28 days pay F.R&I 149 (2).	5-6-44		

CERTIFIED TRUE EXTRACT FROM MFM 4.

CERTIFIED TO BE A TRUE COPY FROM REGT'L BOOKS IN MY CUSTODY.

J. A. Campbell Lt/ and Qm F Capt P.S. Sqn, L.A.A.R.

Officer Having Charge of Regt'l Books.

(PTO)

I request the Convening Officer to appoint.....~~Maj. Gyffin~~.....
to defend me at my forthcoming trial by Court Martial.

Sgd.....J.V. Smith.....

In the Field
.....12 Aug. 44.....

I hereby acknowledge having received a copy of the Charge Sheet and Summary of Evidence in Connection with my forthcoming trial by Field General Court Martial.

Sgd.....J.V. Smith.....

In the Field
.....12 Aug. 44.....

LIST OF EXHIBITS
in the case of
B-79482 Pte. SMITH, J.V.

Exhibit "A" - Record of the Declaration of a Court of Inquiry
Exhibit "B" - Statement of Sgt Nash, L.W.

LIST OF WITNESSES
in the case of
B-79482 Pte. SMITH, J.V.

(1) Lieut. J.K. Rumbell, Assistant Adjutant 3 Bn 1 CBRD
(2) L-18048 Sgt. Nash, L.W. Regt'l Police, 1 C.C.D.
(3) G-22780 CQMS Taylor, J.H. ;5 Coy 3 Bn 1 CBRD

WW-110 (Case #2)

PTE SMITH J.W.

See AA-124 for 1st Case

WW-110

FIELD GENERAL COURT-MARTIAL

(PAGE (1st Issn of AFA8) 40/P & S/1608 (2804))

Convened by Order of Brig. A.E.D. Ingmans Comd 2 Cdn Corps RA dated 23 Nov 43

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apprnt, A/R or A/Apprnt.	Full Christian Names.	Surname.	Unit.
A-9514	Pte Proceedings Reviewed	James William	Smith	13 Cdn Pro Coy

F.C. Donchi Lieut Examiner
16 Dec 43 Reviewing Officer (J.A.G.) C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 24 Nov 43

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member~~, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) ~~not~~ attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~not~~ brought before the Court. At 1400 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~not~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused:~~ Do you object to ~~as interpreter~~ ? Ans ~~—~~

~~The Interpreter is sworn.~~(1) Do you object to ~~as shorthand writer~~ ? Ans ~~—~~

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	W. A. Lucas	HQ Comd 2 Cdn Corps Regt Cdn R CASC
Member	Capt	W. J. A. May	2 Cdn Corps Sig units
Member	Lieut	J. O. Shannon	42 Cdn Lmn Regt Coy RCASC
Judge-Advocate	Capt	G. H. Jennings	HQ 2 Cdn Corps
Prosecutor	Lt.	W. B. Paterson	13 Cdn Pro Coy
Defending Offr	Lt.	J. R. Campbell	11 Cdn Pro Coy

Questions by President: Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans ~~—~~(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused ~~—~~ before arraignment make(s) (no) ~~—~~ plea(s).(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or as bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 27), or by one of several accused charged jointly to be tried separately (RP 15, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~not~~ arraigned ~~separately~~ on the 1st charge in the charge sheet.(1) The accused does ~~not~~ object to any charge.(2) There is no amendment to be made to the Charge Sheet.(2) The President records the pleas in Part I of the Schedule.

(1. RP 21, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B".

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A-9514 Pte James William Smith 13 Cdn Pro Coy (Rank)

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	GUILTY	GUILTY	
2nd ALTERNATIVE	withdrawn by the Prosecuting Officer under the provisions of RP 35(c) after the J.A. complied with RP 36(B)		
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~—~~ ~~beginning on (date)~~ 27 (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 10 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for nine months

(Sgd) Gordon H. Jennings Judge-Advocate, if any 24 Nov 43 Date awarded. (Sgd) W A Lucas President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ~~—~~ (Sgd) ~~—~~ Commanding ~~—~~

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~(1)

(1. AA 57A. Delete if not used.)

(Sgd) W H Halling Lt-Col H.Q. COMD.

Date 25 Nov 43 Commanding 2 CDN CORPS TPT. COLN. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
A-9514 Pte James William Smith 13 Cdn Pro Coy	27 Nov 43	Asst Q Margetts

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of [illegible] RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.[2]
(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).[1] If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[2], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[3]

President to accused : Do you wish to make a statement ? Ans NO SIR .....[3]
(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the accused's statement (1) The Court decides (NOT) to advise accused to change h is (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.[1]
(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A , initialled and read aloud by the President.[1]
(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]
(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]
(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....[1]
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.[1]
(1. RP 39(B), 80(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.[1]
(1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.[1] The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).[2] The Court is closed, and considers the submission.[3] The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).[4]
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn, and you will not be subject to cross-examination.[3] But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.[4] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans ..... Do you intend to call witnesses on your behalf ? Ans ..... Are they witnesses as to character only ? Ans .....
(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1]
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF RP5. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.[1]
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.[2]
(1. AA 54(2) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?[1]
Ans NO SIR
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service[1], and certified true copy (copies) of Conduct Sheet(s)[2], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.[3]
(1. MFB 255 or AFB 296. 2. MIM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s)[1] and Conduct Sheet(s)[2], and in mitigation of punishment ?[3] Ans YES SIR .....
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]
(1. AA 54(5), RP 120(A).)

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.[2]
(1. When several accused tried separately see RP 47(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its consecs, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 326, 343-366, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 136. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

THE ACCUSED, NO.A 9514,PRIVATE JAMES WILLIAM SMITH,NO.13 PROVOST COY., CANADIAN PROVOST CORPS,A SOLDIER OF THE CANADIAN ARMY OVERSEAS, IS CHARGED WITH :-

WHEN ON ACTIVE SERVICE STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW

FIRST CHARGE
ARMY ACT
SEC 18(4)

In that he

in the field on the 13 November 43,stole a £1.0.0 note,No.A11-H500142,the property of C-41965,R.S.M. McCallum,H.,No.13 Cdn.Provost Company,a person subject to military law.

WHEN ON ACTIVE SERVICE,CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

SECOND
(ALTERNATIVE)
CHARGE
ARMY ACT
SEC 40

In that he

in the field on the 13 November 43,was improperly in possession of a £1.0.0 note,No.A11-H500142,the property of C-41965,R.S.M.McCallum,H.,No.13 Cdn. Provost Company.

Capt.
(S.H.C.Margetts)
O.C.No.13 Provost Company

In the Field
16 November 43

To be tried by Field General Court Martial.

(A.E.D. Tremain) Brigadier
C.C.R.A. 2 Cdn Corps

In the Field
21 Nov 43

NO. 13 PROVOST COMPANY
CANADIAN PROVOST CORPS

This is to certify that I have this day, inspected A.9514 Pte. Smith, J.W. of No 13 Cdn Provost Coy, and find him free from any contagious or communicable disease, and is fit to undergo Field General Courts Martial.

(Medical Officer) Capt.

In the Field
24 Nov 43.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA8) 40/FAS/1097 (2963)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) atspmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A.9514	Pte		James William	SMITH	13 C Pro Coy

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) ..... endorsed by me, (or by an offr of my staff for me), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	W. A. Lucas	HQ Comd 2 Cdn Corps Tpt Coln

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt.	W.J.A. May	2 Cdn Corps Sigs RCCS
Lieut.	J. C. Shannon	42 Cdn Gen Tpt Coy RCASC

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt.	G. H. Jermyn	ADJA HQ 2 Cdn Corps

On Active Service in the Fd

in England (Country)

Dated 23 Nov 43

(Signed personally. RP 105 fn 2.)

(A.E.D.Tremain) Brigadier (Rank.)

~~Confirming~~ C.C.R.A. 2 Cdn Corps
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

W. A. Lucas Maj
Pro

Statement of A.9544 Pte. SMITH, J.W.

"Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence."

About 2100 hrs. on the 13 Nov 43, I was checking the blackouts at Smallfields Place, and in one of the rooms I noticed a tunic hanging up, and a paybook was showing out of the pocket about ½ inch. I could see a corner of a money note showing out of the paybook. I took the note out of the paybook without removing the paybook from the pocket, and put it in my field dressing pocket. About 2120 hrs. I left by 15 cwt. truck for Reuhill to pick up S/Sgt. McKay , Sgt. Alder and a broken down jeep. On the way I stopped at a snack bar, and I cashed the £1-0-0 note and had a cup of tea and a sandwich. The tea and sandwich cost about 5 pence and I got 10/ note and silver and coppers for change. I returned to our Headquarters, and in the morning I was questioned and placed under guard by R.S.M. McCallum. I have had a lot of worry about my mother and family lately, and I was over paid by mistake in my paybook, and I received only 10/ last pay day. When I saw the note I took it due to the condition I have been in the last few weeks. I was paraded before the Padre at Aldershot about 3 months ago, and arrangements were made to make application for return to Canada in charge of prisoners of war to settle my affairs. I have heard no more of it.

I have read over and make this voluntary statement, 14 Nov 43.

A9514 Pte Smith J.W.

(A.9544 Pte. SMITH, J.W.)

Statement by Accused in mitigation of Punishment

At 2100 hrs 13 Nov 43 I was checking the blackout at Smallfields Place and in one of the rooms I saw a tunic hanging on the wall with a pay book out of the pocket about ½ an inch. I could see the corner of a money note. I did not know the amount of the note. I took the note from the pay book and put it in my field dressing pocket. At 2120 hrs I left by 15 cwt for Rudhill to pick up S/Sgt McKay, Sgt Allard and a brother down guys. On my way to Rudhill I stopped at a snack bar and cashed the £1.0.0 note for which I had a cup of tea and a sandwich which came to about 5 pence. I got a 10/ note silver and coppers in change. I returned to Coy H.Q at 2220 hrs. On morning of 14 Nov 43 I was questioned by R.S.M McCallum, placed under arrest and handed over to the Coy Guard. I was once paid in my pay book and last pay day I only drew 10/. I have had a lot of worry about my mother and family. My wife is under the doctors care and the letters that I receive from home now are written by my sister in law to the effect of the worry my wife is having. Have got her arms and hands swollen so she is not able to write herself. My mother has taken my little boy to take the burden off my wifes hands. I was paraded to the Padre at Aldershot about 5 months ago and made application for escort of prisoners of war to Canada to see to the affairs of my family. Was told the condition I was in lately. I took the £1.0.0 note.

Statement by Defending Officer

In view of the circumstances in which he came home in Canada he is used to sending a couple of cables to his people each week. He was once paid and only got 10/ last pay it was not possible for him to carry out the practice. It appears in the evidence given that someone in 13 Coy has been suspected of stealing a fuchsia powder would not have been used. When this money was planted it was put in such a position that a corner of the money and part of the pay book were in plain view out of the pocket which leaves nothing but temptation to most any one who may be in the room. It is one thing to look through someones chests pockets for money but are asking other different thing to leave money around where it might tempt someone to take it

FIELD GENERAL COURT MARTIAL

IN THE CASE OF REGIMENTAL NO. A 9514, PRIVATE JAMES WILLIAM SMITH, NO. 13 PROVOST COMPANY, CANADIAN PROVOST CORPS.

LIST OF WITNESSES FOR THE PROSECUTION

C 41965	R.S.M.	McCallum, H.	No.13 Provost Coy.
B 88068	L/Cpl.	Brellisford, G.T.	" " "
H 3533	Sergt.	Elder, L.W.	

LIST OF WITNESSES FOR THE DEFENCE

No witnesses will be called for the defence.

LIST OF EXHIBITS

"A" -Uniform

"B" -First Field Dressing

"C" -Money in amount of £2.2.3½

"D" -£1.0.0 note No.A11-H500142

"E" -Statement of Pte.Smith, J.W.

The exhibits are not appended and will be produced at the trial by the witnesses concerned.

(S.H.G.Margetts) Capt.
O.C.No.13 Provost Company.

In the Field,
16 November 43.

NO.13 COMPANY CANADIAN PROVOST CORPS

The Officer Commanding,
No.13 Company,
Canadian Provost Corps.

Sir :

I, Regt'l.No. A-9514,Private SMITH,J.W.,desire the Convening Officer to detail an officer to represent me at my forthcoming trial by Field General Court Martial.

J.W. Smith Pte.
(A-9514 J.W.Smith)

Smallfield Place,
Smallfield,Surrey,
16 November 1943.

Exhibit A.

SUMMARY OF EVIDENCE IN THE CASE OF NO. A 9514, PRIVATE JAMES WILLIAM SMITH; NO. 13 PROVOST COMPANY, CANADIAN PROVOST CORPS, A SOLDIER OF THE CANADIAN ARMY OVERSEAS

BY DIRECTION OF THE OFFICER COMMANDING, THE EVIDENCE OF ALL WITNESSES IS GIVEN UNDER OATH.

FIRST WITNESS: For the Prosecution. Regimental No. C 41965, R.S.M. Hugh McCALLUM, No. 13 Provost Company, Canadian Provost Corps, a soldier of the Cdn Army Overseas, having been duly sworn, states as follows:

On the 11 November 1945, I obtained a quantity of fuschian powder and on the same date, together with L/Cpl. BRELLISFORD, I sprinkled fuschian powder on L/Cpl. BRELLISFORD's paybook, and on one £1-0-0 note, No. A11-H500142, which was my own property. At about 1000 hrs., 14 November 1945, together with Sgt. ELDER, I checked the hands and wallets of all personnel of this Company then in barracks. On a 10/- note in Pte. SMITH's wallet I found traces of the fuschian powder. I found it also all over his first field dressing and field dressing pocket. The fuschian powder stains were also about his driving gloves and pocket flaps. I present as exhibits, uniform, field dressing and money in amount of £2-2-5½. The change was also stained with fuschian powder. I questioned SMITH about the £1-0-0 note that he had had the night before and he denied any knowledge of it. I placed him under arrest and handed him over to the Unit guard. About 1100 hrs., 14 Nov 45, acting on information received and in company with Sgt. ELDER, I proceeded to Molly's Snack Bar near Redhill and checked the money of Mr. G. DOWDING, Manager, and found the missing £1-0-0 note. I obtained same, which I present as exhibit. On returning to Company H.Q., I again questioned Pte. SMITH. As a result of his answers I cautioned him, after which he made a voluntary statement, which was read over and signed by him. I produce said statement.

THE ACCUSED DECLINES TO CROSS EXAMINE WITNESS.

H McCallum R.S.M.
(C 41965, H. McCallum)

SECOND WITNESS: For the Prosecution. Regimental No. B 88068, L/Cpl. L/Cpl. Gordon Thomas BRELLISFORD, No. 13 Provost Company, Canadian Provost Corps a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:

On 11 November, 1945, I was present when R.S.M. McCALLUM, sprinkled fuschian powder on my paybook, also on a £1-0-0 note, number A11-H500142, this note being the property of R.S.M. McCALLUM. On the same date, at about 1400 hrs., I placed the paybook with the £1-0-0 note inside, in my tunic pocket and hung it up on a nail at the side of my bed. I checked from time to time to see if the note was still there and about 2045 hrs., 13 November 45, I came in off pass, looked in my pocket and found the £1-0-0 note missing. The paybook was still there. At about 0800 hrs, 14 November 45, I reported to the R.S.M. that the note was gone. When I originally placed the £1-0-0 note in the pocket of my tunic it was folded inside the cover of the paybook which was placed in my tunic pocket and the flap buttoned.

THE ACCUSED DECLINES TO CROSS EXAMINE THE WITNESS

G Brellisford L/Cpl
(B88068, G.T. Brellisford)

SUMMARY OF EVIDENCE CONTINUED ON PAGE TWO

THIRD WITNESS: For The Prosecution. Regimental No. H 3555, Sergeant Luther Whitfield ELDER, No. 15 Provost Company, Canadian Provost Corps, a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:

At about 1000 hours, 14 November, 1943, I assisted R.S.M. McCALLUM to search for marking of fuschian powder and a missing £1-0-0 note amongst all members of No. 15 Provost Company then in barracks. On a 10/ note in Pte. SMITH's wallet were traces of fuschian powder, also on his field dressing and field dressing pocket and on some small change in his pocket. On being questioned, Pte. SMITH denied all knowledge of the missing £1-0-0 note and he was placed under arrest and handed over to the Company guard. Later, at about 1040 hrs, I received permission from the R.S.M. and again questioned Pte. SMITH about the missing £1-0-0 note. About 1100 hrs., on the same date I accompanied the R.S.M. to Molly's Snack Bar, near Redhill and we found the missing £1-0-0 note in a roll of notes owned by the manager, Mr. G. DOWDING, The R.S.M. obtained the £1-0-0 note and we returned to Company H.Q.

THE ACCUSED DECLINES TO CROSS EXAMINE WITNESS.

Sgt.
(H 3555, L.W. Elder.)

THE ACCUSED: Regimental No. A 9514, Private JAMES WILLIAM SMITH, No. 15 Provost Company, Canadian Provost Corps, having been duly cautioned as follows: "DO YOU WISH TO MAKE ANY STATEMENT OR TO GIVE EVIDENCE ON OATH? YOU ARE NOT OBLIGED TO SAY ANYTHING OR TO GIVE EVIDENCE UNLESS YOU WISH TO DO SO, BUT WHATEVER YOU DO SAY, OR ANY EVIDENCE YOU GIVE WILL BE TAKEN DOWN IN WRITING AND MAY BE USED IN EVIDENCE."", makes the following voluntary statement, having been duly sworn:-

About 2100 hoursoon the 13 November, 1943, I was checking the blackouts at Smallfield Place and in one of the rooms I noticed a tunic hanging up and a paybook was showing out of the pocket about half an inch. I could see a corner of a money note showing out of the paybook. I took the note from the paybook without removing the paybook from the pocket and put it in my first field dressing pocket. About 2120 hours I left by 15 Cwt truck for Redhill to pick up S/Sgt. McKay, Sgt. Elder and a broken down jeep. On the way I stopped at a snack bar and I crashed the £1-0-0 note and had a cup of tea and a sandwich. The tea and sandwich cost about five pence and I got a 10/- note and sivler and coppers for change. I returned to our H.Q. and in the morning I was questioned and placed under arrest by R.S.M. McCALLUM. I have had a lot of worry about my mother and family lately and I was overpaid by mistake in my paybook and I received only 10/- lasst payday. When I saw the note I took it due to the condition I have been in the last few weeks. I was paraded before the Padre at Aldershot about five months ago and arrangements were made to make application for return to Canada in charge of prisoners of war, to settle my affairs, but I have heard no more of it.
I HAVE READ OVER THE ABOVE STATEMENT WHICH IS MADE VOLUNTARILY AND AFTER HAVING BEEN DULY CAUTIONED.

Pte
(A 9514, J.W. SMITH)

I CERTIFY THAT R.P. 4 HAS BEEN COMPLIED WITH.

TAKEN BY ME IN THE FIELD IN THE PRESENCE OF THE ACCUSED THIS 16th DAY OF NOVEMBER, 1943.

Lieut.
(W.B. Paterson)
Officer taking Summary.

Sheet C 201

M.F.M. 6 (A.F.B. 127) 12SM—7-41—(41-20) H.Q. 1772-39-1402

No. A.7514 Name Smith, J.W. Sqn., Battery, or Company 1 Can. Div. Sup. Coy. (5 Coy) Corps R.C.A.S.C. Date of enlistment 25 Nov 39 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet Nil No. and date of last drunk Nil Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. S.A. Mcarthur Maj. Character

Place	Date of offence	Rank	Cases of absentees	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				This soldier having completed two years consecutive service no entries from previous sheet destroyed 26 Nov 41.					
Field	24 Aug 42	Pte.		(1) Sec 18(4) A.A. N.O.A.S. Stealing property belonging to a person subject to military law.	Sgt. Frost L/C. Tait S/Sgt Gillis	90 days detention	19 Mar 43	F.G.C.M.	Forf 90 days pay P.R.A I 149(1)(b)
				(2) Sec 41 A.A. N.O.A.S. Committing a civil offence, that is, forgery.	Sgt. Frost L/C. Tait S/Sgt Gillis	Released from the Detention Barrack Headley Down on May 17 1943 sentence having expired. Remission earned under Rules for Detention Barracks and Military Prisons 30 days.			Forf 1 days pay P.R.I 149(1)(a)(1) Findings and sentence confirmed by Brig R.W. Leach 1 Can Arty Gp
				Certified true copy of document held at No 13 Can Provost Coy., R.A. (S.S. Margetts) Capt. Officer Commanding, No 13 Can Provost Coy					
						Commandants Initials N.C. Lt.			

(P.T.O.)

Exhibit B
L-A-2

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
A-9514	Pte.	James William Smith	No.13 Cdn. Provost Company

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, preference being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness should be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For	Nil	times.	Nil	times.
For		times.		times.
For		times.		times.
For		times.		times.
For		times.		times.

Number of instances of gallantry or distinguished conduct,

or

There are no entries in the conduct sheets of the accused.

2. ~~The accused having been previously convicted~~ or

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, or ~~The accused was under the present time in civil custody for~~ beginning on the ____ day of ____

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and TEN days in military custody, making a total of TEN days, of which ____ days were spent in hospital.

5. The present age of the accused according to his record of service / ~~attestation~~ paper is 30 years 10 months

6. The date of his ~~attestation~~ / record of service specified in his ~~attestation~~ / record of service paper is 25 November 1939

7. ~~The service which the accused is alleged to have rendered as being or having been in the enemy's~~

8. ~~The accused is entitled to deferred pay or gratuity in respect of~~ Service.

9. ~~The accused is entitled to reckon~~ as service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award ~~or is in possession of or entitled to the following military decoration or reward~~.

11. ~~If the accused is a warrant officer:~~ ~~The accused before he was made a warrant officer was not the legitimate~~ ~~child of~~

12. ~~If the case so requires:~~ The accused holds in the army the rank of ____ and belongs to the ____ (or corps or department) the rank of ____

(*10140) ... A & E W Ltd. ...

Convictions by a Court Martial or Civil Court, ...ry awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. A 9514 Rank PRIVATE Name SMITH, J.W. of 13 PRO.COY. Regiment (or as the case may be).

(INSTRUCTION.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
F.G.C.M.	Field-19 Mar 43	(1) W.O.A.S.stealing property belonging to a person subject to military law (A.A.Sec.18 (4) (2) W.O.A.S.committing a civil offence, that is to say,forgery.(Sec.41 A.A.)	90 days Detention	

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 24 day of NOV 43

CAPT.
OFFR COMMANDING
PROVOST COY
CDN PROVOST CORPS

13. The accused has served as a non-commissioned officer continuously without reduction, to the present date,

Date of Promotion.

In the rank of ... years.

In the rank of ... years.

In the rank of ... years.

N/A

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

AA-124

PTE SMITH J.W.

A.A-124

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 16th day of March, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 1 Canadian Artillery Group, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * and that it is not practicable to delay the trial for reference to a superior qualified officer.]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[I am unable to appoint

*(1. Three Officers, namely,)

*(2. A Field Officer as President,)

for the following reasons, namely:—]

*Omit if not applicable.

JUDGE ADVOCATE — Capt K G Morden, ADJA, First Cdn Army

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	J. Northey	H.Q., First Cdn Army

Members.

Rank.	Name.	Regiment.
Capt or Lieut	(to be detailed by)	OC, First Cdn Army Def Coy (Lorne Scots)
Lieut	J. Howard	H.Q., First Cdn Army.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (H.J. Leach) Brig
Commanding 1 Cdn Arty Gp
Convening Officer.

SCHEDULE

Number, Rank (*a*) Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
A-9514, PTE (L/CPL) SMITH, J.W., NO. 1 Fd Pun Camp	FIRST CHARGE A.A. Sec.18(4) STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW SECOND CHARGE A.A. Sec.41 COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, FORGERY. See Charge Sheet Attached.	Guilty Guilty	Guilty Guilty To undergo detention for a period of 90 days and to be placed under stoppages until he has made good the sum of $3-0-0 owing to A 9543 Pte Smith GA 3 Cdn Inf Bde by RCASC 19 Mar 43	confirmed KCL

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A).):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) (R.J. Leach) Brigadier — (Signed) President.
Commanding 1 Cdn Arty Gp
Convening Officer (*e*)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in place of substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings

I certify that the above Court assembled on the 19th day of March 43, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—

1. The members of the Court & judge advocate present
2. The witnesses
*(3. ~~The Interpreter~~) ~~present~~
*(4. ~~The officers under instruction~~)

*Omit if not applicable.

were duly sworn.

Signed this 19th day of March 1943.

K.G. Lunder Capt
Judge Advocate.

President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 767 M.M.L., 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*[illegible] soldier undergo [illegible] detention barrack until further orders.

Signed this 23 rd day of March 19 43.

(R.J. Leach) Brigadier
Comd. 1 Cdn Arty Gp.
First Cdn Army
Confirming Officer

Promulgated and extracts taken in the case of A-9514 PTE. SMITH, J.W.

(a) (Dated) 29 MARCH 1943 (Signed) [illegible]
No 3 A Pun Camp C.A.E.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(35764) W1475/3/1621 35,000 2/42 A.A.F.W.3.121 Gp.679
(21755) W1186/6/1329 40,000 7/42

CHARGE SHEET

THE ACCUSED, NO. A-9514 PTE. (L/CPL.) SMITH, J.W., NO. 1 FIELD PUNISHMENT CAMP, CANADIAN PROVOST CORPS, A SOLDIER OF THE CANADIAN ARMY OVERSEAS, PLACED ON ACTIVE SERVICE, IS CHARGED WITH:-

First Charge
A.A. Sec. 18(4)

STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW

in that he

In the Field in England on or about the 24th Day of August, 1942, stole a postal packet and cheque for £3-0-0 contained in the said postal packet, the property of No. A-9943 L/Cpl. Smith G.A., a person subject to Military Law.

Second Charge
A.A. Sec. 41

COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, FORGERY

in that he

In the Field in England on or about the 24th Day of August, 1942, with intent to defraud, forged the name of A-9943 L/Cpl. Smith G.A. to a cheque for £3-0-0 and thereby obtained the sum of £3-0-0.

C.O. Neelon Lieut.
Commandant
No. 1 Fd Punishment Camp
CAn Provost Corps

In the Field
27 Feb 43

APPROVED ON BEHALF OF THE JUDGE ADVOCATE GENERAL PURSUANT TO K.R.(Can)540.

(J.J. Kelly) Lieut-Col.,
A.J.A.G.,
First Can Army

In the Field
16 Mar 43.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(E.J. Leach) Brigadier,
Comd,
1 Can Artillery Group.

In the Field
16 Mar 43

MEDICAL OFFICERS CERTIFICATE
(K.R.(Can) Para 557)

I certify that I have this morning examined No. A.9514

Name Smith, J.W. of No.1 Fd. Punishment Camp, Cdn.Pro.C.

and in my opinion he is fit/~~unfit~~ to undergo trial by Court-Martial.

Station Field

Date 19 Mar 43

(Medical Officer)
No. 1 Fd. Punishment Camp,
Cdn. Pro. C.

PAGE 1

Accused A 9514 Pte (L/Cpl) Smith JW No 1 Can Fd Punishment Camp
(Number) (Rank) (Corps) (Unit)

Held in the Field in England on 19 Jan 43
(Country) (Date)

	Rank	Name	Unit
PRESIDENT:	Major	J. Northey	HQ Fwd Can Army
MEMBERS:	Lieut	J. T. Robb	Fwd Can Army Pay (Lowestoft)
	Lieut	J. Howard	HQ Fwd Can Army
JUDGE ADVOCATE: (If any)	Capt	K.G. Mudan	HQ Fwd Can Army

OFFICERS UNDER INSTRUCTION:

Nil

PROSECUTING OFFICER: Lieut H. A. Fitzgibbon no

DEFENDING OFFICER: Capt M.H.B. Corkin no

(The following procedure must be literally carried out)

The President [illegible] the Convening Order, charge Sheet(s) and Summary of Evidence. (See P.A.(F), 22(a)).

The President, if necessary [illegible] the Convening Order and the Court, directly to the Accused, and the Court satisfies himself that it is properly constituted [illegible] and competent, that the Accused [illegible] to the charge, and understands the procedure. (F.A.(F), 23).

The hearing is [illegible] proceed before the Court, that at 1030 hours, the trial commenced.

The Prosecuting Officer produces a Medical Certificate dated 8.1.43 (Sec Gen Circular Letter 173) that the Accused is [illegible] to undergo trial by Court Martial. The certificate is initialled by the President and appended to the Proceedings.

Questions to Accused:

Do you object to [illegible] Interpreter and [illegible]

The Interpreter is duly [illegible]

Do you object to [illegible] Shorthand Writer?

The Convening Order is read in Open Court by the Judge Advocate.

The Charge Sheet is read by the President to the Accused. (F.A.(F), 25).

President to Accused:

Do you object to any officer by me or any member of the Court or any of the Officers under instruction? Have you any grave personal reason why you should not be tried by this Court? no

The President, Members, Judge Advocate and Officers under instruction are duly sworn. (F.A.(F), 27) (Forms of Oath on P.A.(F), 31).

The Charge Sheet(s) is (are) initialled by the President.

The Prosecuting Officer informs the Court that the accused has (has not) elected trial by Court Martial (s.s.46(8))

(If special plea/s in/are made for separate trial on one or more charges (Rs P 62(2), 108); prior to the jurisdiction of the Court (R.P.34); or in bar of trial (R.P.36); or as to accused's mental fitness to stand trial (R.P. 37), record such plea and evidence (if any) as noted by the President and attached to the proceedings.

Each charge is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty (R.P.112). He pleads as follows:

First Charge Guilty — Fifth Charge _____

Second Charge Guilty — Sixth Charge _____

Third Charge _____ — Seventh Charge _____

Fourth Charge _____ — Eighth Charge _____

(For procedure on alternative charges, see R.P. 37, fn 2)

Further proceedings are recorded on Page next succeeding.

FORM 'A'

(For use when accused pleads guilty to all charges)

(All printed matter not applicable to be struck out and all alterations, erasures and additions to be initialled by the President)

1. R.P.35(B) is complied with, by the President ascertaining that accused understands the nature of the charge/s (in 3) and his right thereto, explaining the difference in procedure by the plea (R.P. 37(a)) and advising him to withdraw his plea if he thinks the accused ought to plead 'Not Guilty' thereto.

2. President to accused:
Q. Do you desire to make any statement of the circumstances, in reference to the charge/s? (R.P.37(a)) ans. Not at this time.

(Statement, if any, not on oath, is received in evidence, to be dealt, initialled by the President and attached to the proceedings. Answer is not subject [redacted])

3. Summary of evidence by witness/es, in the presence of the accused, initialled by the President and attached to the proceedings. (If no such summary, it is necessary for witness/es to repeat their evidence in the presence of the accused. Sufficient evidence of each material fact, initialled by the President and attached to the proceedings (R.P.37(c)).

4. President to accused:
Q. Do you wish to make any statement in mitigation of punishment? (R.P.37(d)). ans. Yes.

(Statement, if any, is received in evidence, initialled by the President and attached hereto.)

5. President to accused:
Q. Do you wish to give evidence yourself or call witnesses in relation to your character? (R.P.37(e)). ans. Must Reckon.

(Such evidence, if given, is received in evidence, initialled by the President and attached hereto.)

6. Statement of character and service (A.C.I. 96) and Conduct Sheet (R.P.B.68), signed in the form required by [illegible] (R.P.46(2)) in relation to matters referred to therein, produced by the Prosecutor, are produced to the Court, received in evidence as Exhibits "A", and "B", initialled by the President and attached to the proceedings. (R.P. 46; Queen's R.C. 1131)

7. President to accused:
Q. Do you wish to make to the Court any statement of character, Service and Conduct in further mitigation of punishment? (R.P.46(2)). ans. Yes. (If unsworn statement)
(Record of statement, if any, is received in evidence, initialled by the President and attached hereto.)

8. The Court is now closed to consider sentence. (See p. on page 2 of [illegible])
(Unless sentence is fixed by law, R.P.[illegible]; no sentence only awarded by R.P.46). Sentence [illegible]

The sentence is not unanimous if the Court by the President.

[redacted]

(Signature)

Statement I received in mitigation-

This was all done through family troubles. At the time it happened I was worried and had no money of my own. I wanted money to cable home to find what trouble was going on. I cabled the cheque for £3-0-0. I sent several cables but received no reply from any of them. I've heard nothing from home for 6-8 months now. I was writing home quite regularly but was getting no reply which was quite discouraging to me as I did not know how my baby was, and I have not received any parcels. My wife got a letter last two years all I have received is 1000 cigarettes. I was born on 4 Jan 13. I've been married for over 9 years. I have two children. I joined in Nov 39 and arrived in England in Dec 39 and have not been back since. I had no trouble with my wife before I came over. It is over 8 months since I have heard from my wife. Even before that it was not regular. I assigned £20 to my wife - she is still getting it. The story 55% Police told my wife is definitely not true. As soon as I heard about it I was paraded by the Australian (Ox. 1 Bn Supply) and showed him my wife's letter and he sent a cable to my wife saying the story was untrue. I sent several cables also denying the story and asking them to forward me a reply. I've had no answer since I've been in the army. I had more or less been [illegible]

had no trouble at all. I had up to the 7th grade in public school and 2 years at night school in London, Ont. I brought return of S-O-O to Smith. I was instructed about approaching L/Cpl. Smith about what I had done. and I am quite sure to pay it back to him just as soon as I get the money

---

Charged & Evidence.
Lieut C.O. Rochon A/ commandant
No 1 Can Ed Punishment Camp. duly
Sworn states:-

I know the accused. He is my batman and driver and has been since Jan. I found him to be honest and efficient and carried out his duties in a capable manner. He had access to my personal belongings among which I had quite a few valuable articles. I found him to be very honest and capable man. He has had many opportunities if he so desired to steal from me. He brought to my attention about his family troubles and I spoke to the Pay master Capt Nathan to see if he could do any information or advice to help this man. This was before these Charges were brought. I did not know him before he came here. He put a demand into Brigade asking for a batman driver and he came. He has been batman for my predecessor. Capt Supreme who would say agree with me about him

Cross-examination

He spoke to me about his family troubles about end of January or beginning of February.
R.O. 83(B) complied with.

Closing address & Refunding Offer

Went over chain & circumstances leading up to Crime. After school - he went to night school. Good character before the war. Since joining up, his character has been exemplary. Went Rackham's record shows this out. Before war he had no family trouble. Joined up early and has been on Jury coming since Dec 39. Then got several stories about his wife. Nothing was known to prove his wife getting full assignment. Letters from wife getting power of forgery until Stuckgard told him to his wife. Had no funds. Extraordinary circumstances. Letter left on his bed. Hundred and used money & could borrow & straighten up apparently at hand. I think this is the most dreadful case I've come to my attention.

pleading my Prudent

Summary of evidence in the case of No. A.9514 L/Cpl. J.W. Smith, of No. 1 Field Punishment Camp, Canadian Provost Corps, Cdn Army Overseas.

.....

1st Witness for the Prosecution

File Numbers

42MP/11/2-36

3RU-11-2/301

1 CDR/5-4-7

COPY OF REPORT BY B.21172, Sgt. Frost,J.R.,Special Investigation Section, Candadian Provost Corps.

1. With reference to the above and marginally noted files and reports today I interviewed L/Cpl.Smith,J.W. who, after being duly cautioned made and signed the following statement.

I have been duly cautioned by Sgt.Frost,S.I.S. that I need not say anything unless I wish to do so,but that anything I do say will be taken down in writing and may be used in evidence. I understand this caution and wish to make the following statement. Signed James W. Smith.

Early in 1941 from letters received from my mother-in-law I learnt that my wife was not carrying on at home in the proper way. She was in Hull,Que. for no apparent reason, and also in the Toronto Gen.Hospital for some unknown reason. I have two children. The boy 8 years old is with my mother, but I have no idea what my wife has done with the girl who is 5 yrs old. I have worried about this state of affairs until I am almost out of my mind. I first officially reported these facts to Capt. McLean, my Paymaster about two weeks ago.

Previous Report first.

Some time in Aug.1942 while attached to the Service Corps near Heathfield a letter was left on my bed addressed to L/Cpl. Smith. I opened it and saw that it contained a cheque for £3-0-0 which is shown to me now. It was payable to L/Cpl Smith,G.A. A.9943. I knew a L/Cpl. Smith in the same Coy as myself. I don't think I changed the Regt.No. on the front of the cheque. I did sign the name on the back of the cheque "G.A. Smith A 9943. I also signed the blue Bank form marked exhibit "2". I used the money to cable home to enquire about my family. Signed. James W. Smith.

2. I had Cpl. Smith placed under close arrest pending trial on the above charges.

3. In view of the above I request that this file be concluded as far as this Office is concerned and also request that necessary exhibits be forwarded to the Unit concerned for their information. The original statement made by L/Cpl. Smith is being held at this Office.

CONCLUDED.

(Signed) _____Sgt.
B.21172 J.R. Frost,
Special Investigation Section,
Canadian Provost Corps.

A written Statement of this witness purporting to be signed by him has been read to the accused and included in the summary of evidence.

Owing to the exigencies of the Service including the expense and loss of time involved and the attendance of this witness is not in my opinion necessary.

The accused does not demand the attendance of the witness.

_____Lieut.

2nd Witness for the Prosecution

STATEMENT OF A A.9943, L/Cpl. George Henry SMITH, No. 1 Plt. 3rd C.I.B. Coy. R.C.A.S.C.

BEGINS:- I am George Henry Smith, age 23 years, stationed at Isinghurst, Sussex, 3 C.I.B. Coy. R.C.A.S.C.

About August, 1942, I sent home a telegram to Canada for some money. I don't remember the amount, or if I said English or Canadian money. I sent the telegram fron Haywards Heath Field P.O. About two weeks later, I had not received the money, so I went to the Postal clerk to whom I had given the telegram and asked him how long it would take to received the cheque. He said I should have got it in about nine days.

I wrote home and mentioned that I had not received the money. My mother replied that she had sent money and would check with the C.P.R. through whom she had sent it. Later I received another letter with the particulars regarding the cheque having been cashed in Uckfield, the number of the cheque, and how the name and number had been altered.

I did not see the cheque until it was shown me yesterday (28 Jan 43) by Cpt. McIlhine, when I signed an affidavit to the effect of not having seen it before, or the signature on the back being mine.

I did not ask our company Postal Clerk at any time if a cheque had come for me.

This statement is correct and true to the best of my knowledge.

(Sgn) G.H. Smith.

WITNESS:-T.B.Tait. 29 Jan 43.

ENDS

A written statement of this witness purporting to be signed by him has been read to the accused and included in the summary of Evidence.

Owing to the exigencies of the Servie including the expense and loss of time involved the attendance of this witness is not in my opinion necessary.

The accused does not demand the attendance of the witness.

A. G. Poulton Lieut.

A.B. 426 POST ORDERLY'S RECEIPT BOOK for REGISTERED LETTERS attached herewith as Exhibit 3. This book is produced by Sgt. Frost, J.R. of the S.I.S. Cdn Provost Corps.

The Accused having been duly cautioned in accordance with Rules of Procedure 4 (2) states:-

"It all starts from family troubles back in the middle of 1941. I received letters that my wife was not carrying on in the proper way. She was in Hull, Quebec for reasons unknown to me. Also in Toronto General Hospital for unknown reasons to me. My Mother has had my boy aged eight, since the time I was overseas. My wife has had the little girl, aged five, which I do not know what se done with while away. She has been seen in Beverage Parlors on different occasions drinking with soldiers, [redacted] Wolsey Barracks in London, Ontario, at military dances. My wife's father told my Mother of these conditions which my mother told me about. Also different people have tod my father that his son's wife has been seen in beverage parlors.

It is over six months since I have had a letter from my wife, and over 2 years since I redeived any parcel from her.

SUMMARY OF EVIDENCE (Cont)

STATEMENT OF L/Cpl. Smith,J.W.(continued)

All told I have received only 1000 cigarettes from my wife. I have ~~received~~ to my wife regularly once a week up until the last month. I have received no replies which has been very discouraging to me.

About 24th August 1942 a letter was left on my bed presumably by the N.C.O. in charge of delivering mail. I did not notice that it was not my letter until I had opened the letter which disclosed the cheque for £3-0-0(three pounds.)

At this time I was very worried about the conditions at home and was also without money of my own so I took the cheque to the bank on the 26 August 1942 and endorsed the name of G.A. Smith and the No.A.9943 on the back of the cheque. The Cashier had me sign the blue slip with the name and No. as I had written on the cheque.

I used this money to send telegrams to my wife and my Mother in an effort to get some information as to what was wrong at home. My wife had written me some time previously and told me that Sgt. Welsh(who had been returned to Canada on Medical Grounds) had told her I had a girl over here with a child of mine and that I was supporting this girl and child

I paraded to the O.C. - Major McArthur and showed him the letter I had received from my wife. I asked him to wire my wife and confirm my statement that this accusation by Sgt.Welsh was untrue. It was with part of this money I had received from the cheque that I paid for the telegram Major McArthur sent for me.

After I had cashed the cheque and realized that I had done wrong I was hesitant in telling L/Cpl. Smith,G.A. what I had done. I felt rather mean about it ever since.

After being shown the cheque and exchange form today I admit that it is the cheque and form that I signed to get the money.

I am anxious and quite willing to repay L/Cpl. Smith for the loss of this money.

At the present time the situation between my wife and I is the same. Capt.McLean, the Paymaster at H.Q. 1st Cdn Army is looking into it for me.

I also approached Lieut. Rochon about a month ago concerning these conditions at home.

1 March 43

J W Smith L/Cpl.
A.9514 Smith,J.W.

3rd Witness for the Prosecution

Statement of ALEXANDER MACDONALD WRIGHT, Manager Lloyds Bank Ltd., Uckfield.

BEGINS: I am ALEXANDER MACDONALD WRIGHT, Manager of Lloyds Bank limited Uckfield. A canadian Pacific Express Company cheque for £3 dated 12th August, 1942 and No. L.331841 has been produced to me this day by Staff Sergeant J.H. Gillis of the Canadian Provost Corps. It is made payable to Lance Corporal G.A. Smith, 9943 and appears to be correctly endorsed. According to the records of the Bank, a Canadian Pacific Express Company cheque for £3 was cashed for a person purporting to be and signing as G.A. Smith, 2 Div. Supply Coy. 6 Coy. on the 26th August, 1942. The cheque produced to me bears the crossing stamp of this Branch and passed through our books on the 26th August. The distinctive number of cheques passing through the Branch Clearings are not recorded. The money was paid by my cashier, Miss Dorothy Phyllis Collison, and I cannot personally recall the transaction.

(Sgd) A.M. Wright.

WITNESS: J.H. Gillis, S/Sgt. 10 Mar 43.

ENDS.

A written statement of this witness purporting to be signed by him has been read to the accused and included in the Summary of Evidence.

Owing to the exigencies of the Service including the expense and loss of time invloved the attendance of this witness is not in my opinion necessary.

The accused does not demand the attendance of the witness.

Lieut.

4th Witness for the Prosecution

Statement of DOROTHY PHYLLIS COLLISON, Cashier, employed by Lloyds Bank Ltd. Uckfield.

BEGINS: I am DOROTHY PHYLLIS COLLISON, Cashier employed at Lloyds Bank Ltd. Uckfield. A Canadian Pacific Express Company cheque for £3 dated 12th August, 1942 and No. L.331841 has been produced to me this day by Staff Sergeant J.H. Gillis of the Canadian Provost Corps. It is made payable to Lance Corporal G.A. Smith, 9943, and appears to be correctly endorsed. According to the records of the Bank, I cashed a Canadian Pacific Express Company cheque for £3 for a person purporting to be and signing as G.A. Smith, 2 Div. Supply Coy. 6 Coy. on the 26th August, 1942. I cannot recall the actual transaction and can give no description of the person to whom the money was paid. It is usual to ask for production of Paybook as means of identification before cashing such cheques, but I cannot recall this particular incident.

(Sgd) D. Collison.

WITNESS: J.H. GILLIS, S/Sgt. 10 Mar 43.

ENDS.

A written Statement of this witness purporting to be signed by her has been read to the accused and included in the Summary of Evidence.

Owing to the exigencies of the Service including the expense and loss of time involved the attendance of this witness is not in my opinion necessary.

The accused does not demand the attendance of the witness.

[signature] Lieut.

The Accused having been duly cautioned in accordance with Rules of Procedure 4 (E) declines to make a statement.

[signature] L/Cpl.
A.9514 Smith, J.W.

28

EXCHANGE FORM

To Lloyds Bank Limited

Please exchange the items as specified overleaf, and debit my/our account with the amount of any of the articles if returned unpaid or disputed at any time.

Signature G R Smith

Address 25 Dundonald Camp Camp 6 Camp

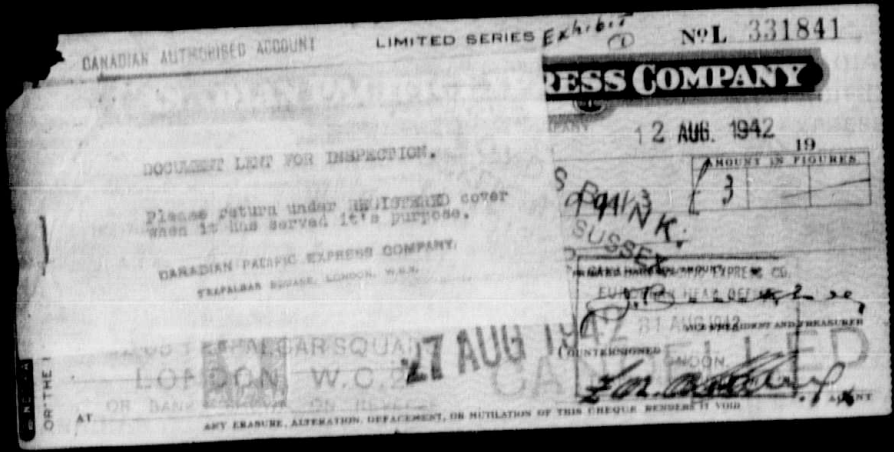
Date 26 AUG 1942 19

Exhibit (2)

IN.		OUT.	
Notes		Notes £1	
		10/-	
Cheques, &c.		Other Notes	
		Silver	
"	3	Coin	
		Total Cash Out	3
"		Paid credit C/A	
		" D/	
"		"	
Bills and Notes of Hand		Commission	
		Stamps	
£		£	3

LLOYDS BANK LIMITED 26 AUG 1942 UCKFIELD

26 AUG. 1942


CANADIAN AUTHORISED ACCOUNT LIMITED SERIES Exhibit D No L 331841

RESS COMPANY

12 AUG. 1942 19

DOCUMENT LENT FOR INSPECTION.

Please return under REGISTERED cover when it has served it's purpose.

CANADIAN PACIFIC EXPRESS COMPANY

TRAFALGAR SQUARE, LONDON, W.C.2.

AMOUNT IN FIGURES

3

SPENK.

SUSSEX

EUSTON HEAD OFFICE

27 AUG 1942

LONDON W.C.2

CANCELLED

For Manager

AT

ANY ERASURE, ALTERATION, DEFACEMENT, OR MUTILATION OF THIS CHEQUE RENDERETH VOID



CANADIAN AUTHORISED ACCOUNT LIMITED SERIES Exhibit ① No L 331841

CANADIAN PACIFIC EXPRESS COMPANY

CHEQUE

CANADIAN PACIFIC EXPRESS COMPANY

12 AUG. 1942 19

WHEN COUNTERSIGNED BY AN AUTHORIZED AGENT PAY THIS CHEQUE WITHOUT ADVICE FROM OUR BALANCE

AMOUNT IN FIGURES £ 3 —

TO THE ORDER OF Lieut G. A Smith

Three pounds only

LLOYDS BANK LTD. UCKFIELD SUSSEX

PROVIDED THE WRITTEN AMOUNT DOES NOT EXCEED THE HIGHEST IN WORDS PAID BY THIS OFFICE

CANADIAN PACIFIC EXPRESS CO. EUSTON SQUARE BRANCH

TO CANADIAN PACIFIC EXPRESS CO. 62-65 TRAFALGAR SQUARE LONDON W.C.2

27 AUG 1942

COUNTERSIGNED

For Agent

AT OR BANK OR HOUSE OR RIVER

ANY ERASURE, ALTERATION, DEFACEMENT, OR MUTILATION OF THIS CHEQUE RENDERS IT VOID

OR THE EQUIVALENT IN FOREIGN CURRENCY

WHEN DRAWN IN UNITED STATES DOLLARS, CLEAR THROUGH NATIONAL CITY BANK OF NEW YORK, NEW YORK. WHEN DRAWN IN ANY OTHER CURRENCY, THIS CHEQUE IS REDEEMABLE BY CANADIAN PACIFIC EXPRESS COMPANY, TRAFALGAR SQUARE, LONDON, W.C.2, ENGLAND.

THIS CHEQUE IS ALSO PAYABLE AT ANY BRANCH OF THE FOLLOWING:

National Provincial Bank Ltd.
Midland Bank Ltd.
Lloyds Bank Ltd.
District Bank Ltd.
Martins Bank Ltd.
The Royal Bank of Scotland.
Union Bank of Scotland Ltd.
Commercial Bank of Scotland Ltd.
National Bank of Scotland Ltd.
Ulster Banking Company Ltd.
Bank of Ireland.

THE PAYEE OF THIS CHEQUE IS REQUIRED TO IDENTIFY HIMSELF AT TIME OF PAYMENT

J A Smith
A9443

THE PAYEE SHOULD PRODUCE HIS PAY BOOK AS A MEANS OF IDENTIFICATION

C.M.H. [illegible]

CANADIAN PROVOST CORPS

FILE REFERENCE 11-2-301

COMPANY. No. 1 Prov. Co. FORMATION. 3rd Can. Div. Corps. 1st.

LOCATION. Field DATE. 1 Feb 43

SUBJECT. THEFT OF CANADIAN PACIFIC EXPRESS CO. CHEQUE (£3-0-0) from A9443, L/Cpl. SMITH, G.H., No.1Plt., 3rd C.I.B. Co., R.C.A.S.C.

D.A.P.M.S. OFFICE 5-FEB 1943

File Numbers

Previous Report First.

Diary Date

1. As instructed, on 29 Jan 43, L/Cpl. T.B.Tait interviewed the C.O. 3rd C.I.B. Co., R.C.A.S.C., who gave the following information regarding the A/M theft.

2. On 26 Jan 43, he had received from the Can.Pac. Exp. Co., London, a letter, dated 26 Jan 43, to the effect that a cheque issued by them dated 12 Aug.42, in favour of A9443, L/Cpl. Smith, G.H., had been cashed at Uckfield Sussex, Lloyd's Bank, and that same had been fraudulently uttered, the payee's name having been altered to "A9443, L/Cpl. G.A. Smith".

3. Enquiry by the C.O., elucidated that during the period 11 Aug 42 to 19 Aug 42, the company postal clerk, Cpl. Gooding, had been absent on leave, and his duties had been taken over for the interim by A9514, L/Cpl. J.W.Smith. This N.C.O. was transferred to Canadian Provost Corps on Nov 24,43, and consequently could not be interviewed. The Post Orderly's Receipt Book for Registered Letters was shown to the writer, however, and it was observed that the signature of the forged cheque bore many striking similarities to the signatures of Smith,J.W., receipting in Army Book 426. Inasmuch as Smith, J.W., had been,in consequence of his duties, in a favourable position to steal the cheque, the following statement wase taken from Smith, G.H.

4. STATEMENT OF A9443, L/CPL. GEORGE HENRY SMITH, No. 1 Plt., 3rd C.I.B. Co., R.C.A.S.C.

BEGINS. I am George Henry Smith, age 22 years, stationed at Isinghurst, Sussex, 3 C.I.B. Co., R.C.A.S.C.

About August,1942, I sent home a telegram to Canada for some money. I don't remember the amount or if I said English or Canadian money. I sent the telegram from Hayward's Heath Field P.O. About two weeks later, I had not received the money, so I went to the Postal Clerk to whom I had given the telegram and asked him how long it would take to receive the cheque. He said I should have got it in about nine days.

I wr te home and mentioned that I had not received the money. My mother replied that she had sent money, and would check with the C.P.R. through whom she had sent it. Later, I received another letter with the particulars regarding the cheque having been cashed in Uckfield, the number of the cheque, and how the name and number had bee n altered.

I did not see the cheque until it was shown me yesterday (28 Jan 43) by Cpt. McIlhine, when I signed an affidavit to the effect of not having seen it before, or the signature on the back being mine.

I did not ask our company Postal Clerk at any time if a cheque had come for me.

This statement is correct and true to the best of my knowledge.

WITNESS: T.B.Tait. 29 Jan 43. (sgd) G.H.Smith.

ENDS.

Continued Overleaf.

6. Perusal of the A.B. 426, failed to show entry for the cheque, and it is thought that same may have been forwarded under ordinary mail cover. However, search is being made by Postal Corps through Records, in order to verify this.

7. Due to similarity of the signature of suspect with that on the questioned document, A.B. 426 in question was receipted for as of assistance in this investigation.

8. Receipt for CANADIAN PACIFIC EXPRESS CHEQUE - No. L 331841, to the order of L/Cpl "G. A. Smith, A 9943", in the amount of £3-0-0, and dated 12 Aug 1942, was also given, this document together with that mentioned in para. 7 to be returned to the Commanding Officer, 3rd C.I.B. Co., R.C.A.S.C., when their use for these purposes have been obtained.

9. On 30 Jan 43, the writer patrolled to Uckfield, and interviewed that manager of Lloyd's Bank, who stated that the cheque had been cashed there, and produced from his records, the exchange form, dated 26 Aug 1942, showing that a cheque in the amount bfd£3.0-0 had been received by the bank, payment being made with three £1-0-0 notes.

10. The request for exchange had been signed by - " G A Smith, 2 Div Sup Coy 6 Coy", and it will be noticed that although the letter "G" in Smith is different from that in the signature of the cheque, the A.B. 426 shows that J.W.Smith used both forms in signing his name. Further, in all cases, the endorser's signatures and the A.B. 426 signatures have one striking thing in common, in that not one of the letters "i" are "dotted"; which similarity is carried on throughout all writing by J.W.Smith in his postal receipt book.

11. Miss Dorothy Phyllis Collison, employed by the Lloyd's Uckfield branch for the past two and a half years, stated that she always requires identification before cashing cheques. She could give no description of the person uttering the cheque in question.

12. Information as to whether this letter containing the cheque can be traced as far as the company post office will be reported upon immediately, but it is not thought that this is so.

13. Investigation is therefore handed over for continuance The necessary documents, viz.
Canadian Pacific Express Cheque, L 331841,
A.B. 426 - 3rd. C.I.B. Co. R.C.A.S.C.,
Lloyd's Bank Exchange Form, dated 26 Aug 1942

14. The whereabouts of L/Cpl. J.W.Smith, A9614, so far as is known are of date 24 Nov 43, transferred from the 1st Div Supply Co.(now 3rd C.I.B. Co., R.C.A.S.C.) to Canadian Provost Corps Reinforcement Unit, C.M.P., Aldershot.

HANDED OVER

L/Cpl.
(T.B.Tait) Reg/C30616
No 1 Pro Co (R.C.M.P)

CHARGE

Army Form B 252
(See King's Regulations

Canadian Provost Corps — Regiment

No. 1 Field Punishment Camp — Battery / Squadron / Troop or Company

CHARGE against No. A.9514 Rank L/Cpl

Name SMITH, James, W.

Place Field Date of Offence Aug 42

OFFENCE W.O.A.S. did commit a Civil Offense i.e. (1) did steal a letter by finding, (2) Forge an endorsement on a monetary document.

D. J. Kidston
(R.J.Kidston) Capt.,
For D.P.M.
H.Q., First Cdn Army

Names of Witnesses:—

B.21172 Sgt. Frost, J.R., Special Investigation Section, Cdn Provost Corps

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

2000) Wt. W1565/O/1406 1,000,000 10/41 K. & E., Ltd. G667/42.

P.T.O.

CANADIAN PROVOST CORPS

FILE REFERENCE

COMPANY. D.A.P.M. FORMATION. First Cdn. Army H.Q. CORPS.

LOCATION. Field. DATE. 22 Feb.1943.

SUBJECT: A 9514 L/Cpl. Smith,James W. Cdn. Provost Corps. No.1 Fld. Punishment Camp.

Theft of mail and forgery.

File Numbers

42MP/11/2-36

[redacted]

1CDR/5-4-7

Previous Report

First.

Diary Date

1. With reference to the above and marginally noted files and reports today I interviewed L/Cpl. Smith,J.W. who, after being duly cautioned made and signed the following statement.

I have been duly cautioned by Sgt. Frost,S.I.S. that I need not say anything unless I wish to do so, but that anything I do say will be taken down in writing and may be used in evidence.I understand this caution and wish to make the following statement. Signed. James W.Smith.

Early in 1941 from letters received from my mother-in-law I learnt that my wife was not carrying on at home in the proper way.She was in Hull,Que.for no apparent reason, and was also in the Toronto Gen. Hospital for some unknown reason.I have two children.The boy 6 Yrs.old is with my mother but I have no idea what my wife has done with the girl who is 5 yrs. old.I have worried about this state of affairs until I am almost out of my mind.I first officially reported these facts to Capt. McLean , my Paymaster about two weeks ago.

Some time in Aug.1942 while attached to the Service Corps near Heathfield a letter was left on my bed addressed to L/Cpl. Smith.I opened it and saw that it contained a cheque for £3-0-0 which is shown to me now.It was payable to L/Cpl. Smith G.A. A 9943.I knew a L/Cpl. Smith in the same Coy. as myself. I don't think I changed the Regt. No. on the front of the cheque.I did sign the name on the back of the cheque "G.A.Smith A 9943".I also signed the blue Bank form marked exhibit "2".I used the money to cable home to inquire about my family. Signed. James W.Smith.

2. I had Cpl. Smith placed under close arrest pending trial on the above charges.

3. In view of the above I request that this file be concluded as far as this Office is concerned and also request that the necessary exhibits be forwarded to the Unit concerned for their information. The original statement made by L/Cpl. Smith is being held at this Office.

CONCLUDED.

J.R.Frost. Sgt.
B 71172 J.R.Frost,
Special Investigation Section,
Canadian Provost Corps.

Canadian Provost Corps

No. 1 Field Punishment Camp

A.9514 L/Cpl

SMITH, James, W.

Field Aug 42

W.O.A.S. did commit a Civil Offense i.e. (1) did steal a letter by finding, (2) Forge an endorsement on a monetary document.

(H.J.Kidston) Capt.,
For D.P.M.
H.Q., First Cdn Army

B.21172 Sgt. Frost, J.R., Special Investigation Section, Cdn Provost Corps

First Cdn.
D.A.P.M. Army H.Q.

Field. 22 Feb.1943.

A 9514 L/Cpl. Smith,James W. Cdn. Provost Corps.
No.1 Fld. Punishment Camp.

Theft of mail and forgery.

1. With reference to the above and marginally noted files and reports today I interviewed L/Cpl. Smith,J.W. who, after being duly cautioned made and signed the following statement.

I have been duly cautioned by Sgt. Frost,S.I.S. that I need not say anything unless I wish to do so, but that anything I do say will be taken down in writing and may be used in evidence.I understand this caution and wish to make the following statement. Signed. James W.Smith.

Early in 1941 from letters received from my mother-in-law I learnt that my wife was not carrying on at home in the proper way.She was in Hull,Que.for no apparent reason, and was also in the Toronto Gen. Hospital for some unknown reason.I have two children.The boy 8 Yrs.old is with my mother but I have no idea what my wife has done with the girl who is 5 yrs. old.I have worried about this state of affairs until I am almost out of my mind.I first officially reported these facts to Capt. McLean , my Paymaster about two weeks ago.

Some time in Aug.1942 while attached to the Service Corps near Heathfield a letter was left on my bed addressed to L/Cpl. Smith.I opened it and saw that it contained a cheque for £3-0-0 which is shown to me now.It was payable to L/Cpl. Smith G.A. A 9943.I knew a L/Cpl. Smith in the same Coy. as myself. I don't think I changed the Regt. No. on the front of the cheque.I did sign the name on the back of the cheque "G.A.Smith A 9943.I also signed the blue Bank form marked exhibit "2".I used the money to cable home to inquire about my family. Signed. James W.Smith.

2. I had Cpl. Smith placed under close arrest pending trial on the above charges.

3. In view of the above I request that this file be concluded as far as this Office is concerned and also request that the necessary exhibits be forwarded to the Unit concerned for their information. The original statement made by L/Cpl. Smith is being held at this Office.

CONCLUDED.

J.R.Frost .....Sgt.
B/21172 J.R.Frost,
Special Investigation Section,
Canadian Provost Corps.

14MP/11/2-36
ORU-11-2/301
1CDR/5-4-7
First.

NO. 1 FIELD PUNISHMENT CAMP, CDN. PRO. C.

Camp Commandant,
No. 1 Fd. Punishment Camp,
Cdn. Provost Corps.

SUBJECT: Theft and Forgery of Canadian Pacific Express Co. Cheque No. L.331841. (£3-0-0).

Sir,

With reference to the m/n, I have the honour to report that pursuant to instructions received from the Camp Commandant on 10 Mar 43, I proceeded to UCKFIELD, SUSSEX, where I interviewed and procured statements attached hereto, from ALEXANDER MACDONALD WRIGHT and DOROTHY PHYLLIS COLLISON, Manager and Cashier respectively of LLOYDS BANK.

3 Mar 43

S/Sgt.
H.32014 Gillis, J.H.
No. 1 Fd. Punishment Camp,
Cdn. Pro. C.

Statement of ALEXANDER MACDONALD WRIGHT, Manager, Lloyds Bank Ltd. Uckfield. 10th March, 1943.

I AM ALEXANDER MACDONALD WRIGHT, Manager of Lloyds Bank Limited Uckfield. A Canadian Pacific Express Company cheque for £3 dated 12th August, 1942 and No. L.331841 has been produced to me this day by Staff Sergeant J. H. Gillis of the Canadian Provost Corps. It is made payable to Lance Corporal C. A. Smith, 9943 and appears to be correctly endorsed. According to the records of the Bank, a Canadian Pacific Express Company cheque for £3 was cashed for a person purporting to be and signing as C.A. Smith, 2 Div. Supply Coy. 6 Coy. on the 26th August, 1942. The cheque produced to me bears the crossing stamp of this Branch and passed through our books on the 26th August. The distinctive numbers of cheques passing through the Branch Clearings are not recorded. The money was paid by my cashier, Miss Dorothy Phyllis Collison, and I cannot personally recall the transaction.

A. M. Wright

WITNESS.

J. H. Gillis S/Sgt.

10/3/43.

Statement of DOROTHY PHYLLIS COLLISON, Cashier,

employed by Lloyds Bank Ltd. Uckfield. 10th March, 1943.

I AM DOROTHY PHYLLIS COLLISON, Cashier employed at Lloyds Bank Ltd. Uckfield. A Canadian Pacific Express Company cheque for £3 dated 12th August, 1942 and No. L. 831841 has been produced to me this day by Staff Sergeant J. H. Cillis of the Canadian Provost Corps. It is made payable to Lance Corporal G. A. Smith, 9943, and appears to be correctly endorsed. According to the records of the Bank, I cashed a Canadian Pacific Express Company cheque for £3 for a person purporting to be and signing as G. A. Smith, 2 Div. Supply Coy. 6 Coy. on the 26th August, 1942. I cannot recall the actual transaction and can give no description of the person to whom the money was paid. It is usual to ask for production of paybook as means of identification before cashing such cheques, but I cannot recall this particular incident.

WITNESS.

J. Collison

10/3/43.

No. 1 Fd. Punishment Camp,
Cdn Provost Corps

B

M.F.M.5 A.F.H. 1799

No. A.9514 Name SMITH, J.W. Sqn., Battery, or Company } Corps Date of enlistment } 25 Nov 39 G.C. Badges } Service or Proficiency Pay }

Date of last entry in Company Conduct Sheet } Nil No. and date of last drunk } Nil Period not reckoning towards freedom from extra fine } N/A Sheet No. Signature O.C. Company, etc. } W.A.McArthur Maj. Character N/A.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				This soldier having completed two years consecutive years service, no entries from previous sheet destroyed 26 Nov 41				M.H.H.	

CERTIFIED TO BE A TRUE COPY FROM REGIMENTAL BOOKS IN MY CUSTODY, Pte. SMITH, J.W.
No. 1 Fd. Punishment Camp,
Cdn Provost Corps.

W.A.McArthur Lieut

Commandant,
No. 1 Fd. Punishment Cam, Cdn Pro.C.

PTO.

Placed under close arrest 27 Feb 43.
Released from close arrest to open arrest for duty 28 Feb 43.
4 Mar 43 released from open arrest subject to re-arrest without prejudice.
15 Mar 43 close arrest.

C.O. Vanderbilt
A/CO

"A"

Exhibit

M.F.H. 355
12M-8-40 (6435-6)
H.Q. 1172-39-620

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number A.9514 Rank Pte.(L/Cpl.) Name SMITH,J.W. Regiment (or unit)
No. 1 Fd.Punishment Camp,Cdn Provost Corps

1. The following is a fair and true summary of the entries in the Field Service and General Regimental and Squadron, Battery Conduct Sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, Air Force Act of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
For	N/A. times	N/A. times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct

or,

There are no entries in the conduct sheets of the accused. N/A.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted N/A.

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act A.F.A. 73 Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time

or,

The accused at the present time is under sentence for N/A. beginning on the day of

4. The accused has been in confinement awaiting trial on the present charges, for N/A. days in civil custody, and N/A. days in military custody, making a total of N/A. days in custody, of which N/A. days were spent in hospital.

5. The present age of the accused according to his record of service is attestation paper is

6. The date of his commission specified in his record of service is N/A. attestation attestation paper

7. The service which the accused is allowed to reckon towards discharge is N/A.

8. The accused is entitled to reckon N/A. service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is military military in possession of or entitled to). State any air force decoration or reward. N/A. military

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of N/A.

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

N/A. dated N/a., and in his regiment (or corps), the rank of

dated

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

N/A. Date of promotion.

In the rank of N/A. years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number Rank

Name of Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
N/A.	N/A.	N/A	N/A.	N/A.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 16 day of March, 1943

Do Not Dismiss

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

22-102

PTE SMITH K.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K-53517 Private Kenneth SMITH, Westmr Regt. 1 C.I.R.U.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	GUILTY.	GUILTY	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ~~SAA~~ beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 15 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under B2.)

Sentence Awarded by the Court:

Undergo detention for Nine (9) months and to be put under stoppages of pay until he has made good the sum of £ 6-8-5, the cost of return to his unit

(Sgd) ~~Judge Advocate, if any~~ SAA 8 Jan 44 Date awarded. (Sgd) T.W. Hall Major President. (RP 45-50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 739-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP (120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

Date 10 Jan (Sgd) J. Stewart Lough Brigadier, Commanding Commanding "G" Gp. Con. Tpt Units. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
K-53517 Pte. Smith K. Westmr R - 1 C.I.R.U.	11 Jan 44	H. Sharp, Colonel (H. Sharp) Commander, 1 Cdn. Inf. Reinf. Unit.

PROMULGATED IN PART II DO 9 d/12 JAN 44

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

22-102

FIELD GENERAL COURT-MARTIAL

CFA86 (In lieu of AFA3) 40/P & R/1008 (2864)

Convened by Order of Brig. J.R. Stewart Lough DSO, MC, VD. Comd "G" Gp - CRU dated 6 Jan 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 102, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K-53517	Pte.		Kenneth	SMITH	Westmr Regt 1 C.I.R.U.

PROCEEDINGS REVIEWED 26 Jan 44 J.R. Stewart Lough Brig REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 8 Jan 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, if any~~, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns from RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet ~~SAA~~ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~SAA~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~SAA~~ brought before the Court. At 1205 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~SAA~~ fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to ~~Accused~~: Do you object to ~~SAA~~ as interpreter? Ans

The Interpreter is sworn.(1) Do you object to ~~SAA~~ as shorthand writer? Ans

The shorthand writer is sworn.(2)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans Nil (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~if any~~ and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	T.W. HALL	1 C.I.R.U.
Member	Major	N.D. ANDERSON	1 C.G.R.U.
Member	Capt.	L.S. MATTHEWS	1 C.G.R.U.
~~Judge Advocate~~	~~SAA~~		
Prosecutor	Lieut	E.B. ALLEN	1 C.I.R.U.
Defending Offr	Lieut	J.V. ALLAND	1 C.I.R.U.

~~Questions by President~~: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 85 (B) and fn 1 were not followed. See Gl p 33 A.)

A8. The accused K53517, Pte SMITH, KENNETH. before arraignment makes(s) (no) ~~SAA~~ plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 24, 25(A), 112), or in bar of trial (RP 26), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and findings are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~SAA~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~(does)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. *If pleas to all charges are GUILTY, use Record Form B below.*

II. *If pleas to all charges are NOT GUILTY, use Record Form D on p 3.*

III. *If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,*

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (RP 37(A).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs (2).*

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 80, 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s) or to call witnesses as to character and make an address in mitigation of punishment.(2)

(*I. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(3), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(4), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans _____

(*I. RP 37(E). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3. MML p 54 para 47. 4. See para E3 of Record Form E.*)

B3. The Court considers the accused's statement.(5) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on _____ charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) to Guilty on _____ charge(s). Part I of the Schedule is amended accordingly.

(*I. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*I. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1) If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charge(s) on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*I. RP 37(A) (C).*)

C2. The charge(s) on which accused pleaded GUILTY is (are) read to him (them) again, and the trial is continued by using paras B4 to B5 of Record Form B above.(1)

(*I. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C1. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

File here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF

D1. President to accused : Do you wish to apply for an ad
relating to procedure before trial have not been complied with, a
the ground that you have not had sufficient opportunity to prep
(*I. If "yes", see RP 39(A) for procedure. Statement or evidence, if*

D2. The Prosecutor makes (an) (no) opening address.(1)
(*I. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes.*

D3. The evidence for the Prosecution is taken.(1)
(*I. RP 39(C), 114, KR Can 555. Record evidence per Notes.*

D4. The Prosecution is closed.(1) The Defending Offr su
establish a prima facie case against the accused on the
is closed, and considers the submission.(3) The Court is re-ope
is disallowed on the _____ charge(s)
charge(s), and that, accordingly, the trial will proceed on the
the latter charge(s).(4)
(*I. Delete remainder of this para, if submission not made.*
per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.
on all charges, use second alternative in para D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should ex
solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans _____ Do you intend to call witnesses on your behalf ?

Ans _____ Are they witnesses as to character only ? Ans _____

(*I. RP 155, 173. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1) The character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 84(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

(*I. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his*

D7. The Court is closed to consider the finding(s).(2) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(3) The Court is re-opened.

(*I. RP 43, 117(B). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the _____ charge(s), being subject to confirmation, will be promulgated later.(1)
Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(*I. AA 54(3) (5), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are plea of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans _____

(*I. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement of Service(1), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 143(3) (g) (h), and (ii) they purport to refer to (a) soldiers having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex _____ and Ex _____ respectively.(2)

(*I. MFB 315 or MFB 294. 2. MFM 6. 2. RP 46, KR Can 556. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement of Service and Conduct Sheet and in mitigation of punishment ?(1) Ans _____

(*I. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove no own anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*I. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him. One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and 48, is to be awarded to cover all charges in all charges sheets on which accused found guilty. When several accused tried separately see RP 78(B). As to sentences see AA 44, 130, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas RO 309, 2323, MML p 66, 757-759. As to sentences consequent upon civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(5), 56(1), KR Can 564. As to release from arrest by Convening Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s) or to call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP* 35 *fn* 3. *2. MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans NO.(5)

(*1. RP* 37(*B*). *2. RP* 37(*D*) *fn* 6. *3. RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. *4. See para* 63 *of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) to ..... on ..... charge(s). Part I of the Schedule is amended accordingly.

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charge on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)

(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. *4. Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans ..... Do you intend to call witnesses on your behalf?
Ans ..... Are they witnesses as to character only? Ans .....

(*1. RP* 115. *2. RP* 40(*A*), *see* 80(*D*). *3. RP* 40 *fn* 10. *4. RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*D*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP* 43, 117(*A*). *See Notes in Part I of Schedule. 2. RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(*1. AA* 54(3) (*b*), *RP* 45, 120(*A*). *2. AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans NO.

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 27(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement of Age as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(2)

(*1. MFB* 355 *or AFB* 2916. *2. MFM* 6. *3. RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement of Age and Conduct Sheet and in mitigation of punishment?(1) Ans Yes.(2)

(*1. RP* 37(*C*), 46(*D*). *2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(*1. Where several accused tried separately see RP* 92(*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566. *Overseas RO* 309, 2323. *MML p* 66, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 136. *When accused already under sentence of imprisonment or detention see AA* 44(18), 68(1), *KR Can* 564. *2. RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

8 Jan 43

Brigadier J. Stewart Lough
Commanding 'G' Group
C.R.U.

K 53517, Pte Kenneth SMITH
Western Regt 1 C.I.R.U.

1. The court recommends that the marginally noted man be examined by a neuropsychiatrist to investigate the plea of home-sickness put forth in his plea of mitigation

J.W. Hall
Major.

In view of certificate (marked Exhibit 'B') attached upon psychiatric examination not considered necessary. S.H.O. 8/1 effected.

10 Jan 43.

CHARGE SHEET

The accused, No. K-53517 Private Kenneth SMITH of the Westminster Regiment, on the strength of No. 1 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
SEC 15(1)
ARMY ACT

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

in the Field, absented himself without leave from 0600 hours on the 16th day of August 1943, until surrendering himself to the Civil Power in London, at approximately 0040 hours on the 25th day of December 1943, thereby incurring expense to the public in the amount of £-0-8-5, the cost of return to his Unit.

Total Absence: 130 days 18 hours 40 minutes.

H. Sharp Colonel
(H. Sharp) Commander,
1 Cdn. Inf. Reinf. Unit.

Barrosa Barracks,
Aldershot, Hants.

5th day of January 1944.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

J.R. Stewart Lough
(J.R. Stewart Lough) Brigadier,
Commander "G" Group,
CANADIAN REINFORCEMENT UNITS.

6 Jan 44

Convening Officer.

FIELD GENERAL COURT-MARTIAL

CF.A.36 (In lieu of AFA.T. 40/FAS/1697 (Stocks))

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K-53517	Pte.		Kenneth	SMITH	Westmr Regt 1 C.I.R.U.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person[X] named above as the accused, being subject to military law, has [XXXX] committed the offence[X] set forth in the Charge Sheet[X] attached and on (date) 6 Jan 44 endorsed by me, [XXXXXXXXXXXXXXXXXX] "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence[X] should be tried by an ordinary General Court-Martial; [XXXXXXXXXXXXXXXXX

Medical Officers Certificate
K.R. Can. Para 557

I certify that I have this morning examined No. K-53517, Private
Kenneth SMITH and in my opinion he is fit to undergo
trial by Court Martial

Station: I.C.I.B.U.

Date: 8 Jan 44

W.A. Reed Capt.
(Medical Officer)

PLEA FOR MITIGATION ON BEHALF OF K-53517, SMITH. K.
UNDERGOING COURT MARTIAL IN ALDERSHOT
1 JANUARY 1944.

Gentlemen;-

In making a plea for mitigation on behalf of Pte. Kenneth Smith I would like to bring to the attention of the Court that, through facts which I have assertained to be correct, this man is not a normal healthy man. He is a homosexual and a bisexual, this I have proved to my own satisfaction and if the court so desires I can produce witness to substantiate this statement.

Early in his youth he discovered this peculiar sexual state and except for a brief period during which he lived with a woman, he has, against his better judgement, practiced homosexualism up to the present time. Through fear of recrimination he has not brought this fact to the attention of the Military authorities until this time.

I could go quite a long way back into this mans life and show that his has not been the normal lot of a healthy male, but for the prupose of this case I would ask the Court to use their imaginations with regards to a boy growing into manhood, knowing that he had an overpowering obsession which led him to do acts that he knew full well were shunned by society. I will, with your permission, cover his life from his marriage on the 30th of march 1940.

A woman friend of his became pregnant by another man sometine before this date, and Smith through friendship, not love, and through an unselfish urge to protect her reputation married her. He renounced his homosexual desires and lived a normal happy life with this woman, until he joined the army on the 26th April 1940.

He served in Canada until 28th Feb 1942, and although he always seemed to get into trouble he must have been a pretty fair soldier as he reached the rank of Sgt. Instructor and was promoted to A/CSM for the purpose of bringing over a C.Forestry Draft.

On arrival in England he reverted to Pte. and in due course became a Cpl. instructor at 5 wing C.T.S.. He had one or two small delinquencies, but on the whole was a good and useful soldier. During all this time he had not practiced homosexualism and had remained true to his wife. We only have his word for that but we have no reason to doubt it.

During the latter part of 1942 he started getting letters from his wife telling him that ~~xx~~ she was living with another man. These letters are, I believe, in the possesion of Hon. Capt. DuPencier, pardre Westmstr Regt. Smith at once took the matter up with the paymaster and his OC with a view to getting a divorce and/or stopping his allowances home.

After a lapse of some months, during which he had been claimed by his brothers and transfered to the Westmstr Regt and [redacted] had had no word, he took the matter up again. This time with Col. Sager, OC Westmstrs, the paymaster and the Pardre. I believe that this time inquiries were made and it was found out that Smith allegations were untrue, however Smith was not informed of this.

After a further lapse of time, during which he worried over his domestic troubles and during which his resolutions over his previous homosexual desires became weaker and the urges to practice this sexual peculiarity became stronger and stronger, he decided to do something about it himself. In his ignorance he thought that if he went A.W.L. long ennough his pay and allowances would be stopped. This he intented to do, however he was picked up after an absence of 14 days. He then reverted from Cpl to Pte and went AWL again. He had still not had any word of his domestic affairs. And his homosexual

desires were well nigh intolerable. He now had a hatred for the woman he had married and no longer cared what happenned.

This time he went to various Cities looking for men of his own calibre. These he found in London and if the Court so desires I can produce addresses. These men took this boy and kept him for their uses. He was comfortable, kept and well supplied with money and drink, also he was getting the sexual satisfaction he so strongly desired and in his peculiar way he was happy. He is no fool and he knew he was committing an offence, both against military and civil codes, but he was pa$$ caring. In this state he lived for some four months until he was arrested by the civil police in London.

I would respectfully suggest that this boy, through his abnormalties has never had a chance in his life. Medical opinion is that this sexual state cannot be cured and I forsee a life of unhappiness and shame ahead of him, even though he be normal in every other way. I respectfully suggest that where medicine and science has failed prison walls are not likely to succeed. I put it to you Gentlemen that this boy is more to be pitied than censored, and I plead him on the mercy of the Court.

Lieut.
J.D.Y.Acland, Defending Officer.

I would like to respectfully Recommend that Smith be sent to a Psychiatrist, this is also the wishes of the accused.

"B"

Exhibit

FIRST AID POST
5 January 44

Adjutant,
R.H.Q

K 53517 Pte SMITH K.

1. I have interviewed the m/n at some length and it is my opinion that a psychiatric specialist report is not necessary.

2. For your information, please.

.....Capt.
Medical Officer 1 CIRU

H Wing
AM's Prosecuting
Officer

Exhibit "A"

Last Order
NO. 54
27 Aug 43

THE WESTMINSTER REGIMENT (MOTOR)
Part II Orders Issued by
CANADIAN SECTION G.H.Q. 2nd ECHELON

No. 55
3 Sep 43

"B" OTHER RANKS

9. ABSENT WITHOUT LEAVE

(a) AWL from 0600 hrs 16 Aug 43. Still absent 0600 hrs 24 Aug 43. (8th day).
K.53517 Pte Smith K.

Sgd. (A.E. Brodie) Lieutenant,
for Officer i/c
Cdn Sec., G.H.Q., 2nd Echelon.

Certified true extract from the original now in my possession.

(J. Sanson) Major
for Officer i/c
Cdn Section G.H.Q. 2nd Echelon

30 Dec 43

Exhibit "B"

Last Order NO. 58 17 Sep 43 | THE WESTMINSTER REGIMENT (MOTOR) Part II Orders issued by CANADIAN SECTION G.H.Q., 2nd ECHELON | No. 59 23 Sep 43

"B" OTHER RANKS

10. ABSENT WITHOUT LEAVE

(b) AWL from 0600 hrs 16 Aug 43. Still absent 0600 hrs 7 Sep 43 (22nd day).
K.53517 Pte SMITH K.

Sgd (R.W.E. Davy) Captain,
for Officer i/c
Cdn Sec., G.H.Q., 2nd Echelon.

Certified true extract from the original now in my possession.

(J. Sanson) Major
for Officer i/c
Cdn Section G.H.Q. 2nd Echelon

30 Dec 43

Exhibit "C"

LAST ORDER
No. 58
17 Sep 43

THE WESTMINSTER REGIMENT (MOTOR)
Part II Orders Issued by
CANADIAN SECTION G H Q (2nd Echelon)

THIS ORDER
No. 59
23 Sep 43

"B" OTHER RANKS

5. STRENGTH DECREASE

(e) S.O.S. as a des w.e.f. 16 Sep 43, having been dec illegally absent by a Ct. Inq from 0600 hrs 16 Aug 43, Deficiencies in kit to the value of £5-0-7
K.53517 Pte SMITH K.

Sgd. (R.W.E.Davy) Captain,
for Officer i/c,
Cdn Sec., G.H.Q. 2nd Echelon.

Certified true extract from the original now in my possession.

(J. Jamison) Major
for Officer i/c
Cdn Section G.H.Q. 2nd Echelon

30 Dec 43

Exhibit "D"

Army Form C.1617.
R.A.F. Form 1617

I, CERTIFY that the man whose personal description is given below surrendered himself to* S/C 123ª Middleton-Stewart at Jermyn Street at (hour) 12.40 am on the 25th day of December as being No. 1533517 (Rank and Name) Pte. Kenneth Smith a deserter (or absentee without leave) from Westminster Regt. and it appears to me from his confession that he is a deserter or absentee without leave.

*After the word "by" to be inserted the name and rank of the police officer concerned.

Age 23 Height 5 ft Feet 10 Inches
Complexion [redacted]
Hair dark
Eyes blue
Marks nil
In uniform or plain clothes Uniform

Probable Date and Place of Attestation	1/5/40 Vancouver
Probable Date of Desertion or beginning of absence, and from what place	16/8/43 Brandon.

Poole

Signature of Officer of Police in charge of West End Central Station.

25/12/43 Date of Signature.

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

The refund of expenses incurred by the Police applies *only* in the case of the Police Authorities in Northern Ireland, the Isle of Man and the Counties of Orkney and Shetland.

Statement of Expenses chargeable to Army or Air Force Funds incurred by the Police in the case of No.
who surrendered to the Police at on
Payable to

CERTIFIED that this statement of expenses is correct.

Superintendent or Officer in charge of Police Station at

Date of Signature.

IMMEDIATE.

Army Form O.1617
R.A.F. Form 1617

PART 1.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit*† in the case of soldiers and in the case of airmen the O.C. the station at which the airman last served, notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depot in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depot, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

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* Address of Units and Depots are shown in the Monthly Army List.

† Note.—Special instructions apply in war for the disposal of absentees and deserters from the Armed Forces who surrender to the civil police : e.g., such personnel will be taken over from the civil authorities by the O.C. the nearest military unit or the O.C. Troops at the nearest military station. (A.C.I. 405/1940).

(22743) Wt.32503/181 25,000 10/47 A.& E.W.Ltd. Gp.698
(23469) W.24028/1209 40,000 5/47 " " Forms/O.1617/23

Exhibit "E"
FMB.

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. 133517 Rank Pte. Name Smith, K. Unit No. 1 C.I.R.U.

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars	Amount £	s	d
26 Dec. 43	Escorts return fare from LONDON To Aldershot		5	7
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Aldershot		2	10
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		8	5

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

T. O. Brayson Capt.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000-5-43
40/P & S/483

(1) I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at Normandy Barracks, Aldershot, HANTS, preliminary to my Court-Martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court-Martial.

Dated at Aldershot, HANTS,
this 5th day of
JANUARY 1944

.....K. Smith.....

(2) I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of J.V. Acland
if he is available.

No. 1. C.I.R.U.

Officers Under Instruction
F.C.C.M.
Corunna NAAFI - 8 Jan 44

Lieut. R.W. Hayter
Lieut. J. Tomlinson
Lieut. J.R. Koensgen
Lieut. J.D. Lorimer
Lieut. L.W. Blakeney
Lieut. C. Black
Lieut. W.H. Lyle
Lieut. W.M. Blahey
Lieut. F.R. Smith
" H.W. Purcell
" B.H. Lemont
" F.K. Stone

Geo Hall Major.

SUMMARY OF EVIDENCE Exhibit A. TAB.

In the case of K-53517 Pte. Smith, K., of the Westminster Regiment, on the strength of No. 1 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the Summary of Evidence is taken on Oath.

FIRST WITNESS for the PROSECUTION

Lieut. T.A. Bate, of the Westminster Regiment, on the strength of No. 1 Canadian Infantry Reinforcement Unit, an officer of the Canadian Army Overseas, having been duly sworn states as follows:-

I am Lieut. T.A. Bate of the Westminster Regiment. I produce Certified true extract of the Westminster Regiment (Motor) Part II Orders No. 55 dated 3 Sep 43 Issued by Canadian Section G.H.Q., 2nd Echelon, purporting to be signed by Lieutenant A.E. Brodie, for Officer i/c Cdn Sec., G.H.Q. 2nd Echelon, which relates to the accused. This document is marked Exhibit "A" and is duly initialled by me for purposes of identification. I also produce Certified true extract of The Westminster Regiment (Motor) Part II Orders No. 59 dated 23 Sep 43 Issued by Canadian Section G.H.Q., 2nd Echelon, purporting to be signed by Capt. R.W.E. Davy, for Officer i/c Cdn Sec., G.H.Q., 2nd Echelon, which relates to the accused. This document is marked Exhibit "B" and is duly initialled by me for purposes of identification. I also produce Certified true extract of The Westminster Regiment (Motor) Part II Orders No. 59 dated 23 Sep 43 Issued by Canadian Section G.H.Q., 2nd Echelon, purporting to be signed by Captain R.W.E. Davy, for Officer i/c Cdn Sec., G.H.Q., 2nd Echelon, which relates to the accused. This document is marked Exhibit "C" and is duly initialled by me for purposes of identification. I also produce Army Form O.1617, Certificate of Surrender, purporting to be signed by W. Poole, Police Officer in charge of West End Central Station, which relates to the accused. This document is marked Exhibit "D" and is duly initialled by me for purposes of identification. I also produce C.M.H.Q.1000:55, Expense Voucher, purporting to be signed by Capt. L.S. Grayson, Officer Issuing Railway Warrant and Expense monies, No. 6 Provost Company, Canadian Provost Corps, London, which relates to the accused. This document is marked Exhibit "E" and is duly initialled by me for purposes of identification.

The accused declines to cross-examine this witness.

Thos. A. Bate Lieut.
(T.A. Bate)

The accused was cautioned as follows: "Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence."

The Accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4(c), (e), [redacted] complied with.

R.B. Allan Lieut.
(R.B. Allan) Officer detailed to take the Summary of Evidence.

Albuhera Barracks,
Aldershot, Hants.

5th day of January, 1944.

First sheet destroyed 1-11-40 on completion of 6 months service.

M.F.M. 6
(A.F. B.122)
40/P.& /8136 (2065)

No. 53517 Name SMITH, Kenneth | Sqn., Battery, or Company | Corps CIC | Date of enlistment 1 May 40 | C.O. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet 1-8-40 | No. and date of last drunk Nil | Period not reckoning towards freedom from extra fine Nil | Sheet No. One | Signature O.C. Company, etc. F. Shawcross Capt.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Currie Bks	4-11-40	Pte		AA.15(1) AWL from 0200 hrs 4-11-40 until apprehended by the authorities in Vancouver B.C. at 1030 hrs 9-11-40 (5 days 8 hrs 30 min)	Cpl Wood Documentary	14 days C.B. placed under stopp of pay to make good cost of apprehension in amt of $39.60	5-11-40	Lt-Col FMW Harvey, VC, MC	Forf 6 days pay under PRAI.149.1.a.
Currie Bks	28-12-40	Pte		AA.15(1) AWL from 2130 hrs 28-12-40 to 2130 hrs 6-1-41 (absent 9 days)	L/C Newste L/C Sullivan	168 hrs Detn	7-1-41	Major H.C. Gillman VD	Forf 9 days pay under PRAI.149.1.a.
Currie Bks	23-1-41	Pte		AA.8(2) Inssubordination	Cpl Lloyd Pte Moore	7 days C.B.	24-1-41	Major W.J. MacDonald	
Currie Bks	12-2-41	Pte		AA.15(1) AWL from 0200 hrs 12-2-41 to 0800 hrs 12-2-41 (6 hrs)	L/C Newitt L/C Newstead	7 days C.B.	12-2-41	Lt. D.S. Donaghy	Forf 1 days pay under PRAI.149.1.a.

(F.T.O.)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Currie Bks	17-3-41	Pte		AA.15(2) Without orders from his superior officer left his piquet at about 1905 hrs 17-3-41 when on piquet in the city of Calgary	Sgt. Reyburn	7 days C.B.	19-3-41	Lt. D.S. Donaghy	
Currie Bks	22-3-41	Pte		AA.24(2) Losing by neglect equipment clothing and regimental necessaries in that he, at Currie Bks Calgary was deficient of 1 pr boots ankle $4.81	Sgt Reyburn CQMS Snell	Admonished	24-3-41	Major W.J. MacDougald	Stop of pay to make good loss $4.81
Currie Bks	18-4-41	Pte		AA.15(1) AWL from 0230 hrs 18-4-41 to 0730 hrs 28-4-41 (10 days)	Sgr Newstead	10 days Detention	28-4-41	Lt.-Col E. R. Knight	Forf 10 days pay under FR&I.149.1.a.
Currie Bks	16-5-41	Pte		AA.40 Conduct to the Prej AA.9.2Failing to comply with a lawful command when ordered to appear for orders at 0820 hrs he did not appear. AA.10(4) Breaking out of barracks	Sgt Newstead L/C Wallis L/C Jesson L/C Staull	21 days Detention	5-6-51	Lt.-Col. E.R.Knight	Forf 19 days pay under FR&I.149.1.a.

M.F.M. 6
(A.F. B.122)
40/F&I/S136 (2965)

No. K-53517 Name SMITH, Kenneth | Sqn., Battery, or Company | Corps C.I.C. | Date of enlistment 1 May 40 | G.C. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 2 | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Currie Bks	16-5-41	(Cont'd)		AA.15(1) AWL from 2200 hrs 17-6-41 to 2200 hrs 5-6-41 (19 days)					
Currie Bks	30-6-41	Pte		AA.10(4) Breaking out of Barracks AA.15(1) AWL from 1345 hrs 30-6-41 till surrendering to military auth. at New Westminster at 0530 hrs 6-7-41(5 days 15 hrs 45 mins)	L/C Johnston L/C Wallis	168 hrs Detention	9-7-41	Major P.P. Fleming	Forf 6 days pay under FR&I.149.1.a.
Camrose	30-10-41	L/C		AA.15(1) AWL from 0600 hrs 30-10-41 to 1130 hrs 1-12-41 (1 day 4 hrs 30 mins)	Cpl Spink, D. (G.M.P.	Reprimanded	31-10-41	Major E.E. Hyde	Forf 2 days pay under FR&I.149.1.a.
Camrose	30-11-41	A/Cpl L/Cpl		AA.11 Failing to comply with Camp Standing Orders Borrowing money from a recruit in training AA.15(1) AWL from 1000 hrs 30-11-41 to 0830 hrs 1-12-41 (22 hrs 30 mins)	Sgt Buzzam CSM Elliott Cpl Loader Pte Lindgren	Reverts to the ranks	2-12-41	Lt-Col. Louis Scott D.C.M.	Forf 1 days pay under FR&I.149.2.a.

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Rowlands Castle	16-8-42	Pte		AA.15(1) AWL from 2359 hrs 16-8-42 to 0910 hrs 17-8-42 (9 hrs 11 mins)	Cpl Deegan	7 days C.B.	17-8-42	Lt.-Col. Fletcher	Forf 1 days pay under FR&I. 142.1.a
Field	2 Apr 43	Pte		AA.15(1) AWL from 2300 hrs 2 Apr till 0230 hrs 14 Apr 43 (13 days 3 hrs 30 mins)	43 Documentary	13 days pay	22 Apr 43	Lt.-Col. R.L.Tindall	Forf 13 days pay under FR&I.149.2. Forf 14 days pay under FR&I.149.1.a
Field	17 Jun 43	Pte	(1)	AA.19 Drunkeness, in that he was drunk on the streets of London (Regent) and was annoying civilians and army personnel	Documentary	7 days C.B.	19 Jun 43	Capt Shawcross	
Field	22 Jul 43	Pte		AA.8(1) Offering violence to his superior officer.	Sgt Davies	28 days Detn	23 Jul 43	R.L.Tindall Lt.-Col.	Forf 28 days pay FR&I.149.1.b.

CERTIFIED TRUE COPY CONSISTING OF TWO PAGES
DATE 8 Jan 44

(H.F. Atkinson) Capt.
Officer having custody of original documents.

Schedule B. 4A.

M.F.B. 355
22M—5-41 (573-3)
H.Q. 1779-39-620
A.F.B. 290

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
F-53517	Private	Kenneth SMITH,	Westmr.R., 1 C.I.B.U.

1. The following is a fair and true summary of the entries in the Regimental ~~and Squadron, Battery, Service and General Conduct sheets or Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For AA.Sec.8(1)	1 times	1 times
For AA.Sec.8(2)	times	2 times
For AA.Sec.9(A)	times	1 times
For AA.Sec.10(A)	times	10 times
For AA.Sec.11	1 times	1 times
For AA.Sec.15(1)	times	
For AA.Sec.16(2)	times	
For AA.Sec.19(1st offence)	1 times	1
~~Number of instances of gallantry or distinguished conduct mentioned in the accused's conduct sheets~~ AA.Sec.4(2) ~~or~~ AA.Sec.40	~~There are no entries in the conduct sheets of the accused.~~	1

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~or~~

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act A.F.A.73 Section 47 of the Army Act and dispensations with trial under A.A. 73 are not set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

~~or~~

~~The accused at the present time is under sentence for beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for 1 days in ~~Air Force~~ civil custody, and 14 days in military custody, making a total of 15 days in custody, of which ~~Nil~~ days were spent in hospital.

5. The present age of the accused according to his ~~record of service in~~ attestation paper is 23 years

6. The date of his ~~enlistment~~ attestation specified in his ~~record of service~~ attestation paper is 1 May 40

7. The service which the accused is allowed to reckon towards discharge is 3 years 95 days

8. The accused is entitled to reckon above service for the purpose of determining his pension, etc.

9. ~~The accused is in possession of or entitled to an air force decoration, or air force reward or is in~~ possession of or entitled to). State any air force decoration or reward. military military

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of

11. (In the case of an officer.) ~~The accused holds in the Royal Canadian Air Force the rank of~~ Permanent Force unit dated , and in his regiment (or corps), the rank of dated .

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number Rank Unit Name of Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 21st day of Jan 44 W/O Cl. Atkinson (Sgt) (W.F. Atkinson) Records Officer

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked B signed by the president, and annexed to the proceedings.

Hartley Mayo

SD-39

Ole. Smith, K.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K-53517 Pte K SMITH X-4 List Lake Sup R, 1 Cdn Disciplinary Centre

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A.W.L.	Guilty.	Guilty.	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At ~~present under sentence~~ for ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A) fn 1. Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ~~46~~ 21 days, of which NO days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo. One years - detention.

(Sgd) Judge-Advocate, if any. 8 Mar 45 Date awarded. (Sgd) President. (See p. 5.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be ~~not committed to prison or detention barracks~~ until further ordered.
(1. AA 57A. Delete if not used.)

Date 9 Mar 45 (Sgd) (G.S.N. Goodeve), Brigadier, Commanding 2 Cdn Base Rft Gp, Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date. Signature of Offr

K93517 Pte Smith, K. 14 Mar 45 [illegible] Lt-Col. Comdg, 1 Cdn Disciplinary Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CR 323
15 March 45

RECORDED AT CMHQ IN AB [illegible] 5D-59

CPA86 (To lieu of AFA [illegible])

FIELD GENERAL COURT-MARTIAL

4/38

17 APR 1945

Convened by Order of Lt-Col V.R. Jhuman A/Comd 2 CBRG dated 5 Mar 45

ACCUSED.

(Insert "alternative" where the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed applicable. MML p 60 (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number. (a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit, Regt or Corps, Rank and Appointment.
K-53517 Pte	K	SMITH	X-4 List Lake Sup Regt 1 Cdn Disciplinary Cent

PROCEEDINGS REVIEWED 19 Apr 45 [illegible]

PROCEEDINGS OF TRIAL.

REVIEWING OFFICER, JAG BRANCH

Held in the Fd in (country) BELGIUM on (date(s)) 8 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for CCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding point, or number series. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which shall are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(4)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1115 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial. ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(1)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ~~the~~ [illegible] as interpreter? Ans [illegible]

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 58(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major.	G.B.H. Cox	C.A.C. HQ 2nd C.R.G.
Member	Capt.	J.G.G. Rotchford	C.G. 136 B.R. Bn.
Member	Capt.	J.H. Labrie	C.A.C. HQ 2nd C.R.G.
Judge-Advocate			
Prosecutor	Lieut.	C. Lemaud	R de C Inf 10 C.B.R. Bn.
Defending Offr	Lieut.	J.P. Gougeon	C.A.C. 10 C.B.R. Bn.

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (3) and fn 2 were not followed. See D1 p 2.)

A8. The accused K-53517 Pte SMITH, K. before arraignment makes(s) (no) plea(s).(2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(F), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 136, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 21, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 22, RP 32. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is cleared and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CBRG Vol 4 P. 141.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto,* or, (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s) or to call witnesses as to character and make an address in mitigation of punishment.[2]
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s)[1]. If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]

President to accused : Do you wish to make a statement ? Ans Yes. exhibit F [5]
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 3 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.[1] The Court decides (not) to advise accused to change his ~~(their)~~ plea(~~s~~) of Guilty to Not Guilty on the charge(s). The accused is (~~are~~) so informed, and he (they) ~~change(s)~~ his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(~~s~~) of Guilty in Part I of the Schedule.[1]
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.[1]
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3.* *RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record. 3

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....[1]
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.[1]
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.[1]
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.[1] The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).[2] The Court is closed, and considers the submission.[3] The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).[4]
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn, and you will not be subject to cross-examination.[3] But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.[4] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans ..... Do you intend to call witnesses on your behalf ? Ans ..... Are they witnesses as to character only ? Ans .....
(1. *RP 115.* 2. *RP 40(A), see 40(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1]
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.
(1. *RP 43, 113(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.[1]
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.[2]
(1. *AA 54(3) (5), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative commencement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?[1]
Ans No
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para.* *RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service[1], and certified true copy (copies) of Conduct Sheet(s)[2], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier[3] having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "D" and Ex "E" respectively.[4]
(1. *MFB 221 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 538. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?[1] Ans No [2]
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]
(1. *AA 54(3), RP 120(A).*)

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.[2]
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 40, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A). KR Can 308, 332, 562-564, Overseas RO 309, 2323, MML p 60, 737-738. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

COUNTER NUMBER 585871

HOUR 17.35

OPERATOR'S INITIALS GP

RELIEVING OPERATOR AL

CHARGE SHEET

GBC

The accused, K-53517, Pte K SMITH, X-4 List 13 Bn Lake Sup Regt, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE
in that he
In the Field, absented himself without leave from 1920 hrs 24 Dec 44 until apprehended at Brussels Belgium at 2315 hrs 14 Feb 45.
(Absent 52 days 3 hrs 55 minutes)

In the Field
2 Mar 45

(A O Hood) Lt col
Comd
1 Cdn Disciplinary Centre

To be tried by Field General Court-Martial

In the Field
5 Mar 45

(W.W. Hugman) Lt-Col.,
~~(G B N Goetling) Brig~~
A/Comd
2 Cdn Base Rft Gp

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
K-53517	Pte		K	SMITH	X-4 List Lake Sup R 1 Cdn Disciplinary Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 5 MAR 45 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	G.B.H. Cox	1 CAMP CAC

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	to be detailed by GC 13 CBR Bn	13 CBR Bn
~~Capt~~ Lieut	to be detailed by ~~GC~~ Hq 2 C B R G	Hq 2 C B R G ~~10 CBR Bn~~ A

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

(Signed personally, RP 105 fn 2.) W.J. Hugman (W.J. Hugman)

Lt-Col (Rank.)

Dat 5 MAR 45

(C.O.S Secretary) A/Commanding 2 CDN BASE RPT GP Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (*For use (In lieu of AFA 2) 60/F.G.C./1697 (8143)*) (*See overleaf for notes and notes for use on trial.*)

Exhibit 6 GBS

MFB 246

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 55)
(CMHQ CL 173)

I certify that I have this day examined H 23317 (No.)
(Name)
and in my opinion he is
fit [redacted] for trial by Court-Martial.

(Sgd)
(Medical Officer)

Station Oxford Rest Unit Oxford Rest

Date 8 Mar 45

Exhibit F

Statement under oath made by the accused:- K-53517 Pte Smith K.

I joined the army 1st May 40 - I am married - I came overseas on Sept 40 - In 1942 I had and still have family troubles back home -

I was with the Seaforth Regt at that time and my C.O. was trying to do something for me and at that time I was dispatch as instructor at 5 C.T.S. from there I went to Holding Unit and dispatched to Westminster Regt - They never done anything for my family troubles. They wouldnot Cut off my wife allowances, Consequently, I went AWL 4½ months received 9 months detention and made Six months. I was granted 3 months remition. From there I went to 6 CIRU, and I asked the C.O. to do something for my family troubles and also if he could reestablish my 3 months pay in my pay

(P.T.O.)

book, but he told me "that I was on the sept draft for France and he warned me on the qt for this ~~mov~~ move.
I got into France in August and went to the Paymaster 2nd Echn 21st Army Group and he said "I would start right now" but 2 or 3 days later I was warn that I was proceeding at Cnd Army H.Q. and there they would start a small sniper school with British staff and two Cnd driver. It lasted about a month and it was washed up. Then they closed it and warned us that the Cnd drivers were going to the British army.
With the british they said "You will stay here until further orders. I went up to see a Cnd Capt who was on loan to the British and I asked him to try and send me back with Cnd army and he said "he

would inquired about it."
While I was there nothing
was done for my family troubles.
I was return to Cnd army on
Dec 1st - 44 and there I went
to see Capt in charge 58 Coy
R. H. I told him "I still had
3 months pay not in my pay
book yet and asked to be
excuse from draft for a while
to giving me a chance to set
something about my family
troubles and my pay."
The only answer was "I will see"

I am ready to go back at
any time with the Cnd army
and fighting again.
Q: Is your family troubles are in
Canada or England?
A: in Canada.
Q: What is going on?
A: My wife live with another man.
Q: How old are you & your Category?
A: 25 years old. A: I Category.

P.T.O.

Q. Were you in the line with British fighting troops?

A. Yes with 2nd Seaforth, 5th Camerroons, Argyle Southerland

Q. Have you ask for a divorce?

A. Yes. I filed in a form at #6 C.I.R.U. England, affrot 1st Aug. 44 and nothing was done-

RP. 82 (B) complied with.

Note:- No Mitigation of Sentence
GK.

Summary of Evidence in the case of K-53517 Pte SMITH, K X-4 List 13 Bn Lake Sup Regt, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas.

Charge - Absence without leave.

By directions of the CO the evidence is taken on oath.

The following documents are read over to the accused, marked as Exhibits and are attached to the proceedings.

Exhibit "A" - Certified true copy of Extract from Pt II Order No 1 dated 4 Jan 45.

Exhibit "B" - Certificate of apprehension dated 14 Feb 45.

Q Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A I have nothing to say.

The accused does not call any witness.

I certify that the fore going Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that HP 4 (C) (D) (E) (F) and (G) have been complied with.

(W D Hungerford) Capt
Officer detailed to take Summary of Evidence

Dated in the Field
2 Mar 45.

PART II ORDER EXTRACT FORM

TO: D & P

99/~~20X~~ 34/X-L Sup R/1 (A5c)

28 Feb 1945

EXTRACTS FROM: UNIT X-4 List (13 Bn) Lake Sup Regt

Part II Order No. 1 dated 4 Jan 45

ABSENT WITHOUT LEAVE

(a) AWL from 1920 hrs 24 Dec 44

K53517 Pte SMITH K X-4 List (13 Bn)

Certified to be a true extract from the regimental books and documents in my custody

Officer IC Records
Cdn Sec GHQ 2 Echn 21 A Gp

Copy is submitted "A"
[illegible] Capt

The following documents are { attached. Please acknowledge receipt on attached duplicate. / required. Please forward same.

Originating Clerk's Initials LER

(JR PENELON) CAPTAIN
Officer in Charge (A5c)
Canadian Section, GHQ, 2nd Echelon

1/70 [illegible]

GRC This is Exhibit "B"

CERTIFICATE OF ARREST IN ACCORDANCE WITH ARMY ACT, SECTION 163 (2) (b)

I certify that No. K 55511 Rank Pte Name [illegible]

of (Unit) Royal Artillery Regt. 53rd (Worcs.) Heavy Army was arrested at Brussels

at 23.15 hrs on 24th Feb 45 (date). He was dressed in Uniform / Plain clothes

Date 11th February 1945

Signature of Provost Marshal, Assistant Provost Marshal or other officer into whose custody the above named person was taken on arrest. [illegible]

(Rank)

(Unit or Appointment)

COMMANDING 120 PROVOST COY. C.M.P.

NOTES

1. This certificate MUST be signed personally by the Officer concerned.
2. In no circumstances may it be signed by one officer 'for' another, or by anyone who does not hold commissioned rank.
3. In no circumstances should the place of apprehension be described as 'In the Fi the actual place of apprehension should be stated, or if difficulty is experien describing the place, the map reference should be given.

Exhibit E.

ARMY FORM B.296 (WAR)

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
K-53517	Pte	Smith K.	K-4 List 13 Bn 2a/16 Sup Coy

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For	AWL 4.4.15 (1)	7 times.
For	4.4.15 (2)	1 times.
For		times.
For		times.

Date of first entry in Field Conduct Sheet 8 Aug 142

Date of last entry in Field Conduct Sheet 15 Dec 144

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for nil beginning on the — day of —

4. The accused has been awaiting trial on the present charges for ——— days in civil custody; and for 21 ~~75~~ 18 days in military custody, *i.e.*, nil days in open arrest, ~~54~~ 21 days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 25

6. The date of his attestation / calling up for military service is 1 May 1940

7. The service which the accused is allowed to reckon is ———

†State the military decorations (if any) held by accused.

8. The accused is in possession of†

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of ———	———
In the war substantive rank of ———	———
In the acting rank of ———	———

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(27933) W1.34930/3454 5M.000 7/44 A.& E.W.Ltd. Gp.698 Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
FGCM	U.K. 9.1.44	a Wh 15(1) 4½ months	9 months detention	The 1/3 remitted

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 8th day of March 1945 [illegible] Offr.
1 Cdn D[illegible] Military Centre

SB

LIST OF WITNESSES

N/A

LIST OF EXHIBITS

Certified true ⌘ copy of Extract from Pt II Order No 1 dated 4 Jan 45 "A"

Certificate of apprehension dated 14 Feb 45. "B"

I, K-53517 Pte SMITH K, hereby certify that I have received one copy of Charge Sheet and one copy of Summary of Evidence free of charge on 2 Mar 45.

K-53517 Pte Smith K

5D-59.

CPA86 (In Text of AFA21) 40/P & S/1898 (40/01) 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of Lt Col V W Bugman A/ Comd 2 CBRG dated 5 Mar 45

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K-53517 Pte K Smith X-4 List Lake Sup R 1 Cdn Disciplinary Centre

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A W L	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 21 days, of which No days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo one year detention.

(Sgd) ..... Judge-Advocate, if any.

8 Mar 45 Date awarded.

(Sgd) George H H Cox Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 170, MML pp 739-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

(Sgd) G S K Gostling Brigadier

Date 9 Mar 45 Commanding 2 Cdn Base Rft Dp Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
K-53517 Pte Smith K	14 Mar 45	A G Hood Lt Col Comdg 1 Cdn Disciplinary Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K-53517	Pte	K	SMITH	X-4 List Lake Sup Regt att 1 Cdn Disc Centre

CERTIFIED TRUE COPY

J K Hall Lieut
for Lt Col
21 Army Group
12 Mar 45

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 8 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p [redacted]. For GCM see Gen relevant fms RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 74- [redacted]. Where a variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF AAS. for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(2)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1115 hours trial commences.(1)

A4. The Prosecutor produces a Medical Certificate that accused is ~~were~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 562(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to~~ ~~as interpreter I have~~ ~~The Interpreter is sworn.(1) Do you object to~~ ~~as shorthand writer I have~~ ~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (1)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	G S K Cox	CAC HQ 2nd C R C
Member	Capt	J G O Robechaud	CIC 15 CBR Bn
Member	Capt	J E Labie	CIC HQ 2nd C R C
Judge-Advocate			
Prosecutor	Lieut	C Lemieux	R de Chaud 10 CBR Bn
Defending Offr	Lieut	J P Gougeon	CIC 10 CBR Bn

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (8) and fn 2 were not followed. See DI p 3.)

A8. The accused K-53517 Pte Smith K before arraignment makes ~~(has made)~~ (1) plea.

(1. If a special plea is made for separate trial on one or more charges (RP 62(F), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or as to bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is (are) arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 86s to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~(is cleared and)~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CBRG Vpl 4 P 141

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accusd may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. *If pleas to all charges are GUILTY, use Record Form B below.*

II. *If pleas to all charges are NOT GUILTY, use Record Form D on p 3.*

III. *If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,*

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP 37(A).*)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s) call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans Yes Exhibit "F" (5)

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 2, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (~~their~~) plea(s) of Guilty to Not Guilty on the charge(s). The accused is (~~are~~) so informed, and he (~~they~~) ~~change(s) his (their) plea(s) on charge(s)~~ Part I of the Schedule is amended accordingly.

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof as a subsequent event.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans (1)

(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans Do you intend to call witnesses on your behalf ? Ans Are they witnesses as to character only ? Ans

(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(*1. AA 54(2) (c), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans No

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by A.A 163(1) (g) (h), and (ii) they refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "D" and Ex "E" respectively.(3)

(*1. MFB 355 or MFB 294. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans No (2)

(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 40. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 543-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(5), 98(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

MFB 246

MEDICAL OFFICERS CERTIPICATE

(KR(Can)Para 55)
(CMHQ CL 173)

I certify that I have this day examined K-53517 Pte Smith K and in my opinion he is fit to undergo trial by Court Martial.

Station 1 Cdn Disc Centre

Date 8 Mar 45

M Adam Capt (Sgd)
(Medical Officer)
Unit 1 Cdn Disc Centre

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
K-53517	Pte		K	SMITH	X-4 List Lake Sup 1 Cdn Disciplinar Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 5 Mar 45 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	G B H Cox	CAC HQ 2 CBRG

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by OC 13 CBR Bn	13 CBR Bn
Capt	to be detailed by HQ 2 CBRG	HQ 2 CBRG

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Belgium. (Country.) V W Bugnan (Signed personally. RP 105 fn 2.) Lt Col (Rank.)

Date 5 Mar 45 A/ Commanding 2 Cdn Base Rft Gp Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (AFA96 (1st Issue of AFA5: 40/F & S/1891) (4621)

(*See overleaf for oaths and notes for use on trial.*)

CHARGE SHEET

The accused, K-53517 Pte K Smith X-4 List 13 Bn Lake Sup Regt, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15(1)
Army Act

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT
LEAVE

in that he,

In the Field absented himself without leave from 1920 hrs 24 Dec 44 until apprehended at Brussels Belgium at 2315 hrs 14 Feb 45.

(Absent 52 days 3 hrs 55 minutes)

Inthe Field
2 Mar 45

A O Hood
(A O Hood) Lt Col
Comd
1 Cdn Disciplinary Centre

To be tried by Field General Court Martial.

In the Field
4 Mar 45

V W Hugman
(V W Hugman) Lt Col
A/Comd
2 Cdn Base Rft Gp

Statement under oath made by the accused K-53517 Pte Smith K.

I joined the army 1st May 40 - I am married-- I came overseas on Sept 40 - In 1942 I had and still have family troubles back home. I was with the Seaforth Regt at that time and my CO was trying to do something for me and at that time I was dispatch as Instructor at 5 C.T.S. From there I went to Holding Unit and dispatched to Westminster Regt. They never done anything for my family troubles - They would'nt cut off my wife allowances, consequantly, I went AWL 4½ months received 9 months detention and made six months. I was granted 3 months remition. From there I went to #6 C.I.R.U., andIasked the CO to do something for my family troubles and also if he could re-established my 3 months pay in my pay book, but he told me that I was on the next draft for France and he warned me on the spot for this move. I got into France in August and went to the Paymaster 2nd Reh 21st Army Group and he said "I would start right now" but 2 or 3 days later I was warn that I was proceeding at Cdn Army HQ and there they would start a small sniper school with British staff and two Cdn driver - It lasted about a month and it was washed up. Then they closed it and warned us that the Cdn drivers were going to the British Army.

With the British they said "You will stay here until further orders. I went up to see a Cdn Capt who was on loan to the British and I asked him to try and send me back with Cdn Army and he said "hewould inquired about it". While I was there nothing was done for my family troubles. I was r eturn to Cdn Army on Dec 1st - 44 and there I went to see Capt in charge 58 Cou R.U. I told him " I still had 3 months pay not in my pay book yet and asked to be excuse from draft for a while to giving me a chance to set something about my family troubles and my pay. The only answer was "I will see".

I am ready to go back at any time with the Cdn Army and fighting again.

Q.1. Is your family troubles are in Canadan or England?
A.1. In Canada.

Q.2. What is going on?
A.2. My wife live with another man.

Q.3. How old are you and your Category?
A.3. 25 years old - "A" Category.

Q.4. Were you in the line with British fighting troop?
A.4. Yes with 2nd Seaforth, 5th Camerooms, Argyle Southerland.

Q.5. Have you ask for a divorce?
A.5. Yes, I filled in a form at #6 C.I.R.U. England approx 1st Aug and nothing was done.

R.P. 83 (b) complied with.

"NOTE" NO MITIGATION OF SENTENCE

Summary of Evidence in the case of K-53517 Pte SMITH K X-4 List 13 Bn Lake Sup Regt, attached to 1 Cdn Disciplinary Centre, a soldier of the Canadian Army Overseas.

Vharge - Absence without leave.

By directions of the CO the evidence is taken on oath.

The following documents are read over to the accused, marked as Exhibits and are attached to the proceedings.

Exhibit "A" - Certified true copy of Extract from Pt II Order No 1 dated 4 Jan 45.

Exhibit "B" - Cerificate of apprehension dated 14 Feb 45.

Q Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A I have nothing to say.

The accused does not call any witness.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that RP 4 (C) (D) (E) (F) and (G) have been complied with.

W D Hungerford Capt
(W D Hungerford) Capt
Officer detailed to take Summary of Evidence

Dated in the Field
2 Mar 45.

PART II ORDER EXTRACT FORM

34/X-L Sup R/1 (A5c)

28 Feb 45

TO: D & P

EXTRACT FROM: UNIT X-4 List (13 Bn) Lake Sup Regt
PART II ORDER NO 1 dated 4 Jan 45

ABSENT WITHOUT LEAVE
(a) AWL from 1920 hrs 24 Dec 44

K-53517 Pte Smith K X-4 List (13 Bn)

Certified to be a true extract from the regimental books and documents in my custody.

??????? Capt
Officer IC Records
Cdn Sec GHQ 2 Ech 21 A Gp

Originating Clerk's Initials LER

(J R PENELON) CAPTAIN
Officer in Charge (A5c)
Canadian Section GHQ 2nd Echelon

CERTIFICATE OF ARREST IN ACCORDANCE WITH
ARMY ACT SECTION 163 (1) (JJ)

I certify that No K-53517 Rank Pte Name Smith K

of (Unit) Lake Superior Regt 58 R U 1st Cdn Army was arrested

at Brussels at 2315 hrs on 14 Feb 45 (date). He was dressed in ~~X~~

Uniform.

Date 14th February 1945.

Signature of Provost Marshal
APM or other officer into whose
custody the above named person
was taken on arrest.

J Blenkham Lieut.
Commanding 120 Provost Coy GHQ

NOTES

1. This certificate MUST be signed personally by the Officer concerned

2. In no circumstances may it be signed by one officer 'for' another, or by anyone that does not hold commissioned rank.

3. In no circumstances should the place of apprehension be described as 'In the Field'. The actual place of apprehension should be state or if difficulty is experienced in describing the place, the map reference should be given.

LIST OF WITNESSES

N/A

LIST OF EXHIBITS

Certified true copy of Extract from Pt II Order No 1 dated 4 Jan 45 "A"

Certificate of apprehension dated 14 Feb 45. "B"

I K-53517 Pte SMITH K, hereby certify that I have received one copy of Charge Sheet and one copy of Summary of Evidence free of charge on 2 Mar 45.

K Smith

K-53517 Pte Smith K

SCHEDULE OF CONVICTIONS BY A COURT - MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and place of trial	Charges upon which convicted	Sentence of Court	Punishment remitted or sentence suspended
FGCM	U.K. 9-1-44	AWL 15(1) 4½ months	9 months detention	1/3 remitted

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 8th day of March 1945

J L Dibb Capt Admin Offr.
1 Cdn Disciplinary Centre

STATEMENT AS TO CIRCULATION AND PUBLICATION OF REVISED OR AMENDED

(For Use at Trials by Field General Court-Martial only)

Number	Rank	Name	Home	Regiment (or as the case may be)
X-53517	Pte	Smith A.	X-4 List 13 Fr. Lake Sup Regt	

NOTE.- The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the Proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of Gallantry or distinguished conduct proceeded on the Field Conduct Sheet should also be inserted here.

* Strike out if not applicable

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:-

For AWL AA 15(1) ..... 7 ..... times

For AA 8 (2) ..... 1 ..... times

For .... times

For .... times

2. Previous convictions of the accused by a court martial or civil court are set out in the Schedule overleaf.

3.* The accused at the present time is under sentence for .....

beginning on the ..... day of .....

4. The accused has been awaiting trial on the present charges for ..... days in civil custody; and for 21... days in military custody, making a total of 21..... days of which NA... days were spent in hosp.

5. The present age of the accused is 25 yrs.....

6. The date of his attestation is 1 MAY 1940..

7. The service which the accused is allowed to reckon is .....

8. The accused is in possession of #

State the military decorations (if any) held by accused.

9. (If the accused is a warrant officer or NCO). The accused has served continuously, without reduction, to the present date -

	Date of Promotion
In the substantive rank of	.....
In the war substantive rank of	.....
In the acting rank of	.....

INSTRUCTION - If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

5N-61

Pte. Smith, K.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : K-53517 Pte Kenneth SMITH SH of C att 1 Cdn Disc Centre

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see [illegible] charge see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for one year detention beginning on (date) 8 Mar 45 (1) "AEL"
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 61 days, of which 21 days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under EJ.)

Sentence Awarded by the Court :

To undergo detention of 30 days

(Sgd) Judge-Advocate, if any. 14 Jun 45 Date awarded. (Sgd) "AE LEFROY" Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(2). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

[illegible] "JSL"
(1. AA 57A. Delete if not used.)

(Sgd) "JS Lind" Brig
Date 3 Jul 45 Commanding 3 CBRGp
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
K-53517 Pte Kenneth SMITH	5 Jul 45 SH of C	"HJ Richmond" Lt-col Comd 1 Cdn Disc Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CERTIFIED TRUE COPY

FIELD GENERAL COURT-MARTIAL

CFA20 (In lieu of AFA21) 40/P N B/1868 60/61 4/38B

Convened by Order of Brig J G Spragge DSO OBE ED 2 CBRG Comd dated 11 Jun 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
K-53517	Pte	Kenneth	SMITH	SH of C att 1 Cdn Disc Centre

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(2)) 14 Jun 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, [illegible] assemble, and the Court is closed. "AEL"

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see fnote for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number hereon. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (is) amenable to military law, and each charge discloses an offence.(3) "AEL"

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is [illegible] brought before the Court. At 1515 hours trial commences. "AEL"

A4. The Prosecutor produces a Medical Certificate that accused is (is) fit to undergo trial by court-martial.(1) [illegible] accused elected [illegible] "AEL"

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. [illegible]

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No Sir (2)

(1. RP 105. 2. If no objection, waiting member retires. RP 60(E). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, [illegible] are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc : "AEL"

President	Major	A E LEFROY	Seaforth Highrs—Cdn C M Centre
Member	Capt	M R M DALE	Cdn CM Centre
Member	Capt	R G L MILES	RCA Cdn CM Centre
Judge-Advocate			
Prosecutor	Capt	G T GALE	Cdn CM Centre
Defending Offr	Capt	R R BROWN	Cdn CM Centre

Questions by President : Is the Prosecutor a lawyer ? Ans Yes Is the Defending Offr a lawyer ? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Di p 33.)

A8. The accused K-53517 Pte Kenneth SMITH before arraignment make(s) (no) (1) plea. "AEL"

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (is) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. "AEL"

[illegible] p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court [illegible] considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B "AEL"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), and to call witnesses as to character and make an address in mitigation of punishment.[2] "AEL"

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).[1] If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4] "AEL"

President to accused: Do you wish to make a statement? Ans. No Sir [5]

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Summary of Evidence is read to the Court. The Court is satisfied that the accused understands the nature and effect of the plea of Guilty to the charge(s). The remarks and previous convictions disclosed in the Schedule to amended are read.~~ "AEL"

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.[1] "AEL"

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.[1] "AEL"

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D6 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....[1]

(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.[1]

(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 93(C).*)

D3. The evidence for the Prosecution is taken.[1]

(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.[1] The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).[2] The Court is closed, and considers the submission.[3] The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).[4]

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114*, *115*.)

D5. President to accused: You will now proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn, and you will not be subject to cross-examination.[3] But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.[4] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?

Ans.....Do you intend to call witnesses on your behalf?

Ans.....Are they witnesses as to character only? Ans.....

(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1]

(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.

(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(G).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.[1]

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.[2]

(*1. AA 54(3) (a), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?[1]

Ans. No Sir

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service[1], and certified true copy (copies) of Conduct Sheet(s)[2], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents relate to the accused, because: (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.[3] "AEL"

(*1. MFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 552. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?[1] Ans. Yes in mitigation of punishment by Defending Offr

(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]

(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~[illegible]~~.[2] "AEL"

(*1. When several accused arrest separately see RP 71 (2)). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see: AA 44, 130, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

"AEL"

MFB 246

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 55)
(CMHQ CL 173)

I certify that I have this day examined K-53517 Pte SMITH, K., and in my opinion he is fit to undergo trial by Court-Martial.

"----------"Capt (Sgd)
(Medical Officer)

Station: Field
Date- 14 June 45

Unit 1 Cdn Disc Centre.

"AEL"

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K-53517	Pte	Kenneth	SMITH	SH of C att 1 Cdn Disc Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~have~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 11 Jun 45 endorsed by me, ~~(or to the Charge Sheet(s) already laid before me)~~, "To be tried by Field General Court-Martial", "JGS

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~ (Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I have unable to appoint (a) three offrs to form the Court; (b) a Fd Offr as President, for the reasons I have attached hereto.~~ (AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I have appointed as Judge Advocate to the Offrs named hereunder.~~ (RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	AE LEFROY	Seaforth Highrs Cdn CM Centre

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	MRM DALE	Cdn CM Centre
Capt	RGL MILES	RCA Cdn CM Centre

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (Country.)

Dat 11 Jun 45

"JG Spragge" (Signed personally. RP 105 fn 2.) Brigadier (Rank.)

(JG Spragge)

Commanding 2 Cdn Base Rft Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 98 (To Secy of AFA 2) 60/PAS/1697 (6148)

(See overleaf for notes and notes for use on trial.)

To the Convening Officer:-

I request attention be drawn particular attention to the letter from Lt. Col Parker of 9th Cdn Inf. re P. Barrett, the accused statement of his army life the value of investigation. May all possible steps be taken to thoroughly investigate this man's character & all possible help toward clarification be given.

14 June 15.

A. Duffy Major

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K-53517 Pte Kenneth SMITH SHof C att 1 Cdn Discipline Centre

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty.	Guilty.	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present undergoing sentence for ~~one year detention~~ beginning on ~~time~~ 8th March 45 (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 61 days, of which 21 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E29.)

Sentence Awarded by the Court:

To undergo detention of 90 days.

(Sgd) ..... Judge-Advocate, if any.

1st June 45. Date awarded.

(Sgd) A.W. Jeffrey Major President. (RP 48, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: Confirmed.

I direct that the accused be not ~~discharged to prison or detention barracks~~ until further orders.(1) JH

(1. AA 57A. Delete if not used.)

Date 3 Jul 45

(Sgd) D.C. Lind Brig.

Commanding 3 CIB Bde

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
53517 PTE KENNETH SMITH SH of C	5 JUL 45	J. Richmond Lt Col Cmd. 1 Cdn Discipline Centre

CR #4/17 5 Jul 45

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

Pin here: Loose Sheets of Record

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use record alternative in para D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans .....

Do you intend to call witnesses on your behalf? Ans .....

Are they witnesses as to character only? Ans .....

(1. RP 115. 2. RP 40(A), see 40(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)

Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans No - Sir.

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)

(1. MFB 355 or AFB 296. 2. MAM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes, on mitigation of punishment by Defending Officer, and I may call witnesses on oath anything here or previously stated which would affect the amount of punishment.

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to give evidence on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)

(1. When several accused tried separately see RP 37 (D). One sentence only, comprised of the punishments or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 64, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO JOY 1323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Exhibit "B"
ddl

Army Form B 296 (War)

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martials only)

Number	Rank	Name	Regiment (or as the case may be)
X-53517	Pte	SMITH K	1 FP & Detn Bks

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court-martial or a civil court:-

For 15(1) 4 — 6 times

For 8(2) — 1 times

For — — times

For — — times

Date of first entry in Field Conduct Sheet 8 Aug 42

Date of last entry in Field Conduct Sheet 8 Mar 45

2. Previous convictions of the Accused by a Cour-Martial or a civil court are set out in the Schedule overleaf.

3. The accused at the present time is under sentence for 1 year detn beginning on the 8 Mar45 day of —.

4. The accused has been awaiting trial on the present charges for 116 days in civil custody and for 61 days in military custody, i.e. 116 days in Open Arrest 61 days in Close Arrest, of which 21 days were spent in hospital.

5. The present age of the accused is 24 years 10 mths.

6. The date of his Attestation is 1 Mar 40.

7. The service which the accused is allowed to reckon —.

8. The accused is in possession of 69 S M with Clasp.

9. (If the accused is a warrant Officer or NCO). The accused has served continuously without reduction, to the present date:-

	Date of Promotion
In the substansive rank of 1111	—
In the War substansive rank of 1111	—
In the acting rank of 1111	—

SCHEDULE OF CONVITIONS BY A COURT MARTIAL OR CIVIL COURT OF SUMMARY AWARD UNDER SEC 47AA AND OF CASES IN WHICH TRIAL HAS BEEN DISPENSED WITH OF ACCUSED

Description of Court by which tried	Date & Place of Trial	charges upon which convicted	sentence of Court	Punishment remitted or sentence suspended
FGCM	Field	15(1) AWL from 0900 hrs 15 Aug 43 to 0900 hrs 25 Dec 43	9 mos Detn & cost £2.2.0 £0.8.5 wot forf 419 dys pay	no record
FGCM	Field 8 Mar 45	15(1) AWL from 1930 hrs 24 Dec 44 to 0315 hrs 14 Feb 45(52 days 3 hrs 55 mins)	1 Years Detn both forf 439 days pay	----------

I hereby certify that the foregoing particulars which have been extracted from the regimental books in my custody are correct to the best of my knowledge and belief.

Signed this 14th day of Jun 45

(M A Cooke) Capt & Adjt
Officer ic Regtl Books
1 Cdn Discipline Centre

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field		Pte		15(1) 5 days 2 hours		21 days FP		6CIRU Pt 11 #192/44	tot forf 47 dy pay
Field	7 Dec 44	Pte		15(1) AWL 3 days 4 hours		4 days forf py	11Dec44	X4ListLSR #1/45	tot forf 8 days pay
Field	13 Dec 44	"		15(1) AWL 1d hours		4 days forf py	15DEC44	X4List LSR #1/45	tot forf 4 days pay
Field	24Dec44	"		AWL from 1930 hrs 24 Dec 44 to 2315 hrs 14 Feb 45 (52 days 3 hrs 45 mins)	documentary	1 yrs detn	8Mar45	FGCM	forfeitures 53 days pay 149(1)(a) 21 days pay 149(1)(a)(i) 365 days pay 149(1)(b) tot forf 439 days pay

Certified true copy of original NFM e in my custody

(M A Cooke) Capt & Adjt
Officer ic Regtl Books
1 Cdn Discipline Centre

Exhibit "G"

Place	Date of offence	Rank	Cause of drunkenness	Period not reckoning towards freedom from extra fine	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order (Insert after with title)	By whom awarded	Remarks
Field		Pte							CTS Pt II 95/21	
Field	2 Apr 43	"			15(1) AWL 9 hrs 10 mins 15(1) AWL 11 day's 3 hrs 30 min		7 days CB	8 Aug 42		1 dy py
Field		"			AA 8(2)		13 dys forf pay & Cost of app	22Apr43	Westmr Reg Pt II No28 28Apr43	total for 25 days pay
Field	15Aug43	"			FOCK 15(1) AWL from 2400 hrs 15Aug43 to 0400 hrs 25 Dec43		28 days detn	23Jul43	Westr Regs Pt II #52 13Aug43	tot forf 28 dy py
Field		"			15(1) 1 day 21 hrs		6 mos detn & cost of app £0.8.5	8 Jan 44	1 CIRU Pt II#9 1944	tot forf #19 dy py & cost of app.
							10 dys CB & 10 forf pay	25Jul44	6CIRU Pt II #179/44	12 dys pay total

LIST OF WITNESSES

PROSECUTION

B-76047 S/Sgt CHESTER H W SIS 2 CBRG

LIST OF EXHIBITS

Statement of accused taken by S/Sjt CHESTER "A"

I, the undersigned, hereby acknowledge receipt of one copy of Charge Sheet and one copy of Summary of Evidence free of charge on 7 June 1945.

K-53517 Pte SMITH K

I, the undersigned desire to have an officer assigned to represent me at my trial by Field General Court-Martial.

I desire the services of Capt E. Parrot, S.H. of C. if he is available

DATE: 7 June 45

(Signature of Accused)
K-53517 Pte SMITH K

D.A.P.M.'s OFFICE
MAY 26 1945
COPY FOR CASE REFT TO

Exhibit A
Lt Rousseau Capt

SIS/[illegible]/2-CMD

21 A Gp

SIS - 2 CMD

25 May 45

Field

The SMITH, Kenneth

K 53217

(nn of C) 1 Cdn Int & Fld Punishment Bks - att 2 Cdn Gen Hosp

K Smith

imprisonment for being A[illegible] I was sentenced by FCCM to serve one year's
Bks in Holland. On 31 Mar 45 I was granted short leave, and was sent to 1 Cdn K.P. and Int
barracks and remained absent without leave, and was sent to 1 Cdn K.P. and Int
at CHURF, at 1900 hrs 15 April 45 1400 hrs., I walked out, undetected, from the
I had to call the Military Police. into custody by the Cdn Provost Corps

friends. I was in CHURF only a [illegible] while absent I travelled a [illegible] Germans with some civilians, when
committed any crime of a [illegible] while I was absent [illegible] been in trouble or
I can tell you. I have read over this statement and it is true.

(sgd) K Smith

Taken down in writing and witnessed
by S 76047 S/Sgt (sgd) H.V. Chester,
SIS - 2 CMD

Witnessed by S/Sgt G.L. Ayre, RCR
1 Cdn Int C - att 2 C G H

1 CMD
25 May 45
SIS/[illegible]/2-CMD

SAIN
Headquarters
2 CMD

1. Herewith as requested, original and quadruplicate copies of statement volunteered by the above-named soldier on 25 May 45.

2. The SMITH is presently in custody at the Detention Wat, in 2 Cdn Gen Hosp.

3. Point for your info and necessary action, please.

[illegible]
2 CMD

JH/hm

COPY

Exhibit A
M. Rousseau accepted

MAY 26 1945
CONFIDENTIAL

SIS - 2 CDN

21 A Gp

25 May 45

Field

K 53517 Pte SMITH, Kenneth

(SH of C) 1 Cdn Det & Fld Punishment Elm - att 2 Cdn Gen Hosp

K Smith

On 8 Mar 45 I was sentenced by FGCM to serve one year's imprisonment for being absent without leave, and was sent to 1 Cdn F.P. and Det Elm in Holland. On 31 Mar 45, at 1400 hrs., I walked out, undetected, from the barracks and remained absent until taken into custody by the Cdn Provost Corps at CHENT, at 1900 hrs 15 April 45 following a fracas with some civilians, when I had to call the Military Police.

While absent I travelled in Holland and Belgium, staying with friends. I was in CHENT only a couple of days. I have not been in trouble or committed any crime of a civil nature while I was absent. There is nothing more I can tell you.

I have read over this statement and it is true.

(Sgd) K. Smith

Taken down in writing and witnessed
by B 76047 S/Sgt (Sgd) H.W. Chester,
SIS - 2 CDN

Witnessed by S/Sgt G.L. Ayre, RCE
1 Cdn Mine C - att 2 C G H

2 CDN
25 May 45
SIS/

SECRET
Headquarters
2 CDN

1. Herewith as requested, original and quadruplicate copies of statement volunteered by the above-named soldier on 25 May 45.

2. Pte SMITH is presently in custody at the Detention Unit, No 2 Cdn Gen Hosp.

3. Passed for your info and necessary action, please.

J. A. Thomson
for (J.A. Thomson) Lt
A/O SIS C Pro C
2 CDN

JAT/hvc

CHARGE SHEET

"AEL"

The accused, K-53517 Pte Kenneth SMITH, SH of C, attached to 1 Cdn Discipline Centre, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, when in arrest, absented himself without leave from No 1 Cdn Fd Punishment and Detention Barracks from 1400 hrs 31 Mar 45 until apprehanded in GHENT, Belgium at 1900 hrs 15 Apr 45.

(Total absence: 15 days 5 hrs)

In the Field
3/ May 45

(J K Medhurst) Lt col
Commanding
1 Cdn Discipline Centre

To be tried by Field General Court-Martial

In the Field
11 Jun 45

"JG Spragge"
(J G SPRAGGE) Brigadier
Commanding
2 Cdn Base Rft Gp

"AEL"

Plea in Mitigation

The court may find the accused guilty of the crime, but I contend that the actual guilt lies with the Adn Army Administration. I have this statement on a letter from the CO 1 FP Camp and a sworn statement of fact given by the accused as to the circumstances surrounding this his 3rd CM in as many years (produced and read to Court).

Pte Smith is a high-school graduate. He has two brothers serving here now, one a Capt and one a Sgt Major. He, himself, was a Sgt Major before he had reached the age of 21. His start in the army was excellent but the net result shows itself in that he is appearing before this court to-day, and why? Because of a lack of attention by the officer he appealed to for advice, he was in trouble - he asked for help - asked Paymasters, Padres and COS. Everytime he found somebody willing to help him, he was moved to a new unit before the help materialized - He was buffeted from pillar to post.

I ask the court to carefully consider the statement made by Pte Smith, and then, if they are in accord, recommend that an investigation be undertaken to verify his statements, and to help him sort out his own troubled thoughts and feelings.

"R Brown" Capt
Defending Officer

1 CD/FP Bks/D 1204

1 Cdn Detn & FP Bks.

13 Jun 45

Major Dawson
1 Cdn Disc Centre

K-53517 Pte SMITH K

1. The m/n soldier was awarded 12 mos detention by FGCM on 8 May 45 for an offence under AA Sec 15(1) AWL 52 days 3 hrs and 55 minutes. He later absented himself from this unit whilst undergoing detn at this unit at 1445 hrs 30 Mar 45 and apprehended at Ghent 1900 hrs 15 Apr 45. Since that date he has been in 2 CDC and despatched to this unit 8 Jun 45.

2. This soldier has been interviewed and the attached statement is forwarded to you for use at any further trial by FGCM. This man has had a considerable amount of domestic troubles and by his statement it is evident that no concrete action has been taken by the Cdn Army to [redacted] with regard to the stoppage of DA & AP to his wife. No infmn has ever been given to him as to the reason and this worry through his many changes of units has caused him to feel that there is no help in the Army.

3. As there is a possibility of you defending him, these papers are forwarded and it is suggested that these might be a ground in this instance to make a plea in bar of trial. Of course this is only a suggestion to the defending officer.

4. A copy of his statement will be forwarded to AG 10 Cdn Sec 1 Ech HQ 21 A Gp for their investigation as it is felt that in this case there are extenuating circumstances in which, had proper been taken in 1942, would not have led to his present misdemeanors.

5. It would be appreciated if these papers are passed to his defending officer should you not be prepared to act for him.

"C. Hochon" Lt-col
Commandant (APM)
1 Cdn Detn & FP Bks.
Cdn Pro Corps

COR/lhd

Sir:-

On the 1st May 1940, I volunteered for the Canadian Army at MD 11, Sub/Depot, at Vancouver, B.C. I was at the depot until17 May 40, and then proceeded to Currie Barracks, in Calgary, ALta., for training. In Augustof the same year they sent all of my draft overseas, except a few who they kept as instructors and I was among the few.

I stayed at Currie Barracks until September of 1941, and from there I went to 131 C.A.(B) T.C. I stayed there until December of the same year. I was paraded every month for 17 months to try to get overseas but they refused on the grounds that they needed instructors very badly.

I finally succeeded in Jan of 1942.

I left Currie Barracks on or about the 15th of Jan 1942, as an A/Sgt, of my draft, the adjutant was Lieut D.S. Harley of the Seaforths and the CO., Major L.F.Findeau of the R 22nd Regt. We arrived in Halifax and found that there was no boat for us so they sent us backto Valcartier, Que, with a couple of other drafts, and I was promoted to A/C.S.M. We stayed there until the end of February, 1942, and then proceeded overseas.

On arrival in the UK I went to No. 1 C.D.I.R.U., and reverted to a Private at my own request.

In March of the same year my brother, who is a Sgt, in the Westmr Regt, claimed me into his regiment.

From No. 1 CDIRU, I went to No 5 CIRU, which is the holding unit of the Westmr Regt. I was there about 2 weeks, when I was drafted as staff for the Battle School which had just opened at Rowlands Castle, (No. 5 Battle Wing, C.T.S.)

I was there with the demonstration platoon and after 3 or 4 months was promoted to Corporal.

About September of 1942, I started to receive letters from my friends telling me that my wife was running around but I disregarded them and let things stand for a fewmonths and then I received a letter from my mother-in-law, I still only half-believed her but nevertheless I was a bit uneasy.

I went to see the CO, of No 5 Wing C.T.S. who was Col Fletcher, at that time, he in turn, referred me to the Padre, who I went to see. He suggested writing to someone official in Ottawa and having a quiet investigation to find out if there was any truth in the letters.

In the meantime I left C.T.S. and went to the Westmr Regt. While I was there I received an awful scortching letter from my wife asking me what was the idea of sending investigators around.

I went straight to the Padre (Capt de Pencier) and asked him if any word had been received from Canada, on my personal affairs, and he asked me who wrote about it and I told him it was the Padre of the C.T.S., he in turn wrote to him and in the meantime the Capt Paymaster called me up and told me that the investigators had found nothing wrong with my wife and that my child was receiving good treatment. How he came in possession of this news I have no idea.

...../2

My wife wrote to me asking for a divorce immediately, and I took the letter to the Padre and asked him if he would make application for compassionate leave to Canada; but he told me that I had no chance whatsoever.

I turned in my two stripes and went AWL, trying to get a boat home but that was impossible so I came back after 4½ months and received 9 months detention.

While I was undergoing detention in Headley, I received another letter from my mother-in-law and I took it to the Commandant and he, in turn, passed it to the paymaster. I asked him for information concerning my pay account and he said he would find out as soon as possible. A few days later he called me and told me that m, wife's pay had been stopped but he could not tellme when. I asked him if the money for my child had alsobeen stopped and he told me that she would be looked after, but he couldn't tell me by whom or when.

I left Headley on June 16, and returned to No. 6 C.I.R.U., as soon as I arrived there I went to see the Padre and asked for a divorce papers as I figured I could not keep my wife she should be entitled to the divorce that she wanted.

I completed the papers and returned them to the padre. He told me to stand by as I would have to go to the Legal Aid Section, but I heard nothing from him.

I was next paraded before Major Hudson, my Company Commander and I asked him if he would do something about getting me ~~that~~ the 20-cent raise in pay as I told him I was entitled to as, as from my reversion on April 3/43.

He told me that it would be very hard to get it at that time, so I asked to see the C.O. and the C.O. got the 20-cents raise for me but at the same time I was entitled to 90 days remission from my 9 months sentence and the paymaster only entered 15 days in my paybook. I went to see him immediately and he told me that all he could do was to follow Part 11 Orders, but he said he would see what he could do about it.

I got into a little trouble and received 21 days FP and while I was in the guard-room they took me out to sign Draft papers, and I was drafted for France.

I went to see my Company Commander and asked him if I could be left off that draft so as I could get my paybook and personal problems cleared up and then place me on the next draft one, but he told me it was the COs orders that I go on draft so there was very little argument.

I arrived in France about the middle of August and went straight to No. 2 CBRD. I was there about 2 or 3 days and the Capt called me and told me I was going on draft for Canadian Army HQ, but instead of going to Army HQ, I went as staff on a new school they were opening. It was called the Cdn Army Sniping School.

It was staffed and run by English except for 9 fatigue men and drivers. As I was one of the drivers I was around Deliverande quite a bit, and on a pay parade I asked to see the paymaster of 2nd Echn 21st Army Gp, Cdn Section, and I laid my whole story out to him. He told me that he would get everything fixed up and a statement of accounts right away.

I also received another letter from my wife telling me what a son of a Gun I was as the baby or her hadn't

...../3

been receiving a penny for a long time and asking me once again for a divorce. I took the letter to the Paymaster of 2nd Echelon and he made a copy of it and returned it to me. I also told him about the 90 days remission I was entitled to.

The school lasted for about 1 month and then they sent the fatigue men back to CBRG, and left the twodrivers. We were told that we would have to transport the English Instructors and Officers back to the English Army.

We went through France and caught up to Army HQ just outside Ghent where we picked up the whereabouts of the 51st HD and I went to see a Major Hovey who was Officer i/c G Ops A and I asked him to return me to the Canadian Army and he told me that it was impossible at that time, but as soon as I returned the Instructors to the HD that I could come right back.

From there we went to Holland and caught up with the HD at a town called Eindhoven. I immediately asked to be returned.

I told the Captain that I had some personal and pay problems that I would like to have attended to right away and was told that while I was with the English Army nothing could be done. But he told me he would see what he could do about getting me back and that in the meantime he would send my paybook back to Army HQ and get them brought back to date as the English cashiers could not touch them.

I was returned to the Canadian Army about Dec 1st and I went straight to see the Padre and once again I asked for compassionate leave to Canada and was refused. So I went AWL and tried to get a boat or plane home but found it was impossible.

I was picked up in Brussels on the 14th Feb 45, and returned to CDC where I was Court-Martialed and awarded 2 years detention on March 8th.

I was brought to No 1 Cdn Detn & FP Barracks about the 15th of March and was put into the imprisonment cells about the 29th March. I was moved downstairs into the detention cells and on the 31st March I was working outside and walked away.

I hung around Antwerp trying to get a boat home and when I found out I couldn't I went to Ghent and there I turned myself in on the 15th April and the Provost from No. 2 L of C asked me where I was from and when I had left and I told them the truth.

They put me in the Town Guard Room of Ghent and I heard no more from the Provost for one month. Then I contacted Yellow Jaundice and they tried to put me into the Detention Ward at No 2 Cdn Gen Hosp, but they would not accept me as there was no charges against me and so they took me back to the Provost Office and the Provost Marshall put me under open arrest and had me put in a free ward at the hospital. About 2 days later they moved me up to the Detention Ward.

While I was in the hospital a Major came up to me and read off my charges to me. It was AWL for 15 days 5 hrs.

I left the hospital on the 3rd of June 45, and went to No. 1 CDC when I was remanded for Court-martial and the next morning they moved me back to No. 1 Cdn Det Bks.

"K. Smith"
K-53517 Pte Smith, K.

Certified that the above statement was made under oath at No 1 Cdn Detn & FP Bks Cdn Pro C., 13 June 45.

"G. Beaver-Jones"
K-73903 S/Sgt Beaver-Jones G
Chief Clerk
No 1 Cdn Detn & FP Bks Cdn Pro C

(1)

Exhibit "A" "AEL"

Summary of Evidence in the case of K-53517 Pte Kenneth SMITH, SH of C, attached to 1 Cdn Discipline Centre, a soldier of the Canadian Army overseas.

Charge - Absence without leave

By directions of the CO the evidence is taken on oath.

FIRST WITNESS R-76047 S/Sgt CHESTER H W SIB 2 CMHG sworn states:-

On the 25th day of May 45, I interviewed the accused K-53517 Pte Kenneth SMITH, attached to 1 Cdn Discipline Centre, whom I now recognize. After making known my identity I cautioned him as follows:-"You are not obliged to s say anything unless you wish to do so but anything you do say will be taken down in writing and may be used in evidence". The accused understood the caution and signed his name to the statement which was read over to him. It is attached to these proceedings as Exhibit "A".

The accused declines to cross-examine this witness.

R-76047 S/Sgt CHESTER H W

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I have nothing to say.

The accused does not call any witness.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that KR 4 (C) (D) (E) (F) and (G) have been complied with.

M Rousseau Capt
(Maurice Rousseau) Capt
Officer detailed to take Summary of Evidence

Dated in the Field
7 Jun 45

EXHIBIT "A"

"M. Bousseau" Capt

SIS - 2 CBRG 21 A Gp

Field 25 May 45 SIS/A-1/94-CBRG

K 53517 Pte SMITH, Kenneth

(SH of C) 1 Cdn Det & Fld Punishment Bks - att 2 Cdn Gen Hosp

I have been warned that I am not obliged to say anything unless I wish to do so, but that whatever I do say will be taken down in writing and may be given in evidence. I fully understand the meaning of this caution, and to show that I do so, I sign my name herewith.

Signature "K Smith"

On 8 Mar 45 I was sentenced by FGCM to serve one year's imprisonment for being absent without leave, and was sent to 1 Cdn FP and Det barracks in Holland. On 31 Mar 45, at 1400 hrs, I walked out undetected from the barracks and remained absent until taken into custody by the Cdn Provost Corps at GHENT, at 1900 hrs 15 April 45 following a fracas with some civilians, when I had to call the Military Police.

While absent I travelled in Holland and Belgium, staying with friends. I was in GHENT only a couple of days. I have not been in trouble or committed any crime of a civil nature while I was absent. There is nothing more I can tell you.

I have read over this statement and it is true.

Taken down in writing and witnessed by B 76047 S/Sgt (Sgd)HW Chester SIS - 2 CBRG

(Sgd) K Smith

Witnessed by S/Sgt G L Ayre BEM 1 Cdn Disc C - att 2 CGH

Certified true copy of Exhibit "A"

M Bousseau Capt

2 CBRG
26 May 45
SIS/A-1/94-CBRG

DAPM
Headquarters
2 CBRG

1. Herewith as requested, original and quadruplicate copies of statement volunteered by the above-named soldier on 25 May 45.

2. Pte SMith is presently in custody at the Detention Ward, No 2 Cdn Gen Hosp.

3. Fwded for your infn and necessary action, please.

"J.A. Thomson"
(JA Thomson) Lt
i/c SIS C Pro C
2 CBRG

JAT/mwe

LIST OF WITNESSES

PROSECUTION

B-76047 S/Sgt CHESTER H.W. SIS 2 CBRG

LIST OF EXHIBITS

Statement of accused taken by S/Sgt CHESTER "A"

I the undersigned, hereby acknowledge receipt of one copy of Charge sheet and one copy of Summary of Evidence free of charge on 7 Jun 1945

"K Smith"
K-53517 Pte Smith K.

I, the undersigned, desire to have an officer assigned to represent me at my trial by Field General Court-Martial.

I desire the services of Capt F Parrot SH of C, if he is available.

"K-53517 Pte Smith"
Signature of Accused

7 June 1945

No. 5351[illegible] Name SMITH K

Exhibit "C" "AEL"

Corps CTC

Sheet No

Date of enlistment 1 Mar 40

GC Badges

Signature OC Company, etc

Service or Proficiency Pay

3/17 M[illegible]

(A[illegible])

Character

Date of last entry in Company Conduct Sheet	Sqn, Battery, or Company	No. and date of last drunk	Period not reckoning towards freedom from extra fine	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
								CTC Pt II 95/21Aug42	1 dy pw
Field	Pte			15(1) AWL 9 hrs 10 mins		7 days CB	6 Aug 42		
Field 2 Apr 43	"			15(1) AWL 11 days 3 hrs 30 min		13 dys forf pay & Cost of app	22Apr43	Wester Bde Pt II No28 28Apr43	total for 25 days p
Field	"			AA 6(2)		28 days detn	23Jul43	Wester Bde Pt II #52 13Aug43	tot forf 28 dy py
Field 15Aug43	"			96CH 15(1) AWL from 2400 hrs 15Aug43 to 0430 hrs 25 Dec43		9 mos detn & cost of app £0.6.5	8 Jan 44	1 CIRU Pt II#9 1944	tot forf 419 dy p$ & cost of app.
Field	"			15(1) 1 day 21 hrs		10 dys CB & 10 forf pay	25Jul44	60IRU Pt II #179/44	12 dys pw total

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Held		Pte		15(1) 5 days 2 hours		21 days FP		6CIRU Pt II #192/44	not forf 27 dy pay
Held	7 Dec 44	Pte		15(1) AWL 3 days 4 hours		4 days forf py 11Dec44		XHalifLSH #1/45	not forf 8 days pay
Held	13 Dec 44	"		15(1) AWL 16 hours		4 days forf py 15DEC44		Xalist LSH #1/45	not forf 4 days pay
Held	24Dec44	"		AWL from 1930 hrs 24 Dec 44 to 0315 hrs 14 Feb 45 (52 days 7 hrs 55 mins)	documentary	1 yrs detn	8Mar45	FOGM	forfeitures 53 days pay 149(1)(c) 21 days pay 149(1)(g)(i) 365 days pay 149(1)(b) not forf 479 days pay

Certified true copy of original NPN 6 in my custody

(W A Cooke) Capt & Adjt
Officer ic Regtl Books
1 Cdn Discipline Centre

"Exhibit 'B'" "AEL"

Army Form B 296 (War)

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martials only)

Number	Rank	Name	Regiment (or as the case may be)
K-53517	Pte	SMITH K	1 FP & Detn Bks

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court-martial or a civil court:-

For 15(1) 4 — 6 times

For 6(2) — 1 times

For ____ — ____ times

For ____ — ____ times

Date of first entry in Field Conduct Sheet 6 Aug 42

Date of last entry in Field Conduct Sheet 6 Mar 45

2. Previous convictions of the Accused by a Cour-Martial or a civil court are set out in the Schedule overleaf.

3. The accused at the present time is under sentence for 1 year detn beginning on the 6 Mar 45 day of ____.

4. The accused has been awaiting trial on the present charges for nil days in civil custody and for nil days in military custody, i.e. nil days in Open Arrest 64 days in Close Arrest, of which 31 days were spent in Hospital.

5. The present age of the accused is 24 years 10 mos.

6. The date of his Attestation is 1 Mar 40.

7. The service which the accused is allowed to reckon ____.

8. The accused is in possession of G.V.S.M. with Clasp.

9. (If the accused is a warrant Officer or NCO). The accused has served continuously without reduction, to the present date:-

	Date of Promotion
In the substansive rank of IIIII	____
In the War substansive rank of IIII	____
In the acting rank of IIII	____

SCHEDULE OF CONVITIONS BY A COURT MARTIAL OR CIVIL COURT OF SUMMARY AWARD UNDER SEC 47AA AND OF CASES IN WHICH TRIAL HAS BEEN DISCONTINUED WITH OR ACQUITTED

Description of Court by which tried	Date & Place of Trial	charges upon which convicted	sentence of Court	Punishment remitted or sentence suspended
FGCM	Field	15(1) AWL from 2400 hrs 15Aug43 to 0400 hrs 25 Dec43	9 mos Detn & cost of sep £0.8.5 tot forf 419 dys pay	no record
FGCM	Field 8Mar45	15(1) AWL from 1930 hrs 24 Dec 44 to 2315 hrs 14 Feb 45(52 days 3 hrs 55 mins)	1 Years Detn with forf 439 days pay	----------

I hereby certify that the foregoing particulars which have been extracted from the regimental books in my custody are correct to the best of my knowledge and belief.

Signed this 14th day of Jun 45

(M A Cooke) Capt & Adjt
Officer ic Regtl Books
1 Cdn Discipline Centre

To the Convening Officer:-

The court wishes to draw particular attention to the letter from Lt-col Rocnon of #1 Cdn Detn and FP Barracks, the accused's statement of his army life and the p,ea of mitigation. May all possible steps be taken to thoroughly investigate this man's domestic affairs and all possible help toward clarification be given.

14 Jun 45 "AE LeFroy" Major

RECORDED AT CMHQ IN AB 150 5N-61

FIELD GENERAL COURT-MARTIAL

CPA86 (In lieu of AFA8) 40/P & S/1000 (40/07)

4388

ED

Convened by Order of Brig J G Spragge DSO OBE Comd 2 CBRG dated 11 Jun 45

RECEIVED 17 JUL 1945 JAG BRANCH D.S.M.A.

ACCUSED.

(Applicable to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
K-53517	Pte		Kenneth	SMITH	SH of C attd Cdn Discipline Centre

PROCEEDINGS REVIEWED

Lt-Col 17 July 45

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED

Capt

21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) BELGIUM on (*date(s)*) 11th June 45.

34/37

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1515 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO(2).~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to ..... as interpreter? Ans ....~~

~~The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans ....~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No - Sir.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc.:

President	Major	A E LEPROY	Seaforth Highrs-Cdn C M Centre	
Member	Capt.	M.R. Mdale.	Cdn. C.M. Centre	
Member	Capt.	R.G.L. Miles	R.C.A.	Cdn. C.M. Centre
Judge-Advocate				
Prosecutor	Capt.	G. T. Gale.	Cdn. C.M. Centre	
Defending Offr	Capt.	R.R. Blown.	Cdn. C.M. Centre	

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused K-53517 Pte Kenneth SMITH before arraignment make(s) (no) (~~a~~) plea.

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 120, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in RE rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~not~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 9. The proceedings are continued on Record Form P.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

SCBR Vol 2 p 113

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s) and call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. No - Sir. (5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 2. *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

~~B3. The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on the charge(s). The accused is (are) informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~

~~(1. Court may be closed to consider the statement. Delete whole or part not used.)~~

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex 'A', initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

MFB 246

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 55)
(CMHQ CL 173)

I certify that I have this day examined K 53517 (No.)
Pte (Rank) Smith K. (Name) and in my opinion he is
fit ~~unfit~~ to undergo trial by Court-Martial.

Station Ripon (Sgd) (Medical Officer)

Date 14 June 45 Unit 1 CDN. DISC. CENTRE.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 16, 109. As to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 62, and as to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, Ins, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K-53517	Pte		Kenneth	SMITH	SH of C att 1 Cdn Discipline Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 11 JUN 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~)
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)			(Unit.)
Major	A E LEFROY	Seaforth Highrs (*Must be named. RP 106.*)	Cdn C M Centre

MEMBERS.

(Rank.)			(Unit.)
Capt	M R M DALE		Cdn C M Centre
Capt	R G L MILES	RCA (*Named or detailed. RP 106.*)	Cdn C M Centre

WAITING MEMBER.

(Rank.)			(Unit.)
		(*Named or detailed, if any. RP 106.*)	

JUDGE-ADVOCATE.

(Rank.)			(Unit.)
		(*Must be named, if any. RP 106.*)	

On Active Service in the Fd

In BELGIUM
(*Country.*)

Date 11 JUN 45

[redacted] (*Signature. See RP 21(1)-2.*)
K J (J) SPRAGGE
Commanding 2 Cdn Base Rft Gp
Convening Officer.

Brigadier
(*Rank.*)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (CFAAS 17th Revn of AFAS)
40/P & S/1697 (4031)

(*See overleaf for oaths and notes for use on trial.*)

CHARGE SHEET

The accused, K-53517 Pte Kenneth SMITH, SH of C, attached to 1 Cdn Discipline Centre, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, when in arrest, absented himself without leave from No 1 Cdn Fd Punishment and Detention Barracks from 1400 hrs 31 Mar 45 until apprehended in GHENT, Belgium at 1900 hrs 15 Apr 45.

(Total absence: 15 days 5 hrs)

In the Field
31 May 45

(J W Medhurst) Lt col
Commanding
1 Cdn Discipline Centre

To be tried by Field General Court-Martial

In the Field
11 JUN 45

(J G SPRAGGE) Brigadier
Commanding
2 Cdn Base Rft Gp

Plea in Mitigation

The court may find the accused guilty of the crime but I shall ask that the full guilt lies with the Commanding Officer. I base this stand on a letter from the C.O. 1st Camp and a conversation I had given by the accused as to the circumstances surrounding the two AWL C.M.s on the same sheet. (produced and read to Court)

Pte Smith is a high school graduate. He has two brothers serving here now, one a Capt and one a Sgt Major. Pte Smith was a Sgt Maj when he had reached the age of twenty-one. His stay in the army was cut short but he did not leave until he received orders from the Court today - and why? Because of a lack of action by the officers he appealed to for advice. He was in trouble - he asked for help, asked Paymaster, Padre, and C.O.s. Everyone he found somebody willing to help him. He was handed to a man and helped the help withheld - he was helpless from place to post.

I ask the Court to carefully consider the statement made by Pte Smith, and then, if they are in accord, recommend that an investigation be undertaken to verify his statements, and to help him sort out his own troubled thoughts and feelings.

Defence Capt
Defending Officer

1 CD/FP Bks /D 1204

1 Cdn Detn & FP Bks
Cdn Pro Corps

13 Jun 45

Major Lawson
~~Capt Burns~~
1 Cdn Disc Centre

K53517 Pte Smith K

1. The m/n was awarded 12 mos detention by FGCM on 8 May 45 for an offence under AA Sec 15 (1) AWL 52 3 hrs and 55 minutes. He later absented himself from this unit whilst undergoing detn at this unit at 1445 hrs 30 Mar 45 & apprehended at Ghent 1900 hrs 15 Apr 45. Since that date he has been in 2 CGH, 1 CDC and despatched to this unit 8 Jun 45.

2. This soldier has been interviewed and the attached statement is forwarded to you for use at any further trial by FGCM. This man has had a considerable amount of domestic trouble and by his statement it is evident that no concrete action has been taken by the Cdn Army to satisfy him in regard to the stoppage of DA & AP to his wife. No infn has ever been given to him as to the reason and this worry through his many changes of units has caused him to feel that there is no help in the Army.

3. As there is a possibility of you defending him, these papers are forwarded and it is suggested that these might be a ground in this instance to make a plea in bar of trial. Of course this is only a suggestion to the defending officer.

4. A copy of his statement will be forwarded to AG 10 Cdn Sec 1 Ech HQ 21 A Gp for their investigation as it is felt that in this case there are extenuating circumstances in which, had proper action been taken in 1942, would not have led to his present misdemeanors.

5. It would be appreciated if these papers are passed to his defending officer should you not be prepared to act ~~as his~~ for him.

Lt Col
Commandant (APM)
1 Cdn Detn & FP Bks
Cdn Pro Corps

COR/lhd

Sir:-

On the 1st May 1940, I volunteered for the Canadian Army at M.D. 11, Sub-Depot, at Vancouver, B.C., I was at the depot until 17 May 40, and then proceeded to Currie Barracks, in Calgary, Alta., for training. In August of the same year they sent all of my draft overseas, except a few who they kept as instructors and I was among the few.

I stayed at Currie Barracks until September, of 1941, and from there I went to 131 C.A.(B)T.C. I stayed there until December of the same year. I was paraded every month for 17 months to try to get overseas but they refused on the grounds that they needed instructors very badly.

I finally succeeded in Jan of 1942.

I left Currie Barracks on or about the 15th of Jan, 1942, as an A/Sgt. of my draft, the adjutant was Lieut. D.S. Harley of the Seaforths and the C.O., Major L.F. Pindeau of the R. 22nd Regt. We arrived in Halifax and found that there was no boat for us so they sent us back to Valcartier, Que., with a couple of other drafts, and I was promoted to A/C.S.M. We stayed there until the end of February, 1942, and then proceeded overseas.

On arrival in the U.K., I went to No. 1 C.D.I.R.U., and reverted to a Private at my own request.

In March of the same year my brother, who is a Sgt., in the Westmr. Regt., claimed me into his regiment.

From No. 1 C.D.I.R.U., I went to No. 5 C.I.R.U., which is the holding unit of the Westmr. Regt. I was there about 2 weeks, when I was drafted as staff for the Battle School which had just opened at Rowlands Castle, (No. 5 Battle Wing, C.T.S.)

I was there with the demonstration platoon and after 3 or 4 months was promoted to Corporal.

About September of 1942, I started to receive letters from my friends telling me that my wife was running around but I disregarded them and let things stand for a few months and then I received a letter from my mother-in-law, I still only half-believed her but nevertheless I was a bit uneasy.

I went to see the C.O., of No. 5 Wing, C.T.S., who was Col. Fletcher, at that time; he in turn, referred me to the Padre, who I went to see. He suggested writing to someone official in Ottawa and having a quiet investigation to find out if there was any truth in the letters.

In the meantime I left C.T.S. and went to the Westmr. Regt. While I was there I received an awful scortching letter from my wife asking me what was the idea of sending investigators around.

[redacted]

...../2

I went straight to the Padre(Capt. de Pencier) and asked him if any word had been received from Canada, on my personal affairs, and he asked me who wrote about it and I told him it was the padre of the C.T.S.; he in turn wrote to him and in the meantime the Capt. Paymaster called me up and told me that the investigators had found nothing wrong with my wife and that my child was receiving good treatment. How he came in possession of this news I have no idea.

My wife wrote to me asking for a divorce immediately, and I took the letter to the Padre and asked him if he would make application for compassionate leave to Canada; but he told me that I had no chance whatsoever.

I turned in my two stripes and went A.W.L., trying to get a boat home but that was impossi[redacted] after 4 1/2 months and received 9 months detention.

While I was undergoing detention in Headley, I received another letter from my mother-in-law and I took it to the Commandant and he, in turn, passed it to the paymaster. I asked him for information concerning my pay account and he said he would find out as soon as possible. A few days later he called me and told me that my wife's pay had been stopped but he could not tell me when. I asked him if the money for my child had also been stopped and he told me that she would be looked after, but he couldn't tell me by whom or when.

I left Headley on Juny 16, and returned to No. 6, C.I.R.U.; as soon as I arrived there I went to see the Padre and asked for divorce papers as I figured I could not keep my wife she should be entitled to the divorce that shewanted.

I completed the papers and returned them to the padre. He told me to stand by as I would have to go to the legal Aid Section, but I heard nothing from him.

I was next paraded before Major Hudson, my Company Commander and I asked him if he would do something about getting me the 20-cent raise in pay as I told him I was entitled to as, as from my reversion on April 3/43.

He told me that it would be very hard to get it at that time, so I asked to see the C.O., and the C.O. got the 20-cent raise for me but at the same time I was entitled to 90 days remission from my 9 months sentence and the pay master only entered 15 days in my pay book. I went to see him immediately and he told me that all he could do was to follow Part II Orders, but he said he would see what he could do about it.

I got into a little trouble and received 21 days F.P., and while I was in the guard-room they took me out to sign Draft papers, and I was drafted for France.

I went to see my Company Commander and asked him if I could be left off that draft so as I could get my pay book and personal problems cleared up and then place me on the next one, but he told me it was the C.O.s orders, that I go on draft so there was very little arguement.

I arrived in France about the middle of August and went straight to No. 2 C.B.R.C.,, I was there about 2 or 3 days and the Capt called me and told me I was going on draft for Canadian Army H.Q., but instead of going to Army "HQ", I went as staff on a new school they were opening. It was called the Cdn Army Sniping School.

It was staffed and run by English except for 9 fatigue men and drivers. As I was one of the drivers I was around Deliverande quite a bit, and on a pay parade I asked to see the pay master of 2nd Ech, 21st Army Gp, Cdn Section, and I laid my whole story out to him. He told me that he would get everything fixed up and a statement of accounts right away.

I also received another letter from my wife telling me what a son of a "Gun" I was as the baby or her hadn't been receiving a penny for a long time and asking me once again for a divorce. I took the letter to the Paymaster of 2nd Echelon and he made a copy of it and returned it to me. I also told him about the 90 days remission I was entitled to.

The school lasted for about 1 month and then they sent the fatigue men back to C.B.R.C., and left the two drivers. We were told that we would have to transport he English instructors and officers back to the English Army,

We went through France and caught up to Army H.Q. just outside of Ghent where we picked up the whereabouts of the 51st H.D., and I went to see a Major Hovey was Officer i/c G Ops A and I asked him to return me to the Canadain Army and he told me that it was impossible at that time, but as soon as I returned the Instructors to the H.D. that I could come right back.

From there we went to Holland and caught up with the H.D. at a town called Eindhoven. I immediately asked to be returned.

I told the Captain that I had some personal and pay problems that I would like to have attended to right away and was told that while I was with the English Army nothing could be done. But he told me he would see what he could do about getting me back to the Canadian Army time he would send my paybook back and that in the mean- them brought back to date as the English cashiers could not touch them.

I was returned to the Canadian Army about Dec 1st and I went straight to see the Padre and once again I asked for compassionate leave to Canada and was refused. So I went A.W.L. and tried to get a boat or plane home but found it was impossible.

...../4

I was picked up in Brussels on the 14th Feb 45, and returned to C.D.C., where I was Court-Martialed and awarded 1 years detention on March 8th.

I was brought to No. 1 Cdn Detn & FP Barracks about the 15th of March and was put into the imprisonment cells about the 29th March. I was moved downstairs into the detention cells and on the 31st March I was working outside and walked away.

I hung around Antwerp trying to get a boat home and when I found out I couldn't I went to Ghent and there I turned myself in on the 15th April and the Provost from No. 2 L of C asked me where I was from and when I had left and I told them the truth.

They put me in the Town Guard Room of Ghent and I heard no more from the Provost for one month. Then I contracted Yellow Jaundice and they tried to put me into the Detention Ward at No. 2 Cdn Gen Hosp, but they would not accept me as there was no charges against me and so they took me back to the Provost Office and the Provost Marshall put me under open arrest and had me put in a free ward at the Hospital. About 2 days later they moved me up to the Detention Ward.

While I was in the hospital a Major came up to me and read off my charges to me. It was A.W.L. for 15 days 5 hours.

I left Hospital on the 3rd of June 45, and went to No. 1 C.D.C., when I was remanded for Court-Martial and the next morning they moved me back to No. 1 Cdn Det. Bks.

Smith

K 53517 Pte SMITH K

Certified that the above statement was made under oath at No 1 Cdn Detn & FP Bks Cdn Pro C., 13 June 45.

K73903 S/Sgt Beaver-Jones G
Chief Clerk.
No 1 Cdn Detn & FP Bks Cdn Pro C

Exhibit "A"

Summary of Evidence in the case of K-53517 Pte Kenneth SMITH, SH of C, attached to 1 Cdn Discipline Centre, a soldier of the Canadian Army overseas.

Charge - Absence without leave

By directions of the CO the evidence is taken on oath.

FIRST WITNESS B-76047 S/Sgt CHESTER H W SIS 2 CBRG sworn states:-

On the 25th day of May 45, I interviewed the accused K-53517 Pte Kenneth SMITH, attached to 1 Cdn Discipline Centre, whom I now recognize. After making known my identity I cautioned him as follows:-"You are not obliged to s say anything unless you wish to do so but anything you do say will be taken down in writing and may be used in evidence". The accused understood the caution and signed his name to the statement which was read over to him. It is attached to these proceedings as Exhibit "A".

The accused declines to cross-examine this witness.

B-76047 S/Sgt CHESTER H W

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I have nothing to say.

The accused does not call any witness.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that RP 4 (C) (D) (E) (F) and (G) have been complied with.

M. Rousseau Capt

(Maurice Rousseau) Capt

Officer detailed to take Summary of Evidence

Dated in the Field
7 Jun 45

Exhibit F
M. Rousseau Capt

CANADIAN PROVOST CORPS

COMPANY: S15-2CBRG FORMATION: 21 A Gp

LOCATION: Field DATE: 25 May 45 FILE NO: S15/A-1/94-CBRG

STATEMENT

Reg No: K 53517 Rank: Pte Name: SMITH, Kenneth

UNIT: (2 H Qc) - 1 Cdn Det and Field Punishment Bks.

STATES: "I have been warned that I am not obliged to say anything unless I wish to do so, but that whatever I do say will be taken down in writing and may be given in evidence. I fully understand the meaning of this caution, and to show that I do so I sign my name hereunder."

Signature... K Smith

On 8 Mar 45 I was sentenced by FGCM to serve one years imprisonment for being absent without leave, and was sent to 1 Cdn F.P. and Det. Bks in Holland. On 31 Mar 45 at 1400 hrs. I walked out, undetected, from the barracks and remained absent until taken into custody by the Cdn Provost Corps at Ghent at 1900 hrs 15 April 45 following a fracas with some civilians when I had to call the military police.

While absent I travelled in Holland and Belgium, staying with friends. I was in Ghent only a couple days. I have not been in trouble or committed any crime of a civil nature while I was absent. There is nothing more I can tell you.

I have read over this statement and it is true.

Taken down in writing and witnessed by B.76047 Sgt H.W. Chester, S15-2CBRG

SIG. K Smith

S/SGT. G.P. Argue B.E.M.
1 C Div Centre.

JOINT TRIAL

YY-8 GNR SMITH K.E

YY-9 GNR BAILEY E.R.

YY-10 GNR SAUMIER E.R.

Correspondence to be PINNED here.

YY-8
YY-9
YY-10

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this Tenth day of October, 19 . 43

Whereas it appears to me, the undersigned, an officer in Command of Royal Canadian Artillery 2 Canadsin Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[redacted] } FGT.

* Omit where Convening Officer is a Commanding Officer or is of Field Rank

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable

*[redacted] } FGT.

Proceedings Reviewed
R. Beaulieu Lt-Col
Reviewing Officer (A.G.) Central
14 Dec. 43.

"B"

President.

Rank.	Name.	Regiment.
Maj	J P Morlock	5 Cdn Fd Regt

Members.

Rank.	Name.	Regiment.
Capt	G C Nixon	4 Cdn Fd Regt
Lieut	B Thomason	A Cdn Svy Bty
Waiting Member -	G W Brady	5 Cdn Fd Regt

* Must be signed personally by the Officer actually in command at the time and all alterations in the disposition which Court to be initialled by him

*Signed (P C Tees) Brigadier
Commanding R A 2 Cdn Div
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B7913 Gnr Kenneth Edward SMITH "A" Cdn Svy Bty 1 Cdn Svy Regt	FIRST CHARGE AA Sec 41 See charge Sheet att.	Guilty	120 days detention forfeits 120 days pay stoppages of 25 shillings to make good cost of chickens	I confirm the finding and vary the Sentence to read "to undergo 90 days detention for 120 days and to be placed under stoppages of pay in the sum of 25 shillings per week for the value of the chickens" and confirm the sentence as varied.
B6236 Gnr Edward Richard BAILEY A Cdn Svy Bty 1 Cdn Svy Regt		Guilty	120 days detention forfeits 120 days pay stoppages of 25 shillings to make good cost of chickens	
C1121 Gnr Eugene Romeo SAUMIER A Can Svy Bty 1 Cdn Svy Regt		Guilty	120 days detention forfeits 120 days pay stoppages of 25 shillings to make good cost of chickens	

Being a prescribed officer under the provisions of A.R.126(B) for the purposes of section 57(2) of the Army Act I hereby remit 90 days detention in the case of C1121 Gnr Saumier, E.R; and I hereby remit 90 days detention in the case of B7913 Gnr Smith, K.E.; and I hereby remit 75 days detention in the case of B6236 Gnr BAILEY, E.R.

In the field
6 Nov 43

(E.L.M. BURNS) MAJ. GEN
COMD. 2 CDN DIV.

18 Dec 43

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) (P C Tees) Brigadier
C R A 2 Cdn Div
Confirming Officer

(Signed) J Moriarty Major
6 Cdn Fd Regt
Convening Officer (*e*) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

NO. 14 CANADIAN GENERAL HOSPITAL, R.C.A.M.C.

I, the accused, D-95765 Cpl. H.M.Smith, No. 14 Cdn.Gen.Hospital, R.C.A.M.C. desire to have an officer assigned by the Convening Officer to represent me at the trial.

H M Smith Cpl

Horley, Surrey,
1st September, 1943.

CHARGE SHEET

The accused, B7913 Gunner Kenneth Edward Smith and B6236 Gunner Edward Richard Bailey, and C1121 Gunner Eugene Romeo Saumier all of 1 Canadian Survey Regiment, RCA, soldiers of the Canadian Army, Overseas, on active service, are jointly charged with:

FIRST CHARGE COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, STEALING
AA Sec 41

in that they,

in the field, on 29 Sep 43 did steal three chickens value 75 shillings, the property of Mr. Ivor Evans, a civilian of TRECASTLE, Wales.

(O.C. "A" Survey Battery)
1 Cdn Survey Regiment, RCA

In the Field
5 Oct 43

To be tried by Field General Court Martial.

Brig.
C.R.A., 2 Cdn Div.

Date: 10 Oct 43.

J a s Rev

B 6236 Gnr Bailey E.R.

I have examined the a/m and find him fit/~~unfit~~ to undergo trial by Court Martial.

signed [redacted] R.C.
Canadian Infantry Corps

11 Oct. 43

J. Macleod Capt



C1R Gnr Saunier E.R

I have examined the a/m and find him fit/~~unfit~~ to undergo trial by Court Martial.

signed.... M.O.
Bonnybridge Camp

11 Oct. 43

R

I certify that I have examined B6236 Gnr. Bailey E.R.
and have found him fit/~~unfit~~ to undergo trial by court
martial.

Date 3 Oct. 1943. (signed) Medical Officer.

I certify that I have examined C1121 Gnr. Saunier E.R.
and have found him fit/~~unfit~~ to undergo trial by court
martial.

Date 3 Oct ~~1943~~ 1943. (signed) Medical Officer.

I certify that I have examined B79131 Gnr Smith W.E.
and have found him fit/~~unfit~~ to undergo trial by court
martial.

Date 3 Oct 1943. (signed) Medical Officer.

*All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for General and District Courts-Martial

Proceedings of a field general Court-Martial held at In the field on the eleventh day of October 1943 by order of Brig. P.C. Ives Commanding R.C.A. 2 Cdn. Div. dated the 10 day of October 1943

President.

Major J. J. Monteith 3 Cdn. Inf. Regt.

Members.

Capt. G. E. Hixon 4 Cdn. Inf. Regt.
Lieut. B. Thomassen A Cdn Surg Bty 1 Cdn Surg Regt.

Trial of* B 7913 Gnr. Kenneth Edward Smith, B 6236 Gnr. Edward Richard Bailey and B 1121 Gnr. Eugene Romeo Lamoureux, all of 1 Cdn Surg Regt.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that ~~to serve owing to~~ ~~is not available~~

~~, waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† Lieut. G. O. Brown 1 Cdn Surg Regt.

~~Counsel† or~~ defending officer† Lieut. B. Mathias 1 Cdn Surg Regt.

At 0915 o'clock the Trial commences.

The order convening the Court is read, and is marked B signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. No.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

B

The President, members and judge-advocate are duly sworn.

JMM ~~The following officers under instruction are duly sworn.~~

Charge-Sheet

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

Instruction. *If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.*

JMM The accused ~~is~~ are arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Answer.

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

JMM *Answer.*

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

Answer.

The accused having pleaded Guilty to charge, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

CC

Proceedings on Plea of Guilty

*To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused B 7913 Gnr. Kennedy Edward Smith, B 6236 Gnr. Edward Richard Bailey, and C 1121 Gnr. Eugene Romeo Sammut are found guilty of Stealing

*The summary (or abstract) of evidence is read, marked [redacted], signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. The accused in mitigation of punishment says [or hands in a written statement, which is read, marked F, signed by the President, and attached to the proceedings.]

by their defending officer

Instruction.

* If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

No

Answer.

Evidence as to character.

E

Finding*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused

Proceedings on Conviction *before Sentence*

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it

is duly sworn.

Evidence of character, &c.

Lieut. G.O. Brown

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.*

Produces A.F.B. 296 MFM 6 for each annexed.

The above statements [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked L, M, N, O, P, Q, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statements which you have heard read? *Answer by the Witness.* yes

Question.

Have you compared the contents of the above statements with the regimental books? *Answer.* yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* yes

Cross-examined by the accused.

Question.—If by reason of the nature of the service of the accused in a depot, recruit corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.

Question to the accused.

Do you wish to address the Court? *Answer.* No

Exhibit handed in written statement, marked "R" and "S".

The Court is closed for the consideration of the sentence.

F

Sentence

Sentence.

The Court sentence the accused to

120 days detention each
Forfeits 120 days pay each
Stoppages of 25 shillings each to make good the cost of chickens

J. M. Mackay Major

"C"

Summary of Evidence in the Case of No.C-11281, Gnr. Saumier, E.R. 2nd Ranging Battery, 1 Canadian Survey Regiment R.C.A.

That the evidence be taken under oath was NOT demanded by the accused and it was not so directed by the Commanding Officer.

FIRST WITNESS : Mr. Ivor Evans, Farmer and Licensee of the Three Horse Shoes Inn, Trecastle, Wales.

His statement is attached as Appendix I. It was read to the accused. The accused declined to question the witness.

SECOND WITNESS : W.J. Douglas Davies, P.C.4 of Brecnshire Constabulary, states as follows:-

At 12 midnight 29 Sept 45 I received this information from Ivor Evans, Licensee of the Three Horse Shoes Inn, Trecastle. Mr. Evans stated that Canadian soldiers had entered his premises on the night of 29 Sept 45 for the purpose of having a drink. At about 9.55 P.M. the two soldiers left the premises through the rear door. They did not return and Mr Evans went to the rear of the premises to see where they were. He then saw the soldiers climbing the gate at the side of the house and they entered the main roadway. Mr Evans then went to his shed and immediately noticed that three chickens were missing. He failed to find the soldiers afterwards but saw feathers on the roadway leading towards Llywel.

Immediately after receiving the information from Evans I went to the scene and following a track of feathers through the village towards Vicarage Road and then through fields where the Canadian soldiers were camped. I traced the feathers to the Gorse fields where the feathers terminated. At this point Canadian trucks were stationary. I made a search of the trucks accompanied by the guard but failed to find the chickens. I continued my enquiries and kept observation on the vehicles. At 8 A.M. on the 30th inst. I took Mr. Evans to the camp but he failed to pick out the soldiers that had been on his premises on the previous night. I examined the clothing of the soldiers present and found a spot of blood on the right sleeve of the overalls of the accused. I questioned the accused and he denied all knowledge of the theft, but admitted being at the Inn that night. I then made further examinations and found a spot of blood on the left leg of Saumier's overalls. I questioned him and he told me that he had been fighting and the blood had most probably come there by that means. I later questioned Smith and he then made a statement to me that he had been drinking heavily on the night in question. He then made a statement in which he admitted stealing the hens with Gnr. Saumier and Gnr. Bailey. In company with Gnr. Saumier we went to collect the hens from the field near by. Evans was there at the time and he identified the hens as his property. I questioned Saumier and later Bailey and they admitted stealing the hens together with Smith.

They made statements which they signed in the presence of an Officer. I cautioned the three soldiers and told them that the facts would be reported. The blood stained overalls mentioned were taken possession of and retained for examination.

(signed- W.J. Douglas Davies P.C.4

The accused declines to question the witness.

(Signed) R. Wallace Maj.

THIRD WITNESS : No. B-79131, Gnr. Kenneth Edward SMITH, 1 Cdn Survey Regiment, RCA, Canadian Army Overseas.

Statement of Kenneth Edward SMITH attached as Appendix II

The accused declines to cross-exaime the witness.

R. H. Mallaber Maj.

FOURTH WITNESS : No.B-8236, Gnr. Edward Richard BAILEY, 1 Cdn Survey Regiment, RCA, Canadian Army Overseas.

Statement of Edward Richard BAILEY attached as Appendix III

The accused declines to cross-exaime the witness.

R. H. Mallaber Maj.

The accused having been cautioned in accordance with Rule of Procedure 4(e) states:

" At about 8.20 p.m. on Wednesday the 29th September 1943 I went from the camp with Gunner Smith and soon afterwards we went to the Black Horse Inn Trecastle. That is the public house on the right hand side of the road as you go up the hill. We were in this pub until about 10 p.m. I then left this pub in company with Gunner Smith. We then went to the other pub across the road. We there met Bailey. As soon as we got in this pub Bailey started talking about chickens. He told methat he knew how to get to the back of the pub and that he knew where to get the chickens and he told me that he knew how to get out from the back of the pub. Soon afterwards Bailey took Smith and I out to the back of the pub. Bailey showed us where the chickens were and he had a light. We entered the little at the back of the house and saw the chickens and we took one each. After that we went around the side of the house and went over the side gate and went onto the main road. The three of us came back to camp. While on the camp Bailey handed Smith his chicken. Smith and I then went to hide them in some bushes in the camp field. The chickens are the ones that I brought to you today.

Taken down by me in the Field this 2nd day of October 1943.
Rule of Procedure 4(e) complied with.

R. H. Mallaber Maj.
.....
Officer detailed to take summary

APPENDIX I

Statement made by Ivor Evans, age 60 years, farmer and licencee, of the Three Horse Shoe Inn, Trecastle.

" At about 9.55 P.M. Wednesday 29th. Sept 1943 I was serving beer at the bar of my house. At that time there were about 20 Canadian soldiers in the room. At about this time two Canadian soldiers came into the room and ordered a half a pint each and drank it straight-off, and immediately asked to be shown the way out to the back yard of the house. I did not take much notice of them because there are so many soldiers coming to the house during the last few days. I noticed that one of them was a tall fellow and the other not quite so tall. I noticed that they were out in the backfor rather a long time. So I told my wife to see to the bar. I then went out to the back-yard and immediately noticed the chicken shed in the back-yard open. I had a torch with me at the time. When I got to the shed I heard foot-steps in the side lane which leads out to the main road. I ran around the corner and saw a soldier in the act of climbing over the gate. I heard him shout to his companion(who was already over the gate), 'Oh; damn! that was a pretty near 'escape'. I noticed the chicken feathers on the gate. I came back to the shed and found three chickens missing, light coloured ones. Valued at 25/-s each. I informed P.C. Davies Trecastle at 12 o'clock that night and later helped him to search for feathers at the Canadian Camp at Trecastle Village."

Signed Ivor Evans

The above statement was taken down in writing in my pocket book at 7P.M. 30th. Sept. 1943 at Trecastle.

Signed .....

Identification Statement made by Ivor Evans:-

" The three dead hens that were shown to me by P.C.Davies while at the Canadian Camp, Trecastle I identify as my property. They are the ones that were stolen from the Chicken Shed at the Three Horse Shoe Inn, Trecastle at about 10 p.m. 29th. Sept 43.

Signed Ivor Evans

The accused declined to question the witness.

Signed R. Wallace Maj.

APPENDIX II

Copy of Statement made by No.B-79131,Gnr. Kenneth Edward SMITH, age 21 years, of the 1st. Canadian Survey Regiment, Canadian Army, Overseas, Scotland. Stationed temporary at Trecastle.

"At about 7 p.m. on Wednesday 20th September 1943 I went to Trecastle village I was in company with Saunier and Gnr. Bailey. Saunier and I went to have a drink at the Black Horse Inn after we had been there for a time we left this public house and went across the road to the other public house the name of which I don't remember. I had had a good many drinks I don't remember much about what happened after that but I remember meeting Gnr. Bailey there. I remember getting into some back lane. I believe I had to climb a gate to get out.

I remember that at this time some one handed me a chicken. I may have got this chicken myself as far as that goes. After getting out from the sidelane I got out onto the main road. I took the chicken with me and walked down the hill towards the camp. I don't remember what happened exactly after that but I know that three chickens were put over in the bushes. The chickens are the ones that I brought and save to you this morning. If I had not been drinking I would never have taken the chickens. I killed my chicken by taking the head off

Signed K.E. Smith.

APPENDIX III

Copy of Statement made by No. B-6236, Gnr. Edward Richard BAILEY age 29 yrs, of the 1st. Canadian Survey Regiment, Canadian Army, Overseas, England. Stationed temporary at Trecastle.

" At about 7.30 p.m. on the 29th September,1943 I went from our temporary Camp at Trecastle to the Village. I visited the pub on the right hand side of the road as you go uphill. I had a good many drinks while there. I then went across the road to the other pub and had several more pints while there. I was there by myself for a good time. At about 10 o'clock Gunner Smith and Gunner Saumier called at the pub. At this time I had had just about too much to drink and I don't remember too clearly. Gunner Smith and Gunner Saumier and myself visited the back yard of the pub at about this time. We came to by a chicken shed with some chickens in it. We all got into the shed and took a chicken each. I killed the one I had by holding on to its neck tight. We decided to leave the yard of the pub and left by the side lane. We climbed the gates at the side of the house and got onto the main road. We made our way towards the camp and took the chickens with us. When I got to the camp I gave my chicken to one of my pals who took it away somewhere. This statement is made voluntarily by me and is correct.

(Signed) Gnr. E.R. Bailey.

C J Maudsley Major

Summary of Evidence in the Case of No.B-7913,Gnr. SMITH, K.E.
Mount Ranging Battery, 1 Canadian Survey Regiment R.C.A.

That the evidence be taken under oath was NOT demanded by ~~the~~ accused and it was not so directed by the Commanding Officer.

FIRST WITNESS : Mr. Ivor Evans, Farmer and Licencee of the Three Horse Shoes Inn, Trecastle, Wales.
His statement is attached as Appendix I. It was read to the accused.
The accused declined to question the witness.

SECOND WITNESS : D.J. Douglas Davies, P.C.4 of Breconshire Constabulary, states as follows:-
At 12 midnight 29 Sept 43 I received this information from Ivor Evans, Licencee of the Three Horse Shoes Inn, Trecastle. Mr. Evans stated that Canadian soldiers had entered his premises on the night of 29 Sept 43 for the purpose of having a drink. At about 9.45 P.M. the two soldiers left the premises through the rear door. They did not return and Mr Evans went to the rear of the premises to see where they were. He then saw the soldiers climbing the gate at the side of the house and they entered the main roadway. Mr Evans then went to his shed and immediately found that three chickens were missing. He failed to find the soldiers afterwards but saw feathers on the roadway leading towards Llywel.
Immediately after receiving the information from Evans I went to the shed and following a track of feathers through the village towards Visarane Road and then through fields where the Canadian soldiers were camping. I traced the feathers to the Corwe fields where the feathers terminated. At this point Canadian trucks were stationary. I made a search of the trucks accompanied by the guard but failed to find the chickens. I continued my enquiries and kept observation on the vehicles. At 6 A.M. on the 30th inst. I took Mr. Evans to the camp but he failed to pick out the soldiers that had been on his premises on the previous night. I examined the clothing of the soldiers present and found a spot of blood on the right sleeve of the overalls of the accused. I questioned the accused and he denied all knowledge of the theft, but admitted being at the Inn that night. I then made further examinations and found a spot of blood on the left leg of Gunner's overalls I questioned him and he told me that he had been fighting and the blood had most probably come there by that means. I later questioned Smith and he then made a statement to me that he had been drinking heavily on the night in question. He then made a statement in which he admitted stealing the hens with Gnr. Saunder and Gnr. Sadler. In company with Gnr. Saunder he went to collect the hens from the field near by. Evans was there at the time and he identified the hens as his property. I questioned Saunder and later Sadler and they admitted stealing the hens together with Smith.
They made statements which they signed in the presence of an officer. I cautioned the three soldiers and told them that the facts would be reported. The blood stained overalls mentioned were taken possession of and retained for examination.

(signed) D.J. Douglas Davies P.C.4

The accused declines to question the witness.

R. Hurlburt Lieut.

(signed) .....

THIRD WITNESS: No. C-1121, Gnr. Eugene Romeo SAUMIER, 1 Cdn Survey Regiment RCA, Canadian Army Overseas.

Statement of Eugene Romeo SAUMIER attached as Appendix II

The accused declines to cross-exaime the witness.

R. Hurlbatt Maj

FOURTH WITNESS: No. B-6236, Gnr. Edward Richard BAILEY, 1 Cdn Survey Regiment RCA, Canadian Army Overseas.

Statement of Edward Richard BAILEY attached as Appendix III

The accused declines to cross-exaime witness.

R. Hurlbatt Maj.

The accused having been cautioned in accordance with Rule of Procedure 4(e) States:-

"At about 7 p.m. on Wednesday 29th September 1943 I went to Trecastle Village I was in company with Saumier and Gnr Bailey. Saumier and I went to have a drink at the Black Horse Inn after we had been there for a time we left this public house and went across the road to the other public house the name of which I don't remember. I had had a good many drinks I don't remember much about what happened after that but I remember meeting Gnr. Bailey there. I remember getting into some back lane , I beleive I had to climb a gate to get out.

I rember t at at this time some one handed me a chicken I may have get this chicken myself as far as that goes. After getting out from the side lane I got out onto the main road. I took the chicken with me and walked down the hill towards camp. I don't remember what happened exactly after that but I know that three chickens were put over in the bushes. The chickens are the ones that I brought and gave to you this morning. If I had not been drinking I would never have taken the chickens.
I killed my chicken by taking the head off.

Taken down by me in the Field this 2nd day of October 1943.
Rule of Procedure 4(e) complied with.

R. Hurlbatt Maj...
Officer detailed to take summary

APPENDIX I

Statement made by Ivor Evans, age 60 years, farmer and licensee, of the Three Horse Shoe Inn, Trecastle.

" At about 9.55 P.M. Wednesday 20th. Sept 1943 I was serving beer at the bar of my house. At that time there were about 20 Canadian soldiers in the room. At about this time two Canadian soldiers came into the room and ordered a half a pint each and drank it straight off, and immediately asked to be shown the way out to the back yard of the house. I did not take much notice of them because there are so many soldiers coming to the house during the last few days. I noticed that one of them was a tall fellow and the other not quite so tall. I noticed that they went out in the back for rather a long time. So I told my wife to see to the bar. I then went out to the back-yard and immediately noticed the chicken shot in the back-yard open. I had a torch with me at the time. When I got to the shed I heard foot-steps in the side lane which leads out to the main road. I ran around the corner and saw a soldier in the act of climbing over the gate. I heard him shout to his companion(who was already over the gate). 'Oh; damn' that was a pretty near 'cop'. I noticed the chicken feathers on the gate. I came back to the shed and found three chickens missing, light coloured ones. Valued at 25/-s each. I informed P.C. Davies Trecastle at 10 o'clock that night and later helped him to search for feathers at the Canadian Camp at Trecastle Village.

Signed Ivor Evans

The above statement was taken down in writing in my pocket book at 7p.m. 20th. Sept. 1943 at Trecastle.

Signed .....

Identification Statement made by Ivor Evans:-

" The three dead hens that were shown to me by P.C.Davies while at the Canadian Camp, Trecastle I identify as my property. They are the ones that were stolen from the Chicken shed at the Three Horse Shoe Inn, Trecastle at about 10 p.m. 20th. Sept 43.

Signed Ivor Evans

The accused declined to question the witness.

Signed R. Kerr Maj.

APPENDIX II

Copy of Statement made by No.C-1151, Gnr. Eugene Romeo Sumior, age 22 yrs, of the 1st. Canadian Survey Regiment, Canadian Army, Overseas, England. Stationed temporary at Trecastle.

" At about 8.30 p.m. on Wednesday the 29th September 1943 I went from the camp with Gunner Smith and soon afterwards we went to the Black Horse Inn Trecastle. That is the public house on the right hand side of the road as you go up the hill. We were in this pub until about 10p.m. I then left this pub in company with Gunner Smith. We then went to the other pub across the road. We there met Bailey. As soon as we got in this pub Bailey started talking about chickens. He told me that he knew how to get to the back of the pub and that he knew how to get out from the back of the pub. Soon afterwards Bailey took Smith and I out to the back of the pub. Bailey showed us where the chickens were and he had a light. We entered the little at the back of the house and saw the chickens and we took one each. After that we went around the side of the house and went over the side gate and went on the main road. The three of us came back to camp. While at the camp Bailey handed Smith his chicken. Smith and I then went to hide them in some bushes in the camp field. The chickens are the ones that I gave to you today.

Signed .....

APPENDIX III

Copy of Statement made by No. B-6236, Gnr. Edward Richard BAILEY age 29 yrs, of the 1st. Canadian Survey Regiment, Canadian Army, Overseas, England. Stationed temporary at Trecastle.

" At about 7.30 p.m. on the 28th September, 1943 I went from our temporary Camp at Trecastle to the Village. I visited the pub on the right hand side of the road as you go uphill. I had a good many drinks while there. I then went across the road to the other pub and had several more pints while there. I was there by myself for a good time. At about 10 o'clock Gunner Smith and Gunner Saumier called at the pub. At this time I had had just about too much to drink and I don't remember too clearly. Gunner Smith and Gunner Saumier and myself visited the back yard of the pub at about this time. We came to by a chicken shed with some chickens in it. We all got into the shed and took a chicken each. I killed the one I had by holding on to its neck tight. We decided to leave the yard of the pub and left by the side lane. We climbed the gates at the side of the house and got onto the main road. We made our way towards the camp and took the chickens with us. When I got to the camp I gave my chicken to one of my pals who took it away somewhere. This statement is made voluntarily by me and is correct.

(Signed) E. R. Bailey.

D

Summary of Evidence in the Case of, No.B-6236, Gnr. BAILEY, E.R. Sound Ranging Battery, 1 Canadian Survey Regiment R.C.A.

That the evidence be taken under oath was NOT demanded by the accused and it was not so directed by the Commanding Officer.

FIRST WITNESS: Mr. Ivor Evans, Farmer and Licencee of the Three Horse Shoe Inn, Trecastle, Wales.
His statement is attached as Appendix I. It was read to the accused. The accused declined to question the witness.

SECOND WITNESS: D.J. Douglas Davies, P.C.4 of Breconshire Contabulary states as follows:-
At 12 midnight 29 Sept 43 I received this information from Ivor Evans, Licencee of the Three Horse Shoes Inn, Trecastle. Mr. Evans stated that Canadian soldiers had entered his premises on the night of 29 Sept 43 for the purpose of having a drink. At about 9.55 P.M. the two soldiers left the premises through the rear door. They did not return and Mr. Evans went to the rear of the premises to see where they were. He then saw the soldiers climbing over the gate at the side of the house and they entered the main roadway. Mr. Evans then went to his shed and immediately found that three chickens were missing. He failed to find the soldiers afterwards but saw feathers on the roadway leading towards the Llywel.

Immediately after receiving the information from Evans I went to the shed and following a track of feathers through the village towards Vicarage Road and then through fields where the Canadian soldiers were camping. I traced the feathers to the Gorse fields where the feathers terminated. At this point Canadian trucks were stationary. I made a search of the trucks accompanied by the guard but failed to find the chickens. I continued my enquiries and kept observation on the vehicles. At 8 A.M. on the 30th inst. I took Mr. Evans to the camp but he failed to pick out the soldiers that had been on his premises on the previous night. I examined the clothing of the soldiers present and found a spot of blood on the right sleeve of the overalls of the accused. I questioned the accused and he denied all knowledge of the thieft, but admitted being at the Inn that night. I then made futher examination and found a spot of blood on the left leg of Saumier's overalls. I questioned him and he told me that he had been fighting and the blood had most probably come there by that means. I later questioned Smith and he then told me that he had been drinking heavily on the night in question. He then made a statement in which he admitted stealing the hens with Gnr. Saumier and Gnr. Bailey. In company with Gnr. Saumier he went to collect the hens from the field near by. Evans was there at the time and he identified the hens as his property. I questioned Saumier and later Bailey and they admitted stealing the hens together with Smith.
They made statements which they signed in the presence of an Officer. I cautioned the three soldiers and told them that the facts would be reported. The blood stained overalls mentioned were taken possession of and retained for examination.

(signed) Det. Sgt. [illegible]

The accused declines to question the witness.

(Signed) R. Wallace Maj.

THIRD WITNESS : No. C-1121, Gnr. Eugene Romeo SAUMIER , 1 Cdn Survey Regiment RCA, Canadian Army Overseas.
Statement of Eugene Romeo Saumer attached as Appendix II

The accused declines to cross-examine the witness.

R. H. Wallace Maj

FOURTH WITNESS : No. B-79131, Gnr. Kenneth Edward SMITH, 1 Cdn Survey Regiment, RCA, Canadian Army Overseas.

Statement of Kenneth Edward SMITH attached as Appendix III

The accused declines to cross-exaime the witness.

R. H. Wallace Maj.

The accused having been cautioned in accordance with Rule of Procedure 4E states:

"at about 7.30 p.m. on the 29th September 1943 I went from our temporary Camp at Trecastle to the Village. I visited the pub on the right hand side of the road as you go uphill. I had a good many drinks while there. I then went across the road to the other pub and had several more pints while there. I was there by myself for a good time. At about 10 o'clock Gunner Smith and Gunner Saumier called at the pub. At this time I had had just about too much to drink and I don't remember too clearly. Gunner Smith and Gunner Saumier and myself visited the back yard of the pub at about this time. We came to by a chicken shed with some chickens in it. We all got into the shed and took a chicken each. I killed the one I had by holding onto its neck tight. We decided to leave the yard of the pub and left by the side lane. We climbed the gates at the side of the house and got onto the main road. We made our way towards the camp and took the chickens with us. When I got to camp I gave my chicken to one of my pals who took it away somewhere. This statement is mx made voluntarily by me and is correct.

Taken down by me in the Field this 2nd day of October 1943.
Rule of Procedure 4(c) complied with.

R. H. Wallace Major.
.....
Officer detailed to take Summary.

APPENDIX I

Statement made by Ivor Evans, age 60 years, farmer and licencee, of the Three Horse Shoe Inn, Trecastle.

" At about 9.55 P.M. Wednesday 29th, Sept 1943 I was serving beer at the bar of my house. At that time there were about 20 Canadian soldiers in the room. At about this time two Canadian soldiers came into the room and ordered a half a pint each and drank it straight-off, and immediately asked to be shown the way out to the back yard of the house. I did not take much notice of them because there are so many soldiers coming to the house during the last few days. I noticed that one of them was a tall fellow and the other not quite so tall. I noticed that they were out in the backfor rather a long time. So I told my wife to see to the bar. I then went out to the back-yard and immediately noticed the chicken shed in the back-yard open. I had a torch with me at the time. When I got to the shed I heard foot-steps in the side lane which leads out to the main road. I ran around the corner and saw a soldier in the act of climbing over the gate. I heard him shout to his companion(who was already over the gate), 'Oh; damn: that was a pretty near 'esop'. I noticed the chicken feathers on the gate. I came back to the shed and found three chickens missing, light coloured ones. Valued at 25/-s each. I informed P.C. Davies Trecastle at 12 o'clock that night and later helped him to search for feathers at the Canadian Camp at Trecastle Village."

Signed Ivor Evans.....

The above statement was taken down in writing in my pocket book at 7P.M. 30th. Sept. 1943 at Trecastle.

Signed .....

Identification Statement made by Ivor Evans:-

" The three dead hens that were shown to me by P.C.Davies while at the Canadian Camp, Trecastle I identify as my property. They are the ones that were stolen from the Chicken Shed at the Three Horse Shoe Inn, Trecastle at about 10 p.m. 29th. Sept 43.

Signed Ivor Evans.....

The accused declined to question the witness.

Signed R H Walker Major

APPENDIX II

Copy of Statement made by No.C-11211,Gnr. Eugene Romeo Sumner, age 22 yrs, of the 1st. Canadian Survey Regiment, Canadian Army Overseas, England. Stationed temporary at Trecastle.

" At about 8.20 p.m. on Wednesday the 29th September 1942 I went fro the camp with Gunner Smith and soon afterwards we went to the Black Horse Inn Trecastle. That is the public house on the right hand side of the road as you go up the hill. We were in this pub until about 10p.m. I then left this pub in company with Gunner Smith. We then went up the other pub across the road. We there met Bailey. As soon as we get in this pub Bailey started talking about chickens. He told me that he knew how to get to the back of the pub and that he knew how to get out from the back of the pub. Soon afterards Bailey took Smith and I out to the back of the pub. Bailey showed us where the chickens were and he had a light. We entered the little at the back of the house and saw the chickens and we took one each. After that we went around the side of the house and went over the side gate and went on the main road. The three of us came back to camp. While at the camp Bailey handed Smith his chicken. Smith and I then went to hide them in some bushes in the camp field. The chickens are the ones that I gave to you today.

Signed E.R. Sumner.

APPENDIX III

Copy of Statement made by No. B-79181, Gnr. Kenneth Edward SMITH, age 21 years, of the 1st. Canadian Survey Regiment, Canadian Army, Overseas, England. Stationed temporary at Tweedsmuir.

"At about 7 p.m. on Wednesday 29th September 1943 I went to Tweedsmuir Village I was in company with Saumier and Gnr. Bailey. Saumier and I went to have a drink at the Black Horse Inn after we had been there for a time we left this public house and went across the road to the other public house the name of which I don't remember. I had had a good many drinks I don't remember much about what happened after that but I remember meeting Gnr. Bailey there. I remember getting into some back lane. I believe I had to climb a gate to get out.

I remember that at this time some one handed me a chicken. I may have got this chicken myself as far as that goes. After getting out from the sidelane I got out onto the main road. I took the chicken with me and walked down the hill towards the camp. I don't remember what happened exactly after that but I know that three chickens were put over in the bushes. The chickens are the ones that I brought and gave to you this morning. If I had not been drinking I would never have taken the chickens. I killed my chicken by taking the head off

Signed K E Smith

Plea in case of GNRs SAUMIER · SMITH · & BAILEY

Would ask Court to consider most favorable accuseds' whole attitude from time of committing offense.
Most cooperative and straightforeward.
No need to admit offense or produce chickens.
From evidence produced conviction could never have been obtained.
Not picked out on parade and small amt of blood not sufficient evidence.
However crime definitely traced to 'C' Tp - To clear others men freely admitted guilt.
A courageous act.
Thruout have done everything in their power to make things easy.
Attitude of men who clearly realize they have committed an extremely foolish act and are ready to do all in their power to make amends.
No real harm or meanness intended — rather a foolish prank.

2. Review of actions & events on 29 Sept

Hard days driving.
Each went into village and started drinking purely by accident - Bailey to post a letter; had no money to drink - Saumier had no money and only coveralls but was persuaded by Smith who himself up to time of winning money had no intention of going in.
All had light heads for drink and in tired condition were quickly affected - Didn't realize strength of local Cider.
Bailey left pub early and on way home stopped at '3 Horseshoes' - On way out to latrine saw open chicken coop but was still sober - Could easily have taken chicken then.
Later Saumier and Smith unable to accompany friends to local dance due to dress also stopped in at '3 Horseshoes' on way home - Met Bailey - All rather drunk.
After another drink judgement completely gone and going back to latrine the sight of chickens was too much.
No possible premeditation pure impulse.
In drunken condition foolish act seemed not a crime but rather a great practical joke.
Obvious if not under influence of liquor accused would never have done this.

3. Background

(a) Saumier
Civil life worked for butcher in Hull - Worked on books and handled considerable amounts of cash - Trusted and trustworthy.
Joined army 4 Feb 41
Since then an unblemished record
That this perfect record should be broken has been in itself a bitter blow
Record still something to be proud of and will receive greatest consideration by Court

(b) Smith
Civil life worked for CNR
Joined army in June 40
Since then a splendid record - Offenses committed always minor.
Since Dec 41 only one charge - Means almost 2 yrs with nothing but one small slip.
Again a record to be proud of.

(c) Bailey
Work in civil life as chauffer - A trusted employee - Owned own home.
Since coming overseas wife sold all possessions and after hearing no word for almost a year learnt that she had deserted him and 2 sons - Only recently learnt thru Welfare Society that boys were placed in foster homes.
Situation preying on mind and undoubtedly responsible for some of minor offenses recently recorded.
Has for sometime worked as batman-driver - Ample opportunities for dishonesty - Never any question of integrity - My own batman since June and can personally vouch for him.
Never convicted of drunkenness and military record shows only series of minor offenses.
While not a perfect record considering severe mental strain of last year, I feel it should be looked on favorable by the Court.

(with please Lt.

Plea in case of GNRs SAUMIER, SMITH & BAILEY.

Summary

1st Accused would never have committed offense had they been sober.

2nd Having committed it they have done their utmost to make things easy for authorities - Attitude most straightforeward.

3rd Finally close plea by reminding Court again of excellent military records of all these men - None ever awarded more than a few days CB and none ever convicted at drunkenness - Gnr. Bailey with reasonable number of minor offenses; Gnr Smith with only one minor offense since Dec '41; Gnr Saumier with an absolutely clean sheet

Taking these 3 points in consideration I feel more than justified in asking for and in hoping to obtain for these men the greatest possible leniency and very lightest sentence which this Court has power to award.

Capt Mathieu

DEFENDING OFFICER

F. g.m.c. July 25/42

"Keep in touch with the folks at home"

THE SALVATION ARMY

ON ACTIVE SERVICE
with the
CANADIAN FORCES

"Canadian Army Overseas" _____ 194__

Sir.

I an Gnr Smith went into the Pat Town for a drink and we had a lot of cider & Beer. and we were getting pretty drunk and foolish and then we went across the road and into the other Pub. for more And we met Gnr Bailey and we had a drink and then went out the back for the Latrin and we got into the wrong place as there were Chickens there and we just thought we would have some fun So we took three. And then we went back to

Think Any reference to shipping or troop movements will result in the delay or mutilation of this letter.

camps. But the next Morning when the Policeman came we know we had done wrong and we were sure sorry Because we had never got any one else into trouble before. So we gave up the Chicken and told all we could to the Policeman

Ann. Summer

SMITH

H. J. Mitchell Major

On the night of Sept 29th. I won some money & with a desire to get out of camp for a few hrs. I asked Gnr. Saunier to go to the village for a drink.

We got pretty drunk on cider & beer by the time we got to the second pub. where we met Gnr. Bailey. The cider & beer seemed a lot stronger than what we figured. In looking for the toilet at the rear of the pub. we walked up in

BAILEY

Marlow Bucks

Sir.

When I was in the Castle area. for a few day. I wrote a letter to a friend and asked any one if they were going to town But they said they were not So I went there my self and met a friend how said he had Money and asked me to come in to the Pub. for a few drinks and we started to drink cider and how And it realy hit us hard because we had been driving all day and we

"L" Army Form B.296 (War).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	Rank.	Name.	Regiment (or as the case may be).
B79131	Gnr	SMITH, K.E	1 Cdn Svy Regt, RCA

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for trivial cases of absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For Conduct to the prejudice (A.A. sec 40)	5 times.
For	times.
For AWL [A.A. sec 15 (1)]	4 times.
For	times.

Date of first entry in Field Conduct Sheet 6 Feb 41

Date of last entry in Field Conduct Sheet 25 Dec 42

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for N/A

beginning on the N/A day of N/A

4. The accused has been awaiting trial on the present charges for NIL days in civil custody; and for 5 days in military custody, *i.e.*, 5 days in open arrest, NIL days in close arrest; of which NIL days were spent in hospital.

5. The present age of the accused is 21

6. The date of his ~~enlisting up for military service~~ attestation is 25 June 40

7. The service which the accused is allowed to reckon is

8. The accused is in possession of: NIL

[State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date:—

	Date of Promotion.
In the substantive rank of	
In the war substantive rank of	
In the acting rank of	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(21114) Wt. 8675/660 100,000 4/42 A & E W Ltd. Gp.696 Forms B.296 W (42).

"M" J Maclady Major

No. B-7013 Name Smith, E.R. Sqn., Batty., or Company Corps RCA Date of enlistment 26-8-40 Sheet No. 1

Date of last entry in Company Conduct Sheet | No. and date of last drunk | G.C. Badges | Long Service and G.C. Pay | Signature O.C. Company, etc. (signed) T.?. Peake, Maj.

Army Form B.122

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bordon	16-2-41	Pte		Warned for fire-man failed to keep fires going. A.A.sec 40.	Sgt. Milnes	5 Dys C.B.	18-2-41	Maj. Adams.	
Bordon	30-2-41	Pte		Asleep when on duty. A.A. sec. 40.	Cpl Wilson	5 Dys C.B.	30-2-41	Maj. Adams.	
Bordon	7-3-41	Pte		Unattentive when on parade A.A. sec 40.	Sgt. Thompson.	7 Dys C.B.	8-3-41	Maj. Adams.	
Aldershot Camp	8-8-41	Pte		Conduct to the prejudice. failed to clean rifle. A.A. sec 40.	Sgt. Porter.	1 Dy C.B.	10-8-41	Lieut. J.P. Humphries.	
Petawawa	19-8-41	Gnr.		A.A. sec 15(1) AWL 0715, 18-8-41 to 1400, 19-8-41.	Documentary	5 Dys C.B. 5 Dys pay.	20-8-41	Col. Tregaine.	Forf 2 dys pay RMC.

P.T.O.

Place	Date of offence	Rank	Casn of Crime	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	12-10-41	Gnr.		A.A. sec 15(1). AWOL from 1030 hrs 10-10-41 to 0830 hrs 12-10-41.	Sgt. Bowman	7 Dys C.B.	14-10-41.	Maj. Zink.	Forf 1 Dys pay. FR&I.
Field	23-10-41	Gnr.		A.A. sec 40. Conduct to the prejudice. Improperly dressed.	BSM. McCall	7 Dys C.B.	24-10-41.	Maj. Zink.	
Field	11-12-41	Gnr.		A.A.sec 15(1). AWOL 20 mins.	Sgt. Butler.	14 Dys C.B.	12-12-41.	Maj. Peake.	
Field	25-12-42	Gnr.		A.A. sec 15(1). AWOL from the expiration of his pass at 2300 hrs, 25-12-42 until 2150 hrs, 28-12-42 (absent 70 hrs, 50 mins)	L/Sgt. Dillion. L/Sgt. Allan.	28 Dys C.B.	29-12-42.	Maj. A.G.Leslie.	Forf 1 dys pay FR&I 149(1)(a)

Charge sheet produced in evidence

I. C1121 Gnr Sammier E.R. ~~wish~~/do not wish to have the convening officer appoint an officer to represent me.

Date Oct. 4 1943. (signed) E.R. Sammier

~~[redacted]~~.

I. 6236 Gnr Bailey E.R. ~~wish~~/do not wish to have the convening officer appoint an officer to represent me.

Date 4 Oct 1943. (signed) Gnr. E.R. Bailey.

I. 879151 Gnr Smith K.E. ~~wish~~/do not wish to have the convening officer appoint an officer to represent me.

Date Oct 4 1943. (signed) Gnr. K.E. Smith

N° 3777 Army Form C. 213. 296 (W.&R).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	Rank.	Name.	Regiment (or as the case may be).
C-11121	GNR	EUGENE EDMOND GAUTHIER	1 CDN SURVEY REGT RCE

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For ____ ____ times.
For ____ ____ times.
For ____ ____ times.
For ____ ____ times.
For ____

Date of first entry in Field Conduct Sheet N/A

Date of last entry in Field Conduct Sheet N/A

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. The accused at the present time is under sentence for N/A

beginning on the N/A day of N/A

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for N/A

days in civil custody; and for 5 days in military custody, i.e., 5 days in open arrest, N/A days in close arrest; of which N/A days were spent in hospital.

5. The present age of the accused is 22 YRS

6. The date of his attestation ~~coming up for military service~~ is 3 FEB 41

7. The service which the accused is allowed to reckon is ____

8. The accused is in possession of‡ N/A

‡State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of ____	____
In the war substantive rank of L/BDR	____
In the acting rank of ____	____

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(21114) W1 8672/900 100,000 4/42 A.S.E.W.Ltd. Gp.498 Forms C.213/W&R.

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

N/A

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this Seventh day of October 1943 Alberger A. Faulkner
Lieut A.G.D.

"O"

J.M. Mackay Major

No. 6121 Name SAUMIER, E.R. Sqn., Batty., or Company } Corps RCA Date of enlistment } 3-2-42 Sheet No.

Date of last entry in Company Conduct Sheet } N/A No. and date of last drunk } N/A G.C. Badges } Long Service and G.C. Pay } Signature O.C. Company, etc. } E.J. McCANN Maj RCA O/C [illegible]

Place	Date of offence	Rank	Cases of Unpunishment	Offence	Names of Witnesses	Punishment Awarded	Date of award or of write Discussing with him	By whom awarded	Remarks
				No Entries 5-6-42					
				Certified true copy [illegible] [illegible] [illegible] [illegible]					

Army Form B.122

P.T.O.

Army Form B 199 (W.O.)

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	Rank.	Name.	Regiment (or as the case may be).
B6236	Gnr	Edward Richard Bailey	1 Cdn Svy Regt R.C.A.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence at the same time may be, should be struck out separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.W.L. (AA. Sec 15(2)) 10 times.

For Conduct to the prejudice etc (AA. Sec 40) 1 time.

For ____ ____ times.

For ____ ____ times.

Date of first entry in Field Conduct Sheet 23 Nov 40

Date of last entry in Field Conduct Sheet 15 Jan 43

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf. N/A

*3. The accused at the present time is under sentence for N/A beginning on the N/A day of N/A

4. The accused has been awaiting trial on the present charges for N/A days in civil custody; and for 5 days in military custody, i.e., 5 days in open arrest, N/A days in close arrest; of which N/A days were spent in hospital.

5. The present age of the accused is 22

6. The date of his ~~enlisting up for military service~~ attestation is 28 Nov 40

7. The service which the accused is allowed to reckon is ____

8. The accused is in possession of: N/L

9. (*If the accused is a warrant officer or N.C.O.*) The accused has served continuously without reduction, to the present date—

	Date of Promotion
In the substantive rank of ____	____
In the war substantive rank of Lt A.	____
In the acting rank of ____	____

*Strike out if not applicable.

State the military decorations (if any) held by accused.

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(21134) Wt 8470/662 100,000 4/42 A & E W Ltd. Gp.498 Form B.199 (W.O.)

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		N/A		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this fourth day of October

Army Form B.122

"Q" [illegible]

No. 6836 Name Bailey, E.R. Sqn., Batty. or Company } Corps R.C.A. Date of enlistment } 26/2/40 Sheet No. 2

Date of last entry in Company Conduct Sheet } No. and date of last drunk } G.C. Badges } Long Service and G.C. Pay } Signature O.C. Company, etc. } (SIGNED) S.V. WALKER Capt

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Completed Six months service - Recd'd entries fm Previous Sheet destroyed 20 Sept 40					Forfeits 1 days pay FRAI
Bordon	23/11/40	Pte		Sec 15 (1) AA WOAS A.W.L. from 0130 Wed hall 1300 hrs 23/11/40 to 1300 hrs 24/11/40. (Absent 1 day)		5 days C.B.	24/11/40	Major Chapman	
Hornley	14/2/41			Sec 15 (1) AA WOAS A.W.L. from Billet Alnwick 0700 hrs 16-2-41 until 1100 hrs 16-2-41 (Absent 1 day 4 hrs)		7 days C.B.	19-2-41	Major Walker	Forfeits 2 days pay FR 1
" "	16-2-41	Pte		Sec 15(1) AA WOAS A.W.L. from Billet Battery 0830 hrs 16/2/41 to 0830 hrs 17-2-41 (Absent 24hrs)		5 days CB	17-2-41	Maj. Walker	Forfeits 1 days pay FRI

P.T.O.

Place	Date of offence	Rank	Cause of Death	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
BURY	27-2-42	Pte		(1) Sec 15(1) AA MDAS AWL from 0hr. Monteith 1830hrs until 0630 hrs 28-2-42 Bdr Holder Absent 13 hrs L-Bdr Roach					Forfeits 2 days pay PRSI 149A
	28-2-42			(2) Sec 15(1) AA MDAS AWL from 5 days Pay 0630 hrs until 0650 hrs 1 Mar 42 Bdr Slatterly					Total forf
BURY	27.2.42			Absent 20 hrs Bdr Holder (3) Sec 40 AA conduct to the prej 2nr Monteith			7-3-42	16 Col DE Todd	7 days pay
				i.e. taking/m [illegible] for his L-Bdr Roach own personal use.					
LIVERPOOL	15-6-42	Gnr		AA Sec 15 (1) MDAS AWL from A/Bdr Stephens 14days CB 0600 hrs 15-6-42 to 1600 hrs 29-6-42 in Burnett Ford total 15-6-42 to 29-6-42					
BURY	27.7.42			2 days 10 hrs One Day on 11.7.42				Lt Loyd	Forf 1 dys pay PRSI 9 Forf 2 days pay total forf
				Sec 15(1) AA MDAS AWL from 12 Abs. 2h 0mn 30 sec Bdr Holder L/Bdr Roach					
				Rnr Reel 5 days F.P. 11-3-42 Maj Johnston 5 days					

Army Form B.122

No. B6236 Name Bailey E.R. Sqn., Battry. or Company Corps R.A.O.C. Date of enlistment 28 Feb 40 Sheet No. 3

Date of last entry in Company Conduct Sheet | No. and date of last drunk | G.C. Badges | Long Service and G.C. Pay | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of Deprivation	Offence	Names of Witnesses	Punishment Awarded	Date of award or of date beginning with this	By whom awarded	Remarks
Field	23-5-43	Gnr		AA Sec 15(a) AWL from 2300hrs 23-5-43 until 1150hrs 24-5-43 Absent 12 hrs 50 ml In	Sgt Allan	3 days CB	24 May 43	Capt Wallace	Forf 1 day pay PRSI
Field	6 Jun 43	Gnr		AA Sec 15(1) AWL from 2400hrs 5-6-43 until 1000 hrs 7-6-43 Absent 16hrs 00 Min	Sgt Allan	3 days CB forf pay	7-6-43	Lt Col Lee	Forf 1½ Day PRSI
Field	15-6-43	Gnr		AA Sec 15(1) AWL from 1630 15-6-43 until 1830hrs 15 Jun 43 Absent 2 hrs 30 min	Sgt Bailey	7 days CB forf 2 days pay	16-6-43	Capt Wallace	Forf 1 days pay PRSI
Field	25 Sept 43	Gnr		AA Sec 15(a) AWL from 2300 hrs 25 Sept 43 until 0700 hrs 26 Sept 43 Absent 8 hrs	Sgt Williams Lt Little L/Bdr Robertson	Admonished	27 Sept 43	Capt Wallace	Forf 1 days pay PRSI

Place	Date of offence	Rank	Corps or Branch of Service	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order directing trial	By whom awarded	Remarks
				ARREST TO THIRD FOOT OR SPECIAL					
				Absent [illegible] [illegible]					
				Sent R.C.H.					

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 11th day of October 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
3. *~~(3. The interpreter)~~
4. *~~(4. The officers under instruction)~~

* Omit if not applicable.

were duly sworn.

Signed this 11th day of October 1943.

President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (i) on page 762 M.M.L. 1919.

~~I certify that the terms of *A.C.I. 370 of 1918 have been complied with.~~

~~Signed this day of 19~~

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I ~~direct that the soldier named in the margin be not committed to prison until further orders.~~)

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 14th day of Oct 1943

Confirming Officer

C.R.A. 2 CDN. DIV.

Promulgated and extracts taken in the case of B7713 Gnr Smith KE

(a) (Dated) 10 Oct 43 (Signed)

Promulgated and extracts taken in the case of B 6236 Gnr Bailey ER

(Dated) 18 Oct 43 (Signed)

Promulgated and extracts taken in the case of C 1121 Gnr Sevigny ER

(Dated) 18 Oct 43 (Signed) Sadon Major Capt R.C.A. Adjutant

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

PROMULGATED & EXTRACTS TAKEN IN THE CASE OF B7713 GNR SMITH, B6236 GNR BAILEY ER, C1121 GNR SEVIGNY.

(DATED) 9 Nov 43

CDN. DEF

QQ-108
TPR SMITH L.

For Original AFA-3 see QQ-105
Tpt McNabb R.E. -

QQ-105

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this 12th day of September, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 2 Cdn Corps Royal Artillery, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to delay the trial for reference to a superior qualified officer~~.

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*~~I am unable to appoint~~ -

*~~(a - Three Officers to form the Court.)~~

*~~(a - A Field Officer as President.)~~

*~~(b - Three Officers having more than one year's service.)~~

~~for the following reason, namely ---~~

"ADDT"

President.

Rank.	Name.	Regiment.
Major	H.G. Pennock	2 Cdn Corps Def Coy

Members.

Rank.	Name.	Regiment.
Capt.	D.S.Montgomery	2 Cdn Corps Rft Camp
Lieut.	EA.Costello	2 Cdn Corps Sigs
Capt.	L. Hubbel	9 Cdn Dent Coy

Waiting Member

Judge Advocate G.H.Jerrys HQ 2 Cdn Corps

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed "A.E.D.Tremain"
(A.E.D.Tremain) Brig.,
Commanding 2 Cdn Corps R.A.
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
H-77502 Tpr SMITH L. 16 Cdn Armd C Regt.	FIRST CHARGE Conduct to the prejudice etc. Army Act sec 40	Guilty	Guilty	
	SECOND CHARGE When in lawful Custody, escaping. Army Act sec 22	Guilty	Guilty	
	SEE CHARGE SHEET ATTACHED		To undergo detention for 90 days.	
			13 Sep 43	Confirmed "A.E.D.T."
			"H.G.Peacock" Maj. President	
			"G.H.Jermyn"Capt. J.A.	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):—

(Signed) "A.E.D.Tremain" (Signed) "H.G. Peacock" Major
(A.E.D.Tremain) Brig.,
Commanding CCRA
Convening Officer (d) "G.H.Jermyn"Capt. *President.*
J.A.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 13th day of September 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3.) ~~The interpreter~~ The Judge Advocate
*(4.) ~~The officers under instruction~~

were duly sworn.

* Omit if not applicable.

Signed this 13th day of Sep 19 43.

"G.H.Jermyn" Capt. J.A. "H.G.Peacock" Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (i) on page 760 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

*(1) ~~I direct that the soldier named in the margin be not committed to prison until further orders.~~

Signed this 13th day of Sep 19 43.

"A.E.D.Tremain"
(A.E.D.Tremain) Brig., CCRA.
Confirming Officer.

Promulgated and extracts taken in the case of Tpr. SMITH

(a) (Dated) 14 Sept 43 (Signed) "illegible" Capt. and ADJUTANT.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(43738) Wt. 46172—841 200 6/43 P.St. G.166

CHARGE SHEET

The accused, H77502 Tpr. Leonard SMITH, 18 Armd C Regt (12D), a soldier of the Canadian Army Overseas, is charged with:-

First Charge
Sec 40 A.A.

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

In that he

in the field on or about 14 Aug 43, improperly and without authority used WD Veh No 4230788 for private purposes.

Second Charge
Sec 22 A.A.

WHEN ON ACTIVE SERVICE, WHEN IN LAWFUL CUSTODY ESCAPING,

In that he

in the field on 14 Aug 43, while undergoing sentence of Field Punishment, escaped.

Jas A Roberts

In the Field
7 Sep 43

(J A Roberts) Lt-Col,
Comd 18 Armd C Regt (12D)

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
13 Sep 43

.....
(A.E.D.Trsmain) Brig.,
DDRA

MEDICAL OFFICER'S CERTIFICATE

F.R. (Gen.) Form 557

I certify that I have this afternoon examined

H 7602 Tpr Smith L of 19 Armd C Regt (12 B)

and in my opinion he is fit ~~unfit~~ to undergo trial by court-martial.

In the field

13 Sep 42

(J G Harris) Capt. RCAMC,
Medical Officer i/c
19 Cdn Armd C Regt (12 B)

PAGE I

Record of Proceedings of a Field General Court Martial

Held in the Field in Eng land (Country) on 13 Sept 43 (Date) to try

Accused H-77502 Tpr Gerard Smith (Number) (Rank) (Christian Names) (Surname) 19 Edn Armd R Regt. (Unit)

	Rank	Name	Unit
President	Maj.	H.E. Pleuck	2 Edn Corps Hq Coy
Member	Capt	D.S. Montgomery	2 Edn Corps Rft Camps.
Member	Lt.	C.A. Costello	2 Edn Corps Sigs
Judge Advocate (if any)	Capt.	G.H. Jennyns	HQ 2 Edn Corps.
Officers Under Instruction (if any)			
Prosecuting Officer	Capt	C.F. Bastide	19 Edn Armd R Regt
Lawyer? Ans	yes		
Defending Officer	Lt.	P.R.I. Pagé	19 Edn Armd R Regt
Lawyer? Ans	No.		

(The following procedure must actually be carried out)

1. The President produces the Convening Order, Charge Sheet(~~s~~) and Summary of Evidence. (Rs.P.17(E), 22(A)).

   (If a waiting member substituted, record is on separate sheet, initialled by the President and attached hereto). (For form of record see M.M.L. p.742 top).

2. The President, in closed court (R.P.22, fn 1) reads the Convening Order and the Charge Sheet(~~s~~) to the Members, and the Court satisfy themselves that it is properly convened (A.A.49; R.P.105) and constituted (A.A.49: Rs.P.106, 107), that the accused is (~~are~~) amenable to Military Law, and that each charge discloses an offence (Rs.P.23,108).

3. The accused is (~~are~~) brought before the Court and at 1950 hours the trial commences.

4. The Prosecuting Officer produces a Medical Certificate under K.R.(Cam) 557 (See CMHQ Circular Letter 175) that the accused has (~~have~~) this day been examined and is (~~are~~) fit to undergo trial by Court Martial. The certificate is signed by the President and attached to the proceedings.

(Over)

5. ~~President to accused:~~

Q - Do you object to _____ as interpreter?
A - _____

The interpreter is duly sworn. (Form of oath on Page "D").

Q - Do you object to _____ as shorthand writer?
A - _____

~~The shorthand writer is duly sworn. (Form of oath on Page "D").~~

6. The Convening Order is read in the hearing of the accused. The names of the President and Members of the Court are read to the accused and they severally answer to their names (R.P.25).

7. President to accused:

Q - Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?
A - NO SIR

(If objection is made it is recorded on separate sheet, initialled by the President and attached hereto. (R.P.25). (For form of record see M.M.L. p. 742 Variation).

8. The President, Members, Judge-Advocate ~~and Officers under instruction~~ are duly sworn (Rs.P.26, 27). (Forms of oath on page "D").

9. The Charge Sheet( ) is ( ) signed by the President.

10. The Prosecuting Officer informs the Court that the accused ~~has~~ (has not) elected trial by Court Martial (A.A.46(8)).

(If special plea(s) is (are) made for separate trial on one or more charges (Rs.P.62(E), 108); or as to the jurisdiction of the Court (R.P.34); or in bar of trial (R.P.36); or as to accused's mental fitness to stand trial (A.A.130; R.P.57), such pleas and evidence (if any) are recorded on separate sheet(s), initialled by the President and attached hereto). (For form of record see M.M.L. p. 744, 745, Variations).

11. Each charge is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty (R.P.112). He pleads as follows:

First Charge	GUILTY	Fifth Charge	
Second Charge	GUILTY	Sixth Charge	
Third Charge		Seventh Charge	
Fourth Charge		Eighth Charge	

(For procedure on alternative charges, see R.P. 37(A) and fn. 2). (For form of record see M.M.L. p. 744 Instructions).

Further proceedings are recorded on pages hereto attached.

PAGE 'A'

(For use when accused pleads "Guilty" to all charges)

(All printed matter not applicable to be struck out and all alterations, erasures and additions to be initialled by the President).

1. The President complies with R.P.35(B) by ascertaining that the accused understands the nature of the charge(s) (R.P. fn. 3) and his plea thereto, explaining the difference in procedure by the plea (R.P. 37(B) & fn. 3) and advising him to withdraw his plea if he thinks the accused ought to plead "Not Guilty" thereto.

2. The finding(s) of the Court is (are) recorded on p. 2 of A.F.A.3.

3. President to accused:

Q - Do you desire to make any statement of the circumstances in reference to the charge(s)? (R.P.37(B)).

A - No SIR

(Statement (if any) not on oath and on which accused is not subject to cross-examination is recorded on separate sheet, initialled by the President and attached hereto).

4. The Summary of Evidence is read aloud, in the presence of the accused, signed by the President and attached to the proceedings.

(If no such Summary, sufficient evidence for determination of the sentence is taken and recorded on separate sheets, initialled by the President and attached hereto). (R.P.37(B)).

5. President to accused:

Q - Do you wish to make any statement in mitigation of punishment? (R.P.37(C)).

A - YES SIR

(Statement (if any) not on oath and on which accused is not subject to cross-examination is recorded on separate sheet, initialled by the President and attached hereto).

(If from paras. 3, 4 or 5 it appears to the Court that the accused did not understand the effect of his plea see R.P. 37(B) fn. 3; 37(C); 37(D) fns. 5 & 6; M.M.L. p. 747 Variations).

6. President to accused:

Q - Do you wish to give evidence yourself or to call any witnesses as to character? (R.P.37(C)).

A - No SIR

(Such evidence, confined to character only, is recorded on separate sheet, initialled by the President and attached hereto).

7. Statement of Character and Service (A.F.B.296 or M.F.B.355) and Field Conduct Sheet (M.F.M.6), signed in the manner required by A.A.163(1)(h) and purporting to refer to the accused by his number, rank, name and Corps, are produced to the Court, read, marked "X", and "Y", signed by the President and attached to the proceedings. (R.P.46; Overseas R.O.3131).

8. President to accused:

Q - Do you wish to address the Court on your Statements of Character, Service and Conduct in further mitigation of punishment?(R.P.46(D)).

A - No SIR

(Address (if any) not on oath and on which accused is not subject to cross-examination is recorded on separate sheet, initialled by the President and attached hereto).

(Over)

9. The President announces:

" The Court is closed for consideration of the sentence. The sentence to be awarded by the Court, being subject to confirmation, will not be announced but will be promulgated later and the proceedings in Open Court are accordingly terminated".

10. The Court is closed to consider the sentence.

11. The sentence is recorded, dated and signed by the President (R.P.50) on p. 2 of A.F.A.3.

(Punishments, A.A.44; M.M.L. p.130-134; K.R.(Can)563-566; Overseas R.Os.309, 2323).
(One sentence is awarded in respect of all offences, R.P.48).
(For form of sentence see M.M.L. p.756-759).

12.

A.G. Leavers Maj
(Signature of President)

J. Kerrigan Capt
J.A.

[2 Cdn Corps 15-6-43]

Statement by Defending Officer in Mitigation of Punishment

September 12th, 1943

In mitigation of sentence in the case of H77502 Tpr. Leonard Smith, 18th Cdn. Arm'd Car Reg't. Cdn Army Overseas.

Here is a lad who knows only too well what he has done and also realizes the seriousness of it. When I was talking with him, he did not try to excuse himself but admitted his guilt and told me quite frankly he was willing to take his medicine. Although he was on defaulters Parade and should have been busy at the time this all occurred he was given the opportunity to go out and he did not miss it. You must realize that had this unfortunate accident not occurred no one would ever have known that 1-- A vehicle was out of camp without proper authority,

2-- A defaulter was out of camp.

This shows a definite weakness in checking up. It is normal for the R.P.'s to take over the defaulters after the Mounting of the guard and to keep them busy the remainder of the evening. This was not done. Instead they were dismissed to their quarters. Then again there is the question of the Sentry at the main gate not even attempting to stop said vehicle and asking driver to produce a Work Ticket. In my opinion that sentry could have avoided all this . A look at this lad's N.P.N. 6 shows that he has been a very good soldier. We are going through a very important phase of training and it is imperative that each and every man goes through it. To give this boy a heavy sentence at such a time would seem unfair to him and his unit. This man still has the makings of a good and efficient soldier but a hard punishment at this time would without a doubt spoil him and have serious effect on his future military carreer. So I very strongly suggest that he be given a chance to prove himself.

Thank you.

Summary of evidence in the case of H77502 Tpr Leonard SMITH, 18th Canadian Armoured Car Regiment (12th Manitoba Dragoons) Canadian Army Overseas, charged with: (1) Unauthorized use of a W.D. vehicle (2) Breaking out of barracks.

The Commanding Officer directs that the evidence be taken on oath.

First Witness

Capt R.S. Street, 18 Cdn Armd C Regt (12 D), sworn, states:

I am 2 I/C of B Sqn, 18 Cdn Armd C Regt (12 D), in which H77502 Tpr Smith, L., is a member of the Blitz troop. I did not authorize the use of WD veh CM4230788 on 14 Aug 43 after 1200 hrs and to my knowledge no authority was given by this Sqn. This authority is required after 1200 hrs Saturdays, before authorization by R.H.Q. which is required. As a result of investigations conducted by myself and Staff Sgt Kelly of C.M.H.Q., H77502 Tpr Smith, L., was questioned on 2 Sep 43 and made a voluntary statement, in my presence, which I herewith submit.

The accused declines to cross examine this witness.

R.S. Street
(R S Street) Capt

The statement referred to by the witness was produced, read over to the accused, marked Exhibit A, signed by me and is attached hereto.

J.A. Irvine
(J A Irvine) Lieut

Second Witness

H77018 Sgt Dash, R. A., 18 Cdn Armd C Regt (12 D), sworn, states:

On 14 Aug 43 I was Regimental Orderly Sgt and took Staff Parade at 1745 hrs. H77502 Tpr Smith, L., was on defaulter's parade, since he was doing field punishment. After the guard was marched off to its duties there were no personnel to take charge of defaulters so I dismissed them and told them to report to their own lines.

The accused declines to cross examine this witness.

R.A. Dash
(R A Dash) Sgt

The accused was warned as follows:

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence".

The Accused: I have nothing to say at this time.

I Certify that R.P. 4 has been complied with.

Taken by me in the field in the presence and hearing of the accused this 4th day of September, 1943.

J.A. Irvine
(J A Irvine) Lieut

CANADIAN PROVOST CORPS.

DATE. 2 Sept 43.

SUBJECT:-

STATEMENT OF Regt. No. H-77502. Trpr Leonard SMITH.

OF:- 18 Armd Car Regt. (1 Can. Corps) TAKEN AT:- In the Field.

" I have been warned that I am not obliged to say anything unless I wish to do so, but that anything I now say will be taken down in writing and may be given in evidence.

" To show that I understand the above warning, I make this statement voluntarily and sign my name herewith."

SIGNED. L Smith.

STATES.

On 14 Aug 43 I was on defaulter parade. Around 1900 or 1930 hrs I left camp with Trpr Hunt, who was driving his jeep, C M 42 30785. We went first to the public house near the airport and had two or three bottles of beer. From there we drove to another pub, where we asked for whisky but they didn't have any. We asked a woman whom we passed on the road where we could get some and she told us at the Ratcatchers. We went to the Ratcatchers, where we had a couple of whiskies and a couple of beers. From there we went to a pub, where there was a piano. We stayed there for some little time and had a few beers. It was raining when we came outside and we started back for camp. Trpr Hunt did all the driving. I remember jumping into the gates at the railway crossing and hearing someone hollering. I helped to push the gates open. I heard a lady holler something about an express train coming but I didn't see or hear the train. I was pretty dopey after the jeep crashed the gates and we

came right back to camp and Pte Hunt put the jeep in the M.T. lines and I helped him put the Camouflage net over it. I went right into my hut then and went to bed.

The main reason that I didnt say anything about this crossing accident was because I didnt want anyone to know I had been out of camp while on defaulters parade.

I have read over the above statement and have had the opportunity of adding to it or deleting any part.

Witnessed.
Lt. of C. M.T.D.

L Smith.

Actg Capt.
18th Aust C. Bty

This is Exhibit D referred to in the summary of evidence in the case of 17302 Pte Smith R taken before me this 22 day of Sep 1943

C T Irwin Lt

LIST OF EXHIBITS in the case of H77502 Tpr. Leonard SMITH, 18 Armd C Regt (12D)

Exhibit A -- Statement of H77502 Tpr. Leonard Smith, 18 Armd C Regt (12D)

LIST OF WITNESSES in the case of H77502 Tpr. Leonard SMITH, 18 Armd C Regt (1RD), Cdn Army Overseas:

(a) For the Prosecution:-

(1) Capt. R.S. Street,
18 Armd C Regt (1RD)

(2) H77018 Sgt. Lamb, R.A.,
18 Armd C Regt (1RD)

(b) For the Defence:-

NIL

I desire the convening officer to detail an officer to represent me at my forthcoming trial by Field General Court Martial.

I desire the services of _____

if he is available. ——

1 Smith

[redacted]

[redacted]

_____
S77502 Tpr. L. Smith,
18 Armd. Regt (12D)

In the Field
7 Sep 43

No. W7502 Name SMITH, Leonard Sqn., Battery or Company "B" Squadron Corps 15 Armd C Regt (Regt) (Dept) "B" SQUADRON

Date of last entry in Company Conduct Sheet 29-9-41 No. and date of last drunk

Period not reckoning towards freedom from extra fine

Sheet No. Two 30-6-41 G.C. Badges "Y"

Signature O.C. Company, etc. J. Hassard Lieut.

Service or Proficiency Pay

Character

M.F.M. 6 (A.F.B. 119)

Place	Date of offence	Rank	Cases of drunkenness		Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Old sheet destroyed 12/12/41 (WWSC)					
Work Point	16-2-42	Tpr	Nil	Neglecting to obey orders; did mend his rifle by piling swivel. A.A. Sec 11	Lt Gladwish Sgt Crampton	3 days C.B.	17-2-42	Lieut J. Hassard	
Work Point	6-3-42	Tpr		Special Leave Furlough Transport Warrant #AB4878 issued					
Camp Debert	31-5-42	Tpr	Nil	AWL from 0100 hrs 31-5-42 until 0400 hrs 31-5-42. ABSENT: 3 hrs AA Sec 15 (1)	W7514 Tpr Watson D	Admonished		J. Hassard Lieut	
Field	8 Mar 43	Tpr		AA Sec 40 Failing to get out of bed when called.	W7013 Cpl Ingraman	7 days C.B.	8 Mar 43	L L Cantlon Capt	

Place	Date of offence	Rank	Class of Arrest or com	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or if order dispensing with trial	By whom awarded	Remarks
Debert	30-5-43	Tpr	NIL	Failure to obey camp standing orders; in that he was found on out of bounds; Nigger Island	Documentary	7 days C.B.	4-6-43	P A K Coupland Lt.-col	
Field	20Mar 43	Tpr		AWL from 0600 hrs 20 May 43 to 2120 hrs 24 May 43. ABSENT 4 Days, 15 hrs, 20 mins. AA Sec 15	H77080 Cpl Wilkinson H50509 Cpl Dunn L G	7 days F.P. 26 May 43 Total Forfieture of pay:10 Days pay FR&I 149 (1)(A & B)			12 Days pay FR&I
Field	29 Jul43	Tpr		AWL from 2359 Hrs 29 Jul 43 to 2100 hrs 1 Aug 43. ABSENT: 2 days, 21 hrs,1 min. AA Sec 15 (1)	Sgt Begley TF Sgt Slight DB	28 Days F.P.	5 Aug 43	Lt.-col R W Moncel	Total Forf. of 31 days pay FR&I.

This is certified true copy of a document in my possession.

(E P Bastedo) Capt & Adjt.,
18 Armd C Regt (12 D).

"X"

M.F.B. 335
5M-10-39 (3492)
H.Q. 1772-39-620

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
H77502	Tpr.	Leonard SMITH, 18 Armd C Regt (12D)	

1. The following is a fair and true summary of the entries in the Field ~~Service Conduct~~ Record Sheet or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Air Force Act / Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
For AA 10(1) - AWL	two times	three times
For AA 11 Failing to obey standing orders	nil times	two times
For	times	times
For AA 40	nil times	one times

~~Number of instances of gallantry or distinguished conduct~~ N/A

~~or~~ N/A

There are no entries in the conduct sheets of the accused.

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~as~~ N/A ~~as~~ N/A

~~Previous convictions of the accused~~ by a court-martial or a civil court, of summary awards under ~~Air Force Act~~ A.F.A. 79 Section 47 of the Army Act and dispensations with trial under A.A. 73 ~~are set out in the schedule annexed to this statement~~ N/A

3. The accused is not under sentence at the present time.

~~or~~

~~The accused at the present time is under sentence for beginning on the~~ N/A ~~day of~~

4. The accused has been in confinement awaiting trial on the present charges, for N/A days in civil custody, and 14 days in military custody, making a total of 14 days in custody, of which N/A days were spent in hospital.

5. The present age of the accused according to his ~~attestation~~ N/A attestation paper is 21 years, 2 months

6. The date of his ~~attestation~~ N/A specified in his ~~attestation~~ N/A attestation paper is 30 Jun 41

7. The service which the accused is allowed to reckon towards discharge is

8. The accused is entitled to reckon 2 years, 2 months, 7 days service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward (or is in possession of or entitled to). State any air force ~~decoration~~ military or reward.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of R/S
Permanent Force
unit
dated N/A, and in his regiment (or corps), the rank of
dated

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force
Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number Rank
Regiment
Name of

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 13th day of Sep 43 (J A Roberts) Lt-col,
2nd 19 Armd - Regt (RCA)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

2 L.

Pte. SMITH L.

O. H. M. S.

M. F. B. 270

Correspondence to be PINNED here.

2 L.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this NINTH day of JULY, 1942.

Whereas it appears to me, the undersigned, an officer in Command of 5 CANADIAN INFANTRY BRIGADE, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; ~~[illegible]~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

~~[illegible]~~

~~service.~~

~~For the following reasons, namely:~~

In my opinion, military exigencies, namely, the dispersion of units, and difficulties of communication and other difficulties render it inexpedient to observe the provisions of those rules inconsistant with Appendix "A" to D.R.C. 772 on the trial of the person named in the annexed schedule.

PROCEEDINGS REVIEWED

[signature] Capt.
Reviewing Officer (A.A.G.)
11 Aug 42.

President.

Rank.	Name.	Regiment.
Major	D.R. Ritchie	R.H.C.

Members.

Rank.	Name.	Regiment.
Capt.	C.Grenda,	R. de Mais.

An Offr to be appointed by O.C. Calg Highrs.
WAITING MEMBER
An Offr to be appointed by O.C. Calg Highrs.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature]
(G.V.Whitehead) Brigadier
Commanding 5 Cdn Inf Bde
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
M/11468 Pte. SMITH, Leo, Calg. Highrs a soldier of the Canadian Army Overseas	FIRST CHARGE A.A. Sec 15(1) (see charge sheet attached) SECOND CHARGE A.A. Sec 24(2) (see charge sheet attached.	Guilty Guilty	Guilty Guilty except that the value of Souvenirs lost should be $10-6-8. Sentence 120 days detention. 1st stoppage to make good amount of $10-6-8 and $2-4-2. G.R. Whitehead Brig Commdg 2 Inf Bde 13th July 42	I Confirm GW

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) G.R. Whitehead Brig. (Signed) B.R. Ritchie Maj.
COMD. 5 CDN. INF. BDE.
Convening Officer (*e*) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 13th day of July 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) B.R.R.
*(4. ~~The officers under instruction~~)
were duly sworn.

* Omit if not applicable.

Signed this 13th day of July 1942

B.R. Ritchie Maj.
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

*~~I also order that the prisoner named in the margin be not committed to prison until further orders.~~ GW

Signed this 14th day of July 1942

G.R. Whitehead Brig
Confirming Officer. 5CE.

Promulgated and extracts taken in the case of

(*a*) (Dated) 14 Jul 42 (Signed) C.D. Tenny Capt
For D.J.A. & Cdn. Inf. Bde.

Promulgated and extracts taken in the case of

(Dated) 20 July 42 (Signed) MacLauchlan Lieut-Col.

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(41736) W'L 40012—982 200 M. Cat. P. St. G. 1a.

"A" THE CALGARY HIGHLANDERS C.A.(O).

13 July, 1942.

M/11468 Pte. Smith L.

I have this day examined the a/n soldier and find him to be free from venereal and communicable diseases, and physically fit to stand trial by Field General Court Martial.

W. H. Bowering Capt. RCAMC.
Medical Officer,
The Calgary Highlanders C.A.(O).

CHARGE SHEET

The accused, M11468 Pte, Smith, Leo, The Calgary Highlanders, C.A.(O)., a soldier of the Canadian Army, In the Field, is charged with:-

FIRST CHARGE
Sec. 15 (1)
Army Act.

When on active service, absenting himself without leave,
in that he,
In the Field, did absent himself without leave from 0830 hrs. 11 May 42. until surrendered to the Corps of Military Police at Cheltenham at about 1000 hrs. 27 June 1942.
Expenses incurred in escorting accused £2-4-2
(47 days, 1 hr, 30 mins).

SECOND CHARGE
Sec. 24 (2)
ARMY ACT

When on active service, losing by neglect his Regimental necessaries,
in that he,
In the Field, on, or about, 11 May 1942 lost by neglect Regimental necessaries to the value of £ 11-8-9.
as per attached list. (Marked Exhibit "O")

In the Field,
7 July 1942

To be tried by FGCM

A.R. MacLauchlan Major
The ~~Calgary Highlanders~~, R.C.A.C.
Officer Commanding.

COMD. 5 CDN. INF. BDE.

(1) :- Pte Smith L. 13-1-42.

The accused is arraigned and pleads
guilty to the first charge.
guilty ... second "

The Pres. questions accused in accordance with R.P.B.31

The accused, Pte Smith L., is found guilty on all charges by prosecution evidence ~~produced~~ ~~The abstract of evidence~~, marked 'A' signed by Pres. and read to court.

Certificate of surrender signed by Pres. and Warder

Sheet of deficiencies of clothing as of date of trial marked 'C' signed by Pres.

Statement of expenses incurred in returning accused 7-18-9 signed by Pres and marked 'D'

Statement of Expenses incurred in returning accused 5s 5d signed by Pres and marked 'E'

A.F.A.

Statement Charles & Parkinson
Service of accused signed by
Pte & marked "F1"

Certified true copy of
W.F.M. 6 signed by Pte & marked
"G"

Accused sworn. Statement of Mitigation by accused under oath.

Before I went absent I was in hospital for 32 days with V.D. & when I came out I felt low and ashamed and went absent and got a job. After thinking it over I only realized I was only doing myself harm and gave myself up to the Provost.

F.K.C.

"A"

ABSTRACT OF EVIDENCE

IN the case of
M11468 Pte. Smith, L
taken by Capt. D.A.McDonald at the direction
of the Commanding Officer, in accordance with
D.R.O. 772

FIRST WITNESS
(Documentary)

CERTIFICATE OF SURRENDER UNDER SEC. 163 (1)(J) A.A.

I, Major D.E.D. Taylor, certify that No. M11468 Rank Pte. Smith, L. Coy. Bn. Calgary Highlanders surrendered himself to No. 2654393 Rank, Sjt. Name Bainbridge, F. Corps of Military Police, at about 1000 hrs. on the 27th. day of June 1942 as a deserter (or absentee without leave)

Place, Cheltenham,
Date 27-6-42

AFM D.E.D. Taylor
Major

SECOND WITNESS

Lieut. A.G.A.A. MacKenzie, of The Calgary Highlanders, C.A.(O), states that he was in charge of the rear party on the 11th. May 1942. On calling the roll at 0830 hrs. on the 11th. May 1942 he found M11468 Pte Smith, L. to be absent. A search was made to try and locate him but he could not be found. His name was entered on the absentee report. Since that time Lieut. MacKenzie has made inquiries and efforts to locate him without result and no word was heard of him until he was reported in the custody of the Cdn. Provost Corps on 27 June 1942.

THIRD WITNESS

M 10593 A/R.S.M. McArthur states that he is A/R.S.M. of The Calgary Highlanders, C.A.(O). He noted Pte Smith's name on the Bn. absentee report for the 11th. May 1942 and daily thereafter until he was struck off strength of the Calgary Highlanders, C.A.(O). on Part one orders No. 138 dated 30th. June 1942 as a deserter with effect from the 6th. June 1942. He did not see him again until he was returned in custody on 27 June 1942.

FOURTH WITNESS

Capt. C.A.Nixon, will state that he is adjt of the Calg Highrs, C.A.(O), and will produce a certificate of apprehension in accordance with A.A. Sec 163(i) (jj), a certificate of expenses incurred in returning the accused to his unit, M.F.B. 555, and certified true copy of the accused's M.F.M. 6.

FIFTH WITNESS

M 10509 C.Q.M.S. Marshall, E. states that he is C.Q.M.S. of "C" Coy. (the Coy. of the accused) The Calgary Highlanders, C.A.(O). On May 17 1942 he checked the kit of Pte. Smith, L. and made a list of the kit on hand. This was compared with his total equipment issued list and shortages as per the attached list-marked Exhibit "C"- amounting to £ 11-8-9 were found. This list was rechecked after the accussed's return to the unit (27 Jun 42) and the shortages were found to amount to £11.8.9.

D.A. McDonald--Capt.

In The Field
7 July 42

CHARGE SHEET

The accused, M11468 Pte, Smith, Leo, The Calgary Highlanders, C.A.(O)., a soldier of the Canadian Army, In the Field, is charged with:-

FIRST CHARGE
Sec. 15 (1)
Army Act.

When on active service, absenting himself without leave, in that he,

In the Field, did absent himself without leave from 0830 hrs. 11 May 42. until surrendered to the Corps of Military Police at Cheltenham at about 1000 hrs. 27 June 1942.

Expenses incurred in escorting accused £2-4-2

(47 days, 1 hr, 30 mins).

SECOND CHARGE
Sec. 24 (2)
ARMY ACT

When on active service, losing by neglect his Regimental necessaries, in that he,

In the Field, on, or about, 11 May 1942 lost by neglect Regimental necessaries to the value of £ 11-8-9. as per attached list. (Marked Exhibit "C")

In the Field,
7 July 1942

Major
The Calgary Highlanders, C.A.(O).
Officer Commanding.

To be tried by FGCM.

Brig
COMD. 5 CDN. INF. BDE.

STATEMENT OF ACCUSED

M11468 Pte. Smith, Leo, The Calgary Highlanders, C.A.(O)., a soldier of the Canadian Army, In the Field, do desire the services of an officer to defend me at my trial by Field General Court Martial.

Should Lieut. V. Ignatieff be available I should like to avail myself of his services as Defending Officer.

M11468 Leo Smith Pte.

Witness: V.E. Ignatieff
Signed in the Field,
this 7th. day of July, 1942.

"A"

ABSTRACT OF EVIDENCE

IN the case of
M11468 Pte. Smith, Leo
taken by Capt. D.A.McDonald at the direction
of the Commanding Officer, in accordance with
D.R.O. 772

FIRST WITNESS
(Documentary)

CERTIFICATE OF SURRENDER UNDER SEC. 163 (1)(J) A.A.

I, Major D.E.D. Taylor, certify that No.M11468 Rank Pte. Smith, L. Coy. Bn. Calgary Highlanders surrendered himself to No. 2654379 Rank. Sjt. Name Bainbridge, F. Corps of Military Police, at about 1000 hrs. on the 27th. day of June 1942 as a deserter (or absentee without leave)

Place. Cheltenham,
Date 27-6-42

APM D.E.D. Taylor
Major

SECOND WITNESS

Lieut. A.G.A.A. MacKenzie, of The Calgary Highlanders, C.A.(O). states that he was in charge of the rear party on the 11th. May 1942. On calling the roll at 0830 hrs. on the 11th. May 1942 he found M11468 Pte Smith, L. to be absent. A search was made to try and locate him but he could not be found. His name was entered on the absentee report. Since that time Lieut. MacKenzie has made inquiries and efforts to locate him without result and no word was heard of him until he was reported in the custody of the Cdn. Provost Corps on 27 June 1942.

THIRD WITNESS

M 10693 A/R.S.M. McArthur states that he is A/R.S.M. of The Calgary Highlanders, C.A.(O). He noted Pte Smith's name on the Bn. absentee report for the 11th. May 1942 and daily thereafter until he was struck off strength of the Calgary Highlanders, C.A.(O). on Part one orders No. 138 dated 20th. June 1942 as a deserter with effect from the 6th. June 1942. He did not see him again until he was returned in custody on 27 June 1942.

FOURTH WITNESS

Capt. C.A.Nixon, will state that he is adjt of the Calg Highrs, C.A.(O), and will produce a certificate of apprehension in accordance with A.A. Sec 163(i)(jj), a certificate of expenses incurred in returning the accused to his unit, M.F.B. 555, and certified true copy of the accused's M.F.M. 6.

FIFTH WITNESS

M 10509 C.Q.M.S. Marshall, E. states that he is C.Q.M.S. of "C" Coy. (the Coy. of the accused) The Calgary Highlanders, C.A.(O). On May 17 1942 he checked the kit of Pte. Smith, L. and made a list of the kit on hand. This was compared with his total equipment issued list and shortages as per the attached list-marked Exhibit "C"- amounting to £ 11-8-9 were found. This list was rechecked after the accussed's return to the unit (27 Jun 42) and the shortages were found to amount to £11.8.9.

D.A. McDonald--Capt.

In The Field
7 July 42

"F" B.R.L. Whitley Major.

(Substitute for A.F.B.296)
or M.F.B.355

STATEMENT OF CHARACTER AND PARTICULARS
OF SERVICE OF THE ACCUSED

No. M11468 NAME Pte. Smith, Leo UNIT The Calgary Highlanders, C.A.(

AGE 21 MARRIED OR SINGLE Single NO. OF DEPENDENTS one-mother

DATE OF ATTESTATION 6-12-39

NO. OF DAYS SPENT IN CLOSE ARREST (TO DATE OF TRIAL)

CIVIL _____ MILITARY 16 HOSPITAL _____ TOTAL 16

DATES OF PROMOTIONS, APPOINTMENTS AND CONFORMATIONS OF RANK, IF ANY

Nil

A CERTIFIED TRUE COPY OF M.F.B.6 MUST ACCOMPANY THIS FORM

(Officer i/c Records)
C.O. Wilson Capt Unit.
A/Adjt. The Calgary Highlanders, C.A.(O).

Dated at In the Field
This 13 day of 7. 44 194
(To be dated and signed as of date of trial)

THE CALGARY HIGHLANDERS, C.A.S.F. "C"

M.F.M. 6
A.F.B. 122
(6650—6 23 (1780))
H.Q. 1773-13-14

No. M11462 Name Smith Leo. Sqn., Battery, or Company C Corps The Calg Highrs Date of C.A.S.F. enlistment 6/12/39 G.C. Badges

Service or Pensioner No.

Date of last entry in Company Conduct Sheet 3/4/42 No. and date of last drunk

Period not reckoning towards freedom from extra line

Sheet No. 2 Signature O.C. Company, etc. Capt. C.A.S.F. Character Poor

Sheet destroyed 5/6/42

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with same	Major by whom awarded	Remarks
Cuillamont Barracks	5/4/42	Pte	-	See 40 A.A. Neglect to the prejudice of good order & Military discipline (Smoking when forbidden by Bn Order 268 (Before)	Pte Burtenshaw	3 days C.B.	7/4/42	Major K.M. Johnson	
Aldershot	20/3/41	✓		Failing to obey a standing order in that he was not carrying his Pay Book	Documentary	3 days C.B.	24/3/41	Capt M. Kenzie	B. McKenzie Capt
				Steel Helmet					
Talavera	18/6/41	✓		Neglecting to obey standing order in that he was wearing collar & tie & tunic open at neck	Documentary	3 days C.B.	19/6/41	Capt. Donald	F.B. Donald Capt
Talavera	20/6/41	✓		The good order & Military Discipline in that he left a V.H.D. Bicycle unattended	Sgt Harrison	7 days C.B.	24/6/41	Capt Donald	F.B. Donald Capt
Eastbourne	18/2/42	✓		A.W.L. 2230hrs 18/2/42 to 0815hrs 19/2/42 R.S.M. (9hrs 45 min) Sec 15(1) A.A.	Pte Fletcher H.W.	3 days pay	20/2/42	Major [illegible]	Forfeiture of 3 days pay [illegible]

Certified True Copy [illegible] Capt a/adjt

Place	Date of offence	Rank	Corps of troop concerned	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In Field	11/5/42	Pte	—	① W.O.R.S - A.W.L. from 0820 hrs 11/5/42 until 1000 hrs 27/6/42 (47 days 1 hr 40 mins). A.A. Sec 15(6) ② W.O.H.S - Knowingly neglect his regimental necessaries. A.A. Sec 24(2).	Documentary	120 days det.	18/7/42	F.G.C.M 13/7/42	Stoppages in respect of ① £10-6-8 and ② £2-4-2

"B"

CERTIFICATE OF SURRENDER UNDER REG. 1(3) (i) (d) A.C.I. Exhibit "A"

I, Capt. Maj. D.B. Taylor, certify that No. M/11468 Rank Pte Name SMITH. L.

Coy. Bn. CALGARY HIGHLANDERS surrendered himself to No 2664379 Rank L/C

Name BAINBRIDGE. F. Corps of Military Police, at about 1000 Hrs on the

27th day of JUNE 1942 as a deserter (or absentee without leave).

Place. CHELTENHAM.

Date. 27. 6. 42.

Arrested by me

Maj.

Expense Voucher Re—: "C" K.R. & O. Para. Ref: K.R. & O. (Can) 539 Exh. 64-13"

Reg. No. M-11468 Rank Pte Name Smith, L Unit Calg. Highs.

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars	Amount		
	Escorts return fare from LONDON To Three Bridges (Station)		3	1
30 June 42	Prisoners single fare to LONDON From			
	Prisoners fare from London To Three Bridges		2	4
			-	
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		5	5

I certify that the above statement of Expenses is Correct. and that the amounts are fair and just.

..... Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000-44
40/P & S/489

"D" Ref: K.R. & O. (Can) 539 Exhibit "B"

Expense Voucher Re—:

Reg. No. M-11468 Rank Pte. Name Smith, L. Unit Can. Highs.

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit From~~ London from Cheltenham

Date	Particulars	Amount		
31 April	Escorts return fare from LONDON To Cheltenham		17	7
	Prisoners single fare to LONDON From Cheltenham		8	10
	Prisoners fare from To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares		12	4
	Total £	1	18	9

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

Lieut.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000-55
60/F & S/483

"C"

"C" Coy.
The Calgary Highlanders, C.A.(O).

SUBJECT. Deficiencies of Clothing and Equipment of M11468 Pte. Smith, Leo.

Article	Quantity	Price
Bags, Kit, Mk. 1	1	0--3 - 11
Bags, Kit, Mk. 2	1	2 - 8
Battle Dress, Blouse	1	1--0 - 9
Battle Dress, Trousers, Pr.	1	1--0 - 11
Boots, ankle, prs.	2	1--12- 3
Braces, Prs.	1	- 11
Brasses, Button	1	1⅌
Brushes, boot, blacking	1	- 6
Brushes, button	1	- 10
Caps, Comforter	1	- 10
Great coats, drab	1	2--17- 9
Combs, hair	2	- 1⅌
Drawers, woolen, prs.	1	2- 10⅌
Gloves, woolen, khaki	1	2- 0
Housewife	1	1- 8
Jackets, sweater	1	3- 1⅌
Knives, clasp	2	3- 11
Shirts, flannel, khaki	2	13- 9
Shirts, woolen	1	2- 10
Shoes, canvas	1	6- 7⅌
Socks, prs.	1	1- 3
Towels, hand	1	[illegible] 8⅌
Drawers, under, cotton, prs.	1	1- 6⅌
Shorts, P.T.	1	1- 5
Vests, P.T.	1	1- 1⅌
Bags, ration	1	- 2
Blankets, 1098-O	1	9- 0

Total £10-6-8

Signed. [signature] C.S.M.S.

B. L. Richardson Esq
Secretary.

JJJ-150 (Case #2)

PTE SMITH LB

See C-337 for lot case

RECORDED AT CMHQ IN AB 160 JJJ-150

Correspondence to be PINNED here

CANADA 15 APR 1944

Army Form

Form for Assembly and Proceedings of Field General Court Martial on Active Service

F70

PROCEEDINGS

On Active Service, this Twenty-first day of March, 1944

Order convening the Court.

Whereas it appears to me, the undersigned, an officer in T/ Command of 1 Canadian Infantry Brigade on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial: [redacted]

* Cross where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Cross if not applicable.

[redacted]

9

PROCEEDINGS REVIEWED [signature] Major
[signature] Capt.
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

	President		
	Rank	Name	Regiment
	Major	E.L. Littleford	R.C.R.
		Members	
	Rank	Name	Regiment
	Captain	L.J. Courtin	R.C.R.
	Captain	J.W.P. Bryan	R.C.R.
Waiting Member	Lt.	D.R. Martyn	R.C.R.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] (I.S. Johnston) Lt.-col
T/Commanding 1 Cdn Inf Bde.
Convening Officer.

(8)F.M.C.(3)4/43—500

F 70

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
C 5541 PRIVATE SMITH, Leonard Bernard, Hastings & Prince Edward Regiment.	FIRST CHARGE A.A. Sec 15 (1) SECOND CHARGE A.A. Sec 15 (1)	guilty guilty	Guilty 90 days FP 90 days FP	Confirmed D.C.Spry Brig 4 Apr 44

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer *(to be recorded on separate sheet if necessary)* :— Nil

(Signed) D.C. Spry Brig (Signed) E.L. Littlefort Major
(D.C. Spry) Brigadier (E.L. Littlefort) Major
Commanding Cdn Inf Bde R.C.R.
Convening Officer (e) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here

I certify that the above Court assembled on the 27th day of March 1944, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule. **B** Certificate of President as to proceedings.

I also certify that :—
1. The members of the Court
2. The witnesses
*3. The interpreter
*4. The officers under instruction)
were duly sworn.

Signed this twenty-third day of March 1944.
E.L. Littlefort Major
President of the Court Martial.

* See footnote (b) on page 365 M.M.L. 1939

I certify that the terms of *A.C.I. 570 of 1918 have been complied with. **C** Certificate in case of death sentence.

Signed this day of 19

President of the Court Martial.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences. **D** Confirmation.

*To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer has no authority to commit to prison, or having such authority, recommends suspension.

*(I direct that the soldier named in the margin be not committed to prison until further orders.)

Signed this Fourth day of April 1944
D.C. Spry
Confirming Officer.
(D.C. Spry) Brigadier
Comd., 1 Cdn Inf Bde.

Promulgated and extracts taken in the case of C 5541 Pte Smith, S.B. Rank Unit

(*a*) (Dated) 10 APR 44 (Signed) T.P.C. Gorman Capt.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

[*a*] When several cases are promulgated in one unit on the same day the Officer need only sign once.

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and cancelled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at Tobruk Egypt on the 21st day of March 1941 by order of Lt Col A Johnston

V/ Commanding 1 Cdn Inf Bde dated the 21st day of March 1941

President.
Major E A Sutherland.

Members.
Capt [redacted] H Curtin
Capt J W P Bryan

, Judge Advocate.

Trial of* C 5341 Private A Smith of Leonard Bernard. Hastings & Prince Edward Regt.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that is not available to serve owing to

, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Capt F W S J Traynor.

Counsel‡ or defending officer† Lieut F. B Kane

At 1500 o'clock the Trial commences.

The order convening the Court is read, and is marked A signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* NO

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

[illegible] W.O.W.6000/2/3. (3,000 pads) 12/40. K. & H., Ltd. (46277). Forms 9/35

B

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn.

Charge-Sheet.

Instruction. *If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.*

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Guilty. *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Not guilty *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

Guilty *Answer.*

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

Answer.

The accused having pleaded Guilty to the first charge, the provisions of Rule of Procedure 35 (B) are here complied with.

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

B 2.
for identification
Major

CHARGE SHEET

The accused, C5541 Pte Leonard Bernard SMITH, Hastings & Prince Edward Regiment, a Soldier of The Canadian Army Overseas, (CMF), when on active service, is charged with:-

FIRST CHARGE Sec 15 (1) A.A. When on Active Service, absenting himself without leave

in that he

In the field, absented himself without leave from 1630 hrs 7 Dec 43 until 1200 hrs 18 Dec 43.

Time absent - 11 days - 19 hrs - 30 min

SECOND CHARGE Sec 15 (1) A.A. When on Active Service, absenting himself without leave

in that he

In the field, absented himself without leave from 1000 hrs 24 Dec 43 until apprehended by C.M. Police at 1500 hrs 30 Jan 44.

Time absent - 37 days - 5 hours.

"In the field"
19 Mar 44

H.C. Cameron, Major
A/CO
The Hastings & Prince Edward Regt., CMF

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

"In the field"
21 Mar 44.

(I.S. Johnston) Lt.-col
T/Comd., 1 Cdn Inf Bde.

MEDICAL OFFICER'S CERTIFICATE
(Man (Can) para 87f)

I certify that I have this morning examined No. C'55741
Rank Pte Name SMITH L.B. of HQ. Pn. HQ. Regt.
and that in my opinion he is fit/unfit to undergo trial by Court-Martial

Station IN THE FIELD

Date 27 MAR 44

(Medical Officer)

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A))

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. NO

The prosecutor makes an opening address [hands in a written address which is read, marked [illegible], signed by the President, and attached to the proceedings.]

The prosecutor proceeds to call witnesses.

First witness for prosecution. CAPT C D SMITH H7PER

being duly sworn, is examined by the prosecutor.

I was 2/c of A Coy during the month of Dec 1943 I know the accused. On 22 Dec 43 the accused and another man were brought into our coy by some Provost and placed in the coy. They were ordered by me to report to No 7 Pl. Coy to which they belonged. On 23 Dec our coy went into the attack. The whole coy marched [illegible] me and the accused was not with the coy at that time. The accused was not with the coy on the 23, 24 & 25th of Dec. I had occasion during my duties to pass rear to the different sections of the coy and the accused was not there. The coy was under enemy fire on 23 Dec and 7 Pl was stationed very close to Coy HQ. While there was possibility that he may have hidden in a slit trench it is highly improbable the reason that I took particular note of these two men is that they were turned in by the Regt Police.

The defence cross-examines.

Q1. Did you order Pte Smith to report to 7 Pl
A1. I did
Q2 Does provost usually bring any people back to their coy
A2 I dont know
Q3 How was Pte Smith brought by Provost to you
A3 I think he came from
Q3. From where do you think Pte Smith came from?
A3. The other side of the river.
Q4. If did you inform Pl Cmd of any particulars item in relation to Pte Smith
A4 I did not
Q5. Is it possible that he was there on dec 22
A5 Yes.
Q6 Was it possible to have seen or missed him on 23 Dec in that at that time the coy was under fire.
A6 It was possible
Q7. On 23 Dec did you check with Pl Cmd to see if he was present or was it a mere cursory look about
A7. It was a mere cursory look about but I did ask the C.S.M and he was unable to give information.

Questions by the court.

Q1 Did you make an individual sum issue to each man
A1 Yes
Q2 Were you in Q.
A2 No
Q3 Do you find out administrative steps
A3. No.
Q4. How do you account for absentees.
A4. The clerk goes forward and checks the roll.
Q5 When check was made was man present.
A5. I was not present at the check.

C.D. 5 Stafford 29 yrs

Second witness for prosecution

Capt T. A. C. Farman having been sworn is examined by the prosecutor.

On 27 Dec 43 I was R/cmd H Coy 1 Pl 1 K.

I checked H Coy as R/cy cmd at about 1000 hrs 29 Dec 43 prior to handing coy over to the new commander Major R K Campbell It was reported to me by the Pl Sgt that Pte Smith L D was not present I checked the pl. and found Pte Smith L D to be AWL.

No cross examination.

The prosecution points out at this point that there is certain difficulty in calling witnesses. The Pl Sgt and other N.C.O.'s are now in England. The C.S.M. is in hospital

D

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. NO

Question. Do you intend to call any other witness in your defence?

Answer. YES

Question. Is he a witness as to character only? *Answer.* AS TO FACTS

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence?

Answer. N/A

The accused in his defence says:†

[hands in a written address which is read, marked signed by the President and attached to the proceedings.]

Instruction. † In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court above.)

D 2

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

The Defence ~~makes an opening address~~ proceeds to examine witnesses

C40603 Sgt Stickle AC having been sworn is examined by the Defence

I was at B.H.Q on 25 Dec 43 I went to ~~Sgt~~ Smith there. He was acting as carrying party under C.S.M Clarke He came up with R.S.M Duffy and was digging slit trenches re around B.H.Q.

No Cross examination.

Questioned by the Court.

Q1 Did you see the accused on 24 Dec 43?

A1 No

Q2 Did you see the accused on 26 Dec 43?

A2 No

At this point the accused changes his plea to "Guilty" insofar as his absence dates from 1800 hrs. 26 Dec 43. RP 38

The accused having pleaded Guilty to the second charge, the provisions of Rule 33(5) are here complied with

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused C 5/5/41 Pte Leonard Bernard Smith is found guilty of the charges as laid, except H & P.E.R. absence in second charge began 1800 hrs 26 Dec 43 and NOT ended 24 Dec 43.

†The summary (or abstract) of evidence is read, marked C 12 signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. The accused in mitigation of punishment says — Yes

(or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.)

They duties as Flay 7 PC are those of a No 1 on the 6 pdr. On the 7 Dec 43 I had the 6 pdr alone with no other weapon. The No 2 was carrying our case of bombs. There was one bomb missing. He had his own rifle but no rifle for me. When the Dr moved off Flay was in the rear as we came under fire we were ordered off the road and under cover. It was evident that there was a sniper in our area as some shots were coming too close for any other fire that was going on at the time. Looking around I located the sniper and came to a halt.

Instructions.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officers to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

500 yards away having no weapon other than the P.14 I pointed to Annett to make his man and asked him to either lend me his rifle or shoot at him himself to which he replied that he had not had the fire Order yet I then told the Sgt. who had a T.H.C. and he said it would not be much use firing and just a T.H.C. having ~~two~~ men like that around me I stayed where I was and they moved ahead.

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

NO.

Answer.

Evidence as to character.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused

Special finding:
The Court find that the accused is guilty of the first charge and guilty of the second charge ~~except~~ with the exception that the charge should read 1500 hrs 26 Dec 43 rather than 1000 hrs 24 Dec 43

Dated this 27th day of March 1944

— P.A. Scott Major

Proceedings on Conviction before Sentence.

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

Capt W.T. Drayton N.S.F.E.R. is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* YES.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked B.C. signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* YES

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* YES.

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

Answer. YES.

Cross-examined by the accused.

NO

Instructions.—If in respect of the matters of the service of the accused or a subsequent conviction or otherwise, the Statute of the Court renders him liable to any exceptional punishment, or subjects him to it in addition to, the attention of the Court to the fact, and the Court must consider with the nature and amount of that additional punishment.)

Question to the accused.

Do you wish to address the Court? *Answer.* NO

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused C 3591 Private ~~Scott~~ Sentence
Leonard Bernard, Yarmouth Prince Edward Regt to
90 days detention
90 days pay

E A Stillman Maj
27 Dec 1944

"EXHIBIT B"

Statement of **EVIDENCE** in the case of

No C 8541. Pte SMITH.L.J.
"A" Coy,
Hastings & Prince Edward Regt.
Canadian Armed Forces.

Sir,

At TARANTO on the 30th Jan 1944, I was on duty on the Road Junction MINDISI - BARI Road, where I saw the above-named soldier, the time being about 1500 hrs.

I approached and asked him where he was going to which he replied, "I am absent".

I arrested and conveyed him to the Town Guard room, where I handed him over to the NCO i/c Guard to be detained. A ding over slip attached.

I obtained his particulars verbally, as he had no AB 64, or any other means of identification.

R Barker L/Cpl.
C.M.P. POLICE.

TARANTO.
30th Jan 1944.

REMARKS

C.M.F. 221.

CHARGE H.Q. 52 AREA Army Form B 252 (See King's Regulations)

C/321

Hastings & Prince Edward Regiment

"A" Battery Squadron Troop or Company

CHARGE against No. C 6541 Rank Pte.

Name KEITH L.B.

Place Date of Offence

OFFENCE WOAB. Absent from until..? apprehended by the Military Police, on June KRIYUNSI- SARI ROAD, on the 30th Jan.1944, about 1600 hrs. Contrary to AA S.12(6)

Names of Witnesses:—

6/21647. L/Cpl. R. BARKER. 231 Provost Coy, C.M.P. POLICE.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom awarded

Adjutant.

P.T.O.

"EXHIBIT C"

DOCUMENTARY EVIDENCE

Dec. 20 1943

Re:C-5541 Pte Smith L.B.
Time of arrest: 1200 hrs. 19 Dec 43
Sir:

I am H-40829, Sgt Wetherell,L.C. On being informed that this man was AWL from the Hast.P.E. Regt. and was in this camp, I immediately placed C-5541 Pte Smith L.B. under close arrest and held him as per instuctions given by your Provost Sgt.

Sgt L.C. Wetherell
H-40829 Sgt Wetherell L.C.
A/CSM Adv. 4 Bn. L.C.B.R.D.

EXHIBIT "D" Army Form B 115

RECORD OF THE DECLARATION OF A COURT OF INQUIRY ON THE ILLEGAL ABSENCE OF A SOLDIER

RECORD of the Declaration of a Court of Inquiry assembled at "In the field" on the 13 day of January 1944 for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipment, Instruments, Regimental Necessaries or Clothing of

No C.5541 Pte. Smith. L.B. "A" Coy Hast. & PER C.W.

DECLARATION

The Court declare; C.5541 Pte. Smith. L.B. "A" Coy Hast. & PER C.W. illegally absented himself without leave or other sufficient known cause "In the field" from 1700 hrs. 22 Dec 43 and that he is still absent and that on the 13th Jan 44 he was and is still deficient (Deficiencies in kit not known)

Names of President and Members. Pres. Capt. C.F. Hepburn
Memb. Lt. G.E. Baldwin.
" " J.B. Benton.

Signature of Commanding Officer Lt.-Col. A.A. Kennedy.

Certified true copy

Signature of Officer having custody of the Original Record;

LIST OF EXHIBITS

"A"	Signed statement by 04700 CSM Clarke, F.
"B"	Statement of evidence on back of S252 (Charge sheet signed by L/Cpl R. Barker, CM Police.
"C"	Documentary evidence signed by H40829 Sjt. Retherell, L.C., A/CSM Adv 4 Bn 1 CBRD.
"D"	AFB115 Declaration of a Court of Inquiry on the Illegal Absence of a Soldier stating that on 13 Jan 44 05541 Pte. Smith,L.S. was absent.

LIST OF WITNESSES FOR THE PROSECUTION

05867 Pte. Mountney, R.A.	Hast. & P.E.R.
Capt. E.P. O'Gorman.	Hast. & P.E.R.
05289 L/Cpl. Black, J.L.	Hast. & P.E.R.

Documentary Evidence.

LIST OF WITNESSES FOR THE DEFENCE

NIL

STATEMENT IN ACCORDANCE WITH R OF F. 14 (B)

C5541 Pte Smith, L.B. HQ Coy The Hastings & Prince Edward Regiment, desire to have an officer assigned to represent me at my trial by Field General Court Martial if he is available.

I desire the service of Lieut F.B. Kane, Hast & PER

L B Smith

C5541 Pte Smith, L.B.
Hast & P.E.Regt.

"EXHIBIT A"

14 Feb 44

Re:- C5541 Pte Smith, L B.

Sir:-

On 24 Dec 43 I was acting R S M of Hqs 1 S P C Regt. and we were in action west of Ortona. At approximately 0700 hrs I ordered Pte Smith, L B. to return to his Coy. At approximately 1000 hrs I checked with his Coy and found that Pte Smith L B had not reported. I did not see Pte Smith, L B. any time after 0700 hrs 24 Dec 43

[illegible] 1700 - [illegible] Coche Fo

B 1/7 F.S. Smith Offr

SUMMARY of EVIDENCE

In the case of C5541 Pte SMITH. L.B.
A Coy the Hastings & Prince Edward
Regiment

By direction of the Commanding Officer the Summary of Evidence as taken on oath

1st WITNESS FOR THE PROSECUTION

C5867 Pte MOUNTSEY H.A.
A Coy the Hastings and Prince Edward Regt having been duly sworn states

"At approx 1630 hrs 7 Dec 43 when A Coy moved off to attack a position across the Moro River I was 2 i/c of no. 1 sec no. 7 platoon. We were told to check our men and I found Pte Smith [illegible] to be no. 2. absent.

Pte Mountsey

~~He elected to be~~ ~~tried by~~ ~~witness the witness~~

KBS

B.W. Shuttleworth
Witness

Question by the accused :- When was I transferred to No. 1 section?

Answer by Pte Mountney - On the same day of the attack, the 1st December, the platoon was split up into two sections - no 1 and no. 2. Platoon headquarters was split between these two sections and Pte Smith came to no. 1 section.

H a Mountney

B IV 9 Hastings Page

SECOND WITNESS FOR THE PROSECUTION

CAPT. T.P. O'GORMAN Adjt
The Hastings & Prince Edward Regt
having been duly sworn states
I am Adjt of the Hastings &
Prince Edward Regt I produce
a statement of evidence signed
by C4700 C.S.M. CLARKE. F.
Hastings & Prince Edward Regt.
which states that that the
accused Pte Smith L.B. whom
I now recognize went A.W.L.
0900 hrs 24 Dec 43 The statement
is marked "EXHIBIT A".

I also produce a statement of
evidence on AFB 252 signed by
H/Sgt R. BARKER 231 Fmn Coy
C.M.P. which states that
C5541 Pte Smith L.B. whom I
now recognize was apprehended
by H/Sgt BARKER at about
1500 hrs 30 Jan 44 as an absentee
without leave The statement
is marked "EXHIBIT B"

I also produce a statement
of evidence signed by H40829
Sgt WETHERELL. L.C. acting
C.S.M. Adv. 4 Bn 1 CBRD.
which states that the accused

C5541 Pte Smith L.B. Hast. & P.C.R. [illegible]

whom I now recognize was apprehended as an absentee by Sgt Wetherell at 1200 hrs 19 Dec 43 The statement is marked "EXHIBIT C" I also produce A1 B115 record of the declaration of a Court of Inquiry on the illegal absence of C5541 Pte Smith L.B. A Coy Hastings & Prince Edward Regt which declares that C5541 Pte Smith L.B. illegally absented himself without leave from 1700 hrs 22 Dec 43 and that he was still absent on the 13 Jan 44 I now recognize the accused as C5541 Pte Smith L.B. This evidence marked "EXHIBIT D"

T.P. O'Gorman Capt.

The accused refuses to waive the attendance of C4700 C.S.M. Clarke F. at this summary of evidence. The accused declines to cross examine the witness.

THIRD WITNESS FOR THE PROSECUTION

C5289 Sgt Black S.L. A Coy the Hastings and Prince Edward Regt having been duly sworn states

I am Coy Clerk of A Coy Hastings and Prince Edward Regt
I certify that C5541 Pte Smith L.B. of A Coy the Hastings and Prince Edward Regt did not report to me at any time between 1st Jan 44 when he was shown absent by a Court of Inquiry and 1500 hrs. 30 Jan 44 when he was apprehended by the Military Police. C5541 Pte Smith L.B. was not present within the Coy area during this time. I recognize the accused as C5541 Pte Smith L.B.

J.L. Black

The accused declines to cross-examine the witness.
The accused was cautioned in accordance with R.P. 47(c)
The accused reserves his defence.
Certified that R.P. 47(c) (d) (e) and (f) have been complied with.
Taken down before me in the presence

and hearing of the accused [redacted] on the field this 19th day of March 1944.

K B Smith Lieut.
HMNZ 1 PCK.
Officer taking Summary of Evidence

No. 5541 Name SMITH, L.B. Sqn., Battery, or Company A. Corps INFANTRY. Date of enlistment 9 Apr. 40 G.C. Badges

Service or Proficiency Pay

M.F.M. 6 (A.F.B. 122) 15M—7-41 (2252-307) H.Q. 1272-39-1602

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Signature O.C. Company, etc. | Sheet No. THREE | Character

Plate	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	14/4/41	Pte.	—	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Field	12/11/40	"	—	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Field	31/5/41	Pte.	—	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Field	7/8/41	Pte.	—	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Field	2/8/41	Pte.	—	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
On & Upon 42 Corrected		Pte		soldier completed 24 hours [illegible] soldier was then relieved		[illegible]	[illegible]	R.O. 21	[illegible]
Field	1/42	Pte.		was in charge with Bicycle [illegible]	[illegible]	[illegible] days F.P.	[illegible]	Capt Allison	
Field	2/7/42	Pte.		was AWL from 0800 hrs 2/7/42 until 2130 hrs 6/7/42 (AA Sec 15(1))	Cpl Hollingsworth Capt Allison	10 days F.P.	21/7/42	Capt Allison	[illegible]
Field	12/41	Pte.		was AWL from 0800 hrs 12/11/42 until 2359 hrs 24/11/42 AA Sec 15(1)	[illegible] Lieut Bentley	28 days detention	2/11/42	Lieut Chapman	[illegible]
Field	1943	Pte.		was AWL from 1330 hrs 1 March to 1055 hrs 8 March 3 AA Sec 15(1)	Lt. Bentley	21 days F.P.	12/3/43	Lt Col Chapman	[illegible]

B I 2 (Amended) 1943

No. C854 Name Smith, L.B. Sqn., Battery, or Company Corps Infantry Date of enlistment G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 122) 175M—7-41 (252-20) H.Q. 1772-39-1252

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	12/8/43	Pte.		LWOS Awl from 12/8/43 to 1/11/43 AO 1515(3)	CSM Charlton Lt Cunningham	28 days det.	2/11/43	Col Harvey	Forfeits pay 12/8/43 to 1/11/43 Pay pay F R 1408 (B)
Field	1/11/43	Pte.		LWOS Awl from 0730 hrs 11/5/43 until 2145 hrs 12/5/43 AO 1515(3)	Lt Mackenzie Lt Glennie	7 days F.P.	18/5/43	Lt Col Harvey	Forfeits pay 11/5/43 to 12/5/43 (Pay Pay F R 1408 (B))
Field	1/7/43	Pte.		LWOS Awl from 1300 hrs 9/7/43 to 2000 hrs 16/7/43 AO 1515(3)	Lt Bissett	7 days F.P.	12/7/43	Lt Col Harvey	Forfeits pay 9/7/43 to 16/7/43 (Pay Pay F R 1408 (B))

CERTIFIED TRUE COPY by officer having custody of original books

Lt Adjutant and Officer i/c Records

B.V.F. Smith

ARMY FORM B.200.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
C6541	Pte	SMITH, LB	Hast & P.F.Regt.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—In a trial by field general court martial this summary must be inserted from the field conduct sheet.

The conduct sheet(s) mentioned should be produced to court with this statement but not annexed to the proceedings.

† See para. 577, K.R., 1940.

* The accused having stated (except in cases where the accusation is admitted by the accused) that he or she is the person mentioned in the conduct sheets, production being dispensed with by the court without evidence in each entry, and is accordingly awarded (a) [illegible] by or recommended for conduct.

Instruction.—If the charge is for drunkenness the entries must be separately and dated.

	* Within last 12 months.	* Since Enlistment.
For AWL	~~three~~ four times	~~eleven~~ TEN times.
For AA 27(1)	times	one times.
For AA Sec 40	time	one times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct, nil

There are ~~X~~ entries in the conduct sheets of the accused.

2. The accused has ~~not~~ been previously convicted. ~~as~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time. ~~or The particulars of the previous sentence~~

~~are set out in the schedule annexed to this statement.~~

4. The accused has been in confinement awaiting trial on the present charges, for no days in civil custody, and 57 days in military custody, making a total of 57 days, of which no days were spent in hospital.

5. The present age of the accused according to his record of service is 25 yrs 8 mths 17 days

6. The date of his ~~attestation~~ specified in his record of service is 2 Apr 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 5 yrs 10 mths 11 days

8. The accused is entitled to deferred pay or gratuity in respect of 5 yrs 10 mths 11 days service

9. The accused is entitled to reckon 5 yrs 10 mths 11 days service for the purpose of determining his pension, etc.

10. The accused is in possession of ~~a certificate of character~~ The CVSM

11. ~~The accused is a person who has been in the receipt of~~

~~pension.~~

12. ~~The accused has the following service in the Army Reserve~~

~~and is in the receipt of pension at the rate of~~

(P 19207) Wt 21822/144 250,000 8/42 A.&E.W. Ltd. Gp.698

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. G5541 Rank Pte. Name Smith, L.B. of Dept. Pnr Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
FDCM	3/9/41 "In the Field"	A.A. Sec 15 (1) N043 AWL from 2230 hrs 20/7/41 until 1725 hrs 17/8/41.	9 mons Detn.	

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 24 day of February 1944 F.P. O'Gorman Capt.

15. The accused has served as a non-commissioned officer continuously, without reduction, up the present date,

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

Date of Promotion.

(NOTE.—If any matter in any of the above paragraphs cannot be dealt from the regimental books the paragraph must be struck through except that in the case of a trial by field general court-martial the information may be obtained from such sources as are available and the paragraph inserted accordingly.)

4 P-34

Pte Smith L. B.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE. "WJR"

Accused: C 5541 Pte Smith L.B. (H & PER) 3 Cdn Rft Bn 1 CBRD

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st Charge	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of list see RP 44 fn b.)

~~At present under sentence for:~~ ~~beginning on (date)~~ "WJR" (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 75 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with hard labour for two years & to be discharged with ignominy from his Majestys Service.

(Sgd) ~~Judge-Advocate~~, if any. 4 Jan 45 Date awarded. (Sgd) "W. J. Ridge Maj" President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 780.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 739-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~ "SAL" (1. AA 57A. Delete if not used.)

(Sgd) "S A Lee" Col.

Date 8 Jan 45 T/ Commanding 1 Cdn Base Rft Group. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
C.5541 Pte Smith L.B.	Jan 9th 1945	"R. D. Clendinning" Maj.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

Certified true copy: RECORDED AT CMHQ IN AB 160 4P-34

(DM Capt. Cdn Sec GHQ 2 Echelon AFHQ) 27 Jan 45

CFA96 (In lieu of AFA3) 40-P & S-1608 (2864)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Col S.A. Lee A/ Comd 1 C.B.R.G. dated 2 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C.5541	Pte	Leonard Bernard	Smith	3 Bn 1 CBRD

PROCEEDINGS REVIEWED
"W P TAYLOR" Major
DJA.
GHQ Sec GHQ 2 Echelon AFHQ.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date) 4 Jan 45 "WJR"

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 72, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) "WJR" The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and "WJR" each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1000 hours trial commences. "WJR"

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) "WJR"
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~ "WJR"

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to~~ ~~the interpreter~~ ~~the shorthand writer~~ ? ~~Ans~~ "WJR"
~~The interpreter is sworn.(1) Do you object to~~ ~~the shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No Sir (2) "WJR"

(1. RP 110. 2. If no objection, waiting member retires. RP 58(B). If objection, see procedure AA 51, RP 25, 73, 98, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	W.J. Ridge	CIC	3 Bn 1 CBRD
Member	Lieut	J.J. Black	CAO	6 Bn 2 CBRD
Member	Lieut	J.O. Reid	RCE	7 Bn 2 CBRD
Judge-Advocate				
Prosecutor	Lieut	J.W. Maltby	CIC	3 Bn 1 CBRD
Defending Offr	Lieut	R.F. Guthrie	CIC	3 Bn 1 CBRD

Questions by President: Is the Prosecutor a lawyer? Ans no Is the Defending Offr a lawyer? Ans no (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused C5541 Pte L.B. Smith before arraignment makes(s) ~~XXX~~ ~~X~~ plea. "WJR" (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is ~~are~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does not "WJR" ~~not~~ object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~reviewed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The pro- "WJR" ceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning "WJR" of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s). "WJR" call witnesses as to character and make an address in mitigation of punishment.[2]
(*1. RP* 35 *fn* 3. *2. MML p* 54 *para* 47.)

"WJR" B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s)[1]. If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]

President to accused: Do you wish to make a statement? Ans. No Sir [5]
(*1. RP* 37(*B*). *2. RP* 37(*D*) *fn* 5. *3. RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. *4. See para* E3 *of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. ~~The Court considers the foregoing statement of~~ ~~The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ... charge(s). The accused is (are) so informed, and he (they) ... charge(s) his (their) plea(s) as ...~~ ~~charge(s). Part 4 of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of "WJR" Guilty in Part I of the Schedule.[1]
(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.[1]
(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]
(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeded by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....[1]
(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.[1]
(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.[1]
(*1. RP* 39(*C*), *114, KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.[1] The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).[2] The Court is closed, and considers the submission.[3] The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).[4]
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. *4. Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB: *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn, and you will not be subject to cross-examination.[3] But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.[4] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. ..... Do you intend to call witnesses on your behalf? Ans. ..... Are they witnesses as to character only? Ans. .....
(*1. RP* 155. *2. RP* 40(*A*), *see* 80(*D*). *3. RP* 40 *fn* 10. *4. RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1]
(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* 895. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.
(*1. RP* 42, 112(*A*). *See Notes in Part I of Schedule. 2. RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.[1]
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.[2]
(*1. AA* 54(3) (*b*), *RP* 45, 112(*A*). *2. AA* 54(3), *RP* 45, *117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?[1]

Ans. No Sir.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

"WJR" E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service[1], and certified true copy (copies) of Conduct Sheet(s)[2], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (*g*) (ii), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex B1 respectively.[3]
(*1. AFB* 353 *or AFB* 296. *2. MFM* 6. *3. RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in "WJR" mitigation of punishment?[1] Ans. My defending offr will, sir,[2]
(*1. RP* 37(*C*), 46(*D*). *2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]
(*1. AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.[2]
(*1. When several accused tried separately see RP* 71(*D*). *Give sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, (*A*)(*B*), *KR Con* 308, 330, 563-566, *Overseas RO* 309, 2323, *MML p* 66, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1B), (*d*)(7), *KR Con* 564. *2. RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see inside of back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET "WJR"

The accused, C5541 Private Leonard Bernard SMITH, presently on strength of 3 Canadian Base Reinforcement Battalion, 1 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas, placed on Active Service, is charged with:

First Charge
Army Act
Sec 15 (1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field in Italy, at about 2130 hours 4 Jun 44, absented himself without leave until apprehended by Military Police at about 0200 hours 16 Oct 44. Total Time Absent 133 days 4 hours 30 minutes.

"R.D. Clendenning Major"
(R.D. Clendenning) Major
A/Commanding Officer,
3 Cdn Rft Bn, 1 C.B.R.D.

In the Field
28 Dec 44

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

"S.A. LEE"
(S.A. LEE) COL
A/ Comd 1 Cdn Base Rft Gp
Cdn Army - CMF.

In the Fd
In Italy
8 Jan 45

"WJR"

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA2)
40/FAS/1497 (2868)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C.5541	Pte		Leonard Bernard	SMITH	3 Bn 1 CBRD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 2 Jan 45 endorsed by me, (~~or by my offr or my staff for me~~), "To be tried by Field General Court-Martial". "SAL"

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~.) "SAL"
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ "SAL"
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr. mentioned hereunder.~~ "SAL"
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	W.J. Ridge (CIC	3 Bn 1 CBRD

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Lieut	J. J. Black (CAC)	5 Bn 2 CBRD
Capt or Lieut to be detailed by the OC 7 Bn Scot.		

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lieut to be detailed by the OC 2 Bn 1 CBRD.		

~~JUDGE ADVOCATE~~ "SAL"

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ITALY (Country.)

"S.A. Lee" (Signed personally. RP 105 fn 2.) Colonel (Rank.)

Date 2 Jan 45

(S.A. Lee)
A/ Commanding 1 Cdn Base Rft Gp, Cdn Army-CMF,
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE "WJR"

I hereby certify that I have this day examined
No. C.5541 Rank Pte Name Smith L.B.
and in my opinion is fit to undergo trial by Court Martial.

Date 4-1-45 "H Lolley Capt"
(Medical Officer)

"WJR"

"O R" E 3

C.5541 Pte Smith L.B.

The a/n soldier volunteered for Active Service in April 1940 and has had four years service overseas. He landed in Sicily on July 13th 1943 and fought with the H & P.E. Regiment from Agaoria to Ortona. In all this time overseas only one privilege leave was granted to this soldier and he was recalled from it.

After serving as a rifleman in Sicily the accused volunteered as a sniper and requested a sniper's course but was refused. Previously in England he had endeavoured to obtain employment as a tradesman in the army as he had been a cabinet maker in civilian life, this opportunity was also denied him. In another instance he requested an opportunity to qualify as a driver mechanic but without success.

It would appear to the defence that instead of receiving encouragement and assistance this soldier has been discouraged in any efforts he put forth to become an efficient soldier.

"R.F. Guthrie Lieut".
Defence.

Ex "A" "WJR" G.R.

SUMMARY OF EVIDENCE

In the case of C-5541 Private Leonard Bernard Smith, presently on strength of 3 Canadian Base Reinforcement Battalion, 1 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken on oath.

First witness for the Prosecution. Lieut A.E. Ruthreen Ass't Adj 3 Bn 1 CWRD having been duly sworn, states:

I am Lieut A.E. Ruthreen, Ass't Adj of 3 Bn 1 CWRD I submit a certified true copy of an X list Hastings & Prince Edward Regt Pt II Order, issued by Can Sec GHQ 2 Echn AAI. This Pt II order #87 dated 15 Jul 44 states in Para 4 (a): "AWL from 2130 hrs 4 Jun 44, still absent 2130 hrs 26 Jun 44, C.5541 Pte Smith L.B.".

I further submit a certified true copy of an X list Hastings and Prince Edward Regt. Pt II order issued by Can Sec GHQ 2 Echn AAI. This order No.118 dated 21 Nov 44 states in Para 4 (a): "208 X 2 list on appr. from desertion 0200 hrs 16 Oct 44 - C5541 Pte Smith L.B."

"A.E. Ruthreen Lieut".

The accused declines to cross-examine the witness at this time.

"L.B. Smith".

First Witness for Prosecution cont'd.

The Pt II order No.57 referred to by the above witness was read to the accused, marked Exhibit "A" and attached to the summary.

The Pt II Order No.112, referred to by the above witness, was read to the accused, marked Exhibit "C" and attached to the Summary.

"R. Ian Davey Lt"
(Off detailed to take Summary of evidence)

The accused was cautioned in accordance with Rule of Procedure 4 (c) as follows:

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence".

The accused declines to make a statement or to give evidence at this time.

"L. H. Smith",

I Certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence and hearing of the accused and that the Rules of Procedure 4 (c) (d) (e) and (f) were complied with.

"R. Ian Davey Lt"
(Officer detailed to take Summary of Evidence)

In the Field
28 Dec 44.

"KIRT" Exhibit "A"

CERTIFIED TRUE COPY,
"D M Owen" Capt.
OFFICER HAVING CUSTODY OF REGIMENTAL DOCUMENTS.

Last Order No. 96 14 Jul 44 — A-LIST HASTINGS AND PRINCE EDWARD REGIMENT This Order No. 57
PART II Order Issued by CANADIAN SECTION, G.H.Q. 2ND ECHELON A.A.I. 15 Jul 44

"B" OTHER RANKS

Page 2

4. ABSENT WITHOUT LEAVE

(a) AWL from 2130 hrs 4 Jun 44 still absent 2130 hrs 26 Jun 44 (22nd day.)
C. 5541 Pte Smith L.B.

"KIR" Exhibit "C".

Certified True Copy of Regimental Books in my Custody.
"A. E. Ruthven Lieut" A/Adj 3 Bn 1 CHRD.

Last Order No. 111 — A-LIST HASTINGS AND PRINCE EDWARD REGIMENT This Order No. 112
PART II Order Issued by CANADIAN SECTION G.H.Q. 2ND ECHELON A.A.I. 21 Nov 44.

"B" OTHER RANKS

4. STRENGTH INCREASE

(a) A.W.O.L. ~~from~~ AR List on appr from desert.
0800 hrs 18 Oct 44.
C. 5541 Pte Smith L. B.

"WJR" E

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C.5541	Private	Smith, L.B.	(H&PER) 3 Cdn Rft Bn, 1CBRD

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AA Sec 15 (1) ..... 12 times.
For ..... times.
For "LDC" ..... 2 times.
For ..... 1 times.

Date of first entry in Field Conduct Sheet "LDC"
Date of last entry in Field Conduct Sheet "LDC"

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is not under sentence for .....
beginning on the ..... day of "LDC"

4. The accused has been awaiting trial on the present charges for 0 days in civil custody; and for 75 days in military custody, *i.e.*, ... days in open arrest, ... days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 26 yrs 208 days.

6. The date of his AEM Pt 1 "LDC" enlistment 2 Apr 40 ..... for military service

7. The service which the accused is allowed to reckon is "LDC"

†State the military decorations (if any) held by accused.

8. The accused is in possession of† CVSM & CLASP

9. (*If the accused is a warrant officer or N.C.O.*) The accused has served continuously, without reduction, to the present date "LDC"

	Date of Promotion.
In the substantive rank of	.....
In the war substantive rank of "LDC"	.....
In the acting rank of	.....

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

W 8880/1402 20,000 2/44 SL 4751. Forms/B.296/War/1

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
Civil Authorities	23 Jan 41 in the Field	Charge of Theft	6 Months Hard Labour.	
F.G.C.M.	9 ?? 41 inthefield	AA SEC 15 (1)	9 Months Detention	
F.G.C.M.	27 Mar 44 in the Field	AA Sec 15 (1)	90 days F.P.	

"CDC"

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 30 day of Dec 1944

"R D Clendenning Major"

"WJR" E 1

No. 5541 Name Smith, L.B. Sqn, Battery, or Company — Corps CIC — Date of enlistment 9 Apr 40 — GC Badges — Service or Proficiency Pay — MFM 6 (AFB 122) 40/PAM/130 (3488)

Date of last entry in Company Conduct Sheet: 3 Jan 18 — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No 1 — Signature OC Company, etc — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	23/9/40	Pte		AA 15(1) AWL from 2315 hrs 17 Sep 40 to 0900 hrs 22 Sep 40 (4 dys 10 hrs 45 mins)		14 dys detn	14 dys FR&I 149(2) 5 dys FR&I 149(1)(a)		
Field	22/10/40	Pte		AA 15(1) AWL from 1300 hrs 14 Oct 40 to 2359 hrs 21 Oct 40 (7 dys 10 hrs 59 mins.)		13 dys detn	13 dys FR&I 149(2) 8 dys FR&I 149 (1)(a)		
Field	23/1/41	Pte		Tried by Civil Authorities for theft		6 Mths H.L.	28 dys FR&I 149 (1) (c) 182 dys FR&I 149(1)(h)		
Field	9/4/41	Pte		AA 15(1) AWL from 2200 hrs 12 Nov 40 to 1530 hrs 17 Nov 40 (4 dys 17 hrs 30 mins)		28 dys detn	28 dys FR&I 149(1) (b) 5 dys FR&I 149(1) (a)		

(PTO)

No C5541 Name Smith, L.B. Sqn, Battery, or Company Corps CIC

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Date of enlistment 9 Apr40 | GC Badges | Service or Proficiency Pay | Sheet No. 2 | Signature OC Company, etc | MFM 6 (AFB 122) 65/PAM/108 (3488)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Character Remarks
Field	18/5/43	Pte		AA 15 (1) AWL from 0800 hrs 11 May 43 to 2140 hrs 15 May 44 (4 dys 13hrs 40 mins.		Forf of 21 dys pay	21 dys FRAI 149(2) 5 dys FRAI 149(1) (a)		
Field	21/6/43	Pte		AA 15(1) AWL		14 dys FP	Total Forf of 38 dys pay.		
Field	10/10/43	Pte		AA 15 (1)		7 dys F.P.	7 dys FRAI 149(2)		
Field	27/3/44	Pte		FUCW AA 15(1)		90 dys FP	Total Forf of 194 dys pay.		

CERTIFIED TRUE EXTRACT FROM MFM 4 - 27 Dec 44
Sgd) (J.L.Hayes) Captain for OIC Records
Canadian Section G.H.Q. 2nd Echelon, A.A.F.

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	8/5/41	Pte		AA15(1) AWL from 2200 hrs 3 May 41 to 1510 hrs 5 May 41 (1 dy 17 hrs 10 mins		168 hrs detn		7 dys FR&I 149(2) 8 dys FR&I 149 (1) (a)	
Field	20/6/41	Pte		AA15(1) AWL from 2230 hrs 15 Jun 41 to 0600 hrs 16 Jun 41 (7 hrs 30 mins)		14 dys C.B.		1 dys FR&I 149(1) (a)	
Field	9/ /41	Pte		FGCM AA 15(1) AWL from 20 Jul 41 to17Aug 41 Cost of appr £2-17-1.		9 mths detn		Total forf of 290 dys pay	
Field	14/7/42	Pte		AA 15(1)		10 dys F.P.		Total forf of 15 dys pay	
Field	6/8/42	Pte		AA 15(1)		7 dys C.B.		Total forf of 1 dys pay.	
Field	6/11/42	Pte		AA 15(1) (absent 11 dys 15 hrs 50 mins		28 dys detn		28 dys FR&I 149(2) 12 dys FR&I 149 (1) (a)	
Field	27/5/43	Pte		AA 15(1) absent 4 dys 10 hrs 40 mins.		28 dys detn		28 dys FR&I 149 (2) 5 dys FR&I 149(1) (a)	

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

CERTIFIED TO BE A TRUE COPY FROM REGT'L BOOKS IN MY CUSTODY.

"A. E. RUTHERN LIEUT".
Officer having charge of Regt'l Books.

3376. Lt. Smith L B.

C-5541 Pte. Smith, L.B.
No. 1 C.I.H.U.

Army Form A.3.

C-337

Correspondence to be PINNED here.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this 1st day of September, 1941.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS, CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[redacted]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*[redacted]

*1. [redacted]
*2. [redacted]
*3. [redacted]

[redacted]

PROCEEDINGS REVIEWED

President.		
Rank.	Name.	Regiment.
Major	G.W. Smart	No.1 Cdn Sigs Bldg Unit
Members.		
Rank.	Name.	Regiment.
Captain	J.M. Bonin	No.2 Cdn Inf Bldg Unit
Lieutenant	C.W. Darling	No.1 Cdn Gen Bldg Unit
Lieutenant	J. Chapin	No.3 Cdn Inf Bldg Unit

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Brigadier
Commanding Cdn Base Units, Cdn Army.
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
C-5541 PTE. SMITH, L.B. No.1 Cdn Inf Hldg Unit.	First Charge A.A. sec 15(1) See charge sheet attached.	Guilty	Guilty To undergo detention for nine (9) months, and to be put under stoppages of pay until he has made good the sum of £2.17.1 in respect of costs of apprehension.	Confirmed D.M. Mclaren Brig

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary) :—

(Signed) D.M. Mclaren Brigadier (Signed) Lwlmar Maj
Commanding Cdn Base Units, Cdn Army. *Convening Officer* (*e*) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the Third day of September, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) shorthand writer Lwtmaj
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this Third day of September 1941.
Lwlmar Maj
President of the Court Martial.

C. Certificate in case of death sentence.

* See footnote (b) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

Signed this ____ day of ____ 19 ____
Lwlmaj
President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has an authority to commit to prison, or, having such authority, recommends suspension.

~~(a) I direct that the soldier named in the margin be not committed to prison until further order.~~)

Signed this 5th day of Sept 19 41.
D.M. Mclaren Brigadier
Confirming Officer.

Promulgated and extracts taken in the case of C-5541 Pte. Smith, L.B.
(*a*) (Dated) 8-9-41 (Signed) L.W.W. Glover A/Col.

Promulgated and extracts taken in the case of
(Dated) (Signed)

Promulgated and extracts taken in the case of
(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE-SHEET

The accused, C-5541, Pte. Smith L. B., (Hastings & Prince Edward Company), on the strength of No. 1 Canadian Infantry Holding Unit as a reinforcement, a soldier of the Canadian Army (Overseas), is charged with:-

First charge Section 69 Army Act

When on Active Service, absenting himself without leave:-

in that he

at Algonquin Camp, Witley, Surrey, absented himself without leave from 2230 hours on the 20th day of July 1941, until he surrendered himself to the Corps of Military Police at Manchester at 1725 hours on the 17th day of August 1941, thereby incurring expenses to the public for the costs of his apprehension in the amount of £ 2 - 17s. - 1d.

L.W.S. Slack ....Lt-Col.,
(L.W.S. Slack) Officer Commanding,
No. 1 Canadian Infantry Holding Unit.

Witley, Surrey,
23rd Aug. 1941.

To be tried by Field General Court Martial

(F.R. Phelan) Brigadier
Commanding Cdn Base Units

Bordon, Hants
This 1st day of Sept 41.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD AT WITLEY ON THE 3rd DAY OF SEP. 41.

TRIAL OF:- No. C5441 PTE. SMITH, L. B.

The order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:- (Name) LT. F. J. HEATHERINGTON (Unit) / C.I.H.C.

Defending Officer:- (Name) LT. A.M. McLEAN (Unit) / C.I.H.C.

At 1230 hrs the trial commences.

The order convening the Court is read, signed by the President and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1. Do you object to be tried by me as President or by any of the officers whose names you have heard read over? A1.- No Sir.

The President, members and judge-advocate (if any) are duly sworn.

The officers under instruction are duly sworn.

~~The shorthand writer is duly sworn.~~ ~~acting as shorthand writer?~~

Q2. ~~Do you object to~~

A2.-

The accused pleading Guilty to the charges in the above mentioned charge sheet, R.P.35(B) is duly complied with.

The summary of evidence is read, signed by the President, and attached to the proceedings.

Q3. Do you wish to make any statement in mitigation of punishment?

A3.- No Sir.

Q4. Do you wish to give evidence yourself or to call any witnesses as to character?

A4.- No Sir.

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER.

Accused has served [illegible] produces a [illegible] + MEMO. Re conduct of def. & pr. presented was from MEMO Re being entry + eff. to June 41 appointed L/Cpl. w.p. which ceased [illegible] 9th June 41. A.C.I. 1147 of 20 June 41.

Re. penalties out after long list of crimes was made L/Cpl. surrendered himself to be goes soldier.

Against MEMO relates to —

Lieut Smart

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD
AT WITLEY ON THE 3rd DAY OF SEP 41.

C5441, PTE. SMITH, L. B.

TRIAL OF:- No.

The order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:- (Name) LT. F.S. HEATHERTON (Unit) 1 C.I.H.U.

Defending Officer:- (Name) LT. B.M. McLEAN (Unit) 1 C.I.H.U.

At 1230 hrs the trial commences.

The order convening the Court is read, signed by the President and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1. Do you object to be tried by me as President or by any of the officers whose names you have heard read over? A1.- No Sir.

The President, members and judge-advocate (if any) are duly sworn.

The officers under instruction are duly sworn.

~~Q2. Do you object to~~ ~~acting as shorthand writer?~~

~~A2.-~~

~~The shorthand writer is duly sworn.~~

The accused pleading Guilty to the charges in the above mentioned charge sheet, R.P.35(B) is duly complied with.

The summary of evidence is read, signed by the President, and attached to the proceedings.

Q3. Do you wish to make any statement in mitigation of punishment?

A3.- Yes Sir.

Q4. Do you wish to give evidence yourself or to call any witnesses as to character? A4.- No Sir.

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER.

Prosecutor sworn produces A.F.B. 252 + O.C.H.Q.

at request of Def Off prosecutor read from M.F.M. 2 the following entry "Aff. 30 June 41. appointed L/Cpl. W.P. on recommd course 906. D.O. 147 of 30 June 41.

Def Off points out after long list of crimes accused was made L/Cpl. surrendered himself + consent to be ord soldier.

Court examines M.F.M. 2 returned to

Lieut Smart Maj

SUMMARY OF EVIDENCE

In the case of, C-5541 Pte. Smith, L.B., (Hastings & Prince Edward Company), No. 1 Canadian Infantry Holding Unit.

The Commanding Officer directs that the evidence shall be taken under oath.

1st Witness

Lieut. A.M. Hueston, Assistant Officer i/c Records, No. 1 Canadian Infantry Holding Unit, having been duly sworn, states:

I am Assistant Officer i/c Records, No. 1 Canadian Infantry Holding Unit and as such produce the following documents in evidence:

(1) A certified true copy of a Record of the Declaration of the Court of Inquiry, assembled at Witley, Surrey, on the 11th day of August 1941, showing that the accused absented himself without leave from 2230 hours on the 20th day of July 1941.

(2) A certificate of surrender, under Section 163 (1), (j), showing that the accused surrendered himself to the Corps of Military Police at Manchester at 1725 hours on the 17th day of August 1941.

These documents refer to C-5541 Pte. Smith, L.B., whom I now recognize.

A.M. Hueston .....Lieut.,

(The accused declines to cross-examine this witness).

2nd Witness

Lieut. M.E. Byers, of No. 6 Company, Canadian Provost Corps; will prove that the expenses incurred in the apprehending and returning of the accused to his Unit from Manchester was in the amount of £2 - 17s - 1d.

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this summary of evidence.

Having regard to the exigencies of the Service the attendance of this witness cannot in my opinion be readily procured.

The accused does not demand the attendance of this witness for cross-examination.

.....Lieut.,
Officer Taking Summary.

SUMMARY OF EVIDENCE(Cont'd)

The accused having been duly cautioned in accordance with Rule of Procedure 4 (e), reserves his defence.

Certified that Rule of Procedure 4 (c), (d), (e), (f), and (g), have been complied with.

Taken down by me in the presence and hearing of the accused, this 25th day of August 1941, at Algonquin Camp, Witley, Surrey.

.....Lieut.,
Officer taking Summary.

R.A O.(Can.)539

Ref: K.R.& O.(Can.)539

Regt.No: C-5541.

Rank: L/Cpl.

Name: Smith L.B.

Regt: NO 1.Cdn Inf Hold Unit.

Unit:

The following expenses were incurred in apprehending and returning the m/n soldier to his unit from Manchester.

DATE	PARTICULARS	AMOUNT		
London.20-8-41.	Escorts return fare from London to Manchester,	1£	8s	2d
	Prisoners single fare to London from Manchester,		14s	1d
	Prisoners single fare from London to		14s	10d.
	Escorts expense for bed,meals,bus fares and meals for the prisoners.			
	TOTAL -- £	2£	17s	1d

I certify that the above statement of expenses is correct and that the amounts are fair and just.

M. E. Byers. Lt.
for O.C. No. 6 Company
CAPT.
CANADIAN PROVOST Corps

NOTE.

No reimbursement for this account is to be sent to our office from your goodself, as the amount has been paid from petty cash and charged to Public Funds.
If the accused is found guilty a stoppage of pay should be put through your units Part II Orders.

Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at Camp Algonquin Witley, Surrey.

on the 11th day of August 1941, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of

No. C-5541 Pte. Smith, L.B. (HAPE)

DECLARATION.

The Court declare that C-5541 Pte. Smith, L.B. illegally absented himself without leave at Witley, Surrey, at 2230 hours 20th July 1941, and that he is still so absent, and that on 21 July 1941 he was deficient and is still deficient the following articles of kit:

		£.	s.	d.
Anklets	1pr		4	6
B.D. Blouse.	1	1	2	6
B.D. Trousers	1pr	1	0	6
Boots Ankle	1pr	1	2	6
Cap Field Service	1		2	5
Comb Hair	1			2
Discs Identity	1			3
Dressing First Field	1		1	1
Fork Table	1			4½
Jacket Sweater	1		6	9
Knife Table	1			10
Towels Hand	1pr		1	6
Shorts P.T.	1		2	1
Helmet Steel	1		7	0
Respirator Container	1		4	3
Respirator Haversack	1		4	7
Respirator Facepiece	1		7	6
Sets, Anti-dim	1			2½
Eyeshields A.G.	6		2	3
Ointment A.G.	1			9½
	Total.....	£2	11s.	10½d

Names of President and Members

President: Capt. R.J.Kerr, (R.A.ofC.)
Member: Lieut. W.G. Jeffery, (R.A. of C.)

L.W.W. Slack.
Signature of Commanding Officer

CERTIFIED TRUE COPY.

E.J. Rider Lieut.
Signature of Officer having custody of the Original Record.

(42581) W.L.24113/1022 75,000 10/39 A.& E.W.Ltd. Gp.498 Forms/B115/54
(75648) W.L.44722/700 225,000 1/40

CERTIFICATE OF SURRENDER UNDER SECTION 163 (1) (3), A.A.

I, E.C.C. Garfit Major, certify that soldier C 5541 Rank L/Cpl.
Name Smith L. Hastings & Prince Edward Coy., 1st. Can. Inf. Hldg. Unit
xxxxxx xxxxxxx
surrendered himself to number 4978405 Rank L/Cpl. Name Hill C.
Corps of Military Police, at 1725 hours on the Seventeenth of August 1941.
As a deserter (or absentee without leave).

E.C.C. Garfit Staff Lieut.
Major.
D.A.A.G. East Lancashire Area.

Headquarters, C.M.Police,
East Lancashire Area,
Manchester.

WAIVER

I, No. C-5541, Pte. Smith, L.B., (Hastings & Prince Edward Company), No. 1 Canadian Infantry Holding Unit, having full knowledge that, under Rule of Procedure No. 89, I am entitled to seven days' notice of my trial if the Officer prosecuting has legal experience,

HEREBY WAIVE MY SAID RIGHTS.

Witley, Surrey,
25th Aug. 1941.

L.B. Smith C.5541 Pte.,

STATEMENT BY DEFENDING OFFICER

I, No. C-5541, Pte. Smith, L.B., (Hastings & Prince Edward Company), No. 1 Canadian Infantry Holding Unit, desire to have an officer assigned by the Convening Officer to represent me at my trial by Court-Martial.

I desire the services of Lieut. M.H.B. Cochrane (R.A.P.C.) if he is available.

Witley, Surrey,
25th Aug. 1941.

Smith L.B. C.5541 Pte.,

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 557

I certify that I have this morning examined

No. G-5541 Pte. Smith, L.B. (N. & P. 2.)

of No. 1 Can. Inf. Holding Unit and in my opinion he

is fit to undergo Trial by Court Martial.

~~xxxx~~

Station Algonquin Camp

Date 3 Sept. 1941

Medical Officer

C-5541 Name Smith, L.B. Sqn., Battery, or Company Depot Corps Mast.& P.E.Reg Date of enlistment 9-4-40 G.C. Badges Service or Proficiency Pay M.F.M. 6

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. Two. Signature O.C. Company, etc.) | Character

Place	Date of offence	Rank	Cause of drunkenness	PREVIOUS SHEET DESTROYED 9-10-40	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				T.O.S. C.(R) T.C. 29 May 40 D.O. # 137 1 June 40				
Camp Bordon	17-6-40	Pte.		When on Active Service AWL from 0615 hours 17-6-40 to 1055 hrs 29-6-40 (12 Days 4 hrs 40 min) A.A. Sec15(1) 46.	Cpl Bowan Cpl Dainard Forfeits 15 Days pay	4-7-40	Lt-Col Campbell	Forfeits 13 Da pay FR&I
Bordon	17-9-40	Pte.		W.O.A.S. AWL from 2215 hrs 17-9-40 till 0900 hrs 22-9-40, Total Absence, 5 Days	Sgt. Vaughnett. 5 Days pay 14 Days Det.	23-9-40	Lt-Col.L.W.W., Slack	
Bordon	14-10-40	Pte.		W.O.A.S. AWL from 1300 hrs 14-10-40 to 2359 hrs 21-10-40 A.A.Sec 15 (1)	Cpl Belcher 8 Days pay Sgt. Potts 18 Days Det.	22-10-40	Lt-Col., L.W.W. Slack	

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Witley	17-11-40	Pte.		AWL from 2200 hrs 16-11-40 until apprehended by the Civil Authorities at Kingsley (Hants) at about 1530 hrs 17-11-40, A.A Sec. 15 (1)	L/Cpl Cudmore	28 days Det. RELEASED FROM DETENTION BARRACKS WITLEY ON May 3-1941. REMISSION EARNED 3 days G.W.B.	9-4-41	Lt-Col L.W.W. Slack, Cmdt	Forfeits 5 days pay F I.Sec149(1) (a), Forfs 28days pay FR&ISec.149 (1) (b), Total Forf. 33 Days pay
				Sentenced to 6 Mos hard labour by the Civil Authorities on theft charge.		Forfeits 22 Days pay FR&I Sec 149 (1) (c), Forfeits 182 days pay FR&I (1)(b) Total Forfeiture 204 days pay.			

No. C-5541 Name Smith, L.B. Sqn., Battery, or Company #1CIHU Corps H&PE

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Date of enlistment 9-4-40 | G.C. Badges | Signature O.C. Company, etc. | Service or Proficiency Pay | Character

Sheet No. Three

M.F.M. 6 (A.F.W. 133) 16GM—4.39 (1782) H.Q. 1775-43-14

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Witley Surrey	3-5-41	Pte.		(1) AWL from 2200 hours 3-5-41 to 1510 hrs 5-5-41 A.A. Sec. 15(1) (2) Stating a falsehood to the Military Police A.A.Sec 27(4)	Documentary	168 hrs Det.	8-6-41	Lt-Col., L.W.W.Slack	Forf.2 days pay FR&I 149(1)a Forf.2days pay FR&I 149 (1)(b) Total Forf. of pay 4 days
Witley	17-6-41	Pte.		W.O.A.S. AWL from 2230 hrs 15-6-41 to 0600 hrs 16-6-41. Total Absence 7 hours 30 min,Sec 15(1) A.A.	Cpl. Forshaw C.B.	14 Days	20-6-41	Lt-Col L.W.W. Slack	1 days pay FR&I 149 (1)(a).

CERTIFIED TRUE COPY

Army Form B 296.

Statement as to Character and Particulars of Service of Accused.

C-5541 Pte. Smith, L. of the (Hastings & Prince Edward Company) No. 1 Cdn. Infantry Holding Unit.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with:—

	*Within last 12 months.		*Since Enlistment.	
For Absence without leave	5	times	6	times
For False Statement regarding leave (A.A. Sec 27 (4))	1	times	1	times
For		times		times
For		times		times

Number of instances of gallantry or distinguished conduct, NIL

or,

~~There are no entries in the Conduct sheets of the accused.~~

2. ~~The accused has not been previously convicted.~~

or,

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

Note.—The Regimental and Squadron, Battery or Company Conduct Sheets to be produced in Court with this statement but are not to be attached to the proceedings.

See Para. 605, K.R. 1935.

*The numbers should be entered with the number of *Entries* in the Conduct sheets, punishments being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Interpretation.—If the charge is for desertion the intent to desert must be stated expressly and dated.

Description of Court by which tried, or Order of Officer dispensing with the charge or dispensing with Trial	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 3rd day of September, 1941

Lieut.,
(A.J. Alder) Officer i/c Records,
No. 1 Cdn. Infantry Holding Unit.

3. The accused is not under sentence at the present time,

or,

~~The accused at the present time is under sentence for~~ ~~beginning on the~~ ~~day of~~.

4. The accused has been in confinement, awaiting trial on the present charges

for 0 days in Civil Custody,

and 17 days in Military Custody.

Total 17 days.

Of which 0 days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 22 years,

6. The date of his ~~enlistment~~ attestation specified in his ~~record of service~~ attestation paper is 9th April 1940

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 16 Months

8. The accused is entitled to deferred pay or gratuity in respect of 16 Months service.

9. The accused is entitled to reckon 16 mos ~~years~~ service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward ~~or is in possession of or entitled to~~.

~~11. *If the accused is a warrant officer.*) The accused before he was made warrant officer last held the regimental rank of~~

12. *(In the case of an officer.)* The accused holds in the army the rank of , dated , and in his regiment (or corps or department) the rank of , dated

13. The accused has served as a non-commissioned officer continuously without reduction, to the present date,

Date of Promotion.

In the rank of years,

In the rank of years,

~~In the rank of~~ ~~years.~~

(Insert this—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name C-7541 Pte. Smith L. B. (RAPC) of the NO. 1 CDN. INFANTRY HOLDING UNIT.

NOTE.—A verbatim extract from the regimental books, stating their convictions and dispensations with trial, must be inserted.

Description of Court by which tried, or station of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
Civil Authorities	9th December 1940 Kingsley , Hants	THEFT	6 months imprisonment with Hard labour	

(Continued overleaf.

5H-119

Tpr. Smith L. D.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: L51183 Tpr Smith L.D. 5 Cdn Armd Regt (8NBH).

	Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 40	Guilty	Guilty	
2nd	AA 40	Guilty	Guilty	
3rd	AA 40	Guilty	Guilty	
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of Kit see RP 44 fn 6.)

At present under sentence for ____ beginning on (date) ____ (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 12 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:
28 Days Field Punishment, and forfeits all ordinary pay for 28 Days.

(Sgd) J.J. Judge-Advocate, if any. 21 Apr 45 Date awarded. (Sgd) J. Smith Maj. President. (RP 45/50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ____ (Sgd) ____ Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~ (1)
(1. AA 57A. Delete if not used.)

(Sgd) H.W. Cumberland

Date 23 Apr 45 Commanding (H.W. Cumberland) Brig Comd 5 Cdn Armd Bde Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
L51183 Tpr. Smith L.D.	1 May 45	J.W. Robertson, Capt ADJT: 5 CDN ARMD BDE

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160. 574-119.

FIELD GENERAL COURT-MARTIAL

CFA90 (In lieu of AFA3) 40/P.G.S./1668 (2804)

RECEIVED 19 MAY 1945 JAG

Convened by Order of Brig I H Cumberland Comd 5 Cdn Armd Bde dated 11 Apr 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L 51183	Tpr	Lindsay Darrell	SMITH	5 Cdn Armd Regt (8NBH)

PROCEEDINGS REVIEWED

4 May 45 A.J. Brody Capt

REVIEWING OFFICER, JAG BRANCH

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) HOLLAND on (date(s)) 21 Apr 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr, if any,~~ assemble, and the ~~Convening Order~~.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order. CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0740 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ____ as interpreter? Ans ____
The Interpreter is sworn.(1) Do you object to ____ as shorthand writer? Ans ____
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans Nil (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 98(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj	J SMITH	2 Cdn Armd Regt (LdSH)
Member	LIEUT	N.W. HOGAN	9 Cdn Armd Regt (SCO)
Member	Capt	G.S.G. JONES	5 Cdn Armd Div Sig Regt
Judge-Advocate			
Prosecutor	LIEUT	M.J. UPHAM	2 CAR (SNOR)
Defending Offr	LIEUT	BLACK J.J.	2 CAR (LdSH)

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans Yes (1)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Convr Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DJ p 32.)

A8. The accused L51183 Tpr LINDSAY Darrell Smith before arraignment make(s) (no) (a) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 102), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) ~~The President records the pleas in Part I of the Schedule.~~
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and see separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination : and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans No (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement(s) (1).~~ The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ~~all~~ charge(s). ~~The accused is (are) so informed, and he (they) changes (his) (their) plea(s) on all charge(s).~~ Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. – Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded see Notes.*)

E2. The Prosecutor produced Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex P and Ex C respectively.(3)
(*1. AFB 255 or AFB 294. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A)(B), KR Can 308, 330, 563-564, Overseas RO 309, 2323, MML p 162, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 98(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

[redacted], L.D.

W/A

Class of Offence	No. and date of last award	Sqn., Battery, or Company	Corps	Date of enlistment	Service or Proficiency Pay	Character	Remarks
	W/A	W/A	C.A.C.	7 Jun 41	????		

Period not reckoning towards freedom from extra fine

Sheet No.

G.C. Mil

Badge

Signature O.C. (Infantry, etc.)

M.F.M.S. (A.F.B. 122) (1939-40) H.Q. 1772-39-1939

Offence	Name of Offender	Punishment awarded	Date of award or of order under which dealt with trial	By whom awarded	Remarks
AWL from Wing Commanders orderly room at 1000 hrs 20 Nov 42 AA 15(1)	B/Sgt Collis E.	168 hrs detention	22 Nov 42	WW Humphrey Lt-col	Forf 7 days pay
FMAS Conduct to the prejudice, etc., in that he at 1 CACRU on 9 Feb 43 was on parade with a lighted cigarette. AA Sec 40.		7 days C.B.	11 Feb 43	JA Meinel Capt	FMAI 148(1)(b)
AWL from 0800 hrs to 1630 hrs (8 hrs 30 min). AA Sec 15(1)	Lcpl Shanks	7 days FP and Forf 7 days pay	3 Mar 43		
AWL from 0745 hrs 16 Mar 43 (2 hrs) AA Sec 15(1). AWL from 0745 hrs 16 Sep 43 (2 hrs) AA Sec 15(1). AWL from 0745 hrs 16 Sep 43 to 0945 hrs 16 Sep 43 (2 hrs) AA Sec 40. Reporting for duty without arms AA 15(1).	Sgt Achilika Lcpl Morrison do	10 days FP and Forf 10 days pay	18 Sep 43	WW Helpenny Lt-col HW Rick Lt-col	Forf 1 days pay FMAI 149(1)(a)
AWL from A.D. Parade at 0945 hrs 20 Jul 43	Cpl Ewart	3 days FP and Forf 3 days pay	22 Jul 43	GW Little Col	

P.T.O.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field	22 Jan 44	Tpr		AA Sec 40. Unshaven on parade	Sgt Rosa, WE Lcpl Frith CF	7 days CB 28 days detention	22 Jan 44 20 Mar 44	SE Dunbar Capt FE Conrad Lt-col	Forf 1 days pay FR&I 149(1)(a). Stopp of pay amt 21.36.
Field	18 Mar 44	Tpr		AA Sec 10(4). Breaking out of barracks at 5 BN 2 CBRD.at approx 2130 hrs 18 Mar 44 while under open arrest.					
				AA Sec 15(1). AWL from 2130 hrs 18 Mar 44 to 1330 hrs 19 Mar 44 (16 hrs)	SSM Pearston GC Documentary				
				AA Sec 24(2). Losing by neglect his regimental necessaries.					
				AA Sec 15(1). AWL from 0800 hrs 18 Mar 44 to 1010 hrs 18 Mar 44.	Lcpl Dumas, CF				
Italy	14 Jun 44	Tpr		AA Sec 15(1). AWL 9 days 21 hrs	Documentary	21 days F.P.	5 Jul 44	CF Wilkinson Major	21 days pay under FR&I 149(1)(b).

CERTIFIED TRUE COPY

T.W. Robertson

(T.W. Robertson) Captain
Adjutant
8th New Brunswick Hussars

OFFICER HAVING CUSTODY OF REGIMENTAL [illegible]

No. J51183 Name SMITH, L.D. Sqn., Battery, or Company — Corps C.A.C. Date of enlistment 7 Jun 41 G.C. Badges Nil Service or Proficiency Pay — A.F.W. 6 (A.F.B. 122) 275M—7-41 (1219-20) H.Q. 1772-39-1652

Date of last entry in Company Conduct Sheet N/A — No. and date of last drunk N/A — Period not reckoning towards freedom from extra fine — Sheet No. — Signature O.C. Company, etc. ???? — Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
						168 hrs detention	22 Nov 42	WW Humphrey Lt-col	Forf 7 days pay FR&I 149(1)(b)
Field	20 Nov 42	Tpr		AWL from Wing Commanders orderly room at 1000 hrs 20 Nov 42 AA 15(1)					
Field	9 Feb 43	Tpr		WOAS Conduct to the prejudice, etc., in that he at 3 CACRU on 9 Feb 43 was on parade with a lighted cigarette. AA Sec 40.	S/Sgt Cellis E.	7 days C.B.	11 Feb 43	JA Meinel Capt	
					Lcpl Shanks	7 days FP and forf 7 days pay	3 Mar 43	WW Halpenny Lt-col	Forf 1 days pay FR&I 149(1)(a)
Field	1 Mar 43	Tpr		WOAS AWL from 0800 hrs to 1630 hrs 1 Mar 43 (8 hrs 30 min). AA Sec 15(1)	Sgt Achilks	10 days FP and forf 10 days pay	18 Sep 43	HW Rick Lt-col	
Field	16 Sep 43	Tpr		AA Sec 15(1). AWL from 0745 hrs 16 Sep 43 to 0945 hrs 16 Sep 43 (2 hrs)	Lcpl Morrison do				
Field	16 Sep 43	Tpr		AA Sec 40. Reporting for duty without shaving					
Field	20 Jul 43	Tpr		AA Sec 15(1). AWL from A.D. Parade at 1725 hrs 20 Jul 43	DQMS Ewart	5 days FP and forf 3 days pay	22 Jul 43	GW Little Col	

(P.T.O.)

The accused elects trial by Court Martial

CHARGE SHEET

L51183 Tpr Smith, L.D., 5 Cdn Armd Regt (8NBH) a soldier of the Canadian Army Overseas is charged with:-

FIRST CHARGE
A.A. Sec 40

W.O.A.S., CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE -

in that he

In the Field, on 19 Mar 45 was improperly dressed in that he was wearing an unauthorized piece of equipment namely an American Jacket.

SECOND CHARGE
A.A. Sec 40

W.O.A.S., NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE -

in that he

In the Field, on 19 Mar 45, did fail to salute an officer namely Major G.R.H. Ross.

THIRD CHARGE
A.A. Sec 40

W.O.A.S., NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE -

in that he

In the Field, on 19 Mar 45, did pace his beat as a sentry with his hands in his pockets.

J.W. Eaton

(J.W. Eaton) Lt-col.,
Commanding,
8th New Brunswick Hussars

To be Tried by Field General Court Martial.

(I H Cumberland) Brig
Comd 5 Cdn Armd Bde

10 Apr 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(5).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L 51183	Tpr	Lindsay Darrell	SMITH	5 Cdn Armd Regt (6NBH)

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 10 Apr 45 endorsed by me, ~~for trial by Field General Court-Martial~~. To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~and that it is not practicable to delay the trial for reference to a superior General Offr~~).
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint as three Offrs subject to the Exigencies of the Service, (b) a Bde Offr as President, for the reasons hereinafter stated, viz.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereof the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Maj	J SMITH	2 Cdn Armd Regt (LdSH)

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt ~~or Lt~~	N. W. HOCKIN (to be detailed)	9 Cdn Armd Regt (BCD)
Capt ~~or Lt~~	G. S. G. Thurs. (to be detailed)	G Sqn 25 Cdn ADR

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	(to be detailed)	5 Cdn Armd Regt (6NBH)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in HOLLAND
(Country.)

Date 11 Apr 45

(I H Cumberland)
Comd 5 Cdn Armd Bde — Brig
(Signed personally. RP 105 fn 2.) (Rank.)

Commanding Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (AFAS 12b (Sec of AFAS) 80-P & O-1547 (4/45))

(See overleaf for notes and notes for use on trial.)

8th New Brunswick Hussars
21 Apr 45.

I certify that L 51193 Tpr. Smith, L.A. is fit to undergo trial by court martial.

N. A. Morrison Capt

(N.A. Morrison) Capt.,
Medical Officer,
8th New Brunswick Hussars

J.S. Page 1. . .

Plea of Mitigation

When Pte Smith was posted the previous evening, he states he was properly dressed, later on, as so many guards do during the night, he put on this American Jacket to keep himself warm, as at that time he had no great coat. He felt that his appearance during the hours of darkness could be overlooked for reasons of comfort. He was still dressed the same way the next morning when he was suddenly called upon by the Cpl to take over while the guard went to breakfast.

As for the charge, for failing to salute an officer, he said he did not recognize Major Ross immediately as he was driving by in a jeep, but that he did salute him when he was called over. The accused has elected trial by court martial, - because he rightly decided that, when the C.O. on these summary charges which he would have dealt with himself asked him whether he wished to be tried by him, or court-martial, - that he was going to get detention. He felt he would rather take his chances and throw himself on the mercy of a court-martial.

If you look at his conduct sheet you will see that he is not a particularly vicious character. There are several short AWLs and other minor offenses. I would therefore ask the court to take all these facts into consideration and be as lenient as possible on the accused.

ex A.J.S.

SUMMARY OF EVIDENCE

in the case of

L 51193 Tpr. SMITH, L.D.

6th NEW BRUNSWICK HUSSARS

SUMMARY OF EVIDENCE

in the case of

L 51183 Tpr. SMITH, L.D., 8th New Brunswick Hussars a soldier of the Canadian Army Overseas.

By the direction of the Commanding Officer the evidence is taken upon oath.

FIRST WITNESS:- Capt C.F.A. Graham, 8th New Brunswick Hussars, having been sworn, states:-

" I am Capt. C F A Graham, C Squadron, 8th New Brunswick Hussars. On the 15 Mar 1945, L 51183 Tpr, Smith L.D., reported to me on coming to C Squadron as a reinforcement. I gave him general instructions concerning the routine of the sqn. I observed that Tpr. Smith was wearing a jacket of American pattern. And I told him that he must not wear such clothing on parade. The following day I met Tpr Smith and observed that he was still wearing the American jacket. I asked him why he was still wearing it and he replied " To keep my battle dress blouse clean" I again ordered him not to wear the jacket. The next morning, in my Sqn Commander's absence, I took Sqn parade and I saw Tpr Smith on parade wearing the American jacket. I ordered him, in the presence of the whole Sqn, to take off the American jacket and not to wear it again.

C.F.A. GRAHAM Capt.

The accused declines to cross examine the witness.

SECOND WITNESS:- C 465 Cpl. Williamson, C.B. 8th New Brunswick Hussars, having been sworn, states:-

" I am C 465 Cpl Williamson, C.B. 8th New Brunswick Hussars. On 18 Mar 1945 I was Cpl of the guard on C Squadron vehicle park. Among my guard was the accused L 51183 Tpr. Smith L.D. The guard mounted at 1700 hrs 18 Mar 1945 and was relieved at 1700 hrs 19 Mar 1945. At 2100 hrs 18 Mar 1945 I posted the accused as a sentry. He remained on his beat until 0100 hrs 19 Mar 1945. The accused was the only sentry on duty in the vehicle park during those hours. At approximately 0800 hrs 19 Mar 1945 I posted the accused as a sentry while the remainder of the guard was having breakfast. He remained on sentry duty until approximately 0830 hours at which time he was relieved. During this time he was the only sentry on duty in the vehicle park. On neither occasion when I posted the accused did I notice that he was wearing an American-pattern jacket. The dress for the guard was battle dress, Skeleton-web, and berets.

C B Williamson

C.B. WWILLIAMSON Cpl

The accused declines to cross examine the witness.

THIRD WITNESS:- Lieut G.G. Pitt, 8th New Brunswick Hussars, having been sworn, states:-

" I am Lieut G.G. Pitt, 8th New Brunswick Hussars. On the night of 18 Mar 1945, I was Regimental Orderly Officer. At approximately 2230 hrs while making my rounds to insrect the guards, I saw the accused L 51183 Tpr Smith L.D. on sentry beat at C Squadron vehicle park. He was wearing an American jacket. I spoke to the accused and called him by name. I know the accused by sight.

G.G. Pitt

G.G. PITT Lieut

The accused declines to cross examine the witness.

FOURTH WITNESS:- Major C.R.H. Ross, Second in command, 8th New Brunswick Hussars, having been sworn, states:-

I am Major C R H Ross, Second in command, 8th New Brunswick Hussars, On the 19 Mar 1945 while passing C Squadron tank park at about 0815 hours I saw a sentry strolling along with his hands in his pockets and wearing an American jacket over his battle dress. I stopped and asked him if he were the sentry. He failed to salute me but admitted that he was the sentry. I asked him (a) Why he was marching his beat with his hands in his pockets, (b) Why he did not salute me, and (c) why he was wearing an unathorized article of equipment, that is to say, a jacket of an American pattern. On receiving an unsatisfactory answer I left and later reported the matter to the commander of C Squadron. I recognize the accused to be the sentry concerned.

C.R.H. Ross Major

The accused declines to cross examine the witness.

Question to the Accused:- "Do you wish to make any statement or to give evidence upon oath ? You are not obliged to say anything or to give evidence unless you wish to do so, But whatever you say or any evidence you give will be taken down in writing and may be given in evidence. "

The accused declines to make a statement.

I certify that this summary of evidence, consisting of two pages, was taken down by me, In The Field, this 7 Day of April 1945 in the presence and hearing of the accused.

I certify that Rule of Procedure 4 (c) (d) (e) (f) and (g) have been complied with.

A.E. Shepherd Capt
8th New Brunswick Hussars

ARMY FORM B.206.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
L51183	Tpr	SMITH, L.D.	5 Cdn Armd Regt (SNSH)

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be struck off from the 'did not desire it.'

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 477, K.R., 1940.

* The answers herein stated should correspond with the particulars of service of the accused person, due allowance being given to the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

Instructions with the charge-sheet disclosure the entries for convictions must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For	AA Sec 15(1)AWL	1 times	6	times.
For	AA Sec 40	times	4	times.
For	AA 10(4)	time	1	times.
For	AA 24(2)	times	1	times.
For		times		times.

[redacted]

or

[redacted]

2. [redacted]

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, or [redacted]

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 12 days in military custody, making a total of 12 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is 22 years

6. The date of his [redacted] attestation specified in his record of service is 7 Jun 41

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is Full

8. The accused is entitled to deferred pay or gratuity in respect of Part service.

9. The accused is entitled to reckon Full service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (or is in possession of or entitled to (*state any military decoration or reward*)). Nil

[redacted]

[redacted]

[redacted]

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. 151183 Rank Tpr Name SMITH L.D. 5 Cdn/Armd Regt (8NBH) Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		NIL		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

8 day of April 1945.

J.W. Eaton, Capt. & Adjt.
for (J.W. Eaton) Lt-col
Comd. 8th New Brunswick Hussars

19. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion

In the rank of N/I / , , years, , ,

In the rank of N/I / years

In the rank of N/I / , , years, , ,

(INSTRUCTION—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.)

40.0
Fx1646 Pte Smith L.J.
(see 41-0)

O. H. M. S.

M. F. B. 270

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this THIRD day of SEPTEMBER, 1942.

Whereas it appears to me, the undersigned, an officer in Command of 3 Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[I am unable to appoint

*(1. Three Officers to form the Court,)

*(2. A Field Officer as President)

for the following reasons, namely:—]

* Omit if not applicable.

President.

Rank.	Name.	Regiment.
Major	E.A.A. Doiron	R 22e R

Members.

Rank.	Name.	Regiment.
Capt	J.L.J. Poulin	R 22e R
Lieut	H. Belyea	Carlt & York R
Lieut	J.A.K. Leger	Carlt & York R

*Signed [signature] Brigadier,
Commanding 3 Cdn Inf Bde.
Convening Officer.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

Waiting

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
F41646 Pte Smith, L.J. F43664 Pte Crowell, R.P., West N.S.R.	First Charge Sec 40 A.A.	Not guilty	Not guilty	
	Second Charge Sec 40 A.A.	Not guilty	Guilty Thirty (30) days detention. Eaddowson major	

Finding and Sentence confirmed.
Brigadier
Comd 3 Cdn Inf Bde
10 September 1942

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :— No

(Signed) Brigadier (Signed) Eaddowson Major
Commanding 3 Cdn Inf Bde *Convening Officer* (*d*) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the Seventh day of September 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. ~~The officers under instruction~~)

were duly sworn.

* Omit if not applicable.

Signed this Eighth day of September 1942.

Eaddowson Major
President of the Court Martial.

* See footnote (*b*) on page 762 M.M.L. 1929

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

C. Certificate in case of death sentences.

Signed this day of 19

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences. 44

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(~~I direct that the soldier named in the margin be not committed to prison or detention barracks until further orders~~) 44

Signed this 10th day of September 1942

Brigadier,
Comd 3 Cdn Inf Bde
Confirming Officer.

Promulgated and extracts taken in the case of F 41646 Pte Smith, L.J.

(*e*) (Dated) 11 Sept 42 (Signed) J.R. Clemens, Lieut - Adjt 3 Cdn Inf Bde

Promulgated and extracts taken in the case of F 43664 Pte Crowell, R.P.

(Dated) 11 Sept 42 (Signed) J.R. Clemens, Lieut - Adjt 3 Cdn Inf Bde

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*e*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] W. & Co., Ltd. Gp. 746-2

CHARGE SHEET

The accused, F41646 Pte Smith, L.J. and F43664 Pte Crowell, R.P., both of the West N.S.R., soldiers of the Canadian Army Overseas, stationed in the field, are charged with:

1st CHARGE
Sec 40 A.A.
Army Act

When on Active Service, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that they

at about 2300 hrs on 28 Aug 42 did cause damage to private property (Cromwell Cottage) South Coast Road, Peavehaven, in the amount of £12-0-0.

2nd CHARGE
Sec 40 A.A.
Army Act.

When on Active Service, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that they

at about 2300 hrs 28 Aug 42 did create a disturbance at Peavehaven.

In the Field.
2 Sep 42.

(J.A. Hebb), Major,
A/Comd. West N.S.R.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
3 Sep 42

(illegible), Brigadier,
(illegible) Canadian Corps.

Canadian Army
President

7th Ltf

F41646 Pte Smith L.J +
F43664 Pte Crowell H.P.

~~Lt J.H. Rhodes J.H.~~
Lt C.L. Putnam

Nil

Nil

Nil

Court adjourned
President

Prosecution

Expatriation Design
Resident

First witness

Mrs Dorothy Howard
Cromwell Cottage
South Coast Rd
Peacehaven Est

Having been duly sworn states:

I went to bed at about 10.00 pm went to sleep and woke up hearing noises. I got up and looked out of the window and saw two soldiers pulling at one of the posts. I called out to them. One of them had fallen down as he pulled at a post. When they heard me they walked away across the road and joined some people on the other side.

Q:- Were you able to see any of the people on the other side of the street?

A):- No, but I could hear a woman calling out.

Cross-examination
Defending officer.

Q:- You only saw two soldiers pulling one of the posts.

A:- Yes.

Q:- You did not see them touch the rest of the fence.

A:- No.

Q:- You also state that you couldn't tell who the people were on the other side of the street but I saw many but you say you saw two soldiers in the front of your cottage

A:- Yes

Q:- How dark a night was it

A:- It was pretty dark, but I was able to see the two soldiers

Q:- You had your window open? Baltimore Md. Resident
A:- Yes.
Q:- How are you sure of the approximate time?
A:- I asked my wife the next morning and she said she heard the clock strike eleven
Q:- How do you know there was a girl crying?
A:- When the soldiers walked across the street she called out to someone to leave her husband alone and not to touch him again. I stayed at the window quite a time and she was crying the whole of the time.
Q:- Where there any marks of a truck in front of the house on the sidewalk?
A:- I did not see any.

Re-examination

Prosecutor

Q:- You say the two soldiers crossed the road
A:- Yes.
Q:- Can you tell me anything that happened after they crossed the road?
A:- There was a lot of quarreling going on and they started to fight.

Question by the defense

Q:- You say two crossed the road and started to fight. Naturally, you said that you couldn't see Captain who was on the other side of the road. do you mean after they crossed the road there was a fight?
A:- Yes.
Q:- So you couldn't be sure if the two you saw cross the road were involved in the fighting
A:- No I couldn't be sure of the two, but the fighting started after they crossed the road.

Second witness

Mrs Ada Smith, Cromwell cottage - South Mrs Ada Smith, Cromwell cottage - South road rd. Peacehaven ##, taking oath duly sworn states:- I lived at Piries first

A:- before eleven
Q:- What sort of noises?
A:- All sorts of noises, a girl screaming, breaking something
crashing down or falling, and some noise under
neath with windows.

Defence: Cross examination.

Q:- Would you say this was a raised voice
A:- Yes.
Q:- This noise went on sometime before eleven
until sometime after eleven?
A:- Yes, just before eleven until a good long time
after.
Q:- You say you heard a woman scream. Was
it before or after the crashing noise?
A:- After I heard a crashing noise
Q:- You saw nothing?
A:- No, I didn't get up.

Prosecution rests

Third witness.

Rev Harold George Harrison
Cromwell College, South Road rd. Rochdale
having been duly sworn, states:

Q:- Can you give the Court particulars as to the
alleged damage to your property?
A:- I found that a panel of the pickets were dam-
aged and that the gates, pram gate with archway
were torn down.
Q:- Did you take any steps to have the dam-
age repaired.
A:- Yes, I did.
Q:- Have you taken any steps to ascertain the cost of
damages.
A:- The police have done so.

Cross-examination.

Q:- Do you know either of the accused persons
A:- No
Q:- Do you know any soldier of the W.R. & R.
by name.
A:- No
Q:- Was any of the damaged wall moved until after
you repaired it?
A:- No.

Q:- Did it block the sidewalk?
A:- The main gates did. Yes.
Q:- Was there anything else, besides the main gates laying on the pavement?
A:- The tops of the pillars.
Q:- How long would it take two men to do this damage?
A:- I could not say.

Question by the Court.

Q:- What do you estimate the cost of damages.
A:- I could not really say. The police sent a man to do that.
Q:- What was his estimate?
A:- £ 12-0-0

Prosecutions

4th witness
Special Constable 748 Arthur Henry Smith, Beechanen St, Ewing sworn
states:-
At about 11.15 pm on the night in question I heard a row outside, I was in bedroom window at first I heard some words, but was by my different words. It appeared to me after I got up to open window, it appeared to me after I got up to open window, it appeared to me after I got up to open window, it

and spoke to two soldiers and went on.

Re-examination by prosecution.

Q:- How long before the alteration did P.C. Potter pass?

A:- Two or three minutes before.

Questions by the Court

Q:- Where is your home?

A:- Right opposite the damaged property.

Q:- Were you in bed?

A:- Just going to bed.

Q:- Where about is your bedroom?

A:- The front bedroom faces the damaged house.

Fifth witness

Mrs R. Delacourt - Having been duly sworn states:-

My husband and I left the Peacehaven Hotel with two privates, Joe + Tug. We were walking along the road talking when we were startled by a noise, a thudding rumbling noise. We stopped and, as we were talking we heard someone coming across the road, two soldiers appeared and one of them hit my husband. Tug, one of the soldiers with us went to fight the soldier who had struck my husband and the four men with I stood with my husband on the pavement. The other soldier, Joe, the fight was still going on when we left. The three of us went along the road and we left the others fighting. Later we met "Tug" along the road at "Gladdens" (a billet) and the four of us went to my home and "Tug" had a wash and his forehead + his nose. We all had a cup of tea and they left me.

Q:- Can you state at what time you left the Peacehaven Hotel?

A:- Just before closing time.

Q:- What time is closing time?

A:- 10.30 pm I think

Address supplied Defendant

Cross-examination by the defence

Q:- How many men crossed the road?
A:- Two.
Q:- Could there have been any other there?
A:- I don't know I couldn't see.
Q:- Did you scream or cry out?
A:- Yes, I did.
Q:- How many drinks did you have that evening?
A:- Three light ales.
Q:- What was the time the alleged fight started?
A:- Approximately 1045 pms
Q:- Did you see any damage done or being done to the house across the road? . . . .
A:- No, it was too dark.
Q:- You say you heard a rumbling noise, was it like Pte's boots on the pavement?
A:- Yes.
Q:- How many times was your husband struck?
A:- Once
Q:- Was he hurt
A:- No
Q:- Have you any reason to think it was an accident?
A:- Yes.

Evidence stops

Fifth witness.

Mrs K. Delcourt having been duly sworn states:
On this particular night me, my wife, Pte Cameron and another private whose name I don't remember were in the Peacehaven Hotel and had a few drinks. We left there at five and twenty past ten and started walking in the direction of New Haven. We got as far as the "Dew Drop Inn" when we heard like a shudding noises and at once took it as someone fighting. We walked on and heard a noise and someone walked across the road towards us, the next minute I seen a figure in the half light. Pte Cameron went straight into these fellows. There was a fight and I said to the wife; we will walk along the road home. The other private accompanied us. We got as far as "Gladden's" (a billet)

there we met Pte Cameron who looked as if he had been mauled about. His nose was shaped and I said to him "you better come home and have it washed" which he did - We then had a cup of tea and there he left us.

Cross-examination by defence

Q:- Why were you hit?
A:- I don't know sir.
Q:- How hard were you hit?
A:- Quite a blow, my lip was swollen up.
Q:- Do you think it may have been accidental
A:- Possibly.
Q:- Did Cameron meet these two before they got to you
A:- I couldn't say.
Q:- Can you tell us where Cameron & Dowell were walking?
A:- We were walking four abreast. I was walking on the outside, my wife next to me and the two soldiers on the inside
Q:- Did Cameron strike either of the two before you were struck?
A:- No, sir.
Q:- What was the time?
A:- Roughly, about ten to eleven p.m.
Q:- Was the ~~mumps~~ mumps still going on when you were struck.
A:- No.
Q:- Did you see any damage to the house across the street.?
A:- No sir.
Q:- How much had you had to drink?
A:- Three pints of beer.

Cameron's wife

Seventh witness

44808 Pte Cameron G. M. - West Nova Scotia Regiment having been duly sworn states:

I left the Peacehaven hotel just about closing time, with Roy Delacourt his wife and Joe Dowell. We were going towards Newhaven on the left hand side of the road. Up past the Dew drop Inn there was a lamppost of some kind across the street. It sounded like a fight

to me. We had all stopped and two soldiers came across the road they were privates Smith & Crowell Smith hit Delacourt and his wife started to scream, I stepped in to try to stop it. When I was talking to Pte Smith, Pte Crowell took a swing at me, I stepped back and more shoved than hit him. Pte Crowell fell, Smith and I had locked arms and we wrestled out towards the centre of the road.

Pte Crowell got up again and came back to where we were. I got away from Smith and more pushed than hit Crowell and he fell again. Pte Smith then got me around the waist and I was thrown to the pavement I hit my head on the pavement when I fell and was hit two or three times while I was down I managed to get to my feet again and Pte Smith had hold of my pant leg and I had a hold of him around the neck. At this time there were two other soldiers had come up the road. Pte Basque was one but I did not recognise the other. I asked their help and got away from Pte Smith, I ran down the road and circled up around and met Delacourt, his wife and Pte Crowell again. The four of us went up to their house, and some stuff was put on my face and we had some tea and then I came back to camp with Pte Crowell.

Cross-examination by defence.

Q:- Were you on the right side of the road when coming from the Beaubien hotel?
A:- No
Q:- Did you see a police constable?
A:- No
Q:- Did you go straight along the road without stopping any where
A:- Yes.
Q:- How were you walking
A:- Four abreast. I think Delacourt was on the outside I was inside.
Q:- Were you walking next to Mrs Delacourt?
A:- Yes.
Q:- What caused the fight?
A:- I don't know, I only saw that Pte Smith

struck Delaccourt
Q:- What was said next?
A:- I asked Smith why he struck the sailor?
Q:- Did you strike Smith before you asked him this?
A:- I never struck him at all.
Q:- How many drinks did you have?
A:- Three (3) pints
Q:- Did you see any damage done to the house across the street.
A:- Not until the next day.
Q:- Did you lose your top?
A:- Yes
Q:- Were you not in a fight in Worthing last July.
A:- Yes.

Examination by Major Robertson President

Eighth witness

Police constable Patten having been duly sworn states:
At about 11.15 p.m. on the 28th August I was proceeding along the Southeast rd. Peacehaven town new paving. Just before reaching Cromwell cottage I was stopped by two soldiers who handed me a lady's handbag which they stated they had found on the road and further stated that there had been a fight further along the road, in which a young lady was involved and they assumed the handbag was hers. They told me the lady involved was walking towards Newhaven with a sailor. I caught up with them and handed her the handbag which she claimed was her property. I came back at about 11.45 and saw the fence of Cromwell cottage had been damaged.
Q:- Which side of the road were you when you were stopped by these soldiers?
A:- On the left side opposite Cromwell cottage

Cross examination by defence
Q:- Did you see any damage that night?
A:- Not before 11.45 p.m.
Q:- Did anyone report the damage done at the cottage at the time of the handbag affair?

A/ No.

Question by the Court

Q:- Is it possible that the damage could have been done before you went by?
A:- Yes.
Q:- Was it very dark?
A:- There was a moon coming up.
Q:- How far could you see?
A:- From five to ten yards.

Re-examination by prosecution

Q:- Did you know who the two soldiers were?
A:- No.

Fourth witness

F 29776 Lgt Lupton proved Lgt W.A.A.F. having been duly sworn states.
I answered a complaint & went out to Cromwell Cottage, South of Coast Rd Beaconsfield, occupied by Mr & Mrs Hannan.
I found considerable damage had been done to the property. Further investigations disclosed that the accused Pte Smith and Pte Cromwell were in the vicinity on the night the damage was done. Other witnesses interviewed led me to lay a charge against them.

Cross-examination by defence

Q:- How many people were in that vicinity at the time?
A:- The persons I interviewed were Mr & Mrs Hannan Mr & Mrs Delacourt, Pte Cameron Pte Dowsett Pte Mac Intyre, Pte Bergne and Ptes Smith & Cromwell also the constable who was on the beat.
Q:- Were Smith and Cromwell inconsistent in their story to you?
A:- The first time I saw Smith, on Sunday afternoon the 20th Aug. He said he knew nothing about it, but admitted being in the

Tenth witness

F40062 Pte Durand J. - W.N.S.R. having been duly sworn states:

On the night of the 28th August I went to the Pineshaven hotel with Mr & Mrs Delacourt and Pte Cameron. We had a few drinks and left around 10.20 pm. We walked up the rd towards Newhaven. When we got around the dew drop I saw we heard a explosion on the other side of the road. We stopped to see. Pte Smith and Pte Duval crossed the rd. over to us. One of them struck Mr Delacourt and Pte Cameron stepped in to stop the fight. I didn't see much of the fight. I stay on the sidewalk with Mr & Mrs Delacourt. In a few minutes I saw Cameron running down the road. We walked on. Shortly after Cameron caught up with us and I went to the Delacourts house and stayed there.

Cross-examination by defence

Q:- Was there any actual fighting with the civilian workers only one blow struck?
A:- Just one blow
Q:- Why was this blow struck?
A:- I don't know
Q:- Was there anything said
A:- No
Q:- Where were you walking?
A:- On the left of the road.
Q:- There were four of you, where were you?
A:- I was in the centre, Mrs Delacourt was on the outside, next to the road.
Q:- Who was on the other side?
A:- Mr Delacourt.
Q:- How many drink had you had?
A:- Three pints
Q:- What was the time of the incident?
A:- About 10.45 pm.

Colchester Reger
President

Eleventh witness

F49908 Pte Rose Lutyre W.N.S.R. having been duly sworn states:-

At about 10.20 pm on the 28th August I left the Central Club Peacehaven and started towards my billets. At the top of the lane leading from the Dew Drop Inn I met Pte Basque. We kept on walking towards our billets. About a quarter of a mile further we heard some noise in the street, on the left hand side. A girl was yelling and a man was calling for help. We broke up the couple of men who were wrestling in the middle of the road. We broke them apart and sat down among them. I told the girl and her husband to get going. The boys who were there went home and so did I. Pte Basque had to go back for his cap.

Q:- Who were the men fighting?

A:- Pte Cameron + Smith (Regimental Sgt Major President)

Cross-examination by defence

Q:- What side of the road were you walking?

A:- On the left hand side.

Q:- What time was it when you got to the scene of the fight?

A:- Roughly 10.30 pm.

Q:- Did you see any damage at Cromwell cottage

A:- No.

Q:- Did Smith and Crowell want to fight with you

A:- No

Q:- Where did Smith + Crowell go after the scrap

A:- Towards their billet. This scrap took place about

Q:- fifty yards from the cookhouse on the Peacehaven side near the "Corner House"

Third witness.

F41338 Pte Basque W.N.S.R. having been duly sworn states:- On the night 28th August I was in the Dew Drop Inn and stayed there until 10.20 pm

Then I went up the main road where I met Pte Mac Intyre. We talked for a while then decided we would go to our billets. We started walking on the left hand side of the road. When we got to the corner House, I saw four fellows standing on the left side of the road, having an argument. MacIntyre said "let's part them" When we stopped someone said to me: Where are you going "Indian" I said. Some of your business and turned around. I was then hit in the face. I fell down and was hit again in the face before I could get up. I crawled about two feet to get clear of them. When I got up, I felt on my shoulder to see if my cap was there. It was missing so I walked back on the right hand side of the road towards "Rose Mary" cafe. When I got there I turned back again and went to my billet. I arrived there at about 11.00 pm.

Q: About how far from the Dew Drop Inn did the fight take place?

A: About 50 yds from the Corner House.

Cross-examination by defence

Q:- Would you say it was a quarter of a mile from the Dew Drop Inn.

A:- I couldn't say

Lance Corporal Major
President

P.O.H No.

DEFENCE

The accused is informed of his rights in accordance with R.P. 40 (A) and n ote 2 of page 644 of the Manual of Military Law, 1929 edition.

The accused is asked the following questions:-

Q.1 Do you wish to give evidence as a witness

A.1 yes

Q.2 Do you intend to call any other witness on your behalf

A.2 yes

Q3 Are they witnesses as to character only

A.3 No

Sd

Captain
President

Motion by the defending officer 17

If it please the Court I wish to make a motion that the prosecution has not established a "Prima facie" case, and that therefore the accused should not be called upon for their defence, and I make a similar motion on the second charge. In the first place it has not been established that anyone has definitely saw them committing the act of breaking the fence, nor were they identified. They were apparently in the fight but alone with other people at least. On the circumstancial grounds, times given for when the fight is said to have taken place vary from 10 to 11 to 11:15 p.m. - The police constable gives testimony that he could see for five or ten yards that night. [illegible]

Yet Mrs Hannan said she could see two men at a distance which must have been greater than ten yards. The evidence is contradictory. As for the second charge the facts show by their own testimony that only a few people were concerned in the fight in the same sort of way as the accused persons.

Decision of the Court is that motion is rejected.

Defence

First witness.

Mrs Delacourt having been recalled for the defence states.

Q:- Did you lose your handbag on the night of the 28th and if so where?
A:- Yes, I did, a policeman returned it to me. I lost it when the fight took place

Q:- Are you quite sure?
A:- Yes.

Second witness

F 41062 Pte Doucet J. having been ~~duly sworn~~ recalled by the defence states.

Q:- Did you see any damage done or being done to a house on the other side of the road from which you were?
A:- No.

Third witness

F. 29695 Pte Helpes W. H. S. H. having been duly sworn states:

Q:- Where were you on the night 28th Aug 42?
A:- In the lounge of the Peacedown hotel.

Q:- When did you leave?
A:- At about 10.35 pm.
Q:- Who did you see when you left?
A:- Pte Smith + Pte Crowell were talking outside ~~was talked to them.~~
Q:- Where did they go?
A:- I don't know.
Q:- Were they drunk?
A:- No but they had had a few drinks
Q:- What time was it then?
A:- About ~~&~~ 10.40 pm
Q:- Who was with them?
A:- Pte Smyrna

Chairman Major President

Fourth Witness.
F. 40124 Pte Smyrna W. R. R. K. having been duly sworn states:
Q:- Where were you on the night of 28 Aug 42?
A:- At the Peachaven Hotel.
Q:- When did you leave?
A:- We were the last out. about 10.35 pm
Q:- Who did you see?
A:- Pte Smith + Pte Crowell were outside the door
Q:- What time was it when you last saw them?
A:- About 10.37 p.m.
Q:- Where did you go when you left them?
A:- I took the bus and went back to billets

Cross-examination by prosecution
Were Smith + Crowell drunk? .. . .
No but they had been drinking

Fifth witness
F. 41634 Pte Wright W. R. R. having been duly sworn states:-

On the 28 Aug 42 in the evening Cpl Watson and I were proceeding towards Seaford, it was then between 1045 and 1100 pm. We walked up the road and came up to the "Corner House" and caught up with Pte Smith and Pte Crowell. We talked a few minutes and went to our billets.-

Q: Were Pte Smith + Pte Crowell drunk?
A: No
Q:- Did they say anything about damaging a wall?
A:- No, and I did not see any damage anywhere on the road.
Q:- Which side of the road were you on?
A:- On the right hand side
Q:- Do you know were the house with the damaged wall is?
A:- Yes
Q:- Did you pass it that night?
A:- Yes.
Q:- Did you notice anything unusual?
A:- No

Sixth Witness

F 40361 Cpl Watson WN & R having been duly sworn states.

On the 28th Aug 42 in the evening I went to the Drop Inn. I left about 9 pm. I wandered around with Pte Wright between 1045 and 1100 pm we made for home. We came to the "Corner House" and met Crowell and Smith. We talked for some minutes and decided it was time to go back to our billets. Which we all did.

Q:- Were they drunk?
A:- No
Q:- Did they say anything about damaging a wall?
A:- No.

Q:- Which side of the road were you on?
A:- The right hand side of the road.
Q:- Did you see anything unusual?
A:- No
Q:- Were there any obstructions on the sidewalk?

Cross-examination by prosecution

Q:- Are you quite sure of the time you left the ~~mess~~ Corner House?
A:- Yes, it was between 10.45 and 11.00 pm
Q:- Did they go to bed?
A:- Yes they did.
Q:- Did you see them go to bed?
A:- I don't sleep on the same floor as them.

Seventh witness

Lt A.W. Rogers W.N.S.R. having been duly sworn states:

Q:- Did you see Pte Crowell and Pte Smith on the night 28 Aug 47?
A:- I went to the Peacekeeper hotel that night and saw many men of No 7 Pl. Among them were Pte Smith and Pte Crowell. I talked to them and gave them the usual "pay night" warning.
Q:- Were they drunk?
A:- No
Q:- Do you know wh the damaged house is?
A:- Yes the following noon I was asked by major Webb to investigate the damage done to this house.
Q:- What was the extent of the damage?
A:- Six or seven round bulbs on top of the posts were knocked off. One post was completely pulled down and lying on the sidewalk. Part of the fence and wire attached were also hanging down on the sidewalk. There were also several pieces

of posts about.

Q:- Could anyone walk by, in the dark, without tripping on the debris.
A:- No.
Q:- How long would it take two men to cause such damage?
A:- About 10 to 15 minutes.
Q:- How long does it take to walk from the Pasadena hotel to the damaged house?
A:- About 10 minutes.
Q:- How long would it take to walk from that hotel to the Corner House?
A:- About 20 minutes.

Cross-examination by prosecution

Q:- What time were you in the Pasadena hotel?
A:- I left about 10.15 pm.

Questions by the Court.

Q:- Was it very dark that night? Could you have seen the debris across the road when you walked home?
A:- I could not have distinguished
Q:- At what time did you pass the damaged house that night?
A:- About 11.25 pm.
Q:- How many yards is it from the "Corner House" to Cromwell Cottage?
A:- About fifty yards.

Eighth witness

Lt Commander Hughes
Resident.

F.42183 Pte Lee Gill W.A.S.A.F having been duly sworn states:

Pte Schofield and myself on the night in question, were coming from the Pasadena hotel

towards our billets. About 200 yds from the road leading to the "Dew Drop Inn" going towards Sawbones we heard sounds of fighting behind us. We both went back. Before we got there we met a sailor and his wife with Pte Cameron and Pte Dowell coming up the road. Behind them came Pte Crowell and Pte Smith. We passed by and went down the road towards Peacehaven (about opposite the afm road) & came upon a lady's purse and picked up and gave it to Schofield. We kept walking in the same direction. We then met a civil policeman to whom we gave the purse. Then we came back to our billet walking on the right hand side of road. We saw no fence broken on the way back.

Q:- Do you know where the damaged house is?
A:- Yes
Q:- Did you go by it that night?
A:- Yes
Q:- Did you meet Smith + Crowell after this?
A:- Yes I saw them at the "Corner House"
Q:- Was this before or after you heard the fighting?
A:- After, between 10.45 and 11.30 pm.

Cross-examination by prosecution

Q:- How do you know a fight was going on?
A:- There was loud talking going on & we got back to billets around 11.30 pm

Sixth witness

Examination by President

40403 Pte Schofield 1/W & K. Sworn & been duly sworn states:-
On the 28 Aug 42, in the evening I came out of the Peacehaven hotel at closing time & 10.45 pm and went towards our billets. I was about two

hundred yards passed the ~~Dew Drop~~ Inn when I heard sounds of a fight. I went back to see what was going on. While doing so I met Pte Smith and Pte Crowell and further on Pte McGill who was with me picked up a purse. Further on we gave it to a policeman. We then went to billets Pte Smith and Pte Crowell were ahead of us

Q:- When you went back to your billets after seeing the policeman, on which side of the road were you

A:- Right on the south side.

Q:- Do you know where the damaged houses?

A:- Yes

Q:- Did you pass it that night?

A:- Yes

Q:- Did you notice anything unusual?

A:- No, It was then about 10.45 pm.

Cross-examination by prosecution

Q:- On which side of the road did you pick up the purse?

A:- On the North side

Q:- Is the "Corner House" on the same side?

A:- No it is on the south side.

Canadian Major
President

. . . . . .

I E Delacourt having been duly sworn states: 10th instant

On Sunday morning 25
I noticed the damaged wall,
when I was going to the Peacock
Hotel with my two sons.
There was a definite mark
of a tyre on the pavement
in a half moon, right up against the wall. My son Jack noticed it and showed it to me on it. I am quite certain it was a tire mark on the asphalt.

(sgd) J. E. Delacourt

Lieutenant Major
President.

Defence.

Eleventh witness

F41646 Pte. Smith. L.J.

Court room Regis President

Having been duly sworn states:-

On the 28th Aug. Pte. Crowell & myself were at the Peace Haven Hotel. There we met a few of the boys from our p.l., also Lt. Rogers Mr. Rogers & I tossed a penny to see who would buy a round of drinks. I lost.

We stayed there untill closing time, which was 10:30. We then left the pub. Pte Crowell & I, ~~and~~ Outside the door we were deciding which way we would go up to our billets by way of the beach or by the road.

while we were doing so Pte. Myra & Pte. Helpard came out and talked to us for a while, they then left to catch a bus home. Pte. Crowell & I started up the main road towards our billets; On the way we heard a woman talking and went over "nosey like" to see who it was.

Pte. Crowell was a bit ahead of me and I saw a fellow make a pass at Pte Crowell. There was a little fellow directly in front of me. I more or less stepped him out of the way, kind of a shove, and

caught hold of the fellow that swung at Pte Cowell. I Put him down on the road. He said "What are you doing Smith" and I recognized him as Pte. Cameron of our Pl. he asked me to let him up, which I did and he ran away down the road. Pte. McIntayre had arrived there by this time, and we walked along to our Cookhouse talking as we went. Where at the Cookhouse a short time when ~~Pte~~ L/Cpl Watson and Pte. Wright, came along. We talked to them for a minute or two and we left for our billets, accompanied by them.

Questions by the Defence.

Q. Did you loose any part of your personal belongings.

A. No Sir.

Q. Who struck the first blow.

A. Pte. Cameron made a swing at Pte Cowell but didnt hit him.

Q. Do you know Mr. Hannon, the owner of the damaged Property.

A. No Sir.

Cpl Adamson Sniper
Reliever

Q. Do you know Delacourt, the Sailor.

A. No. Sir.

Q. Was there any fight with the Sailor.

A. Just the shove at of the way.

~~Cross Examination~~

Q. Do you know any thing about the damage to Cromwell Cottage

A. No.

Cross Examination by the prosecutor.

Q. When this unknown person took a swing at Pte. Cromell - How was it you did not recognize him.

A. It was ~~too~~ dark to recognize faces.

Q. But you definately saw him take a swing at Cromell.

A. I did. Examined Major Pearkes

Q. Was Cromell in front of You.

A. Yes and to one side.

Q. About how long did this little mix up take,

A. About three minutes.

Q. Did Pete McIntyre separate you & Cameron.

A. No.

Q. Did you hear the female yelling.

A. When I turned the little fellow out of the way, I heard a woman's voice say "Oh! my. Husband.

Q. Have you any idea what time you got back to the Corner House.

A. Approx. Eleven O'clock.

Questions by the Court.

Q. How many drinks had you had that evening.

A. four pints.

Ed Davidson Deceased

10: Fourth Witness.

F 43668 Pte Crowell. R.P. having been duly sworn states: —

Cross-examined by Witness

On Aug. 28th. 1942 Smith & myself were at the Peace Haven Hotel, we met a few of our boys from mr pl. also Mr. Rogers. [redacted] & Mr. Rogers toss a penny to see who would buy the drinks. Smith lost.

We stayed there until closing time and then went outside, we were deciding whether to go up by the beach way or by the road while we were doing so. Pte. Myra & Helyard came out. We talked to them for a short time and then they took the bus and went home. Smith & myself walked up the road and we heard a girls voice, we sort of went over to see who they were. Just as I went to step on the sidewalk, this fellow took a swing at me but he never hit me. I swung at him & never hit him. Then Pte Smith grabbed him and threw him down. While they were wrestling I swung my id his wife. She asked Smith to let him up & when he did he ran down the road (Pte Cameron). About that time Pte. McIntyre came there, and then

we all walked along to our cook house,
talking as we went.

After we got to the Corna House. L/Cpl.
Watson + Pte Wright came along. We
talked to them for a minute or so, and then
L/Cpl. Watson said it was time to go home.
And we went along home with L/Cpl Watson
+ Pte. Wright.

Questions by the Defence.

Q. Did you lose any part of your equipment on
this occasion.

A. No.

Q. Who struck or made to strike the first
blow.

A. Pte Cameron.

Q. Do you know Mr. Hamm the owner of
Cromwell cottage.

A. No.

Q. Do you know the Garda Sergeant.

A. No.

Q. Why did Cameron strike you.

A. I don't know.

Lieutenant Major
President

Q. Was there any argument with Cameron

A. No.

Q. Was there any fight with the Sailor.

A. That I don't say sir.

Q. What do you know of the damage done to Cromwell Cottage.

A. Nothing.

Q. How long did the fight last given by Judges

A. About two or three minutes. Decided

Q. What time did you get to the Court House

A. About eleven.

Cross examination by Prosecution

Did you or Smith say anything to the Constable on the road.

A. No.

Did you see Smith push the waiter out of the way.

A. No.

What were you doing while Smith was wrestling with Cameron.

A. Standing by.

Did you know that Cameron took a swing at Smith

A. I stepped back to the side walk, he took

93. a swing and it went by the front of me

Q. Have you known Canan long.

A. Quite a while.

Q. How far was he from you when he took the swing at you.

A. Not a full arms length.

Q. But you couldn't recognize him.

A. No it was too dark.

Question by the court.

Q. When this man swung at you, were you still walking?

A. I was just stepping onto the sidewalk.

Q. How many drinks had you had.

A. About four pints of beer at the Peace Haven Hotel and one pint at the Elder Flower Inn.

Robert Wilson Jeffers
President

F 39776. Sgt. Lupton.

Having been recalled & sworn.

Q. You investigated the damage to Cromwell cottage.

A. Yes sir.

Q. On what day.

A. On the afternoon of the 29th. Saturday.

Q. Explain your investigations of the damaged property.

A. I found the walls had been broken down also part of the gate. It was strewn partly on the sidewalk and was apparently wilful damage. One post in particular had been broken at onto the sidewalk.

Cross Examination by the defence.

Q. What is the difference between wilful & accidental damage.

A. In the case of accidental damage it is more or less confined to a compressed area, whereas wilful damage as in this case, the breakage was strewn over a larger area.

Question by the Magistrate:

Q. Did you examine the pavement, Sergt.

A. I did sir.

Ed Dairy
President

1.5 2. Did you notice any patches or marks on it.

A. There were no marks of any kind on the pavement except the wreckage from the wall.

Question by the ~~Defence~~ Court.

Q. ~~Was~~ ~~Was this wreckage~~

Q. What time did you make your inspection

A. Between ~~12~~ Fourteen & Fourteen thirty hours.

Alderman Judge
President

Character Witness. 36

Lt. Cdr. Putnam. Having been duly sworn states:—

I have been Pl. Commander of U.S. Pl. U.P.S.R. since October 1941, the defendants Hans Smith Crowell have both been in that pl. all that time. Neither have ever given me personally any trouble whatsoever, to the best of my knowledge Crowell has a clean crim sheet, and Smith has had no arrests for at least seven months. They are both carrier division and their work has always been more than satisfactory. Their conduct as soldiers has left little to be desired in my experience with these men.

I consider it extremely improbable that they have had any thing to do with the damage.

Lt Cdr Putnam USNR
President

Summing up by prosecution.

I have considered both charges together.

1. Mrs Dorothy Hannan on oath states that she saw two men pulling the wall in front of Cromwell Cottage down. She then saw them cross the road and ~~engage in a fight~~ heard a fight ensue.

2. Mrs Hannan's mother heard the row and states that the time was just before 11 o'clock.

3. Ptes Cameron & Doucette, Mr & Mrs Delacourt's evidence show that they reached a point opposite Cromwell Cottage sometime before 11 o'clock

4. Both Mrs Hannan and her mother heard a woman screaming.

5. Ptes Cameron & Doucette, Mr and Mrs Delacourt all state that Mrs Delacourt cried out.

6. The time is too well to admit of any reasonable doubt of the fact that the accused were in the vicinity of Cromwell cottage shortly before 11 o'clock.

7. Mr Rogers in his evidence stated that in his opinion it would take ten or fifteen minutes to cause the

admit that this is an impossibility and apart from the distance they were engaged in the fight with Cameron during this time. In view of this it seems that little reliability can be placed on the times given by the witnesses for the defence.

10. Pte Crowell states that at arms length he could not recognize Cameron. Previous to this the defence have tried to prove that visibility was ten to fifteen yds. If Crowell could not recognize a man he knew well at arms length then anyone could certainly have passed the damaged house without noticing the damage from the other side of the street.

11. Sgt Shorton the Provost Sgt who for three years has been investigating cases such as these states definately that there were no parades on the pavement on Saturday. So that the wind mark seen by the Sergeant on Sunday could have no bearing on the case.

Lt Col Weir Major
President.

(D) Summing up by the defending Counsel.

With regard to the case for the prosecution: prosecution by law assumes the burden of the proof. If all prosecution witnesses are correct, he has proved almost nothing. He has proved that between the hours of 10:15 & eleven there was a fight. Bret. This in strictly has no bearing on the first charge, the evidence which he accepts as rebuttal of Mrs. Hanner & her mother, is when you boil it down simply by that they lead a movie. If as the prosecution accepts his proof. Pte. Crowell couldn't identify a man at arms length, How the devil could Mrs. Hanner, sat two windows the road, & How could she be sure what they were doing, & how many there were. As for the prosecutors declaration that, because Pte. Crowell couldn't identify a man at arms length. Four witnesses for the defence could walk by the damage wall without seeing the damage, is ridiculous, in that the prosecution witnesses state that the defendants would across the side walk, and the court has seen for itself the nature of the rebris.

The case for the prosecution in the first charge, rests upon the computation made of Mrs Hanna & the mother, whose greatest contribution to the evidence, was that she heard a noise.

Respectfully submitted
Chas. Thomson Rogers
President

Summing up for the defence.

1st Charge.

1 No one saw them actually commit the damage.

2 They have not been identified as having been at the scene of the crime when the damage was done.

3 Evidence shows they left the Peacheaven Hotel at approximately 2240 hrs, walked on towards [illegible] and met Cameron who had also left the Peacheaven Hotel at closing time. They are alleged to have done the damage before they met Cameron, but in consideration that by the evidence of Myra & Helpard, they left the Peacheaven some little time after 2230 hrs closing time, and in consideration of the fact that Cameron also left at closing time and stopped nowhere, they obviously could not have had the necessary time to do the damage and then meet Cameron and his party.

4 Four people, Schofield, Nicoll, Wright and Watson passed the Cromwell Cottage that night after Smith & Cromwell, i.e. they caught up with them at the Corner House, indicating [illegible]

His evidence that he pushed the sailor aside in order to come to grips with Cameron is more reasonable. There is a contradiction in the evidence it is to the advantage of both sides to stick to their story and the court must decide which is true. Either Cameron's story is correct and Smith made an unprovoked assault on a man he didn't know, which is unlikely, or the defendant's story is correct and Cameron was the aggressor.

May it please the court, there is a reasonable doubt as to the culpability of the defendant, and therefore the second charge must be dismissed.

Gardiner Hays
President

Lt. J. K. Rhodes.

see page 47

Eddie Rickenbacker
President

47

Plea in Mitigation of Sentence
by the
Defending Officer.

I ask the court in due consideration of the meritorious service of both the accused and I ask that punishment meted out to them on the second charge be not greater than that which the commanding officer could give. I ask the court to consider that this prisoner was only a pay night squabble and that the disciplinary action taken be not harsher than is usual in such cases. I also ask the court to consider the number of persons involved who may also be considered to have been partly at fault. I also ask the court to consider this fact, that had it not been for the damage done to property by persons not known, the defendants would never have been called on for defence in this second charge, as no complaints were laid.

WEST NOVA SCOTIA REGIMENT

49

This is to certify that F 41646 Pte Smith L. J.
of the West NSR, Cdn Army (Overseas), has this day been examined by
me, and found medically fit/~~unfit~~ to undergo trial by Court Martial.

Date Sept 7th 1942.

H. S. Walker Capt.
Medical Officer
West NSR

Bradshaw Maj
President

WEST NOVA SCOTIA REGIMENT

48

This is to certify that F 43664 Pte Fennell R. P.
of the West NSR, Cdn Army (Overseas), has this day been examined by
me, and found medically fit/~~unfit~~ to undergo trial by Court Martial.

Date Sept 7th 1942.

H. S. Walker Capt.
Medical Officer
West NSR

Bradshaw Maj
President

50

SHORT STATEMENT AS TO PARTICULARS OF SERVICE OF THE ACCUSED

(a) The accused, Pte Gowell R.P. has been in confinement awaiting trial on the present charges for nil days in Civil Custody and 7 days in Military Custody making a total of 7 days of which nil days were spent in hospital.

(b) The present age of the accused according to his pay book is 22 years

(c) The date of his attestation specified in his pay book is 31 Oct 39

(d) The accused is in possession of, or entitled to:

~~(i) No Military Decoration or Military Reward~~
or
(ii) Is in possession of ~~or entitled:~~
A Good Conduct Stripe.

I hereby certify that the foregoing particulars are true extracts from the PAY BOOK of the accused.

John R Clemens Lieut RA adjt
West N.S.R.

Court Room
President

51

SHORT STATEMENT AS TO PARTICULARS OF SERVICE OF THE ACCUSED

F41646 Pte Smith, L.G.

(a) The accused has been in a confinement awaiting trial on the present charge for nil days in Civil Custody and 7 days in Military Custody making a total of 7 days of which no days were spent in hospital.

(b) The present age of the accused according to his pay book is 22 years.

(c) The date of his attestation specified in his pay book is 12 Oct 39

(d) The accused is in possession of, or entitled to
(i) No Military Decoration or Military Award
or

I hereby certify that the foregoing particulars are true extracts from the pay book of the accused.

Edwin Keyes
President

Jos P Clements Lieut
Asst N.S.R.

List of Witnesses in the case of F41646 Pte Smith L.J. and F43664 Pte Crowell, R.P., West N.S.R.

Prosecution:

1. F39776 Sgt Lupton, W.B. West N.S.R.
2. F44808 Pte Cameron, A.M. West N.S.R.
3. F40062 Pte Domeette, J.R. West N.S.R.
4. F49908 Pte MacIntyre, D.P. West N.S.R.
5. F40328 Pte Basque, W. West N.S.R.
6. Mrs Dorothy Hannan, Peacehaven, Sussex.
7. Mrs Ada Smith, Peacehaven, Sussex.
8. Mr Harold George Hannon, Peacehaven, Sussex.
9. S.C.948 Arthur Henry Smith, Peacehaven, Sussex.
10. Mrs H. Delacourt, Peacehaven, Sussex.
11. Mr R. Delacourt, Peacehaven, Sussex.

Defence: NIL.

Exhibits: NIL.

Statement by the accused as to a defending officer.

If I am to be tried by Court Martial on charges now pending against me, I wish to have Lieut. C.L. Putnam, West N.S.R to act in my behalf.

Date: 2 Sep 42.

.....
Signature of accused.

Statement by the accused as to a defending officer.

If I am to be tried by Court Martial on charges now pending against me I wish to have Lieut. C.L. Putnam, West N.S.R. to act in my behalf.

Date: 2 Sep 42.

L. A. Smith
Signature of Accused

Statement of Mrs R. Delacourt, Peacehaven, Sussex.

"On the 28th of August, my husband, Pte Cameron, Pte Doucette and I had a few drinks in the Peacehaven Hotel and then started to walk home. Around the vicinity of the Dew Drop Inn we heard a commotion, a sort of rumbling on the other side of the street. We stopped and either two or three soldiers came across the street and one of them hit my husband. Pte Cameron then interfered. It was too dark to see who the men were. Pte Cameron kept the men away from us and my husband, Pte Doucette and I went on towards home, meeting Pte Cameron further up the road.

Signed: E.M. Delacourt.....

[redacted]

Statement of Mrs. R. Delacourt, Peacehaven, Sussex.

On the 28th of August I left the Peacehaven Hotel at 10.25 p.m., accompanied by my wife and Pte Doucette and Cameron. Down by the Dew Drop Inn I heard a commotion which sounded like men fighting and pushing one another around. We stopped and two men came across the road and one of them hit me in the face. Pte Cameron interfered and my wife and I and Pte Doucette went on. We met Pte Cameron again further on and we went home where Pte Cameron fixed up his face and we had a cup of tea.

Signed. R Delacourt.....

FORM 31. [redacted]

Beat File No.
Crime Report No.
No. in Summons Book.

EAST SUSSEX CONSTABULARY.

Newhaven. Station Lewes. Division

Statement taken at:—

Place Cromwell Cottage, South Coast Rd., Peacehaven. Time 5 p.m. Date 29th August, 1942.

Name (Mrs.) Dorothy HANNAN.

Address "Cromwell Cottage, South Coast Road, Peacehaven, Sussex.

Occupation Age years

Statement:— "I reside at "Cromwell Cottage", South Coast Road, Peacehaven.

At about 10 p.m. on the 28th August, 1942, I retired to bed, I sleep in the bedroom over the shop. I was asleep when I was aroused by a noise outside. I cannot say what the time was, I looked out of the window and saw two soldiers outside the shop, they were pulling one of the stone posts down, one had both arms encircled around the post and I saw him pull it down with such a force that he fell backwards. I called to them and they started to walk away and then they crossed the road to some other people. The 2 soldiers were the only two that I saw on our side of the road. There was a girl on the other side of the road and she was crying. There was a fight and someone was knocked down."

(Sgd.) D.HANNAN.

Statement made by Mrs. ADA SMITH at 5.15 p.m. on the 29th August, 1942 at Cromwell Cottage, South Coast Road, Peacehaven.

(Mrs.) Ada SMITH,

Cromwell Cottage, South Coast Road, Peacehaven.

"I am residing at Cromwell Cottage, South Coast Road, Peacehaven. At about 10p.m. on the 28th August, 1942, I retired to bed, I did not go to sleep. I later heard some shouting and singing. Just as the clock was striking 11 p.m. I heard a great deal of noise outside the house. I heard a lot of crashing noise. I did not look out of the window to see what was happening."

(Sgd.) A.SMITH.

Statement made by Mr. Harold George HANNAN. at 5.30 p.m. on the 29th August, 1942 at Cromwell Cottage, Peacehaven.

(Mr.) Harold George HANNAN.

Cromwell Cottage, South Coast Road, Peacehaven.

"I reside at Cromwell Cottage, South Coast Road, Peacehaven, I am working away from home.

At about 10.45 a.m. on the 29th August, 1942, I returned to my house and saw that 7 brick pillars had been pulled down. There was a large wooden frame over the side gate and this had also been pulled down. I have had a builder to estimate the damage and it is estimated at £12.

As a result of what my wife told me I informed the local military commander of the matter.

(Sgd.) H.G.HANNAN.

s were Further statement over-leaf.

The above statement [redacted] made to me [redacted] By Mrs. D.HANNAN, Mrs. A.SMITH Mr. H.G.HANNAN. and recorded by me at the same time.

John Miller Police Det.Con. [redacted]

Sub. 139 15.000/8/42

Statement made by Special Constable 948 Arthur Henry SMITH at 5.45 p.m.on the 29th August,1942 at Bolney Stores,South Coast Road,Peacehaven.

S.C.948 Arthur Henry SMITH,

Bolney Stores,South Coast Road,Peacehaven.

"I am a Special Constable at Peacehaven.At about 11p.m.to 11.30 p.m.on the 28th August,1942,I heard a great deal of noise on the main South Coast Road,Peacehaven.I looked out of the window and saw four soldiers,one was calling another "Cameron" and he was being addressed as Leslie.There were two fighting in one place and 2 in another. The two that were fighting under my window were the two "Cameron" and"Leslie".I saw a cap on the grass. At about 7.15 a.m.on the 29th August,1942 I collected two soldier's caps from the grass outside my shop and also a locket.I reported the matter to P.C.PUTTEN.

Directly opposite my house is "Cromwell Cottage" and at 6.45 a.m.on the 29th August,I saw considerable damage to the wall and gate around the cottage."

(Sgd.)
A.H.SMITH S.C.948.

The above statement was made to me by S.C.948 A.H.SMITH and recorded by me at the same time.

John Putten Pct.Con.

Summary of Evidence in the cases of F41646 Pte Smith, L.J., and F43664 Pte Crowell, R.P., both of West N.S.R., soldiers of the Canadian Army Overseas, stationed in the Field.

By Order of Lt.-col. M.P. Bogert, Comd. West N.S.R.
This Summary is taken on Oath.

First Witness for the Prosecution.

F39776 Sgt Lupton, W,B., West N.S.R., having been duly sworn states:

I am Provost Sgt of the West N.S.R. In answer to a complaint on Friday 28th August 42, ~~xxxxxx~~ relating to damage done to the property of H.G. Hannan, Cromwell Cottage, South Coast Road, Peacehaven. I went down and interviewed Mr Hannan and his wife, which resulted in my placing under arrest Ptes Smith, L.J. and Pte Crowell, R.P. The damaged property is situated about fourty yards along the main Brighton Rd from the Dew Drop Inn. W B Lupton

The accused declines to cross-examine this witness.

Second Witness for the Prosecution.

F44808 Pte Cameron, A.M., West N.S.R., having been duly sworn states:

On 28 Aug 42 I left the Peacehaven Hotel with a sailor Roy Delacourt, by name and his wife Gladys also Pte Doucette, J. about closing time and started up the road towards Newhaven on the left side of the road. After passing the Dew Drop Inn I noticed some sort of row on the other side of the street and we all stopped. A few minutes later Ptes Smith and Crowell came across the road. Pte Smith aimed a blow at Mr Delacourt and Mrs Delacourt started yelling and I stepped in to try and stop the fight. I started talking to Pte Smith and then Pte Crowell took a swing at me. I stepped back to avoid the blow and more or less pushed him and Crowell fell down. Pte Smith then grabbed hold of my arm and we wrestled out towards the center of the road. By that time Pte Crowell had got up again. I broke loose from Pte Smith and pushed Pte Crowell again who fell on the pavement. Smith then ~~xxxx~~ stepped in and looked me around the waist and threw me to the road where I struck my head on the pavement. I was hit two or three times while I was lying there. I scrambled back to my feet and Smith caught me by the pant legs and I grabbed him around the neck. Pte Basque came along at that time and another soldier with him whom I did not recognize. I asked them to help and managed to get away from Smith. I ran up a ~~xx~~ side street and circled back to the main road meeting Mr Delacourt and his wife who were coming up the road. I went to their house where Mrs Delacourt put ointment on my face. We then had tea and I returned to the billets with Pte Doucette who had accompanied Mr & Mrs Delacourt. A M Cameron.

The accused declines to cross-examine this witness.

Third Witness for the Prosecution.

F40062 Pte Doucette, J.H., West N.S.R., having been duly sworn states:

On the 28 Aug 42 I was in the Peacehaven Hotel with Pte Cameron and Mr and Mrs Delacourt. We had a friendly drink in there and left the Hotel at about 2230 hrs. We started walking up the road and around the Dew Drop Hotel we heard some kind of a commotion on the opposite side of the street. We stopped to see what was going on and Ptes Smith and Crowell hit Mr Delacourt and then Pte Cameron stepped in to stop the fight. Cameron and Smith and Crowell then started fighting

Third Witness for the Prosecution, Cont'd

together. I did not see much of the fighting as I stayed on the sidewalk with Mr and Mrs Delacourt. After a few minutes I saw Cameron running down the road. Mr and Mrs Delacourt and I walked on and Cameron caught up with us soon after. We went on and spent the rest of the evening at their home.

Cross-examined by the Accused, Pte Smith, L.J.

Q. Was there any actual fighting with the sailor or just the one blow struck?
A. Just the one blow.

J. B. Doucette

The accused declines to further cross-examine this witness.

Fourth Witness for the Prosecution.

F49908 Pte MacIntyre, D.P., West N.S.R., having been duly sworn states:

I left the Central Club around 2230 hrs on the night of 28 Aug 42 and proceeded towards my billets in the direction of Newhaven, at the corner of the Side road leading to the Dew Drop Inn I met Pte Basque and we went on together. A short distance further on we heard some scuffling and shouting and a noise like a girl yelling. We went up to see what was going on and found two soldiers wrestling, they were Ptes Cameron and Smith. We parted them and they separated quite peacefully. There was a lady there with a sailor and I told them they better go on which they did. We then all had a little argument, Ptes Smith, Crowell, Basque and I. I then went on to my billets alone and arrived there at 2245 hrs.

D. P. MacIntyre

The accused declines to cross-examine this witness.

Fifth Witness for the Prosecution.

F40536 Pte Basque, W., West N.S.R., having been duly sworn states:

At 2220 hrs on the night of 28 Aug 42 I left the Dew Drop Inn and went out to the Main Road, and there met Pte MacIntyre. I talked to him for a few minutes and then we started back towards our billets in the direction of Newhaven. We were on the left hand side of the road. We started to sing and came along about fifty yards and found four men standing on the left hand side of the road arguing. Pte MacIntyre said to me we will stop and part them. Then someone asked me, "Where are you going Indian", I answered none of your business and as I turned someone hit me in the face and while I was down someone hit me again. I got straight up with all the beer knocked out of my head and went straight home arriving at my billets at about 2300 hrs. I do not know who the men were.

W. Basque

The accused declines to cross-examine this witness.

A written statement of the following six witnesses evidence purporting to be signed by them has been read to the accused and is included in this Summary of Evidence. Having regard for the loss of time involved the attendance of these witnesses cannot in my opinion be readily procured.

J. K. Rhodes Lieut.

Sixth Witness for the Prosecution

Mrs Dorothy Hannan, Cromwell Cottage, South Coast Road, Peacehaven, Sussex.

Statement: I reside at "Cromwell Cottage, South Coast Road, Peacehaven. At about 10 p.m. on the 28th August, 1942, I retired to bed, I sleep in the bedroom over the shop. I was asleep when I was aroused by a noise outside. I cannot say what the time was. I looked out of the window and saw two soldiers outside the shpp, they were pulling one of the stone posts down, one had both arms encircled around the post and I saw him pull it down with such a force that he fell backwards. I called to them and they started to walk away and then they crossed the road to some other people. The two soldiers were the only two that I saw on our side of the road. There was a girl on the other side of the road and she was crying. There was a fight and someone was knocked down.

(Sgd) D.Hannan.

The accused do not demand the attendance of this witness for cross-examination.

Seventh Witness for the Prosecution.

Mrs Ada Smith, Cromwell Cottage, South Coast Road, Peacehaven, Sussex.

Statement: I am residing at Cromwell Cottage, South Coast Road, Peacehaven. At about 10 p.m. on the 28 August 1942, I retired to bed. I did not go to sleep. I later heard some shouting and singing. Just as the clock was striking 11 p.m. I heard a great deal of noise outside the house. I heard a lot of crashing noise. I did not look out of the window to see what was happening.

(Sgd) A. Smith.

The accused do not demand the attendance of this witness for cross-examination.

Eighth Witness for the Prosecution.

Mr Harold George Hannan, Cromwell Cottage, South Coast Road, Peacehaven, Sussex.

Statement: I reside at Cromwell Cottage, South Coast Road Peacehaven. I am working away from home. At about 10.45 a.m. on the 29th August 1942. I returned to my house and saw that 7 brick pillars had been pulled down. There was a large wooden frame over the side gate and this had also been pulled down. I have had a builder to estimate the damage and it is estimated at £12. As a result of what my wife told me I informed the local Military Commander of the matter.

(Sgd) H.G. Hannan.

The accused do not demand the attendance of this witness for cross-examination.

Ninth Witness for the Prosecution.

S.C.948 Arthur Henry Smith, Solney Stores, South Coast Road, Peacehaven.

Statement: I am a Special Constable at Peacehaven. At about 11 p.m. to 11.30 p.m, on the 28th of August, 1942, I heard a great deal of noise on the main South Coast Road, Peacehaven. I looked out of the window and saw four soldiers, one was calling another "Cameron" and he was being addressed as Leslie. There were two fighting in one place and 2 in another. The two that fighting under my window were the two "Cameron" and "Leslie".

Ninth Witness for the Prosecution. CONT'd

I saw a cap on the grass. At about 7.15 a.m. on the 29 Aug 1942 I collected two soldier's caps from the grass outside my shop and also a locket. I reported the matter to P.C. Potten.

Directly opposite my house is "Cromwell Cottage" and at 6.45 a.m. on the 29th August, I saw considerable damage to the wall and gate around the cottage."

(Sgd) A.M. Smith, S.C.948.

The accused do not demand the attendance of this witness for cross examination. J.K.R.

Tenth Witness for the Prosecution

Statement by MrsDelacourt of Peacehaven, Sussex.

"On the 28th August my husband, Pte Cameron, Pte Doucette and I had a few drinks in the Peacehaven Hotel and then started to walk home. Around the Vicinity of the Dew Drop Inn we heard a commotion, a sort of rumbling on the other side of the street. We stopped and either two or three soldiers came across the street and one of them hit my husband. Pte Cameron then interfered. It was too dark to see who the men were. [redacted] kept the men away from us and my husband, Pte Doucette and I went on towards home, meeting Pte Cameron further up the road.

The accused do not demand the attendance of this witness for cross-examination.

Eleventh Witness for the Prosecution.

Statement by Mr Delacourt of Peacehaven, Sussex.

"On the 28th August I left the Peacehaven Hotel at 10.25 p.m., accompanied by my wife and Ptes Doucette and Cameron. Down by the Dew Drop Inn I heard a commotion which sounded like men fighting and pushing each other about. We stopped and two men came across the road and one of them hit me in the face. Pte Cameron interfered and my wife and I and Pte Doucette went on. We met Pte Cameron again further on and we went home where Pte Cameron fixed up his face and we had a cup of tea.

The accused do not demand the attendance of this witness for cross-examination.

After having been warned in accordance with RP4, the accused reserve their defence.

Certified that RP 4 (c) (d) (e) (f) and (g) has been complied with.

Taken down by me this 2nd day of September 1942, in the presence and hearing of the accused.

J.K. Rhodes Lieut.

(J.K. Rhodes), Lieut.,
Officer taking Summary of Evidence.

Eastmond Major
President

No. F 41646 Name Smith L J. Sqn., Battery, or Company — Corps Ord R.S.C. — Date of enlistment 11 Oct 39 — G.C. Badge — Service or Proficiency Pay 1/53 — M.F.M. 6 A.F.B. 122 (Revised) 17834 7-41 (1319-20) H.Q. 1775-39-1402

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. 1 — Signature O.C. Company, etc. — Character

Place	Date of offence	Rank	Cause of detention over	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Guillaumont	22 Apr 40	Pte		W.O.A.S. AA Sec ... refusing to obey an order of his superior officer viz: to parade for Gas Drill at 1400 hrs on 22 Apr 40	Cpl Hollis C.J.	8 days C.B.	28 Apr 40	Major K.P. Hunter	
"	24 Apr 40	"		absent from Gas Drill parade	Sgt Hunt C.H.	48 hrs det	29 Apr 40	Lt-Col H.E. Young	
Salonika	25 May 40	"		refusing to perform a duty when ordered by a superior officer	Pte Gunson	7 days C.B.	25 May 40	Capt Chennells	
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Salonika	29 Jan 41	Pte		W.O.A.S. AA Sec ... refusing to obey an order of his superior officer viz: to parade for Gas Drill at 1200 hrs on 29 Jan 41	Pte Gunson	10 days C.B.	12 Mar 41	Lt-Col Hamilton	
"	29 Jan 41	"		W.O.A.S. failing to appear at the place	Pte Gunson	10 days C.B.	5 Apr 41	Lt-Col Hamilton	
"	23.4.41	"		W.O.A.S. failing to appear at the place appointed by his O.C parade	Sgt Smith	14 days C.B.	28.4.41	Maj Clennett	
				W.O.A.S. failing to appear at the place appointed by his commanding officer 24.25 4.41	Cpl McLeod				

(P.T.O.)

Place	Date of offence	Rank	Cause of dropping-ness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
1 Field	11.1.42.	Pte		W.O.A.S. absenting himself without leave from Church parade at 09.15 hrs on 4.1.42 Sec 15 (1) A.A.	P.S.M. Manning	7 days C.B.	12.1.42	M.G. Clements Maj	
Field	18 January	Pte		W.O.A.S. absent from parade from 1300 hrs until 1900 hrs on 17.1.42 Sec 15 (2) A.A. (2) using insubordinate language to his superior Officer in that he when ordered by a warrant Officer to fall out did a weapon pit, said I will not do it, or words to that effect. Sec 5 (1) A.A.	Lance Corporal Cochrane Lance Corporal Cochrane	28 days detention	17.1.42	M.G. Clements Maj	

Certified true copy
J.H. Rhodes Lt.
Adjt 1st Welsh D.S.R.
2 Sept.

Graduation Major
President

No. F43[illegible] Name Crowell RP Sqn., Battery, or Company [illegible] Corps West NSR

Date of last entry in Company Conduct Sheet } No. and date of last drunk } Period not reckoning towards freedom from extra fine } Date of enlistment 21 1 89 G.C. Badges } Signature O.C. Company, etc. } Service or Proficiency Pay 3rd

Sheet No.

M.F.M.S. (A.F.B. 122)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Nature of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Ro[illegible]	2 Mar 41			[illegible] soldier completed two consecutive years service after [illegible] and accordingly [illegible] previous sheet to look [illegible]					

M G Clements Maj

Charleston

M G Clements Maj

Certified true copy

John B Cameron Lt

a/Capt West NSR

[illegible] Major

54-20-21

Pte. Smith, L. J. C. (20)

Pte. Boles, A. L. (21)

RECORDED AT CMHQ IN AB 188 50-20-21

CFA96 (To head of AFA21) 40/1 & 2 — 1945 — (2010) — 4888

FIELD GENERAL COURT-MARTIAL

RECEIVED 1945 SEPT 5 CMHQ

Convened by Order of Brig G W B TARLETON DSO MC Comd Brussels Grn dated 3 Sept 45

50-20 B
50-21 B

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L 8330	Pte		Lewis John Edmund	SMITH	No 1 Edn Base Trf Coy RCASC
M 45121	Pte	L/Cpl	Allen Lloyd	BOLES	Smith - 37/86. Boles - 37/87.

1888

PROCEEDINGS OF TRIAL.

Held in the Fd in ~~country~~ Courtus L'Abbaye Rodt, BELGIUM on ~~(date(s))~~ 5 to 6 Sep 45 B

(Vol IV p. 5)

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OF JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in JAML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused ~~is~~ (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn b. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused ~~is~~ (are) brought before the Court. At ~~1000~~ 1015 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused ~~is~~ (are) fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO(2).~~

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to YVETTE LEROI as interpreter? Ans NO SIR

~~as shorthand writer?~~ Ans

The Interpreter is sworn.(1) ~~The shorthand writer is sworn.~~(2)

~~Do you object to~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) The President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO SIR (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	F A BAILLARGEON	1 Cdn Court Martial Centre
Member	CAPT	D L MACDONELL	1 Can C M Centre
Member	CAPT	J W VARTY	Lorne Scots 1 Can C M Centre
~~Judge Advocate~~			
Prosecutor	CAPT	K A McKENZIE	1 Can C M Centre
Defending Offr	CAPT	D B MACKENZIE	1 Can C M Centre

Questions by President: Is the Prosecutor a lawyer? Ans YES Is the Defending Offr a lawyer? Ans YES (2)

(1. RP 25, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (8) and fn 2 were not followed. See Dil p 33.)

A8. The ~~accused~~ L 8330 Pte Lewis John Edmund SMITH before arraignment make(s) (no) ~~(a)~~ plea.(1)
M 45121 Pte (L/Cpl) Allen Lloyd BOLES

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and [rading are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank, name of the accused making the plea.)

A9. The accused ~~is~~ (are) arraigned (separately) on all charges in the charge sheet.(1) The accused ~~does~~ (do) not object to any charge.(2) There is no ~~amendment~~ to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 886 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is sworn and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The pro-

ceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Allen Lloyd Boles Can Vol I p 72

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (RP 37(A).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

~~B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning~~ of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty,(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans (5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 2, MML p 54 para 47.* 4. *See para EJ of Record Form E.*
5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex , initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea signifying as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by ~~using Record Form E on p 3.~~

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

~~C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8~~ inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B3 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by using paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using ~~Record Form E on p 3.~~

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET NO 1

The accused, No M-45121 Pte (L cpl) Allen Lloyd BOLES, and No L-8330 Pte Lewis John Edmund SMITH, both of No 1 Cdn Base Tpt Coy, RCASC, attached to Cdn Sec H Q Brussels Garrison, soldiers of the Canadian Army Overseas, are charged with:

FIRST CHARGE
Sec 40
Army Act

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that they

in the Field, on or about the 10 July 1945, did improperly and without authority use a Canadian Military Vehicle, No CL 4250201, for private purposes.

In the Field
31 Aug 45

(L P Payard) Lt col
Commanding
Cdn Sec HQ Brussels Garrison

To be tried by Field-General Court-Martial

In the Field
6 Sep 45

(G W TARLETON) Brigadier
Commanding
Brussels Garrison

CHARGE SHEET NO 2

The accused, No L-8330 Pte Lewis John Edmund SMITH, of No 1 Canadian Base Tpt Coy, RCASC, attached to Cdn Sec H Q Brussels Garrison, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 40
Army Act

WHEN ON ACTIVE SERVICE, NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field, on or about 10 July 45, so negligently drove Canadian Military Vehicle No CL 4250201 as to become involved in an accident.

In the Field
31 Aug 45

(L P Payan) Lt col
Commanding
Cdn Sec H Q Brussels Garrison

To be tried by Field General Court-Martial

G L 3

In the Field
3 Sep 45

(G W E TARLETON) Brigadier
Commanding
Brussels Garrison

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court, RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L 8330	Pte		Lewis John Edmund	SMITH	No 1 Cdn Base Tpt Coy RCASC
M 45121	Pte	L/Cpl	Allen Lloyd	BOLES	

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, ~~has~~ (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on 3 Sep 45 (date) endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial" GD

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.~~ (Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ (AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~ (RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	F A BAILLARGEON		1 Cdn C M Centre

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	D L MACDONELL		1 Cdn C M Centre
Capt	J M VARTY	Lorne Scots	1 Cdn C M Centre

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 105.)	(Unit.)

On Active Service in the Fd

in Belgium (Country.)

Date 3 Sep 45

J. W. Stratford (Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

(C W E TARLETON)

Commanding Brussels Garrison

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

4/38A CP A95 (To Dept of AFAIR) 40/P & S/1687 (4801)

MEDICAL OFFICER'S CERTIFICATE

I certify that No. W-45121 Pte. (L/C.) BOLES, A.L.
Att'd: Cdn Sec Brussels Grn Regiment
is FIT to undergo trial by Court Martial.

5 Sep 45.

Signature of Medical Officer

MEDICAL OFFICER'S CERTIFICATE

I certify that No. L-5330, Pte. SMITH, L.J.E.

..Att'd. 22A Sec. Brussels Grn

is..FIT.....to undergo trial by Court Martial.

5 Sep 45.

Signature of the Medical Offr

MEDICAL OFFICER'S CERTIFICATE

I certify that No. M-45121 Pte. (L/C.) BOLES, A.L.
Att'd: Cdn Sec Brussels Grn
Regiment is FIT to undergo trial by Court Martial.

5 Sep 45.

Signature of Medical Officer

MEDICAL OFFICER'S CERTIFICATE

I certify that No. L-6330, Pte. SMITH, L.J.E.
Att'd. Cdn Sec. Brussels Grn Regiment
is FIT to undergo trial by Court Martial.

5 Sep 45.

Signature of the Medical Offr

MEDICAL OFFICER'S CERTIFICATE

I certify that No. Pte. SMITH,
Att'd: Cdn Sec Brussels Grn Regiment
is FIT to undergo trial by Court Martial.
~~UNFIT~~

Signature of Medical Officer

6 Sep 45

MEDICAL OFFICER'S CERTIFICATE

I certify that No. Pte. SMITH,
Attd. Gds. Sec. Brussels Gnn. Regiment
is FIT to undergo trial by Court Martial.

~~UNFIT~~

6 Sep 45

Signature of the Medical Offr

The same series of events give rise to the charges found on both charge sheets. Also, the events of this particular evening continue beyond those facts upon which the prosecution relies for the establishment of it's case on the two charge sheets. However the events occurring beyond a certain point during the course of the evening are irrelevant not essential to the proof of the charges. I anticipate that the civilian witnesses particularly may desire to continue their testimony to it's natural conclusion, "to complete the story" so to speak. In fairness to the accused, on the charges, on which they are being heard, it is not desireable that this irrelevant matter be admitted. It might perhaps be prejudicial to them

It may appear that certain material evidence is being suppressed. I should like to assure the court in advance that such is not the case — that any evidence not adduced is, in my opinion irrelevant.

Kenneth D. McKenzie, Capt.

D3 charge sheet #1 JCB

Evidence in the case of

45121 Pte (A/Cpl) BOYLES, Allen Lloyd and L. 8330 Pte SMITH, Lewis John Edmund both of No 1 Can Base Tpt Coy RCASC, attached to Can Int Org Brussels Garrison.

The president in makes an opening address & calls.

First Witness - Miss M. M. Lemmens of 20 Onderbergstraat, Ledeberg, Ghent, having been duly sworn states.

I recognize Pte Smith and the other accused whose name I do not know.

I remember the evening of 10 July, 1945. I was at the pictures & then to cafe Ghent. I was with my friend Gabrielle Van Acker at the cafe Ghent. While I was in the cafe Smith & the other soldier came in at approx 2200 hrs. Pte Smith asked me if I wanted to go to Brussels. I can't remember if Pte Smith was with the other soldier. All I can remember is that I was in the street at the time he asked me. I accepted the offer if he could bring me back by 3 o'clock in the morning. He then said he would drive me back by 3 in the morning. We started for Brussels, the Pte Smith the other soldier my friend & myself my friend being Gabrielle. I asked Gabrielle to come, no else suggested it. We travelled to Brussels in a military lorry. The four of us were in the front seat.

RB

was only sent to accompany the soldiers for no other purpose.

Cross examination.

We spoke English to the two soldiers I speak English a little. I understand a little English I asked Smith to have me back by 3 a.m. because I had to go to work at 6 a.m. He said he would have me back in time for work.

I didn't really care how I got back as long as I got back in time for work. Any train would have been just as good. I knew Smith was stationed in Ghent but I knew he had been away for 14 days in Holland He told me he was going back to Nijmegen the other soldier did not say where he was going. I had never seen the other soldier before the evening I went to Brussels with them the other soldier didn't speak to me at all

Re-examination

I can't say exactly that I expected them to bring me back once I arrived in Brussels but I could always take the train. I can't exactly say if he told me when he was going to Nijmegen, but he came on Sunday evening & said he was going that the next day Monday evening was not the day we went to Brussels. I know the next

day. Stronger Smith would bring me back from Brussels on time for work with the lorry

By the Court:

I rode as far as Asche in the lorry. I am not giving evidence in English as I cannot say exactly in English as I can in French.

RP 93(b) complied with.

The witness after complaint of above rule wishes to add the following to page 3 line 4 of her evidence "Once in Brussels if Smith was unable to bring me back in his lorry I would take a train."

RP 83(B) complied with

No examination by DO or P.O. under RP83(B)

witness Miss Gabrielle Van Acker 19 yrs old
for prosecution Rey branch street, Evergem Ghent.
having been duly sworn states.

I recognize the two accused as Cpl Boles
the other Pte Smith. I remember the
evening of 14 th of July 18 I saw the two
soldiers in the cafe Ghent that evening
three girls were with me. Magdelena
Semmyn was one. We were in the cafe
the two soldiers came in ~~they asked me~~ We
~~to go with them to Brussel~~. ~~I spoke to~~
~~Magdelena. The soldier spoke first to~~
Magdelena. One soldier spoke first to
Magdelena It was Smith I did not
hear what he said Magdelena then
came & asked me something. I told her
that we ~~were~~ intended to work at 6 ~~am~~
in the morning & we had to be back
by 3 A.M. We went together to the
two soldiers. Smith asked me to go
to Brussels. It was the first time I
had seen the Cpl. I did not speak to
the Cpl in the cafe I told Smith
I would go to Brussels with him &
that I must be back before 6 o'clock in
the morning. We sat at a table
drinking a lemonade during the
conversation Cpl Boles was not
sitting there. We came in to the cafe
went to the lavatory & then we went out.
I spoke to Smith in the cafe. I told him
I would go to Brussels if he promised me

I will be back before 6 o'clock in the morning. Smith said" I will have you back by 3 o'clock in the morning mi Short.

We went to the truck the four of us.

Cross examination.

I understand English Smith was speaking to me in English. I had seen Smith before, many times. If Smith was not able to get me back to Short by truck I knew I could come back by train. We knew that we had to come back by train. I did not know that Smith was going right through to Virginia

Re examination

I did not foresee that I would have to come back by train. I expected to come back by truck as Smith told me we would be back by 3 o'clock.

By the Court

Boles was with Smith when he told me he would have me back by 3 A.M. They were together he was close enough to understand and to hear.

RP 43 (b) complied with

all four of us got in the truck and rode

as to Rasche RP 43 (b). complied with

Civil Witness M-60102 Cpl AARSTAY R.C., for prosecution
2 Can T/C Provost Coy having been duly sworn states. On 10 July 45 I was stationed in Brussels. On the morning of 11 July 45 at approx 0930 hrs. I was instructed to proceed to Aasche on the Brussels Ghent highway. I took T/Cpl Boles & Pte Smith who are present here today, to investigate an accident which had occured during the night. I did not see the vehicle I interviewed Pte Smith & T/Cpl Boles at Aasche who were not under arrest at that time. I obtained a work ticket from Pte Smith. I asked Pte Smith if they were on an authorized trip and he produced a work ticket I would recognize the work ticket if I saw it again.

Prosecution produces a work ticket which the witness identifies as the one taken from Pte Smith.

This work ticket relates to a Ford 3 ton WD # 42502201. The driver designated by the work ticket is Pte Smith 12C. # 1 Can Base Tpt Coy RCASC.

The prosecution submits work ticket as evidence. The defending officer does not object to the admission of the work ticket as evidence.

Produced & marked exhibit # 1

I went to Albert on the evening of the same day. I did not take anyone with me. I contacted Miss Magdelena in Sermaize and Miss Gabriella Van Acker I have never seen vehicle # 425020

Cross examination.

Both girls I interviewed worked at cafe Albert. ~~I don't believe it was at Sermaize~~

By Court

I recognize the work taken by the drivers name. I took the ~~#~~ number of the vehicle as the work taken at the time also the unit from which it was issued. I did not take particulars of the trips on this speed date.

RP 2:(b) complied with

Fourth Witness — Lt. H J Jacobi Admin ~~for prosecution~~ Officer, Can Base Tpt Coy RCASC having been duly sworn states.

On 10 July 45 I was not Admin Officer but acting under instruction of Mr Wingman admin officer. Rolls & Chits were in strength, Can Base Tpt Coy on 10 July 45. "A" Pool established and all chits for issue Sermaize.

AB

Part of our unit was in Ghent, Corp HQ.
I could not ~~recognize~~ definately Capt
Wingfield signature. I have seen
it many times. (Exhibit # 1
in chronological witness) This is a
transport work ticket of 1 Cdn Base
Tpt Coy RCASC. Opposite the entry
for 10 of July 45 is Lt Wingfield
signature he was attached at
Corp HQ in Ghent at that time.
Signature authorizing journey of
9 July is that of Capt. Mc Laughlin
with "A" Platoon attached to 13 CIB Bn.
I was stationed also at Corp HQ in
Ghent on 10 July 45.
The entry of 9 July authorizes a trip
from 13 Bn in Holland near Nijmegen
to Ghent and return. The round
trip had often been done depending on
the exigencies of the service in one day.
On the 10 of July Lt Wingfield
authorized a trip ~~to Ghent~~ from
Corp HQ Ghent to ~~Nijmegen~~ 9 CIB Bn, Ghent
& return. This would mean the
vehicle would return from 9 Bn
Ghent to Corp HQ Ghent.
I have no personal knowledge
of this trip other than in connection
with a Court of Inquiry

If an other trip was authorized for the same day it would be normal practise to enter it on the work ticket.

Trips for the next day are often authorized the night before. ~~This is~~ Before a vehicle may carry civilians the driver would have to have in his possession written authority from the O.C. I was working in the office through which authority would pass. And it is quite possible for such an authority to be given without my knowledge. To my knowledge no authority was given.

On a trip from Nijmegen to Ishem I would expect the vehicle to proceed by the most direct route I have travelled between Ishem & Nijmegen twice. I did not go through Brussels. I think I took the shortest route.

I was on arrival in

I do not know when the vehicle left. 13 Bn on the 7th July I do not know what time it arrived at Cory 7 & 9. I do not know what it was carrying. Sometimes the vehicles remain overnight on a trip of this nature, ~~depending~~ It is done if possible

Cross examination 10

I do not know who made the trip from 13 Rm to Coy 76 q. I did not know either of the accused before the investigation began.

I did not know 2/Cpl Boles was a pass in Mount o did not come down with the vehicle. I do not know why the vehicle was used on the trip to Q'Bm. I did not know that a Coy 76 q driver took the vehicle away from Pte Smith to make the trip. I did not know that the vehicle was not returned to Smith until after supper on the 10 July. I do not know why the Orderly man did not give any new transport authorization after holding up the vehicle for 76 Coy.

The driver of the vehicle is responsible for getting his vehicle between any two points in the shortest time possible having regards to conduct on roads & wear & tear on vehicle. The route is left to the discretion of the driver having this in mind, unless otherwise directed

I do not know whether any other authority than that of the work tickets for this trip, being given per

By the Court —

The vehicle shown by the number on the work ticket is normally kept at Nijmegen with "A" platoon.

The entry on the 9th July would indicate that the vehicle would go to Ghent & not to Nijmegen

In my opinion the last entry on a work ticket cancels all previous and if I was returning to Nijmegen from Ghent I would ask for another entry to be made, if an entry had been made after the original one for an intermediate run.

RP 83 (b) complied with

after the driver has been authorised to carry civilians by the O.C. he must get a release form signed by the civilian.

RP 83 (b) complied with

The prosecution closes.

The defence entered no prima facie case against L/Cpl Boles. p 11A

The prosecution replies. p 11B.

Submission is allowed in the case of No. 4701211 Pte (T/Cpl) Boles A J and disallowed in the case of 4.783.0 Pte Smith S.J.C.

"B"

Submission "B" of Defending Officer.

It is submitted that there is not a prima facie case and that both accused should now be dismissed.

With respect to L/Cpl. Bales there is no evidence that he was anything but a passenger in Smith's lorry.

With respect to both accused there is no evidence that this trip was "without authority"

D Sheaf Capt

"B"

Reply to "B" Def Offrs. Submission

It is submitted that Boles & Smith acted together in a common enterprise throughout. They came to the cafe together in the truck about 2200 hours at night. Smith asked his girl friend to make a trip to Brussels with him & requested her to bring another girl for his friend. She promised miss Sermyn that she would have her back in time for work in the morning. Smith also promised miss Van Acker, in the presence & hearing of Boles that he would have her back in time for work the following morning.

The four of them - two soldiers & two girls got in the military vehicle & proceeded towards Brussels. It was the understanding of both the girls that they would be brought back to Ghent in the military truck, - though they were prepared to take a train back if the military vehicle for some unforseen reason could not bring them. Miss Van Acker says that she did not forsee she might have to return by train. & is requested that the first submission be disallowed, as Boles acted with Smith in the common plan that With regard to the second submission there is no proof the driver lacked authority "without authority" must be read in their context, request that it too be disallowed. The words was the vehicle used "without authority for private purposes? I submit that it has been proved affirmatively that there was no authority given Smith to use his vehicle late at night to drive to Brussels & back with some civilian girls. The vehicle may be his, & he may

NB

Reply (cont'd)

be authorized to make a trip in it, — but he was not authorized to drive his girl friend to Brussels. It is alleged that his authority did not extend to using the truck for private purposes — namely driving Miss Sermyn to Brussels. I accordingly request that the second submission be disallowed, and the accused be required to make a defence.

Kenneth D. Mc Kenzie, Capt.

The defence ~~opens its~~ has no opening address and calls his first witness.

~~Left~~ 1st Witness for Defence. NX-45121 Pte (L/Cpl) Boles G.L. of 1 Can Base Tpt Coy RCASC. having been duly sworn states:

My last leave was a short leave in which expired on 11 July. I spent this leave in Ghent. I made arrangements for my return on the day before my leave expired. I wished to stop at ~~the~~ "C" platoon which was stationed at Villevoorde just outside of Brussels. I met Pte Smith and as he was thinking of returning to his unit that evening I suggested I take the 2 ton lorry & stop over at "C" platoon. I met Pte Smith between 1800 & 2000 hrs on the 10 July 44. I spoke to him about the trip that night. We left Ghent between 2100 & 2130 hrs, before dark. There were civilians in the vehicle. Pte Smith & I intended to take them as far as Brussels. I understood we were to send them home on the 2400 train from Brussels. To my knowledge I had no intention of bringing the civilians back to Ghent. I had spoken to Pte Smith about what I proposed to do. I understood his intentions were the same as mine.

I am reasonably familiar with the train schedules from Brussels-Ghent. At one time there was a train which left Brussels around 3 am & arrived at Ghent around 5.30 am. I am a runner. I am familiar with driving of vehicles from Ghent to Nijmegen. The route taken depends on circumstances. As a rule if I have time I take 210. I have been told that 210 route is slightly longer but I have never checked it. 210 route goes through Aalst touches edge of Brussels - Antwerp. Turnhout. Tilburg & maps lead up from there on. I have taken 200 from Ghent. It is a rough road except for 4 or 5 miles of cement. There is a stretch of 3 miles of 10 miles per hour speed limit at Antwerp. There are numerous villages on 200 between Ghent & Antwerp. Generally traffic is much heavier on 200.

Cross examined by

I wanted to go to C platoon to see a soldier who lives close to my home in Vancouver who was on report. Smith told me he was to return to Nijmegen on 10 July 45. He told me this on the evening of 10. He said his vehicle

had been used by 14 cars 14.9. by another
driver. During the day a platoon officer 18
Lt Taylor had instructed Smith to return
as soon as his vehicle was returned to
him. The vehicle was not returned
until late in the evening. His
instructions were to return in the
afternoon originally. If he had then
returned in a proper to Superior that
afternoon or evening the driver could use
his discretion & would not be
duty if the driver thought the conditions
~~do~~ warranted driving home.

Smith did not have his vehicle
between 1900 & 0900 hrs. He got
his vehicle between 2030 hrs & 2100 hrs.

I am not sure of the exact time we
left ~~for Biloxi~~ with the girls.

Smith & I were on the road from
Biloxi to the cafe between the
time he picked up the vehicle & the
time we met the girls.

I couldn't say if Smith had
written authority to carry civilians.
He didn't tell me he had. I did not
see the girls sign a civilian release
form before getting in the car. I gathered
from conversations that Miss Sampson
was Smith's girl friend.

210 route goes from Ghent to Antwerp via Brussels. # 200 goes direct from Ghent to Antwerp. I do not know that it is true as far from Ghent to Antwerp via Brussels that the direct route Ghent-Antwerp.

I intended to inquire at "C" platform about transport to Bruges otherwise I intended to go with Smith I do not know the reason why the traffic from Ghent to Antwerp is heavier, is because it is the more direct route.

By the Court

I was not present when the girls were asked to go to Brussels. I was present when the discussion took place as to how they were to return. Smith told them they would be back in time for work. My understanding from the conversation was they were to return by train.

RP. #3 (6) complied with

Second Witness. Lt J.R. Taylor office Vc
for Defence.
A platoon #1 Canadian Tank Corp. having been
duly sworn states

Pte Smith is a member of my platoon. on 9 July 44 he was given certain orders. I am familiar with the orders. He was to proceed from Nijmegen to Uden & return. He should have left Nijmegen at approx 0900 hrs. I expected him back the following night. His direction was given as to route by any one. This is customary as the drivers know the routes & changes in roads such as detours better than anyone else. As far as I know T/Cpl Poles went with Smith on pass.

Normally when one of my vehicles is dispatched to Uden it is not used for local trips & normally another entry is not made if an intermediate authority is put on the work ticket for an intermediate run, after the original Nijmegen - Uden authority.

Pte Smith has always been a very good soldier. He has never given cause for disciplinary action. He has always carried out his duties in the manner desired. Smith is the type of soldier I would prefer to have under my command. If he was detailed for a job I would expect him to do the

job & return as soon as possible.

Cross examined by

I don't recall the length of Burke's leave. It is possible he may have come back with Smith next day.

I expected Smith to return to Ringmer as soon as possible even if it meant he had to travel back all night. To do it as we needed vehicles and he was a reliable driver.

RP 42 (b) complied with.

Summing up by D.O. p. 17A
" " " P.O p 17B

Closing Address for Defending Officer (Joint Charge Sheet)

It was the duty of the accused Smith to return to Nijmegen and he was returning, along a route known to be slightly longer, but admittedly a better road, than the shorter and most direct route. Both were approved military highways known as 210 and 200. Owing to very special circumstances, his vehicle had been taken from him during the day and used by Coy. HQ. It was returned to him during the evening and shortly afterwards he set out, as it was his duty to do, to return to his platoon near Nijmegen. With him was an N.C.O. of the same platoon, and they took two girls with them for company, intending to see that they got safely to the appropriate railway station at Brussels. Perhaps they didn't have the necessary authority to take these civilians in the lorry but they aren't charged with that: the essential point is that they were proceeding on duty, and Smith was not, repeat not, using his vehicle "for private purposes".

D A Mack Capt

J Barlanger Pres

17B

Prosecutor's Summing Up.

Pte Smith is charged with the unauthorized use of a military vehicle for private purposes. The facts as brought out in evidence are not in dispute. The question for decision is whether Smith was proceeding on a properly authorized duty run during the course of which he gave some civilians a lift, or whether he was taking his girl friend for an unauthorized joy ride to Brussels. The court must ascertain Smith's intention from his actions & the surrounding circumstances.

The prosecution alleges that it was a joy-ride, for private purposes & bases this allegation on the following facts.

1. There is no authorized trip to Brussels on the work ticket for the day in question.

2. The entry on the work ticket for the day before, authorizing a trip from Nijmegen to Ghent & return is technically cancelled by the subsequent entry.

3. Brussels is not on the most direct route between Ghent & Nijmegen, — even if the return trip from Ghent to Nijmegen is authorized.

4. The girls were given to understand that they would be brought back to Ghent, — & assumed it would be by the military lorry. Miss Leroy says, if something unforseen occurred to prevent the lorry going back she was prepared to take

a train, — & Mrs Van Acker states she did not foresee the possibility of having to return by train.

5. Smith & Miss Verwyn were not just casual acquaintances. He had seen both girls many times before. Does it seem probable that he intended to drive them both directly to the Brussels station, so that they could return to Ghent from whence they came, — while he proceeded on his duty run to Nijmegen.

I accordingly submit that the carrying of the two girls to Brussels was for private purposes & not in the course of duty. And by using his military vehicle for the purpose of carrying his girl friend, Smith is using it for an unauthorized private purpose.

Kenneth A. McKenzie, Capt.
Prosecuting.

Dallaghan
Pres

NB

EXHIBIT 1

Work ticket which is also exhibit 3 in trial on charge sheet No. 2 and is attached to notes of evidence relating to that charge sheet.

J. Baillargeon
Pres.

Charge Sheet #2

D3 JB

Evidence in the case of L 8330 Pte
Lewis John Edmund Smith 1 Cdn
Base Tpt Coy & CASC att Cdn Sec
HQ. Brussels Garrison.

Same procedure followed by Court
pursuant to 4/38B commencing at A8.

1st witness for prosecution. Miss M. M. Jennings 20 Student. having been duly sworn states. On the 10th July 44 I went for a drive in a military vehicle Smith was the driver of the vehicle (witness identified accused) I rode in the front seat with Smith the other soldier and Gabrielle We were driving from Aasche to Aasche en route to Brussels. We arrived at Aasche at approx 2330 hrs there was an oncoming vehicle which switched off its light & Smith did the same. I cannot estimate the strength of the light but I know I was blinded by them ~~[illegible] the vehicle was~~ I could not estimate how far away the other vehicle was when it switched off it light. After the vehicle had passed us and Smith switched on his light again I saw two people in front of the vehicle & then it was over. ~~Accused~~ while Smith still had his hands on the wheel I saw ~~him~~ the accused in the light I saw ~~doing~~ the curtains behind

a lorry. and all over as when Smith switched on his lights ~~I saw the civilians before the lights~~ at the moment the two vehicles passed Smiths vehicle had his dim lights on. I saw the 2 civilians behind the lorry after Smith had switched on his bright light I didn't know at the time whether the lorry was a civilian a military but I was told afterwards it was a civilian I did not see a light on the rear of the other vehicle. Everything was over so quickly after Smiths light is ~~was~~ on I don't know what happened Smith pulled his brake & the vehicle stopped I got out of the lorry & I went away I was in the Quartermasters at about 4 in the morning. We came to Brussels in ~~an American~~ a military police jeep after that.

Cross examined con.

The front seat of the lorry is two seats. The driver Smith was sitting on the right hand side I was seated between the two seats. Smith was the only one sitting on the driver seat.

By the Court

When we passed the oncoming vehicle it was all over.

The accident was all over.

The accident with the lorry in front of Smiths vehicle that I saw when the lights of Smiths vehicle were turned on again

RPS 2(Ld) Accepted with

Second Witness
Pourcentin.

Mr Philemon MERCIER the
Bde of Bordeaux, Caserne Lourmel
was duty runner at Battn HQ. I was
at the police station at Laroche on 10 July
41 in the morning. At approximately
2300 hrs I heard a crash. We went
outside to see what had happened
when I reached the gate of the police
station I saw a Canadian vehicle
a heap of dirt [illegible] further along I
saw another civilian lorry. This
was approximately 40 metres from
the pile of dirt. The military
vehicle was about 20 metres
from the pile of dirt the military
vehicle was on the pile of dirt was
in front of the lorry. I did not
prepare a report of the accident myself.
The military vehicle was a medium
sized lorry. I examined the civilian
truck. It was a little lorry of approx
1½ to 2 tons. I remember
that it was carrying flower pots
It had two lights in front & one red
on the rear. The lights of the civilian
vehicle were all on. The glass may
have been broken but I cannot say positively.
The civilian truck was damaged
I remember very little of the damage
done but it was the rear part of the
truck that was damaged. After the collision
it toppled with a crash damaging the
front also. There was damage to the
front wheel also.

The civilian vehicle was driven back into the yard of the Hindarming the same evening. I saw the occupants of the civilian vehicle. The name of the [illegible] was Lawrence and another woman Jo[illegible], whose [illegible] name I don't know. They went to the clinic of Coach to be taken care. They were at the Hindarming the following day. I saw two Canadian soldiers that evening. They were at the Hindarming. They stayed for many hours with British and after which the Canadian Provost came. I recognized the accused as one of the two soldiers

Cross examined by

When I came out Lawrence was at the scene of the accident I can't say if he was in the truck when I came out.

When I came out the Canadian vehicle was on the correct side of the street driving Belgian law, but there was a driving track on the right side of the road. The vehicle was on the left side of the driving track, in accordance with Belgian law.

Re-examined by

The part of the military vehicle damaged was complied with.

3 - Witness for prosecution

Gabriella Van Acker, 69 Reybrack St. Evergem, Ghent having been duly sworn is examined by the prosecutor.

I know the accused Pte Smith. I remember evening 10 Jul 45. On that night I went for a drive in a Mil vehicle. Smith was the driver. My girl friend Magdalena Leroux, L/Cpl Boles, ~~went with~~ and myself went with Smith. We were 4 in the vehicle and all in the front. We drove from Ghent. We were going to Brussels and got as far as Assche. We arrived at Assche about 2315 hrs. We met a civilian car with big lights. The approaching car dimmed its lights and Pte Smith also dimmed his lights. I do not know how far away the civilian car was when it dimmed its lights. When it had passed Smith put his bright lights on again. As soon as the

~~light~~ Smith turned on his bright lights I saw something immediately in front of us and then it was all finished. I saw girl or woman. and I felt a shock. I saw nothing else other that the woman on the road when the lights came on. I did not see another vehicle. We got out of the lorry and walked back along road towards Ghent. I was in Gendarmerie at Assche that night. The English Police took us to Brussels in a jeep

Cross-examination

Smith stopped the lorry quickly. There are 2 separate seats in front of the lorry Smith was the only one sitting on the drivers seat Magdalena was sitting in between the 2 seats and Cpl/Bales and I were sitting on the other seat. ~~I was~~ ~~blinded by lights of the oncoming car~~

We were quite a distance from that car but I could say the lights were rather strong. My head was not facing the front I was sitting so that I was facing the side and when I saw lights of approaching car I did not face them but turned my head to the side.

By the Court

The lorry was travelling at regular speed. It was not going fast when we passed the other car. I have not driven on a lorry often RP 83(8) complied with

4th witness for prosecution Joseph Dauvage 162 Rue Horion. Hozemont. Liège. having been duly sworn is examined by the prosecutor.

The evening of 10 Jul 45 I was on road from Ghent to Brussels, on my way from Ghent. It was about 2300 hrs when I arrived at Assche. I stopped

8

in Assche for lack of fuel. I stopped my car on the right hand side of road leaving space for tramway. I took container to refuel my car. As soon as I stopped two people approached me, a man and a woman. The man spoke to me. I told them that I could ~~[illegible]~~ because my vehicle was already heavily loaded with plants. It is a 2 ton Chevrolet truck. I paid no more attention to these two people, but went to rear of my truck to get a container and came back and climbed on top of "hood" cabin to fill gas tank which is on top of the cabin. I must stand on the hood of the vehicle to fill the tank. I did climb up on the hood of the motor. I had not yet opened tank when a Military vehicle arrived and collided with my truck in the rear. When I got out of my vehicle all the lights were on. There was a red light in rear. It was "burning properly" properly lit. When I halted my vehicle and got out I had the brakes

on. My wife stayed in the cab of my truck. When the Mil. vehicle struck mine vehicle it was pushed forward and I fell down. My vehicle went about 40 metres forward. It stopped on the right hand side against a row of houses. I got up and ran after my vehicle to stop it from hitting the houses but I arrived too late Then I took a look to see if my wife had been hurt. I then went back to scene of the accident where I saw that all my goods were on the road. that is, the plants that were in my lorry. The plants were apprx where my truck had been before the accident. The military truck was ~~slightly in front of the plants~~ pile A. ~~on the road~~ facing the pile B. The pile of plants was on road between the mil lorry and my lorry. plants. I saw one soldier, the one who was at the wheel of the Mil lorry. I cannot positively identify that soldier.

I saw that same soldier again since the accident yesterday, here in the building. The soldier I saw at the wheel was inside the lorry on the right hand side. That soldier is the accused here to-day. After the accident I drove my lorry out of the way to the Gendarmerie, on orders of Gendarmes. All goods in my lorry were lost. The body and windshield chassis are completely broken and has to be replaced. Some other parts have been broken.

Cross-examination

The back door of my lorry is made of wood. The body of the lorry is made of wood and covered with canvas. My lorry stopped at this spot because it was out of petrol. I could not have pushed it to the other side of the road. If it had been possible for me to have gone a few metres further I would not have moved it to the other side of

the road but would have left it where it was, parked according to Belgian laws leaving room for tram to pass.

By the Court.

I don't know if there was anyone behind my truck when I was on hood to refuel the tank. My wife was still in the cab of my truck when I stopped against the house.

RP 83(6) complied with.

6th witness for prosecution

Jane Therese Sauvage, 162 Hamoir, Hozemont, Liege being duly sworn as examined by the prosecutor.

I was with my husband in his truck the night of 10 Jul. I remember when he stopped his truck in Lasache. When he got out of the vehicle the lights were on. The brakes were on. I saw my husband climb up on the hood of the truck. I felt a bump on the car. It was a

formidable bump. I saw my husband fall, projected, from the truck. By the shock the brakes must have released and the truck drove against the wall of a house. The truck travelled about 45 metres from place it had stopped to the wall of the house

Cross-examination

It was flat where our truck had stopped. The brakes were put on to stop the vehicle. We stopped because engine ran out of petrol. I did not put on brakes before the truck hit the house. Owing to the accident the brakes broke.

RP 93(B) complied with.

7B witness for prosecution (HQ) Brussels. 5047573 L/Cpl Elsley F 247 Pro Coy being duly sworn examined by the prosecutor.

I proceeded to Assche on night 10 Jul or morning 11 Jul about 0100 hrs 11 Jul I received a message to investigate an accident. I.

went to Belgian Police Station in Assche and saw two soldiers there. L/Cpl Boles and Dvr Smith. I also saw a military vehicle. I made notes in my book at the scene of accident that night. The number of vehicle was L-425 0201. Ford 3 ton. Can Mil vehicle. The soldiers belonged to 1 CBT Coy RCASC. I took a statement from driver Smith. He did not tell me who was the driver of the vehicle. I made measurements at the scene in presence of the 2 Can soldiers, L/Cpl Barr, Fire Bde Offr. and Belgian police. On roadway I saw blood, dirt, glass and broken flower pots. I saw 13 ft. skid marks leading up to the pile of dirt. I was not told in presence of accused what caused the skid marks. Smith told me that skid marks were caused by the Military truck. I was told in presence of the accused that there was another vehicle involved in the accident. All measurements and information were taken in the presence of

the accused. I measured the distance from pile of dirt to the wall. There was a broken glass at the wall and a mark on it. I produce sketch made as result of measurements made by myself in presence of Pte Smith I made the legend on the sketch. All the information used in preparing the sketch was obtained in presence of accused.

The Defending Off does not object to admission of the sketch in evidence.

sketch produced and marked exhibit 1.

I prepared a second sketch from information received in the presence of the accused. ~~in an attempt to reconstruct the accident~~ and measurements made at scene of accident in an attempt to reconstruct the same.

The Defending Off has no objection to admission of the sketch in evidence.

sketch produced and entered as exhibit 2. AB

I examined the Mot veh it had a smashed head lamp and radiator.

Cross-examination

All the road surface is cobblestone It is not possible that skid marks were made by civilian lorry. skid marks were an unbroken line. There were 2 sets. The road is straight for some considerable distance approaching from Ghent. The road is level at place of accident. RP 83(B) complied with

By the Court

5th witness for prosecution

M60102 Cpl Causby RC 2 Cdn L of C Pro Coy, being duly sworn is examined by the prosecutor.

I investigated an accident on 11 Jul 45. I did not see the Mot vehicle but I did see the work ticket. I would recognize the work ticket. I produce work ticket.

Def Off has no objection to admission of work ticket in evidence. It is produced as

and marked exhibit 3. I took a statement from Pte Smith at H.Q. L of C Brussels. I made no threats and offered no inducements to procure the statement. It was free and voluntary.

The Def Off has no objection to admission of the statement in evidence

The statement is in my handwriting and signed by the accused and witnessed by myself.

The statement is produced and read to Court excepting certain portions not relevant to charge in question marked exhibit 4.

Cross-examination

The accused made no attempt to evade the issue and gave me every assistance in my investigation.

RP 73(B) Complied with

The prosecution does not call the remaining witnesses named in the summary and the defence does not require them for cross-examination.

Submission of the Defending Officer that no prima facie case made out on second Charge Sheet.

It is submitted that the essence of the charge is negligence and that there is absolutely no evidence of negligence before the court. The accused Smith was alone on the driver's side of the cab. No drunkenness is even suggested. The only evidence as to speed is that it was "normal", as one witness states, and 25 M.P.H. in his statement. The evidence of Capt Marsby is that the accused gave him every assistance in his investigation of the accident and gave a statement promptly, voluntarily and without any attempt at evasion. The civilian truck was parked in the travelled portion of one of the busiest highways in Belgium, and after the accident was still in a condition to be driven away so the actual collision was not too forceful. The accused had a right to expect that the road then, 8½ feet from the curb, would be free from parked vehicles. When blinded momentarily by the glare of the light of the oncoming car, as all of us have often been, he kept to his own side of the road, and it was just purely tough luck that the civilian truck driver stupidly chose that particular spot to fill his gas tank with petrol.

What was the negligence?

D Allan
Capt.

16B

Reply to Defending Officer's submission

The evidence of negligence on which the prosecution relies is based on four grounds, as follows:-

1. There were four persons in the cab of the truck. A 60 cwt. has seats for a driver & one other person, & not too much room at that. With four persons in the cab it must necessarily have been cramped. In addition, this is contrary to instructions to drivers & to orders which are common knowledge.

2. The driver drove into the rear end of a parked vehicle which had it's lights, including a tail light, burning

3. The speed of the vehicle is indicated by the aftermath of the accident. The force of the impact drove a parked, loaded, 2 ton vehicle forward a distance of 40 to 50 yds. Here it stopped, not of it's own ~~speed~~ loss of way, but because it struck the wall of a house. And it struck with sufficient impact to mark the wall of the house & to leave shattered glass at the spot.

4. There is an ancient rule of law governing highway traffic which requires a driver of any vehicle to so drive his vehicle as to be prepared to deal with any forseeable emergency. In other words, having regard to traffic on the road & all other circumstances of the case, he should have control of his vehicle at all times.

Smith put himself in such a position

16B

by failing to slow down when temporarily blinded that he was unable to avoid the accident. This constitutes blameworthy negligence.

Kenneth A. Watenpaugh, Capt.

16B

16 C

Summing-Up, Prosecutor. AP 1.

The facts of this case are not in dispute. The accused in his statement agrees with the evidence in this regard called by the prosecution.

The question is, do these facts reveal any negligence on Smith's part. I should like to review again the facts on which negligence is alleged.

1. There were four in the cab of the truck. This may have caused it to be cramped to the extent that his control of the vehicle was not as great as it might otherwise have been.

2. The accident occurred on a straight level road with nothing to obstruct the forward view. The road was of cobblestones, & was wide. On such a road Smith drove into the rear end of a parked vehicle which had its lights, including a tail light, burning. This vehicle was not parked on the extreme right of the road, but was parked in accordance with Belgian law. There was ample room to pass on the left of the vehicle, which from the diagrams was by no means in the centre of the road.

3. The speed of Smith's vehicle was such that it knocked a parked, loaded, 2 ton vehicle forward a distance of 40 to 50 yds where it stopped because it struck the wall of a house. The brakes of this vehicle had been on, — & it struck the wall with sufficient impact that it left a

mark, & a pile of shattered glass at the spot. Aside from this evidence, we have the evidence of one of the girls who said the truck was proceeding at normal military speed, & Smith's statement which fixes his speed at 25 m.p.h. Certainly it was no less than 25 m.p.h. when the truck was knocked from under it & load of flower pots which fell to the road in a heap at the point of impact.

5. A driver should drive, having regard to all the circumstances of the case, so that he has such control of his vehicle as to be able to cope with any normal forseeable problem. It was forseeable that there would be traffic on a main highway such as this — even at the hour in question — because they had just passed a vehicle headed in the opposite direction. There was in fact some traffic on the road. — & particularly in a village or town such as this one might forsee the possibility of something on the road. Smith was blinded for an appreciable length of time by the headlights of the approaching vehicle. Knowing he could not see he continued to drive at speed, — & makes no claim in his statement that he slowed down. None of the witnesses suggest that the vehicle slowed at all.

Of course when the lights were switched up again Smith was then in such a position that he could not avoid the vehicle in front. But he had put himself in such a position by his own negligence.

Had he slowed down when blinded by the glare he might have been able to cope with the situation

16C 3. (Summing-up cont'd

when he did see it, — if the truck had been less crowded he might have been able to act more quickly

I submit there is sufficient evidence of negligence to support a finding of guilty as charged.

Kenneth A. McKenzie. Capt.
Prosecuting

Closing Address of Defending Officer 167 Second Charge Sheet

The defence submits that the prosecution has failed to show any culpable negligence and refers the Court to the amendment to the note to Sec 40 A A where "neglect" is defined and explained.

I say again what I said in my submission at the close of the case for the prosecution. Referring to the prosecution's 4 points:

1. There is no evidence that ~~not~~ accused was crowded in the cab — quite the contrary.
2. If the civilian truck had a tail light it was presumably weak (as compared with the glaring headlights of the approaching car) and quite possibly hidden by the two civilians standing behind the truck.
3. There is no evidence of excessive speed and the fact that the other truck rolled 40 yards proves nothing.
4. As regards "control", the accused had the right to expect that no vehicle would be parked in the travelled portion of a wide and busy highway. No driver ought to be blamed for not anticipating such stupidity.

The prosecution must prove neglect of a blameworthy nature, must prove it beyond a reasonable doubt.

And it hasn't done so.

Pte Allcock Cpl

DB.

Submission by D.O. p. 16A.
Reply by P.O. p. 16B.
Summing up by PO. p. 16C
Summing up by DO p 16D

E1 Lieut J H Taylor, 1 Cdn Base Tpt Coy having been duly sworn states.

I am OIC "A" Pl of which the accused is a member. While under my command the accused as a driver has always been one of the best in the Pl and as a soldier his conduct has always been particularly good. I noticed and knew him personally since May 45. He was in the Pl when I came to it. He was always dependable on any detail. He was chosen for details which were to be done alone. He is the kind of a soldier I prefer to have under my command.

RPT3(B) complied with.

Major J.D. Cheatley, Cdn B Tpt Coy.
having been duly sworn states.

I am OC, Cdn Base Tpt Coy.
I have always found with my
experience with the accused
that he has been a dutiful and
deligent soldier. Absolutely clean
cut type of boy that I am
proud to have in my unit
and regardless of any sentence
that might be imposed by
the Court I would certainly
try to get him back. I
was not called to this court
by accused. Defending Officer
nor Prosecuting Officer and
it is not my habit to come
250 miles to make any
statement unless I think
the accused is deserving.

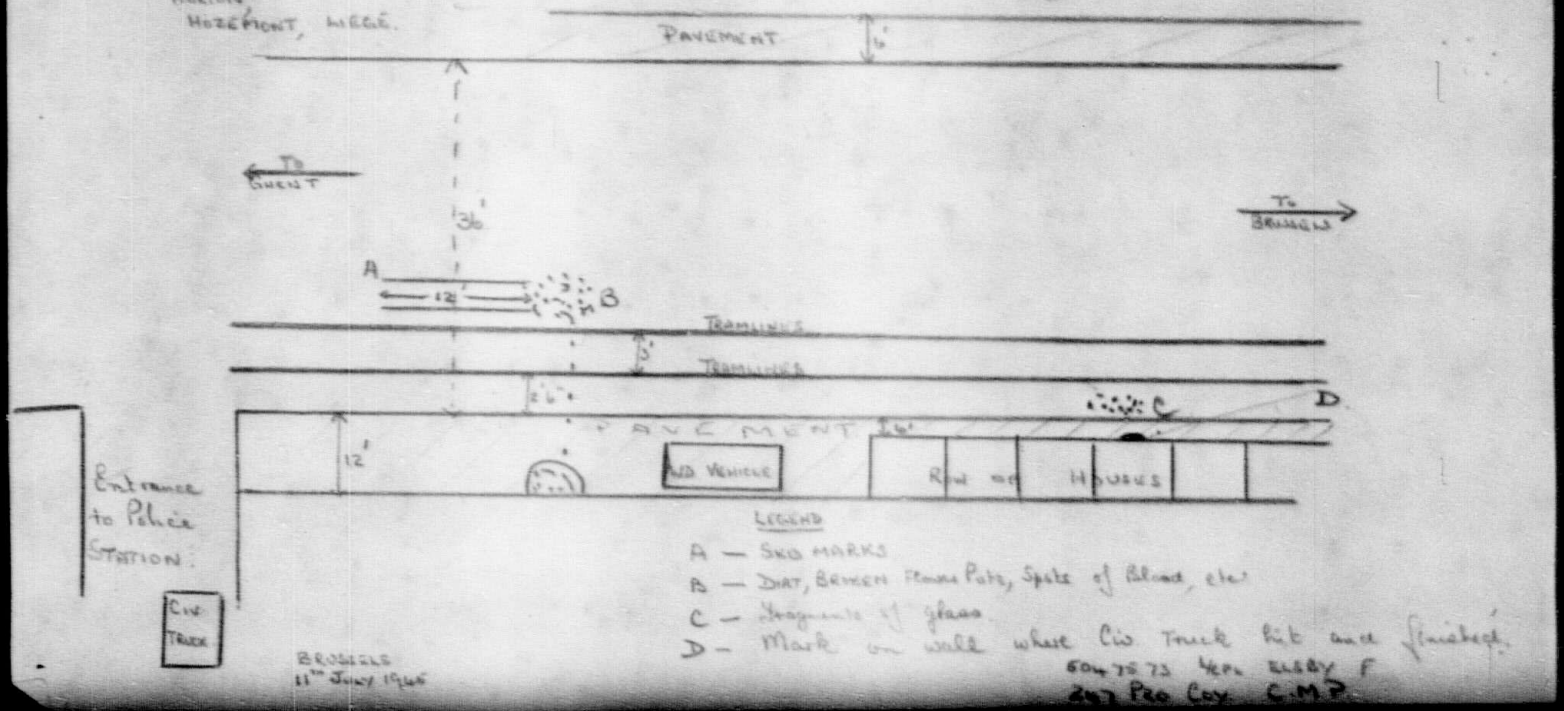
RP 83(B) complied with

J.D. Cheatley
Pres

SKETCH PLAN OF ACCIDENT ON ARRIVAL BY 4RA ELEBY F CMP

PLACE :- ANSEME
DATE :- 11TH JULY 1945
TIME :- 0200 HRS
VEHICLES INVOLVED :- MD VEHICLE FORD 3 TON No L4250201
CIVILIAN TRUCK No 433527
DRIVERS :- L43330 DVR SMITH LJE 1ST CBT Coy RCASC.
MR JOE SAUVAGE.
HARLON
HOZEMONT, BELGE.

EXHIBIT 1



LEGEND

A — SKID MARKS
B — DIRT, BRICKS Pieces Pots, Spots of Blood, etc
C — Fragments of glass
D — Mark on wall where Civ Truck hit and ricocheted.

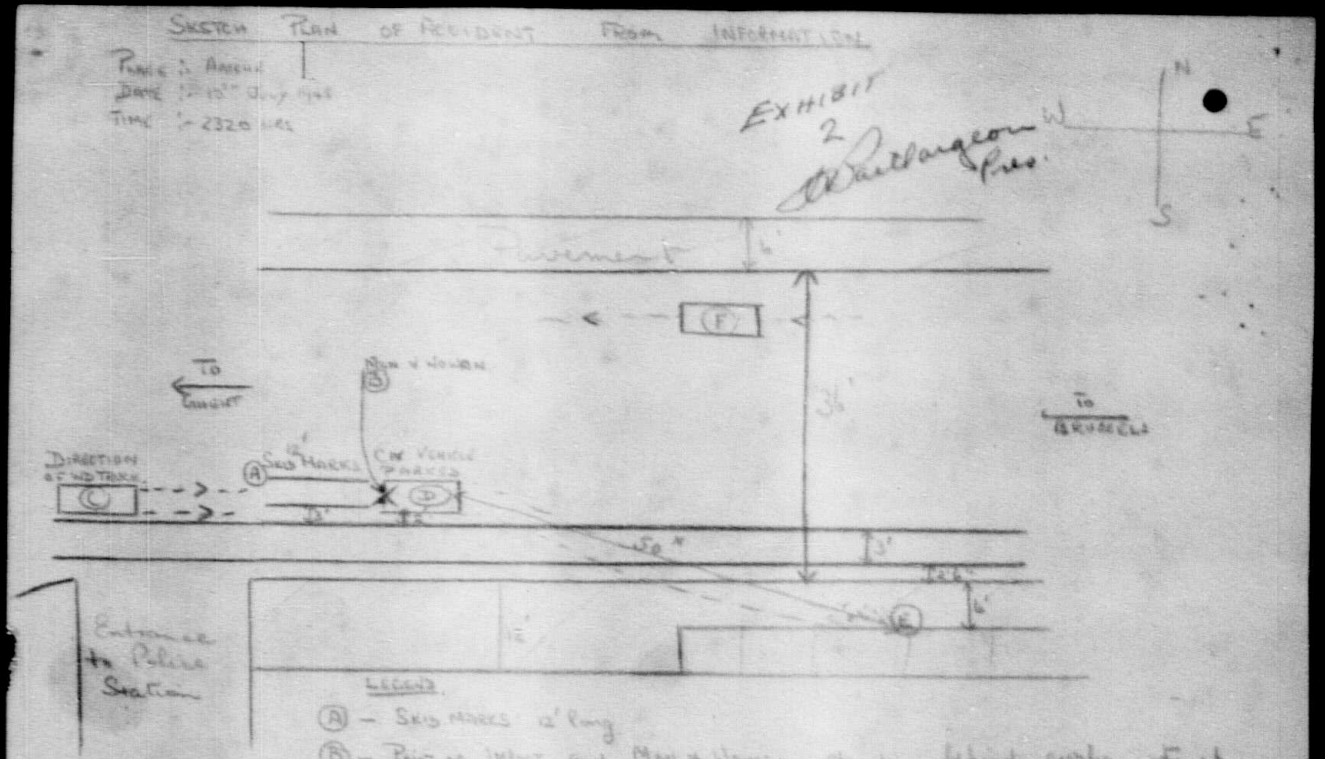
BRUSSELS
11TH JULY 1945

604 75 73 4RA ELEBY F
2ND PRO COY C.M.P.

SKETCH PLAN OF RESIDENT FROM INFORMATION

POLICE ☆ ABSENT
DATE :- 15th July 1965
TIME :- 2320 HRS

EXHIBIT 2
A Bathurgeon Pho.



LEGEND

(A) – Skid marks 6' long
(B) – Point of impact and Man & Woman standing behind civilian truck.
(C) – Direction of WD Truck before accident.
(D) – Civilian truck parked
(E) – After collision wheel civilian truck ejected.
(F) – Car/bike and proceeding in opposite direction.

Remarks

5047572 Page EXHIBIT F

Army Form G 1518 (Revised 1942)

TRANSPORT WORK TICKET

TO BE COMPLETED IN INK WHENEVER PRACTICABLE

Charge Sheet No 1 EXHIBIT No A1 Baselargeon

MAKE OF VEHICLE: FORD | CLASS: 3/4 Ton | DIVISION: 1 | DRIVER'S NAME: Pfc Smith L/E | DRIVER'S SERIAL NO.: L42450201 | MONTH & YEAR: Jul 45

Colm Base Tpr Coy Rebe 3

DATE	FOR WHOM JOURNEY IS PERFORMED	DETAILS OF LOAD	ROUTE: From	To	Via	SIGNATURE OF PERSON AUTHORISING JOURNEY	OFFICIAL TIME GIVEN: Type	Point	FUEL GALLONS: Allotted	Drawn At	Used	TIME: Out	In	SPEEDOMETER: In	Run	Day
1	13 Bn	pers	13 Bn	2 AGRA	return	C.R. McKenna Capt			22	14	20	14	0830	1600		1/2
2	13 Bn.	pers.	13 Bn.	5 DMA	return	C.R. McKenna Capt			29	12		12	0830	1600		290
4	13 Bn	present	13 Bn.	1 Corps	return	C.R. McKenna Capt			29	22	12	12	0830	1600		96
	12 Bn	pers	13 Bn	Stn	return	[illegible] Capt			24	1	13	1	0830	1600		1
5	"	"	"	3 DMA	return	[illegible] Capt			24	10	14	10	0830	1600		1/2
7	1 CBTC	pers.	13 Bn.	Cocoa Beach	return	C.R. McKenna Capt			24	22	2	22	0830	1600		224
9	13. BN		Ghent	return		[illegible] Capt			24	12	12	12	0830	1600		1/2
10	1 CBTC	Beds	HQ	9 Bn	return	[illegible] Capt										

Exhibit "C"
[illegible], Capt

Charge Sheet No 2. Exhibit "B"

M.P.G. for week ..... or totals carried over

Exhibit "A"
Capt Hanger

CANADIAN PROVOST CORPS EXHIBIT

COMPANY: 2 Pro/C Provost FORMATION: 21st Army Gp. 14

LOCATION: Brussels DATE: 11 July 45 FILE NO: Pers

STATEMENT

Reg No: 18330 Rank: Pte Name: Smith L.J.E.

UNIT: No 1 Adv Base Transport Coy R.A.S.C.

S T A T E S: "I have been warned that I am not obliged to say anything unless I wish to do so, but that whatever I do say will be taken down in writing and may be given in evidence. I fully understand the meaning of this caution, and to show that I do so I sign my name herewith."

Signature. L.J.E. Smith . . . . .

At approx 2130 hrs 10 July 45 I left W/S No 1 Adv Base Transport Coy, Ghent on my return trip to Nijmegen, where one platoon of my unit is stationed. I stopped at a cafe in Ghent after I had left W/S where myself and L/Cpl Boles who was with me offered to take two civilian girls whom we knew to Brussels.

While I was passing through the town of Asschi, travelling approx 35 m.p.h. when a vehicle approached me from the opposite direction with very bright lights. I switched my headlights off but the other vehicle did not dim his lights, which blinded me at the time.

When the oncoming vehicle had passed me I turned my headlights on and there was a civilian vehicle approx 10 yds in front of me, parked beside the tram line, some distance from the tram line sidewalk. I saw the movement of two civilians behind the parked vehicle but could see no light on the rear of the parked vehicle. I slammed all my brakes on immediately but was too close to avoid crashing into the rear of the vehicle. My vehicle stopped dead and the civilian vehicle rolled some distance ahead, across the sidewalk and up against a house.

W/Sgt & L/Cpl Boles jumped out of the vehicle and noticed a heap of plants, pots and dirt in front of it. In a few minutes a number of civilians and civilian police were there and the area I was towed and civilian police were there and the area I was towed. We passed which began to dig up the pots and plants on the road which ran out of the back of his truck. Someone turned a light on and I saw the bodies of a civilian man and woman. After they had been removed by ambulance myself and L/Cpl Boles

went into the Gendarmerie which was just opposite the accident and was informed that the two civilians were dead.

The Gendarme phoned for the Military Police, Brussels and in approx 45 min a C.M.P. arrived. Before they arrived the Gendarme took statements from the two civilian girls who were riding in my lorry. The C.M.P. questioned L/Cpl Bolesland myself and later on a wrecker came and towed us into Brussels, to R.E.M.E. After our lorry was parked in their garage, the C.M.P. took us to H.Q. 2 Base Sub & Provost Coy, where we reported to the Orderly Cpl and told him what had happened.

J. H. E. Smith

Taken and witnessed by Cpl Ansley R.C.

No. L8330 Name SMITH LJE Sqn, Battery or Company 70FY Corps RCASC Date of enlistment 19-7-41 OC Badges Service or Proficiency Pay 1/17 MFM 6 (AFB 121) 40(FAS/136)(5512)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				NIL entries					
Duplicate created from MFM 4 available				11 Aug 45 Record of conduct in Canada prior to TOS Cdn Army Overseas 1 Mar 42 not "RM GRANT" Lt Officer i/c Rec "E" Cdn Sec 2 ch HQ 21 A Gp Mabandmy Capt					

EXHIBIT "B"

(PTO)

ARMY FORM B. 296 (WAR.)

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
L-8330	Pte	SMITH LJE	1 Cdn Base Tspt RCASC

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be assessed to the prejudice of the accused. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, precedence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For Nil entries on MFM 6 ~~1~~ time

For ~~time~~

For ~~times~~

For ~~times~~.

EXHIBIT "C" [illegible]

Date of first entry in Field Conduct Sheet NIL

Date of last entry in Field Conduct Sheet NIL

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for NIL

beginning on the N/A day of N/A

4. The accused has been awaiting trial on the present charges for

N/A days in civil custody ; and for 57 days in military custody, *i.e.*,

N/A days in open arrest, 57 days in close arrest : of

which 4 days were spent in hospital.

5. The present age of the accused is 25 years

6. The date of his attestation / calling up for military service is 19 Aug 41

7. The service which the accused is allowed to reckon is

8. The accused is in possession of** CVSM AND CLASP

**State the military decorations (if any) held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously without reduction, to the present date —

Date of Promotion.

In the substantive rank of ///

In the war substantive rank of ///

In the acting rank of ///

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT, OF SUMMARY AWARD UNDER SEC 47 AA AND OF CASES IN WHICH TRIAL HAS BEEN DISPENSED WITH OF ACCUSED

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		NIL entries on MFM 6		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 30 day of Aug 45

Mackenzie Capt

Summary of Evidence in the case of L-8330 Pte SMITH LJF and M-45121 Pte (L cpl) BOLES AL, both on strength of 1 Cdn Base Tpt Coy, RCASC, attached to Cdn Sec HQ Brussels Garrison, soldiers of the Canadian Army Overseas.

Charges: Conduct etc- Improperly using Cdn Mil Veh for private purposes (Jointly)

~~Conduct etc- did allow unauthorized civilians to be carried as passengers in Cdn Mil Veh.(Jointly)~~

Neglect etc- so negligently drove Cdn Mil Veh as to become involved in an accident.(Smith only)

By direction of the CO the evidence is taken on oath.

First witness

B

miss M. M. Germyn having been duly sworn states:—

I am magdelena M. Germyn, 20 Oude Diestraat, Sedeberg, Ghent. At approx. 2200 hrs 10 July 45 I was in the Cafe Stand at Ghent where Pte Smith whom I recognize came into the Cafe. He asked me if I would go to Brussels with him, & I said yes if he would bring me back in the morning. He said he would bring me back, so I asked my girl friend Gabriella Van Acker to come with me, she said she would, & we left the Cafe with Smith and another soldier at approx 2220 hrs. I do not know the name of the other soldier but I can recognize him. Myself & the other three all got into the cab of a large military lorry which Smith was driving.

We were travelling on the Brussels - Ghent highway and at approx 2315 hours we met a vehicle coming towards us from Brussels. The oncoming vehicle dimmed his lights when he was quite close to Smith, & Smith turned his big lights out. As soon as the vehicle passed us Smith turned the lights on in his lorry, and I saw two civilians standing behind a civilian vehicle directly in front of Smith's lorry. I could see no light on the rear of the civilian vehicle. Smith's lorry crashed into the rear of the civilian lorry. My girl friend & I got out of the truck & went over to the sidewalk on the left side of the road about fifty yards away. I stood there with my girl friend for

about half an hour, & then went to the Gendarmerie across the street where I gave a statement to the gendarmes. We waited there till the military police arrived & then went to Brussels in a jeep. The accident occurred in Asche.

The two accused decline to cross examine this witness

Sermijn Madeleine

Second Witness

Miss Gabriella Van Acker, having been duly sworn states:-

I am Gabriella Van Acker, 69 Keybraeck Street, Evergem, Ghent. At approx 2200 hrs. 15 July 45, I was in the Cafe Grand, at Ghent when Pte Smith, whom I know & can recognise came into the Cafe with another soldier whom I had never seen before. I can recognise him, & now know him to be L/Cpl Coles. Smith asked Magdelena to go to Brussels with him and said that he would bring her back to Ghent at 3 o'clock in the morning, because we both go to work at 6 o'clock in the morning. Magdelena then asked me to come with her and we left the cafe at approx. 22.20 hours. We all got into the cab of the lorry & Smith, whom I know, was driving

We were travelling on the Brussels - Ghent highway at approx. 2315 hrs. we met a vehicle coming towards us from Brussels. The oncoming vehicle which had very bright lights, dimmed his lights when he was very close. Smith had turned his out before. When the vehicle had passed Smith turned his lights on again and I saw only a woman standing behind a civilian vehicle directly in front of Smith's lorry on the right side of the road. I did not see a light on the rear of the civilian vehicle. Smith's lorry crashed into the rear of the civilian lorry.

(over)

My girl friend & I went across the road on the opposite side of the street for about half an hour when the Gendarme came for us and took us to the Gendarmerie where they took a statement from me.

The 2 accused decline to cross-examine this witness.

Van Acker Gabrielle

Third witness

Philimon Merchx having been duly sworn states:—

I am Philimon Merchx, Commander of the Brigade of Gendarmes at Assche. I was in the police station at Assche on the 10 July 45 at approx. 23 15 hrs when I heard a crash. I went outside & right in front of the gate of the police station there was a heap of flowers, paper, & earth on the road. To the right about 30 a 40 yds distant was a civilian truck which was up against the wall of a house. Two or three yards from the pile of earth was a military truck, a large heavy one. I was present & assisted to remove the bodies of a man & a woman from the pile of debris. That evening we found one identity card in the debris & the next morning we found one identity card on one of the bodies in the mortuary. The names & addresses on the two cards were:—

Petrus Frans Leroy, Nyverseelstraat 96 Opwijk, and Maria F. Van de Voorde, Rue de Bouchers 33, Brussels. I saw Dr. Goossens at the accident.

The number of the military truck was

guard was dented where it struck the wall of the house. The spare wheel which was carried under the body was completely buckled & the tire was torn. The owner of the civilian truck was ~~(illegible)~~ J. C. 2. C. Sauvage, Rue Horion 162, Horion, Hozemont.

There were two Canadian soldiers, Pte. L.J.E. Smith, L8330, and M45121 L/Cpl Boles. R.C. who were taken into the Gendarmeries. They made statements which were translated into Flemish. I asked Paul Meert, Fire Brigade Officer to telephone the military police because he speaks good English & the two soldiers stayed in the police station until the military police arrived.

The civilian vehicle was moved into the yard of the police station the same evening.

The two accused decline to cross examine this witness.

1604/2

Third witness

Philimon Merckx having been duly sworn states:-

I am Philimon Merckx, Commander of the Brigade of Gendarmes at Assche. I was in the police station at Assche on the 10 July 45 at approx. 23 15 hrs when I heard a crash. I went outside & right in front of the gate of the police station there was a heap of flowers, paper, & earth on the road. To the right about 30 a 40 yds distant was a civilian truck which was up against the wall of a house. Two or three yards from the pile of earth was a military truck, a large heavy one. I was present & assisted to remove the bodies of a man & a woman from the pile of debris. That evening we found one identity card in the debris & the next morning we found one identity card on one of the bodies in the mortuary. The names & addresses on the two cards were:-

Peters Frans Leroy, Nijverheidstraat 96 Opwijk, and Maria F. Van de Voorde, Rue de Bouchers 33, Brussels. I saw Dr. Goossens at the accident.

The number of the military truck was CL 42 50201 pas.

The [redacted] civilian truck was Chevrolet 16 P.K. No 453527, & was carrying a load of flowers. I saw it right after the accident & it had one red light at the rear, & two white lights at the front in accordance with regulations. All lights were [redacted] after the accident & none were broken. The under crossbar on which the wooden body is sustained was broken. The back of the body of the truck was broken & the rest of the body was damaged. The right hand mud

guard was dented where it struck the wall of the house. The spare wheel which was carried under the body was completely buckled & the tire was torn. The owner of the civilian truck was J. C. J. C. Sauvage, Rue Horion 162, Horion, Hozemont.

There were two Canadian soldiers, Pte. L.J.E. Smith, L8330, and M45121 L/Cpl Boles. A.L. who were taken into the Gendarmerie. They made statements which were translated into Flemish. I asked Paul Meert, Fire Brigade Officer to telephone the military police because he speaks good English & the two soldiers stayed in the police station until the military police arrived.

The civilian vehicle was moved into the yard of the police station the same evening.

The two accused decline to cross examine this witness.

160/1

Fourth Witness

Doctor Jose Goossens having been duly sworn states:—

I am doctor Jose Goossens a fully qualified medical doctor practicing at Asseche Belgium.

At approximately 2330 hrs on the evening of the 10th of July I was leaving a meeting when I was called to an accident which had occurred about 200 yds from the place where I was. I went immediately to the place & saw a civilian truck which was empty beside the wall of a house. It had crossed the tram track & struck the house. In the road was a pile of papers, flowers, & earth. ~~About~~ Ten yds. past this was a military truck facing the pile of flowers.

People searched in the pile of flowers & earth & uncovered first a man. He was injured, his clothes were torn, & his heart was beating very slowly. I gave him an injection to sustain his heart. A woman was found. I examined her & found that she was dead. When I returned to the man he was dead also. I instructed the commandant of the Fire Brigade to take the two bodies to the mortuary. The next morning the commandant of the Belgian Gendarmerie showed me two cards of identity which had been found at the place of the accident. They read as follows:—

Pierre Leroy of Opwijk and maria Vande Voorde, Brussels

At the scene of the accident there were a number of people present. Two persons, a man & a woman, presented themselves to me to be examined. The woman was not badly hurt,

she had a slight injury at the back of her head. Her name was Mme Souvage of Liege. I also examined a man M. Souvage of Liege.

1. The bone of the right side of his nose was broken
2. There was a deep cut under his nose
3. There was a deep cut at the left eyelid
4. There was a deep cut of about 5 cm. length in the upper lip
5. There were superficial injuries of his two legs.

No autopsy was held on the two dead persons as a burial permit was received from the Canadian military authorities either the next morning or the morning after. From a superficial examination, the cause of death in both cases appeared to have been from a blow which crushed in the ribs & chest of both persons.

The two accused decline to cross examine this witness.

O. S. Hall

FOURTH WITNESS Doctor Jose GOOSSENS, ASSCHE, Belgium, having been duly sworn, states:

I am Doctor Jose Goossens, a fully qualified medical Doctor practicing at ASSCHE, Belgium. At approximately 2330 hrs on the evening of the 10th of July, I was leaving a meeting when I was called to an accident which had occurred about 200 yds from the place where I was. I went immediately to the place and saw a civilian truck which was empty beside the wall of a house. It had crossed the tram track and struck the house. On the road was a pile of papers, flowers, and earth. Less than ten yards past this was a military truck facing the pile of flowers. People searched in the pile of flowers and earth and uncovered first a man. He was injured, his clothes were torn, and his heart was beating very slowly. I gave him an injection to sustain his heart. A woman was found. I examined her and found that she was dead. When I returned to the man he was dead also. I instructed the Commandant of the Fire Brigade to take the two bodies to the mortuary. The next morning the Commandant of the Belgian Gendarmerie showed me two cards of Identity which had been found at the place of the accident. They read as follows: Pierre Leroy of Ppwijk and Maria Van de Voorde, Brussels. At the scene of the accident there were a number of people present. Two persons a man and a woman, presented themselves to me to be examined. The woman was not badly hurt, she had a slight injury at the back of her head. Hee name was Mme SAUVAGE of Liege. I also examined a man, M. SAUVAGE of Liege.

1. The bone of the right side of his nose was broken
2. There was a deep cut under his nose
3. There was a deep cut at the left eyelid
4. There was a deep cut af about 5 cm length in the upper lip.
5. There were superficial injuries of his two legs.

No autopsy was held on the two dead persons as a burial permit was received from the Canadian Military authorities either the next morning or the morning after. From a superficial examination, the cause of death in both cases appeared to have been from a blow which crushed in the ribs and chests of both persons.

The two accused decline to cross-examine this witness.

"J GOOSSENS"

TH WITNESS Paul MEERT , Fire Brigade Officer 396 Chee. de Gand, ASSCHE

I certify that in my opinion, the attendance of this witness is not readily procurable and a written statement of his evidence, signed by him, has been read over to the accused and is attached hereto as Exhibit "Y".

(K A McKenzie) Capt

We do not require the attendance of Paul Meert for the purpose of cross-examination.

L-5530 Pte SMITH LE

L-25121 Pte (L Cpl) BOLES AL

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SIXTH WITNESS Joseph SAUVAGE, Rue Horion 162, Horion, Hozemont, Liege

I certify that in my opinion, the attendance of this witness is not readily procurable, and a written statement of his evidence, signed by him, has been read over to the accused and is attached hereto as Exhibit "G".

(K A McKenzie) Capt

We do not require the attendance of Joseph Sauvage for the purpose of cross-examination.

L-8330 Pte Smith LDE — M-45121 Pte(L cpl) BOLES AL

SEVENTH WITNESS Madame SAUVAGE, Rue Horion 162, Horion, Hozemont, Liege

I certify that in my opinion, the attendance of this witness is not readily procurable, and a written statement of her evidence, signed by her, has been read over to the accused and is attached hereto as Exhibit "H"

(K A McKenzie) Capt

We do not require the attendance of Madame SAUVAGE for the purpose of cross-examination.

L-8330 Pte Smith LDE — M-45121 Pte(L cpl) BOLES AL

8th Witness

5047573 L/Cpl Elsby F. having been duly sworn states: —

I am 5047573 L/Cpl Elsby F, 242 M.P. Provost Coy. Brussels. At about 0100 hrs 11 July 45 I was on Flying Squad duty in Brussels, accompanied by L/Cpl Barr.

I proceeded to Assche to investigate a vehicle accident in which a Canadian military vehicle L 4250201 Ford 60 cwt was involved.

At the gendarmerie in Assche I interviewed L 8330 Pte Smith L.T.E., C.B.T.C., R.C.A.S.C., & M45121 L/Cpl Boles R.L. of the same unit. Pte Smith was cautioned by L/Cpl Barr & asked if he wished to make a statement. Pte Smith wrote out a statement in his own handwriting in my notebook which he signed in my presence. Smith told me he was the driver of the Chn. 60 cwt L 4250201 when it struck a civilian vehicle at Assche that night. L/Cpl Boles declined to make a statement. In the presence of the two Canadians, Paul MEERT, Fire Brigade Officer, 396 Chaussee de Gand, Assche gave me a statement. Two girls were present, & I took their names which were Gabriella Maria Van Acker 69 Keybroeck St. Evergem, & Magdalena Margarethur Serruys, 20 Oude Grievestraat, Ledeberg.

Then the two Canadians, a gendarme, Paul Meert, L/Cpl Barr & myself went out on the street. With the aid of a searchlight I made some measurements.

There was a heap of dirt & flower pots on the roadway. Skid marks were visible on the road

about 12 feet in length, leading right up to the pile of dirt. While we were all together Mert told me that the military truck had stopped there after the crash + that he had seen the civilian truck rolling from there until it struck the side of a house about 50 yards further on. I paced the distance + found a mark on the wall of the house at this point + also some glass on the road. In the presence of the two Canadians Mert told us that he + the policeman moved the civilian vehicle from that point to the entrance to the police station where I saw it. The Canadians told me they had moved their vehicle from the place where it stopped up on to the pavement where I saw it. From my observations + measurements, I prepared a sketch showing the positions of all these things as I saw them. (Entered as exhibit "D") From my observations + measurements, ~~[illegible]~~ + from information received from the Canadians or in their presence I prepared another sketch showing the accident + the positions of the vehicles. (Entered as exhibit "E")

I took the number of the civilian vehicle which was a Chevolet truck No 453527. I saw an identity card which Mert, in the presence of the Canadians told me belonged to the driver of the civilian vehicle. The card was that of Mr. Joseph Lauvage, Horion, Hozemont, Liege.

I had the W.D. vehicle removed to No 4 S.T.W. Shops, R.E.M.E. Brussels, + handed over the two Canadians to H.Q. 2 Can. L. of C. Provost Coy in charge of Lieut Hope Smith.

AB

Brussels.

Damage to Army vehicle was; damaged radiator, smashed nearside headlamp.

Damage to civilian vehicle; smashed windscreen, beat offside front mudgard, back of truck smashed, iron bar bent, wheel carrier bent, lower part of body moved about 6 inches forward. The truck was filled with flowers in pots.

In the presence of the two Canadians, Lieut told me that two civilians had been killed in the accident. He said he found them under the pile of dirt & flower pots on the road & removed them to the mortuary. One was a man & the other was a woman.

Hilsby Hcm. 5047-73
24th H.Q. Pro. Coy.
C.M. Police.

NINTH WITNESS

M-60102 Cpl AARSBY RC 2 Cdn L of C Provost Coy having been duly sworn states:

I am M-60102 Cpl AARSBY RC of 2 Cdn L of C Provost Coy. at approx 0930 hrs 11 July 45, in accordance with instructions received, I proceeded to ASSCHE on the Brussels-Ghent Highway to investigate an accident in which a Cdn vehicle, 60 cwt No L-4250201 had been involved.

I proceeded to the Gendarmerie at ASSCHE where I obtained statements from two civilians, Mr & Mrs Joseph SAUVAGE, Rue Horion 162 Hozemont, Liege. I asked for the names of the civilians alleged to have been killed. A Gendarme handed me two passports bearing the following names and addresses:

Maria VAN DE VOORDE
103 Rue Des Bouchers, Brussels

Febius Frans Leroy
Nyverseel 96 , Opwijk

I saw Dr Jose GOOSSENS of ASSCHE at the Gendarmerie and then I went to the mortuary where I saw the bodies of a man and a woman.

In Brussels at H Q 2 Cdn L of C Pro Coy, I cautioned L-8330 Pte SMITH L J E and M-45121 L cpl BOLES EL. They both volunteered statement s to me concerning the accident which I took down in writing and had them sign in my presence. I made no threats, promises or inducements to obtain the statements, and they were made of their own free will. I produce herewith statement of L-8330 Pte SMITH LJE as Exhibit "A", and statement of M-45121 L cpl BOLES EL as Exhibit "B"

I proceeded to GHENT where I obtained statements from Gabriella VAN ACKER, 69 Reybraeck St. Evergem, Ghent, and from Magdelena GERUYN, 26 Oude Briestraat, Ledeburg, Ghent. Both girls were working at the Cafe Gand near the railway station.

I asked Pte SMITH for the work ticket on his vehicle L-4250201 and he gave it to me I now produce it as Exhibit "C".

The accused declines to cross-examine this witness

"M-60102 Cpl AARSBY RC "

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so but whatever you say or any evidence yougive will be taken down in writing and may be given in evidence.

A. We have nothing to say

The accused do not nall any witness.

I certify that the foregoing Summary of Evidence consisting of eight pages was taken down by me in the presence of the accused and that RP4(C)(D)(E)(F) and (G) have been complied with.

[redacted]

(K A McKenzie) Capt

Officer detailed to take the Summary of Evidence

Dated in the Field
Aug 45

NOTICE

R P 76

Take notice that at your trial by FIELD GENERAL COURT-MARTIAL, Lt H J JACOBI, Admin Officer, 1 Cdn Base Tspt Coy RCASC will be called to give evidence to the effect that:

1. L-8330 Pte SMITH LJE, and M-45121 Pte (L cpl) BOLES AL did not have permission to carry civilians in WD Transport on 10 Jul 45

2. The work ticket for the 9 July 45 authorized a trip from 13 Bn in Nijmegen Holland to Ghent Belgium and return.

3. The work ticket for 10 Jul 45 authorized a trip from 1 CBTC HQ in Ghent to 9 Bn which was then a few miles from Ghent

4. A trip from Ghent to Nijmegen was not authorized for 10 Jul 45. Such a trip if authorized would be by the most direct route which does not lead through Brussels.

5. No authority was issued for Smith, Boles, or vehicle L 4250201 to proceed to Brussels

TO: L-8330 Pte SMITH LJE and M-45121 Pte (L cpl) BOLES AL

I acknowledge receipt of a copy of the above written notice this 22nd day of Aug 45.

Witness

L-8330 Pte SMITH LJE

M-45121 Pte(L cpl) BOLES AL

STATEMENT OF L 8330 Pte. SMITH LJH, No.1 Cdn Base Trans Coy., RCASC
After being duly cautioned states:-

At approximately 2130 hours, 10 July 44, I left HQ, No.1 Canadian Base Transport Coy., Ghent, on my return trip to Elmegan, where one platoon of my unit is stationed. I stopped at a Cafe in Ghent after I had left HQ, where myself and L/C HOLMS who was with me offered to take two civilian girls whom we knew to Brussels.

I was passing through the town of Anseghe, at approximately 2319 hours, travelling appro. 25 m.p.h. when a vehicle approached me from the opposite direction with very bright lights. I switched my headlights off but the other vehicle did not dim his lights, which blinded me at the time.

When the oncoming vehicle had passed me I turned my headlight on and there was a civilian vehicle approx. 10 yds. in front of me, parked beside the tram line, some distance from the sidewalk. I saw the movement of two civilians behind the parked car but could see no light on the rear of the parked vehicle. I slammed all my brakes on immediately but was too close to avoid crashing into the rear of the vehicle. My vehicle stopped dead and the civilian vehicle rolled some distance ahead, across the sidewalk and up against a house.

Myself and L/C HOLMS jumped out of the vehicle and noticed a heap of pots, plants and dirt in front of it. In a few minutes a number of civilians and civilian police were there and the man that owned the parked vehicle began to dig in the pots and plants on the road which came out of the back of his truck. Someone turned a light on and I saw the bodies of a civilian man and woman. After they had been removed by ambulance myself and L/C HOLMS went into the Gendarmerie which was just opposite the accident and was informed that the two civilians were dead.

The Gendarme phoned for the Military Police, Brussels, and in approx. 45 min. four CMP arrived. Before they arrived the Gendarme took statements from the two civilian girls who were riding in my lorry. The CMP questioned L/C HOLMS and myself and later on a wrecker came and towed us into Brussels to [illegible]. After our lorry was parked in their garage the CMP took us to [illegible], where we reported to the Orderly Cpl. and told him what had happened.

(Sgd) L.J.H. SMITH

Statement taken and witnessed by Cpl. [illegible] RC, 2 Cdn L of C Provost Coy., Coy Investigation Section., 11 July 44

Exhibit "B"
Cameron Lessil. Capt.

CANADIAN PROVOST CORPS

COMPANY: 2 Adm Bof & Provost FORMATION: 21st Army Gp.

LOCATION: Brussels DATE: 11 July 45 FILE NO:

STATEMENT

Reg No: M45121 Rank: L/Cpl. Name: Boles. A.L.

UNIT: No 1 Adm Base Transport Coy RCASC.

S T A T E S: "I have been warned that I am not obliged to say anything unless I wish to do so, but that whatever I do say will be taken down in writing and may be given in evidence. I fully understand the meaning of this caution, and to show that I do so I sign my name herewith."

Signature. A.L. Boles

At approx 2130 hrs 10 July 45 I left H.Q. No 1 Adm Base Transport Coy, with Pte Smith in a 60 cwt to return to my platoon in Nijmegen. As we were leaving Ghent we stopped at a Cafe for a few minutes where we picked up two civilian girls who wanted to go to Brussels.

As we were passing through the town of Assche Pte Smith was driving approx 35 MPH when a vehicle approached from the opposite direction with very bright lights. Pte Smith switched the headlights off but the oncoming vehicle did not dim his lights. It was a very dark night and I was temporarily blinded.

When the oncoming vehicle passed Pte Smith switched his headlights on again and I saw a civilian vehicle parked directly in front, beside the tram line, some distance from the sidewalk. Two civilians were behind the vehicle obstructing the view of the rear light if it was on, and Pte Smith immediately applied the brakes but was too close to avoid crashing into the rear of the parked vehicle. The lorry stopped dead and the civilian vehicle rolled some distance ahead, across the sidewalk on the right and up against a house.

Myself & Pte Smith jumped out of the lorry and there was a heap of plants, pots & dirt in front of it. In a few minutes a number of civilians and civilian police were there and the man that owned the parked vehicle began to dig in the pots and plants on the road which came out of his vehicle. During this time I saw the two

civilian girls who were in the lorry with us standing on the side walk. I went over to them and told them to wait until I found out what the situation was. When I returned to the lorry someone had turned on a light and I saw the bodies of a civilian man and woman in the rubbish on the road. After they had been removed by ambulance and the police had taken measurements, myself and Pte Smith went into the Gendarmerie, which was just opposite the accident and was informed that the two civilians were dead.

The Gendarme phoned for the Military Police, Brussels and in approx 45 min 4 C.M.P. arrived. Before the C.M.P. arrived the Gendarme took statements from the two civilian girls who were riding in the lorry with us. The C.M.P. questioned Pte Smith and myself and later on a wrecker came and towed us into Brussels, to R.E.M.E. After the lorry was parked in the garage, the C.M.P. took us to HQ's 2 Cdn Inf Bde Provost Coy, where we reported to the Orderly Cpl and told him what had happened.

A/ 130 Av

Taken and witnessed by Cpl Cawley R.C.

206

121 L/C [illegible] AL, No.1 Cdn [illegible] Trans. Coy., RCASC

after being duly cautioned states:-

At appro. 21 30 hours, 10 July 45, I left HQ, No.1 Cdn Base Trans Coy. with Pte. SMITH in a 60 Cwt. lorry to return to my plin in BRUSSELS. As we were leaving GHENT we stopped at a Cafe for a few minutes where we picked up two civilian girls who wanted to go to BRUSSELS.

As we were passing through the town of AALSCHE at appro. 2315 hours Pte. SMITH was driving appro. 25 M.P.H. when a vehicle approached from the opposite direction with very bright lights. Pte. SMITH switched the headlights off but the oncoming vehicle did not dim his lights. It was a very dark night and I was temporarily blinded.

When the oncoming vehicle passed Pte. SMITH switched his headlights on again and I saw a civilian vehicle parked directly in front, beside the trem line, some distance from the sidewalk. Two civilians were behind the vehicle obstructing the view of the rear light if it was on, and Pte. SMITH immediately applied the brakes but was too close to avoid crashing into the rear of the parked vehicle. The lorry stopped dead and the civilian vehicle rolled some distance ahead, across the sidewalk and up [illegible] house.

[illegible] jumped out of the lorry and there was a heap of pots plants and dirt in front of it. In a few minutes a number of civilians one civilian police were there and the man that owned the parked vehicle began to dig in the pots and plants on the road which came out of his vehicle. During this time I saw the two civilians girls who were in the lorry with us standing on the sidewalk. I went over to them and told them to wait until I saw what the situation was. When I returned to the lorry someone had turned on a light and I saw the bodies of a civilian man and woman in the rubish on the road. After they had been removed by ambulance and the police had taken measurements, myself and Pte. SMITH went in to the Gendarmerie, which was just opposite the accident and was informed that the two civilians were dead.

The Gendarme phoned for the Military Police, Brussels, and in appro. 45 min. four CMP arrived. Before the CMP arrived, the Gendarme took statements from the two civilian girls who were riding in the lorry with us. The CMP questioned Pte. SMITH and myself and later on a wrecker came and towed us into Brussels to RCASC. After the lorry was parked in the garage, the CMP took us to HQ, 2 Can I of C Provost Coy., where we reported to the Orderly Cpl. And told him what had happened.

(Sgd) AL [illegible]

Statement taken and witnessed by Cpl. AARONEY RC, 2 Can I of C Provost Coy., Coy Investigation Section. 11 July 45

Certified true copy of original

_____

P/Lt [illegible]

CANADIAN PROVOST CORPS

COMPANY: 2 Cdn L of C Provost FORMATION: 21 Army grp

LOCATION: Brussels DATE: 11 Jul 45

STATEMENT

Reg No : M-45121 Rank L cpl Name BOLES A L
Unit No 1 Cdn Base Transport Coy RCASC

STATES: I have been warned that I am not obliged to say anything unless I wish to do so, but that whatever I do say will be taken down in writing and may be given in evidence. I fully understand the meaning of this caution, and to show that I do so, I sign my name herewith.

Signature: "AL BOLES"

At approx 2130 hrs 10 July 45, I left HQ No 1 Cdn Base Transport Coy, with Pte SMITH in a 60 cwt to return to my platoon in Nijmegen. As we were leaving Ghent we stopped at a Cafe for a few minutes where we picked up two civilian girls who wanted to go to Brussels. As we were passing through the town of ASSCHE at approx 1115 hrs, Pte SMITH was driving approx 25 MPH when a vehicle approached from the opposite direction with very bright lights. Pte SMITH switched the headlights off but the oncoming vehicle did not dim his lights. It was a very dark night and I was temporarily blinded. When the oncoming vehicle passed Pte SMITH switched his headlights on again and I saw a civilian vehicle parked directly in front, beside the tram line, some distance from the sidewalk. Two civilians were behind the vehicle obstructing the view of the rear light if it was on and Pte SMITH immediately applied the brakes but was too close to avoid crashing into the rear of the parked vehicle. The lorry stopped dead and the civilian vehicle rolled some distance ahead, across the sidewalk on the right and up against a house. Myself and Pte SMITH jumped out of the lorry and there was a heap of plants, pots and dirt in front of it. In a few minutes a number of civilians and civilian police were there and the man that owned the parked vehicle began to dig in the pots and plants on the road which came out of his vehicle. During this time I saw the two civilian girls who were in the lorry with us standing on the sidewalk. I went over to them and told them to wait until I found out what the situation was. When I returned to the lorry someone had turned on a light and I saw the bodies of a civilian man and woman in the rubbish on the road. After they had been removed by an ambulance and the Police had taken measurements, myself and Pte Smith went into the Gendarmerie, which was just opposite the accident and was informed that the two civilians were dead. The Gendarme phoned for the Military Police, Brussels and in approx 45 mins 4 CMP arrived. Before the CMP arrived the Gendarme took statements from the two civilian girls who were riding in the lorry with us. The CMP questioned Pte SMITH and myself and later on a wrecker came and towed us into Brussels to RHQE. After the lorry was parked in the garage, the CMP took us to HQ 2 Cdn L of C Provost Coy, where we reported to the Orderly Cpl and told him what had happened.

"A L BOLES"

Taken and witnessed by "CPL AARSBY RC"

Certified true copy of Exhibit "B"

Subject:- Statement.

MP/247/Acc/44

Date:- 17th Aug. 45.

28

To:-
Canadian Courts Martial Centre,
18. Avenue De Caulcis,
BRUSSELS.

From:-
O.C.
247. HQ. Pro. Coy. CMP.

The attached original statement from Mr. Paul Meert, Fire Brigade Officer, is attached, as per your request.

BRUSSELS.
17th Aug. 45.

N.L. Wellance
Captain.
O.C. 247. HQ. Provost Company. CMP.

Having heard the noise of a collision I came outside and saw ~~a~~ military truck standing on the right hand side of the road. I live just opposite the place where the accident happened). In front of the military truck I saw a lot of flowers in soil, which came from the civil truck with which the collision took place. Underneath the dirt and flowers I found a man and a woman both were dead. I telephoned for a doctor and went to the fire station to fetch a car and two stretchers to take the victims to the mortuary. The civil truck stood about 50 yards further when it had collided against a wall the driver ~~and~~ was wounded. The man and woman killed were not on the civil car as far as I ~~know~~ record people on the road when I came back for the mortuary.

My identity is:

Albert Pauk (born 22-6-1903)
Fire Brigade officer
396 64th de Gand
Ghent

a statement from a woman who was at a fire place near the occupied city hall

COPY OF STATEMENT MADE BY :- Paul, MEERT

Having heard the noise of a collision I came outside and saw a military truck standing on the righthand side of the road (I live just opposite the place where the accident happened). In front of the Military Truck I saw a lob of flowers in pots, which came from the civil truck with which the collision took place.

Underneath the dirt and flowers I found a man and a woman, both were dead.

I telephoned for a doctor and went to the fire station to fetch a car and two stretchers to take the victims to the mortuary. The civil truck stood about 40 yards further where it had rolled against a wall, the driver was wounded. The man and woman killed were not on the civil car as far as I heard people on the road when I came back from the mortuary.

My identity is : MEERT, Paul, born 22.6.1907.
Fire Brigade Officer
396 Chee. de Gand,
ASSCHE.

11 July 45

113

Statement Re: Accident at Kinsale - Ghent Highway - Cowsha.
From - Joseph Savage. Passport 11485
Fire Control Unit
Kinsale Management
Dept

I must caution you that you are not obliged to say anything unless you wish to do so, but anything you do say may be taken down in writing and may be used as evidence. Do you clearly understand what has been said to you?

Jos. Savage

At approx 23.15 hrs on 9 July 45 I was driving on the Kinsale - Ghent highway in the direction of Kinsale when I stopped by the side of the road at the town of Cowsha to refill my petrol tank. A civilian man and woman advised me if I was going to Kinsale and I said that was where I was going. I said I had to fill my petrol tank and that there was a petrol station. I was looking over my shoulder as I was standing on the back of my vehicle taking the top off the petrol tank when my vehicle was hit from the rear. My wife was in the cab of the vehicle and I had the tailboard down — my vehicle was pushed across the tram tracks and sideswiped up against a house on the right of the road. I fell from my vehicle and was injured on the head and legs. I got myself out of my vehicle when my wife was crying and when I found that she was alright I went to the spot where I had parked my vehicle and found a pile of pots + plants which I had on the back of my vehicle, on the road. Someone told me that there were two bodies under the plants and I said that was impossible because I had no one on the back of my vehicle. I then saw the dead woman and I knew and thought that they must be the ones

two people that had asked me for a ride to Brussels and thought that they must have been looking for a place to sit on the back of my vehicle when I was putting it with petrol.

I then drove my vehicle in to the Garage after putting it with petrol and then went to the hospital with my wife and a doctor to have my [redacted] head.

I had a red light on the back of my vehicle which was still on after the accident

Jos. Perrye

Rue Horion N° 162

à Horion-Hozémont

(Liège).

This statement has been translated from French to English by Maria Sablon. Kalkoven 40 Aasche, and is a true translation

Maria Sablon

STATEMENT OF: Joseph SAUVAGE, Rue Morion 162, [illegible]ion, NOZEMONT, [illegible]

At appro. 0715 hours, 10 July 44, I was driving on the Brussels-[illegible]ent Highway in the direction of Brussels when I stopped by the side of the road at the town of AASCHE to refill my petrol tank. A civilian man and a woman asked me if I was going to Brussels and if they could have a ride. I said that I had to fill my petrol tank and that there was no place for them. I then took my reserve petrol can and was standing on the hood of my vehicle, taking the top off my petrol tank when my vehicle was hit from the rear. My wife was in the cab of my vehicle and I had the brakes on but my vehicle was pushed across the tram tracks and sidewalk and up against a house on the right of the road. I fell from my vehicle and was injured in the head and legs. I got up and went to my vehicle where my wife was crying and when I found that she was alright I went to the spot where I had parked my vehicle and found a pile of pots and plants which I had in the back of my vehicle, on the road. Someone told me there were two bodies under the plants and I said that was impossible because I had no one in the back of my vehicle. I then saw the dead woman and man and thought that they must be the same two people that had asked me for a ride to Brussels and thought that they must have been looking for a place to sit in the back of my vehicle when I was filling it with petrol.

I then drove my vehicle in to the Gendarmerie after filling it with petrol and then went to the hospital with my wife and a doctor to have my wounds dressed.

I had a red light on the back of my vehicle which was still on after the accident.

(Sgd) Jos. SAUVAGE

Statement translated from French to English by Marie HEMELS, Eindhoven 407C, Annex, and taken by Cpl. [illegible]HC, Coy Investigation Section, 2 Can I of C Provost Coy., 11 July 44.

STATEMENT OF: Joseph SAUVAGE, Rue Horion 162, Horion, Hozemont, Liege

At appro. 2315 hrs, 10 July 45, I was driving on the Brussels Ghent Highway in the direction of Brussels when I stopped by the side of the road at the town of AASCHE to refull my petrol tank. A civilian man and woman asked me if I was going to Brussels and if they could have a ride. I said that I had to fill my petrol tank and that there was no I then took my reserve petrol can and was standing on the hood of my vehicle, taking the top of my petrol tank when my vehicle was hit from the rear. My wife was in the cab of my vehicle and I had the brakes on but my vehicle was pushed across the tram tracks and sidewalk and up against a house on the right of the road. I fell from my vehicle and was injured in the head and legs. I got up and went to my vehicle where my wife was crying and when I found that she was alright I went to the spot where I had parked my vehicle and found a pile of pots and plants which I had in the back of my vehicle, on the road. Someone told me there were two bodies under the plants and I said that was impossible because I had no one in the back of my vehicle. I then saw the dead woman and man and thought that they must be the same two people that had asked me for a ride to Brussels and thought that they must have been looking for a place to sit in the back of my vehicle when I was filling it with petrol.

I then drove my vehicle in to the Gendarmerie after filling it with petrol and then went to the hospital with my wife and a doctor to have my wounds dressed. I had a red light on the back of my vehicle which was still on after the accident.

SIGNED " JOS SAUVAGE"

Statement translated from French to English by Maria Sablon, Kalkoven 407C, ASSCHE, and taken by Cpl AARSBY, RC, Coy Investigation Section, 2 Cdn L of C Provost Coy., 11 July 45.

Certified true copy of Exhibit "G"

11 July 45

26

Statement Re Circulant Knocke - Ghent Highway Guard

From - Madame Sauvage.
Rue Florian 162, Forion Fragement
Liège

At approx 23.15 hrs on 6 July 45 I was walking with my husband on our way from Ghent to Liège when we stopped by the side of the road at Assche to put petrol in our vehicle. My husband got out to put petrol in the tank and I stayed in the car. I heard a civilian man & woman ask my husband for a ride to Brussels and heard him tell them to wait until he had put the petrol in his vehicle. My husband was standing on the road ready to fill the tank when our vehicle was struck from the rear with a great impact. My husband had put the brakes on but when our vehicle was struck the brakes released and it shot across the roadway against a house. I applied the brakes again just before I hit the house. I was crying for my husband and when he came to me we went to the rear where we had parked and saw a pile of pots and plants which we had on the back of our vehicle, on a pile on the road. Someone was moving the plants and I saw the bodies of a man and woman underneath. There also a large military vehicle which had struck the back of our vehicle.

After this my husband put the petrol in our vehicle and after he had taken it into the Gendarmerie I

(over)

ment sent him + the Doctor to the hospital, where my husbands wounds were dressed. He had also received a sword bang on the back of the head and my husband was hurt.

Mrs. Sauvage
Rue de Hanon 162,
à Hanon-Hozémont

The above was translated from French to English by Maria Sabbe, Kalkoven #373, Gesche and is a true translation.

Mrs. Sauvage

Maria Sabbe

STATEMENT OF [redacted], Rue Herion 102, Herion, [redacted], Liege.

At approx. 2115 hours, 10 July 45, I was riding with my husband on the road from Ghent to Liege when my husband stopped by the side of the road at ANCHE to put petrol in our vehicle. My husband got o t to put petrol in the tank and I stayed in the cab. I heard a civilian man and woman ask my husband for a ride to Brussels and heard him tell them to wait until he had put the petrol in the tank. My husband was standing on the hood ready to fill the tank when our vehicle was struck from the rear with a great impact. My husband had put the brakes on but when our vehicle was struck it went across the sidewalk against a house. I applied the brakes again just before it hit the house. I was crying for my husband and when he came we went to the spot where we had parked and saw a pile of pots and plants which we had in the back of our vehicle, in a pile on the road. Someone was moving the plants and I saw the bodies of a man and a woman underneath them, also a large military vehicle which had struck the back of our vehicle.

[redacted]

After this [redacted] petrol in our vehicle and after he had taken it into the Gendarmerie I went with him and the doctor to the hospital where my husbands wounds were dressed. I had also received a severe bang on the back of the head and my back was hurt.

(Sgd) M. [redacted]

Statement translated from French to English by Marie, [redacted], Malkoven 407C, ANCHE and taken by Cpl. [redacted] RC, Coy Investigation Section, 2 Canadian L of C Provost Coy., 11 July 45.

STATEMENT OF MADAME SAUVAGE, Rue Horion 162, Horion, Hozemont, Liege

At approx. 2315 hours 10 July 45, I was riding with my husband on our way from Ghent to Liege when my husband stopped by the side of the road at ASSCHE to put petrol in our vehicle. My husband got out to put petrol in the tank and I stayed in the cab. I heard a civilian man and woman ask my husband for a ride to Brussels and heard him tell them to wait until he had put the petrol in the tank. My husband was standing on the ready to fill the tank when our vehicle was struck from the rear with a great impact. My husband had put the brakes on but when our vehicle was s struck it shot across the sidewalk against a house. I applied the brakes ag again just before it hit the house. I was crying for my husband and when he came we went to the spot where we had parked and saw a pile of pots and plants which we had in the back of our vehicle, in a pile on the road. Some one was moving the plants and I saw the bodies of a man and a woman underneath them, also a large military vehicle which had struck the back of our vehicle. After this my husband put the petrol in our vehicle and after he had taken it into the Gendarmerie I went with him and the doctor to the hospital where my husbands wounds were dressed. I had also received a severe bang on the back of the head and my back was hurt.

(Sgd)"H SAUVAGE"

Statement translated from French to English by Maria Sablon, Kalkoven 407C ASSCHE and taken by Cpl ARRSBY RC, Coy Investigation Section, 2 Canadian L of C Provost Coy. 11 July 45.

Certified true copy of Exhibit "H"

CHARGE SHEET NO 1

Pin here Loose Sheets of Record. 3 M45121 Pro(4)(Pr) Rules AL

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans NO SIR (1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) ~~(no)~~ opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the FIRST charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is ~~disallowed on the~~ ..... charge(s), ~~and~~ allowed on the FIRST charge(s), and that, accordingly, ~~the trial will proceed on the former, but~~ the accused is (are) found Not Guilty on the ~~latter~~ charge(s).(4)

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. ~~President to accused: You will now proceed with your defence.(1)~~ You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?

Ans ..... Do you intend to call witnesses on your behalf?

Ans ..... Are they witnesses as to character only? Ans .....

(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 2. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Hints on Back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 147(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

~~(or~~ The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. AA 54(3) (6), RP 43, 120(A). 2. AA 54(3), RP 43, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

~~D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.~~

CHARGE SHEET No 1.

L8330 PTE SMITH LE

Fix here Loose Sheets of Record. 3

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans NO SIR (1)
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (~~not~~) opening address.(1)
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the FIRST charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the FIRST charge(s), ~~and allowed on the _____ charge(s)~~, ~~but the accused is (are) found Not Guilty on the latter charge(s).~~(4) and that, accordingly, the trial will proceed on the former.
(1. Delete remainder of this para. if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans DO NEITHER Do you intend to call witnesses on your behalf?
Ans YES SIR Are they witnesses as to character only? Ans NO SIR
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if on his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (~~are~~) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), ~~if any~~, of Not Guilty, ~~and states to the accused that the finding(s) of the Court on the _____ charge(s), being subject to confirmation, will be promulgated later.~~(1)
~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.~~(2)
(1. AA 54(3) (4), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

~~D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.~~

CHARGE SHEET NO 2

Pin here Loose Sheets of Record. 3 L 8330 PTE SMITH L.I.E

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans NO SIR.(1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes ~~an~~ (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the FIRST charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the FIRST charge(s), ~~and allowed on the charge(s)~~, and that, accordingly, the trial will proceed on the former, ~~but the accused is (are) found Not Guilty on the latter charge(s).~~(4)

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?

Ans DO NEITHER. Do you intend to call witnesses on your behalf?

Ans ~~YES~~ NO SIR. ~~Are they witnesses as to character only?~~ Ans ~~YES~~ ~~Three~~.

(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is ~~(are)~~ recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President ~~announces the finding(s), if any, of Not Guilty, and~~ states to the accused that the finding(s) of the Court on the FIRST charge(s), being subject to confirmation, will be promulgated later.(1) ~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed (2).~~

(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans Call witnesses as to character

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 27(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true ~~copies~~ copy of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)

(1. MFB 355 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans NO SIR.(2)

(1. RP 27(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 27(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any (2).~~

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A); KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B L 8330 Pte Lewis John Edmund SMITH / ~~B M 45121 Pte (L/Cpl) Allen Lloyd BOLES~~ } No 1 Cdn Base Tpt Coy RCASC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
CHARGE SHEET No 1			
1st AA 40	NOT GUILTY	NOT GUILTY	
CHARGE SHEET No 2			
B 1st AA 40	NOT GUILTY	GUILTY	
4th			
B 5th			
6th			

(Note: As to findings for lesser offences see AA 36, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... beginning on ~~(date)~~ ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 57 days, of which NO days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for thirty (30) days

~~(Sgd)~~ ..... ~~Judge Advocate, if any~~

6 Sep 45 (Sgd) [illegible] President. (RP 45, 92)

Date Awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6.46(A), 51-56, 120, MML pp 739-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.(1)~~

Date 20 Sep 45 (Sgd) [illegible] Col

Commanding Col Gen'l Sch HQ R1C

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 575, 577.)

Accused.	Date.	Signature of Offr.
L 8330 Pte Smith J.E.	26 Sep 45	[illegible] Capt DAPM Cdn Sec HQ 1 Cdn Corps

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

Pin here. Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. Delete remainder of this para. if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Do you intend to call witnesses on your behalf?

Ans..... Ans.....

Are they witnesses as to character only? Ans.....

(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1) Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95.

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans.....

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex..... and Ex..... respectively.(2)

(1. AFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans.....(2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or call anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 328, 330, 563-566, Overseas RO 309, 1323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: M 45121 Pte (L/Cpl) ALLAN LLOYD BOLES No 1 Con Base Tpt Coy RASC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A A 40	NOT GUILTY	NOT GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

~~Time in confinement awaiting present trial—a total of days, of which days were spent in hospital.~~ (1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

Acquittal

~~Judge Advocate, if any~~ (Sgd)

5 Sep 45
Date awarded

(Sgd) [signature] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Noted

I direct that the accused be not committed to prison or detention barracks until further orders. (1)

(1. AA 57A. Delete if not used.)

Date (Sgd)

Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

MINUTE OF PROMULGATION

FGCM
L-8330 Pte SMITH LJE
No 1 Cdn Base TPT Coy RCASC

Charge:

Sec 40 AA WHEN ON ACTIVE SERVICE NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

In that he
In the Field, on or about 10 July 45, so negligently drove Canadian Military Vehicle No CL 4250201 as to become involved in an accident.

Date of Trial: 5 & 6 Sep 45

Finding: Guilty

Sentence: To undergo detention for 30 (thirty) days.

Date of Sentence: 6 Sep 45

Confirmation: Confirmed -

"HO Morman" Col
Commanding Cdn Sec 1 Ech HQ
Brit Army of the Rhine

20 Sep 45

Time in confinement awaiting trial - a total of 57 days of which Nil days were spent in hospital.

Promulgated and Extracts taken:

Accused	Date	Signature of Offr
L-8330 Pte Smith LJE	26 Sept 45	[illegible] DAPM Cdn Sec HQ FF [illegible] ON

GGG-134
PTE SMITH L.R

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A9172 Pte Leonard Ross Smith 7 Bn 2 CARD

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for 120 days detention beginning on (date) 27 Jan 44 (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

~~Time in confinement awaiting present trial: a total of ____ days, of which ____ days were spent in hospital.~~ (1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

Detention for a period of ~~forty-five~~ one hundred and thirty-two days.

(Sgd) Judge-Advocate, if any. 1 Mar 44 Date awarded. (Sgd) R.R. Taylor President. (For the Brigade)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 739-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 52, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~ Exd
(1. AA 57A. Delete if not used.)

(Sgd) E.W. Hasdenby Brig
COMMANDER
CON BASE SET GROUP
Date 3 Mar 44 Commanding Confirming Officer

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
A9172 Pte Smith, L.R.	6 Mar 44	J.H. Beckett Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

ENTERED IN RECORDS OF C.M. GGG134

FIELD GENERAL COURT-MARTIAL (PAGE 1 (In lieu of AF A3) to F.S.R. 1608 /2804)

Convened by Order of Brig. E.W. Haldenby Comd 1 C.A.R.D dated 29 Feb 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A9172	Private	Leonard Ross	Smith	7 Bn 2 CORD (R.C.A.S.C)

PROCEEDINGS REVIEWED E6
1 Lt Lindsay Capt
for STAFF OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 1 Mar 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED [illegible] Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A93, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 62-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0900 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ____ as interpreter? Ans ____
The Interpreter is sworn.(1) Do you object to ____ as shorthand writer? Ans ____
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No (2)
(1. RP 105. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 23, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	R.R. Taylor	C.A.C. 6 Bn 2 CORD
Member	Captain	A. Arnoldi	5 Bn 2 CARD
Member	Lieut	S. Pitt	Cal. 6 Bn 2 CARD
Judge-Advocate	—	—	—
Prosecutor	Capt.	J.M. Turney	7 Bn 2 CARD
Defending Offr	Capt.	A.D. Hall	7 Bn 2 CORD.

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)
(1. RP 36, 37, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 37 (B) and fn 2 were not followed. See D1 p A3.)

A8. The accused A9172 Pte Leonard Ross Smith before arraignment makes(s) (has) no plea (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does not) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 51, 112. See para 4 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A86 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (*i*) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (*ii*) *to record the pleas as the findings of Court. After deciding between* (*i*) *and* (*ii*), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of J A see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of J A or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans [redacted] (5)
(*1. RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.*
5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on [redacted] charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on [redacted] charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex [redacted], initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP* 17(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D6 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D6 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D6 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP* 39(*C*), 114, *KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the [redacted] charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the [redacted] charge(s), and allowed on the [redacted] charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans [redacted] Do you intend to call witnesses on your behalf ? Ans [redacted] Are they witnesses as to character only ? Ans [redacted]
(*1. RP* 155. 2. *RP* 40(*A*), *see* 60(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*E*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the [redacted] charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(1)
(*1. AA* 54(3) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1) Ans [redacted]
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (*g*) (*b*), and (ii) they purport to refer to (*a*) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex [redacted] and Ex [redacted] respectively.(3)
(*1. AFB* 353 *or AFB* 294. 2. *MFM* 6. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans [redacted]
(*1. RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A., if any.(2)
(*1. When several accused tried separately see RP* 7(*D*). *One sentence only, comprised of the punishments or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 139, 182, *RP* 46-50, 98, 118, 119(*A*), *KR Con* 308, 330, 563-564, *Overseas RO* 309, 2323, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(2), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(18), 68(1), *KR Con* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, A-9172, Private Leonard Ross SMITH, R C A S C , on the strength of 7 Battalion, 2 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas, is charged with

FIRST CHARGE
Section 15 (1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field at the Guard Room, Cliffside Barracks, Avellino, Italy, did absent himself without leave when in close arrest from approximately 1630 hours on 31st January, 1944 until apprehended in Foggia by the Canadian Military Police at approximately 0950 hours on 1st February 1944. (Total time absent, approximately 16 hours and 20 minutes)

J D Macbeth

(J D Macbeth) Lt-Col,
Officer Commanding,
7 Bn, 2 CBRD, CMF

In the field
this 28 day of February, 1944.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

29 Feb 44

Brig.
Comd.1 Cdn Base Rft Group.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/PAM/1697 [2008]

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
A.9172	Private	Leonard Ross	SMITH	(RCASC) 7 Bn.2 CBRD.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and ~~the~~ (date) 29 Feb 44 endorsed by me, ~~[illegible]~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~[illegible]~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~[illegible]~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~[illegible]~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)		(Unit.)
Major	R.R.Taylor		CAC	5 Bn.2 CBRD

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)		(Unit.)
Captain	A. Arnoldi			5 Bn.2 CBRD
Lieutenant	G. Pitt		CAC	5 Bn.2 CBRD

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Captain or Lieutenant to be detailed by C.O., 7 Bn.			

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
Active Service in the Fd			

Italy
(Country.)

29 Feb 44

(Signed personally. RP 105 fn 2.)

Brig.
(Rank.)

Commanding 1 Cdn Base Rft Group.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE
(K R (Can) Para 557)

I certify that I have this morning examined No. A 9172 Private Smith L R
of 7 Cdn Base Reinforcement Battalion and in my opinion he is fit/
unfit to undergo trial by Court Martial.

Station Cliffside Barracks, Avellino, Italy.

Date 1 Mar 44.

[redacted]
(MEDICAL OFFICER)

B3

A-9178 Pte. Smith, S.R.
7 Battalion, 2 C.B.R.D.

Statement given by accused:

On 31 Jan 44 at 1600 hours I was escorted from Guard Room to M.I.R. I had finished my treatment and was ready to return to the Guard Room. There was myself and two other soldiers under escort. The three of us left the M.I.R. and paraded back toward the Guard Room, another fellow and myself walked together. As we left the M.I.R. the two excorts started to talk to a Sergeant Major and we continued without escort. We walked out to the main entrance of Cliff Side Barracks and proceeded into Avellino. We aked the road to Foggia. We ended up in Foggia the next morning. We were asked by the British Military Police where we were heading for and we said we were heading for the front to join our own Company. They told us we had better come with them and would turn us over to our own Canadian Base (4 Battalion).

My intention for leaving Guard Room in the first place was to proceed to the Canadian front and join any of the units I could get into but before I could carry out my plans I was stopped by the British Military Police.

I joined the Army 2 Sept 39 and was overseas in December of the same year. I have spent 4½ years in the Canadian Army and I have always tried to do my job to the best of my ability. I was 2½ years in England as Command Despatch Rider and 1½ years in the workshop at 1 C.A.S.C.R.U. When the 1 Cdn. Div. left England I had belonged to it and tried to get back to it but they would not release me because I was a Class A Fitter, and they said they needed me in the shop. I tried several times to get out on draft and finally got on draft in November 1943. I was sent to North Africa and then to Italy, and tried several times at 7 Battalion to get ondraft. They told me each time when a fitter was needed but I was never sent out on draft. I made one mistake which I knew had spoiled my chances of going on draft.

My mistake was - One night I took more drink than I could handle which resulted in trouble when I returned to Barracks. That was my first serious offense in the Army in 4½ years. I knew I had lost my chance of getting out to try and do the job for which I joined the Army to do.

I know if I had the chance I could be the good soldier and do my job the same as I did before I got into trouble. All I want is a chance to get to the front to prove, to myself and all concerned, that I can still do my job just as good as anyone else. The only chance I could see that I had to carry out my desire was to try and get up to the front, but was stopped before I could carry out my plans. We weren't actually apprehended at Foggia. We met the M.P.'s on the street and the soldier I was with asked them where the hospital was because he wanted a bandage on his hand. When we told them where we were going and could show them no authority for going there, they said it was best to take us to a Canadian Base and we were taken to Canadian Base (4 Battalion) and was then returned to Avellino.

Summary of Evidence in the case of A 9172 Private Leonard Ross SMITH (RCASC) on the strength of 7 Battalion, 2 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas.

FIRST WITNESS for the prosecution

C 32206 Sergeant George Pecton CAMPBELL (Canadian Infantry Corps) on the strength of 7 Battalion, 2 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas, having been duly sworn states:

"I am C 32206 Sergeant Campbell G P, Orderly Room Sergeant of 7 Battalion, 2 CBRD. I produce this certificate of evidence in the case of Private Smith L R, whom I now recognize, purporting to be signed by Captain E A Slop (?), Adjutant, Foggia Garrison, and duly initialed by me for purposes of identification".

Exhibit "A"

The foregoing statement is read back to the witness in the presence and hearing of the accused.

THE ACCUSED DECLINES TO CROSS-EXAMINE THIS WITNESS:

G P Campbell Sgt

(G P Campbell) Sergeant.

The Certificate of Apprehension referred to by the witness, produced, read over to the accused, marked Exhibit "A", signed by me and attached hereto.

J M Tierney

(J M Tierney) Captain & Adjt, Officer detailed to take the Summary of Evidence.

SECOND WITNESS for the prosecution

L 19106 Sergeant Everett Clinton NICHOL (RCE) on the strength of 7 Battalion, 2 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas, having been duly sworn states:

"On the night of 31 January, 1944 I was Sergeant of the Guard, 7 Battalion, 2 CBRD. On the night of 31 January, 1944 at approximately 1830 hours the accused, Private Smith L R, whom I now recognize, absented himself without leave from close arrest. He did not return from AWL at any time during the night, nor had he returned when my duties were finished at 1600 hours, 1st of January, 1944."

The foregoing statement is read back to the witness in the presence and hearing of the accused.

The accused declines to cross-examine this witness.

E C Nichol

(E C Nichol) Sergeant

WARNING TO THE ACCUSED - You may make a statement or give evidence on oath but you do not have to make a statement or give evidence on oath unless you wish, but if you do, it may be taken down and given in evidence.

The accused declines to make a statement or give evidence on oath and reserves his defence.

(Continued on Page Two)

Rules of Procedure 4 (C) (D) (E) and (F) have been complied with.

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in writing in the presence and hearing of the accused this 23rd day of February, 1944.

.....J Tierney.....

(J M Tierney) Captain & Adjutant,
Officer detailed to take the
Summary of Evidence.

In the field
this 23rd day of February, 1944.

M.F.M. 6
(A.F. B.122)
40/P & /3136 (2965)

COMPILED FROM MFM 2 & MFM 4 on 29 Dec 42

No. A 9172 Name SMITH L R | Unit, Battery, or Company | Corps RC ASC | Date of enlistment 7 Sep 1939 | G.C. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No. 1 | Signature O.C. Company, etc. H S SMITH Lt

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order (Correspondence with trial)	By whom awarded	Remarks
Field	25/6 1940	Pte		Sec 15 (1) AWL		7 days C B		C C 1 Div Sup	1 days pay FR&I 149(1)(a
Field	15/8 1940	Pte		Sec 40 AA		10 days det & forf 10 days pay		OC 1 Div Sup	
Field	1/4 1942	Pte		Sec 40 AA		Forf 5 days pay		O C 1 Corps Sigs	
Field	24/12/42	Pte		AWL Sec 15 (1) TTA 3 days 22 hrs	Cpl Rafter H A	Forf 8 days pay	30/12/42	Lt-Col WC Fletcher	Forf 8 days pay FR&I 149(2) Auot forf 4 days FR&I 149 (1)(a)

CERTIFIED TRUE COPY
Officer IC Records
1 Cdn ASC Reinf Unit
Cdn Army Overseas

EXHIBIT "C"

Place	Date of offence	Rank	Cause of dynamic loss	OFFENCE	Name of Witnesses	Punishment awarded	Date award or earlier dispos-al with trial	By whom awarded	Remarks
Field	4 Sep 43	Pte		A.A. SEC 15 (1) WOAS AWL from 2359 hrs 4 Sep 43 until 2200 hrs 9 Sep 43 TTA 4 days 22 hrs 1 min	DOCUMENTARY	5 days pay	11 Sep 43	Lt-Col JM McGown	Forf 5 days pay 149(1) (a) 5 days pay 149 (2) Total forf 10 days pay.
Field	11 Jan 1944	Pte		(1) AA Sec 8(1)(2)AA Sec 8 (2) (3) AA Sec 8(2) Sentenced to detention 120 days Guilty 1st and 2nd charges 3rd charge not guilty.	Documen tary	120 day s detention	27 Jan 44	F G C M	Forefeits 120 days pay FR&I 149 (1)(B Forefeits 14 days pay149 (1) (c) Total forefeiture 134 days pay.

CERTIFIED TO BE A TRUE COPY FROM THE REGIMENTAL BOOKS IN MY CUSTODY

(J M Tierney) Capt & Adjt
7 Bn., 2 C B R D, CMF.

Exhibit "B"
Robert Taylor
Major.

In lieu of AFB 296

Statement as to Character and Particulars of Service of the accused.

NUMBER - A 9172 RANK - Pte NAME - SMITH Leonard Ross

UNIT - 7 Bn., 2 C B R D, C M F.

1. The accused is under sentence at the present time. (Was on 27 Jan 44 awarded 120 days detention by FGCM for offences under AA Sec 8 (1) and AA Sec 8 (2))

2. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 30 days in military custody, of which Nil days were spent in hospital.

3. The present age of the accused is 24 years.

4. The accused is single.

5. His date of attestation is 7 Sep 1939.

DATE 1 MARCH 44

(J D Macbeth) Lt-Col,
Officer Commanding,
7 Bn., 2 C B R D.

LLL-123 PTE SMITH L.R.

LLL-124 TPR SKINTY C.

42 C (117) RECORDED AT CMHQ IN AB 160: 4-22-424 (1/75)

Army Book, 160. Whether elected Trial Case No.

5238 PMEM—300 Bks.—5-43

Regt.	No.	Rank and Name	Description of Court-Martial	Date and Place of Trial
CAC 5 Bn, 2 CBRD	K-67380	Tpr. Skinty, C.	F.G.C.M.	Italy 19 21 & 26 Jan 44

CHARGES See also certified copy AB 160 kept by 1 CBRG p.

(1) AA 40
(2) AA 9(2)
(3) AA 22
(4) AA 15(1) AWL from 2200 hrs 26 Dec 43 until 1400 hrs 31 Dec 43.

President and Members of Court	Pleaded	Finding
Major M.E. Meers Capt B.J. Kelly Capt J.M. Cameron	(1) Not Guilty (2) Not Guilty (3) Not Guilty (4) Guilty	(1) Not Guilty (2) Not Guilt y (3) Not Guilty (4) Guilty

FORMER CONVICTIONS

Date and Place of Trial	Offence	Punishment Awarded

Character	Decorations, Honours and Rewards	Age	Service

SENTENCE AND MINUTE OF CONFIRMATION

Seven days F.P. (Seven days forfeiture pay)
Confirmed - Brig E.W. Haldenby, Commander, 1 CBRGp

Transmitted for Promulgation	When and where Promulgated	Court dissolved 19
	29 Jan 44 c/ Bn, 2 CBRD	

Date of Receipt	To whom sent	Date sent	Purport
4 Feb 44	Certified true Copy R Cordeau Capt (R. Cordeau)		

C (116) (1/74)

Army Book, 160. Whether elected Trial LLL-123 Case No. 41

RECEIV 22 MAY 1944 JAG RECORDED AT CMHQ IN AB 160

Regt.	No.	Rank and Name	Description of Court-Martial	Date and Place of Trial
RCASC 7 Bn 2 CBRD	A-9172	Pte Smith, L.R.	F.G.C.M.	Italy ~~23/24/25~~ Jan 44

CHARGES

See also certified copy AB 160 kept by 1 C BRGp.

(1) AA 8(1)
(2) AA 8(2)
(3) AA 8(2)

President and Members of Court	Pleaded	Finding
Major R.R. Taylor Capt J.C. Whittle Lieut E.E. Sorensen	(1) Not Guilty (2) Not Guilty (3) Not Guilty	(1) Guilty (2) Guilty (3) Not Guilty

FORMER CONVICTIONS

Date and Place of Trial	Offence	Punishment Awarded

Character	Decorations, Honours and Rewards	Age	Service

SENTENCE AND MINUTE OF CONFIRMATION

Detention for period of one hundred and twenty (120) days.
Confirmed - Brig E.W. Haldenby, Commander, 1 Cdn Base Rft Group.

Transmitted for Promulgation	When and where Promulgated 31 Jan 44 7 Bn, 2 CBRD.	Court dissolved	19

Date of Receipt	To whom sent	Date sent	Purport
4 Feb 44	Certified True Copy Cordeau Capt (R. Cordeau)		

g m g

RECORDED AT CMHQ IN AB 160 4LL-124

C 117

Regt	No	Rank and Name	Description of Court Martial	Date and Place of Trial
5 Bn 2 CBRD	K67380	Tpr Skinty, C.	FGCM	Italy 21 & 26 Jan 44

CHARGES

(1) AA 40 - WOAS Conduct etb At Avellino Italy 25 Dec 43 entered St Mary's Church with a beret on his head and made a disturbance while a divine service was in process

(2) AA 9(2) - WOAS Disobeying a lawful command 25 Dec 43, did not leave vicinity of Church when ordered by Lt Cusy, R 22e R

(3) AA 22 - WOAS When in arrest, escaping, 25 Dec 43

(4) AA 15(1) WOAS AWL 26 Dec 43 from roll call at 2200 hrs until 1400 hrs 31 Dec 43

President and Members of Court	Plea	Finding
Maj M.E. Meers RCASC 7 Bn 2 CBRD	1 - Not Guilty	1. Not Guilty
Capt B.J. Kelly RCA 6 Bn 2 CBRD	2 - "	2. "
Capt J.M. Cameron RCA 6 Bn 2 CBRD	3 - "	3. "
	4 - Guilty	4. Guilty

FORMER CONVICTIONS

Date and Place of Trial	Offence	Punishment Awarded

SENTENCE AND MINUTE OF CONFIRMATION

7 days F.P. and 7 days forfeiture of pay

Confirmed by Brig E.W. Haldenby 1 CBRGp 27 Jan 44

Transmitted for Promulgation	When and where Promulgated	Court dissolved	19
	Italy 29 Jan 44		

Summary dated 3 Jan 44
Convening order dated 18 Jan 44
Forwarded to CMHQ 12 Feb 44
Date..12 Feb 44.....

Certified correct
Signature..W.B. Bate.....
Capt ADJA 1 CBRGp
Rank and Appt.....

CERTIFIED TRUE COPY
W.B. Bate Capt
ADJA 1 CBRGD

RECORDED AT CMHQ IN AB 160 - LLL-123

C 116

Regt	No	Rank and Name	Description of Court Martial	Date and Place of Trial
7 Bn 2 CHRD RCASC	A 9172	Pte Smith, L.R.	FGCM	Fd Italy 23, 24, 25 Jan 44

CHARGE

(1) AA 8(1) WOAS Offering violence to his superior offr being in the execution of his office at Avellino Italy 11 Jan 44, caught hold of tunic of RSM Smith, C.T. and raised his right arm threatening to strike RSM Smith

(2) AA 8(2) WOAS Using insubordinate language to sup offr RSM Smith 11 Jan 44

(3) AA 8(2) WOAS Using insubordinate language to his superior offr Cpl Gould, J. on 11 Jan44

President and Members of Court	Plea	Finding
Maj R.R. Taylor 5 Bn 2 CHRD	1. Not Guilty	1. Guilty
Capt J.C. Whittle 5 Bn 2 CHRD	2. "	2. "
Lt E.E. Sorenson, 5 Bn 2 CHRD	3. "	3. Not Guilty

FORMER CONVICTIONS

Date and Place of Trial	Offence	Punishment Awarded

SENTENCE AND SUMMARY OF CONFIRMATION

120 days detention

Confirmed by Brig E.W. Haldenby 1 CHRGp 27 Jan 44

Transmitted for Promulgation	When and where Promulgated	Court dissolved	19
	Italy 31 Jan 44		

Summary dated 12 Jan 44
Convening Order dated 20 Jan 44
Forwarded to CMHQ 12 Feb 44

Date...12 Feb 44.....

Certified correct

Signature...W. B. BATE.....
Capt ADJA 1 CHRGp

Rank and Appt.....

CERTIFIED TRUE COPY

W.B. Bate.

(W.B. Bate) Capt
ADJA 1 CHRGp

115-0

Pte. SMITH, L.V.

O. H. M. S.

M. F. B. 270

115-0

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this TWENTY-FIRST day of SEPTEMBER, 19 42

Whereas it appears to me, the undersigned, an officer in Command of 9th Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable.

*[I am unable to appoint :—

*(1. Three Officers to form the Court.)

*(2. A Field Officer as President.)

for the following reasons, namely :—]

PROCEEDINGS REVIEWED C.M.G.O. 1939 Army Form A.3.

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
MAJOR	D. C. FORBES	N.N.S. Highrs.

Members.

Rank.	Name.	Regiment.
CAPT.	V. E. STARR	N.S. of C.
LIEUT.	S. FISHER	N.S. of C.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed E.W. Sansom Brig

Commanding 9 Cdn Inf Bde

Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
C-539453 PTE. SMITH L.V. S.D.&.H. Hobart.	A.A. Sec HD. In that he the prejudice etc. — employed procedure of an army Trade	NOT GUILTY	NOT GUILTY	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) Edward Bury (Signed) Barbara Wright
Commanding 9 Cav Bty Bde *Convening Officer* (*e*) N N J Hughes *President*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 24th day of Sept 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
~~3. The officer[illegible]~~
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 24th day of Sep 19 42

Barbara Wright
President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (b) on page 762 M.M.L. 1929

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this day of 19 .

Confirming Officer.

Promulgated and extracts taken in the case of

(*a*) (Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] W.O. (M.M.) 1216. Wt. 2/47. W. & Co., Ltd. Gp. 748/2

Accused has elected Trial by Court Martial

CHARGE SHEET

The accused, No.C53945 Pte Smith L.V., Stormont, Dundas & Glengarry Highlanders, a soldier of the Canadian Army placed on Active Service is charged with:-

A A sec 40.

Conduct to the prejudice of good order and military discipline in that he in the field on 31st August 1942 was in improper possession of, and improperly used a government truck and petrol for private purposes.

G.H. Christiansen

12 Sep 42.
In the Field.

(G.H. Christiansen) Major,
A/Officer Commanding,
S.D. & G. Highrs. CAC.

To Be Tried By Field General Court Martial.

Dated in the Field this 20th day of Sept. 1942.

E.W. Haldenby

(E.W. Haldenby) Brigadier
Commanding 9 C.I.B.

A Jarvis Major
President FGCM.

Accused has elected trial by Court Martial

CHARGE SHEET

The accused, No.C53945 Pte Smith L.V., Stormont, Dundas & Glengarry Highlanders, a soldier of the Canadian Army placed on Active Service is charged with:-

A.A. sec. 40

Conduct to the prejudice of good order and military discipline in that he in the field on 31st August 1942 was in improper possession of, and improperly used a government truck and petrol for private purposes.

12 Sep 42.
In the Field.

(G.N. Christiansen) Major,
A/Officer Commanding,
S.D. & G. Highrs. CAC.

To be tried by field general court martial

Col Wedderburn Brig
Cmdg 9 Cdn Inf Bde

Not accepted

Exhibit "H"

MEDICAL OFFICER'S REPORT

I certify that No. C-53945 Pte. Smith, L.V.

S.D.G.Highrs. is in a good state of health

and fit to undergo Trial by Court Martial.

A.A.T.Ross Capt
Medical Officer

MEDICAL OFFICER
Supreme Dundas & Glengarry Highlanders

Station Field

Date 24 Sept, 1942

P. T. O.

C.F.B. 246

Category: "A"

Free from vermin, venereal and infectious disease: Yes

Vaccination & Inoculations complete: Yes

Date of last inoculation 9-7-42

Exhibit "1"

TRANSPORT WORK TICKET.

Army Form G 3518

Date 31 Aug No. U/0

Make of Vehicle Chev Class 60 cwt W.D. No. CL 4 4 4 3 1 6

Unit S.D.T. Hdrs Section M.T Driver's Name D. Crowe Hour of Parade 0 5 30

For whom journey is performed. (1)	FULL Details of load and service. (2)	ROUTE From (3)	ROUTE To (4)	Via (5)	Signature of person authorising journey (6)	TIME TAKEN From (7)	TIME TAKEN To (8)	Miles run (9)
A Unit	Haul Coal Cap Stash						1600	22
B								
C								
D								
E								
F								
G								
H								
K							TOTAL ...	22

SPEEDOMETER READINGS. Miles

(10) In 8992

(11) Out ... ...

Mileage 22

PETROL Galls.

(12) Held at Start 12

(13) *Add*—Amount drawn 0

(14) *Deduct*—Remains on completion ... 9

(15) Quantity Consumed ... 3

(16) TOTAL hours out on duty

(17) Signature of Driver D J Crowe

(18) Countersigned L. D. Foster Capt T.O.

Rank

*All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for General and District Courts-Martial

Proceedings of a Field General Court-Martial held at Base Area
on the 25th day of September 1942 by order of Brig. Adam.
E.W. Holdenby Commanding 9 C.I.B.
dated the 20th day of Sept. 1942

President.

MAJOR D.F. FORBES M.M.S. N.Z.E.F.

Members.

CAPT. V.E. STARK H.L.I. 9 C.I.B.

LIEUT. S. FIDLER. H.Q. 1 9 C.I.B.

CAPT. R.A. KERR. RCA, Judge Advocate.

Trial of* C. 53745 Pte SMITH. L.V.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ ~~is not available~~
~~to serve owing to~~
~~, waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† LIEUT KILLIGAM

Counsel‡ or defending officer† LIEUT PETTAPIECE.

At 1050 o'clock the Trial commences.

The order convening the Court is read, and is marked signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? NO.

Answer by accused.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Mil. Form B. 271
10M—3-41 (9670)
H.Q. 1772-99-224

PROSECUTOR OPENING.

The transport Corporal went down to check his transport lines on the morning of August 31st and found that a certain truck was missing. All Guards were told to look out for this truck. In the early hours of Sept 1st two Guards at the North Gate of the Camp, ~~saw~~ saw this truck. One Guard got on the side of the truck and drove it to the Guard room. There were three men in the truck and these men got out of the truck, two accused men seen standing with two other men by the Guard room after the truck had been brought in. Evidence will be adduced to shew that these three men were seen to go out together on that morning.

C

*Instruction. (See R. P. 39 (A))

Proceedings on Plea of Not Guilty

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. NO.

The prosecutor makes an opening address [~~hands in a written address, which is read, marked , signed by the President, and attached to the proceedings~~].

The prosecutor proceeds to call witnesses.

First witness for prosecution. C. 5·3231 L/Cpl SPRY. W. E.

being duly sworn, is examined by the prosecutor.

I am a clerk in the M.T. Office of the S.O and R. Highlanders. I was not in the transport Office on the night of Aug 31st last. I was in my bed reading and as a result of information received I went to the Qr Gds Stores & Pte [illegible] who had the drivers keys for that night. Box had been checked the drivers keys & the M.T. lines & found all drivers in and one truck missing. That truck was Ch. 4214316 with tactical marking Q. 4. The regular driver of that truck was Pte Crow. D.T. The check and discovery of the missing vehicle took place at approximately 1815 hrs. I then notified the Adjutant that there was a truck missing. As Corporal of the transport section I would have known if a work ticket had been issued for that truck that morning. A work ticket had been issued for that truck

(2)

to haul coal that day but not for the morning. When Duckett's trip on that C.O. a coal haul) has been completed he driver completes his ticket and hands it in to the office. I did not check the file that night to see if the ticket was time but at 0830 hrs on 1st Sept the mark ticket was there and showed that the job had been completed at at 1730 hrs. I produce herewith the work ticket (which I refer (EXHIBIT I") As the driver was filling out this ticket at 1600 a call came for the driver to go over to the Q. M. Stores to move some benches. This he did which accounts for the truck being out until 1730 but his truck was not authorised to leave the camp area after 1600 hrs. No other work ticket was issued on 31 August from our office which granted permit this particular vehicle to leave the camp area. All vehicles of No 6 Platoon of which the vehicle in question was one, are controlled through our office and other than all work tickets for these vehicles are issued through our office. No work ticket was issued for this truck after 1730 on 31 Aug 42.

I saw the accused Pte Smith around 1700 hrs on 31st August 1942. I did not see him after that on that day. Duty drivers are ordered to stand by from Reveille to Reveille. The accused was a duty driver on 31st Aug and his turn would end at Reveille on the 1st September. The orders were that duty drivers were to remain standing by in their own huts for the period of their turn of duty. Pte Smith was not in his hut when the Corporal and Sergeant went round to check up.

*All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for General and District Courts-Martial

Proceedings of a Field General Court-Martial held at Ld Fld
on the 23rd day of September 19 42 by order of Brigadier
E.W. Haldenby Commanding 9 C.I.B.
dated the 20th day of Sept. 19 42

President.

MAJOR D.F FORBES H.H.S. Nyasa

Members.

CAPT. V.E. STARK H.L.I. of C.

LIEUT. S. FIDLER. H.L.I. of C.

CAPT. R.A. KNOX. RCA, Judge Advocate.

Trial of* C. 53745 Pte SMITH. L.V.

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~~The Court satisfy themselves that is not available to serve owing to~~

~~, waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

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Counsel‡ or defending officer† LIEUT PETTAPIECE.

At 1030 o'clock the Trial commences.

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The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? NO.

Answer by accused.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Mil. Form B. 271
10M—3-41 (9670)
H.Q. 1772-39-224

B

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn.

Major C.A. Beattie
Lieut W.R. Travers

Charge-Sheet

Instruction.
If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

NOT GUILTY. *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Answer.

Are you guilty or not guilty of the third charge against you, which you have heard read? *Question.*

Answer.

Are you guilty or not guilty of the fourth charge against you, which you have heard read? *Question.*

Answer.

The accused having pleaded Guilty to charge, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

CROSS. EXAMINED

Q. In his summary of evidence you state that Corporal Goodeve told you he thought was missing

A. Cpl Goodeve on the phone Orderly reported this to me at about 1815 hrs.

Q. If the truck was reported missing by you at 1815 hrs it must have been missing before that time.

A. I could not say Sir.

Q. Did you look in the hut to see if the duty drivers were in?

A. Cpl Goodeve and I went in.

Q. Are duty drivers confined to the hut or the camp?

A. They were on five minute call but not necessarily in their hut.

Q. Therefore, I suggest, that Pte Smith could have been in the Camp area at that time?

A. Yes.

Q. Have you driven a truck.

A. No but not for four or five months and at that time there were no Guards on the trucks.

Q. Did you check to see if the work ticket (Exhibit 1) was present at the time the truck was reported missing?

A. No. I did not check until the next morning the ticket could have been put on the file during the night.

BY THE COURT

Q. ~~Is the~~ When is it normal for drivers to have in their tickets?

A. On the 31st August it was still the practice to

C4

turn them in at the end of the day's work.

RULE OF PROCEDURE 83(B) COMPLIED WITH.

K.A.H.

SECOND WITNESS FOR THE PROSECUTION.

C. 53312 CORPORAL GOODY. R.C. Having been duly sworn states:

I am a corporal in the Transport Section of S.D. & G. Highlanders. At about 1815 hrs on 31st August I formed that no duty drivers were on duty. I then contacted Cpl Spry and in his company I searched the M.T. lines and found a truck missing. The accused Pte Smith was a duty driver that night and I searched his transport lines, his HAAFI and the ~~neighbouring~~ grounds near by his drivers huts and I could not find the accused or any of the other duty drivers. The missing truck was CA 4214316 unit tactical sign A-4 the regular driver of this truck was Pte Row. D.T. (~~We made~~ I had a charge against the accused and other duty drivers for being A.W.L. I did not see the truck in question again until next morning at breakfast time in the ~~barracks~~ day I went to the Quartermaster and did not find one. I do not remember what time of day this was. I drove the truck up to the transport lines. I checked the last work ticket that had been issued to his vehicle (identified as Exhibit I") for the mileage and checked them against the speedometer reading and I found 22 miles difference that is the vehicle had gone 22 miles more and above what was recorded on his work ticket.

A work ticket for a No 6 Platoon truck

has to be signed by either his Adjutant, the transport Officer ~~and~~ or the Colonel. At that time (31 Aug) it would have been possible and likely that a work ticket could have been issued by the Adjutant, the transport Officer ~~and~~ or the Colonel, without any one in the Transport Office knowing anything about it.

CROSS-EXAMINED BY THE DEFENDING OFFICER

Q. L/Cpl Spry says that the truck was reported missing by him at 1815 hrs would that be right?

A. Yes approximately.

Q. Did you report this truck "missing", to Cpl Spry?

A. I went around the lines with Cpl Spry and he found the truck to be missing, I had not noticed it before.

Q. Did you see a truck heading out of the camp just before you and Spry started your search?

A. No I was down in the washroom

Q. Are the duty drivers confined to their barracks or the Camp Area?

A. They are confined to their lines. They are on 15 minute Call.

Q. Have you driven a truck in the present Regimental area?

A. Yes.

Q. Were the guards checking closely on trucks which were leaving, at that time (31 Aug 1962)

A. No not it was quite possible to drive a vehicle ~~in~~ out of the ~~camp~~ area without being checked by any guard.

Q. Is it possible that the 22 miles you mention that the truck was driven after the work-ticket had expired, is in fact the 22 miles that is marked on the work ticket.

A. No it is not there was about 26 - between 22 and 26 additional miles on the speedometer

BY THE COURT

Q. Did you have anything to do with a job of hauling stones by that truck on Aug 31st.

A. No. Sir.

THE WITNESS MAKES THE FOLLOWING CORRECTION. The way that I determined that the vehicle had travelled 22 miles was by reference to the mileage entered in the log book at the time when the vehicle was last passed up.

C7.

THIRD WITNESS

LIEUT. F. M. CASS. having been duly Sworn States:

I am acting Adjutant of the 5 D. & G. Highlanders and was so acting on 31st Aug 1942. In this unit it is the practice that work tickets for M.T. vehicles must be signed by any one of the following Officers: The Commanding Officer, the 2/c, The Transport Officer, the Adjutant or the Duty Officer of the day. On 31st August the unit was away on a scheme and I was the only Officer left in Camp except Lieut C. M. Thom who was duty Officer for the period of the scheme. I did not sign a work ticket which would authorise any truck to remain out after 1900 hrs, to the ordinary Convoy if I am correct a trip, the last platoon truck came in at about 1700 hrs. trip originates with me. That is I call the Transport Office and ask for a truck (this time) to be sent up. My Batman then sent up by Officer & I then issue the work ticket. The driver does not return to the Orderly room at the end of the trip. He goes to the transport lines. At the end of each day the drivers hand in the work tickets to the transport Corporal.

CROSS-EXAMINED

Q. Who reported to you that Cpl 4214316 was missing?

A. Cpl Spry Ld, Some time between 1700 and 1900 hrs.

Q. What other Officers besides Mr Thom & yourself were in Camp or on the 31st August.

A. The paymaster, dental Officer, Ass Chaplain Officer. I am not sure if about the Quartermaster.

Q. I presume the Duty Officer has someone to relieve him?

A. The duty Officer and Padre used each other.

Q. Did you phone the Transport Office for a truck to move some benches out from the Camp Area from the Q.M. Stores at about 1600 hrs on 31 August?

A. Not that I can recollect.

Q. Could you tell us if there have been any other men charged with regard to the taking of this truck other than the accused, Moriarty and Post?

A. No. The guards were not charged for letting the truck out of the area. As soon as the truck was reported missing the guards were all notified. I went personally. The truck had not been seen.

Q. Was Pte Anderson charged with the neglect of duty?

A. Yes he was charged with failure to take the necessary steps to identify the driver on his return.

Q. Two Pte's were on guard at the same time. Can you tell us why he was not charged?

A. I did not lay the charge.

Q. Prior to this truck being taken had there been reports of trucks being taken?

A. No.

Q. At the present time would it be possible for a truck to get out of the unit lines on a work ticket properly made out?

A. I do not know.

RULE OF PROCEDURE 83(3) COMPLIED WITH.

BY THE COURT.

Q. Is his duty O/C: car his same as his orderly O/C: car?
A. Yes.

FOURTH WITNESS

LIEUT. C. M. THOM having been duly sworn states:

I was Orderly O/C: car on 31 Aug. 42. I was relieved for the following day at Meal times by Lieut Meadows. I do not remember signing any work tickets for use of trucks after 1900 hrs. I cannot however say that I did not sign such a work ticket.

CROSS-EXAMINED.

Q. Do you know what time on the morning of Aug 31st that you heard that a truck was missing.
A. I do not know. I was not in the orderly room when the report was made.

BY THE COURT.

Q. Have you ever signed a work ticket in this unit which authorized the use of a truck after 1900 hrs.
A. No not that I can remember.
Q. Would it be a very unusual occurence?
A. Yes.
Q. And you do not remember having signed such a ticket on 31 Aug 42.
A. NO.
Q. Was any request made by you for a truck to haul some fuel from Lt C.M. Thom.
A. No.

RULE OF PROCEDURE 83(B) COMPLIED WITH

FIFTH WITNESS
FOR PROSECUTION.

C53040 Pte WINDSOR. H.R. having been duly Sworn

States:

I was on guard on August 31st 1942 at the North Gate of this Camp. I was there from 1900 to 1900 and from 2300 to 0700 hours. Others told me that the guard was to be on the lookout for a certain truck. About 0030 hrs on 1st Sept. I was on my post at about 0030 hrs on 1st Sept. I heard a truck approaching from the direction of Horsham and I recognised the vehicle as being its number "66". I then swung open the gate which was fastened on the left hand side. The truck had stopped by this time and as I swung the gate open I said: "Is this "316"" Someone said "Yes it is" I recognised his voice as that of E.R. POST. a man who I have known for two or three years. I said "Just have to take you boys to the Guard House." I jumped on the left hand running board of the truck and I recognised the man who was sitting next to me. It was the accused Smith. I am sure of it. There were two other men in the truck. I did not recognise the driver but I had recognised Private Post who was sitting in the middle. We proceeded with the truck to the Guard House and as we got near to the Guard House I told the driver to pull up a bit and I jumped off the running board and called for the Corporal of the Guard. When he came out I was standing at about the centre of the truck and the accused and Post and another man were standing behind me near the front of the truck.

The Corporal of the Guard then took them into the Guard house and recognised them all. Pte Moncrieff was the third man.

CROSS-EXAMINED BY DEFENDING OFFICER.

Q. How long have you known Moncrieff
A. I don't know him very well even now.
Q. Did you get a good look at Smith and Pott in the cab?
A No not a very good look it was very dark.
Q. After you got to the Guard house and jumped off the truck could anyone have got out of the back of the truck to join him & then two standing beside it?
A Yes.
Q. Did you see the driver get out of the truck?
A. No Sir he was on the opposite side.
Q. The driver could have got out of the truck and hid behind a building that is there could he not?
A He could have it was a very dark night.
Q Did you see the truck in question leaving the camp in the morning?
A. No Sir.
Q Did the Guard Commander question you about whether a 30 cwt or a 60 cwt had gone out?
A No but Sgt Wood did. Told him

Neat only one had gone out & that
was a 15 cwt.

By The Court.

Q. Have you known Smith, his accused, for some time?

A I have known him by sight for about six months.

Q. What was his number & the truck that you have been talking about?

A. The last number [redacted] I do not know what the first numbers were.

Q. Would you know Mongeroff as well as you did Smith? A. About the same.

Q. When you were on the running board could you see all the way in the cab?

A No I could not see the man on the right hand side as well as I could see Smith.

Q. Was your position such that you could recognise the driver?

A. No he was on the far side.

Q. If it had been Mongeroff driving could you have recognised him?

A. I am not sure.

RULE OF PROCEDURE 83(B)

COMPLIED WITH.

SIXTH WITNESS FOR PROSECUTION.

LIEUT. S. R. WIDDISS having been duly sworn deposes:

I remember returning from the Mess as orderly Officer of S.O. & G. Highlanders on the 31st August 1942. I returned there for supper and I am sure that I signed no work tickets that day for any truck.

Lt.

C13.

By The Court

Q. Were you acting Quartermaster on 31 Aug 42?

A Yes and as much I had an Order to call up and ask for a truck for Camp duties but I cannot remember asking for one to move forces that day.

Rule of Procedure 83(13) complied with.

At 1630 hrs The Court Adjourned until 0930 hrs on Thursday Sept 24th 1942.

The Court Reconvened at 0930 hrs 24 Sept 42.

Medical Certificate is laid before this Court.

C 33812 Cpl Goody R.C. being recalled and already under oath states:

I have been transport Corporal of this S.D.G. Regt for 2 years and previously, in civil life worked for an oil company and as a driver. I have a good knowledge of trucks and particularly of Army vehicles.

I produce herewith the Log Book for vehicle CL 4214316.

The Court Examine the Log Book and note the following entries.

Date	Fuel Received Gallons	Lubricants Engine	Lubricants Other Oils	Mileage	Remarks and Initials
28. 8. 42.	2	—	—	8965	D.L. Crowe.
1. 9. 42.	12.	—	—	8994	Rogers. R.

[Due to the inconvenience which would be caused by retaining this Log Book as an exhibit, this Court, with the consent of the defending Officer, accepts the above excerpt from it, which is certified to be correct. Cpl.]

Q. Do those entries mean that on 28 Aug 42 the speedometer reading was 8965 at the time the petrol was put in and that 2 gallons were put in.

A Yes.

Q. What happens when a truck goes for petrol

A. When a truck goes & get petrol the tank is always filled to the nearest two gallons.

Q. Can you explain to the Court exactly what the two entries in this book mean?

A. They mean that on the 28th of August it is likely that the two gallons taken on would fill the tank; then a Saturday & Sunday intervened and when I brought the truck back it took 12 gallons and according to the speedometer it had only travelled 29 miles. These vehicles run about 7 miles to the gallon.

Q. Is it possible to disconnect the speedometer, that is for a driver to do so?

A. Yes it only takes about a minute but it takes about five minutes to put it together again.

Q. Did you look at [illegible] was the speedometer connected when you got the vehicle from the Guard room on Sept 1st

A. Yes it was.

CROSS EXAMINED.

Q. Did you know that this truck was used for moving benches on the 31 August?

A. No.

Q. A truck when the engine is idling can use up quite a bit of gas can't it?

A. Some.

Q. How long do you say it takes to put the speedometer back together again?

A. About 5 minutes.

Q. Did you have to put it back in shape again?

A. No Sir.

BY THE COURT.

Q. How many gallons does the tank hold?

A. About 24 gallons.

Q. Exhibit "I" shows that the vehicle had 19 gallons in it after completion of the test on 31st August.

A. Yes.

Q. And it took 12 gallons to fill it on 1 Sept?

A. Yes.

Q. And it should only have taken 5 gallons?

Driver that leaves 7 gallons unaccounted for and his speedometer only shows that it travelled 2 miles. In my opinion either his speedometer was tampered with or his gasoline Syphoned off.

Q. Do the drivers ever syphone gas off?

A. Only small amounts for cleaning. Three quarters of a gallon at the most. The drivers are not supposed to do this.

RULE OF PROCEDURE 83(13) COMPLIED WITH.

SEVENTH WITNESS

C 58311 PTE LAVALLE M. having been duly sworn states:

I am a member of the S.D. & Highlanders and on 31st Aug 1942 was on guard at the North gate of this camp with Pte Davidson. A truck came in from Horsham about 1230 that night. It came up to the gate and stopped. Davidson went out to the gate & shined on the first light I had. Davidson asked if his truck was a certain number, and someone said yes. Davidson jumped on his left hand side of the truck & took it to the guard house. The accused, who I now identify, was an occupant of that truck. I recognized his driver by his face I walked right alongside of the truck. I did not know the drivers name at the time but now know it to be Moncrieff. There were three men in the truck. I went round to the back of the truck and lifted the tarp and found two men in the back part. I flashed the light on them but did not speak with them. There was an artillery man standing by the gate with Davidson & myself. I asked

him right in the back so as not to let him run out until they got to the Guard house

CROSS-EXAMINED.

Q. Where did you get the Torch light?
A. In his ~~Guard Van~~ Cab. Sentry box.
Q. What kind of a light did it throw.
A. A really fair light.
Q. Did you recognise him even through the windshield or directly. —
A. Recognised the accused through the wounds windshield.
Q. Do you know any of his chaps well.
A. No.
Q. Next morning, at the Guard house did you say you could not recognise the driver of the truck
A. I was doubtful at that time.

By The Court

Q. What did you see in the cab of the truck.
A. I saw ~~three~~ people in the cab, one on the left, one low in the middle and the driver. I only recognised the driver ~~of~~ and the man on the left.
Q What kind of a night was it.
A It was a real dark night.

RULE OF PROCEDURE 83(3) COMPLIED WITH.

8th WITNESS FOR PROSECUTION

C 53041 SGT GARRETT R.V. having been duly Sworn States:

I am a member of the S.D. & H. and on 31 Aug 42 was corporal of the Guard of that Regt. that is I was Guard Commander. I told the men on guard that there was a truck with the last three numbers of which were 316 was

the waggon to the guard room if it came in. This truck was eventually brought to the guard room at 0045 hrs 21st/1st. There were three fellows standing in front of the truck when I saw it. The accused, Pte and Moncrieff - I asked them for a work ticket. The question was a general one to the three of them and one of them replied ~~in the negative~~ that they had not got one. [illegible]

The next day the Orderly Officer asked the three men who were driving the truck and they replied that none of them had been driving it.

CROSS-EXAMINED

There was no one in the back of the truck when I looked in it after coming out of the guard room. There is a small building just behind the guard house. It was a very dark night. The driver of the truck could have ridden behind any of ~~them~~ the two lorries. I did not see any member of the Artillery around the truck that night. I did not look in the truck for a work ticket. The accused did not appear to be worried when I placed them under close arrest.

BY THE COURT.

Q. How long would you say it was between the time when the truck pulled up in front of the guard house & you heard the door slam, and the time when you saw the three men ~~standing by~~ at the back?

A. About ~~a minute~~ half a minute.

RULE OF PROCEDURE
53 (R) COMPLIED WITH.

C.54331. Pte Crowe D.T. having been duly Sworn States:

I am a member of the S.D. & G. Hqrs and on 31 Aug last was a member of the transport Sec No 6 platoon. I was the driver of Truck No CL.4142.316. On 31 August I was driving the truck on a haul for coal in the morning & coke in the afternoon. The coal I was drawing at Horsham & the coke at Broadbridge Heath which is about 3 miles away from this camp. After the first trip for the day at about 1630 hrs and parked the truck and reported to the Q.M. Stores to move some tables, I was on just one trip to the Canada Stores. The round trip would be about ½ of a mile, it is within the camp area. I received no other work ticket that day. I identify Exhibit I as the work ticket which I had for Aug 31 and which I handed in to transport Office that evening. The next time I saw my truck after returning from the Q.M. Stores was at about 0030 of 0100 hrs ~~Sept~~ Sept 1st. I saw Pte Smith, he occupied around 1800 or 1830 hrs. I lived in the same hut as Smith, Moncrieff and Post at that time, there were about 18 drivers quartered there. I do not remember seeing Pte Smith leave the hut that evening. Next I saw Smith at the Guard house at about 2000 hrs when I went there to report as late for fatigue. The accused Moncrieff and Post were there at that time. I spoke to the accused but I cannot remember

any of the conversation.

CROSS-EXAMINED.

Q. How many trips did you make on Aug 31st?

A. One hauling coke and one hauling coal.

Q. Were you making out your work ticket when Sgt Story asked you to go to the R.M. Stores?

A. No I had already turned my ticket in at the Transport Office.

Q. Are you still in the Transport Section

A. No Sir. I left during the frost work in September. I am now in "C" Coy and am not a driver.

BY THE COURT:

Q. Are the figures at the bottom of Exhibit I put in by you?

A. Yes Sir

Q. How do you arrive at the figure 22.

A. On my mileage.

Q. And the ~~Gallons~~ gallons consumed

A. From my mileage.

Q. What time did you arrive in camp that night?

A. At 00 05 hrs.

Q. Were you out with Smith that night?

A. No.

~~Q. Were you (sd.)~~

RULE OF PROCEDURE 83(5) COMPLIED

F.53150. Pte Crowe. A.D having been duly sworn States:

On 31 Aug Cast I was a driver in the transport section of the S.D. of Hqrs. I lived in the same hut as Smith, Moncrieff and Post. Between 1800 & 1900 hrs. I saw the accused, Moncrieff and Post cleaning up in the hut. Post and Moncrieff went out together and noticed that Smith was there a minute before they left and was not there after they had gone. Shortly after wards I saw Post & Moncrieff walking in front of the garage with Smith a few paces in front of them. They were going in the direction of a short cut to Horsham. States saw them (Moncrieff and Post) on the short cut to Horsham. Did not actually see Smith at this time but there was a figure in front of Moncrieff & Post.

CROSS-EXAMINED.

I swore at about 1900 hrs when I saw these men on the short cut towards Horsham.

BY THE COURT.

Q. Were you a duty driver on Aug 31st.

A. I was and I am not. I had been warned as duty driver but had received another order later giving me another duty.

Q. Did you come in by the North Gate.

A. No me came up through Dorothie fields

Q. To the short cut where you saw them were heading, go past the Rehearsal Park

Where the Q. vehicles stand?

A- No it is below it and there men were heading away from his vehicle park when seen by me.

Q. Are you sure of the time when you saw them on the short cut?

A No. But I am sure that Q. free after 1800 hrs.

RULE OF PROCEDURE 83 (B) COMPLIED WITH.

D

The prosecution is closed.

Defence

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. YES.

Question. Do you intend to call any other witness in your defence?

Answer. YES.

Question. Is he a witness as to character only? *Answer.* NO.

INSTRUCTIONS TO THE COURT

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says†

[Hands in a written address which is read, marked

signed by the President and attached to the proceedings.]

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, see Instructions to the Court above.)

D2

FIRST WITNESS
FOR THE DEFENCE.

Instruction.
The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

C. 53945. Pte. SMITH. L.V. having been duly sworn states:

On 31st August 1942 I was a driver with the M.T. Section of the S.D and G. H. 3 Canadian. On the morning of 31 August 42 I got cleaned up and went to Cowfold leaving camp after six o'clock between six and seven. I took the short cut out to the highway. down by the garage - ~~I crossed~~ went across to main highway to where the road branches off to Cowfold. I got a ride in a civilian car over this distance. When I got a ride with a 15 cwt in to Cowfold. I do not know who the driver of the 15 cwt or the civilian car were. In Cowfold I went out with a girl and walked into the park and sat down. I was accompanied by Pte Post and Hourcroft - we were all together on the way into Cowfold. I left Cowfold round 2330 or 2400 - I got a ride out of there with it 15 cwt and then me & Post and Hourcroft walked up from the road junction to a small village on the road to camp. We then both hiked another lorry. the driver said he was going to Horsham so me & I got in with him. I fell asleep and when ~~me~~ I woke up we were at the gate and the guards told us we would have to go to the guard house. ~~the~~ In the front of the truck there was the driver, then Post in the middle and I was on the left. I did not recognise the driver of the truck all I know is that he had no hat on - I did not speak to him on the way in, when he replied to the request for a lift I did not recognise his voice. The only people I saw at the gate when we came in were Pte's Swindon & Lavalle. Swindon took us up to the guard room, he was on the left hand side. When the truck stopped

outside the Guard room 2907 out and walked towards the Guard room. Pte 907 out after me + Moncrieff 907 out of the back and was standing there too. The driver was not with us at this time. The reason that I did not see the driver on the way in was because I went to sleep and it was pretty dark. I do not know all the Company drivers. I have seen them from the R.C.A. going through the S.D + G. Camp area. I did not drive the truck after it brought us into Camp and I did not know it was stolen. I did not know it was an S.D and G. truck. I did not ask to see the work ticket. To my knowledge neither Pte Moncrieff had any thing to do with the stealing of this truck. If the driver of this vehicle had been from No: 6 Platoon I think I would have recognised him.

CROSS EXAMINED.

Q. Can you explain why if you wanted to go to ~~Horsham~~ Cowfold, you took the short cut to Horsham?
A It is the shortest way on to the main road.
Q. You were a duty driver that night?
A. Yes and so was Moncrieff.
Q. Did you go into Horsham?
A. No to Cowfold.
Q. Who stopped the truck?
A. We all put our hands up.
Q Did you recognise it as an S.D + G truck at this time?
A. No I did not.
Q. Do you know whether this was a front, second or third div: truck.
A. No Sir.

D4

Q. You didn't notice the markings on the truck?

A. No Sir.

Q. You went to sleep?

A. Yes Sir. until I reached his Gate.

Q When you awakened at his gate did you look & see who his driver was?

A. No Sir.

Q. Have all his drivers on S.D & G been with No: 6 Platoon at some period?

A. Yes.

Q And you have been with that Platoon for 6 months

A Yes.

Q And still you say you did not trouble to look at his driver and did not recognise him.

A. I did not.

Q When you were taken into the Guardroom did you ask Gl Garrett what the cause of your arrest was?

A Yes and he told me that the truck had been stolen and everyone in it had to go to the Guardroom & was under arrest.

Q. I suggest to you that you, Honeycutt and Post and maybe others took this truck and went down to Chichester in it and came back. Is that right?

A. No Sir.

BY THE COURT

Q. You were asked which side of the road you were on. Which side was it?

A Left hand side of the road.

RULE OF PROCEDURE 8 (2)(B) COMPLIED WITH.

D.S.

C 575512 Pte Post. E.R. having been duly sworn

States:

On the Evening of 31st August. I went out with Pte Smith & Moncrieff We left Camp somewhere between 1800 & 1830 hrs. We went a cross road into Cowfold in a Civilian car and got a ride from a Man to Cowfold in a Lorry. We met three girls in Cowfold. We left Cowfold around eleven o'clock. We left Cowfold and walked quite a way and then got a lift in a 15 cwt as far as a small village & then we walked some more and were picked up by a truck. I did not recognise the driver, there was sitting beside him on the battery box. I was for one a little above the driver and I did not recognise him. I was'nt interested in recognising him and it was very dark with the light in the cab. We came in the North Gate and I do not recall seeing anyone except the two guards at the gate. Pte Smith was sitting in the front seat and Moncrieff in the back. When we got to the Guard room the Guard got off the truck and then Smith & I got out and came & stood by the truck and Moncrieff was there. I did not know the truck was stolen, I had no knowledge Pte Smith had no thing to do with the stealing of the truck and he did not drive it at any time. The first time I knew the truck was stolen was when we got to the gate. I still could not see the driver as it was too dark. I did not notice anything particular about him. I do not know all the Coy drivers.

but I do know all the drivers in No 6 Platoon. I have often seen members of the R.C.A. passing through the S.D.G. lines.

CROSS-EXAMINED

Q. What time did you leave Cowpold?
A. About 2300 hrs.
Q. Where did you get your first ride coming home?
A. About a mile out of Cowpold and we got a ride to a cross roads where there are some petrol pumps.
Q. Then what?
A. We got a ride in the truck?
Q. Which side of the road were you on?
A. I don't remember but I think it was the right hand side of the road.
Q. Did you notice the unit number or the Divisional sign?
A. No Sir. I was not interested.
Q. You got right in beside the driver?
A. Yes. Yes.
Q. Did you notice the driver at all.
A. No Sir.
Q. After you found out the truck was an S.D. & G. truck did you look at the driver?
A. Yes but I did not recognize him.
Q. Most of the Coy drivers have been in No 6 Platoon at some time?
A. No Sir.
Q. At the gate did you notice whether the driver had a hat on or not?
A. No
Q. Did Lavalle come round & put the flashlight on the drivers face?
A. No he shined it on from the front

Against the headlights.

Q. What side of the truck did you get out at the Quadroon?

A. The left hand side as in Smith.

BY THE COURT.

Q. How far from the East Gate is your Quarters?

A. About ½ a mile and about one mile from Horsham

Q. Why did not you come in the East Gate?

A. I was looking out for it but I missed it in the dark.

Q. How did you intend to get home from Horsham.

A. We intended to walk.

RULE OF PROCEDURE 83(B) COMPLIED WITH.

C5336. PTE HANCRIEFF. G.S having been duly Sworn Stated:-

I was a driver in H.T. Seat of the S.O.R. Highlanders on 31 Aug 42 and on the evening of that day I went out visiting from Smith's Post. I left the camp at between 1800 & 1830 hrs on that day. We went out across the field below the Lancs post lines. We went to Cowfold. We hitch hiked in a Canadian car as far as Four Corners and then picked up a 15 cwt which drove us in to Cowfold. Cpl [illegible] In Cowfold we took some [illegible] drinks out. It was about 2230 or

2300 hrs we started back for home. We marched about a mile and then got a ride to Town Corner again and we started walking again. After we had marched quite a way, as far as a little village, we were picked up by a truck which I recognised as the S.D.G truck because I saw the 68 in the front headlights and I am very familiar with vehicle markings and recognised this marking. We hailed the truck and in about 10 yards the truck stopped. It had not got quite past us. I got in the back, there was nobody else in the back. I did not get a chance to look at the driver. When we stopped by the gate I heard some conversation and I heard some one say that we had to go to the Guard house. [illegible] A light was flashed into the back of the vehicle for a second or two. As we got up to the Guard house I stepped out of the back of the truck.

CROSS-EXAMINED

Q. Were you all alone in the back of the truck?

A Yes Quite.

Q. Did you look at the person who put the flash in the back of the truck

A I looked at the light not at the man who was holding it.

BY THE COURT

Q. When you left Cowfold did you make any arrangements about time you were to be dropped. A. I did not make the arrangement.

D24

Q. Do you know if any arrangements were made about the second touch?

A. I do not know.

RULE OF PROCEDURE 83(13) COMPLIED WITH.

FOURTH WITNESS FOR THE DEFENCE

C-53989 Pte SUTHERLAND R. J. having been duly sworn states:

I was a driver in the transport section of S.D. & G. Highlanders on the 31st of August 1941 and occupied the same hut as Smith, Monarch & Post. I saw these three leaving the camp that evening, they were walking across the field towards the main highway. This would be at about between 1745 and 1815.

CROSS EXAMINED

Q. Were you in the hut when Smith was getting dressed.

A. I am not sure.

BY THE COURT

Q. Did you see Smith again that night?

A. In the guard room.

RULE OF PROCEDURE 83(8) COMPLIED WITH.

FIFTH WITNESS FOR DEFENCE

C-53010 Sgt HOWDEN P.D. having been duly sworn states: I am transport sergeant of S.D.G. Highlanders and was so employed on 31 August 1941. I was not in camp that night. About a week before this coming over to supper I noticed a vehicle going out of camp and noted its number and found that the C.P. had not been authorized. I asked that the guards watch for it but the

truck was not caught. That vehicle went out of the lines without a work ticket and none of the transport drivers were stopping it.

RULE OF PROCEDURE 83 (13) COMPLIED WITH.

DEFENSE IS CLOSED

BY THE DEFENDING OFFICER.

There is no definite proof that Pte Smith took this truck out of the lines or had any knowledge that it was stolen.

Cpl Goody and Sgt Hastings that the vehicle was not in the lines at 1815 hrs, if it was not there then it must have been taken before that time.

Smith was seen leaving camp about 1830 hrs on the Post and Roncliff, they were not going towards the M.T. lines but in the opposite direction.

The accused & Post both say they got a lift into camp & were sitting in the front seat of the missing car but did not know that it was a truck taken from S.D.C lines.

The truck could easily have got out of camp without a work ticket.

When the truck returned Windsor who got on the running board could identify Smith & Post but not the driver.

Pte Lavalle claims to have recognised Smith through the windshield, this is not very satisfactory. He went to the back of the truck and did not take a good look at the driver. He says he saw two men in the back

of the truck. I think and submit that he made a mistake, the only person he saw was Moncrieff.

Just because Smith was in a stolen truck it does not prove that he improperly used it or took it.

BY THE PROSECUTOR.

(1) An S.D. & G. truck was illegally out of the lines.

(2) If the accused took the truck out, then certainly admitted that they had no work ticket.

(3) The whole question is whether you believe the accused and his witnesses or Lavalle.

. . . . .

E

Finding*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused IS NOT GUILTY

Proceedings on Conviction *before Sentence*

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

_____ is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.*

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked , signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.*

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.*

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.*

[Explanation.—If by reason the nature of the service the accused is a deserter, or otherwise, a finding of the Court does not render him liable to any additional punishment to that to be awarded by the Court the Court must call the attention of the Court to the fact and the Court must inquire into the nature and effect of that additional punishment.]

Cross-examined by the accused.

Question to the accused.

Do you wish to address the Court? *Answer.*

The Court is closed for the consideration of the sentence.

F

Sentence

The Court sentence the accused Not Guilty *Sentence.*

Summary of Evidence in the Case of No. 32542 Pte Post. E.R, S. D & G. Highrs and No. C 53945 Pte Smith. L.O, S. D & G. Highrs and No. C 53316 Pte Moncrief. F.S., S. D & G. Highrs. C.M.G.

By direction of the Commanding Officer the subsummary of evidence is taken on oath.

First Witness for Prosecution. No. C 53231 L/Cpl. Story. W.E. S. D & G. Highrs, C.M.G. having been duly sworn states: I am the Clerk in the Motor Transport office of the S. D & G. Highrs. ~~Then~~ At about 1815 hrs on Monday the 31st day of August, 1942, it was reported to me that a truck was missing from our Transport lines. I went to the Transport lines and discovered that a 60 cwt Truck No C/S 42143/6 was missing. This truck was in charge of Pte. Crowe. D.T. of the Transport Section. No work ticket had been issued for this truck to be sent from the Transport Office. All work tickets are turned into Transport office after the work has been finished and put on file. On Tuesday the 1st day of Sept. 1942 at 0800 hrs. I checked the file and no work ticket was on

file allowing this truck to be out after 1715 hrs the 31st day of August.
After discovering the truck was missing, I phoned the Adjutant and reported it as missing. At about 1845 hrs the Orderly Sergeant Sgt Woods, called at the transport office and I made a list the number of the missing truck and the name of the driver it was charged to. Two of the accused, Pte Smith, L.D. and Pte Moncrief, F. were duty drivers. Their tour of duty was from Reveille Monday Aug 31st to Reveille, Tuesday 1st Sept. As such they were confined to Camp. I last saw them at about 1700 hrs Monday. I next saw them at Bn. Orderly Room, Tuesday Sept 1st.

The accused declined to cross-examine this witness.

H.B. Jones

2nd Witness for Prosecution.

C53312 Cpl. Goody R.C., S.D. & T. Regt'l H.Q.R.C., having been duly sworn states: I am Corporal in the transport section of the S.D. & T. Regt'l H.Q. At about 1830 hrs on Monday the 31st day of July 1916 on checking the transport lines, I discovered that a 60 cwt truck No. C.L. 421316 was missing. I checked to see if a work ticket had been issued. No work ticket having been issued. I got in touch with Capt. Spry S. & T. H.Q. Corps H.Q. where Capt. Spry notified the adjutant by phone that the truck was missing.

The accused declines to cross-examine this witness.

R. C. Goody

3rd Witness for Prosecution.

Lieut F. M. Cass, S.D. & T. Regt'l H.Q. having been duly sworn states: I am acting adjutant of the S.D. & T. Regt'l H.Q. and have been so acting since 27 Aug last. Unit Routine and regulations call for M.T. work tickets being signed and authorized by one of following officers, C.O.; 2 i/c, F.O.; Adjutant & Orderly Officer

On Monday the 31st day of August the Unit was on a Battalion scheme and the only officers remaining in Camp authorized to sign work tickets were Lieut. C. M. Thom, Orderly Officer and myself as Adjutant. I signed and authorized no vehicle work ticket for the vehicle in question to be moved out of Camp after 1800 hrs.

Cross examined by accused, Smith K.C.

Question 4 Do you know the numbers of the trucks for which you signed work tickets for rations that day.

Answer (1) - I would not say whether or not I signed work tickets for rations trucks.

The accused declines to further Cross-examine this witness.

Jurors

4th Witness for Prosecution.

Lieut C. M. Thom, S. Div F. Right Rs, having been duly sworn states: I was orderly officer on Monday the 31st day of August 1942. I do not remember how many work tickets I signed.

Cross-examined by accused Mowrey J. S.

Question (1) Could you explain to me how you checked the work tickets?

Answer (1) I examined the work tickets and if I was not satisfied that it properly stated the work to be done I enquired concerning it.

Question (2). Any work ticket that looked all right to you, you signed.

Answer (2) Yes, that is correct. I looked at work ticket and if in my opinion it was correct it would be signed.

The accused declines to further cross-examine this witness.

C. M. Thom Lt

5th Witness for Prosecution

C.53040 Pte Windsor, N.R.
S.D.T.S. High'rs, C.A.S.C having been duly sworn states:
I was on guard on Monday the 31st day of August, 1942. I was on duty at post number two which is the North gate of this Camp. At about 1030 hrs Tuesday the 1st Sept. I heard a truck approaching and I opened the gate. The orderly Sergeant, Sgt. Woods Lud previously warned us to be on the look out for truck whose ~~number~~ number was 421316. The truck stopped and I could see it was one of S.D.T.S. High'rs truck as I recognized the unit number. I asked one of the men in front seat of the truck if it was truck 316. Someone answered "Yes." I recognized the fellow who said yes by his voice. He was Emerald Post. I have known him for three years. I told them I would have to take them to the guard house. I got on the running board on the left hand side of truck and told them to drive to guard house. I looked in and saw Pte

Post. He was sitting on the centre, there being three men in front seat. One driving. The driver drove the truck to the guard house and ~~the~~ I called for the Corporal of the Guard. I got off the running board and took a few steps toward the guard room at same time calling for Corporal of Guard. The Corporal of Guard came out and took the three men, who were then standing behind me about the centre of truck, into the Guard Room. I went into Guard room with them and then recognized the three accused men, Pte. Smith, Pte Post and Pte Rowsell. I did not have a flash light. The other guard on duty with me had a flash light. He was Pte Lavelle.

Cross-examined by accused Pte Post. E.A.

Question (1) Someone could have got out of the back of the truck without you seeing them.

Answer (1) yes. they could have.

The accused decline to further cross-examine this witness.

M L Minden

6th Witness for Prosecution

C. 58311 Pte Lavallee, M., S. Div. Q. Highs., C.A.D., having been duly sworn states: I was on guard at Post No. 2, which is the North gate of this Camp, on Monday the 31st day of August, 1942. The Orderly Sergeant reported to Pte Hindson and myself that a Unit truck was missing and to be on the look out point. At about 0030 last Tuesday the 1st day of September, 1942, a CC unit truck drawing to the gate coming from the direction of Aldershot. We opened the gate and went up to the truck. The driver of the truck whom I identify as Pte Mooring said to Pte Hindson on being questioned as to the number of the truck that "that was the number of the truck". I had a flash light and pointed it at rear of truck and turned it on. I was standing on the right hand side of the truck. I saw one man sitting on left hand side of front seat of truck. He had his face turned. I went around to back of truck and lifted up tail of tarpaulin which was over truck and

turned my flashlight on the inside of truck. I saw two men in back of truck. I did not recognize them. None of the accused were in the back of the truck. [Witness looks at accused.] I then went around and opened gate and truck drove off. Pte Windsor going with it. I did not ask them if they had a work ticket. The accused Pte Smith K.V. whom I now identify was in the front seat of the truck on the left hand side. Pte Windsor stood on left side running board of truck as it drove away.

Cross-examined by accused Pte Smith K.V.

Question (1) "How did you recognize me as one of the men in front seat of truck on the left hand side."

Answer (1) By [illegible]

The accused Pte Smith K.V. declines to further cross-examine this witness.

Cross-examined by accused Pte Post E.R.

Question (1) "How can you identify man on left side of front seat of

were standing on the ground and he had his head turned?

Answer (1) I recognized his face from an angle.

Question (2) "Where were you when you shone the light?"

Answer (2). "At the left front of truck."

Question (3) If you were there how did you identify the prisoner as the driver?

Answer (3) I went around on the right hand side of the truck and had the light shining on the driver.

The accused Pte Post. E.R. declines to further Cross-examine this witness.

Cross examined by the accused Pte Mowery. F.S.

Question (1) Do you identify me by any marks.

Answer (1) No - by no marks.

Question (2) When you were looking in back of truck were you standing on the ground?

Answer (2) "Yes."

Question (3) ~~Monday~~ Tuesday morning in the guard room when six of us were there did you not say that you could not identify the driver.

Answer (3) Yes I did say that but after I got a good look

at time I could identify the driver.
Question (4) " How did you identify me later.
Answer (4) " I took a good look at them there.
The accused Pte Mowery J.S. declines to further cross-examine this witness.

M LaValle

7th Witness for Prosecution.

C. 54331 Pte Crowe, D.T., S.D.& G. Highrs, A.O.D. having been duly sworn States: I am on Aug. 31st 1942 the driver in whose charge truck No C.L. 42 14316. was. I finished with the truck at about 1650 hrs on Monday 31st August. I did not take the truck out again after that. I did not receive a work ticket for that truck after that. I next saw the truck parked by the side of the Guard house at about 0100 hrs Tuesday the 1st of September. I had left the ignition in the truck. I was not with any of the accused that night that is the night of Aug 31-Sept 1st As a rule when detailed for work we drive our own trucks. I talked to the accused in the guard room but they did not

turned my flashlight on the inside of truck. I saw two women back of truck. I did not recognize these. None of the accused were working the back of the truck. [Witness looks at accused.] I then went around and opened gate and truck drove on. Pte Windsor going with it. I did not ask them if they had a work ticket. The accused Pte Smith L.C. whom I now identify was in the front seat of the truck on the left hand side. Pte Windsor stood on left side running board of truck as it drove away.

Cross-examined by accused Pte Smith L.C.

Question (1) - "How did you recognize me as one of the men in front seat of truck on the left hand side.

Answer (1) By your face.

The accused Pte Smith L.C. declines to further cross-examine this witness.

Cross-examined by accused Pte Post C.K.

Question (1) "How could you identify man on left hand side of front seat when you

day who was driving the truck or why it was out.

The accused declined to cross-examine this witness.

D.S. Crowe

8th Witness for Prosecution

C. 53071 Sgt. Garrett, S. Div. Regt'l H.Q., C.A.O. having been duly sworn states: On Monday the 31st day of August 1942, I was Guard Commander. Sometime on Monday evening it was reported to me that truck whose last three numbers ~~ended~~ was 316, was missing. I ordered Guard if they saw the truck to bring it to Guard room at about 0040 hrs Tuesday Sept. 1st ~~one~~ I heard a truck drive up to Guard House and somebody called for me. I went out and Pte Windsor had the accused Pte. Smith, Pte Post and Pte Mowery standing at the front end of the truck. I looked in back ~~end~~ of truck with my flash light. There was no one there. I looked at front of truck and did not see any one there. I took the accused into Guard house and placed them under close arrest. I asked them if they had a work

ticket and one of them said "no". - I then took them up to their Quarters to get their blankets. On the way we met Pte Crowe D.T., Pte Crowe A. and Pte Sutherland. I told them they were under arrest and they all wanted to know why they were being put under close arrest as they ~~were not~~ with the truck. I told them it was orders. All six then came with me to get their blankets at their Quarters. ~~On they~~ ~~the way~~ while they were in the hut getting their blankets they were laughing & talking about what they would get out of it as a punishment. I took them back to Guard House and entered names on Guard report. They went to sleep shortly after that. The next morning I heard the orderly officer ask the accused which one had been driving the truck and they all denied being the driver.

The accused declined to cross-examine this witness:

Cpl RB Garrett

9th Witness for Prosecution.

C. 53150 Pte Crowe H. D., V.D. & T. Regt'rs, C.A.D. having been duly sworn states: I know all three of the accused. I live in the same quarters with them. I saw them in the hut between 1800 hrs and 1900 hrs of Monday the 31st August 1942. They were getting cleaned up. ~~Pte Smith left first~~ I saw Pte Post and Pte Mowery leave the hut together. Pte Smith must have gone out first ahead of them. ~~as~~ I did not see Pte Smith leave the hut but he was not there after they had gone out. I left the hut a short while after they did. I saw three of them walking across the ~~bank of the~~ along the edge of the camp. I recognized two of them as Pte Mowery and Pte Post, two of the accused. That is the last I saw of them until I saw them with Lt. Garrett about 0130 hrs Tuesday Morning Sept. 1st.

The accused decline to cross-examine this witness.

Albert Crowe

The accused Pte Smith, L.C. having been duly cautioned in accordance with Rule of Procedure 4(E) reserves his defence.

The accused Pte Post. E.H. having been duly cautioned in accordance with Rule of Procedure 4(E) reserves his defence.

The accused Pte Mooney J.S. having been duly cautioned in accordance with Rule of Procedure 4(E) reserves his defence.

Certified that Rules of Procedure 4(C)(D)(E)(F) and (G) have been complied with.

Taken down by me in the presence and hearing of the accused all present together, this 4th day of September, 1942. In the field.

R. P. Milligan Lieut.
A. D. J. G. Right's.
C.C.S.

4V-70

PTE SMITH M.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A. 117436 Pte Melfort SMITH Perth R.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	notguilty	guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ "WWWS" ~~beginning on date~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 23 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To suffer penal servitude for a term of four years and to be discharged with ignomy from His Majesty's Service.

(Sgd) "WWWS" Judge-Advocate, if any. 19 Jan 45 Date awarded. (Sgd) "H.D.K. Chisholm Maj" President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

I reserve the finding and sentence for confirmation.

Date 20 Jan 45 (Sgd) "R.C. Clark LtCol" A/ Commanding 11 Cdn Inf Bde.

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

"I confirm the findings and sentence and I direct that a part of the sentence not exceeding two years shall be served in a military prison"

~~I withhold my confirmation of the finding(s) and sentence for the following reason(s):~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) "E.G. Weeks" Major-General
IC Administration
Date 8 Feb 45 Commanding CANADIAN MILITARY HEADQUARTERS
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. D-119436 Pte Smith, M. Perth Regt.

Date. 17 Feb 45

Signature of Offr. [illegible] Capt.
#2 Cdn Res Education Centre

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

(AFMF)

Certified true Copy
(DK [illegible] Capt.
Cdn Sec GHQ 2 [illegible]

45-70

CFA96 (1st Rev of AFA3) 40-P-M-8/1608 (3864)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Lt C I R C Clark DSO A/Cond 11 Cdn Inf Bde dated 18 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names	Surname.	Unit.
A.117436		Pte	Melford	SMITH	Perth

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Italy on (date(s)) 19 Jan 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF AF5, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 62-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1100 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO(2)~~ "WWWS"

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

"WWWS" A5. ~~President to accused. Do you object to~~ ~~the Interpreter (1) Do you object to~~ ~~the shorthand writer (1) Do you object to~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(E). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	D.M. Chisholm	CBE
Member	Capt	G.S. Bauld	PLF
Member	Capt	F.F. Fisher	Perth
Judge-Advocate	Capt	W.M. W. Shaw	HQ 5 Cdn Armd Div
Prosecutor	Lt	J.S. Lilburn	Perth
Defending Offr	Lt	T. Cooper	Perth

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dir p 3.)

A8. The accused before arraignment make(s) (no) ~~(X)~~ plea. "WWWS" (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

"WWWS" A9. The accused is ~~were~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~(does not object to any charge~~ (2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF AB6 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

"WWWS" A10. The Court (~~is cleared and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP* 35 *fn* 3. *2. MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)

(*1. RP* 37(*B*). *2. RP* 37(*D*) *fn* 6. *3. RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. *4. See para* E3 *of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ..... initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*F*).)

B6. The accused having been found Guilty of one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No Sir .....(1)

(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1) "WWWS"

(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP* 39(*C*), *114, KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the~~ "WWWS" ~~charge(s).~~(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. *4. Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans Do Neither ..... Do you intend to call witnesses on your behalf ?

Ans No Sir ~~Are they witnesses as to character only ? – Ans~~ .....

"WWWS"

(*1. RP* 155. *2. RP* 40(*A*), *see* 80(*D*). *3. RP* 40 *fn* 10. *4. RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 101(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP* 42, 117(*A*). *See Notes in Part I of Schedule. 2. RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

"WWWS" ~~On the President announces that the accused is found Not Guilty on all charges and is to be released from his, and that the proceedings are accordingly terminated.~~ – Part I of the Schedule is dated and signed.(2)

(*1. AA* 54(3) (*c*), *RP* 42, 120(*A*). *2. AA* 54(2), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans No Sir .....

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex B respectively.(3)

(*1. MFB* 255 *or MFB* 294. *2. MFM* 6. *3. RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 7.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes thru def offr. .....(2)

(*1. RP* 37(*C*), 46(*D*). *2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(*1. When several accused tried separately see RP* 7(*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 108, 119(*A*), *KR Con* 308, 330, 563-566, *Overseas RO* 309, 1313, *MML p* 662, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(3), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(*B*), 46(*1*), *KR Con* 564. *2. RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, A-117436 Private Melford SMITH, The Perth Regiment C.A. (CMF) a soldier of the Canadian Army (CMF) is charged with:

Charge
Sec 18(1) (a)
Army Act.

WHILE ON ACTIVE SERVICE, DESERTING HIS MAJESTY'S SERVICE

in that he

In the Field, on 22 Dec 44, after being warned that his coy., was moving forward from GRATTACOPPA Lateral to a new forward position, absented himself without leave from "C" Coy., The Perth Regiment, C.A. (CMF) with intent to avoid further front line service from 1830 hrs, 22 Dec 44 until located in a stable near TAC H.Q. at 1500 hrs, 26 Dec 44.

Time Absent: 3 Days, 19 hrs, 30 mins.

In the Field
31 Dec 44

"W.W. Andrew Lt Col"
(W.W. Andrew) Lt Col.
Cond - The Perth Regt. CA.

"To be tried by Field General Court Martial"

In the Field
18 Jan 45

"R.C. Clark"
(R.C. Clark) Lt.Col
A/Cmd- 11 Cdn Inf Bde.

"WWAWS"
"DC"

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA8)
40/F&S/1097 (2nd)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A 117436	Pte		Melford	SMITH	PERTH

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 16 Jan 45 endorsed by me, (~~or by an offr of my staff for me~~), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (and that it is not practicable to delay the trial for reference to a superior qualified offr.)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder. "RCC"

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(E), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	D.M. CRISHOLM	C.S.I.

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
CApt	G.S. BAULD	P.L. F.
Capt	P. F. FISHER	Perth

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	C.D. McQUARRIE	H.Q. 11 Cdn Inf Bde

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	W.M.W. Shaw	H.Q. 5 Cdn Armd Div

On Active Service in the Fd

in Italy (Country.)	"R.C. Clark" (Signed personally. RP 105 fn 2.)	Lt-Col (Rank.)
Date 18 Jan 45	A/ Commanding 11 Cdn Inf Bde. Convening Officer.	

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

"RMWS"
"DC"

I certify that I have this morning examined No A.117436
Rank Pte Name Smith M Unit Perth Regt and in my opinion he
is fit to undergo trial by Court Martial

Station Field
Date 19 Jan 45 "WWWS" " Undecipherable"
Medical Officer.

-1-

1st Wit) B.132904 L/Sgt Clark H.J. Pert R duly sworn, states:-
Pros.)

On Grattacoppa lateral Mr Davis called Pl together - Pte Smith, the accd there (pointing was present. Mr Davis told us going to move to frwd position about 800 yds frwd & that we would be moving about 1600 hrs that night. Orders were given about 1700 hrs. We moved off at 1800 hrs - Pl was all present when we left - we arrived approx 1830 hrs. I checked up on Pl and Pte Smith was missing. I reported to offr. Never saw Smith again for about 2 wks. Smith was a member of the Pl & he was not with the Pl again after 1830 hrs. This was two days after we had passed ORANGE.

XXm:- Roll was not actually called. I was acting Pl Sgt. Smithin Pl HQ & I checked it myself - I saw Smith on the warning parade. I checked Pl when it moved off & Smith was present. I waited until Pl had moved out of house. Had moved out by secs & I was with Pl H.Q. - he was last man of Pl HQ to move out.

When got to new area I checked men - was customary to check.

Re Exam: Nil.

Court: - Accd has been in my Pl approx 6 mos - know him well by sight & sound of his voice.

When moved off we came under shelfire from heavies, about 210 mm, about 6 or 8 shells. We took cover in a ditch by side of rd for about 5 mins. I was leading the Pl HQ at this time - just hollered to see if everyone OK & when word came back I just hollered to move off. No other trouble getting on objective. We moved across this rd to the objective - our centre line was a rd running up to the objective. It was dark - just after dusk. Could see a man about 20x away. There was a sec behind & following Pl H.Q. We were travelling in single file. Smith was only one missing on arrival - No others strayed. Shells caused no casualties - they landed very close, about 50x. Ditch was fairly deep

---

II

Ditch was clear - no bush. Would not be possible for a man to get lost when taking cover in the ditch.

R P 83 (b) complied with.

2nd Wit A.11344 CSM Spears, W.A. Perth R. duly sworn states.
Prosn.

On Xmas day I saw Pte Smith whom I recognize here, around Tac H.Q. of Perth R. He was wandering around the area the remainder of the day & the following day. At approx 1500 hrs Capt Schwartz, the adj, spoke to me & as a result of an order he gave I placed Smith under arrest & handed him over to Pro Sgt with orders to escort him to A Ech. At time of arrest he was in a [illegible] adjoining Tac H.Q. arrested him 26 Dec 44 "C" Coy moved frwd from Grattacoppa lateral on 22 Dec - fix the date by incident which occured in the morning, our Tac HQ house burned down & we moved to C Coy Area that afternoon when C Coy moving out. Smith is in "C" Coy.

XXm:- I saw last Pl of C Coy moving - was around 1700 hrs but I x

don't remember exact time - it was just getting dark - they moved out after we arrived. I don't know Pl Smith is in. Did not see Smith that night. Never asked before when I had seen C Coy moving.

Re Exam: Nil

Court:- I was acting RSM 22 to 26 Dec period - as RSM was normal to know position & moves of Coys. Area Tac took over was scattered farm bldgs - Don't remember name of lateral rd or objective Orange. When placed him under arrest I only asked him to identify himself - he sd he had been told to wait there by "C" Coy until he was sent for.

R.P. 83 (b) complied with.

Prosn closed.

Pros in closing:- Sgt cannot remember date but Sgt Maj establishes the date of commencement by reference to the move of C Coy. Sgt's evidence establishes that accst warned to go fwd & did not go fwd. Pros has proved case

III

Def Offr in closing.

Accsd did not ~~MAKE~~ leave bn area & had all his equipment when apprehended. During battle went back to old position & stayed. Did not leave bn as a deserter would. Would ask Court to consider carefully.

J.A. in Summing Up:- Points out functions & duties of the Court. Presumption of innocence, burden on prosn, reasonable doubt, intent, desertion & AWL, AA 56.

Def Offr in mitigation.

Accst never been in trouble before. Has been 4 mos with unit & went into action at Rubicon. Has been a good soldier up to now. & ask court to take this into consideration & be as lenient as possible in passing sentence.

"WWShaw Capt".

No. A117436 Name SMITH, M | Sqn, Battery, or Company | Corps CIC | Date of enlistment | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 132) 40/P&S/136 (3438)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Certified true extracts from MFM 2. 20 Mar 44 - D Henderson, Capt for Offr i/c Records CMHQ.			"B" DWEMS"		
				Certified true copy of original document held in my possession as custodian to regt'l documents. "C. H. Swartz" (C.H. Swartz) Capt & Adjt The Perth Regiment C.A.					

(PTO)

Substitute for AFB 296
or MFB 356

STATEMENT OF CHARACTER & PARTICULARS OF SERVICE OF ACCUSED.

No. A.117436 Rank Pte Name Smith, M. Unit Pert R.

Age 35 Married or Single Single No of Dependents Nil

Date of Attestation 15 Feb 43.

Number of days in Close arrest awaiting trial.....
Civil Nil Military 23 Hospital Nil Total 23 Days.

Dates of appointments, promotions, etc. (if any)

Nil

Decorations CVSM & Clasp.

In the Field
19 Jan 45
Date

"C.H Swartz Capt & Adj.
(officer i/c Regt Books)

The Perth Regiment C.A. (CMF"

"A" "WHOWS".

LRPG V IRIZ SRL 20

FROM CANMILITARY 141735

TO CDR CEE CMF

ABLE 1892

RESTRICTED PARA 1 FGCM PROCEEDINGS B136734 PTE HARIMAN W SERIAL 943/1 ENDORSED BY MGA 8 FEB 45 QUOTE I CONFIRM THE FINDING AND SENTENCE AND IX I DIRECT THAT A PART OF THE SENTENCE NOT EXCEEDING TWO YEARS SHALL BE SPENT IN A MILITARY PRISON . UNQUOTE PARA 2 FGCM PROCEEDINGS A117436 PTE SMITH M SERIAL 107/1 ENDORSED BY MGA 8 FEB 45 QUOTE I CONFIRM THE FINDINGS AND SENTENCE AND I DIRECT THAT A PART OF THE SENTENCE NOT EXCEEDING TWO YEARS SHALL BE SERVED IN A MILITARY PRISON UNQUOTE

T B 150920 HA B K

CC-7TH LINE READ " AND I "

LRPG RD 150921 WP K

201E - Pte Smith M.

O. H. M. S.

M. F. B. 270

Army Form A.3.

Correspondence to be PINNED here.

PROCEEDINGS REVIEWED.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this TWENTY-SIXTH day of JANUARY, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 2nd CANADIAN DIVISION CANADIAN ARMY (A.F.) on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * ~~and that it is not practicable to delay the trial for reference to a superior qualified officer~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

* ~~I am unable to appoint~~ —

~~*(a) Three Officers to form the Court.~~

~~*(b) A Field Officer as President.~~

~~*(c) Three Officers having more than one year's~~ service.

~~*(d) Three Officers of the Canadian Corps.~~ In my opinion, military exigencies, namely the dispersion of units, difficulties of communication, and other difficulties, render it impossible to comply with these rules inconsistent with Appendix "A" to D.L.O. 772 on the trial of the person named in the annexed schedule.

President.

Rank.	Name.	Regiment.
Major	R. J. Dufresne	2 Cdn Div Pet Coy. R.C.A.S.C.

Members.

Rank.	Name.	Regiment.
Captain	R. L. Hoxton	Sig 2 Cdn Div
A Captain (To be appointed by C.R.E. 2 Cdn Div)		R.C.E.
A Captain (To be appointed by A.D.M.S. 2 Cdn Div)		R.C.A.M.C.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

Signed H. W. Roberts) Brig.
Commanding 2 Canadian Division.
Convening Officer.

2

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B85910 Pte. Smith, M., 2 Cdn Div Sup Coln, RCASC	FIRST CHARGE A.A.Sec. 15(1) ABSENT WITHOUT LEAVE (See charge sheet attached)	Guilty	Guilty	55 Days Detention. Confirmed. JAL

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) J.E. Roberts, Brig.
Commanding 2 Cdn Div.
Convening Officer (*c*)

(Signed) R.J. Dufresne Major
President.

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

27

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 15th day of Jan. 42, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
* ~~(3. The interpreter)~~ ~~d~~
* ~~(4. The officers under instruction)~~ ~~d~~

were duly sworn.

Signed this 15th day of Jan. 19 42

R.J. Dufresne Major
President of the Court Martial.

* Omit if not applicable.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1949.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison until further orders.) ~~(I direct that the soldier named in the margin be not committed to prison until further orders.)~~ JAL

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or having such authority, recommends suspension.

Signed this 20 day of Jan 19 42

J.E. Roberts Brig;
Confirming Officer.

Promulgated and extracts taken in the case of

(*a*) (Dated) 23 Jan 42 (Signed) [illegible] Major

2 CDN. DIV. SUP. COLN. R.C.A.S.C. C.A.(O.S.)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

28/5-1 2

3

2 Cdn. Div. Supply Column

B.C.A.S.C., Canadian Army (Overseas)

15 Jan 42.

D86010 Pte. SMITH, M.

This is to certify that the m/n man has been examined by me and found to be free from diseases and medically fit to undergo Court-Martial.

(J.W. Merritt) Capt'n,
M.O., 2 Cdn Div B.C.A.S.C.

5-9

CHARGE SHEET

The accused, B85910 Pte. SMITH, M., 2 Cdn. Div. Sup. Coln., R.C.A.S.C., a soldier of the Canadian Army (Active) - is charged with:

FIRST CHARGE
A.A. 15(1)

When on active service, absenting himself without leave.

In that he at ISEHURST PARK, SUSSEX, absented himself without leave from defaulters roll call at 2000 hours 13 Dec 41 till 1615 hours 2 Jan 42.

(E. DeGeer) Major,
Cmdg, 2 Cdn Div Sup Coln,
R.C.A.S.C., C.A., (Overseas).

Dated In The Field this
13 day of Jan 1942.

(J.H. Roberts) M.C. Brigadier,
Cmdr, 2 Canadian Division.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT HEATHFIELD, SUSSEX, ON 15 JAN 42

TRIAL OF NO. B65910, Pte. Smith, M., 2 Cdn Div Sup Coln, RCASC

PRESIDENT: Major R. J. Dufresne, 2 Cdn Div Pet Coy RCASC

MEMBERS: Capt. R. L. Houston, Sigs 2 Cdn Div
Capt. F. J. Payne, R. C. E.

WAITING MEMBER: Capt. D. W. Clare, R.C.A.M.C.

PROSECUTOR: Capt. T. W. Bigelow, 2 Cdn Div Sup Coln, RCASC

DEFENDING OFFICER Lieut. W.D.S. Careless, 2 Cdn Div Sup Coln RCASC

---

1. The accused is arraigned and pleads "Guilty" to the charge.

2. Rule of Procedure 35(B) is complied with.

3. The Abstract og Evidence is read.

4. The Prosecutor files Substitute A.F.B. 296, and M.F.M. 6.

5. THE ACCUSED makes the following statement in mitigation of punishment:

"After I was married I had trouble, on October 21st my baby died. I have had only three letters from my wife since July, and only one since the baby died, October 21st. I had a letter from my father advising me to have her pay stopped. I know she is running around but I haven't any definite proof, so have put off having her pay stopped. In the one letter I have had since the baby died she did not tell me what it died of. My mother wrote and told me the baby died from penumonia. My only reason for going A.W.L. is that I had a charge and Major DeDeer gave me a break and tore it up. On November 10 I was duty driver. At 9 o'clock I had to change the guard. At 9:15 I was ordered by the Orderly Sgt. to pick the orderly officer up. On my way to pick up the Orderly Officer I was stopped by Major DeDeer and charged with speeding. The man riding with me noticed the speedometer. He said I was not speeding, but the Major insisted I was."

The 1st witness as to character, B66134, Cpl A.P. Clarke, 2 Cdn Div Sup Coln, having been duly sworn, states:

I have known the accused since 1935, he was just a boy then. I never knew of him to be in any trouble of any kind in the unit before. I know that for two and a half years prior to the war he worked for Brock Snyder Electrical Coy., Grimsby. He was well thought of by his employer. He joined the army in September, 1939, and afterwards got married. And what led up to his present trouble, he has been informed that his baby died from neglect. He has been a good soldier, and always did what he was told, well and efficiently.

BY THE COURT:
Q 1 What was his employment?
A 1 Truck driver.
Q 2 You don't know his army record?
A 2 No.

THE COURT CLOSED FOR CONSIDERATION OF SENTENCE.

9

Abstract of Evidence
in the case of -
B85910 - Pte. SMITH, M.

I, S/Sgt. Leighton, C.W. B85757 will state that on the the 2 Jan 42 at about 1615 hours Cpl. O'Connell reported to me that the accused Pte. Smith had just returned from being absent without leave and asked me if he should place him under open or close arrest. Knowing that the accused had been absent without leave from 2000 hours 13 Dec 41 until now I instructed him to place the accused under close arrest.

C.W. Leighton
(C.W. Leighton)

A bstract of Evidence
in the case of -
B86010 - Pte. SMITH, M.

I, B86578 Pte. DAWSON, J.S. will state that on the 13th Dec 1941, the accused who I knew to be on C.B. and who had been detailed to me for duty, reported to me at 1000 hrs. to mix cement for ovens. At 2000 hrs. I could not locate him and did not see him again.

.....J.S. Dawson.....
(J.S. Dawson)

13

Abstract of Evidence
in the case of -
[redacted] - Pte. SMITH, M.

I, [redacted] Cpl. CRAIG, G.W. will state that in accordance with my duty as section corporal, I checked the beds on the morning of the 14th Dec 41. Pte. Smith, the accused, who was on C.D., at the time, was not there. I checked with the D.F., Cpl. O'Donnell, and found the accused had been A.W.L. from 0000 hrs. 13 Dec 41.

G.W. Craig

(G.W. Craig)

15

Abstract of Evidence
in the case of -
[redacted] - Pte. SMITH, W.

On 10 Dec 41, Pte. Smith was awarded fourteen days' C.B. and a forfeiture of ten days' pay and placed to work with Pte. Dawson, T.S., assisting him at building ovens in the new kitchen. On the morning of the 14 Dec 41, Cpl. Craig, G.W., Pte. Smith's section corporal, reported to me that [redacted]. I immediately checked with Pte. Dawson for confirmation and found that [redacted] had been released on 12th Dec 41. I then reported the matter to the Orderly Room.

At 1600 hrs. 2 Jan 42 I saw Pte. Smith, accompanied with Pte. Sibbick, M. [redacted] out of a lorry on the Causeway. I reported to the A/C.S.M. and enquired whether to place them under open or close arrest. I was told to place [redacted] close arrest and place both under close arrest at approximately 1615 hrs.

T.B. O'Connell Sgt.
(T.B. O'Connell)

A

17

Question to the accused:

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything, or to give evidence unless you wish to do so, but whatever you say, or any evidence you give, will be taken down in writing, and may be given in evidence."

The accused declines to make a statement or to give evidence upon oath.

Rules of Procedure No. 4(c) (d) and (e) have been complied with.

Taken down under my direction in the presence of the accused, at Isenhurst, Park, Sussex, this 5th day of January 1942.

(H. L. Mumpery) Captain,
2 Cdn. Div. Sup. Coln.,
R.C.A.S.C., C.A., (Overseas).

19 2

STATEMENT OF CHARACTER AND PARTICULARS OF SERVICE OF THE ACCUSED

1. NAME(NO.) B85910 Pte. SMITH, M. UNIT - 2 Cdn Div Sup Coln R.C.A.S.C.

   OF THE CANADIAN ARMY, ACTIVE.

2. AGE - 21 years DATE OF ATTESTATION - 5 Sep 39

3. DATE OF PROMOTIONS, APPOINTMENTS AND CONFIRMATIONS IN RANK

   None.

4. SINGLE OR MARRIED, AND NUMBER OF DEPENDENTS, IF ANY

   Married, 1 dependent.

5. NUMBER OF DAYS SPENT IN CLOSE ARREST TO DATE OF TRIAL 7 (TOTAL)

   CIVIL (IF ANY) none MILITARY 7 HOSPITAL none

6. A CERTIFIED TRUE COPY OF M.F.M. 6 MUST ACCOMPANY THIS CERTIFICATE.

DATED AT In the Field

THIS Seventh DAY OF January 1942.

(E. DeGeer) Major,
Cmdg, 2 Cdn Div Sup Coln,
R.C.A.S.C., C.A., (Overseas).

No B85910 Name SMITH, M. Sqn., Battery, or Company 2 Cdn Div Sup Coln Corps R.C.A.S.C. Date of enlistment 5-9-39 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc.: [illegible] Character [illegible]

M.F.M. 6 (A.F.B. 122)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
No entries from previous sheet - destroyed 5-3-40 on completion of 6 mths service							D.R.O. 119		
Hamilton	23 Mar 40	Pte		AWL 1200 hrs. 23-3-40 to 2130 hrs 24-3-40	Sgt. Burgess, T. Sgt. Gray, W. Sgt. Urquhart, D.	144 hrs detention.	74/40	Major Montague	8 days pay
Camp Borden	30 Jun 40	Pte		AWL 0900 hrs 30-6-40 to 1415 hrs 3-7-40	Cpl. Mathews, H.	12 days detention.	160/40	Major Montague	4 days pay Total of 16 days pay
Camp Borden	16 Aug 40	Pte		AWL 2200 hrs 16-8-40 to 0615 hrs 17-8-40	Sgt. Green Cpl. Allcock, W.	12 days pay	4/40	Major Montague	3 days pay Total of 15 days pay

Place	Date of offence	Rank	Corps of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Camp Borden	28 Apr 41	Pte		AWL from parade P.A.D. roll call	Cpl. Daniel, JL	27 days detention. Stoppages 22-6-41	13-5-41	Lt-Col McQueen	
Field.	10 Jul 41	Pte		AWL 2215 hrs 10-7-41 to 0800 hrs 12-7-41.	Cpl. Craig, GW	14 days C.B. 14 days pay.	42/41	Major Montague	1 day's pay. Total of 15 days pay.
Above entries transferred from previous sheet destroyed 5-9-41 on completion of 14 days C.B. and a forfeiture of 10 days pay F.R.&I. 149 (2).									
Field.	9 Dec 41	Pte		Failing to comply with Standing Orders. Sec 11 A.A. In that he at 0915 hrs 9 Dec 41 did drive C.A. Vehicle CV199307 at a speed in excess of 10 miles per hour contrary to Part I Order 333, para 3.	L/Cpl. Frost, E.	2 yrs. service. D.R.O. 310 Forfeits 10 days pay F.R.&I. 149 (2).	10 Dec 41	Major DeGeer	

CERTIFIED TRUE COPY

2 CON. DIV. SUP. COLN.
R.C.A.S.C. C.A.(O.S.)

I, Pte. SMITH, M., desire (do ~~not desire~~) to have an officer assigned to represent me at my trial by Court-Martial.

I desire the services of Lieut. W.D.S. Careless if he is available.

I have this day, 7 Jan 42, been handed a copy of the Abstract of Evidence and Charge Sheet.

M. Smith

B85910 Pte. SMITH, M.

LIST OF WITNESSES

in the case of

B85910 - Pte. SMITH, W.

For Prosecution

B85909 Cpl. CRAIG, C.W. - 2 Cdn Div Sup Coln, R.C.A.S.C.

B86280 Cpl. O'CONNELL, T.B. - 2 Cdn Div Sup Coln, R.C.A.S.C.

B86578 Pte. DAWSON, J.S. - 2 Cdn Div Sup Coln, R.C.A.S.C.

B85757 S/Sgt. LEIGHTON, C.W. - 2 Cdn Div Sup Coln, R.C.A.S.C.

For Defence

None

25 A

LIST OF WITNESSES

in the case of

B85910 - Pte. SMITH, M.

For Prosecution

B85909 Cpl.	CRAIG, C.W.	- 2 Cdn Div Sup Coln, R.C.A.S.C.
B86280 Cpl.	O'CONNELL, T.B.	- 2 Cdn Div Sup Coln, R.C.A.S.C.
B86578 Pte.	DAWSON, J.S.	- 2 Cdn Div Sup Coln, R.C.A.S.C.
B85757 S/Sgt.	LEIGHTON, C.W.	- 2 Cdn Div Sup Coln, R.C.A.S.C.

For Defence

None

Z-114 (Case #2)

PTE SMITH M.

See E-201 for 1st case

Correspondence to be PINNED here.

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A. Order convening the Court.

On Active Service, this TENTH day of FEBRUARY, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 2nd CANADIAN DIVISION CANADIAN ARMY OVERSEAS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior authority]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable.

*[I am unable to appoint :—

*(1) Five Officers to form the Court;

*(2) Special Officers as Presidents

for the following reasons, viz:—]

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

President.

Rank.	Name.	Regiment.
MAJOR	F J GILMOUR attd H Q 2 Cdn Div	R C A

Members.

Rank.	Name.	Regiment.
A CAPTAIN OR A LIEUT	to be detailed by CRCASC 2 Cdn Div	R C A S C
A CAPTAIN OR A LIEUT	to be detailed by ADMS 2 Cdn Div	R C A M C
A CAPTAIN OR A LIEUT	WAITING MEMBER to be detailed by CRA 2 Cdn Div	2 Cdn A Tk Regt

*Signed [redacted]

A/Commanding x 2 Canadian Division

Convening Officer

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B85910 Pte Meldrum Smith 6 Cdn Inf Bde Coy RCASC	FIRST CHARGE Sec 15(1) Army Act (See charge sheet attached)	Guilty	Guilty	
	SECOND CHARGE Section 9(2) Army Act (See charge sheet attached)	Not guilty	Guilty 40 days detn 11 Feb 1943 J Gilmour Maj'r RCA	I confirm G.W.

* Question to be asked of accused, if he pleads not guilty (R. of P. 89 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?" No Sir.
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) G Whitehead Brig (Signed) J Gilmour Maj'r R C A
A/Commanding 2 Cdn Div — *Convening Officer* (*e*) — *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 11th day of February 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
~~(3. The interpreter)~~
~~*(4. The officers under~~ instruction) JG

were duly sworn.

* Omit if not applicable.

Signed this 11th day of February 1943.

J Gilmour Maj'r RCA
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 782 M.M.L. 1929.

~~I certify that~~ the terms of A.C.I. 570 of 1918 have been complied with.

Signed this JG day of 19

President of the Court Martial.

D. Confirming Officer's

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not sub-~~ Gw
~~mitted to prison or detention barrack until further orde~~rs.)

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 15 day of Feb 1943.

G Whitehead Brig
Confirming Officer
A/Comdr 2 Cdn Div.

Promulgated and extracts taken in the case of B85910 Pte Smith. M.

(*a*) (Dated) 22 February 43 (Signed) J Sheahan Major Registrar #15 Cdn General Hospital

Promulgated and extracts taken in the case of

(Dated) _____ (Signed) _____

Promulgated and extracts taken in the case of

(Dated) _____ (Signed) _____

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

W.A. 6796/1887 10 M. 5/41 K.P.,S.E.&O. Gp. 4/9/2

2-114

Correspondence to be PINNED here.

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

"A."

On Active Service, this TENTH day of FEBRUARY, 1943.

Order convening the Court.

Whereas it appears to me, the undersigned, an officer in Command of 2nd CANADIAN DIVISION CANADIAN ARMY OVERSEAS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial;

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

*[and that it is not practicable to delay the trial for reference to superior authority]

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable.

*[I am unable to appoint :—

*(1) Three Officers to form the Court;

*and a Field Officer as President;

for the following reason namely :—]

Copy

23 Jan 43

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
MAJOR	F J GILMOUR attd H Q 2 Cdn Div	R C A

Members.

Rank.	Name.	Regiment.
A CAPTAIN OR A LIEUT	to be detailed by CRCASC 2 Cdn Div	R C A S C
A CAPTAIN OR A LIEUT	to be detailed by ADMS 2 Cdn Div	R C A M C
A CAPTAIN OR A LIEUT	to be detailed by CRA 2 Cdn Div WAITING MEMBER	2 Cdn A Tk Regt

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [redacted]

A/Commanding x 2 Canadian Division

Convening Officer

CHARGE SHEET

B-85910 Pte. SMITH MELBURN 6 Cdn Inf Bde Coy R.C.A.S.C.
a soldier of the Cdn Army Overseas, is charged with

First Charge
Army Act
Sect 15-1 Absenting himself without leave.

in that he, on 5 Feb 43 at 1330 hrs absented himself without leave until 1600 hrs 5 Feb 43.

Second Charge
Army Act.
Sect 9-2AA Disobeying a lawful command given by his superior officer

in that he, at approx 1630 hrs 5 Feb 43 refused to take his hands out of his pockets when ordered to do so by Cpl. O'Connell his superior officer.

(T. W. Bigelow) Major
O.C. 6 Cdn Inf Bde Coy.
R.C.A.S.C.
Cdn Army Overseas.

Field
8 Feb 43

TO BE TRIED BY F.G.C.M.

(J H Roberts) Major-General
Comd 2 Cdn Div

In the field
11 Feb 43

B2 HQ

6 Cdn Inf Bde Coy

R.C.A.S.C., Cdn Army (Overseas)

In the Field,
11 Feb 43.

B85910 - Pte. Smith, M.

This is to certify that I have this day examined the m/n soldier and found him to be free from infectious diseases and medically fit to stand trial by Court Martial.

(A.G. Tellson) Capt.,
M.C., 6 Cdn Inf Bde Coy, R.C.A.S.C.,
Canadian Army (Overseas)

R. Thornbury capt.
Reg.
1 C.F.A.

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a F. G. Court-Martial held at In the Field on the 11th day of Feb 19 42 by order of

Maj-Gen L. H. Roberts

Commanding 2 Cdn. Division

dated the 10th day of Feb 19 42

President.

Major F. J. Gilmour R.C.A.

Members.

Capt. L. A. Hunter
4 Cdn. Inf Bde Coy. RCASC

Capt. A. G. Tebbutt
5th Cdn Field Amb. RCAMC

, ~~Judge Advocate~~ FJG

Trial of* 3 66410 Pte Smith, M.
6 Cdn. Inf Bde Coy RCASC

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that ~~ is not available to serve owing to ~~

~~ , waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor.† Major T. Bingham 6th Cdn Inf Bde Coy RCASC

Counsel‡ or defending officer† Capt A.C. Tebbutt " " " "

At 1730 o'clock the Trial commences.

The order convening the Court is read, and is marked A signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No Sir

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

FJG

B

The President, members and ~~judge-advocate~~ are duly sworn. HB

~~The following officers under instruction are duly sworn.~~ HB

Charge-Sheet.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

Instruction.
If the accused has elected to be tried under Army Act, sec. 46 (3) the fact should be here recorded.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Not Guilty *Answer.*

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~ *Question.*

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~ *Question.*

Answer.

The accused having pleaded Guilty to first charge, the provisions of Rule of Procedure 35 (B) are here complied with. HB

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A).)

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No Sir.

~~The prosecutor makes an opening address (hands in a written address which is read, marked , signed by the President, and attached to the proceedings.)~~

The prosecutor proceeds to call witnesses.

First witness for prosecution. B-86280 Cpl O'Connell T. B.

being duly sworn, is examined by the prosecutor.

On Feb 5 1943 I was searching for the accused in the CO of 28th Army Troops. as the accused was absent from the 1330 parade. I located the accused at about 1600 hours that day. The accused was placed in close arrest. I told accused to come with me & get his blankets etc. He had his left hand in his left pocket & going along as not quite my speed. I turned & told him to take his hand out of his pocket & carry up. He paid no attention & put his other hand in his other pocket. I said there was no one acting this way & to come along & he said "Oh Fuck it" & swore to that effect. after Oh Fuck it a Oh Fuck it. I repeated the order once a bit more. the order was "Take your hands out of your pockets" "Left" he said "Go fuck yourself & put the charge in". (2) I was duly placed in close arrest by the QM Sgt.

RP. 83 X-f

No cross exam.

HR.

B

The President, members and ~~judge-advocate~~ are duly sworn. HS

~~The following officers under instruction are duly sworn.~~ HS

Charge-Sheet.

Instruction.
If the accused has elected to be tried under Army Act, sec. 46 (B) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Not Guilty *Answer.*

~~Are you guilty or not guilty~~ of the third charge against you, which ~~you have heard~~ read? *Question.*

Answer.

~~Are you guilty or not guilty~~ of the fourth charge against you, which ~~you have heard~~ read? *Question.*

Answer.

The accused having pleaded Guilty to first charge, the provisions of Rule of Procedure 35 (B) are here complied with. HS

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a F. G. Court-Martial held at In the Field
on the 11th day of Feb 19 42 by order of
Maj-Gen J. H. Roberts
Commanding 2 Cdn. Division
dated the 10th day of Feb 19 42

President.

Major F. J. Gilmour
R.C.A.

Members.

Capt. C. A. Hunter
4 Cdn. Inf Bde Coy. *CA32

Capt. A. G. Tallman
6th Cdn Field Amb. *CA40

, ~~Judge Advocate~~ JAG

Trial of* B56910 Pte Smith, M.
6 Cdn Inf Bde Coy RCA30

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that is not available~~
~~by reason owing to~~
~~, waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Major T. Bingalow 6th Cdn Inf Bde Coy *CA32

Counsel‡ or defending officer† Capt A.C. Britton " " " "

At 1730 o'clock the Trial commences.

The order convening the Court is read, and is marked "A" signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No Sir

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

JAG

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A).)

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No Sir.

~~The prosecutor makes an opening address (hands in a written address which is read, marked ~~, signed by the President, and attached to the proceedings.)~~~~

The prosecutor proceeds to call witnesses.

First witness for prosecution. B-86280 Cpl O'Connell T.B.

being duly sworn, is examined by the prosecutor.

On Feb 6 1943 I was searching for the accused in the CO of 28 Bn. Maj in Mond. as the accused was mark from the 1330 Parade. I located the accused at aprox 1600 hours that day. The accused was placed in close arrest. I told accused to come with me & collect his blankets etc. He had his left hand in his left pocket & going along at most quite my speed. I turned & told him to take his hand out of his pocket & carry on. He paid no attention & put his other hand in his other pocket. I said there was no one acting that way & to come along & he said 'Oh Fuck it' & more to that effect. after Oh Fuck it & Oh Fuck it. I repeated the order once & twice more. He said "Take your hands out of your pockets" & he said "Go fuck yourself & put the charge in". He was duly placed in close arrest. (2)

RP. 83 (1) explained

No cross exam.

HR.

C2

2nd W witness for Pros.

B-86409 Pte Ridley L.E.
6 Coy 1st Bde Coy RCASC
duly sworn

On the 5th of Feb last I heard Cpl O'Connell tell the Privt to take his hands out of his pockets I heard the Privt reply OH fuckus it – Fuck yourself put the charge in". I was not looking – I don't know if Privt took his hands out of his pockets or not

Cross-exam. I did not see Privt prior to the incident

RP. 56(3) Completed

The Court informs the accused of his rights under RP. 40

Prosecutor

F.O.

D

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. Yes.

Question. Do you intend to call any other witness in your defence?

Answer. Yes.

Question. Is he a witness as to character only? *Answer.* No

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(*Where any evidence is given for the defence.*)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(*Where the accused does not give evidence upon oath.*)

Question to the accused. ~~Have you anything to say in your defence?~~

Answer. ~~The accused in his defence says†~~

~~[hands in a written address which is read, marked signed by the President and attached to the proceedings.]~~

First Witness for Defence. The accused B-85410. Pte Melbourne Smith. 6 Con. Bde Con. R.C.A.S.C. duly sworn

On the 5th & 7th Feb 1943 I & Carbutt went to a Pub at 11.30. We drank until closing time - 2.30 PM. I was drunk when I came out of the Pub. One of the boys coming

Instruction.

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, see Instructions to the Court *above*.)

APO - JAG

D2

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

along in a lorry picked me up & brought me back to camp. When I arrived at camp I was in the Hutch & Ed Howe but I don't know what I was in for after that me was picked up by Cpl O'Connell. About refusing to obey the order I know that if I had not been drinking it would not have happened.

Cross Examined. I recognised the man who picked me up in the lorry. I don't know what time Cpl O'Connell picked me up.

R.P. 83(b)/complies with

2nd Witness for Defence B86513 Pte Griggs A.E. 6th C.A.B. Coy R.C.A.S.C.

I picked prisoner up in my lorry last Friday. He was well under the influence of liquor. I had to help him on the lorry. It was about 2.30 when I brought prisoner back to camp. I did not see him subsequently.

R.P. 83(b)/complies with

3rd Defence Witness B86646 Pte R.E. Woolls 6th C.A.B. Coy R.C.A.S.C.

I saw prisoner at 2.30 on Feb 6th. He was stumbling & staggering & came to the Hutch & asked for something to eat. I was driving & was off at 1 o'clock. He stumbled around & was alright - to hell with it - I don't know no more.

F.L.

D 3

Cross Exam: Smith was at the Kitchen about 15 minutes. I next saw him about 4.30 the same day at the outside of the Orderly room. R.P. 83(b) / Applies

The defending Officer addresses the Court: suggests that the wound was deep.

The Prosecutor replies.

See page 5

H. Gibbons
Major
Pres

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused Guilty of the 2nd charge

Fol proceedings on plea of Guilty.

see page CC

Proceedings on Conviction before Sentence.

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

~~Thomas Bowden~~ 7th S. Britton is duly sworn.

Evidence of character, &c.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Can only refer to M.T.A.G. 4 A.F.B. 796.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked 75 B, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes

Cross-examined by the accused. No

[illegible] the service of the accused in a disciplinary corps or otherwise, the consent of the Court thereto, and liable to such exceptional punishment on re-trial as may be awarded by the Court, the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of such additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.* No

The Court is closed for the consideration of the sentence.

F

Sentence.

Sentence 40 days detn

The Court sentence the accused

To undergo detention for 40 days.

11 Feby 1943.

J Johnson
Maj
/ RA

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused B-85910 Pte Meldrum Smith is found guilty of the first charge.

†The summary (or abstract) of evidence is marked "C" signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. No.

~~The accused in mitigation of punishment says:—~~

~~[or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]~~

W Gilmour
Maj
Pres

Instructions.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

7/8

Do you wish to give evidence yourself or to call any witnesses as to character? No Sir

Question to the accused.

Answer.

Evidence as to character

The defending Officer addresses the Court. The accused has had a lot of domestic trouble. Suggests a transfer to another unit would help him and to start soldiering better. Preference is No 2 Can Inf Bde Gp. RCASC.

J Gilmour
Maj
Pres

SUMMARY OF EVIDENCE IN THE CASE OF B-85910 Pte.Smith Melburn
6 Cdn Inf Bde Coy R.C.A.S.C. Cdn Army Overseas.

The accused is informed of his rights.

The accused demands that the evidence be taken on OATH

First Witness for the Prosecution. B-86280 Cpl.O'Connell,T.B.
having been duly sworn states.
I am the Regt.Police Cpl of the 6 Cdn Inf Bde Coy RCASC On 5 Feb 43 at approx 1600 Hrs Sgt Major Mace told me to accompany him in a search for Pte.Campbell and Pte Smith the accused whom I recogonize we found them in the recreational hall and I was told by the Sgt Major to get them properly dressed for Orderly Room as they had been A.W.L from the 1330 hr parade that day. The O.C. declined to hear them that afternoon and I was ordered to place them in close arrest. I told Pte ~~XXXXXX~~ Smith to come with me to get his blankets before I took him to the guard room. Pte Smith had his left hand in his pocket and I ordered him to take it out he completely ignored the order at first and I repeated twice more he shoved his other hand in his other pocket and said "Ah fuck it" I then said to him "there is no use acting that way" or words to that effect and then Pte Smith said "go ahead and put the charge in and after some words passing between us he again said" Go fuck yourself" He repeated the words again and I took him to the guard room.
The accused is asked if he wishs to cross-examine this witness
Answer "No Sir.

.....T.B.O'Connell Cpl
(T.B.O'Connell)Cpl

Second Witness for the Prosecution B-86409 Pte Riley,L.G. 6 Cdn Inf Bde Coy RCASC. having been duly sworn states. On 5 Feb 43 at approx 1600 hrs I heard Cpl O'Connell give Pte Smith an order to take his hand out of his pocket. They were walking down the road and I heard some argueing and I heard Pte Smith say "Fuck you put in the charge" or words to that effect. Pte Smith also said that he was fed up
The accused is asked if he wishes to cross-examine this witness
Answer "No Sir"

.....L.G.Riley.....
(L.G.Riley)Pte.

Third Witness for the Prosecution B-86298 Sgt.Allcock,W.A.6 Cdn Inf Bde Coy RCASC. having been duly sworn states. On 5 Feb 43 at 1330 hrs I called the roll R.D.I. Pln and the accused Pte Smith whom I recogonize failed to answer his name.
The accused is asked if he wishes to cross-examine this witness
Answer "NO Sir

...W.A.Allcock
(W.A.Allcock)Sgt.

Certified that R.P.(4) Complied with
Field
8 Feb 43

.....W.B.Lawlor..... Capt.
Officer detailed to take summary

Tedford,A.R.

I,B-85910 Pte Smith,M. Request the assignment of Capt [redacted]g
6 Cdn Inf Bde Coy RCASC to represent me at my Court Martial.

M. Smith
(M.Smith)Pte

List of witness for the Prosecution.

Cpl	O'Connell	6 Cdn Inf Bde Coy
Sgt	Allcock	6 Cdn Inf Bde Coy
Pte	Riley	6 Cdn Inf Bde Coy.

List of witness for the Defence.
Nil

(Substitute for A.F.B. 296)
or N.F.B. 355

STATEMENT OF CHARACTER AND PARTICULARS OF
SERVICE OF THE ACCUSED

No B-85910 NAME Pte Smith, Melburn UNIT 6 Cdn Inf Bde Coy RCASC

AGE 22 MARRIED OR SINGLE Married NO. OF DEPENDENTS none

DATE OF ATTESTATION 5 ~~Sept~~ Sept 39

NO OF DAYS SPENT IN CLOSE ARREST (TO DATE OF TRIAL)

CIVIL Nil MILITARY 6 HOSPITAL Nil TOTAL 6

DATES OF PROMOTIONS, APPOINTMENTS AND CONFIRMATIONS OF RANK, IF ANY

Nil

A CERTIFIED TRUE COPY OF A.F.B. 6 MUST ACCOMPANY THIS FORM

(Officer i/c Records)
H C Butler Lt & Adjt Unit
6 Cdn Inf Bde Coy
R.C.A.S.C.
Cdn Army Overseas

Dated at Aldershot

This 11 day of Feb 1943.

(To be dated and signed as of date of trial)

"I 7/5

			OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	3/1/43	Pte	Sec 15(1) A.A. In that he absented himself without leave from 2300 hrs 3 Jan 43 to 1315 hrs 4 Jan 43 Absent 14 hrs 15 mins	Sgt Allcock L/Cpl Oxley	14 days C.B. 14 days pay FR&I 149(2)	4 Jan 43	Major Bigelow	28 days pay FR&I 149(1)(b) Total 35 days pay
Field	4 Jan 43	Pte	Sec 15 (1) A.A. AWL from 1800 hrs 4 Jan 43 to 0715 hrs 5 Jan 43 while on C.B. (Absent 12 hrs 15 mins) Close arrest 0715 hrs 5 Jan 43 to 1600 hrs 7 Jan 43	Cpl O'Connell L/Cpl Oxley	28 days Field Punishment forfeits 28 days pay FR&I 149(1)(b)	7 Jan 43	Major Bigelow	Forfeits 1 days pay FR&I 149 (1)(a) 14 days pay FR&I 149(2) Total 15 days pay Forfeits 1 day pay FR&I 149(1)(a) 2 days pay FR&I 149(1)(c)(ii) 28 days pay 149 (1)(b) Total 31 days pay

Certified true copy for O.C.

CDN. INF. BDE. COY. R.C.A.S.C.

Place	Date of offence	Rank	Charge or description	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	9 Dec 41	Pte		Sec 40 A.A. In that he at 0915 hrs 9 Dec 41 did drive CA Vehicle CV 199307 at a speed in excess to 40 miles per hour contrary to Part I Orders 323 para 3.	L/Cpl Frost	14 days CB 10 days pay FR&I 149(2)	10 Dec 41	Major DeGeer	Forfeits 10 days pay FR&I 149(1)
Field	13 Dec 41	Pte		Sec 15(1) A.A. In that he absented himself without leave from 2000 hrs 13 Dec 41 to 1615 hrs 2 Jan 42 Close arrest from 1615 hrs 2 Jan 42 to 0800 hrs 16 Jan 42	Cpl O'Connell S/Sgt Langs Cpl Craig	55 days detention by FGCM	16 Jan 42	Field General Court Martial	Forfeits 55 days pay FR&I 149(1), 20 days pay FR&I 149(1)(a) 1 days pay FR&I 149 (1)(c)(ii) Total 76 days pay
Field	1 May 42	Pte		Sec 15(1) A.A. In that he absented himself without leave from 2300 hrs 28 Apr 42 to 1300 hrs 1 May 42 (Absent 2 days 10 hrs)	L/Cpl Harkness	12 days F.P. Forfeits 12 days pay	1 May 42	Major Bigelow	Forfeits 3 days pay FR&I 149 (1) (a) 12 days pay FR&I 149 (1)(b) Total 15 days pay

CERTIFIED TRUE COPY

No. B85910

SMITH, M.

Date of last entry in Company Conduct Sheet: n/a

No. and date of last drunk: n/a

Regt., Battery, or Company: Corps R.C.A.S.C.

Date of enlistment: 5 Sep 1940

Service or Proficiency Pay: n/a

Sheet No. 2

Place	Date of offence	Rank	Crime or Offence	Punishment awarded	Signature of C.O.
Hamilton	23 Mar 40	Pte	No entries from previous sheet destroyed 5-3-40 on completion of six months		
Camp Borden	30 Jun 40	Pte	AWL 1700 hrs 23-3-40 to 2130 hrs 24-3-40	Sgt Burgess 14	
Camp Borden	16 Aug 40	Pte	AWL 0900 hrs 30-6-40 to 1415 hrs 3-7-40	Sgt Gray	
Camp Borden	28 Apr 41	Pte	AWL 2200 hrs 16-8-40 to 0615 hrs 19-8-40	Sgt Urqu	
Field	10 Jul 41	Pte	AWL from PAD Roll Call	Cpl Mat	
			AWL 2215 hrs 10-7-41 to 0 12-7-41	Sgt	

No. B85910 Name SMITH, M. Sqn., Battery, or Company 1st Edm Fd Coy Corps R.C.A.S.C. Date of enlistment 5 Sep 40 Service or Proficiency Pay N/A

Date of last entry in Company Conduct Sheet n/a No. and date of last drunk n/a Period not reckoning towards freedom from extra fine n/a Sheet No. 3 Badges n/a Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witness	Punishment awarded	Date of award or of order dismissing with trial	By whom awarded	Remarks
Malplaquet Barracks	15-8-42	Pte		WOAS AWL from 2200 hrs 15-8-42 to 1230 hrs 17-8-42 Tame absent 38 hrs 30 mins.	Sgt Doran	14 days F.P. 14 days pay FR&I 149(1)(b)	20-8-42	LtCol W.C. Fletcher	Forfeits 2 days pay FR&I 149(1) Total forf. 16 days pay
Field	5 Oct 42	Pte		Sec 15(1) A.A. AWL from 2300 hrs 5 Oct 42 to 2359 hrs 5 Oct 42 Absent 59 mins	Sgt Anderson L/Cpl Harkness	7 days CB	6 Oct 42	Major Bigelow	
Field	27 Nov 42	Pte		Sec 15 (1) A.A. AWL from 2300 hrs 27 Nov 42 to 1100 hrs 29 Nov 42 (Absent 1 day 12 hrs) Close arrest from 1100 hrs 29 Nov 42 to 1600 hrs 4 Dec 42 (Close arrest 5 days 5 hrs)	Sgt Allcock L/Cpl Harkness	28 days F.P. 28 days pay FR&I 149(1)(b)	4 Dec 42	Major Bigelow	Forfeits 2 days pay FR&I 149(1)(a) 5 days pay FR&I 149(1)(c) (ii)

(P.T.O.)

A.A-109
PTE SMITH M.

Correspondence to be PINNED here.

P-55307 Pte SMITH, Matthew
North Nova Scotia Highlanders
7 Cdn Infantry Reinforcement Unit

Army Form A.3. AA-109

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A. Order convening the Court.

On Active Service, this twenty-fourth day of March, 19 43

Whereas it appears to me, the undersigned, an officer in Command of "D" Group, Canadian Reinforcement Units, Canadian Army Overseas, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; [found that it is not practicable to delay the trial for reference to a superior qualified officer.] 46

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable. [unable to appoint;— (1) Three Officers to form the Court; (2) A Field Officer as President;] for the following reasons, namely:— 46

Proceedings [illegible] Convening Officer (A.C.) C.M.O. Reinforcement Units, Canadian Army Overseas

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Lt.-Col	D.L. Redman	Calg Highrs

Members.

Rank.	Name.	Regiment.
A Major	from	1 C.I.R.U.
A Captain	from	1 C.I.R.U.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Colonel
Commanding "D" Group, Cdn Rft Units
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
P-55307 Private SMITH, Matthew Nth N.S.Highrs 7 C.I.R.U.	First Charge A.A. Sec 15 (1)	Guilty	Guilty Sentence To undergo detention per a period of twenty (20) days and to be put under stoppages of pay until he has made good £1-0-4 the expenses of his apprehension and return 25th Mar 1943	Sentence to be pending and sentence of the Court. G Hanley Basher Colonel Commander "D" Group (Cdn. Reinforcement Units) C.A.

See Charge Sheet attached.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
(Answer to be recorded on separate sheet if necessary.)

Signed G Hanley Basher Colonel (Signed) [illegible]
Commanding "D" Group, C.R.U.
Convening Officer (e) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 25th day of March 1943., and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. ~~The witnesses~~
*(3. ~~The interpreter~~)
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 25th day of March 1943.

[illegible]
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been~~ complied with.

Signed this day of 19 .

~~*President of the Court Martial.~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further order.)

Signed this 25 day of Mar 1943

G Hanley Basher Colonel
Confirming Officer. Commander "D" Group
(Cdn. Reinforcement Units) C.A.

Promulgated and extracts taken in the case of F.55307 Pte Matthew Smith NMSH 7 C.I.R.U.

(a) (Dated) 25 March 43 (Signed) [illegible] CAPT ADJT 7 CDN INF REINF UNIT

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused No. F 55307 Private Matthew, SMITH, North Nova Scotia Highlanders, on the strength of 7 Canadian Infantry Reinforcement Unit as a reinforcement, a soldier of the Canadian Army (Overseas) is charged with.

FIRST CHARGE
SEC 15 (1)
ARMY ACT

When on Active Service, absenting himself without leave,

in that he,

at Leipzic Barracks, Ewshott, Hants, absented himself without leave from 2200 hours 16th day of February 1943, until apprehended by the Military Police in Birmingham at approximately 2250 hours 19th day of March 1943. Thereby incurring a cost of apprehension to the amount of £ 1-0-4.

Total time Absent 31 days 50 minutes.

(J.R. Calkin) Colonel
Commander
7 Cdn. Inf. Rft. Unit

In the Field
23rd day of March
1943

To be tried by Field General Court Martial.

(G. Medley Basher) Colonel
Commander
"D" Group, Cdn Rft Units

In the Field
24 March 43

7 Cdn. Inf. Reinf. Unit

25 March 43

F-55307 Pte. Smith M.

This is to certify that the above mentioned other rank is medical fit and free from Infectious disease, and is fit to stand. F.G.C.M.

J.B. Baker Capt. RCAMC
Medical Officer
7 Cdn. Inf. Reinf. Unit

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT SALAMANCA BARRACKS, ALDERSHOT HANTS.,
ON THE 25TH DAY OF MARCH. 1943

The accused. 5598201 PTE. SMITH. M. Unit. N.W.S.H. 10 I.A.D.

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P.22&23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the president or any member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President. LT. C.S.M. P.T. REDMAN. Y.P. Unit. H.D.C.A.V.

Members. MAJOR. T. CAMPBELL. Unit. I.C.T.A.D.

CAPT. C.C.A. DIXON. Unit. I.C.T.A.D.

The officers under instruction are duly sworn:-

(2 O.C.C.S.M.D.) Unit.

Unit.

Prosecutor CAPT. W.R. MOORE. Unit. I.C.T.A.D.

Defending officer LIEUT. R.A. PISTRICH. Unit. I.C.T.A.D.

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
The Prosecutor ~~is sworn and~~ produces ~~MFM 5~~ AFB 296 and MFM 6.
The Court complies with R.P. 46(B)

Pursuant to R.P. 37 THE ACCUSED:-

(a) ~~makes a statement in mitigation of punishment.~~
(b) ~~calls witnesses as to character.~~
(c) ~~calls witnesses in mitigation of punishment.~~
(d) addresses the Court by his Defending Officer.

The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE, and ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER

Plea in mitigation of punishment by defending Officer attached hereto.

Plea in Mitigation

F 53807 Pte Smith M. 4th Nova Scotia Highrs.

This man lives in Sydney Mines N.S.
age 38 year - He enlisted in June 1940 with
the 4th N.S. Highrs and sailed for overseas on
July 1941. He has served with his unit in
England nearly 3 years. He is not married.
In civilian life he was employed by the
Coal mines in Sydney Mines. While there he
held different jobs as "Shot firer", assistant
overman and then studied for mine
examiner. He past his exams and served
his employers diligently and [redacted] certificate
of years of [redacted] took first aid
courses and was a Dressingman. His
Education is Grade X. - Civilian Pay $150 per mos.

I wish to bring to your attention that
this man comes in the army more chiefly
A.W.L. due to a "browned off" feeling, coupled
with a feeling of not getting his just dues
as a Canadian Soldier. He states that
at different times he has asked for a transfer
to Signals, the field Hospital and to Pay
Provost Corp. In every case all he received
was promises. His reason for transfer was
age and continual training of Infantry.
His M.F.M. shows that [redacted] was
never charged under Insubordination
neglect. There is dependents a case of
"2 years pay in a round hole"
Therefore as his defending officer I beg
this court to carefully consider this
man's case. A soldier doing the work
which he does not like and his age

such that Infantry training is impossible for him. Baffled by superiors in his efforts to obtain a transfer to some other service, where his qualifications would help him to further the war effort. I would asked the court to grant him the greatest leniency.

And I would further ask that this man case be studied and a recommendation from this court be made concerning this man's transfer to another service more suited to him.

Respectfully submitted
D. B. Dickerson 1st Lieut.
NNO. 41485

SUMMARY OF EVIDENCE

In the case of No. F55307 Private Matthew SMITH, North Nova Scotia Highlanders, on the strength of 7 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, this Summary of Evidence is taken on oath.

FIRST WITNESS FOR THE PROSECUTION

F44814 Sgt. Dunn, L.C., North Nova Scotia Highlanders, 7 Cdn. Inf. Reinf. Unit, having been duly sworn, states:

I am F44814 Sgt. Dunn, L.C., North Nova Scotia Highlanders, 7 Cdn. Inf. Reinf. Unit. On 16 Feb 43, I was Company Orderly Sergeant of the Nth N.S. Highrs. Company. I called the roll at tattoo of this date and F55307 Pte. Smith, M. failed to answer his name. I marked him absent. This evidence relates to the accused whom I now recognize.

D Dunn .....Sgt.

(The accused declines to cross examine this witness)

SECOND WITNESS FOR THE PROSECUTION

Lieut. A.J. Blakeney, Carlt & York R, Assistant Records Officer 7 Cdn. Inf. Reinf. Unit, having been duly sworn, states:

I am Lieut. A.J. Blakeney, Carlt & York R, Assistant Records Officer 7 Cdn. Inf. Reinf. Unit. I produce Certificate in accordance with P.C. 2797 showing the accused, whom I now recognize, was apprehended in Birmingham at 2250 hours, 19 Mar 43, purporting to be signed by Lieut. R.S. Luker for D.A.P.M. London Area. This document is marked Exhibit "A". I also produce Expense Voucher, relating to the accused, in the amount of £1-0-4, purporting to be signed by Capt. W. Fern, Officer Issuing Railway Warrant and Expense monies. This document is marked Exhibit "B".

A.J. Blakeney ....Lieut.

(The accused declines to cross examine this witness)

The accused having been warned according to Rule of Procedure 4 (E), reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4(C), (D), (E), and (F) have been complied with.

T.E. Rogers ....Capt.
(Thomas E. Rogers)
Officer taking Summary

In the Field,
23 March, 1943.

LIST OF WITNESSES in case of F55307 Pte. Smith, M.(Nth N.S.Highr)

For the Prosecution

1. F44814 Sgt. Dunn, L.C., Nth N.S.Highrs, "A" Coy, 7 C.I.R.U.
2. Lieut. A.J. Blakeney, Carlt & York R, Assistant Records Officer 7 C.I.R.U.

For the Defence

nil

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No. F55307 Rank Pte. Name Smith, M. Unit 7 C I R U

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London from Birmingham

Date	Particulars (½ portion)	Amount £	s	d
21 Mar 43	Escorts return fare from LONDON To Birmingham		8	6
	Prisoners single fare to LONDON From Birmingham		8	6
	Prisoners fare from To			
	Escorts & Prisoners expenses for ~~Bed~~, Meals, Bus fares (½ portion		3	4
	Total £	1	0	4

EX "B"

I certify that the above statement of Expenses is Correct. and that the amounts are fair and just.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000-43
28/7 & S/482

CERTIFICATE IN LIEU OF [illegible] F.O. 2797 of 10 Apr 42.

I CERTIFY that No. F-55307 Rank Pte. Name Smith, M.

Unit No 7 C.I.R.U. (N.N.S.H.) was arrested at Birmingham (Place)

at 2250 (Hour) on 19-Mar-43 (Date) and that at the time of his arrest he was wearing (Military Uniform) of [redacted].

Signature of Provost Marshall, Assistant Provost Marshall or other officer or the Commanding officer of the portion of His Majesty's Forces or the officer, warrant officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, or any one duly authorized by the above named Corps who took charge of the said person.

(Strike out part in brackets).

"A"

FOR: [illegible] Lt.

[illegible] Form) R.C.P.C.,

London Area.

(1) I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at Leipzig Barracks, Bushott, Hants, preliminary to my Court-Martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court-Martial.

Dated at Leipzig Barracks,
Bushott, Hants,
this 23rd day of
March 1943.

M. Smith

(2) I hereby acknowledge that I have been served with a true copy of an additional Summary of Evidence taken at Leipzig Barracks, Bushott, Hants, preliminary to my Court-Martial.

(3) I hereby request that the Convening Officer appoint an officer to represent me at my trial.

I desire the services of Lieut D.B. Dickson if he is available.

Dated at Leipzig Barracks,
Bushott, Hants,
this 23 rd day of
March 1943.

M. Smith

No. F55307 Name Smith, M. Sqn., Battery, or Company — Corps Med M S Staff — Date of enlistment — G.C. Badges — Service or Proficiency Pay

M.F.M. 5
A.F.B. 122
(8SM—T-41 (1515-2)
H.Q. 1772-39-1408

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. 4 — Signature O.C. Company, etc.

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	18 Jan 43	Pte		Awl from 0630 hrs 15 Jan 43 to 0033 hrs 26 Jan 43. (10 days 2 18 hrs 33 min. QQ 1541)	Nil Cpl Hallard	14 days pay 14 days C.B.	29 Jan 43	Lt Col Elmgren	14 days det QL 1491(a)
				Certified True Copy consisting of two sheets A J B Lowrey Capt (Officer having custody of document)					
Field	10/2/43	Pte		Awl Leave Let 1511 absent 31 Days 18 hrs 25 Mins	Sgt Dunn	Trfd by FGCM 23-3-43 awarding 90 days Detn Stoppage £1-0-4	23-3-43	Grand Court Martial Convened by Command 23-3-43	Forfeit 32 Days Pay 90 " Det 2 stoppage £1-0-4

(P.T.O.)

No. F 3337 Name Smith, M Sqn., Battery, or Company Corps Nfld R.S. Highrs Date of enlistment 18-6-40 G.C. Badges Service or Proficiency Pay M.F.M. 5 (A.F.O. 142) HBM—7-41 (3310-30) H.Q. 1772-33-1613

Date of last entry in Company Conduct Sheet 31-10-41 No. and date of last drunk (2) 30-11-40 Period not reckoning towards freedom from extra fine Sheet No. 1 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award in case dispensing with trial	By whom awarded	Remarks
Amherst N.S.	3-2-41	Pte		Awlt from 2300 hrs 31-1-41 to 1200 hrs 3-2-41. (1 days 13 hrs.) (AA 154)	Sgt Shortley Cpl MacDonald	14 days C.B.	4-2-41	Capt D Neil	2 days pay
Amherst N.S.	1-3-41	"		(1) Awlt from 0720 hrs 1-3-41 till 2300 hrs 1-3-41. (20 hrs) (AA 154)	Cpl McNeil	14 days C.B. 14 hrs pack drill	3-3-41	Major Mitchell	2 days pay
				(2) Con to the prej of C. (AA Sec 40)	Pte Watson				
				(3) Awlt from 2300 hrs 2-3-41 to 0030 hrs 3-3-41. (1 hrs 30 mins) (AA 154)					
Amherst N.S.	2-3-41	"		Awlt from 2300 hrs 15-3-41 till 2305 hrs 18-3-41. (3 days 5 mins) (AA 154)	L/Cpl Gordon	14 days C.B.	19-3-41	Major Tatlow	4 days pay
Amherst N.S.	17-4-41	"		Awlt from 0720 hrs 19-4-41 till 0100 20-4-41. (1 hrs 10 mins) (AA 154)	L/Cpl McKinnon	168 hrs detn	21-4-41	Lt Col Murdoch	1 day 2 pay 7 days pay

(P.T.O.)

Place	Date of offence	Rank	Class of Arrest-ment	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	1-11-41	Pte		(a) Awol from 1900 hrs 1-11-41 To 0800 hrs 2-11-41. (13 hrs) (QQ 13 b) (b) Awol from 1800 hrs 2-11-41 To 0600 hrs 4-11-41 (36 hrs) (QQ 13 b)	Sgt Bishop Sgt Halland	6 days F.P. 6 days ○ pay	8-11-41	Major MacKenzie	3 days Pay F.R. 14 (9 (a))
Field	19-4-42	"		Awol 2215 hrs To 2310 hrs. (0 hrs 55 min) (QQ 13 (a))	Sgt Legge J	7 days ○ C.B. 2 days ○ pay For 2 days ○ pay	22-4-42	Major Mitchell	2 days ○ Pay F.R. 14 (9 (a))
Field	16-8-42	"		Awol from 22.30 hrs 14 May 42 To 2100 hrs 16 May 42 (46½ hrs) (QQ 13 (a))	Lt Col Mc Neil		19-5-42	Lt Col Murdock	
Field	17-9-42	"		Awol from 1700 hrs 17-9-42 To 1800 hrs 4-10-42 (17 days 25 hrs) (QQ Sec 13 (a))	Capt Wiseman Capt Killoch	28 days ○ F.P. 28 days ○ pay	5-10-42	Lt Col Petch	27 days Pay F.R. 14 (9 (a))
Field	10-12-42	"		Awol from 0630 hrs 10-12-42 To 1345 hrs 11 Dec 42 (31 hrs 10 min) (QQ 13 (a))	Sgt Dodds Capt Halland	14 days ○ F.P. 14 days Pay 1/4 cord of apprehension	14 Dec 42	Major McKay	2 days ○ pay F.R. 14 (9 (a))

ARMY FORM B 296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
F55307	Pte.	Smith, M.	8th N.S. Highrs 7 C.I.B.U.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	• Within last 12 months.	•Since Enlistment.
For AA 15(1)	5 times	12 times.
For AA 40	nil times	1 times.
For	times	times.
For	times	times.
For	times	times.

~~Number of instances of gallantry or distinguished conduct.~~

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, or

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 79 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, or

~~The accused at the present time is under sentence for~~

~~beginning on the day of~~

4. The accused has been in custody awaiting trial on the present charges, for 3 days

in civil custody, and 3 days in military custody, making a total of 6 days.

of which, nil days were spent in hospital.

5. The present age of the accused according to the ~~record of service~~ attestation paper is 38 years.

6. The date of the ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 18 June 40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 yrs 230 days

8. The accused is entitled to deferred pay or gratuity in respect of 2 yrs 230 days service.

9. The accused is entitled to reckon 2 yrs 230 days service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award ~~He is in possession of~~

~~entitled to (state any military decoration or reward).~~

11. *(If the accused is a warrant officer.)* The accused before he was made a warrant officer was held the ~~regimental~~

rank of dated

12. *(In the case of an officer.)* The accused holds in the army the rank of dated

~~and in the regiment (or corps or department) the rank of dated~~

M Mclaren Lt Col

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. P55307 Rank Pte. Name Smith, H. of 8th N.S.Highrs Regiment (or as the case may be).

(INSTRUCTION.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 23rd day of March 1942

Capt. & Adjt.

13—The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

In the rank of , Date of Promotion.

In the rank of , years, .

In the rank of , years, .

In the rank of , years, .

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph completed accordingly.*)

Y-64.

for SMITH M.

Correspondence to be PINNED here.

Proceedings reviewed [illegible] 22 Feb 43.

Army Form A.3.

K-*64

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A. "G"

On Active Service, this ~~ninth~~ day of February, 1943. — Order convening the Court.

Whereas it appears to me, the undersigned, an officer in Command of Royal Canadian Artillery 3 Cdn. Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer,] 8½.

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

*[I am unable to appoint :— 8½

*(1. Three Officers to form the Court.) 8½

*(2. A Field Officer as President.) 8½.

for the following reasons, namely :—] 8½

Passed to Confirming Authority [illegible] 22 Feb 43

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	C.R. OSTROM	13 Fd. Regt. RCA

Members.

Rank.	Name.	Regiment.
Capt.	J.L. SYLVESTER	4 Lt. A.A. Regt. RCA
Lieut.	R.N. LeBARON	14 Fd. Regt. RCA
Waiting Member Lieut.	F.N. PUE	3 A. Tk. Regt. RCA

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (P.A.S. Todd) Brigadier, Commanding C.R.A., 3 Cdn. Div.

Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B-21072 Gnr. SMITH, M., 12 Fd. Regt. R.C.A.	(1) Sec. 15 (2) A.A.	Not Guilty	Not Guilty	Confirmed
	(2) Sec. 40 A.A.	Not Guilty	Not Guilty	
			In the Field 10 FEB 43 C.R. Von Mayer Major Presiding	C.R.B. 3 Cdn Div 11 Feb. 43

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?" No Sir.
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) Stanley Todd (Signed) C.R. Von Mayer Major
(P.A.S. Todd) Brigadier,
Commanding C.R.A., 3 Cdn. Div.
Convening Officer (e) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

I certify that the above Court assembled on the tenth day of February 43, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule. **B.** Certificate of President as to proceedings.

I also certify that :—

1. The members of the Court
2. The witnesses

* Omit if not applicable.

~~*(3. The interpreter)~~ C.R.O.
~~*(4. The officers under instruction)~~ C.R.O.

were duly sworn.

Signed this tenth day of February 1943

C.R. Von Mayer
President of the Court Martial.

* See footnote (*b*) on page 782 C.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~ C.R.O. **C.** Certificate in case of death sentences.

~~Signed this day of 19~~

~~President of the Court Martial.~~

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences. **D.** Confirmation.

* To be omitted unless penal servitude, imprisonment or detention (saving lines awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~*I direct that the action award in the margin be not committed to prison or detention barrack until further orders.~~ H.F.

Signed this 11 day of Feb. 19 43

Stanley Todd
Confirming Officer.
(P.A.S. Todd) Brigadier,
C.R.A., 3 Cdn. Div.

Promulgated and extracts taken in the case of

(*a*) (Dated) 12 Feb 43 (Signed) E.H. Sadleir-Jackson Capt
12TH FD. REGT. R.C.A. A.P. ADJUTANT

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

67361-1937 30 M. 5/41 K.P.,O.H.Q.) Gp. 698-3

SUMMARY OF EVIDENCE IN THE CASE OF B21072 GNR. SMITH M. 16TH. CDN. FD. BTY. 12TH. FIELD REGIMENT R.C.A. (AF) B2

CHARGE SHEET

The accused B-21072 Gnr. Marcel Smith, 16th. Cdn. Fd. Bty. 12th. Cdn. Field Regiment R.C.A. (AF) a soldier of the Canadian Army placed on active service is charge with:

FIRST CHARGE
AA Sec 18(2)

Wilfully ~~inquiring~~ injuring himself with intent thereby to render himself unfit for service

in that he

in the field at or about 2120 hrs on 3 Sept 1942 wilfully injured himself by gunshot wound in the left forearm intending to render himself unfit for service

[redacted]

SECOND CHARGE
(Alternative)
AA Sec. 40

Neglect to the ~~conduct~~ prejudice of good and military discipline

in that he

In the field at or about 2120 hrs 3 Sept 1942 did so negligently handle a small arm that he injured himself in the left forearm.

In The Field
5 Feb. 1943

.....(Lt.-Col.)
(J.P. PHIN)
C.O. 12th. Field Regiment R.C.A.

To be tried by F.G.C.M.

In The Field
9 Feb. 1943

.....
CRA 5th Cdn Div

Major
President

Medical Certificate

No: B210.72. Name: ~~Smith~~ ...M... Rank: Gnr... Date: 10/3/43...

RAP/RHLI.

I certify that I have examined ~~s~~/n man and in my opinion is ~~not~~ fit to ~~proceed on course.~~ undergo ~~detention~~. Court Martial

(Signature) Major
President

~~Capt.~~ RCAMC.
M.O. / RHLI.

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at in the Field on the 10th day of February 1943 by order of Brig. P.A.S. Todd.

Commanding C.R.A. 3 Can. Div.

dated the 9th day of February 1943

President.

Major. C.R. Ostrom 13 Can. Fd. Regt RCA.

Members.

Capt. J.L. Sylvester 4 Lt. A.A. Regt R.C.A.

Lieut. R.N. Le Baron 14 Can. Fd. Regt. R.C.A.

, Judge Advocate.

Trial of* B 21072 Gnr. Maced Smith
16 Can. Fd. Bty
12 Can. Fd. Regt RCA

The order convening the Court, the charge-sheet and the summary ~~(or abstract)~~ of evidence are laid before the Court.

~~The Court satisfy themselves that~~ ~~is not available~~ ~~to serve owing~~ to

~~, waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor.† Major A.E. Hall attchd 3 Can. Div.

~~Counsel; or~~ defending officer† Lieut S.A. Gales, 12 Fd Regt RCA

At 1515 o'clock the Trial commences.

The order convening the Court is read, and is marked G , signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.*

No

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Ostrom Major

54274 30M 10/42/78 25,000 pds 6/42 E. & H., Ltd. G/42/33 Forms A 9/2

B

The President, members ~~and judge-advocate~~ are duly sworn.

~~The following officers under instruction are duly sworn.~~

Charge-Sheet.

Instruction. *If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.*

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read ? *Question to the accused.*

Not guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read ? *Question.*

Not guilty *Answer.*

~~Are you guilty or not guilty of the third charge against you, which you have heard read ?~~ *Question.*

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read ?~~ *Question.*

Answer.

~~The accused having pleaded Guilty to charge, the provisions of Rule of Procedure 35 (b) are here complied with.~~

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

Penny address of Prosecutor.

The case involves a charge arising out of the following facts.

The accused was found in a ~~fainting~~ condition in the night of 3 Sept 42. The guard who picked him up found he had been shot in the left arm. apparently a bullet had entered at the elbow and emerged on the fore arm. There will be evidence that the accused did not have a rifle in his possession but some time that shortly before the date a rifle in the Regt had been lost

[signature] Prosecutor

[signature]
Major
President

C

*Instruction. (See R. P. 39 (A))

Proceedings on Plea of Not Guilty.

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No sir

The prosecutor makes an opening address [~~hands in a written address which is read~~, marked , signed by the President, and attached to the proceedings.] See attached

The prosecutor proceeds to call witnesses.

First witness for prosecution. A 30515 Gnr. Jackson, A.F. 43 Fd Bty

being duly sworn, is examined by the prosecutor.

Gnr Jackson recognizes accused and recalls while on guard early one morning in September an unusual occurence in connection with Gnr Smith. I mounted guard approx nine o'clock and at about twenty minutes after just about end of my beat at the ammo dump. just about to turn around when I heard a scuffling noise. I called out "who goes there" received no answer & walked out again. Someone answered "help my I'm hurt" Couldn't find where he was until Bdr. Came along with a light we found a man lying on the road. Wasn't certain at the time who it was but now I know it was the accused. When we picked him up he said "that hurts". We picked him up & took him to the 43 Bty Q. Stores put him in a chair then I went back to my duty. Gnr Smith did not say anything other than mentioned above nor did I hear any firearms. Gnr South was about 30 ft from Q stores. I did not examine the wound.

CROSS EXAMINATION

I did not know what had happened to the man.
I did not see any firearm.

(2)

Q By the President. Do you mean 30 ft or 30 yds.

A 30 yards.

RP 83[B] Complied with

SECOND WITNESS C2

A23895 Gnr. Jennings J.Z. having been duly sworn is examined by the Prosecutor and states I am Bdr Jennings J Z. Technical Storeman 43 Bty. I recognize the accused and recall early in Sept. 42 while in the stores tent with Gnr. Baker at approx. 2115 hrs I heard cry for help. I proceeded towards direction of call with Gnr. Baker. Approx 50 yds on road N. of stores we found Gnr. Jackson guard bending over the man whom I did not know then but now recognize as Gnr Smith. the accused. We proceeded to pick him up, he was in pain, his arm was hurting, so we took him to stores tent. After proceeding a few steps Gnr. Smith remarked "I have been shit" I ordered Gnrs Baker & Jackson to proceed with man to stores while I went to exchange to phone M.O. Then I returned to stores, helped to make injured man comfortable. I examined rifle of guard & found no shot had been fired and that guard (section) had his 10 rds of ammn. Accused complained being thirsty we gave him drink of water and a cigarette. He first got first aid from MOs Orderly L/Bdr Gingerich. a few minutes later. Wound had been bleeding not very freely. It appeared a bullet had entered about ~~gun~~ rear of elbow & come out ~~front~~ forearm - there being approx 6 or 7 inches between wounds. I was approx 50 yds from place I ~~found~~ man ~~came~~ when I heard call for help. I did hear the sound of firearms once discharged at or about time first heard call for help. Cannot say type of weapon which fired ~~the~~ shot. I would say the shot I heard was from 300 to 400 yds away ~~on an East~~ and from the East away from the camp. Accused was found North of where I was when I heard shot. Shot heard two or three minutes before I heard cry to help.

CROSS EXAMINATION

Did not know who caused injury at the time.

REEXAMINATION

I do not know now who caused the shot.

RP 83 13 complied with

Mayo

C 3

THIRD WITNESS

B 11333 Gnr. Baker SE having been duly sworn is examined by the Prosecutor states I am a driver of the 43 Bty and recognize the accused. I recall early last summer when in the 43 Q stores tent with Bdr Jennings at appx 2120 I was writing a letter. Heard a report from small arms which I can not identify as rifle or revolver. I would say it was at least 300 or 400 yds away but cannot say what direction. Two or three minutes later heard a cry for help, rushed out with Bdr Jennings - we had lights, we found a soldier by name in a dip rat on the road 40' or 50' from stores. Did not know who he was at the time but can now identify him as the accused. Gnr Jackson the guard was standing beside him. I did not hear accused say anything. Gnr Jackson & I took him to stores tent. On way tent heard accused say "it hurts". Only firearm I saw at time was one belonging to guard. I did not make a search of accused for firearms. Few minutes later MO's orderly came and dressed the accused's arm. I did not examine the wound.

NO CROSS EXAMINATION
R.P. 83 B complied with

FOURTH WITNESS

A 35417 L/Bdr. Gingeruch having been duly sworn is examined by prosecutor states on night 3 Sep 42 between 2100 & 2200 hrs I treated the accused in Q stores tent 43 Bty for a wound in the left arm appeared to have been done by a bullet. Small wound on point of the elbow & a larger wound on upper part of forearm. It appeared that the point of entry was in the elbow & exit in the forearm. Noticed clothing around area covered with blood, mud and dirt. Accused was suffering from shock and pain - groaning, not in a partial fainting condition. I just saw him sitting in a chair unsupported by anyone. I helped him in to the car but in my opinion he could have managed by himself. Did not notice anything unusual about clothing besides blood & mud. Accused was in the Q tent about half

RCEOstrom Major

an hour before he was taken to 14 Fd Amb. where he was immediately examined by Capt. Eaton who removed ~~the~~ dressing, examined wound, and applied sulphonamide (?) powder & redressed the wound.

CRO ~~AC~~ CROSS EXAMINATION

I did not notice any blast marks in blouse or wound ~~which would indicate~~ nor any other indication that bullet was fired at short range

R.P. 83 B complied with.

FIFTH WITNESS

A 35195 RQMS Young D.S. 12 Fd Regt RCA having been duly sworn is examined by Prosecutor & states he was 16 Bty during Sept 42 A I recognize Gnr Smith of 16 Bty on 3 Sept He had not been issued with a rifle. On 3 Sept a rifle on charge to Gnr Mc Callum was missing & was reported missing a day or so before the accident.

CROSS EXAMINATION

No small arms issued to accused because there had never been an order for him to receive any.

R.P. 83 B Complied with

SIXTH WITNESS

A 35517 Gnr. Spencer FH. 16 Bty 12 Fd Regt RCA is examined by prosecution. I know the accused Gnr. Smith. I was called in night in early September when our tent was wounded in the arm Around 1930 Gnr Smith came into our tent and got something then he went out again. I have no idea where he went. There was nothing unusual about his appearance. My tent is about 100 yds from 43 Q stores tent. I did not hear the report of a rifle or other small arms that night. To my knowledge Gnr Smith did not have any small arms on his person or in his position.

Lt Col Strom Major President

SIXTH WITNESS (Contd)

Gnr Smith if required for Guard Duty usually borrowed a rifle from one of the drivers

NO CROSS EXAMINATION.

RP 83 B Complied with

SEVENTH WITNESS

B11324 Gnr. Black VJ having been duly sworn was examined by the prosecution. I am a member of 16 Bty and recall early Sept 42 Gnr Smith was wounded. At that time I was living in the same tent as the accused. He never had any small arms in his possession to my knowledge At about 2040 hrs he loaned Gnr. Smith some money to go to the canteen near our tent. Gnr Smith after borrowing money went into his tent to his bed. When I went to make my bed Gnr Smith was not there. I did not hear any firearms. I would not hear any because I was asleep. There was nothing unusual about Gnr. Smith.

CROSS EXAMINATION

Gnr. Smith was satisfied with the army

RP. 83 B Complied with.

EIGHTH WITNESS

A 35817 .B.S.M. Hamilton R.G. 18 Fd Regt RCA having been duly sworn is examined by the prosecution. I was acting BSM 16 Bty 3 Sep 42. I recognize accused as Gnr Smith M of 16 Bty at that time.

CROSS EXAMINATION

I Have known accused since formation of 16 Bty RCA since Feb or Mar 1941. As far as I know the accused has been a good soldier & a good worker in the Bty and was not discontented.

R.P. 83 B Complied with.

Adrom Major
Assistant

The prosecuting officer closes his case.

The defending Officer makes the following motion
I submit to the court that the onus of proving guilt is upon the prosecution according to the charges as laid. I further submit that the evidence adduced here to day falls short of that onus and that that is equally applicable to both charges and that the accused ought not to be put on his defence.

Prosecuting Officer in reply
I have nothing useful to add in reply to this motion.

At 1745 hrs the Court adjourned to consider the motion.

At 1750 hrs the Court reconvened and advised the accused that the motion had been allowed.

The Court discharged the accused and adjourned.

In the Field
10 Feb 43
[illegible] from Maj a RCA
President

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at in the Field

on the 10th day of February 1943 by order of

Brig. P.A.S. Todd.

Commanding C.R.A. 3 Can. Div.

dated the 9th day of February 1943

President.

Major. C.R. Ostrom 13 Can. Fd. Regt RCA.

Members.

Capt. J.L. Sylvester 4 Lt. A.A. Regt C.G.A.

Lieut. R.N. de Baron 14 Can. Fd. Regt. R.C.A.

, Judge Advocate.

Trial of* B 21072 Gnr. Maxwell Smith
16 Can. Fd. Bty
12 Can. Fd. Regt RCA

The order convening the Court, the charge-sheet and the summary (~~or abstract~~) of evidence are laid before the Court.

~~The Court satisfy themselves that is not available to serve owing~~ to

, ~~waiting member takes his place as a member of the Court~~.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Major A.E. Hall attchd 3 Can. Div.

~~Counsel or~~ defending officer† Lieut S.A. Gilkes, 12 Fd Regt RCA

At 1515 o'clock the Trial commences.

The order convening the Court is read, and is marked G , signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.*

No

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Maj

Q6274. Wt.9?10828/?8. 25,000 pds. 5/40. K. & H., Ltd. Q6274/111. Forms A 9/55.

B

The President, members ~~and judge-advocate~~ are duly sworn.

~~The following officers under instruction are duly sworn.~~

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (B) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

Not guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

Not guilty *Answer.*

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~ *Question.*

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~ *Question.*

Answer.

~~The accused having pleaded Guilty to~~ charge, ~~the provisions of Rule of Procedure 35 (B) are here complied with.~~

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

SUMMARY OF EVIDENCE IN THE CASE OF No. B81072 Gnr. SMITH M, 18th CDN. FIELD BATTERY, 12 CANADIAN FIELD REGIMENT RCA (AF), a SOLDIER OF THE CANADIAN ARMY OVERSEAS.

From Maj K President

FIRST WITNESS

No. A35515 Gnr. Jackson A.F., 18th Cdn Fd Regt RCA, having been duly sworn, states:-

I am a driver at B.H.Q., 43rd Bty, 12 Cdn Fd Regt RCA, at Potts's Farm Camp, Sussex on a dark rainy night about three weeks after our unit moved into the camp, I was ammunition guard. I mounted at 2100 hrs on that ni ht, and about 2130 hrs I was walking slowly south along the roadway between the ammunition dump and the 43 Bty lines, and was about two-thirds of the way to the Officers' lines from Bty Q.M. Stores, I heard a sound which I could not identify, and as I turned about I heard a man's voice crying for help, just the word "Help!". I called out "who goes there?" There was no answer just then. I started down the road towards the voice and asked again, "whose there?". A man's voice replied "I'm hurt". I had not light and could see no one at that time. I saw a light coming out of the Bty Q.M. Stores and approaching me along the road. I was beside the man when Bdr. Jennings and Gnr. Baker, with the light, found me. The three of us began to pick up the man, who was lying in the centre of the road in a puddle of water. He was dressed in battle dress, and I believe he said his name was Gnr. Smith. We saw blood on the ground. I went to lift him on his left side, and he said "That hurts". When we had him on his feet, Bdr. Jennings left Gnr. Baker and myself to take the injured man into the 43rd Bty Q.M. Stores, which we did. There we set him in a chair, and I went back out to resume my patrol.

Q. Did you have any conversation with this man?
A. No

Q. Do you recognize the accused as this injured man?
A. Yes

Q. Did you at anytime that night hear the report of a fire-arm?
A. Definitely not.

Q. Where on the road was the accused lying?
A. About thirty yards or so.

The accused declines to question this witness. R.P. 23(b) has been complied with.

A.F. Jackson
A35515 Gnr. Jackson A.F.

SECOND WITNESS

No. A82295 Bdr. Jennings J.E., 18th Canadian Field Regiment RCA, having been duly sworn states:-

I am technical Storeman, 43 Bty, 18th Canadian Field Regiment RCA. I recognize the accused, Gnr. Smith, as the man whom on a night early in September I helped into our Quarter Stores after being injured. At about 2115 hrs or 2120 hrs, while I was in our Quarter Stores, I heard a yell for help and, in company of Gnr. Baker, who was in the Quarter Stores at the time, I proceeded in the direction I thought the call came from, which was south along the road between the Quarter Stores and the ammunition dump. About fifty yards down that road I found the ammunition guard, Gnr. Jackson, just coming down over a man dressed in battle dress lying on the road. The three of us, Gnr. Jackson, Gnr. Baker and myself, got this man to his feet and proceeded to take him to our Quarter Stores. The man appeared to be injured, and said that he had been shot. There was no other conversation.

SUMMARY OF EVIDENCE IN THE CASE OF No. B81072 GNR. SMITH M., 12th CANADIAN FIELD REGIMENT RCA (AP), A SOLDIER OF THE CANADIAN ARMY OVERSEAS.

SECOND WITNESS: (Continued)

I sent Baker and Jackson with the injured man to the stores while I went to the telephone for the M.O. After phoning I immediately returned to the stores and tried to make the injured man comfortable. I did not examine the wound. He was complaining of great pain and could not move his left arm. He again said that he had been shot in the 45 Bty lines, but there was no other conversation. I immediately, examined the guard's rifles, that is Gnr. Jackson's and found it clean and that he had his full allotment of ammunition, which was ten rounds. L/Bdr. Gingerich, the Regimental Medical Orderly, arrived shortly and dressed the injury. The accused was taken away from the Quarter Stores in a Station wagon.

Q. Did you hear the report of any fire arm that evening?
A. Between two to three minutes before the cry for help, I heard a report which sounded some little distance away. I sounded like the report of a small arm being discharged not in the immediate vicinity. I paid not particular attention to this sound and could not be sure from what direction it came.

The accused declines to question this witness. R.P. 83(b) has been complied with.

.....J. S. Jennings.....
A/82(?) Bdr. Jennings J.S.

THIRD WITNESS

No. B11535 Gnr. Baker S.E., 12th Canadian Field Regiment RCA having been duly sworn states:-

I am a driver at BHQ 45 Bty, 12th Canadian Field Regiment RCA, I recognise Gnr. Smith, the accused, as the injured man who was lying in a deep pit on the roadway between the Quarter Stores and the ammunition dump at Pott's Farm Camp, Sussex, about 5 Sept 42, at about 2100 hrs. He was lying about thirty yards south from the Quarter Stores. His head was lying north, but I don't recall whether he was lying on his side or face or back. I was with Bdr. Jennings and I assisted Gnr. Jackson to take him to our Quarter Stores tent. I had no conversation with the accused. I saw Bdr. Gingerich dressing the accused's left arm near the elbow in the Quarter Stores. As soon as the injury was dressed, the accused was taken away in a station wagon.

Q. Did you that night hear the report of any firearm?
A. Yes, a few minutes before we heard a cry for help outside, I heard a report of the discharge of a small arm. I don't know what calibre it was quite clear but I cannot say if it was close or far away, nor can I say from what direction the sound came.
Q. Did the accused have any fire arm on his person?
A. Not that I know of.
Q. Was any fire arm found near him or in that vicinity?
A. No.

The accused declines to question this witness. R.P. 83(b) has been complied with.

.....Baker.....
B11535 Gnr. Baker S.E.

SUMMARY OF EVIDENCE IN THE CASE OF No. B81078 GNR. SMITH M, 16th CDN FD BTY, 12th CANADIAN FIELD REGIMENT RCA (AF), A SOLDIER OF THE CANADIAN ARMY OVERSEAS.

FOURTH WITNESS

A35447 L/Bdr. Gingerich O.L., 12th Canadian Field Regiment RCA (AF) having been duly sworn states:-

I am the medical orderly of the 12th Canadian Field Regiment RCA. I recognise the accused, Gnr. Smith, as the man I was called to see one night at the end of August or early part of September 40, at Pott's Farm Camp, Sussex. He was in 45 Bty Quarter Stores sitting on a chair holding his left arm with his right hand. I examined the injury which was a wound on his left arm, one wound being at the point of the elbow and the other at the top of his forearm, as if something had been driven through the arm. I examined the wound carefully, but not the clothing. The wound was dirty with a mixture of blood and dirt, but there were no blast marks nor any sign of burning. The wound at the point of the elbow was considerably smaller than the wound on top of the forearm. I had a conversation with him as to how the injury occurred. After I had dressed the wound he was evacuated to the 14th Field Ambulance.

The accused declines to question this witness. R.P. 83(b) has been complied with.

A.L. Gingerich

.....

A35447 L/Bdr. Gingerich O.L.

FIFTH WITNESS

A35195 Sgm Young D.S., 12th Canadian Field Regiment RCA having been duly sworn states:-

In Sept 40 I was Sgm, 12 Bty, 12th Canadian Field Regiment RCA (AF). I recognize the accused, Gnr. Smith as a member of the 12th Bty at that time.

Q. Did the accused ever have a rifle or revolver issued to him?
A. To the best of my knowledge he never had one.

Q. Do you know if any small arms were missing at this time?
A. Yes, a rifle, on charge to Gnr. McCallum, 12 Bty. This was never found. The rifle was reported lost a day or so before the accused sustained his injury to his arm. I don't remember the date.

The accused declines to question this witness. R.P. 83(b) has been complied with.

D.S. Young

.....

A35195 Sgm Young D.S.

SIXTH WITNESS

A35517 Gnr. Spencer F.H., 12th Field Regiment RCA (AF) having been duly sworn states:

I am on strength 12 Bty, 12 Canadian Field Regiment RCA and was in September 1940. I slept in the same tent as the accused, whom I recognize as Gnr. Smith, at Pott's Farm Camp, and was in the tent on the night, early in Sept 40, on which Gnr. Smith was injured. About 1930 hrs Smith came into the tent for cigarettes or something and went right out again. I didn't see him again that night.

Q. Did he appear upset, or was he normal.
A. He appeared quite normal to me.

SUMMARY OF EVIDENCE IN THE CASE OF B21072 Gnr. SMITH M, 16th BTY, 12th CANADIAN FIELD REGIMENT RCA (AF), A SOLDIER OF THE CANADIAN ARMY OVERSEAS.

SIXTH WITNESS
(Continued)

Q. How far was your tent from the 43rd Bty Quarter Stores?
A. About one hundred yards.

Q. Did you hear any report that night?
A. No I was in my tent all evening and heard no shot or other report.

Q. Did the accused have in his possession any fire arms, either his own or on issue.
A. No, not that I had ever seen, except when he went on guard, then he would borrow a rifle, usually from one of the drivers.

The accused declined to question this witness. S.F. 83(b) has been complied with.

.....F W Spencer.....
Acting Gnr. Spencer F.W.

SEVENTH WITNESS

B11324 Gnr. Black V.J., 16th Canadian Field Regiment RCA (AF), having been duly sworn, states:-

I am on strength 16th Bty, 12th Canadian Field Regiment, and was so in Sept 42. I was in the same tent as Gnr. Smith, the accused, at Pratt's Farm Camp, Sussex in Sept 42.

Q. Did the accused ever have any firearms in his possession?
A. No. When he went on guard he had to borrow a rifle.

At about 2040 hrs about 3 Sept 42 I saw the accused. He borrowed some money to go up to the canteen from me. He then went into the tent towards his bed, and I made mine and went to sleep. The next thing I remembered was that some one woke me up to tell me that the accused had been shot.

Q. Did you hear the report of any firearms that evening?
A. No

Q. Did you notice anything unusual about the accused that evening?
A. No.

Q. Had the accused any troubles at the time that you know of?
A. No

Q. Did he seem dissatisfied with the army?
A. No. He never, to my knowledge, said that he wanted to get out of the army.

The accused declined to question this witness. S.F. 83(b) has been complied with.

.....V.J. Black.....
B11324 Gnr. Black V.J.

SUMMARY OF EVIDENCE IN THE CASE OF B21072 Gnr. SMITH M, 16th Bty, 12th CANADIAN FIELD REGIMENT RCA (AP), A SOLDIER OF THE CANADIAN ARMY OVERSEAS.

EIGHTH WITNESS

A58217 B.SM. Hamilton R.G. 12th Canadian Field Regiment RCA having been duly sworn states:-

I recognize the accused as Gnr. Smith M, 16 Bty, 12th Canadian Field Regiment RCA (AP). I was acting B.S.M. in Sept 42. There was no criticism, as far as I know, of Gnr. Smith's work, nor do I know of any reason why he might have been dissatisfied. He seemed to be content in his work.

The accused declines to question this witness. R.P. 93 (b) has been complied with.

R.G. Hamilton
A58217 B.S.M. HAMILTON R.G.

NINTH WITNESS

Captain R.B. Eaton, #1 Neurological Hospital, R.C.A.M.C., submits the following written evidence:

"B.21072 Gnr. Smith,
12 Fld. Regt. R.C.A.

1. This is to certify that I rendered medical aid to the m/n Soldier on 3 Sept 42 at about 2230 hrs, on which date I was on duty and posted to # 14 Fld. Amb.

2. He was admitted with a G.S.W. of the left elbow (through and through). There were no powder stains and the appearance of the wounds suggested that a bullet had entered from behind forwards. I am unable to state what calibre, but it was probably S.A.A. Haemorrhage was moderate and there was no evidence of a nerve lesion.

The unit medical orderly had previously given first-aid, a shell dressing and splint was adequately applied. The wounds were re-dressed and he was referred to #1 C.G.H.

(Signed)..R.B..Eaton.Capt.....

The accused does not require the presence of this witness at this summary for the purpose of cross-examination.

Marcel Smith
.....
B.21072 Gnr. Smith M.

I certify that due to the exigencies of the service it is impracticable to procure the attendance of the above witness at this summary, and that his statement was read aloud by the accused.

E.H.A. Carson
.....CAPT.
E.H.A. CARSON

TENTH WITNESS

Capt. H.R. Robertson, No.1 Canadian General Hospital, R.C.A.M.C., submits the following written evidence:

B.21072 L/Bdr. Smith, M.

The above mentioned was admitted to No.1. Can Gen Hosp on the night of 4 Sept. 42, with a gun shot wound of the left forearm in the region of the elbow. The radius and ulna were fractured at their proximal ends. There were no metallic fragments in the wound and the diagnosis of gun shot wound rested upon the appearance of the entrance and exit wounds and the type of the fracture.

Convalesnence was normal and the patient was discharged on 23 Nov. 42, with wounds healed and fractures united but with considerable limitation of elbow movement. It was anticipated that his range of elbow movwmwnt would increase but that he would have some permanent slight limitation of movement.

(Signed) H. R. Robertson, Capt.
No. 1 C. A. H.

The accused does not require the presence of the above witness at this Summary for the purpose of cross-examination.

Marcel Smith
B 21072 Gnr. Smith, M.

I certify that due to the exigencies of the service it is impracticable to procure the attendance of the above witness at this summary, and that a statement was read over to him by the accused

E. H. A. Carson
(E. H. A. Carson) Capt.

STATEMENT OF THE ACCUSED

The accused, No. B 21072 Gnr. Smith, M., having been duly cautioned in accordance with the provisions of R. P. 4(E), makes the following statement on oath:

On the 3 Sept. 43, at about 2115 hours I left the N.A.A.F.I. tent at Pott's Farm Camp, Sussex, and proceeded South toward my tent. I went by the road instead of cutting across the ditch and through the 16 Bty lines to my tent, because it was dark and wet and in order to miss the guy ropes of the tents. While I was walking along the road I felt a terrific pain in my left arm and everything went black and I fainted. That is all I know until I was found by the guard. When I came to I called for help and the guard came to help me.

Marcel Smith
B 21072 Gnr. Smith, M.

I CERTIFY THAT Rules of Proceedure 4 (C), (D), (E) . (F) have been complied with.

Taken down in the Field in the presence and hearing of the accused the 6 Feb. 43.

E. H. A. Carson . . . .Capt.
(E. H. A. Carson)
1 x elbow 42 Right R.A.(AF)

SUMMARY OF EVIDENCE IN THE CASE OF B21072 Gnr. SMITH M. 16th Fd. Bty. RCA, 12th CANADIAN FIELD REGIMENT RCA (AF) A SOLDIER OF THE CANADIAN ARMY OVERSEAS.

I, B21072 Gnr. Smith M, wish to have an officer appointed to defend me at my trial by F.G.C.M.

Maxwell Smith
.....
B21072 Gnr. Smith M.

COUNTER NUMBER 586457

HOUR 1800

OPERATOR'S INITIALS GH

RELIEVING OPERATOR WMB

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

FLASH NUMBER ONE

4/E-103

PTE SMITH M.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-85910 Pte Smith, M. 2 Armd Bde Coy (84 Coy) RCASC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	GUILTY	GUILTY	
2nd	NOT GUILTY	GUILTY	except that an undetermined amount of petrol was used.
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ Nil beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or MF B296.)

Time in confinement awaiting present trial—a total of 12 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or MF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for ninety days and to be put under stoppages of pay until he has made good the sum of £1-17-0 in respect of the damage to vehicle # CH 4270097.

(Sgd) Gordon H Jarmyn Capt — Judge-Advocate, if any. 28 Oct 44 — Date awarded. (Sgd) J.A. Tindal Major — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~(+)

(+. AA 57A. Delete if not used.)

(Sgd) H Burns Lorne

Date 29-10-44 — Commanding 2 CDN ARMD BDE — Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused. — Date. 1 Nov 44 — Signature of Offr. Lieut-Col Allan. Maj (NORMAN ALLAN) MAJ. O.C. 2 Armd Bde Coy (84 Coy) RCASC

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 HE-103

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA3) 41/P.M.S./1608 (2864)

Convened by Brig J.F. Bingham Comd 2 Can Armd Bde Gp. dated 26 Oct 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-85910	Pte	Melbourne	Smith	2 Armd Bde Coy (84 Coy) RCASC

PROCEEDINGS REVIEWED

JCAC J.A. Tindal Lieut-Col. 27 Oct 44.

REVIEWING OFFICER, BRANCH, CMHQ

PROCEEDINGS REVIEWED Date 1/2 Nov 44 JCAC J.A. Tindal Lieut-Col. Dep Asst Adj Gen GHQ 21 Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Belgium on (date(s)) 28 Oct 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member~~, JA, ~~if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A93, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet ~~&~~ attached thereto.(1) The Court is satisfied that is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1215 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(C). Delete, if not applicable.)

A5. President to accused: Do you object to ..... as interpreter? Ans .....

The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No objn.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J.A. Tindal	2 Can Armd Bde & 3rd Can RCAC
Member	Capt.	H.J. Murphy	2 Can Armd Bde & Regt RCEME
Member	Lieut	W.B. Ronnie	Sig 2 Can Armd Bde
Judge-Advocate	Capt.	G.H. Jarmyn	HQ 2 Can Corps
Prosecutor	Lt.	J.F. Fleming	2 Can Armd Bde (84 Coy) RCASC
Defending Offr	Capt.	K.M. Peck	HQ 2 Can Armd Bde.

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 2a, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 69 (B) and fn 2 were not followed. See Dir p 3.)

A8. The accused ..... before arraignment make(s) (no) ~~a~~ plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does ~~each~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D, E, F.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 Can Armd Bde Coy (84 Coy) RCASC

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B--PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s) or call witnesses as to character and make an address in mitigation of punishment.(1)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO SIR.(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C--PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Fill here Loose Sheets of Record.

RECORD FORM D--PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans NO SIR.(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(3)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)*

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans I would like to testify. Do you intend to call witnesses on your behalf ?
Ans Yes sir. Are they witnesses as to character only ? Ans NO.
(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(6).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s) being subject to confirmation, will be promulgated later.(1) On the President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(7) (c), RP 45, 120(A).* 2. *AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E--PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO SIR.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement of Service as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB 255 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement of Service and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans NO SIR.
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *Where several accused tried separately see RP 94(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 45. As to sentences see AA 44, 136, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. Where accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 30. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

The accused, No B-85910, Pte Melburn Smith, 2 Armd Bde Coy (84 Coy) R.C.A.S.C., a soldier of the Canadian Army Overseas, is charged with:

First Charge
Sec 15(1).
Army Act.

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, on 12th October 1944 at 2215 hrs did absent HIMSELF WITHOUT leave till 0800 hrs on 16th October 1944.

(Absent 3 days, 9 hrs, 45 mins.)

Second Charge
Sec 40.
Army Act.

WHEN ON ACTIVE SERVICE
AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field, on 12th October 1944 did use WD Veh # CL 4270007 and 45 gals of petrol for private purposes and caused damage to said veh to the extent of £3-14-0.

Norman Allan Maj.

In the Field.
20 Oct 44.

(NORMAN ALLAN)MAJ.
Officer Commanding
2 Armd Bde Coy(84 Coy)
R.C.A.S.C.

To be tried by Field General Court Martial

In the Field
26 Oct 44

(H.B. Bingham) A/Brig
Comd 2 Cdn Armd Bde Gp

FIELD GENERAL COURT-MARTIAL

CFAOS (In lieu of AFAS) 40/FAS/1697 (2nd/S)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B 85910	Pte		Melburn	SMITH	2 Cdn Armd Bde Coy (64 Coy) RCASC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, had (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 25 Oct 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; and that it is not practicable to delay the trial for reference to a superior convening offr.

(Delete part in brackets where not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.

(AA 49, RP 104(3), 107(A). Delete as whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	J.A. Tindal	2 Cdn Armd Bde Ord Fd Pk RCOC

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	H.J. Murphy	2 Cdn Armd Bde Wksp RCEME
Lt	F.A. Rouse	Sigs 2 Cdn Armd Bde

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	G.H. Jerwyn	HQ 2 Cdn Corps

On Active Service in the Fd

in Belgium
(Country.)

(Signed personally. RP 105 fn 2.)

Brig
(Rank.)

Date: 26 Oct 44

Commanding 2 Cdn Armd Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

1054

I certify that I have this morning examined B-85910 Pte SMITH, M., 2 Armd Bde Coy (84 Coy) RCASC, and in my opinion he is fit to undergo trial by court-martial.

Station Field
Date 28 Oct 44

Dunlop Capt
(Medical Officer)
17 Cdn Fd Amb
RCAMC

Prosecuting officer closing address

Submit charge proved. It has been proved he was in the vehicle. They did go for a purpose. He drove the vehicle. He used it without authority. He is therefore guilty of conduct etc.

Defending officer closing address

The prosecution has not shown that PC Smith drove under any other condition than when it was necessary to take over the vehicle because I who was not in condition to drive.

Summary up by J. A.

When facts have been proved, the credibility of the witnesses and the weight to be given to the evidence of any witness are matters for the court to decide. Any mention I may make of the evidence is not to be taken as an indication either of the truth or the way it is to be given to it.

The accused is charged secondly with, viade charge. The charge is conduct etc and the particulars which the prosecution allege are such conduct are viade particulars. As to the particulars I refer the court to RP 44(D) and for to decide found in MML p 647 and 649. The question for the court to decide first is what facts have been proved by the prosecution. In this connection I must point out that I who is in the position of an accomplice and although he is a competent witness that is to say, he may give evidence, it is very dangerous to convict any accused on the uncorroborated evidence of an accomplice and the corroboration which should be required is independent testimony which confirms in some material particular not only the evidence that the crime has been committed but also that the accused committed it. This is more fully set out in MML p 53 para 45 to which I refer the court.

Capt MacKenzie gives evidence that after an investigation of the disappearance of the vehicle PC Smith came to him and stated he thought he could locate the vehicle and led him to various places where he thought the vehicle might be found. Eventually the vehicle was located although not entirely through Smith's directions. The vehicle had been damaged and Capt MacKenzie, subsequently Field Security Officer, estimated the damage at £3-14-0. He also estimated the petrol and some petrol was last added at Yiyiala but is unable to allocate that or any

Prosecution

2 civil witnesses

Capt. J.R. MacKenzie sworn states,

I am HQ Capt of 2 Armd Recy Coy (FV Coy) RCASC. On 16 Oct 44 I was investigating the disappearance of a vehicle of this unit. WD No. CL-427000?. On completion of the investigation PC Smith came to me and said he thought he could locate the missing lorry in the vicinity of Antwerp. At about 1400 hrs I proceeded with PC Smith to Contich, about 9 KM from Antwerp. There he led me to the cafe and stated he had been in the cafe the night of 14/15 Oct and the lorry was not there had been in the cafe prior to the night of 14/15 Oct and the lorry had been parked behind the cafe. He said two armed Belgian soldiers had asked him if he could take the lorry to pick up PC Smith who was in a cafe some 8 KM back. He said the soldiers had not come back with the vehicle PC Smith went into the cafe with the 2 armed Gpl. and obtained a picture of the soldiers. We visited 2 or 3 additional cafes where he said he had been with the PC Smith and the soldiers of the armed escort but we found no trace of the soldiers or the lorry but as a result of information obtained we went to a spot near Contich where a lorry had recently had an accident. The spot indicated that a lorry with army type tyres had skidded at the spot indicated and skipped over on to the left hand side and down a bank and stopped over on its port side. The lorry had been removed. I decided not to search for the vehicle further and started towards camp. We had gone about 12 KM through the town of Hoboken (15 KM from camp) when I saw the lorry approaching being driven by an Belgian Officer. I asked him where he got the lorry and he said he had pulled it out of a ditch with a tank. The spot which he described to me was the spot we had just visited. The lorry had a broken windscreen, some damage to the radiator, and the cab and left mudguard were dented. I identified myself to the officer and took over the lorry, which was otherwise undamaged, and returned to the unit lines.

Cross-examination

I do not think that he knew exactly where I found the lorry. If he had known it he would have known.

RP 53 (b) complied with.

Second Witness

B-T0430 L/Sgt Wootton, R.S. sworn states.

I am L/Sgt i/c Admin in B Pl. R and Bde Coy. On 12 Oct 44 at 2215 I ~~attended~~ at Tattoo roll call, the accused did not answer his name. I reported the fact and could not find the accused. At 0900 hrs 15 Oct the accused reported to me sober and properly dressed. I placed him under close arrest.

Cross-examination

I have access to Pl. Records. Vehicle CL-42-70007 is on charge to PG Smith. The Cpl despatches the vehicles. The driver to whom a vehicle is issued is responsible for the vehicle, its tools and equipment.

The accused PG Smith had another vehicle on charge. His vehicle has not been been reported missing. At 2218 hrs 12 Oct veh. CL42-70007 was reported missing. PG Talbot was spare driver of the vehicle.

R.P. 83(2) complied with.

Third witness

Capt L. McKinnis. sworn states.

I am W/S Offr. of 2 Cdn Con Bde Coy. On 17 Oct 44 Lorry CL42-70007 was being W into workshops. I examined the vehicle and found front bumper bent, left front fender bent, cab destroyed, box damaged, tarpaulin torn, left clearance lamp damaged, left windshield & case broken, petrol meter damaged. I estimated the repairs as follows. material £ 1-6-0 Labour 16 hrs @ 2-9-0. Total £3-14-0. I examined the AB 412 and the last mileage recorded before petrol was added was 3794 miles. The speedometer reading when the vehicle was timed into workshops 4166 miles. Therefore 372 mileage on p.p. 6 from AB 412. Therefore 45 gals consumed since last recording.

Cross-examination

I have no evidence that accused had been in or driving the vehicle The mileage computed is an opinion.

By the court

I do not remember what date was shown opposite 3794 miles there would be nothing to show the expenditure of petrol for each day we are not using work tickets and the only record of petrol consumed is in the log book.

RP 83(2) complied with.

Accused's witness

The Prosecution requests permission to call PG Smith as a witness

The J.A. reads and explains the rights of the Accused to an adjournment after the evidence is taken.

The court allows the witness to be called.

B-T0136 PG Smith E.F. sworn states.

I was in the area from ~~about~~ 1700 hrs 12 Oct to 0900 hrs 15 Oct. I was at Conteh. I used my lorry Dyd at Aber. PG Smith drove it when I was not capable. I was in a condition to drive it. We decided Dyd to Turnbull for a drink then went on to Conteh.

Evidence

Defending Officer does not require an adjournment

Cross-examination

PG Smith drove it when I was unable to. We were going down to this other place to get something to eat. We were often passed by a chap from an armoured regiment. PG Smith drove well. There was no accident while he was driving.

By the Court

I was not on authorized leg. I was in unit lines. I had no transport I had just come in from a run. I clocked in. I just said we a joke later my car went to go to Turnbull. PG Smith said he would go. We went to Turnbull. Then to Conteh. There was no accident up to that point. Saturday night the chap from the armoured corps whom we met in Conteh, I don't know his name, and Smith took the lorry to go to another restaurant to get something to eat. I can't say which one was driving. They were supposed to come back and pick me up. They didn't do so. I hitched back to camp. I don't see either the other chap or Smith after they left in the lorry.

Defending officer sworn by the court.

I was intoxicated at the time. I can't remember if the other soldier asked to take the lorry or not. He was drunk. He was intoxicated. PG Smith was not intoxicated at that time.

RP 83(2) complied with.

particular part of it to any one day. Sgt Watson gives evidence that the accused was absent between 2215 hrs 12 Oct and 0800 hrs 13 Oct. He also states that the vehicle was in charge of and the responsibility of PC Franks.

PC Franks, says, although you must be careful of accepting hearsay evidence, that when he came in off a trip he said as a joke does anyone want to go & Townsville. PC Smith said he would go. They went to Townsville then on to Ravenshoe. Somewhere they picked up another, nationwide soldier and Smith and this soldier drove off in the lorry. Franks says no accident took place up to the time he last saw the lorry and that Smith was not intoxicated though the other soldier was and he was ill also.

Now has the prosecution proved that Smith on 12 Oct 44 used vehicle CL 427000 7 and 45 gals of petrol for his private purposes and caused damage to the vehicle to the extent of £14-0 or has the prosecution proved against Smith enough of these facts to constitute conduct to the prejudice of good order and military discipline having regard to the nature and to the circumstances in which & took place.

The accused must be presumed innocent until he has been proved guilty beyond reasonable doubt. To warrant an acquittal that doubt must not be light or capricious. It must be such a doubt as upon a calm view of the whole evidence a rational understanding will say ought to an honest heart. If there is such a doubt the accused must be given the benefit of it and be acquitted even though you are not entirely convinced of his innocence because it is for the prosecution to prove his guilt not for him to prove his innocence.

J.A. Mr. President, are there any further matters on which you wish me to advise the Court?

Pres. No

J.A. Mr. Prosecuting Officer, are there any further matters on which you wish me to advise the Court?

Pros. No

J.A. Mr. Defending Officer, are there any further matters on which you wish me to advise the Court?

Def. No.

F. Fenney Capt
J.A.

EXHIBIT A.

SUMMARY OF EVIDENCE
in the case of
B-80736 Pte Zinke, E.I. and
B-85910 Pte Smith, M.,
both of "B" Platoon
2 Armd Bde Coy (84 Coy) RCASC,
charged jointly with
(1) Absence Without Leave, AA Sec 15(1)
(2) Using Government vehicle and petrol
for private purposes, AA Sec 40.

By direction of the Commanding Officer
the evidence is taken on oath.

FIRST WITNESS — B-80430 L/Sjt Wootton, R.J., "B" Pl, 2 Armd Bde Coy (84 Coy) RCASC, sworn, states:-

I am Adm Sjt of "B" Pl, 2 Armd Bde Coy (84 Coy) RCASC and while calling the tattoo roll at approx 2215 hrs on 12 Oct 44, B-80736 Pte Zinke, E.I. and B-85910 Pte Smith, M. failed to answer their names. I made a thorough check of the lines and the accused were no where to be found. I therefore marked them absent. The matter was reported to the Pl Officer, Lt F. Halle. At approx 0800 hrs. on morning 13 Oct 44, lorry #CL-4270007 was missing from the lines. I made a check of the entire Coy area and said vehicle was no where to be found. I also checked the records in the Pl Orderly Room and vehicle WD #CL-4270007 had not been detailed for any duty. This vehicle is in No 6 Section and is signed to B-80736 Pte Zinke, E.I. Both Pte Zinke and B-85910 Pte Smith, M. are in No 6 Section. At approx 0800 hrs 15 Oct 44 Pte Zinke reported to me, sober and properly dressed, and was placed under close arrest and escorted to the Guard Tent. At approx 0800 hrs 16 Oct 44 Pte Smith, M. reported to me, sober and properly dressed, and was placed under close arrest and escorted to the Guard Tent. At approx 1830 hrs 16 Oct 44 Lorry CL-4270007 was brought into the lines by Capt J.R. MacKenzie.

The accused, B-80736 Pte Zinke, E.I. declines to cross-examine this witness.
The accused, B-85910 Pte Smith, M. declines to cross-examine this witness.

R J Wootton
.....

SECOND WITNESS — Capt G.W.C. Baker, Offr IC Composite Platoon, 2 Armd Bde Coy (84 Coy) RCASC, sworn, states:-

I am Capt G.W.C. Baker, Offr IC Composite Platoon, 2 Armd Bde Coy (84 Coy) RCASC. On 13 Oct 44 at approx 0845 hrs I was proceeding from the Coy lines to Rear Bde HQ and passed through TURNHOUT en route. As I was passing through this town, I saw one of our unit vehicles, bearing a "B" Pl tactical sign, and saw one of the accused , B-80736 Pte Zinke, E.I. standing beside it. Pte Zinke, E.I. told me that he was lost, and asked me to give him directions back to the Coy location. This I did, and proceeded on my way to Rear Bde HQ.

The accused, B-80736 Pte Zinke, E.I. declines to cross-examine this witness.
The accused, B-85910 Pte Smith, M. declines to cross-examine this witness.

THIRD WITNESS

Capt J.R. MacKenzie, 2 Armd Bde Coy (84 Coy) RCASC, sworn, states:-

I am Capt J.R. MacKenzie, HQ Capt, 2 Armd Bde Coy (84 Coy) RCASC. At approx 1200 hrs 16 Oct 44 I was informed by B-85910 Pte Smith, M. that he thought he knew where he could locate a lorry No CL-4270007 which at that time was missing from our Unit lines. He stated that he and B-80736 Pte Zinke, E.I. had had the missing lorry in the vicinity of CONTICH, Belgium, but that they had returned separately to the Unit lines without the vehicle. We proceeded to CONTICH and Pte Smith secured a snapshot of a soldier who he believed to be in possession of the lorry. After considerable searching in public houses in the vicinity, we discovered no trace of the soldier or the vehicle in question, but finally found a place on a side road where a lorry had had an accident. It appeared that the lorry had slipped off the road down an 8 foot embankment, fallen over on its side, and in doing so demolished a small brick shed. The lorry had subsequently been removed. We started on the way home but after going a very short distance we noticed lorry WD No CL-4270007 to be in the possession of an officer from No 4 Park, 15 Vehicle Coy. The lorry had a broken windshield and damage to the front and side. The officer stated that the lorry had been found on Sunday 15 Oct 44 in the spot from which we had just come. He had had it pulled out on the morning of the 16 Oct 44. After identifying ourselves, he turned the lorry over to us (this was at approx 1630 hrs.) and we returned to the Unit lines.

The accused, B-80736 Pte Zinke, E.I. declines to cross-examine this witness.
The accused, B-85910 Pte Smith, M. declines to cross-examine this witness.

FOURTH WITNESS

Capt C. McKenzie, Offr IC Wksp Pl, 2 Armd Bde Coy (84 Coy) RCASC, sworn, states:-

I am Capt C. McKenzie, Offr IC Wksp Pl, 2 Armd Bde Coy (84 Coy) RCASC. On 17 Oct 44 a "B" Pl lorry No CL-4270007 was brought into Wksp for repair. This lorry had been involved in an accident and was damaged as follows: bumper bent, left front fender bent, cab distorted, box damaged, tarpaulin torn, left clearance lamp damaged, left windshield glass broken and petrol racks damaged. I estimate the cost of repairs to be:

Labour - 16 hrs @ 0-3-0	-£2-8-0
Material - windshield and clearance lamp	- 1-6-0
Total	-£3-14-0

I further examined the AB 412 for this lorry and estimated the consumption of petrol as shown by the following figures:

Present Speedometer reading - 4166 miles
Last reading where petrol was added - 3894 miles

Miles run since last refill - 272 miles

Average miles per gallon as per AB 412 - 6.

Estimate of petrol used - $\frac{272}{6}$ - 45 gals

The accused, B-80736 Pte Zinke, E.I. declines to cross-examine this witness.
The accused, B-85910 Pte Smith, M. declines to cross-examine this witness.

.....

Deleted in accordance with 20/CM - ASC/1/J JAG Rear HQ 2 Can Corps d/24 Oct 44.

.....

The accused B-80736 Pte Zinke, E.I. was cautioned as follows:-

Q Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A I do not wish to make a statement, sir.

The accused B-85910 Pte Smith, M. was cautioned as follows:-

Q Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A I do not wish to make a statement, sir.

The accused B-80736 Pte Zinke, E.I. does not call any witnesses.

The accused B-85910 Pte Smith, M. does not call any witnesses.

I certify that the foregoing Summary of Evidence, consisting of three pages, was taken down by me in the presence of both of the accused and that R.P. 4 (C), (D), (E), and (F) have been complied with.

In the Field
18 Oct 44.

(J. FLEMING) Lt
3 Armd Bde Coy (S&Coy) RCAC

EXHIBIT B

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B-85910	Pte	Smith, M.	2 Armd Bde Coy(84 Coy)RCASC

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.A. 15(1) ..... 14 times.

For A.A. 40. ..... 1 times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet 23 Mar 40

Date of last entry in Field Conduct Sheet 23 Aug 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. ~~The accused is not entitled to any decoration~~ Sgt Cpl

~~medal or decoration~~ Sgt Cpl ~~except~~ Sgt Cpl

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for NIL days in civil custody; and for 18 days in military custody, *i.e.*, 06 days in open arrest, 12 days in close arrest; of which NIL days were spent in hospital.

5. The present age of the accused is 24 years

6. The date of his attestation ~~XXXXXXXXXXXXXXXX~~ is 5 Sep 39 Sgt Cpl

7. The service which the accused is allowed to reckon is 356/365 years

8. The accused is in possession of: ~~no military decorations or medals~~ CVSM and clasp

State the military decorations or medals held by accused.

9. (*If the accused is a warrant officer or N.C.O.*). The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of B/A	
In the war substantive rank of	
In the acting rank of	

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

W1.8675/888 100,000 4/42 A.& E.W.Ltd. Gp.698
W1.29484/1873 50,000 9/43 " Forms/B.296(War)/3

1

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
FGCM	16 Jan 42 Field	A.A. Sec 15(1) AWL from 2000 hrs 13-12-41 to 1615 hrs 2-1-42.	55 Days Detention	
FGCM	11 Feb 43 Field	A.A. Sec 15(1) AWL from 1330 hrs 5-2-43 to 1600 hrs 5-2-43.	40 Days Detention	
Civil Court	13 Jun 42 Newport County	Theft of £6-10-5d.	3 Months hard Labour at Winchester Prison.	

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 14 day of Oct 1944

(M.I. WALTON) CAPT.
ADJT, 2 Armd Bde Coy (84 Coy) RCASC

EXHIBIT C 004

MFM 6 (AFB 122) 40/FAB/156 (3438)

No B-85910 Name SMITH, M. Sqn, Battery, or Company | Corps R.C.A.S.C. | Date of enlistment 5-9-39 | GC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet: N/A | No and date of last drunk: N/A | Period not reckoning towards freedom from extra fine: N/A | Sheet No 2. | Signature OC Company, etc

Place	Date of offence	Rank	Dates of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
No entries from previous sheet destroyed 5-3-40 on completion of six months service. D.R.O. 319.									
Hamilton	23-3-40	Pte		AWL 1700 hrs 23-3-40 to 2130 hrs 23-3-40.	Sjt Burgess Sjt Gray.	144 hrs detention.	No 74/40	Major Montague	Forfeits 8 days pay.
Camp Borden	30-6-40	Pte		AWL 0900 hrs 30-6-40 to 1415 hrs 3-7-40.	Sjt Urquhart Cpl Mathews	12 days detention.	160/40	Major Montague	Forfeits 16 & 4 days pay.
Camp Borden	16-8-40	Pte		AWL 2200 hrs 16-8-40 to 0615 hrs 19-8-40.	Sjt Green Cpl Allcock	12 days pay	4/40	Major Montague	Total 15 days pay.
Camp Borden	28-4-41	Pte		AWL from PAD Roll Call	Cpl Daniel	27 days det	13-5-41	Lt-Col ??	Stoppages 12-4-41.
Field.	10-8-41	Pte		AWL 2215 hrs 10-7-41 to 0900 hrs 17-7-41	Cpl Craig.	14 days C.B. 14 days pay.	42/41	Major Montague	1 days pay, tot 15 days pay
Above entries transferred from previous sheet destroyed 5-9-41 on completion of 2 years service D.R.O. 319.									

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field.	9-12-41	Pte		Sec 40 A.A. In that he at 0915 hrs on 9 Dec 41 did drive CA vehicle CV 199307 at a speed in excess of 10 miles per hour contrary to Part 1 Orders 323 para 3.	S/Cpl Frost, E.	14 days C.B. 10 days pay FR & I 149(2)	10-12-41	Major DeGeer	Forfs 10 days pay FR & I 149(1)
Field.	13-12-41	Pte		Sec 15(1) A.A. In that he absented himself without leave from 2000 hrs 13-12-41 to 1615 hrs 2-1-42. Close arrest from 1615 hrs 2-1-42 to 0800 hrs 16-1-42.	Cpl O'Connell S/Sjt Lange, E.H. Cpl Craig.	55 days detention by FGCM	16-1-42	FGCM	Forfs 55 days pay FR&I 149(1)(b) 20 days pay FR&I 149(1)(a) 1 days pay FR&I 149(1)(c)(ii) Tot forf 76 days pay.

No B-85910 Name SMITH, R. Sqn, Battery, or Company — Corps R.C.A.S.C. Date of enlistment 5-9-39 GC Badges — Service or Proficiency Pay — MFM 6 (AFB 122) 40/P&S/136 (3458)

Date of last entry in Company Conduct Sheet: N/A — No and date of last drunk: N/A — Period not reckoning towards freedom from extra fine: N/A — Sheet No 2. — Signature OC Company, etc — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field.	1-5-42	Pte		AWL (Sec 15(1) A.A.) In that he absented himself without leave from 2300 hrs 28-4-42 to 1300 hrs 1-5-42.(Absent 2 days 10 hrs.)	L/Cpl Harkness, J.A.	12 days F.P. & a forf of 12 days pay.	1-5-42	Major Bigelow	forfs 3 days pay FR&I 149 (1)(a) Forfs 12 days pay FR&I 149(1)(b) Tot forf 15 days pay.
Field.		Pte		On 13 Jun 42 tried by Civil Court at Newport County Petty Sessions on charge of theft of £6-10-5d. "Guilty" - Sentenced to 3 months hard labour at Winchester Prison in custody 1000 hrs 9 Jun 42 to 1000 hrs 13 Jun 42.(4 days).					forfs 4 days pay FR&I 149 (1)(c)(ii) forfs 92 days pay FR&I 149(2) Tot forf 96 days pay.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Kalplaquet Barracks	15-8-42	Pte		WOAS AWL from 2200 hrs 15-8-42 to 1230 hrs 17-8-42. (Absent 38 hrs, 30 mins.) A.A. Sec 15(1).	Sjt Doran	14 days F.P. & forf 14 days pay. FR&I 149(1)(b)	20-8-42	Lt-Col W. Fletcher	C.Forfs 2 days pay FR&I 149(1)(a) Tot forf 16 days pay
Field.	5-10-42	Pte		(Sec 15(1) A.A.)AWL from 2300 hrs 5-10-42 to 2359 hrs 5-10-42. (Absent 59 mins.)	Sjt Anderson L/Cpl Harkness	7 days C.B.	6-10-42	Major Bigelow	
Field.	27-11-42	Pte		(Sec 15(1) A.A.) AWL from 2300 hrs 27-11-42 to 1100 hrs 29-11-42. (Absent 1 day, 12 hrs)(Close Arrest from 1100 hrs 29-11-42 till 1600 hrs 4-12-42 - 5 days 5 hrs)	Sjt Allcock L/Cpl Harkness	28 days F.P. & forf 28 days pay. FR&I 149(1)(b)	4-12-42	Major Bigelow	Forfs 2 days pay FR&I 149(1)(a) Forfs 5 days pay FR&I 149(1)(c)(ii) Forfs 28 days pay FR&I 149(1)(b) Tot forf 35 days pay.

MFM 6
(AFB 122)
50/P&S/136 (3438)

No B-85910 Name SMITH, E. | Sqn, Battery, or Company | Corps R.C.A.S.C. | Date of enlistment 5-9-39 | GC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet N/A | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 2. | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field.	3-1-43	Pte		Sec 15(1) A.A. in that he absented himself without leave from 2300 hrs 3-1-43 till 1315 hrs 4-1-43. (Absent 14 hrs, 15 mins).	Sjt Allcock. L/Cpl Oxley	14 days C.B. Forfs 14 days pay. rR&I 149(2)	4-1-43	Major Bigelow	Forfs 1 days pay rR&I 149 (1)(a) 14 days pay rR&I 149 (2) Tot forf 15 days pay.
Field.	4-1-43	Pte		Sec 15(1) A.A. AWL from 1800 hrs 4-1-43 to 0715 hrs 5-1-43 while on C.B. (Absent 12 hrs, 15 mins) (Close Arrest 0715 hrs 5-1-43 to 1600 hrs 7-1-43.)	Cpl O'Connell F.P. L/Cpl Oxley, D.R.	28 days F.P. & forf 28 days pay rR&I 149(1)(b)	7-1-43	Major Bigelow	Forfs 1 days pay rR&I 149 (1)(a). 2 days pay rR&I 149(1)(c)(ii) 28 days pay rR&I 149(1)(b) Tot 31 days pay.

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field.	5-2-43	Pte		Sec 15(1) A.A. AWL from 1330 hrs 5-2-43 to 1600 hrs 5-2-43.(Absent 2 hrs, 30 mins.)	Documentary Evidence.	40 days det. 40 days pay.	11-2-43	F.C.C.M.	Forfs 40 days pay FR&I 149(1)(b) Forfs 8 days pay FR&I 149(1)(c)(ii).Tot forf 48 days pay.
Field.	28-9-43	Pte		AWL (Sec 15(1) A.A.) Absent from 1530 hrs 28-9-43 to 2300 hrs 28-9-43. (Absent 7 hrs 30 mins.)	Sjt Allcock CSM Mace,A.	14 days C.B. 21 days pay		Major Bigelow.	Forfs 1 days pay FR&I 149(1)(a) Forfs 21 days pay FR&I 149(2)
Field.	29-5-44	Pte		AWL (Sec 15(1) A.A.) Absent from 2300 hrs 29-5-44 till 2230 hrs 1-6-44. (Absent 2 days, 23 hrs 30 mins.)	CSM Mace,A. Sjt Reid,E.	21 days F.P.	2-6-44	Major Arnold.	Forfs 3 days pay FR&I 149(1)(a) 21 days pay FR&I 149(2) Tot forf 24 days pay

MFM 6
(AFB 122)
40/FAS/136 (3438)

No 5-85910 Name SMITH, M. Sqn, Battery, or Company — Corps R.C.A.S.C. Date of enlistment 5-9-39 GC Badges — Service or Proficiency Pay — Character

Date of last entry in Company Conduct Sheet N/A — No and date of last drunk N/A — Period not reckoning towards freedom from extra fine N/A — Sheet No 2. — Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field.	23-8-44	rte		WOAS AWL from 2215 hrs 23-8-44 till 0730 hrs 24-8-44.(Absent 9 hrs, 15 mins.)A.A. Sec 15(1).	Cpl Norwood H.L. L/Cpl Alderson,W.C. Sjt Cunningham, G.E.	21 days F.P. with 21 days forf of pay	24-8-44	Maj Norman Allan.	forfs 1 days pay under RR & I 149(1)(a)

CERTIFIED TRUE COPY FROM THE REGIMENTAL BOOKS IN MY CUSTODY

(M.I. WALTON)CAPT.
ADJT, 2 Armd Bde Coy (84 Coy)R.C.A.S.C.

(PTO)

I, B-85910 Pte Smith, M. wish to have Capt Careless, 6 Cdn Inf Bde Coy R.C.A.S.C. represent me at Trial by Court-Martial.

M. Smith

B-85910 Pte Smith, M.

YY-120

PTE SMITH M.G

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: F32525 Pte Michael Gerard SMITH

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
~~1st~~ ~~AA 10(c)~~			
~~1st~~ ~~2nd~~ AA 15(1)	Guilty	Guilty	
~~2nd~~ ~~3rd~~ AA 11	Not Guilty	Not Guilty	
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 752, and in lieu of kit see RP 44 fn 6.)

At present under sentence for ~~life~~ 3 months beginning on (date) 11 Dec 43 (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A), information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 11 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

30 days detention.

(Sgd) _____ 11 Dec 1943 (Sgd) W Humphreys Lt Col
Judge-Advocate, if any. Date awarded. President. (AA 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date _____ (Sgd) _____ Commanding _____

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 758-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the finding and sentence of the court.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1. AA 57A. Delete if not used.)

(Sgd) _____
Date 14 Dec 43 Commanding 11 Cdn Inf Bde
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

F32525 Pte MICHAEL GERARD SMITH 17/12/43 J B Humphreys Lt Col
C B Highrs.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

YY-120 24/1914 14 75

CPA86 (In lieu of AFA83) 40/D & S/1856 /2864

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig. G. Kitching Comd 11 Cdn Inf Bde dated 8 Dec 43

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F32525	Pte	Michael Gerard	SMITH	C B Highrs

PROCEEDINGS REVIEWED
Deputy Judge Advocate, Capt
14 Dec 43
REVIEWING OFFICER, JAG BRANCH, C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) 11 Dec 43

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~not~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 1400 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1)
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ~~me~~ as interpreter? Ans ~~no~~

~~The Interpreter is sworn.~~ Do you object to Lt Smith as shorthand writer? Ans No

The shorthand writer is sworn.(1) or

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 187, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J B Humphreys	Ir RC
Member	Capt	H J Waisman	Perth R
Member	Capt	P J F Baker	Perth R
Judge-Advocate			
Prosecutor	Capt	Pryce O.J.	G.R.H.
Defending Offr	Capt	Logan G.	C.R.H.

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 2.)

A8. The accused ~~stands~~ before arraignment makes (~~no~~) plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~not~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~not~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea of Not Guilty to each charge in Part I of the Schedule.

(1. RP 30, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and the separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B".

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative. (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 86), 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)

(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex A , initialled and read aloud by the President.(1)

(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans No (1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (cease) found Not Guilty on the latter charge(s).(4)

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 60 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans ..... Do you intend to call witnesses on your behalf ?

Ans ..... Are they witnesses as to character only ? Ans .....

(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF B95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(a).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. The alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans No Evs

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C and Ex E , respectively.(3)

(1. AFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans .....

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)

(1. When several accused tried separately see RP 120(B). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 230, 313-366. Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET 1184

The accused, F32525 Pte SMITH, Michael Gerard, "A" Coy, Cape Breton Highlanders, Canadian Army Overseas, is charged with:

First Charge
A.A.Sec 15(1) WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he,

in the Field, when his unit was confined to barracks, absented himself without leave from 0745 hrs 1 Dec 43 and remained absent until he returned to unit lines at 1330 hrs 1 Dec 43.

(Absent 5 hrs 45 mins)

Second Charge
A.A.Sec 11 WHEN ON ACTIVE SERVICE NEGLECTING TO OBEY UNIT ORDERS

in that he,

in the Field, on 1 Dec 43, entered the town of GRAVINA contrary to Daily Order #164 dated 12 Nov 43.

In the Field,
4 Dec 43

J.B.Weir (J.B.Weir) Lt.Col.,
Officer Commanding,
Cape Breton Highlanders.

To be tried by Field General Court-Martial.

G. Kitching
(G. Kitching) Brig
Comd 11 Can Inf Bde

In the Fd
9 Dec 43

1686

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFAB 40/FAB/1697 (2968))

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
F.32525	Pte		Michael Gerard	SMITH	C B Highrs

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 9 Dec 43 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	J S Rumphreys		Ir RC

MEMBERS.

Capt	H J Waiman	Perth Regt
Capt (Rank.)	P J F Baker (Named or detailed. RP 106.)	Perth Regt (Unit.)

WAITING MEMBER.

Lt (Rank.)	L A Smith (Named or detailed, if any. RP 106.)	C B Highrs (Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ITALY (Country.)

Date 9 Dec 43

(Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Commanding 11 Can Inf Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

EXHIBIT "D"

This is to certify that F325'25 PTE SMITH M.G. has been examined by me this ~~date~~ morning and is physically fit to undergo Court-Martial

W. Macpherson Capt

Date 11 ~~Dec~~ Dec 43

EXHIBIT "G"

Pte Smith M.G. C.A.H.

- Court opens
- Charges read to accused & order to the court.
- Accused pleads guilty to 1st and not guilty to the 2nd.
- Prosecution to proceed on 1st charge.
- Pros. Offr. called & sworn proved charge. Witness cross-examined by prisoner. Had no objection
- Court finds accused not guilty on second charge.
- Accused declined to make any statement as to his character & call any witnesses.
- M.O.M. examined by defending officer and the members & president of the court.
- Defending Offr. then makes plea.

F 32525 Pte SMITH, MICHAEL GERARD

EXHIBIT "H" (E3)
10th CRD

PLEA IN MITIGATION OF PUNISHMENT

The young soldier is charged with one minor offence, absent without leave for 5 hours and 45 minutes. Under FR & I the accused does not lose even a days pay as an automatic forfeiture. Surely this offence is not serious. I submit that the man should be dealt with in the most lenient manner possible. His crime certainly doesn't warrant a punishment of any length.

Exhibit "B"

CAPE BRETON HIGHLANDERS

EXHIBIT "13"

Field,
12 Nov
Part I
D.O. # 1

By Lt.Col.J.B.Weir — Officer Commanding

1035 DUTIES

Duty Officer commencing 1700 hrs 13 Nov 43
Lieut C.D.Hood
Next for duty commencing 1700 hrs 14 Nov 43
Lieut H.N.McLeod
Next for duty commencing 1700 hrs 15 Nov 43
Lieut P.J.Stephen

Duty coy commencing 1700 hrs 13 Nov 43
"D" Coy
Next for duty commencing 1700 hrs 14 Nov 43
"A" Coy
Next for duty commencing 1700 hrs 15 Nov 43
"Sp" Coy

1036 TRAINING — Training as laid down

1037 CENSORSHIP — Censorship will be normal. No name,rank or number to be shown on outside of envelope, the address will be placed on the inside of letters.

EXAMPLE: Outside of envelope:

Address to:

Inside top of letter:

F000000 Pte Jones, A.B.
Cape Breton Highlanders
(C.A.) C.M.F.

Notice to Postal Orderlies: Mail will be delivered to Lancs I.

1038 CHURCH SERVICES 14 Nov 43

RC — Parade Mass at 1000 hrs in HQ Coy lines
Confessions will be heard Saturday, 13 Nov 43 after suppe in BHQ lines and also during mass on Sunday.

Prot — Church Parade at 1000 hrs. Place to be notified later. Holy Communion Services will be held immediately after th above service.

1039 POSTINGS — B 95110 Pte Lawless,W.J. "D" Coy, posted to "C" C oy wef 12 Nov 43.

1040 BOUNDS — All Towns,villages and cities are out of bounds to all tr

1041 BLACKOUT — NO lights will be shown after sunset and fires will be ei extinguished or screened.

.....(W.A.Standing)Capt
Adjutant,Cape Breton Highlanders.

"CERTIFIED TRUE COPY OF DO #164"

EXHIBIT "F"

I des ire the convening officer to detail an officer to represent me at my forthcoming trial by court martial.

I desire the services of CAPT. J.A. MACDONALD, P.L.F. if he is available.

.....

List of Exhibits in the case of F32525 Pte Smith,M.G.

EXHIBIT "A" SUMMARY OF EVIDENCE OF ACCUSED
Exhibit "B" Document purporting to be a certified true copy of D.O.#164, dated 12 Nov 43.
EXHIBIT "C" M.F.B. 355
EXHIBIT "D" CERTIFICATE OF MEDICAL FITNESS
EXHIBIT "E" M.F.M. 6
EXHIBIT "F" REQUEST TO CONVENING OFFR FOR DEFENSE OFFR
EXHIBIT "G" RECORD OF PROCEEDINGS
EXHIBIT "H" PLEA IN MITIGATION OF PUNISHMENT

SUMMARY OF EVIDENCE Exhibit "A"

Summary of Evidence in the case of F32525 Pte SMITH, Michael Gerard, "A" Coy Cape Breton Highlanders, Canadian Army Overseas, charged with ~~one offence~~ ~~under Section 10(4) of the Army Act~~, one offence under Section 15(1) of the Army Act and one offence under Section 11 of the Army Act.

The Commanding Officer directs that the evidence be taken on oath.

First Witness: F59651 Sgt Peters, W.B., "A" Coy, C.B. Highlanders, duly sworn, states:

I am F59651 Sgt Peters, W.B., "A" Coy, C.B. Highlanders. On 1 Dec 43 at approx 0745 hrs I called the roll in #7 Platoon. F32525 Pte Smith, Michael Gerard, whom I know well and recognize here as the accused, was absent from parade. At the time of his going absent, "A" Coy was confined to barracks by a Unit Order. The Platoon had been told this and it had also been published in Unit orders. The accused has not been on platoon parade since the time of his absence.

Signed..W.B. Peters.

The accused declines to cross examine the witness.

Second Witness: F54781 CSM MacDonald, S.M., "A" Coy, C.B. Highlanders, duly sworn, states:

I am F54781 CSM MacDonald, S.M., "A" Coy, C.B. Highlanders. On the 1 Dec 43 at approx 0745 hrs, F32525 Pte SMITH, Michael Gerard, whom I know well and recognize here as the accused, was reported absent to me, by his platoon sgt on coy parade. He was not on parade all morning. At approx 1130 hrs the same date, on my way to the guard room, one half hour after Lieut. G.H. Nelson had turned over to me some men from "A" Coy that he had picked up in GRAVINA without a pass, I met Pte SMITH, Michael Gerard, coming up the road towards the barracks. He said, "I am coming back on my own". I placed him under close arrest. The accused had been warned on coy parade that the unit was confined to barracks and that all towns were out of bounds. It had also been published in unit orders, which were posted in coy lines.

Signed..S.M. MacDonald.

The accused declines to cross examine the witness.

The accused was warned as follows:

Do you wish to make any statement or give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so. But whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused: I have nothing to say at this time.

I certify that R.P. 4 has been complied with.

Taken by me in the Field, in the presence and hearing of the accused, this 4th day of December, 1943.

.....(M.F. MacLachlan) Capt.,
Officer taking summary.

ADDITIONAL SUMMARY OF EVIDENCE

Additional Summary of Evidence in the case of F32525 Pte SMITH, Michael Gerard, "A" Coy, Cape Breton Highlanders, Canadian Army Overseas, charged with one offence under Section 15(1) of the Army Act and one offence under Section 11 of the Army Act.

The Commanding Officer directs that the evidence be taken on oath.

Third Witness: Capt. W. A. Standing, Adjutant, C.B. Highlanders, duly sworn, states

I am Capt. W. A. Standing, Adjutant, C.B. Highlanders. I produce a document purporting to be a certified true copy of Daily Order #164, dated 12 Nov 43, showing that all towns were out of bounds.

Signed. W. A. Standing

The accused declines to cross examine the witness.

The document referred to by the above witness is marked Exhibit "A" and attached hereto.

.....
Officer taking summary

The accused was warned as follows:

Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so. But whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The Accused: I have nothing to say at this time.

Signed.....

I certify that R.P. 4 has been complied with.

Taken by me in the Field, in the presence and hearing of the accused, this 8th day of December 1943.

.....(N.F. MacLachlan) Capt
Officer taking summary

EXHIBIT "E"

MFM 6
(AFB 122)
40/P&S/136 (3458)

No F32525 Name Smith M.G. | Sqn, Battery, or Company | Corps Infantry | Date of enlistment 15-10-42 | GC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				AWL 0900 hrs 3 Dec 42 to 1845 hrs 3 Dec 42 A.R. Sec 15	Lieut Dawson	7 days C.B.	4 Dec 42	A.H. Beck Major	Forf 1 day Pay
Yarmouth	3 Dec 42			WOA3 AWL from 2200 hrs 8-6-43 until 0600 hrs 9-6-43 absent 8 hrs	Capt Fiulette	7 days C.B.	15-6-43	W.C. Lawrence Lt Col	
Field	9-6-43			AA Sec 15 absent from P.T. Parade.	Sgt Glawson	admonished	19-6-43	Capt P.B. Kennedy	
Field	19-6-43			A.A. Sec 15 (1) AWL 2 days 18 hrs 34 mins	Capt Henton	10 days Det. stoppd	25 June 43	D.C.M. Robinson	3 days Pay
Field	21-6-43			AA Sec 40 Neglect did not clean brass	Sgt Brown L.H.	3 days Pay	9-7-43	Major 2nd Lt. Reid	
Field	9-7-43			AA Sec 40 Neglect did not wear Identity Disc	Sgt Glawson	8 days Pay	14-7-43	Major 2nd Lt. Reid	
Field	14-7-43			AA Sec 40 Neglect did not clean Rifle	Sgt Glawson				
Field	26-7-43			AA Sec 40 Conduct Prejudicial to discipline at Keswick	C.S.M.S. MacIntyre	14 days C.B.	29 Sept 43	J.B. Wisdom Lt Col	
				AA Sec 15 (1) absent from Parade		10 days Pay			Inf 2 days Pay
Field	2 Oct 43			AA Sec 15 (1) AWL from 2300 hrs 2 Oct 43 until 0200 hrs 4 Oct 43 absent 1 day 3 hrs	Documentary Capt MacDonald CF	21 days F.P. 21 days Pay	18 Oct 43	J.B. Wisdom Lt Col	FAO 149-1-A Inf 3 days Pay FAO 1670

Certified True Copy

W. C. Lawrence Lt Col

EXHIBIT "C"

M.F.B. 355
22M—5-41 (272-3)
H.Q. 1772-89-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
F32525	Pte	SMITH Michael Gerard	C.B.Highlanders

1. The following is a fair and true summary of the entries in the ~~Regimental Defaulter~~ or Company Conduct sheets of the accused, ~~exclusive of convictions by a Court Martial or Civil Court, of summary punishments under Section 47(2) of the Army Act and of those awarded by a Commanding Officer which have been cancelled~~ with.

	Within last 12 months		Since enlistment or appointment	
For AA Sec 15(1)	6	times	6	times
For AA Sec 40	4	times	4	times
For		times		times
For		times		times

~~No entries of any other description~~

or,

There are no entries in the conduct sheets of the accused.

~~No such charge is recorded against the accused.~~

2. The accused has not been previously convicted

or,

~~Previous convictions are recorded by a Court Martial or a Civil Court, of which particulars are given on the attached sheet.~~

3. The accused is not under sentence at the present time.

or,

~~The accused the present ~~charge~~ is under sentence of~~ [illegible]

~~day of~~

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and ~~8 days~~ 10 days in military custody, making a total of ~~8~~ 10 days in custody, of which none days were spent in hospital.

5. The present age of the accused according to his ~~record~~ attestation paper is 19y- 5 months

6. The date of his ~~enlistment~~ attestation specified in his ~~record~~ attestation paper is 15 Oct 42

7. The service which the accused is allowed to reckon towards discharge is B.A.

8. The accused is entitled to reckon no service for the purpose of determining his pension, etc.

9. The accused is ~~not~~ entitled to no ~~good conduct~~ military decoration, or ~~good service~~ military reward (~~except~~ ~~the~~ ~~Africa Star~~).

~~The accused is not entitled to any military decoration.~~

~~The accused has no~~ [illegible]

~~days~~

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of
Permanent Force
unit
.....dated....., and in his regiment (or corps), the rank of
.....dated.....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

.....Date of promotion.

In the rank of .....years.

In the rank of .....years.

In the rank of .....years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force
Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank .....
Unit
Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 10th Dec 43 day of [illegible] Capt & Adjt
C.S. Highton

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

EE-143

RFN SMITH M.D.

EE-143

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

W. Kennedy Major

A.

Order convening the Court.

On Active Service, this Twentieth day of May, 19 43

Whereas it appears to me, the undersigned, an officer in Command of 7 Canadian Infantry Brigade, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[I am unable to appoint :—

*(1.) Three Officers to form the Court.]

*(2.) A Field Officer as President.]

for the following reasons, namely :—]

* Omit if not applicable.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	W. Kennedy	Regina Rif

Members.

Rank.	Name.	Regiment.
Capt.	W.J. Saul	R Wpg Rif
Lieut.	A.C. Lundie	1 C Scot R
Waiting Member Lieut.	J.E. Orr	Regina Rif

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (H.W. FOSTER) Brigadier,
Commanding 7 Canadian Infantry Brigade.
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
L.27707 Rfn SMITH, Mark Osborne Regina Rif	A.A. Sec. 15 (1) See Charge sheet attached	Guilty	Guilty 90 days detention W.Kennedy Major 21 May 43	Finding and Sentence Confirmed. H.F.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(*Signed*) H.F. (H.W. FOSTER) Brigadier, *Commanding* 7 Canadian Infantry Brigade *Convening Officer* (*c*)

(*Signed*) W.Kennedy Major (W. KENNEDY) Major, Regina Rif *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 21 day of May 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

* Omit if not applicable.

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. The officers under instruction)

were duly sworn.

Signed this 21 day of May 1943.

W.Kennedy Major
President of the Court Martial.

C. Certificate in case of death sentence.

* See footnote (b) on page 762 M.M.L. 1929

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*~~(I direct that the soldier named in the margin be not committed to~~ prison or ~~detention barrack until further orders.)~~

Signed this 22 day of May 1943

H.F.
Confirming Officer.
(H.W. FOSTER) Brigadier,
7 Canadian Infantry Brigade

Promulgated and extracts taken in the case of L 27707 Rfn Smith, M.O.

(*a*) (Dated) 27 May 43 (Signed) [illegible], Lt Col

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[84] Wt. 38292-5218 Tim 1/47 W. & Co., Ltd. Gp. 748-2

B L
Kennedy Maj

CHARGE SHEET

The accused L27707 Rfn. Smith, Mark Osborne, 1st Bn. The Regina Rifle Regiment, a soldier of the Canadian Army (Overseas), being on active service, is charged with:-

Absenting himself without leave -

in that he

150(1) AA. in the field, absented himself without leave from 2200 hrs 22 Apr 43 until 2130 hrs 13 May 43 (20 days, 23 hrs, 30 min)



Dated in the field this 19th day of May, 1943.

Officer Commanding,
Regina Rif.

To be tried by Field General Court Martial.

(H. W. FOSTER) Brigadier,
7 Canadian Infantry Brigade

To Army 43.

1st Bn. THE REGINA RIFLE REGIMENT

21 May 43.

This is to certify that L.27707 Rfn. Smith, M.O. is fit to undergo trial by Field General Court Martial.

(W.S. Huckvale), Capt.,
Medical Offr, Regina Rif.

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at Dr. Canfield on the 21st day of May 1943 by order of Brigadier H. W. Foster

Commanding 7 Canadian Infantry Brigade

dated the 20 day of May 1943

President.

Major W. Kennedy 1 Regina Rif

Members.

Capt W. J. Saul R. Winn Rif

Lieut J. E. Orr 1 Regina Rif

Trial of* 2 27707 Rfn Smith, Mark Osborne ~~Judge Advocate~~ Royal ~~Winnipeg Rifles~~, WRR. 1 Regina Rif.

The order convening the Court, the charge-sheet and the summary of evidence are laid before the Court.

The Court satisfy themselves that Lieut G. E. Lundy is not available to serve owing to not receiving time of Court martial

Lieut J. E. Orr, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23. X

The accused is brought before the Court.

Prosecutor,† Capt A. J. F. Roberts Legal Staff.

Counsel or defending officer† Lieut H. R. Rowan 1 Regina Rif

At 1200 o'clock the Trial commences.

The order convening the Court is read, and is marked A, signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

X I have satisfied myself that none of the officers detailed for the duty of this Court have previously served on any Court of Inquiry respecting the matters forming the subject of the charge before this Court or Board.

W Kennedy Major

(Wt. W3/1 [illegible] 25,000 sets) G/46 [illegible] & H. Ltd. G42/711. Forms A 9/22.

B

The President, members and ~~judge-advocate~~ are duly sworn.

The following officers under instruction are duly sworn,

Major A. McCallum
16/22 Saskatchewan Horse
20 Army Tank Bn
Major G. E. Fritschler
Winnipeg Light Infantry

Charge-Sheet.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

Instruction. If the accused has elected to be tried under Army Act, sec. 20 (8) the fact should be here recorded.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the ~~first~~ with charge against you, which you have heard read?

Question to the accused.

Guilty

Answer.

Are you guilty or not guilty of the second charge against you, which you have heard read?

Question.

N/a

Answer.

Are you guilty or not guilty of the third charge against you, which you have heard read?

Question.

N/a

Answer.

Are you guilty or not guilty of the fourth charge against you, which you have heard read?

Question.

N/a

Answer.

The accused having pleaded Guilty to the charge, the provisions of Rule of Procedure 35 (B) are here complied with.

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*~~[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read~~ WTS, ~~to him again.]~~†

The accused L 27707 Pte. Smith Mark Osborne is found guilty of the Charge.

†The summary ~~(or abstract)~~ of evidence is read, marked C. signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

no

Answer. The accused in mitigation of punishment says :—

N/A.

~~[or~~ hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.~~]~~

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

Do you wish to give evidence yourself or to call any witnesses as to character? yes, I wish to call my platoon sgt. — *Question to the accused.*

Answer.

Evidence as to character.

L 27 42 5 sgt. smith H. H. having been duly sworn states as follows:

"Sir I am platoon sgt. of no. 3 platoon, Rfn smith was in my platoon when the accused Rfn smith was with my platoon. I never had any trouble with him. If I put him on a job I didn't have to worry if it was going to be done or not. He keeps himself clean and his equipment always in good shape sir."

prosecutor — no questions.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

~~The Court is closed for the consideration of the finding.~~ n.w. 15.

~~The Court find that the accused~~

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out. Evidence of character, &c.

~~*The Court being re-opened, the accused is again brought before it.~~

~~is duly sworn.~~ n.w. 15

Question by the President. Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes
Prosecutor Capt. E. J. Roberts presented statements

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked E, signed by the President, and annexed to the proceedings.

Question by the President. Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question. Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question. Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

Answer. Yes

Cross-examined by the accused.

n/a.

[Instruction.—If by reason of the nature of the service of the accused or a departmental letter or otherwise, the finding of the Court requires him liable to any re-stoppage, forfeiture, or other action in that is to be exercised by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Question to the accused. Do you wish to address the Court? *Answer.* Yes. I wish my defending officer to speak on my behalf marked H.

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused L 27707 Pte Smith, [illegible] Osborne, 1 Regina Rif.

to 90 days detention.

W. Kennedy
major

21 may 43

address by Defending Officer Lieut H. R. Ramsay.

The accused has what might be termed as a fairly bad record but most of them relatively minor offences, up until last Christmas time. Absence without leave seems to be rather a prevalent disease at this time and it is our contention that a lot of it is due to a lack of guidance and explanation. You have heard his platoon Sergeant who said he was a very good soldier in his platoon. I think this court martial has rather taught him a lesson, in so far as it has gone, and since he is a satisfactory soldier, on his behalf I would ask the mercy of the Court.

SUMMARY OF EVIDENCE

In the case of L.27707 RFN. SMITH, Mark Osborne, 1st BN. THE REGINA RIFLE REGIMENT.

1st Witness
L.27947 Cpl. James, A.H.J., 1st Bn. THE REGINA RIFLE REGIMENT having been duly sworn states as follows:-
"At 2200 hrs 22nd Apr 1943 I took Roll Call and found Rfn. Smith absent. I reported it to the Orderly Room."
The accused declines to cross-examine this witness.

A.H.J. James Cpl.
(L.27947 Cpl. James, A.H.J.)

2nd Witness
L.28177 Rfn. Grunerud, C.F., 1st Bn. THE REGINA RIFLE REGIMENT having been duly sworn states as follows:-
"Sir, I was on duty at the Regimental Guard Room on the 13th day of May when the accused Rfn. Smith reported to me at approximately 2130 hrs on returning from absence without leave. I placed him under close arrest. He was confined to the Regimental Guard Room.
The accused declines to cross-examine this witness

C.F. Grunerud Rfn
(L.28177 Rfn. Grunerud, C.F.)

3rd Witness
L.27425 Sgt. West, H.H., 1st Bn. THE REGINA RIFLE REGIMENT having been duly sworn states as follows:-
"I am platoon sergeant of #3 Platoon. Rfn. Smith was in my platoon. At 0800 hrs on 23 Apr 43 Cpl James reported to me that Rfn. Smith was absent as from 2200 hrs 22 Apr 43. He was continuously absent from that time until 2130 hrs, 13 May 43."
The accused declines to cross-examine this witness.

H.H. West Sgt.
(L.27425 Sgt. West, H.H.)

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence."
The accused declines to make any statement or give evidence. Rules of Procedure 4, paras c. d. e. f. and g. complied with.

Taken by me in the field this 17th day of May 1943 in the presence of the accused.

A.J.F. Roberts Capt.
(A.J.F. Roberts), Capt.

Last sheet destroyed 6 Oct 42 (R.O. 2084)

No. L27707 Name SMITH Mark Osborne | Sqn., Battery, or Company N11 | Corps | Date of enlistment 22 Jun40 | G.C. Badges | Service or Proficiency Pay | Character Very Good

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. One | Signature O.C. Company, etc. Maj. A.S. Gregory Poor

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Debert	28-1-41	Rfn		AA 15 - AWL 6 days	L/Cpl McMillian	10 days CB	29-1-41	LtCol Hewitt	Forf 6 days pay FR&I
Debert	31-7-41	Rfn		AA 40 Act to the prej etc found in possession of property ~~xx~~ of Sgts' Mess	Rfn Stonehouse	7 days CB	31-7-41	Major Scott-Calder	
Debert	31-7-41	Rfn		(1) AWL 1645 hrs 31-7-41 to 0600 hrs 1-8-41 absent 13 hrs 15 mins (2) Failing to appear at place of parade (defaulters parade) (3) Breaking out of barracks	L/C Koester A/C Smith A/C Wilson	Forf 5 days pay AA 4b 2a and 5 days CB	1-8-41	Major MacNutt	Forf 1 days pay
Debert	2-8-41			Failing to appear at place of parade (defaulters parade)	L/Cpl Baxter	168 hrs det.	4-8-41	Lt.-Col Hewitt	Forf 7 days pay FR&I
I.T.F.	10-1-42	Rfn		AWL 2200 hrs 10-1-42 to 2400 hrs 10-1-42 Absent 2 hrs	Sgt Mountford	2 days CB	12-1-42	Lt. Foster	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
I.T.F.	18-1-42	Rfn		Conduct to the prejudice of good order - replacing cap on head after ordered to remove it	Cpl Thorneycroft	3 days stopp. of pay AA 46 2d	19-1-42	Major MacNutt	
I.T.F.	5-3-42	Rfn		AWL from 1245 hrs to 1430 hrs 5-3-42 Absent 1 hr 45 mins	Cpl Dowling Cpl Lewis	5 days CB	6-3-42		
I.T.F.	13-3-42	Rfn		AA 15(1) AWL 2200 hrs 13-3-42 to 0500 hrs 14-3-42 (Absent 7 hrs)	Cpl Dowling Cpl Kinchen	5 days FP and 5 days pay	23-3-42	LtCol Sharp	Forf 1 days pay FR&I 149 (1)(a)
I.T.F.	12-6-42	Rfn		AWL AA 15(1) 2230 hrs 12-6-42 to 0630 hrs 13-6-42 - 8 hrs	Cpl Nicholson	Forf 5 days pay	16-6-42	LtCol Sharp	
I.T.F.	4-10-42	Rfn		AA 15(1) AWL 2200 hrs 4-10-42 until 2345 hrs (1 hr 45 mins)	Documentary	5 days CB	6-10-42	LtCol MacIntosh	
I.T.F.	19 Dec 42	Rfn		AA Sec 15(1) AWL 2200 hrs 19 Dec 42 to 2255 hrs 27 Dec 42 (8 days 55 mins)	Sgt Firby Sgt Bentley	15 days F.P.	29 Dec 42	Lt.Col Sharp	Forf 25 days pay FR&I 149
I.T.F.	21 Mar	Rfn		A.A. Sec 15 (1) AWL - 22 hrs14 Mins	Sgt West Rfn. Grunerud	(5 days F.P.	23 Mar	Major Kennedy	
I.T.F.	22 Apr 43	Rfn		A.A. Sec 15 (1) AWL 23 hrs 30 mins 20 days	Cpl James Rfn Grunerud	3 days forf. of pay Remanded for trial by FGCM		Lt-Col FM Matheson	

Certified true copy

A/A.G.I.

A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

NUMBER	RANK	NAME	REGIMENT (or as the case may be)
1.27707	Rfn.	SMITH, Mark Osborne	1st Bn. THE REC INA RIFLE REGIMENT

Note.-At a trial by field general court martial this summary may be compiled fro the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

N.B. See p ara. 677, K.R., 1940
The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, a nd to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.-If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	WITHIN LAST 12 MONTHS	SINCE ENLISTMENT
FOR Absence Without Leave	5 TIMES	TEN TIMES
FOR Conduct to the Prejudice	TIMES	TWO TIMES
FOR Failing to appear at place of parade	TIMES	Two TIMES
FOR Breaking out of barracks	TIMES	1 TIMES
FOR	TIMES	TIMES

Number of instances of gallantry or distinguished conduct,

2. The accused has previously served in the ~~Regular Army~~ Indian Army

3. The accused is not under sentence at the present time or

4. The accused has been in confinement , awaiting trial on the present charges, for three days, total of three days, of which h no days were spent in hospital.

5. The present age of the accused according to his attestation paper is 37 years

6. The date of his attestation specified in his ~~enlistment~~ attestation paper is 27 Jun 40

7. The service which the accused is allowed to reckon towards discharged or transfer to the reserve is 2 years, 11 mo s

8. The accused is entitled to deferred pay or gratuity in respect of _____ service.

9. The accused is entitled to reckon _____ service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award.

11.

12

SCHEDULE OF CONVICTIONS BY A COURT MARTIAL OR CIVIL COURT, OF MEMBERS UNDER SENTENCE AT OR NOT AWAY AT THE TIME OF CLOSE OF UNION MAIL HAS BEEN DISTURBED WITH OR LOCATED.

NO. ..... NAME ..... of ..... COMPANY.

RIFLE (or as the case may be).

(INSTRUCTION.—A waterish extract from the regimental books, stating these particulars and dispositions with trial, must be inserted.)

Description of court by which tried, or authority under which punishment was awarded	Date and place of trial, or date when received, if the punishment was awarded by superior authority	Offence upon which convicted, or for which punishment was awarded	Punishment inflicted

I HEREBY CERTIFY that the foregoing schedule of convictions and dispositions with trial is a true extract from the regimental books in my custody.

Signed this 12 day of May 1943

Captain
Adjutant

12. The accused has sworn as a non-commissioned officer continuously, without substantial interruption, for a period of [illegible] years, [illegible] months, and [illegible] days, to the present date.

DATE OF ENLISTMENT

IN THE CASE OF [illegible]

IN THE CASE OF [illegible]

IN THE CASE OF [illegible]

years,

years,

years,

y. 100

Pte. SMITH. M W.

Y-100

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 15th day of February, 1943.

Whereas it appears to me, the undersigned, an officer in Command of R.C.A.S.C. 1 Canadian Corps, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to superior qualified officer]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[I am unable to appoint—

*(as officers to form the Court)

*(as Field Officer to be President)

for the following reasons, namely:—]

* Omit if not applicable.

"A"

Lieutenant-Colonel
President

(13)

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	Alex Gagnon	85 Cdn Bridge Coy

Members.

Rank.	Name.	Regiment.
Captain	G. J. JOHANSON	31 Cdn C.T. Coy
Lieutenant	C. K. KEMPSTON	5 Cdn Gen Tpt Coy

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (M.V. McQueen) Colonel
Commanding R.C.A.S.C. 1 Cdn Corps
Convening Officer.

Proceedings Reviewed
Reviewing Officer (JAG) CMHQ
Mar 43

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
L.8854 Private MARTIN WESLEY Smith 41 Can Gen Tpt Coy	1st Charge Sec. 18(4) A.A.	NOT Guilty	not Guilty	I confirm the finding and sentence of
	2nd Charge Sec. 40 A.A.	NOT Guilty	Guilty To undergo 6 months detention	the Court but remit 2 months detention
			Alex Toguri Major President	
			17 Feb, 1943	W.C.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— No.

(Signed) D.M.W. McQueen (Signed) Alex Toguri Major
(K.V. McQueen) Colonel
Commanding R.C.A.S.C. 1 Cdn Corps 85 Cdn Bridge Coy RCASC
Convening Officer (*c*) President

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 17th day of FEBRUARY, 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter)~~ Alex T
*(4. ~~The officers under instruction)~~ Alex T

were duly sworn.

* Omit if not applicable.

Signed this 17th day of FEBRUARY 1943.

Alex Toguri Major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. ~~570~~ of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

Signed this 18th day of February 1943.

D.M.W. McQueen Col
Confirming Officer.

Promulgated and extracts taken in the case of L-8854 Pte. Smith, M.W.

(*a*) (Dated) 19 Feb. 43 (Signed) A.J. Labrie Lieut.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

"B 2"

CHARGE SHEET

The accused, No. L-8854 Private ~~M.W.~~ MARTIN WESLEY SMITH, 41 Canadian General Transport Company, R.C.A.S.C., a soldier of the Canadian Army Overseas, is charged with While on Active Service:-

First Charge Section 18 (4) Army Act — STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW

in that he

in the Field on 31 Jan. 43 stole a bicycle, ~~of which bicycle L-7653 L/Cpl. Bratten, D. R., was the custodian, the property of L-7209 Pte. Hodgson, a person subject to military law.~~

Second Charge Section 40 Army Act (ALTERNATIVE) — CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the Field on 31 Jan. 43 was improperly in possession of a bicycle, said bicycle being in the custody of L-7653 L/Cpl. Bratten, D. R.

W. A. Cummings Capt.

FIELD
11 Feb. 43

(W. A. Cummings) Captain,
A/O.C. 41 Cdn. Gen. Tpt. Coy,
R.C.A.S.C., C.A.O.S.

To be tried by Field General Court Martial.

Field,
15 Feb 43

M.V. McQueen

(M.V. McQueen) Colonel,
DDST,
1 Cdn Corps

Alex Fogwell Major
President

"C 6"

MEDICAL CERTIFICATE (K.R.(Can) 537)

I certify that I have this morning examined No L 8854

Pte. Arnold M.W. of 41 Fmn Fd. Co. RCE and in my opinion,

he is fit to undergo trial by Court-Martial.

Station Field

Date Feb. 17/43

M. Kaman Capt RCAMC
Medical Officer

Alex. Gagnon Major
President

A Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at 41 Can Tpt Coy
on the 17th day of February 19 43 by order of
Colonel M.V. McEwen
Commanding DDST 1 Cdn CORPS.
dated the 16 day of February 19 43

President.

Major Alex Lagnon 85 Cdn Bridge Coy

Members.

Captain G.J. Johansen 31 C.T. Coy.
Lieutenant C.R. Kempston 45 C.G.T. Coy.

, Judge Advocate.

Trial of*

L 8854 Pte Smith M.V.
41 Cdn Can Tpt Coy RCASC.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that _____ is not available to serve owing to _____~~ N/A

~~_____, waiting member takes his place as a member of the Court~~ N/A

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Captain C.W. Manley 41 Can Tpt Coy

~~Counsel~~‡; or defending officer† Lieut. R.C. Savage 41 Can Tpt Coy

At 0950 o'clock the Trial commences.

The order convening the Court is read, and is marked "A" signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* NO

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q6274. Wt. W1628/78. 35,000 pds. 6/43. E. & H., Ltd. G667/11. Forms A 9/2a.

B

The President, members ~~and judge-advocate~~ are duly sworn.

~~The following officers under instruction are duly sworn.~~ Allegh.

Charge-Sheet.

Instruction. *If the accused has elected to be tried under Army Act, sec. 40 (8) the fact should be here recorded.*

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

NOT GUILTY. *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read? *Question.*

NOT GUILTY *Answer.*

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~ Allegh *Question.* Allegh.

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~ Allegh *Question.* Allegh

Answer.

~~The accused having pleaded Guilty to charge, the provisions of Rule of Procedure 35 (B) are here complied with.~~ Allegh Allegh.

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

Alfred Cosgrave Major
President

C

*Instruction. (See R. P. 39 (A))

Proceedings on Plea of Not Guilty.

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. NO

Adv requires a major President

The prosecutor ~~makes an opening address~~ [hands in a written address which is read, marked C 7, signed by the President, and attached to the proceedings.]

The prosecutor proceeds to call witnesses.

First witness for prosecution. L 76553 L/Cpl Bratten DR
41 Cdn Sen Spt Coy RCASC

being duly sworn, is examined by the prosecutor.

The witness recognized the accused ~~Sgt~~ CSM as being Pte MW Smith 30 Jan 43

Q Were you in possession of a bicycle on ~~Sat. 4~~ 30 Jan 43
A ~~Yes Sir~~ CSM yes sir.
Q How did you come into possession of this bicycle
A It was left in my charge by Pte Hodgson
Q Did Pte Hodgson leave the bicycle completely in your charge
A Yes sir.
Q When did you last see this bicycle
A About 2230 hours 30 Jan 43.
Q When did you first notice the bicycle missing
A Monday morning 1 Feb 43.
Q What did you do when you noticed the bicycle missing
A I enquired of the men around if they had seen it and no one had seen it. I also asked the accused and he said he had not seen it. I then reported to my platoon ~~Sgt~~ Lieut Brigsby, who questioned Pte Smith about the bicycle in front of me. Smith said he had not seen the bicycle. Sgt Bryan was also present at this interview. Sgt Bryan said that Smith was not telling the truth and that he, Bryan, had seen the accused riding out of camp on the bicycle. Smith replied to this by saying it was the property of his lady friend. (2)
Q What happened after this
A Lieut Brigsby gave me a pass to go to Aldershot and three Bridges to investigate at bicycle shops in these towns

Cross Examination major
President

C2

Q Wat what results
A here sir The following day I had another pass to proceed to Sutton to see Pte Smith's lady friend I saw her and asked her if she was in possession of her bicycle on 31 Jan 43 She told me she was in possession of it on that date. She gave me a written statement witnessed by her father to that effect I then returned and on Wednesday Smith was paraded before Lieut Sergeby
Q What did Mr Sergeby ask the accused
A He asked him if he knew anything about the bicycle and the accused answered that he did not know anything about it I then produced the statement I had from his lady friend on being questioned by Lieut Sergeby about this, the accused replied that the bicycle belonged to Pte Campbell and not his lady friend Pte Campbell was then summoned
Q what happened then
A Before Campbell was actually called Pte Smith admitted that he had taken the bicycle that was missing from army Unit
Q Will you state in your own words what happened then
A Mr Sergeby then asked him if he would sign a statement saying he had taken the missing bicycle and the accused said he owned when asked when he left the bicycle, the accused said he left it at the bus stop in Reigate L/Cpl Geddes, Cpl Church and myself were then detailed to go to Reigate, accompanied by the accused, We went to the spot where it was left and it was not there We found it at the police station
I the witness identified a bicycle that was missing Exhibit A as the property of Pte Hodgson left in his custody and taken by the accused.
Cross Examination by the defending officer.
Q. L/Cpl Bratten is the bicycle Exhibit A the one you found in Reigate
A. Yes sir.
Q. Is it true that the police had to make some adjustments on the bicycle Exhibit A before it was in a rideable condition.
A. No mention was made to me by them of making any adjustments.
Q. Did you, yourself or attach anyone to make any adjustments to the rear of the chain, from the time that you left the police station with the bicycle until the bicycle was presented in this court
A. I did not touch it myself but I asked Pte Page to adjust and tighten the chain.
Q. Was the chain looser at the time you picked the bicycle up at Reigate than when you last saw it on 30 Jan 43
A. About the same. It dropped a little

The prosecution declines to re-examine the witness

C 3

Adjs. Fagnan Major
President

1st witness: Cont'd

Question by the Court - What led Lieut Grigsby to call Pte Smith before him and question him

A. While investigating, a few things were said which led L/Sgt Lucas to question the truth of Pte Smith the accused saying he had not seen the bicycle.

K. R. & O. 13 (6) Complied with

2nd Witness. Lieut Grigsby. M.C. 41 Cdn Lgn Sgt Coy.
being duly sworn states as examined by the prosecutor.

Q. do you know the accused.
A. yes
Q. what is his name
A Pte Smith.
Q. will you tell the court in your own words your knowledge of this
A. on the morning 1 Feb. 43 L/Cpl Bratton came to me in my orderly room and reported a bicycle which was left in his custody during the night at the station. He told me that he had made an investigation which led him to believe the accused was the one concerned. I questioned the accused and he told me he had not seen the bicycle. L/Sgt Lucas who was present during the questioning told me he had seen the accused riding the bicycle out of the camps. The accused then stated it was his lady friends bicycle. In the afternoon I sent L/Cpl Bratton to Crawley and Three Bridges, to enquire at the local bicycle shops whether any had purchased a bicycle from a Cdn soldier. He returned without any success. On the morning 2 Feb 43 I sent L/Cpl Bratton to Littlehampton to locate the accused's lady friend. He returned the same day and reported to me that the accused's lady friend had been in possession of her bicycle on the 31 Jan 43 and he produced a written statement signed by her to that effect. On 3 Feb 43 I again questioned the accused and showed him the statement written by his lady friend. He then told me it was Pte Campbells bicycle that he was riding out of the camps. I then ordered some one to go and bring Pte Campbell before me. The accused then said he would tell the truth. He told me he had taken the bicycle to Bognor and had left it outside a shop near the railway station. On Monday 8 Feb 43 I sent the accused accompanied by L/Cpl Bratton, L/Cpl Hobbes, and Cpl Church to Bognor to attempt to locate the bicycle on their return L/Cpl Bratton informed me that he had recovered the bicycle at the Bognor Police Station. I then laid a charge against Pte Smith.

C.4

Also Engineer Major. President

2nd Witness Cont'd

Cross examined by the Defending Officer

Q. Was the accused under the arrest on 17 Feb 43
A. He was under open arrest on that date.
Q. Was there another charge against him
A. Yes.
Q. Has he been awarded any punishment on the said charge
A. yes. three days field punishment.

Re examined by the Prosecuting Officer

Q. on what date was the accused sentenced to field punishment
A. I cannot say.
Q. Was it on the 1 Feb 43.
A No.

R.P. 83 B complied with.

The Court adjourns at 1200 hrs for lunch

The Court reopens at 1300 hrs

3rd Witness L 8043 L/Cpl Tedder J.

being duly sworn is examined by the prosecutor.

Q Do you know the accused
A. Yes sir
Q. Would you identify him
A. Pte Smith sir.
Q Were you detailed by Lieut. Rugaby to proceed to Negate and recover a missing bicycle
A yes sir. I was sent along with L/Cpl Bratten, Cpl Church and Pte Smith on the 8 Feb 43
Q. What happened
A. We proceeded to the place where the bicycle had been left by Pte Smith. We found nothing and then proceeded to the police station where L/Cpl Bratten recovered the bicycle

The Defending officer declines to cross examine the witness

Question by the Court.

Q. Was the bicycle in good order when you recovered it from the police.
A. It was in running order sir
Q Did anyone ride it as soon as you got it from the police.
A. L/Cpl Bratten rode it for a short distance
Q. What distance
A He rode it at intervals and walked alongside it at times as we were proceeding to the railway station
Q. Did L/Cpl Bratten complain about the state of the bicycle
A No sir.

R.P. 83 B complied with it

4th Witness

B84292 L/Sgt Zicari T.P. 41 Can Gen Lgt Coy

being duly sworn is examined by the prosecutor.

Q. Do you know the accused.
A. Yes sir.
Q. Would you identify him
A. Pte Smith. M sir.
Q. Were you present when Lieut Hegarty made enquiries about the missing bicycle.
A. yes sir.
Q Did the accused deny he had stolen the bicycle.
A Yes sir.
Q What did you say at this point
A I said that I had seen Pte Smith riding a bicycle around 1600 hrs 31 Jan 43 and he denied that I had seen him riding a bicycle. Two days later
Q. Cxx. I again in the presence of Lieut Hegarty, Pte Smith ~~Cxx admitted having taken the bicycle~~ denied again and then admitted having taken the bicycle.

Cross examined by the Defending Officer

Q Did you recognize the bike which you saw Pte Smith the accused riding on 31 Jan 43.
A Yes sir.
Q How did you connect the disappearance of the bicycle with the accused.
A Because I had seen Pte Smith driving a bicycle and when L/Cpl Bratten was enquiring about his bicycle I remembered seeing Pte Smith riding a bicycle.

The Prosecutor declines to reexamine the witness.

RP 83 B complied with.

Adjs. ~~Captain~~ major

President

"C 7"

I intend to proove to this Court that the accused willfully ~~and ~~ stole the bicycle marked Alphabet "A" and that, to cover his theft, abandoned the said bicycle in a public place away from this Camp and returned by other means. I further intend to prove that the accused lied to his Platoon Officer and others and only admitted the truth when no other means of escaping detection presented themselves to him.

~~address~~ handed in writing by the Prosecutor

Lieut. Eugene Eugor
President

The prosecution is closed.

Defence. R.P. 40(1) complied with. Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. yes sir

Question. Do you intend to call any other witness in your defence?

Answer. no sir

Question. Is he a witness as to character only? *Answer.* no.

IN OPEN COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*). (See p. D5)

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says†

[hands in a written address which is read, marked signed by the President and attached to the proceedings.]

Alex. Paquet Major
President

Instruction. † In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court above.)

D 3

Evidence of the accused given under oath.

Question by defending officer

Q. Will you tell the court in your own words exactly what took place on 31 Jan 43.

A. On 31 Jan 43 as I was in camp, nothing to do, I went to find L/Cpl Bratten to see if I could borrow his bicycle. He was not around camp, so I thought there would be no harm in taking his bicycle to go to Crawley. On my way to Crawley I met one of my friends on his bicycle and he asked me to go to Reigate with him and I thought I would go. After we got to Reigate the bicycle was not in good riding condition. I thought I [redacted] and go back Monday afternoon and get it. I had to borrow two shillings from my friend to get back home and when we returned here I found I was under arrest and I could not go back Monday afternoon to get the bicycle because of being under arrest and on Tuesday I was unable to go as I had been sentenced to seven days field punishment No 1 on 1 Feb 43.

Q. How did you return to camp from Reigate

A. I came by train sir.

Cross examined by prosecutor

Q. Did you tell anyone else on 31 Jan 43 that you were looking for ~~the~~ L/Cpl Bratten

A. no sir.

Q. When you left the bicycle in Reigate could it run

A. yes sir, it could run, but the chain was loose and the tire was rubbing against the frame on the back wheel.

Q. If you intended returning the bicycle on Monday why did you deny any knowledge of it on Monday morning when questioned by Lieut Grigsby

A. I did not want L/Cpl Bratten to know about it, until I had an opportunity of returning it.

Q. This friend you refer to is he a member of this unit

A. yes sir.

Q. You were under arrest on Monday. Did it have anything to do with the bicycle

A. no sir.

~~Examined by~~ The Defending officer declines to examine

Examination by the Court

Q. Who was your friend you mentioned

A. Campbell of J.

Accused

Defendant

Question by the court cont'd.

Q. Why did you simply leave the bicycle on the road.
A. I did not know where the police station was and I intended to go and get it the next day.
Q. Never the less you thought for a minute that someone who was passing would take the bicycle.
A. It never occured to me sir.
Q. The 1/Sgt 4/3 when you discovered you were under open arrest why didn't you and someone, a friend, or even L/Cpl Bratten to do something about it.
A. I thought I would be tried on monday and able to get out on monday afternoon to get it.
Q. Then why did you deny it two days after 31 Jan 43.
A. My idea was that I could go down and get after I came out of field punishment.
Q. It never occurred to you that after a week the bicycle would be gone.
A. I knew that the bicycle would probably be gone, the first night after I came back.
Q. Since you were assured ~~of~~ the fact. why did you proceed ~~out~~ to the place where you had left it instead of proceeding immediately to the police station.
A. Because I was asked to take the party to the place I had left it.
Q. While riding with Pte Campbell on that Sunday afternoon did you mention the fact that you were riding L/Cpl Bratten's bicycle.
A. No sir.
Q. Is it only in Rergate that you noticed the bicycle was not running satisfactorily.
A. No sir I noticed it about four miles this side of Rergate.
Q. Was the point you left the bicycle far from the station.
A. No sir
Q. How far
A. about 200 yards.
R.P 83 B complied with.

Ass. Paymaster Major
President

"D 5"

From the weight of evidence it must be the considered opinion of this Court that the accused is guilty on the first charge, that is, under section 18(4) of the Army Act.

The seriousness of stealing from a comrade, a fellow soldier, cannot be overestimated. There is little protection of personal property which makes the offence one of particular nastiness.

I consider that this man should receive the maximum sentence as a lesson to himself and to all would-be thieves. He has lied until it did not benefit him to lie any longer. A thief is a menace of the worst sort; may he and all would-be thieves now learn the consequences of this despicable act.

The accused has made unsubstantiated statements totally at variance with the facts and contrary to the evidence of the other witnesses. This officer, the theft of the bicycle, has cost the Government the value of the time of an Officer and other ranks in fruitless investigation. I repeat, the accused discontinued lying only when lying became profitless and discovery was imminent.

That is all I have to say sir.

Address handed in writing by the Prosecutor :-

Alex Paquin Major
President

"D 6"

Summary of Defence. Closing address.

The accused having tried to locate L/Cpl Bratten decided to take the bicycle thinking that it was alright. There was no intention to steal it

Definition of stealing.

He did plan on bringing it back.

He lied because he worked on the theory of "what you dont know wont hurt you"

There has been no evidence to prove theft of the bicycle. If he had intended to steal the bicycle surely he would mean to gain by the theft. Leaving a bicycle on a street in a fairly large town is hardly going to let him derive some benefit

The accused due to lack of thought was no doubt somewhat negligent in leaving the bicycle unguarded. He planned on probably going back the following day and take sufficient tools along to fix the bicycle.

On Mon 7 Feb 43 the accused was placed under open arrest, on 27 Feb 43, he was sentenced to 7 days field punishment and therefore could not return.

Address handed in writing by the defending officer

Alex Ferguson major
President

E

Finding.*

"To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused ~~is not Guilty of Stealing property belonging to a person subject to Military law but,~~ Guilty of ~~being improperly in possession of a bicycle~~.

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

Capt. G. W. Manley 41 D. T. Coy. R.C.A.S.C. is duly sworn.

Question by the President. Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* yes sir

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked E 1 & E 2 signed by the President, and annexed to the proceedings.

Question by the President. Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* yes sir.

Question. Have you compared the contents of the above statement with the regimental books? *Answer.* yes sir

Question. Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* yes sir.

Cross-examined by the accused.

no.

Instruction.—If in virtue of the nature of the service of the accused or of a departmental order or otherwise, the finding of the Court renders him liable to any exceptional punishment or punishments in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.

Question to the accused. Do you wish to address the Court? *Answer.* no sir.

Lieut-Colonel Major
Acting Deputy Judge Advocate General
President.

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused to undergo 6 months Sentence.
detention.

Alex. Ferguson Major
President.

SUMMARY OF EVIDENCE
in the case
of
L-8854 Private M. W. SMITH, 41 Cdn. Gen. Tpt. Coy, R. C. A. S. C.

The Commanding Officer directs that the evidence be taken on oath.

First Witness for Prosecution

L-7653 L/Cpl. D. R. BRATTEN, 41 Cdn. Gen. Tpt. Coy, R.C.A.S.C., having been duly sworn, states:-

I am L-7653, L/Cpl. D. R. Bratten. When Pte. Hodgson went to hospital he left his bicycle in my charge. I have always left it outside "B" Platoon Orderly Room. At approximately 0800 hrs 1 Feb. 43, I noticed that the bicycle was missing. I asked a few of the men if they had borrowed the bicycle. Someone, I forget who, told me they had seen L-8854 Pte. M. W. Smith, whom I now recognize, ride it out of Camp on Sunday 31 Jan. 43. I asked Pte. Smith if he had taken the bicycle and he told me he had never seen it. I then reproted it's loss to Lieut. Grigsby, my Platoon Commander. Lieut. Grigsby Called Pte. Smith into the Orderly Room on Monday morning, 1 Feb. 43 and questioned him in my presence. Pte. Smith first denied that he had seen the bicycle. L/Sgt. Zicari was also present and when he said that he had seen Pte. Smith ride a bicycle out of camp on the day in question, Pte. Smith then claimed he was riding a bicycle belonging to his girl-friend. On Monday afternoon 1 Feb. 43, I went in to Crawley and inquired at several bicycle shops whether any bicycles had been brought in for sale by a Canadian soldier. I obtained negative replies. On Tuesday 2 Feb. 43 I obtained a pass to go in to Sutton where I looked up Pte. Smith's girl-friend. I asked her if she was in possession of her own bicycle on Sunday 31 Jan. 43 and she replied that she had been. She gave me a statement to this effect. (See Appendix "AA" to this Summary). I then retruned to camp and reported to Lieut. Grigsby. In my presence on Wednesday 3 Feb. 43 Lieut. Grigsby again questioned Pte. Smith and informed him that he had a statement from his girl-friend and read it to him. Pte. Smith then said that the bicycle he was riding belonged to a Pte. Campbell. When Lieut. Grigsby ordered someone to go & find this Pte. Campbell, Pte. Smith said he would tell the truth. Pte. Smith said he had taken the bicycle from outside the Platoon Orderly Room and had ridden it to Reigate. He said he had left it outside a shop near the Reigate Railway Station. On Monday 8 Feb. 43, I went to Reigate accompanied by Pte. Smith, L/Cpl. Geddes and Cpl. Church. We proceeded to the spot where Pte. Smith claimed to have left the bicycle and could not find it. We then proceeded to the Reigate Police Station and asked them if they had found the bicycle on Sunday. They had found one and, after I identified it, handed it over to me and I brought it back to camp.

The accused declines to cross-examine this witness.

Bratten

Second Witness for Prosecution

L-8043 L/Cpl. J. GEDDES, having been duly sworn, states:-

I am L-8043 L/Cpl. J. Geddes. At approximately 1345 hrs 8 Feb. 43 I was detailed by Lieut. Grigsby to accompany L/Cpl. Bratten and Pte. Smith, whom I now recognize, to Reigate to locate a bicycle left there by Pte. Smith.

(Continued on Page 2)

Second Witness for Prosecution (continued)

Pte. Smith took us to the place where he claimed to have left the bicycle but there was no bicycle there. We then went to the Reigate Police Station to inquire if a bicycle had been picked up by the Police. They had and, after having it identified by L/Cpl. Bratten they gave it to him and we returned to camp.

The accused declines to cross-examine this witness.

J. A. Geddes L/Cpl.

Third Witness for Prosecution

Lieutenant M. G. Grigsby, 41 Cdn. Gen. Tpt. Coy, R.C.A.S.C., having been duly sworn, states:-

On the morning of 1 Feb. 43, L/Cpl. Bratten came to me and reported that a bicycle of which he was custodian had been stolen. He told me that he had been informed that Pte. M. W. SMITH, whom I now recognize, was seen riding a bicycle out of camp. I sent for Pte. Smith and questioned him concerning this matter. Pte. Smith told me he had never seen the bicycle and L/Sgt. Zicari, who was present during the interview, stated that he had seen Pte. Smith riding a bicycle out of camp on the day in question. Pte. Smith then said that the bicycle he was seen riding belonged to his girl-friend. On the afternoon of 1 Feb. 43 I sent L/Cpl. Bratten to Crawley to check at all the local bicycle shops as to whether a bicycle had been sold to them by a Canadian soldier. He returned the same afternoon and reported to me that the bicycle could not be located. On Tuesday 2 Feb. 43 I sent L/Cpl. Bratten to Sutton to contact Pte. Smith's girl-friend. On his return he showed me a written statement signed by Pte. Smith's girl-friend and witnessed by her father which stated that on the day in question she was in possession of her bicycle. (See Appendix "A" to this Summary). On the morning of 3 Feb. 43 I called in Pte. Smith and showed him this statement. After reading it, Pte. Smith told me that the bicycle he was seen riding belonged to a Pte. Campbell. When I ordered a soldier to go and find Pte. Campbell, Pte. Smith then said he would tell the truth. He then told me he had taken the bicycle to Reigate and had left it outside a shop near the Railway Station. On Monday 8 Feb. 43 I sent Pte. Smith accompanied by L/Cpl. Bratten, L/Cpl. Geddes and Cpl. Church to Reigate to try and locate the bicycle. On their return, L/Cpl. Bratten told me that when they reached the spot where Pte. Smith claimed to have left the bicycle, it could not be found. L/Cpl. Bratten then reported to me that the bicycle had been located at the Police Station in Reigate.

The accused declines to cross-examine this witness.

M. G. Grigsby Lieut.

Fourth Witness for Prosecution

B-84292 L/Sgt. Zicari, T.P., 41 Cdn. Gen. Tpt. Coy, R.C.A.S.C., having been duly sworn, states:-

On 31 Jan. 43 I saw Pte. M. W. Smith, whom I now recognize, riding a bicycle outside the Company Orderly Room. He stopped because his front wheel was stuck in the mud. I did not speak to him.

The accused declines to cross-examine this witness.

[illegible]

The accused was cautioned as follows:-

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

After the above caution, the accused declines to make any statement and elects to reserve his defence.

The accused does not call any witnesses for the defence.

..Smith. W.A.....

I certify that the foregoing Summary of Evidence consisting of three pages was taken down by me in the presence of the accused and that Rules of Procedure 4 (C), (D), (E) and (F) have been complied with.

(G. W. Manley) Captain,
41 Cdn. Gen. Tpt. Coy, R.C.A.S.C.

FIELD
11 Feb. 43.

'E 2" L8854 SMITH, M.W.
No. Name

Sqn., Battery or Company | Corps 41 CGTC. RCASC | Date of enlistment 4-10-41 | G.C. Badges | Service or Proficiency Pay | M F M 6 (A.F.B. 122)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Original sheet destroyed on completeionof six months service in accordance with C.A.O.R.O. 319 Regt'l Entries carried forward below.									
Farnborough	12-6-42	Pte.		AWL 15 (1) AA 30 min.	Cpl.Hodgins Cpl. Young	3 days CB	18-6-42	F.W.G.Wiles Lt-Col	Forf.2 days pay FR&I 149(1)
Field	25-8-42	Pte.		Sec.11 AA Failing to obey a Regt'l Order by drawing two entries of CQMS Leslie cigarettes		Admonished	26-8-42	Lt.Manley	for O.C.
Field	14-8-42	Pte.		Sec. 40 AA Smoking while driving a W.D. Vehicle	Capt.Shaw	Forfs 3 days pay FR&I 149 (2)	15-8-42	Lieut.G.W. Manley	for O.C.

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	28-11-42	Pte.		AWL Sec. 15 (1) 5 hrs. 5 min.	L/Cpl. Packabusch	27 days F.P.	2-12-42	Major Lucas	
Field	7-1-43	Pte.		Sec.40 AA Failed to carry out duties as platoon fireman	L/Sgt.Zicari	14 days CB	8-1-43	Capt.Shaw	
Field	31-1-43	Pte.		Sec. 40 AA Left Unit Billet Area	L/Cpl. Madden	7 days FP	3 Feb.43.	Capt.Shaw	Forf.7 days pay FR&I 149 (1) (b)

" I hereby certify that I am the custodian of the Regimental Books and that this is a true exhibit from the Regimental Books"

W.T. Dowsle ..... Lieut. & Adjt.
41 Cdn.Gen.Tpt.Coy, R.C.A.S.C. C.A.O.S.

"E"

Alex. Roquois Duguay
President

M.F.B. 255
(A.F.B. 5-41 (372-3)
H.Q. 1772-39-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
L-8854	Private	M. W. SMITH,	(41 Cdn. Gen. Tpt. Coy, (R.C.A.S.C., C.A.O.S.

1. The following is a fair and true summary of the entries in the Service and General / Regimental and Squadron, Battery Conduct sheets / or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, Air Force Act / of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For A. W. L.	one times	two times
For Sec. 11 A.A.	one times	one times
For Sec. 40 A.A.	three times	three times
For	times	times

Number of instances of gallantry or distinguished conduct Nil

~~or~~

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

~~2. The accused has not been previously convicted~~

~~or~~

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act / A.F.A. 73 Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

~~or~~

~~The accused at the present time is under sentence for beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and Two days in military / Air Force custody, making a total of Two days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is nineteen years old.

6. The date of his ~~enrolment~~ attestation specified in his ~~record of service~~ attestation paper is 4 Oct. 41.

7. The service which the accused is allowed to reckon towards discharge is from 4 Oct. 41

8. The accused is entitled to reckon 496 days service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward ~~he is in possession of or entitled to~~. ~~State any air force decoration or reward~~ ~~military~~.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit, dated ....., and in his regiment (or corps), the rank of ....., dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, Air Force Act, and of cases in which trial has been dispensed with of accused. Number L-8854 Rank Pte. Unit Name M. W. SMITH, of 41 Cdn Gen Tpt Coy, RCASC, Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

Adjutant-Major
President

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this eleventh day of February, 1943.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

W. F. Daniels

(W. F. Daniels) Lieut.,
41 Cdn. Gen. Tpt. Coy,
R.C.A.S.C., C.A.O.S.

SG-85

#6 Smith N.M.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: G-13063 Pte Maurice Marineau SMITH — CIC — 3 CITR

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	GUILTY	GUILTY	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence~~ for ~~.....~~ beginning on (date) .....(1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 11 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of ninety (90) days.

(Sgd) ..... Judge-Advocate, if any. 20 JUL/45 Date awarded. (Sgd) [signature] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1) Jew

(1. AA 57A. Delete if not used.)

Date 23 Jul 45 (Sgd) [signature] Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
G 13063 Pte SMITH M M (CIC) 10 Cdn Repat Dep	Promulgated 25 Jul 45 Extracts taken from Pt II DO 176B d/22 Jul 45	A.C.E. Lyon Major A/CO "A" WING 10 Cdn Repat Dep

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160

50-55

RECEIVED 8 AUG 1945 JAG's Br. CMHQ

CFAMS (In lieu of AFAS) 40/F & B/1698 (6/44) 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Brigadier K G Blackader Comd 13 CITB dated 17 Jul 45
DSO, MC, ED

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G-13063	Pte	Maurice Marineau	SMITH	CIC 3 CITR

PROCEEDINGS REVIEWED

REVIEWING OFFICER, JA BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date) 20 Jul 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED ~~PRESIDENT OR JA~~. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order. CF A95. for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1200 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ..... as interpreter?~~ Ans ~~.....~~

~~The interpreter is sworn.~~(1) Do you object to PTE J.J. PETTINGILL as shorthand writer? Ans NO

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO SIR(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT-COL	D.L. REDMAN	QO CAV 5 CITR
Member	CAPT	W.A. SCHOFIELD	5 CITR
Member	LT	C.E. CARTMEL	2 CITR
~~Judge-Advocate~~			
Prosecutor	LT	V.D. HAMILTON	3 CITR
Defending Offr	LT	R.L. CHANTLER	3 CITR

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO.(2)

(1. RP 28, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See 2(i) p 3.)

A8. The accused ..... before arraignment make(s) (no) (~~or~~ plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), (GE), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of J A see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of J A or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or J A, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. NO SIR (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. A-7, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. ..... Do you intend to call witnesses on your behalf? Ans. ..... Are they witnesses as to character only? Ans. .....
(*1. RP 115. 2. RP 40(A), see 60(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record any Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is cleared to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(a). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (a), RP 43, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. NO - SIR
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by A A 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. B and Ex. C respectively.(3)
(*1. MFR 355 or MFR 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. (NOT AT THIS TIME)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on such anything there or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the J A, if any.~~(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 562-566, Overseas RO 308, 1323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(2), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 52. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, G 13063 Private Maurice Marineau SMITH, Canadian Infantry Corps, on the strength of No 3 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE — WHILE ON ACTIVE SERVICE, Absenting himself without leave,

in that he,

Section 15(1) Army Act — In the Field, absented himself without leave from 0930 hours 8 June 1945 until apprehended by the Canadian Provost Corps in Aldershot at 2215 hours 7 July 1945. Total absence 29 days, 12 hours, 45 minutes.

(W.D. Whitaker) Colonel
Commander
3 Cdn Inf Trg Regiment.

IN THE FIELD

12 July 1945

To be tried by Field General Court Martial.

(K G Blackader) Brig
Comd
13 Cdn Inf Trg Bde

IN THE FIELD
17 Jul 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 109. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G-13063	Pte		Maurice Marineau	SMITH	CIC 3 CITR

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has committed the offence set forth in the Charge Sheet attached and on (date) 17 Jul 45 endorsed by me, "[illegible]." To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence should be tried by an ordinary General Court-Martial; [illegible]
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person, and to consist of the Offrs appointed or detailed hereunder.

4. [illegible]
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [illegible]
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

LT COL (Rank.)	D L REDMAN, VD (Must be named. RP 106.)		HQ, CHU (Unit.)

MEMBERS.

Captain	to be detailed by Comd	5 CITR
Lieutenant (Rank.)	to be detailed by Comd (Named or detailed. RP 106.)	2 CITR (Unit.)

WAITING MEMBER.

Captain (Rank.)	to be detailed by Comd (Named or detailed, if any. RP 106.)	3 CITR (Unit.)

[illegible]

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Dtd 17 Jul 45

K G Blackader
(Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

(K G Blackader)
Commanding 13 Cdn Inf Trg Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 60 (In lieu of AFA 3) 60/P & E/1691 (61-62) (See overleaf for notes and notes for use on trial.)

Medical Officer's Certificate. 4C/25
K.R. (Can.), para 557.

I certify that I have this morning examined No. C13063
Pte. Smith M.M. of #3 C.I.T.R.
and in my opinion, he is fit to undergo trial by Court Martial.
Station 3 N. Thes Field
Date 20 July 1945 (Sgd.) [signature] (Medical Officer)

(Canadian Reinforcement Units Routine Order No. 3, para 27, d/6 Jan 42)

PLEA OF MITIGATION FOR G-13063 Pte. Smith, M.M.

Sirs:

In plea of mitigation for Pte. Smith I would like to draw to the attention of the Court that he has been in the army since the 5th of September 1939. Due to an E-4 category he was unableto get overseas until January 1945. Also due to the same category he was not allowed to go to the C.A.P.F. with his friends for which he volunteered.

For the last year and a half this man has felt that he has been kicked from pillar to post because his category prevented him from fulfilling his duty in the field, which was his basic reason for joining the army, and at the same time it was not sufficiently low for him to be returned to civil life. Consequently it seemed to him that the army didn't quite know what to do with him.

In view of these facts and the fact that Pte. Smith is still very anxious to serve with the C.A.P.F. I would ask for leniency in this case and that if at all possible further consideration be given to his application for service with C.A.P.F.

C-3

SUMMARY OF EVIDENCE

Summary of Evidence in the case of G 13063 Private Maurice Marineau SMITH, Canadian Infantry Corps, on the strength of No 3 Canadian Infantry Training Regiment, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer the Summary is taken on Oath.

FIRST WITNESS: Capt F.W. Fraser, Canadian Infantry Corps, on the strength of No 3 Canadian Infantry Training Regiment, an Officer of the Canadian Army Overseas, having been duly sworn, states:

For the prosecution

I am Capt F.W. Fraser, and am Adjutant of No 3 Cdn Inf Depot Bn. Pursuant to Overseas R.O. 5352, I produce the following documents which have been read over and shown to the accused, G 13063 Pte. Smith, M.M., whom I now recognize and identify, and which are attached as Exhibits. EXHIBIT "A" - Certified True Copy of the Declaration of a Court of Inquiry held on 5 July 45 relating to the accused. EXHIBIT "B" - Certified True Extract of 3 Cdn Inf Trg Regt Part II Daily Order No. 165 dated 10 July 45 relating to the accused.

F.W. Fraser

(F.W. Fraser) Capt.

The accused declines to cross-examine this witness.

The accused was cautioned as follows: Do you wish to make a statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement or to give evidence on Oath.

I certify that the foregoing Summary of Evidence consisting of ONE (1) page was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c) (d) (e) (f) and (g) have been complied with.

K.W. McNab Lt.

(K.W. McNab) Lieut
Officer detailed to take Summary.

IN THE FIELD
12 July 1945

Exhibit "A"
Kw 7th Cdn D.

RECORD of the Declaration of a Court of Inquiry assembled at In the Field on the 5th day of July 1945, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. G 13063 Pte. Smith, M.M.

DECLARATION

The Court declare that No. G 13063 Pte. Smith, M.M.

illegally absented himself without leave from 3 Cdn Inf Trg Regt. at 0930 hours on the 6th day of June 1945, that he is still so absent, and that on the 6th July 1945 he was deficient, and that he is still deficient of the following articles :—

ARTICLES	No	Vo's	VALUE

Signed at In the Field

this 9th day of July 1945

Capt. A.J. Geisler (C.I.C) - 3 CITR — President

Lieut J.K. Hunter (Essex Scot R)- 3 CITR — Member

Lieut J.R. Fiddes (C.I.C) - 3 CITR — Member

Signature of Commanding Officer "A.C. Ross Major" A/Officer Commanding-3 Cdn Inf Dep Bn.

Certified true copy J.W. Fraser Capt

Signature of officer having custody of original record

3/60B MFB 375-AFB 115 #0/F65/292 (5610)

ARTICLES	Quantity	Repl. Value £	s	d	Apps'd Value £	s	d
Blouses B.D.	2	2	18	2	2	6	4
Trousers B.D.	2	2	18	7	2	6	6
Boots Ankle, prs	2	2	12	0	1	19	9
Drawers woollen, prs	1	0	6	3½	0	4	9½
Gloves woollen, prs	1	0	2	1	0	1	6½
Jerseys, pullover	1	0	8	0	0	6	0
Shirts Angola	1	0	18	2	0	13	7
Vests woollen	2	0	5	4½	0	4	0
Shoes canvas, prs	1	0	2	11	0	2	4½
Socks prs	1	0	6	7½	0	5	0
Badges cap	3	0	0	5	0	0	4
Braces prs	1	0	1	4	0	1	5
Brushes button	1	0	1	2	0	0	10½
Brushes cloth	1	0	2	2	0	1	7½
Brushes hair	1	0	1	6	0	1	1½
Brushes shaving	1	0	1	8	0	1	8
Brushes shoe polish	1	0	1	3	0	0	11
Brushes tooth	1	0	0	6	0	0	4½
Combs hair	1	0	0	2	0	0	1½
Dressing F.F.	1	0	1	1	0	0	9
Forks table	1	0	0	4	0	0	3
Holdalls	1	0	0	10	0	0	7½
Housewives	1	0	0	9	0	0	6½
Knives clasp	1	0	3	10	0	3	10
Razors safety	1	0	0	3	0	0	3
Spoons dessert	1	0	0	5	0	0	5
Overalls comb.	1	0	12	2	0	9	1½
Braces right	1	0	1	4	0	1	1
Haversacks	1	0	8	0	0	8	0
Sheets ground	1	0	13	2	0	13	2
Blankets G.S.	1	0	13	9	0	13	9
Capes A/G	1	0	12	4	0	12	4
TOTAL:.....		£14	-11-	4½	£11	-15-	10½

E Lieut "B" Coy Kwm.

LAST ORDER NO 164 9 JUL 45

No 3 CANADIAN INFANTRY TRAINING REGIMENT
PART II DAILY ORDERS
Issued by
COLONEL W D WHITAKER, DSO, COMMANDER

THIS ORDER NO 165 10 JUL 45

6. STRENGTH INCREASE

(e) T O S from desertion on being apprehended by C Prov C in Aldershot at 2215 hrs 7 Jul 45
G 13063 PTE SMITH M M "CIC"

"A M Kennedy Lt"
for (J B Stretton) A/Major,
Regimental Adjutant,
No 3 Cdn Inf Trg Regt.

Certified True Extract. - 12 Jul 45.

A M Kennedy Lt.

Officer having custody of original record.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
G 13063	Pte.	SMITH, M.M.	CIC - 3 Cdn Inf Trg Regt

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For AA Sec 15(1)	2	times	6	times.
For AA Sec 15(2)	1	times	1	times.
For AA Sec 15(3)	1	times	1	times.
For AA Sec 10(4)	1	times	1	times.
For AA Sec 40	1	times	4	times.

~~Number of instances of gallantry or distinguished conduct.~~

Kwm

~~There are no entries in the conduct sheets of the accused.~~

2. The accused has not been previously convicted. Kwm

~~Previous convictions† of the accused by a court martial or civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time. ~~or The accused at the present time is under sentence for~~

~~to~~ Kwm Kwm

4. The accused has been in confinement, awaiting trial on the present charges, for NIL days in civil custody, and ~~6~~ 11 days in military custody, making a total of ~~6~~ 11 days, of which NIL days were spent in hospital.

5. The present age of the accused according to his ~~attestation~~ attestation paper is 25

6. The date of his ~~attestation~~ specified in his ~~attestation~~ attestation paper is 5 Sep 39

7. ~~The service which the accused is still liable to render towards discharge or transfer to the reserve is~~

8. The accused is entitled to deferred pay or gratuity in respect of 5 yrs, 10 Mos service.

9. ~~The accused is entitled to reckon~~ Kwm ~~service for the purpose of determining his pension, etc.~~

10. The accused is in ~~possession of, or entitled~~ ~~to receive~~ ~~decoration or military award~~ (*or* is in possession of or entitled to (*state any military decoration or reward*)). CVSM & Clasp

11. ~~(*If the accused is a warrant officer.*) The~~ ~~date on which he was~~ made a warrant officer (*or* held the rank of~~)~~

Kwm

12. ~~(*In the case of an officer.*) The~~ Kwm ~~held army the rank of~~ Kwm

~~and in his regiment (*or corps*) he was~~ Kwm

E & M

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. G 13063 Rank Private Name Smith, M.N. of 5 C.I.T.R. Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		NIL		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 13th day of July 45

R. W. McNat Lt

13. The second last entry in this conduct sheet (dated [illegible]) was cancelled, and this entry substituted, by order of [illegible]

Date of Promotion.

In the rank of ..... years, ...

In the rank of ..... years, ...

In the rank of ..... years, ...

In the rank of .....

(INSTRUCTION—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph corrected accordingly.)

Original Sheet Destroyed 11 May 45

No. G13063 Name SMITH M M | Sqn, Battery, or Company | Corps | Date of enlistment 6 Sep 39 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/PAS/136 (5418)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	19 Jul 43	Pte		Cond to prej of good order and Military discipline.	Sgt Devine	7 days C.B.	21 Jul 43	CV Harris Lt-Col	
Field	2 Aug 43	Pte		Cond to the Prej of Good Order and Military discipline.	Sgt Devine	28 days detn	3 Aug 43	CV Harris Lt-Col	
Field	27 Oct 43	Pte		Cond to the Prej of Good Order and Military discipline.	G.K. Foster Lieut	1 days pay FR&I 149(2)	29 Oct 43	CV Harris Lt-Col	
Field	18 Nov 43	Pte		AWL from 220 hrs 18 Nov 43 to 2200 hrs 20 Nov 43	Docy	2 days pay FR&I 149(2)	28 Dec 43	RC Zink Major	2 days pay FR&I 149.1a
Field	13 May 44	Pte		AWL from 2359 hrs 13 May 45 to 0735 hrs 14 May 44. Abs 7 hrs 36 mins	Cpl Chandler Sgt Robichaud	24 hrs detn and 1 days pay FR&I 149(2)	14 May 44	EJ Lounsbury Lt-Col	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	7 Jun 44	Pte		AWL from 0600 hrs 7 Jun 44 to 0615 hrs 14 Jun 44 (Abs 9 days 15 min) AA Sec 15(1)	Docy	Add 10 days pay Stoppage $9.03 14 days C.B.	19 Jun 44	Lt-Col WB Manzer	10 days pay and allow
Field	11 Jul 44	Pte		AWL from 2359 hrs 11 Jul 44 to 1900 hrs 18 Jul 44. Abs 6 days 19 hrs 1 min.	Docy	14 days pay 14 days C.B. Stoppage $9.03	22 Jul 44	W.B. Manzer Lt-Col	7 days pay
Field	28 Jul 44	Pte		(1) Breaking out of Barracks AA Sec 10(4) (2) AWL from 0600 hrs 28 Jul 44 to 1200 hrs 14 Aug 44 Abs 17 days 6 hrs. AA Sec 15(1)	Sgt Martin L/C Nowlan	21 days detn	15 Aug 44	H.J. Woods Major	18 days pay
Field	3 Sep 44	Pte		Failing to appear at the place of Parade etc. Failed to appear on Protestant Church parade AA15(2)	Sgt R.A. Dalrymple	7 days C.B.	4 Sep 44	J.F. Plewman Major	

No G13063 Name SMITH M M | Sqn, Battery, or Company | Corps | Date of enlistment 6 Sep 39 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/P&S/136 (5418)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	24 Oct 44	Pte		AA Sec 15(1) AWL from 1800 hrs 29 Oct 44 to 1745 hrs 14 Dec 44. Abs 45 days 23 hrs 45 mins.	CSM Carr Cpl Reuber	27 days detn	2 Jan 45	Maj J.G. Cumming	46 days pay PR&I 149.1.a
Field	10 Mar 45	Pte		AA Sec 15(3) Out of bounds (attempted to enter Soldier's Institute during parade hours.	Docy	5 days C.B.	15 Mar 45	J.B. Stratton	
Field	27 Mar 45	Pte		AA Sec 40 Negl to Prej bed untidy and kit improperly laid out.	Docy	7 days C.B.	28 Mar 45	Maj J.B. Stratton	

Certified true copy - 20 Jul 45

B. C. Gaudman, Lt.

Officer having custody of original record.

(PTO)

LIST OF WITNESSES

In the case of G 13063 Pte. Smith, M.M., (CIC) on the strength of No 3 Cdn Inf Trg Regiment.

FOR THE PROSECUTION

1. Capt F.W. Fraser — No 3 Cdn Inf Trg Regt

FOR THE DEFENCE

NIL

LIST OF EXHIBITS

In the case of G 13062 Pte. Smith, M.M., (CIC) on the strength of No 3 Cdn Inf Trg Regiment.

EXHIBIT "A" - Certified True Copy of the Declaration of a Court of Inquiry held on 5 July 45.

EXHIBIT "B" - Certified True Extract from 3 Cdn Inf Trg Regt Part II Daily Order No. 165 d/10 Jul 45.

12 Jul 45.

This is to acknowledge that I have received, free of charge, the following papers in connection with my forthcoming trial by F.G.C.M.

1 Copy of Charge Sheet
1 Copy of Summary of Evidence
1 List of Witnesses
1 List of Exhibits

(G 13063 Pte. Smith, M.M.)

3 CANADIAN INFANTRY TRAINING REGIMENT (C.A.O.) 3D/11

12 July 1945.

I, No. G 13063 Pte. Smith, M.M. wish to have
(Rank) (Name)
an Officer defend me at my forthcoming trial by Court Martial.

I desire the services of Lt. J.L.H. Campeau
if he is available.

(Sgd.) [signature]

80-109

Pte. Smith, M. H.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: L-6654 Pte Martin Wesley SMITH, 5 CITR att to #4 Cdn Gen Hosp, RCAMC

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)(a)	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to finding of guilty on alternative charges see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 9 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of Sixty (60) days.

(Sgd) ..... 15 JUN 45 (Sgd) ..... President. (RP 45, 50.)
Judge-Advocate, if any. Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 746.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 739-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding but mitigate the sentence so that the period to undergo detention for a period of thirty (30) days, and I confirm the sentence as so mitigated.

I direct that the accused be not committed to prison or detention barracks until further order.(1)

(1. AA 57A. Delete if not used.)

Date 18 June 45 (Sgd) ..... D.C. Spry
(DC SPRY) MAJ-GEN
Commanding ..... COMD CDN RECEIVING DEPOTS.
Commanding Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
L 6654 Pte Martin Wesley Smith	25 June 45	W Harrison Major

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160, 50-109

CPA86 (To item of AFA31 40/P & S/1868 (40/6)
4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of Maj-Gen D.C.Spry, DSO Comd CRU dated 16 Jun 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
L-6654		Martin Wesley	SMITH	5 CITR att to #4 Cdn Gen Hosp RCAMC

PROCEEDINGS REVIEWED
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 18 JUNE 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER. NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 52, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to~~ ~~as interpreter? Ans~~

~~The Interpreter is sworn.~~(1) Do you object to C.S.M.I. Sgt Broadbent as shorthand writer? Ans NO
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO. S/P (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT-COL	D.L. REDMAN	HQ CRU
Member	CAPT	W.E. UTLAY	1 CARU
Member	LT	W.IL BROCK	1 CARU
~~Judge-Advocate~~			
Prosecutor	CAPT	J.D. LEMAY	4 CG H
Defending Offr	MAJ	J McKENTY	4 CG H

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 33.)

A8. The accused ..... before arraignment make(s) (no) (~~a~~) plea ..... (3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 21, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is ~~are~~ sent) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B"

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (*i*) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (*ii*) *to record the pleas as the findings of Court. After deciding between* (*i*) *and* (*ii*), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans NO STATE. (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 2, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) changes his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof as a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans Do you intend to call witnesses on your behalf ? Ans Are they witnesses as to character only ? Ans
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf AB5. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, B(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans talk that over NOTE - ATT
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (b), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex "C" respectively.(3)
(*1. MFB 355 or AFB 296. 2. MJM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes and will (NOTE ATT) (2)
(*1. RP 37(C), 46(2). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if sitting~~(2).
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(B), (C), KR Can 564. 2. RP 50. As to release from arrest by Convening Offr see KR Can 567. As to assembly and dispersal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, No. L-8854 Pte. Martin Wesley Smith, CIC, No. 5 C.I.T.R. attached to No. 4 Canadian General Hospital, RCAMC, a soldier of the Canadian Army (Overseas), WOAS, is charged with:

FIRST CHARGE ABSENTING HIMSELF WITHOUT LEAVE
A.A. Sec. 15(1)(a)

in that he

illegally absented himself from No. 4 Canadian General Hospital, RCAMC, from 1800 hours 18 May 45, until 2330 hours 13 Jun 45. (Time absent 23 days 5 hours 30 minutes.

In The Field
13 Jun 45

(V.O. Mader) Colonel, RCAMC,
Commanding Officer,
No. 4 Canadian General Hospital, R.C.A.M.C.

To be tried by Field General Court Martial.

In the Field
16 Jun 45

(D.C.Spry) Maj-Gen
Comd.
Cdn Rft Units.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L-8854	Pte		Martin Wesley	SMITH	5 CITR att to #4 Cdn Gen Hosp RCAMC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has(~~XXXX~~) committed the offence(~~XX~~) set forth in the Charge Sheet(~~X~~) attached and on (date) 16 Jun 45 endorsed by me, ~~XX XX XX XX XX XX XX XX XX~~ " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(~~X~~) should be tried by an ordinary General Court-Martial ; ~~XXXX

THIS IS TO CERTIFY THAT I EXAMINED NO. L-8854 Pte. Smith, M.W., No. 5 C.I.T.R., att No. 4 Canadian General Hospital, this 18th day of June, 1945, and find that he is in a fit state of health and able to undergo trial by Court-Martial.

(I. Levy) Capt., RCAMC,
No. 4 Canadian General Hospital, RCAMC

E-1

TRIAL OF

L-8854 PRIVATE SMITH MW 5 CITR - ATT # 4 GEN HOSP RCAMC

CHARACTER WITNESS
~~FIRST WITNESS~~

K-70972 CPL CROSSLEY, AG, 5 CITR, sworn, states:-

I have known the accused for quite some time. He was my roommate in 5 CITR at Aldershot. I always found him to be honest, reliable and quite a suitable soldier.

Q. In May did you think that the accused worried about something?
A. Yes, Sir, he was worrying at that time.

Q. Altogether, you've found him to be a reliable and upright soldier?
A. Yes, Sir.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83 (B)

PLEA IN MITIGATION OF SENTENCE

I have more character witnesses that would like to call and give evidence but they are all at present on the Continent. Their names are Captains AW Shaw, T.L. Reid, J. Londell, and Lieuts W. Grigsby, O. Brown and M.J. Savage. The fact that the accused was anxious to submit their names would seem to imply that they would speak well of him. Of course the accused has no excuse to offer for his absence but he has some reasons. On his return from Italy where he had been injured on active service he received a six day leave and shortly after a nine day leave. I believe it was in order for them to have fifteen straight days. Finally he was due for another nine days' leave but was attached to No 4 Cdn Gen Hosp in May as a fatigue orderly. He asked for the leave then one month overdue. He was told that as he was attached, it culd not be granted from No 4 Cdn Gen Hosp. He asked for a 48-hr pass that was due to him from VE-Day. This was also refused to him. He was also worried as he had not heard from his parents for over five months. He also had a Scotch girl living at Inverness. He was not formally engaged to her but they had an understanding. He had heard that lately an American soldier had moved in and this worried him too. He wanted to go up and find exactly where he stood. He did a crazy thing - he went AWL. I might have done the same thing. He comforted himself in the thought that the Empire didn't need him as the war was over in Germany. He reported back himself according to the sergeant's evidence properly dressed and sober. And furthermore, he is very sorry and ashamed of himself for what he's done. He is not mature yet inspite of being 21 years old. He enlisted at the age of 17 at a time when many boys are still in high school. I submit that the accused needs a school rather than a detn bks. You and I as Canadian taxpayers have an investment in this boy. We can't turn him out of the Army, broken, discouraged and with the dangerous germs of malcontent against society implanted in him. He has to have a vocational course - further training. His gratuity money should be intact, not eaten up with fines. I'm sure you'll agreed with me that we owe it to Canada to turn this man out of the Army an asset not a liability to the country.

SUMMARY OF EVIDENCE

in the case of

No. L-8854 Pte. Martin Wesley Smith, No. 5 C.I.T.R., attached No. 4 Canadian General Hospital, RCAMC, a soldier of the Canadian Army (Overseas), WOAS.

CHARGE ABSENTING HIMSELF WITHOUT LEAVE

The Commanding Officer directs that the evidence be taken on oath.

R-91522 Sgt. Bernard Joseph Shoemaker, No. 4 Canadian General Hospital, RCAMC, is duly sworn as shorthand writer.

FIRST WITNESS D-95845 Sgt. Kennedy, G., RCASC, No. 1 CASCHU, attached No. 4 Canadian General Hospital, RCAMC, having been duly sworn states:-

"I am C-95845 Sgt. Kennedy, G., RCASC, No. 1 CASCHU attached No. 4 Canadian General Hospital, RCAMC. I was employed as Sgt. cook at No. 4 C.C.D. kitchen. Pte. Smith, whom I now recognize as the accused failed to report for duty to No. 4 C.C.D. kitchen at 1800 hrs 18 May 45. I reported this to the Orderly Sergeant."

The accused declines to cross-examine the witness.

S Kennedy

(G. Kennedy) Sgt.,
D-95845,
No. 1 CASCHU att.
No. 4 Cdn Gen Hosp RCAMC

2ND WITNESS C-93147 Sgt. Marks, C.G.C., RCAMC, No. 4 Canadian General Hospital, RCAMC, having been duly sworn states:-

"I am C-93147 Sgt. Marks, C.G.C., Orderly Sergeant No. 4 Canadian General Hospital, RCAMC. Sgt. Kennedy, the Mess Cook of No. 4 C.C.D. kitchen, reported to me that Pte. Smith did not report for duty in 4 C.C.D. kitchen at 1800 hrs on the 18 May 45. I checked the unit lines and the accused was absent. A daily check was made of the unit lines and until the accused returned at 2330 hrs 10 Jun 45 he was continuously absent."

The accused declines to cross-examine the witness.

(C.G. Marks) Sgt.,
C-93147,
No. 4 Cdn Gen Hosp RCAMC

RM

THIRD WITNESS C-96340 Sgt. Crooke, L.J., RCAMC, No. 4 Canadian General Hospital, RCAMC, having been duly sworn states:-

"I am C-96340 Sgt. Crooke, L.J., Night Orderly Sergeant, No. 4 Canadian General Hospital, RCAMC. At approximately 2330 hrs 10 Jun 45 the accused reported to me as returning from Absent Without Leave. He was sober and properly dressed. I warned him for orderly room and placed him under close arrest."

The accused declines to cross-examine the witness.

(L.J. Crooke) Sgt.,
C-96340,
No. 4 Cdn Gen Hosp RCAMC

QUESTION TO THE ACCUSED:

"Do you wish to make any statement or to give evidence under oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement and reserves his defence.

I certify that Rules of Procedure 4(c), (d), (e) and (f) have been complied with.

Taken down before me in the presence of the accused, at Aldershot, England, this 12th day of June, 1945.

J.A. LeMay Capt.
(J.A. LeMay) Capt., FMR,
Officer detailed to take the
Summary of Evidence.

Ex A

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
L-8854	Pte.	Martin Wesley SMITH	5 CITR att 4 Cdn Gen Hosp

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement and not annexed to the proceedings.

† See para. 677, R.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, precedence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For AWL	3 times	5 times.
For Conduct to prejudice of good order and mil discipline	times	2 times.
For Losing by neglect articles of clothing equipment etc.	times	1 times.
For	times	times.
For	times	times.

Number of occasions of gallantry or distinguished conduct: NIL

~~Date of last entry~~ NIL

~~Titles of mentions in the conduct sheets of the accused~~ NIL

2. The accused has not been previously convicted, *or*

~~Previous convictions of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 70 of the Army Act, are set out in the schedule annexed to this statement.~~ NIL

3. The accused is not under sentence at the present time, *or* ~~The accused at the present time is under sentence for~~ NIL

~~Imprisonment~~ ~~Detention~~ ~~Field punishment~~ ~~Forfeiture of seniority~~ ~~Forfeiture of service~~ ~~Dismissal~~ ~~Reduction to the ranks~~ ~~Fine~~ ~~Severe reprimand~~ ~~Reprimand~~ ~~Admonition~~ ~~Discharge with ignominy~~ ~~Discharge with disgrace~~ ~~Discharge~~ ~~Dismissal with disgrace~~ ~~Dismissal~~ ~~Cashiering~~ ~~Loss of rank~~ ~~Loss of seniority~~ ~~Loss of service~~ ~~Loss of pay~~ ~~Loss of gratuity~~ ~~Loss of pension~~ ~~Loss of decorations~~ ~~Loss of medals~~ ~~Loss of clasps~~ ~~Loss of ribbons~~ ~~Loss of badges~~ ~~Loss of buttons~~ ~~Loss of boots~~ ~~Loss of clothing~~ ~~Loss of equipment~~ ~~Loss of arms~~ ~~Loss of ammunition~~ ~~Loss of stores~~ ~~Loss of property~~ ~~Loss of money~~ ~~Loss of documents~~ ~~Loss of papers~~ ~~Loss of records~~ ~~Loss of books~~ ~~Loss of maps~~ ~~Loss of charts~~ ~~Loss of plans~~ ~~Loss of drawings~~ ~~Loss of photographs~~ ~~Loss of negatives~~ ~~Loss of films~~ ~~Loss of tapes~~ ~~Loss of recordings~~ ~~Loss of discs~~ ~~Loss of cassettes~~ ~~Loss of cartridges~~ ~~Loss of magazines~~ ~~Loss of clips~~ ~~Loss of bullets~~ ~~Loss of shells~~ ~~Loss of grenades~~ ~~Loss of mines~~ ~~Loss of explosives~~ ~~Loss of detonators~~ ~~Loss of fuses~~ ~~Loss of primers~~ ~~Loss of propellants~~ ~~Loss of rockets~~ ~~Loss of missiles~~ ~~Loss of bombs~~ ~~Loss of torpedoes~~ ~~Loss of depth charges~~ ~~Loss of mines~~ ~~Loss of explosives~~ ~~Loss of detonators~~ ~~Loss of fuses~~ ~~Loss of primers~~ ~~Loss of propellants~~ ~~Loss of rockets~~ ~~Loss of missiles~~ ~~Loss of bombs~~ ~~Loss of torpedoes~~ ~~Loss of depth charges~~ NIL

~~Beginning on the~~ NIL ~~day of~~ NIL

4. The accused has been in confinement, awaiting trial on the present charges, for NIL days in civil custody, and 9 days in military custody, making a total of 9 days, of which NIL days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 21

6. The date of his ~~enlistment~~ attestation specified in his ~~record of service~~ attestation paper is 5 Sep 40

7. ~~The service which the accused is allowed to reckon towards discharge or transfer to the reserve is~~ NIL

8. The accused is entitled to deferred pay or gratuity in respect of ~~service~~.

9. The accused is entitled to reckon ~~service~~ for the purpose of determining his pension, etc.

10. ~~The accused is in possession of, or entitled to, the following military decorations or military rewards~~ NIL or is in possession of or entitled to (*state any military decoration or reward*)). CVSM & Clasp

11. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental~~ NIL ~~rank of~~ NIL

12. (*In the case of an officer.*) The accused holds in the army the rank of NIL dated NIL

~~And is in the regiment (or corps or department) the rank of~~ NIL ~~dated~~ NIL

(*[illegible]*) W1.[illegible] 2,000 3/42 A.A.S.D.(1) Gp.698

E & B

RM

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. L-8854 Rank Pte. Name Smith, W.T. of 2 Can. Sth Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 18th day of June, 1945

W.H. Carson Major

(W. H. CARSON, Major)
REGISTRAR
No. 4 Can. Gen. Hospital

Date of Promotion.

Sheet 2

No. L-38514 Name SMITH M.W. Sqn., Battery, or Company 41 CGTC Corps R.C.A.S.C. Date of enlistment [illegible] 1-10-41 G.C. Badges Tradesmen's Rates of Pay

M.F.M. 6 (A.F.B. 122) 500M—11-41 (3468) H.Q. 1772-39-1652

No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	13 Apr. 45	Pte.		WOAS AWL from 2230 hrs. 13 apr. 45 until 0610 hrs. 30 Apr. 45, thereby incurring cost of apprehension of $0-2-6 Total time absent 16 days 7 hrs 40 min AA Sec. 15(I)	Cpl. A.G. Crossley	15 days pay FR&I 149(2) Placed under stoppage of pay in the am't. of $0-2-6. FR&I 172(8)	2 May 45	AG Stevenson Maj. C.C. 5 CITR	Aut. forf. 17 days pay FR&I 149(I)(a) total forf. 32 days pay.
Field	11-5-45	Pte.		AA Sec. 15 (I) WOAS, AWL from 0630 hrs 11 May 45 until 0730 hrs 11 May 45. Time absent (1 hr.)	L/Cpl. Delmonte V.	Extra 5 days C.B.	11 May 45	J. Gardiner Maj	

CERTIFIED TRUE COPY
W.H. Carson Major
(W.H. Carson) Major, Registrar,
No. 4 Con Gen Hosp.

PTO

No. L-8654 Name SMITH, M.W. Sqn., Battery, or Company 41 COTC Corps R.C.A.S.C. Date of enlistment 4-10-41 G.C. Badges Tradesmen's Rates of Pay

M.F.M. 6 (A.F.B. 122) 500M—11-41 (2499) H.Q. 1772-30-1622

No. and date of last drunk Period not reckoning towards freedom from extra fine Signature O.C. Company, etc. Sheet No. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sheet distroyed 22-7-42				on completion of 2 years service in accordance with R.O. 2084		Reg't. entries carried forward below			
Farnborough	12-6-42	Pte.		AWL 15(1) AA 30 min.	Cpl. Hodgins, M.W. Cpl. Young, H	7 days CB	18-6-42	F.W.G. WILES Forf 2 days Lt. COL. pay FRAI 1/6(2)	
Field	14-8-42	Pte.		Sec 40 AA Smoking while driving a WD Vehicle	Capt. Shaw	Forf. 7 dys Pay FRAI 1/6(2)	15-8-42	Lt. O.K Stanley For C.C.	
Field	28-11-42	Pte.		AWL Sec. 15(1) Absent from Guard Room 5 hrs. 5 min.	T/Sgt. Packenebusch, L/Cpl Scheibelhofer	27 days F.P.	2-12-42	Maj. W.A. Lucas RELEASED From DETENTION BARRACK Headley Downs on 6 May 43 SENTENCE HAVING EXPIRED. Remission earned under "Rules for Detention Barracks and Military Prisons" 17 days.	

CONTINUED ON Field W.D.

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	31-1-45	Pte.		Sec. 40 AA Conduct to the prej. i.e. left Unit billets area as laid down in Pt. 1 Orders without proper authority	L/Cpl. Madden	7 days F.P.forf. 7 dys FRAI 149 (I) (b)	1-2-45	D.C. Shaw, Capt.	
Field	14-4-45	Pte.		SEC 24 AA WOAS Losing by neglect. Equipment, clothing and regimental necessaries in that he on the 14 Apr. 45 was deficient (1) blanket.	Documentary	28 days F.P. 28 Days pay	7 May 45	Maj. [illegible] W.J. Baillie	
Field	5 Apr. 45	Pte.		WOAS AWL from 1200 hrs 5 apr. 45 till 1110 hrs. 9 Apr. 45. Time absent (3 days 23 hrs. 10 min) AA Sec 15(I)	Documentary	10 days pay.	10 Apr. 45	W.E. THorne Maj. A/OC Dep Bn. 30ITH	aut.forf. 4 days pay FRAI, 149 I) total forf. 14 days pay

CERTIFIED TRUE COPY

W.H. Carson Major

(W.H. Carson) Major, Registrar,
No. 4 Can Gen Hosp RCAMC

LIST OF WITNESSES

In the case of

No. L-8854 Pte. Martin Wesley, Smith, No. 5 C.I.T.R., attached No. 4 Canadian General Hospital, RCAMC.

FOR THE PROSECUTION:

D-95845 Sgt. Kennedy, G., RCASC,
No. 1 C.A.S.C.R.U., attached
No. 4 Canadian General Hospital RCAMC

C-93147 Sgt. Marks, C.C.C., RCAMC,
No. 4 Canadian General Hospital, RCAMC

C-96340 Sgt. Crooke, L.J.? RCAMC,
No. 4 Canadian General Hospital, RCAMC

FOR THE DEFENCE

N I L

(V.O. Mader) Colonel, RCAMC,
Commanding Officer,
No. 4 Canadian General Hospital, RCAMC

I, No. L-8854 Pte. Martin Wesley Smith, CIC, No. 5 C.I.T.R., attached to No. 4 Canadian General Hospital, RCAMC, (desire) (~~do not desire~~), the services of an Officer to represent me at my trial by Field General Court-Martial.

Smith M.W.

13 Jun 45

(M.W. Smith) Pte.,
L-8854,
No. 5 C.I.T.R., att.
No. 4 Can Gen Hosp. RCAMC

5 H-152

ON HIS MAJESTY'S SERVICE

FASTEN Envelope by gumming this Label across Flap.
OPEN by cutting Label instead of tearing Envelope.

Pt Smith, N.H.

1/14 CMBQ 40-1
40-P.S.S.&B.
(Stock of 40)

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : L-8854 Pte Martin Wesley SMITH - CIC - 11 Cdn Repat Dep

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 41 (5)	NOT GUILTY	NOT GUILTY	
2nd AA Sec 8 (2)	" "	" "	
3rd AA Sec 9 (1)	" "	" "	
4th AA Sec 9 (2)	" "	GUILTY	
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 43 days, of which Nil days were spent in hospital.(2)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo detention for a period of One (1) year

(Sgd) _____ Judge-Advocate, if any. 10 DEC/45 Date awarded. (Sgd) K M Macmillan Maj President. (RP 41, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date _____ (Sgd) _____ Commanding _____

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(2). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 13, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

(Sgd) W S Murdoch.

Date 14 Dec 45 (W S Murdoch) Col Commanding A/Comd D Gp CRU Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 33, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
L-8854 Pte Martin Wesley Smith	17 Dec 45	[illegible] OC

11 CRD Part II DO No 125 dated 16 Dec 45.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED AT CMHQ IN AB 169 A 54-152

RECEIVED 29 DEC 1945 JAG BRANCH C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CFAB6 (In lieu of AFAB1 40/F&S/1698 (1944) 4/38B

Convened by Order of Brig KG Blackader, DSO, MC, ED Comd D Gp - CRU dated 6 Dec 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L-8854	Pte	Martin Wesley	SMITH - CIC - 11 Cdn Repat Dep	

PROCEEDINGS REVIEWED

29 Dec 45 LJ Brady Maj.

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 10 DEC 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 72, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1045 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused : ~~Do you object to~~ as interpreter ? Ans _____

~~The Interpreter is sworn.(1)~~ Do you object to 4004094 Cpl O'NEILL J F as shorthand writer ? Ans NO SIR. The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO SIR (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(E). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	LT COL	D L REDMAN VD	HQ CRU
Member	CAPT	A G McKAY	10 CDN REPAT DEP
Member	LIEUT	G RICHARDSON	11 CDN REPAT DEP
~~Judge-Advocate~~			
Prosecutor	LIEUT	G W DuBOSE	11 CDN REPAT DEP
Defending Offr	LIEUT	F E PAYNE	11 CDN REPAT DEP

Questions by President : Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused before arraignment make(s) (no) ~~(no)~~ plea (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to return proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~(is closed and)~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(2), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(3)

President to accused: Do you wish to make a statement? Ans _____(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3. MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on _____ charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on _____ charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex _____, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such paras only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans NO - SIR (1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) opening address.(1)
(*1. RP 29(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1) NOTE - ATT
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the _____ charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the _____ charge(s), and allowed on the _____ charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(2) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(3) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans Your Evidence. Do you intend to call witnesses on your behalf? Ans No Are they witnesses as to character only? Ans NO - SIR
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1) NOTE ATT
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if on his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(a).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the Your charge(s), being subject to confirmation, will be promulgated later.(2)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(3)
(*1. AA 54(3) (a), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans NO - SIR
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 255 or MFB 295. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Character NOTE - ATT (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove as with anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(3), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in respect of which [illegible] found guilty. RP 46. As to sentences see AA 44, 138. [illegible] RP 50, 69. [illegible] 50.3-56b. Overseas RO 309, 2302. MML p 60, 737-739. As to sentences assigned for Civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see items on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, No. L.8854 Pte. Martin Wesley SMITH, Cdn Inf Corps, 11 Cdn Repat Depot, a soldier of the Cdn Army Overseas, is charged with:-

FIRST CHARGE Sec.41(5) Army Act

WHEN ON ACTIVE SERVICE COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, COMMON ASSAULT, CONTRARY TO SECTION 42 OF THE OFFENCES AGAINST THE PERSON ACT, 1861.

In that he, about 2315 hrs, 8 Nov 45, in the presence of a civilian woman, on a public highway at Nutley, Sussex, assaulted No. C.122641 RQMS Fleming, D.G., 11 Cdn Repat Depot, a Warrant Officer of the Canadian Army, by seizing the said RQMS from the front with one hand on each of the said RQMS's upper arms and throwing the said RQMS violently to the ground.

SECOND CHARGE (Alternative) Sec.8(2) Army Act

WHEN ON ACTIVE SERVICE USING VIOLENCE TO HIS SUPERIOR OFFICER.

In that he, about 2315 hrs, 8 Nov 45, in the presence of a civilian woman, on a public highway at Nutley, Sussex, by seizing from the front No. C.122641 RQMS Fleming, D.G., 11 Cdn Repat Depot, a Warrant Officer of the Canadian Army, with one hand on each of the said RQMS's upper arms and throwing the said RQMS violently to the ground.

THIRD CHARGE Sec. 9(1) Army Act

WHEN ON ACTIVE SERVICE DISOBEYING IN SUCH A MANNER AS TO SHOW A WILFUL DEFIANCE OF AUTHORITY, A LAWFUL COMMAND GIVEN PERSONALLY BY HIS SUPERIOR OFFICER IN THE EXECUTION OF HIS OFFICE.

In that he, about 2315 hrs 8 Nov 45, in the presence of a civilian woman, on a public highway at Nutley, Sussex, when personally ordered by No. C.122641 RQMS Fleming, D.G., 11 Cdn Repat Depot, a Warrant Officer of the Canadian Army, to produce his pay book, did not do so, but replied to the said RQMS "You can have it if you are big enough to take it away from me".

FOURTH CHARGE (Alternative) Sec.9(2) Army Act

WHEN ON ACTIVE SERVICE DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER.

In that he, about 2315 hrs 8 Nov 45, in the presence of a civilian woman, on a public highway at Nutley, Sussex, when personally ordered by No. C.122641 RQMS Fleming, D.G., 11 Cdn Repat Depot, a warrant officer of the Canadian Army, to produce his pay book, did not do so, but replied to the said RQMS, "You can have it if you are big enough to take it away from me".

Lieut-Col.
(R.W. Wilson)
Officer Commanding, No. 1 Wing,
11 Canadian Repatriation Depot.

In the Field,
28 Nov. 1945.

To be tried by Field General Court Martial.

(W G Blackader) Brig
Comd D Gp CRU

IN THE FIELD
6 Dec 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L-8854	Pte		Martin Wesley	SMITH - CIC - 11 Cdn Repat Dep	

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~have~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 6 Dec 45 endorsed by me, (~~I have directed~~ ~~that he be tried~~). " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~and that it is not practicable that the Court hereinafter appointed should be composed of officers of my force.~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I consider it expedient that the Offr to form the Court, and the Offr detailed for the purpose, have~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I appoint the following Offr to act as Judge Advocate.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt Col	DL REDMAN, VD	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	to be detailed by Comd	10 Cdn Repat Dep
Lieutenant	to be detailed by Comd	11 Cdn Repat Dep

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Captain	to be detailed by Comd	11 Cdn Repat Dep
~~Major~~	~~Major~~	~~Major~~
(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Dat 6 Dec 45

(Signed personally. RP 105 fn 24.) (K G Blacklader)

Brig (Rank.)

Commanding D Gp CRU

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (CFA 98 (In lieu of AFA 3) 40-7-A-R/1697 (5143))

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

I certify that L.6854 Private Martin Wesley SMITH, CIC, 11 Canadian Repatriation Depot, is in a good state of health and is fit to undergo trial by Court Martial.

.....Capt.
RCAMC Att'd 11 Can Repat Depot.

Date 10 Dec 41

TRIAL OF

L.8854 Pte Smith MW, CIC, 11 Cdn Repat Depot

PROSECUTION

FIRST WITNESS

A.107098 CQMS Woolvett, A.M., 11 Cdn Repat Depot, sworn, states:-

About 2315 hrs on the 8th Nov 45, I was walking on the highway from the dance hall in Nutley towards the Shelly Arms in Nutley. I was approximately half way between those two points when a civilian woman, Gladys Ralph, came running from behind me, calling my name "Art". She said something to me and I returned towards the dance hall with her, to a point where I found RQMS Fleming of 11 Cdn Repat Depot standing in the road. Facing him was a Pte Bell, whom I recognized as a Canadian soldier from A Wing, 11 Cdn Repat Depot, and Pte Smith, whom I recognized as a Canadian soldier from 11 Cdn Repat Depot, the accused whom I now recognize. I used my flashlight and I asked RQMS Fleming at that time what had happened and he indicated that Pte Bell had hit him. Upon looking him over I saw that his hair was mussed up, there was blood on his neck and I found his hat on the ground about four or five feet from him. The woman was rubbing the right side of her face and her nose at that time. I heard RQMS Fleming order Pte Smith to produce his paybook and Pte Smith refused to comply with the order, saying he could have it if he was big enough to take it away from him. He said this in a defiant manner and definitely refused to produce his paybook. I picked up the hat and there was some slight argument, nothing of any importance, and Pte Smith and Pte Bell left and walked up the road towards the Shelly Arms. RQMS Fleming and myself accompanied the two ladies to their residence at the Shelly Arms and we then continued towards camp. When we came to the fork in the road in Nutley, where one road leads towards "B" Wing and the other towards "A" Wing of 11 Cdn Repat Depot, Pte Bell walked out and stood immediately in front of RQMS Fleming and dared him to lay charges against him. We continued walking down towards camp and Pte Smith and Pte Bell walked with us. Pte Bell was immediately alongside of RQMS Fleming and Pte Smith was on the opposite side of the road most of the way back.

Q. Could the accused walk straight?
A. To the best of my knowledge he did.
Q. Was his conversation clear and coherent?
A. Yes, very.

When we got towards camp Smith stayed on the opposite side of the road and did not cause any argument or do anything. Pte Bell took his paybook out of his pocket and offered it towards RQMS Fleming at the time and then he replaced it in his pocket before there was any opportunity to do anything about it. Pte Bell and Pte Smith then walked on ahead of us and Pte Bell challenged us again to lay a charge against him.

CROSS-EXAMINED

Q. When you went to where this disturbance was going on, how many Canadian soldiers were there besides RQMS Fleming and yourself?
A. I saw only two other soldiers, apart from Fleming and myself.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

SECOND WITNESS

C.122641, RQMS Fleming, D.G., 11 Canadian Repat Depot, sworn, states:-

At approximately 2315 hrs on 8 Nov 45 I was walking on the main highway midway between the dance hall and the Shelly Arms, Nutley, Sussex, with a civilian woman, Gladys Ralph of Nutley. We were walking very slowly, arm in arm, when we were bumped into from behind by two soldiers from 11 Cdn Repat Depot who were walking in the same direction. When they bumped into us I said "Oops, detour boys" and, without warning, Pte Bell struck me on the right jaw with his clenched fist. I staggered back from the force of the blow, still on my feet, and the accused, Pte Smith, grabbed me from in front with both his hands on my upper arms and threw me violently to the ground. I told him that I was a RQMS but he continued to hold me down until I heard CQMS Woolvett coming towards us. Just after I was was struck I heard Gladys Ralph call out "Stop Bell". She then shouted "Art", CQMS Woolvett's name and ran towards CQMS Woolvett who was walking ahead.

Q. Was it dark at the time?
A. It was fairly dark, but not too dark.

Gladys Ralph returned with CQMS Woolvett and when I heard them approaching Pte Smith let me up. I then ordered him to produce his paybook and he said "you can have it if you are big enough to take it away from me". He did not produce it. I then ordered Pte Bell to produce his paybook and he replied defiantly "nothing doing". I then noticed Gladys Ralph wiping her face with a handkerchief. I asked her if she was hurt, in the hearing of both Pte Smith and Pte Bell, and still in the hearing of both she replied "he struck me". I thought it must have been Bell who struck her because Smith had been holding me down. Neither of the accused denied striking Gladys Ralph but turned and walked rapidly away towards camp. I then escorted Gladys Ralph to her residence in company with CQMS Woolvett and the young woman with him. CQMS Woolvett and myself then started to walk towards camp. At the fork in the road past the Shelly Arms Pte Smith and Pte Bell came out on the road and started to walk along with us. Pte Bell then pulled out his paybook and said "there is my paybook if you want to see it". Before I had an opportunity to take the paybook he put it back in his pocket. He then dared CQMS Woolvett and myself to lay a charge against him. Pte Bell and Pte Smith then left us and walked on towards camp. The next I saw of them was when they were leaving the Unit Guard Room.

CROSS-EXAMINED

Q. When the soldiers bumped into you on the road, how many Canadian soldiers were there beside yourself?
A. There were two, sir.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

THIRD WITNESS

Gladys Ralph, barmaid, Nutley, Sussex, sworn, states:-

About 2315 hrs on 8 Nov 45, RQMS Fleming and I were walking home from a dance at the Nutley canteen. We were half way between the Shelly Arms and the canteen and walking slowly, arm in arm, when two Canadian soldiers walking behind us bumped into us. Fleming said "make a detour there boys. I don't remember if either of the men answered. They just made a grab at Fleming with their hands. I told them there was nothing to make a row about. Pte Bell then hit me on my nose with his clenched fist, causing my nose to bleed. I then ran

THIRD WITNESS (CONTINUED)

forward to catch up to CQMS Woolvett who was walking ahead of us. I called him by his name "Art" and tole him what was happening a way back. We hurried back. Fleming was on his feet and in the light of Woolvett's flashlight Fleming's badges of rank were clearly visible. Woolvett asked Fleming what had happened and he replied that Bell had hit him. Fleming then ordered the men to produce their paybooks and they refused and one of them said "you can have it if you are big enough to take it" but I don't know which one it was. They did not give Fleming their paybooks.

Q. Did Pte Bell and Pte Smith appear to be drunk?
A. They did not appear to be drunk.
Q. Had any provocation been given to either Pte Bell or Pte Smith?
A. None whatsoever.
Q. Did you see them at the dance?
A. Yes.
Q. Was there any trouble there?
A. None whatsoever.

CROSS-EXAMINED

Q. You say both men laid hands on Fleming?
A. Yes.
Q. Did you see Fleming thrown to the ground?
A. No.
Q. Did you see Fleming get struck?
A. No.
Q. When you called out "Stop Bell", what did you mean?
A. Well, I could see he was going to hit somebody and when I called "Stop Bell," he hit me.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B)

The Prosecutor said that Captain B.G. Herman, RCAMC, was available to give evidence as to the condition of RQMS Fleming but that in his evidence he would not say that any injury was done to the RQMS as the result of the offences of which this accused, Smith, is charged. The Defending Officer said that it would be fairer to the accused not to take the evidence of Captain Herman as it would be irrelavant and might be prejudicial. The Court agreed.

THE PROSECUTION IS CLOSED

DEFENCE

FIRST WITNESS

The Accused, L.8854 Pte Smith MW, CIC, 11 Cdn Repat Depot, sworn, states:-

At approximately 2315 hrs on 8 Nov 45 I was coming from the dance hall to return to camp. It was dark and I bumped into RQMS Fleming. When RQMS Fleming said "take a detour, boys" I stepped aside and excused myself. Before I knew what was going on Pte Bell knocked him to the ground and then Pte Bell helped the RQMS to his feet again. There was a slight argument between Bell and the RQMS when the RQMS asked us for our paybooks. I did not consider the RQMS request to be in order so I did not show him my paybook. We then proceeded to camp and stopped at the crossroads where one road leads into "B" Wing and the other into "A" Wing where I talked to two cooks from "A" Wing.

FIRST WITNESS FOR THE DEFENCE (CONTINUED)

Q. When you bumped into RQMS Fleming, how many soldiers were with you?
A. There were four.
Q. Who were they?
A. Pte Bell, Pte Copan, Pte Patterson and myself.
Q. Was it a dark night?
A. It was dark enough that I could not see RQMS Fleming when I bumped into him.
Q. Did you just come out of the dance hall?
A. Yes, shortly before and I couldn't see well in the dark.

CROSS-EXAMINED BY PROSECUTOR

Q. Why did you not consider it an order when RQMS Fleming asked you to produce your paybook?
A. I don't consider it an order until I know his rank?
A. Had you any reason to doubt his authority?
A. Not exactly, but it was dark.
Q. Had you reason to suspect that there was no authority?
A. I did not know him and I could not see his badges of rank.
Q. Had you any reason to believe that this man might have been a private soldier after the order to produce your paybook?
A. Yes, sir, as I could not see and I heard around camp that there had been quite a few of the other boys laying for me in camp.
Q. You heard RQMS Fleming state in effect that you put both your hands on his shoulders and shoved him to the ground and held him there. Is that true?
A. No, sir, I did not lay a hand on him at all.
Q. Was Gladys Ralph not telling the truth when she said both of the men grabbed Fleming?
A. No, sir, she is not telling the truth.
Q. Were you acquainted with RQMS Fleming before 8 Nov 45.
A. No, sir.
Q. How long have you been at 11 Cdn Repat Depot?
A. I had been in camp approximately five months.
Q. Had you been doing any drinking on 8 Nov 45?
A. I had a few drinks.
Q. Were you drunk at the time this happened?
A. I was not exactly drunk and I was not completely sober.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

SECOND WITNESS FOR THE DEFENCE

F.89842 Pte Copan, A., 11 Cdn Repat Depot, sworn, states:-

At about 2315 hrs 8 Nov 45 I was coming home from the dance hall and I caught up to Pte Bell and Pte Smith on the road. This is Pte Smith (points to accused). I saw RQMS Fleming grab Pte Bell around the neck. I did not see him plainly. Then Pte Bell grabbed RQMS Fleming and threw him down. I did not see any blows struck. Bell then helped Fleming up. Another soldier came with a flashlight then and I noticed Fleming's rank and saw that he was an RQ.

Q. What made Fleming grab Bell by the neck?
A. I don't know if anything happened before that becsuse I was not there.
Q. Was it quite dark at the time this happened?
A. Yes, sir.
Q. How many soldiers beside yourself were there?
A. There was Smith, Bell and myself.
Q. You know them both very well?
A. Yes, sir.
Q. And you are definitely sure that it was Bell who put Fleming down?
A. Yes, sir.

SECOND WITNESS FOR THE DEFENCE (CONTINUED)

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

THE PROSECUTOR ADDRESSES THE COURT

Mr President and members of the court,

The Court has heard the evidence in this case. It has heard the statements of RQMS Fleming (our second senior Warrant Officer), CQMS Woolvett, and a civilian, Gladys Ralph. All three people are highly respected in their various walks of life, beit it civilian or military. The Court, on the other hand, has heard the terrifically conflicting statements of the Defence witnesses. This is an unhealthy condition -- and it is designed to place the full blame upon another private soldier who is also charged. All the charges, I feel, are given ample support in the evidence which the Court has heard. The seriousness of this un-Canadian-like attack is greatly enhanced by the fact that it involved a civilian woman. This and the fact that it demonstrates the state of discipline which some of our soldiers are rapidly approaching. Strike and investigate later -- the Nazi way of doing things -- the very thing we fought against has seemingly crept into our midst. I strongly urge that the Court will bear these facts in mind when passing sentence. Our military policy of discipline is at stake and also, equally as important in these last days of our UK experience, the continued good will of the British public toward our Canadian soldiers.

THE DEFENDING OFFICER ADDRESSES THE COURT

Mr President and members of the court,

Smith, under Oath, states that there were four soldiers on the scene besides RQMS Fleming, Smith, Bell, Copan and Patterson. Mrs Ralph states that both Smith and Bell laid hands on RQMS Fleming but she saw neither one of them throw him to the ground. There were four soldiers there and it could have been any two of them. She says she knew Bell was going to do something to Fleming so she cried "Stop Bell". Pte Copan states he saw Pte Bell and RQMS Fleming struggling at which time Bell threw Fleming to the ground. This evidence by the eyewitnesses shows that there was a certain amount of confusion at the time. All three men, Fleming, Bell and Smith were fairly close together at the time and in the confusion Mrs Ralph thought that Smith's hands as well as Bell's were on the person of RQMS Fleming. However, the evidence of Pte Copan who was on the scene proves without a doubt that it was Bell and not Smith that threw RQMS Fleming to the ground. As for the third charge, that of refusing to produce his paybook, Pte Smith had just been an innocent bystander in a quarrel in which he had just seen his friend strike down a man. Smith became alarmed at what his friend had done and when the question came up as to producing paybooks Smith felt that the request was directed towards Bell and not himself, as he had not been involved in the brawl and furthermore he knew not the rank of the person doing the demanding in the dark so refused to give it up. Gentlemen of the court, there has never been a charge against this man before. Smith was just about due for repatriation, he certainly wasn't going to jeoprodise his chance for going home by becoming involved in a roadside brawl. I respectfully request that the court weigh the evidence I have placed before it and return a verdict of Not Guilty on all charges.

THE COURT IS CLOSED

THE COURT RE-OPENS

The President announced that the Court found the accused not guilty of the first, second and third charges but the finding of the court on the fourth charge cannot be communicated to the accused because it is subject to confirmation.

PLEA OF MITIGATION BY DEFENDING OFFICER

The Accused has done service with our Canadian Army in Italy for 18 months with the RCRs where he was wounded. He has never before faced a charge of violence. The man was about to be returned to Canada on repatriation and at this time I ask the Court to be lenient on the strength of the above. He quit school when he was 16 and worked on a farm. His category is U4 on account of wounds.

TRIAL OF

L.8854 Pte Smith MW, CIC, 11 Cdn Repat Depot

PROSECUTION

FIRST WITNESS

A.107098 CQMS Woolvett, A.M., 11 Cdn Repat Depot, sworn, states:-

About 2315 hrs on the 8th Nov 45, I was walking on the highway from the dance hall in Nutley towards the Shelly Arms in Nutley. I was approximately half way between those two points when a civilian woman, Gladys Ralph, came running from behind me, calling my name "Art". She said something to me and I returned towards the dance hall with her, to a point where I found RQMS Fleming of 11 Cdn Repat Depot standing in the road. Facing him was a Pte Bell, whom I recognized as a Canadian soldier from A Wing, 11 Cdn Repat Depot, and Pte Smith, whom I recognized as a Canadian soldier from 11 Cdn Repat Depot, the accused whom I now recognize. I used my flashlight and I asked RQMS Fleming at that time what had happened and he indicated that Pte Bell had hit him. Upon looking him over I saw that his hair was mussed up, there was blood on his neck and I found his hat on the ground about four or five feet from him. The woman was rubbing the right side of her face and her nose at that time. I heard RQMS Fleming order Pte Smith to produce his paybook and Pte Smith refused to comply with the order, saying he could have it if he was big enough to take it away from him. He said this in a defiant manner and definitely refused to produce his paybook. I picked up the hat and there was some slight argument, nothing of any importance, and Pte Smith and Pte Bell left and walked up the road towards the Shelly Arms. RQMS Fleming and myself accompanied the two ladies to their residence at the Shelly Arms and we then continued towards camp. When we came to the fork in the road in Nutley, where one road leads towards "B" Wing and the other towards "A" Wing of 11 Cdn Repat Depot, Pte Bell walked out and stood immediately in front of RQMS Fleming and dared him to lay charges against him. We continued walking down towards camp and Pte Smith and Pte Bell walked with us. Pte Bell was immediately alongside of RQMS Fleming and Pte Smith was on the opposite side of the road most of the way back.

Q. Could the accused walk straight?
A. To the best of my knowledge he did.
Q. Was his conversation clear and coherent?
A. Yes, very.

When we got towards camp Smith stayed on the opposite side of the road and did not cause any argument or do anything. Pte Bell took his paybook out of his pocket and offered it towards RQMS Fleming at the time and then he replaced it in his pocket before there was any opportunity to do anything about it. Pte Bell and Pte Smith then walked on ahead of us and Pte Bell challenged us again to lay a charge against him.

CROSS-EXAMINED

Q. When you went to where this disturbance was going on, how many Canadian soldiers were there besides RQMS Fleming and yourself?
A. I saw only two other soldiers, apart from Fleming and myself.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

SECOND WITNESS

C.122641, RQMS Fleming, D.G., 11 Canadian Repat Depot, sworn, states:-

At approximately 2315 hrs on 8 Nov 45 I was walking on the main highway midway between the dance hall and the Shelly Arms, Nutley, Sussex, with a civilian woman, Gladys Ralph of Nutley. We were walking very slowly, arm in arm, when we were bumped into from behind by two soldiers from 11 Cdn Repat Depot who were walking in the same direction. When they bumped into us I said "Oops, detour boys" and, without warning, Pte Bell struck me on the right jaw with his clenched fist. I staggered back from the force of the blow, still on my feet, and the accused, Pte Smith, grabbed me from in front with both his hands on my upper arms and threw me violently to the ground. I told him that I was a RQMS but he continued to hold me down until I heard CQMS Woolvett coming towards us. Just after I was was struck I heard Gladys Ralph call out "Stop Bell". She then shouted "Art", CQMS Woolvett's name and ran towards CQMS Woolvett who was walking ahead.

Q. Was it dark at the time?
A. It was fairly dark, but not too dark.

Gladys Ralph returned with CQMS Woolvett and when I heard them approaching Pte Smith let me up. I then ordered him to produce his paybook and he said "you can have it if you are big enough to take it away from me". He did not produce it. I then ordered Pte Bell to produce his paybook and he replied defiantly "nothing doing". I then noticed Gladys Ralph wiping her face with a handkerchief. I asked her if she was hurt, in the hearing of both Pte Smith and Pte Bell, and still in the hearing of both she replied "he struck me". I thought it must have been Bell who struck her because Smith had been holding me down. Neither of the accused denied striking Gladys Ralph but turned and walked rapidly away towards camp. I then escorted Gladys Ralph to her residence in company with CQMS Woolvett and the young woman with him. CQMS Woolvett and myself then started to walk towards camp. At the fork in the road past the Shelly Arms Pte Smith and Pte Bell came out on the road and started to walk along with us. Pte Bell then pulled out his paybook and said "there is my paybook if you want to see it". Before I had an opportunity to take the paybook he put it back in his pocket. He then dared CQMS Woolvett and myself to lay a charge against him. Pte Bell and Pte Smith then left us and walked on towards camp. The next I saw of them was when they were leaving the Unit Guard Room.

CROSS-EXAMINED

Q. When the soldiers bumped into you on the road, how many Canadian soldiers were there beside yourself?
A. There were two, sir.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

THIRD WITNESS

Gladys Ralph, barmaid, Nutley, Sussex, sworn, states:-

About 2315 hrs on 8 Nov 45, RQMS Fleming and I were walking home from a dance at the Nutley canteen. We were half way between the Shelly Arms and the canteen and walking slowly, arm in arm, when two Canadian soldiers walking behind us bumped into us. Fleming said "make a detour there boys. I don't remember if either of the men answered. They just made a grab at Fleming with their hands. I told them there was nothing to make a row about. Pte Bell then hit me on my nose with his clenched fist, causing my nose to bleed. I then ran

THIRD WITNESS (CONTINUED)

forward to catch up to CQMS Woolvett who was walking ahead of us. I called him by his name "Art" and tole him what was happening a way back. We hurried back. Fleming was on his feet and in the light of Woolvett's flashlight Fleming's badges of rank were clearly visible. Woolvett asked Fleming what had happened and he replied that Bell had hit him. Fleming then ordered the men to produce their paybooks and they refused and one of them said "you can have it if you are big enough to take it" but I don't know which one it was. They did not give Fleming their paybooks.

Q. Did Pte Bell and Pte Smith appear to be drunk?
A. They did not appear to be drunk.
Q. Had any provocation been given to either Pte Bell or Pte Smith?
A. None whatsoever.
Q. Did you see them at the dance?
A. Yes.
Q. Was there any trouble there?
A. None whatsoever.

CROSS-EXAMINED

Q. You say both men laid hands on Fleming?
A. Yes.
Q. Did you see Fleming thrown to the ground?
A. No.
Q. Did you see Fleming get struck?
A. No.
Q. When you called out "Stop Bell", what did you mean?
A. Well, I could see he was going to hit somebody and when I called "Stop Bell," he hit me.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B)

The Prosecutor said that Captain B.G. Herman, RCAMC, was available to give evidence as to the condition of RQMS Fleming but that in his evidence he would not say that any injury was done to the RQMS as the result of the offences of which this accused, Smith, is charged. The Defending Officer said that it would be fairer to the accused not to take the evidence of Captain Herman as it would be irrelavant and might be prejudicial. The Court agreed.

THE PROSECUTION IS CLOSED

DEFENCE

FIRST WITNESS

The Accused, L.8854 Pte Smith MW, CIC, 11 Cdn Repat Depot, sworn, states:-

At approximately 2315 hrs on 8 Nov 45 I was coming from the dance hall to return to camp. It was dark and I bumped into RQMS Fleming. When RQMS Fleming said "take a detour, boys" I stepped aside and excused myself. Before I knew what was going on Pte Bell knocked him to the ground and then Pte Bell helped the RQMS to his feet again. There was a slight argument between Bell and the RQMS when the RQMS asked us for our paybooks. I did not consider the RQMS request to be in order so I did not show him my paybook. We then proceeded to camp and stopped at the crossroads where one road leads into "B" Wing and the other into "A" Wing where I talked to two cooks from "A" Wing.

FIRST WITNESS FOR THE DEFENCE (CONTINUED)

Q. When you bumped into RQMS Fleming, how many soldiers were with you?
A. There were four.
Q. Who were they?
A. Pte Bell, Pte Copan, Pte Patterson and myself.
Q. Was it a dark night?
A. It was dark enough that I could not see RQMS Fleming when I bumped into him.
Q. Did you just come out of the dance hall?
A. Yes, shortly before and I couldn't see well in the dark.

CROSS-EXAMINED BY PROSECUTOR

Q. Why did you not consider it an order when RQMS Fleming asked you to produce your paybook?
A. I don't consider it an order until I know his rank?
A. Had you any reason to doubt his authority?
A. Not exactly, but it was dark.
Q. Had you reason to suspect that there was no authority?
A. I did not know him and I could not see his badges of rank.
Q. Had you any reason to believe that this man might have been a private soldier after the order to produce your paybook?
A. Yes, sir, as I could not see and I heard around camp that there had been quite a few of the other boys laying for me in camp.
Q. You heard RQMS Fleming state in effect that you put both your hands on his shoulders and shoved him to the ground and held him there. Is that true?
A. No, sir, I did not lay a hand on him at all.
Q. Was Gladys Ralph not telling the truth when she said both of the men grabbed Fleming?
A. No, sir, she is not telling the truth.
Q. Were you acquainted with RQMS Fleming before 8 Nov 45.
A. No, sir.
Q. How long have you been at 11 Cdn Repat Depot?
A. I had been in camp approximately five months.
Q. Had you been doing any drinking on 8 Nov 45?
A. I had a few drinks.
Q. Were you drunk at the time this happened?
A. I was not exactly drunk and I was not completely sober.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

SECOND WITNESS FOR THE DEFENCE

F.89842 Pte Copan, A., 11 Cdn Repat Depot, sworn, states:-

At about 2315 hrs 8 Nov 45 I was coming home from the dance hall and I caught up to Pte Bell and Pte Smith on the road. This is Pte Smith (points to accused). I saw RQMS Fleming grab Pte Bell around the neck. I did not see him plainly. Then Pte Bell grabbed RQMS Fleming and threw him down. I did not see any blows struck. Bell then helped Fleming up. Another soldier came with a flashlight then and I noticed Fleming's rank and saw that he was an RQ.

Q. What made Fleming grab Bell by the neck?
A. I don't know if anything happened before that because I was not there.
Q. Was it quite dark at the time this happened?
A. Yes, sir.
Q. How many soldiers beside yourself were there?
A. There was Smith, Bell and myself.
Q. You know them both very well?
A. Yes, sir.
Q. And you are definitely sure that it was Bell who put Fleming down?
A. Yes, sir.

SECOND WITNESS FOR THE DEFENCE (CONTINUED)

NO CROSS-EXAMINATION

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83(B).

THE PROSECUTOR ADDRESSES THE COURT

Mr President and members of the court,

The Court has heard the evidence in this case. It has heard the statements of RQMS Fleming (our second senior Warrant Officer), CQMS Woolvett, and a civilian, Gladys Ralph. All three people are highly respected in their various walks of life, beit it civilian or military. The Court, on the other hand, has heard the terrifically conflicting statements of the Defence witnesses. This is an unhealthy condition -- and it is designed to place the full blame upon another private soldier who is also charged. All the charges, I feel, are given ample support in the evidence which the Court has heard. The seriousness of this un-Canadian-like attack is greatly enhanced by the fact that it involved a civilian woman. This and the fact that it demonstrates the state of discipline which some of our soldiers are rapidly approaching. Strike and investigate later -- the Nazi way of doing things -- the very thing we fought against has seemingly crept into our midst. I strongly urge that the Court will bear these facts in mind when passing sentence. Our military policy of discipline is at stake and also, equally as important in these last days of our UK experience, the continued good will of the British public toward our Canadian soldiers.

THE DEFENDING OFFICER ADDRESSES THE COURT

Mr President and members of the court,

Smith, under Oath, states that there were four soldiers on the scene besides RQMS Fleming, Smith, Bell, Copan and Patterson. Mrs Ralph states that both Smith and Bell laid hands on RQMS Fleming but she saw neither one of them throw him to the ground. There were four soldiers there and it could have been any two of them. She says she knew Bell was going to do something to Fleming so she cried "Stop Bell". Pte Copan states he saw Pte Bell and RQMS Fleming struggling at which time Bell threw Fleming to the ground. This evidence by the eyewitnesses shows that there was a certain amount of confusion at the time. All three men, Fleming, Bell and Smith were fairly close together at the time and in the confusion Mrs Ralph thought that Smith's hands as well as Bell's were on the person of RQMS Fleming. However, the evidence of Pte Copan who was on the scene proves without a doubt that it was Bell and not Smith that threw RQMS Fleming to the ground. As for the third charge, that of refusing to produce his paybook, Pte Smith had just been an innocent bystander in a quarrel in which he had just seen his friend strike down a man. Smith became alarmed at what his friend had done and when the question came up as to producing paybooks Smith felt that the request was directed towards Bell and not himself, as he had not been involved in the brawl and furthermore he knew not the rank of the person doing the demanding in the dark so refused to give it up. Gentlemen of the court, there has never been a charge against this man before. Smith was just about due for repatriation, he certainly wasn't going to jeoprodise his chance for going home by becoming involved in a roadside brawl. I respectfully request that the court weigh the evidence I have placed before it and return a verdict of Not Guilty on all charges.

THE COURT IS CLOSED

THE COURT RE-OPENS

The President announced that the Court found the accused not guilty of the first, second and third charges but the finding of the court on the fourth charge cannot be communicated to the accused because it is subject to confirmation.

PLEA OF MITIGATION BY DEFENDING OFFICER

The Accused has done service with our Canadian Army in Italy for 18 months with the RCRs where he was wounded. He has never before faced a charge of violence. The man was about to be returned to Canada on repatriation and at this time I ask the Court to be lenient on the strength of the above. He quit school when he was 16 and worked on a farm. His category is U4 on account of wounds.

Summary of Evidence

In the case of No. L.8854, Private Mott Wesley SMITH, CIC, No. 11 Cdn Repat Depot, a soldier of the Canadian Army Overseas

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS FOR PROSECUTION

No. A.107098 C.Q.M.S. Woolvett, A.M., 11 Canadian Repatriation Depot, having been duly sworn states:-

About 2315 hrs, 8 Nov 45, on the main highway midway between the dance hall and the Shelly Arms, Nutley, Sussex, I was walking slowly arm in arm with a civilian woman toward the Shelly Arms. No. C.122641 RQMS Fleming, D.G. of 11 Canadian Repatriation Depot, in company with Gladys Ralph, a civilian woman, was following about 50 yards behind me. I then heard Gladys Ralph running toward me calling my name "Art", as a result of what she then told me I ran back with her, and in the light of my flashlight, saw R.Q.M.S. Fleming, with his badges of rank clearly visible, standing on the highway facing No. C.120369 Pte. Bell, W.R., whom I now recognize as the dark haired accused and No. L. 8854 Pte. Smith, M.W., whom I now recognize as the brown haired accused, both of 11 Canadian Repatriation Depot. R.Q.M.S. Fleming's hat was on the ground and there was blood on his neck. His hair was mussed. In the hearing of both accused, I asked R.Q.M.S. Fleming what had happened, and still in the hearing of both accused, he replied [redacted] Bell) hit me". I then noticed that Gladys Ralph was rubbing her face and [redacted] Fleming ordered the accused Smith to produce his paybook. Smith replied in a very defiant manner "you can have it if you are big enough to take it away from me". The accused Smith did not comply with this order, though he had ample time to do so. Shortly after this, both accused walked away toward camp. R.Q.M.S. Fleming and I escorted the girls to their residence in the Shelly Arms. R.Q.M.S. Fleming and I then walked alone towards camp. As we reached the fork in the highway, the accused Bell walked out into the middle of the highway and stopped directly in front of R.Q.M.S. Fleming. The accused Smith was a few paces to one side. The accused Bell dared R.Q.M.S. Fleming to lay a charge against him. Both accused accompanied us for a short distance up the road toward camp. During this time accused Bell extended his paybook toward R.Q.M.S. Fleming, but put it back in his pocket before R.Q.M.S. Fleming had a chance to see it. The accused Bell dared R.Q.M.S. Fleming and me to go to the Guard Room then and lay a charge. Both accused walked away from us toward camp.

A.M. Woolvett

A.107098 C.Q.M.S. Woolvett, A.M.

The accused declined to cross-examine the witness.

SECOND WITNESS FOR PROSECU/TION

No. C.122641, R.Q.M.S. Fleming, D.G., 11 Canadian Repatriation Depot, "A" Wing, having been duly sworn states:-

About 2315 hrs 8 Nov 45, on the main highway midway between the dance hall and the Shelly Arms, Nutley, Sussex, I was walking slowly arm in arm with a civilian woman Gladys Ralph of Nutley, returning from a dance, when two soldiers from 11 Canadian Repatriation Depot, namely No. C.120369 Pte. Bell, W.R., whom I now recognize as the dark haired accused and No. L.8854 Pte. Smith, E.W., whom I now recognize as the brown haired accused, who were walking rapidly in the same direction, overtook and bumped into Gladys Ralph and me. I said "Cope, detour boys". The accused Bell suddenly and without warning struck me on the right side of my jaw with terrific force, with his clenched fist. I staggered back from the force of the blow. I was still on my feet when the accused Smith grabbed me from the front with one hand on each of my upper arms and threw me violetnly to the ground. I told him I was an RQMS but he continued to hold me there until I could hear No. A.107098 CQMS Woolvett, A.K. and Gladys Ralph running back toward me. Immediately after I was struck by the accused Bell, I heard Gladys Ralph call out "stop Bell" and then she shouted "Art" CQMS Woolvett's name. She ran ahead toward CQMS Woolvett who was walking ahead of us and returned with him. He had a flashlight. As soon as I got on my feet, I ordered the accused Smith to give me his pay book. He immediately replied to me in a defiant manner, "you can have it if you are big enough to take it away from me". He did not comply with my said order though he had ample time to do so. I then ordered the accused Bell to give me his pay book. He immediately replied to me in a defiant manner "nothing doing". He did not comply with this order though he had ample time to do so. I then noticed that Gladys Ralph was rubbing her face with her handkerchief. In the hearing of both accused I asked her if she was hurt and still in the hearing of both accused she replied "he struck me". Neither accused denied this, but turned and walked rapidly away towards camp. I escorted Gladys Ralph to her residence in company with CQMS Woolvett, and the young woman with him. Then in company with CQMS Woolvett, I walked towards camp. As we reached the fork in the road, both accused were standing there. They each walked about 20 yards along the highway toward camp. The accused Bell then extended his pay book toward me saying "there is my pay book if you want to see it". He put it back in his pocket before I had a chance to see it. He then said "I dare you both to lay a charge". Both accused walked on ahead of us. I next saw them coming out of the Unit Guard House as I went in. I was wearing my badges of rank clearly visible.

D.G. Fleming

C.122641 R/QMS Fleming, D.G.

The accused declined to cross-examine the witness.

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THIRD WITNESS FOR PROSECUTION

Gladys Ralph, barmaid, Nutley, Sussex, having been duly sworn states:-

About 2115 hrs 8 Nov 45, on the main highway midway between the Dance Hall, Shelley Arms - Nutley, Sussex, I was walking slowly arm in arm with No. C.122641 RQMS Fleming, D.G., 11 Canadian Repatriation Depot, returning from a dance when two Canadian soldiers from that Depot, namely No. C.120369 Pte. Bell, W.R., whom I now recognize as the dark haired accused and No. L.8854 Pte. Smith, M.W. whom I now recognize as the brown haired accused, who were walking rapidly in the same direction, overtook and bumped into Fleming and me, Fleming said "make a detour there boys". I don't remember if either of the accused answered. Both accused grabbed Fleming with their hands. I told them there was nothing to row about. The accused Bell struck me on my nose with his clenched fist, causing my nose to bleed. I ran forward to No. A.107098 CQMS Woolvett, A.M. who was walking ahead of us. I called him by his name "Art". As soon as Woolvett joined me, we both returned to Fleming who was then on his feet. His hat was off. Fleming was facing both the accused. Fleming's badges of rank were clearly visible in the light of Woolvett's torch. Woolvett in the hearing of both accused asked Fleming what had happened. Fleming replied "Bell hit me". Fleming ordered each accused to produce his paybook. One of the accused said to Fleming "if you are big enough to take it you can have it". Each accused refused in a defiant manner to produce his paybook. Both accused turned and walked away. Fleming did not give any cause or provocation to the accused to assault him. None of the parties were drunk.

G. J. Ralph

Gladys Ralph

The accused declined to cross-examine the witness.

(4)

FOURTH WITNESS FOR PROSECUTION

Captain B.G. Herman, R.C.A.M.C., attached 11 Canadian Repatriation Depot.

A written statement of this Witness's evidence purporting to be signed by him has been read to the accused and is included in the summary of evidence, as Exhibit "A". In my opinion the attendance of this witness cannot readily be procured owing to the exigencies of the service.

(J.F. McCormick) Captain

I, the undersigned Accused do not require or demand the attendance of Captain B.G. Herman, for cross-examination.

L.8854 Pte. Smith, M.W.

Question to the accused:

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence".

Answer by the accused:

"I have nothing to say."

The accused called one witness for the defence.

FIRST WITNESS FOR DEFENCE

No. F.89842 Pte. Copan, A., 11 Canadian Repatriation Depot, having been duly sworn states:-

About 2315 hrs 8 Nov 45, on the main highway about midway between the dance hall and the Shelly Arms, Nutley, Sussex, I was walking towards camp when I caught up to No. C.120369 Pte. Bell, W.R. and No. L.8854 Pte. Smith, M.W., both of 11 Canadian Repatriation Depot, and saw No. C.122641 R.Q.M.S. Fleming, D.G. grab hold of No. C.120369 Pte. Bell, W.R. by the throat. Accused Bell grabbed R.Q.M.S. Fleming and threw him down. Accused Bell then helped R.Q.M.S. Fleming to his feet. No. A.107098 C.Q.M.S. Woolvett, A.M. came back with a flashlight and we noticed R.Q.M.S. Fleming's badges of rank. Both accused then proceeded toward camp.

F.89842 Pte. Copan, A.

I certify that Rules of Procedure 4 (C) (D) (E) (F) and (G) have been complied with, and that the foregoing summary of evidence consisting of four pages was taken down by me in the presence of the accused.

(J.F. McCormick) Captain
Officer detailed to take the summary of evidence.

In the Field
24 Nov, 1945.

Statement of Captain B.G. Herman, R.C.A.M.C., attached 11 Canadian Repatriation Depot, for inclusion in summary of evidence under Rule of Procedure 4(g).

No. C.122641 R.Q.M.S. Fleming, D.G., 11 Canadian Repatriation Depot, was seen by me on morning sick parade 0830 hrs, 9 Nov 45, (about nine hours after injury). Examination disclosed that he had discoloration, swelling pain, loss of continuity and mobility of the angle of his right mandible showing that he had a fracture of that bone. This injury is of a serious nature and reduction of this fracture required opening of the skin, wiring the fragments together, and wiring the jaw shut for a period of at least 4 weeks. At the end of which time he will be checked for union of the bone fragments. There is a strong probability at that time that the fractured bones may not have united and further treatment such as a bone graft may be necessary. This injury could have been caused by a hard blow.

B.G. Herman Capt RCAMC

Captain B.G. Herman, RCAMC

~~Exhibit~~
This is ~~Appendix~~ "A"

J. McCormick Capt

Captain E.J. McCormick,
Offr detailed to take Summary of Evidence

No. L8854 Name SMITH M.W. | Sqn, Battery, or Company | Corps C.I.C. | Date of enlistment 4 Oct 41 | OC Badges | Service or Proficiency Pay 1.50 3/17 MSM 6 (AFB 122) 40/P&S/138 (7010)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award of or order directing trial	By whom awarded	Remarks
Field	14/10/43	Pte.		AA 15(1) AWL from 1200 hrs 14 Oct 43 to 1300 hrs 18 Oct 43		14 dys F.P.	19 Oct 43		19 dys pay cost of APPH £1-8-1
Field	7 May 44	Pte.		AA 24		5 days C.B.	7 May 44		5 dys Pay
Field	16 Oct 44	Pte.		AA 40 AWL 1 Day		7 days C.B.	16 Oct 44		FR&I 149(2) Forf 1 dyspay FR&I 149(1)(a)
Field	5 Apr 45	Pte.		AA 15(1) AWL from 1300 hrs 5 Apr 45 to 1110 hrs 9 Apr 45 AA 15(1)			10 Apr 45		14 Dys. Pay
Field	13 Apr 45	Pte.		AA 15(1) AWL from 2330 hrs 13 Apr 45 to 0610 hrs 30 Apr 45		26 Days Pay			26 dys pay Cost of Appr 6/2/6

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	18 May 45			AWL 23 days 5 hrs 30 Min	60 days Det Sentence Mitigated to read 30 days Det & Conf.			F.G.C.M.	61 Days Pay
Field	20 Sep 45			AA 11		5 days Pay			FR&I 149(2)
Field	20 Sep 45			AA 15(1) AWL from 2315 hrs 20 Sep 45 to 2359 hrs 22 Sep 45		5 days C.B.			2 Days Pay FR&I 149(1)(a)

Certified that this is a true copy of M.F.M. 5 as of 10 Nov 1945

A. A. Dew .....MAJOR & ADJUTANT

Officer having custody of Regt'l. Records.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
L.8854	Private	Martin Wesley SMITH	CIC, 11 Cdn. Repat. Depot.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement and not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheet(s), punishment being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For Absent Without Leave	times	5 times.
For Army Act 24	times	1 times.
For Army Act 40	times	1 times.
For Army Act 11	times	1 times.
For	times	times.

~~[illegible]~~ 6d

or

~~[illegible]~~ 6d

2. The accused has not been previously convicted, *or*

~~[illegible]~~ 6d

~~[illegible]~~ 6d

3. The accused is not under sentence at the present time ~~[illegible]~~ 6d

~~[illegible]~~ 6d

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 13 days in military custody, making a total of 13 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~[illegible]~~ attestation paper is 23 yrs.

6. The date of his ~~[illegible]~~ attestation specified in his ~~[illegible]~~ attestation paper is 4 Oct 41.

~~[illegible]~~ 6d

~~[illegible]~~ 6d

~~[illegible]~~ 6d

10. The accused is in possession of ~~[illegible]~~ 6d

entitled to (*state any military decoration or reward*) CVSM & Clasp, 1939-45 Star, Italy Star, Defence Medal.

~~[illegible]~~ 6d

~~[illegible]~~ 6d

~~[illegible]~~ 6d

(*[illegible]*) [illegible] A.J.B.W. Ltd. Gp.456
(*[illegible]*) [illegible]

E + B
MJ

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. _____ Rank _____ Name _____ of _____ Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
FGCM	18 May 45	Absent without leave	61 days pay	

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 10th day of ~~November~~ DECEMBER, 1945.

(Maj. & Adj.)
Officer having custody of Original Records.

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

Date of Promotion.

In the rank of _____ years, _____

In the rank of _____ years _____

In the rank of _____ years, _____

In the rank of _____ years, _____

(NOTE.—*If any matter in any of the above has already been stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such entries as are available and the paragraph inserted accordingly.*)

In the matter of the trial by FIELD GENERAL Court Martial

of No. L.8854 Rank Private Martin Wesley
(Christian Names)

SMITH CIC 11 Cdn Repat Depot
(Surname) (Corps)

1. I the undersigned accused acknowledge that I have this day at 1450 hours been served with the following documents free of charge: (a) Copy of Summary of Evidence & (b) Copy of Charge Sheet both in connection with my forthcoming trial by Field General Court Martial.

In the Field,
27 Nov, 1945

M W Smith
(No. L.8854 Pte. SMITH, M.W.)

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2. I the undersigned accused acknowledge that I have been informed that the convening officer may appoint or apply for the services of an officer holding legal qualifications to act as prosecutor at my trial by Field General Court Martial and I have been advised of my rights to retain counsel (lawyer). I do not intend to retain the services of counsel but desire to have a defending officer assigned to represent me at my said trial. I desire the services of [redacted] if he is available for this purpose. I waive the 7 days notice mentioned in Rule of Procedure 89 (B).

In the Field,
27 Nov, 1945

M W Smith
(No. L.8854 Pte. SMITH, M.W.)

LIST OF EXHIBITS

[redacted]
See Summary of Evidence

LIST OF WITNESSES

For the Prosecution - [redacted]
- [redacted]
- See Summary of Evidence

For the Defence - [redacted]
- [redacted]
- See Summary of Evidence

STATE OF TRAINING OF ACCUSED

Fully trained soldier.

MEDICAL CATEGORY OF ACCUSED

YOE	P	U	L	H	E	M	S	[redacted]	[redacted]
22	1	4	1	1	1	1	1		

WWW-127. Case #2.

Spr. Smith N.

See TTT-217 for 1st case.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B 53700 SPR NORMAN SMITH

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for FIVE YEARS HARD LABOUR beginning on (date) 14 JUL 44 (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ... days, of which ... days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under £2.)

Sentence Awarded by the Court:

TO BE IMPRISONED WITH HARD LABOUR FOR FOURTEEN MONTHS ~~[illegible]~~

(Sgd) N/A, Judge-Advocate, if any. 27 AUG 44, Date awarded. (Sgd) [illegible], President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ... (Sgd) ... Commanding ...

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1) (J. AA 57A. Delete if not used.)

(Sgd) [illegible] Brig

Date 27 Aug 44 Commanding COMMANDER 1 CDN BASE RFT WING

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B53700 Spr Norman SMITH	29 Aug 44	[illegible] Captain Commandant 2 Cdn. Field Punishment Camp.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 2 SEP 1944 JAG BRANCH C.M.H.Q.

RECORDED AT CMHQ IN AB 160. WWW-727

FIELD GENERAL COURT-MARTIAL

CF AB 160 (To lieu of AFA 21) 40-P & B/1008 (40650) 4/38B

Convening Order by Brigadier E.W. MALDEN BY MC. V.D. Comd 1 CDN BASE dated 22 AUG 44 RFT LP. CMF

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B53700	SPR.	NORMAN	SMITH	2 CAN FD PUNISHMENT CAMP

PROCEEDINGS REVIEWED K.18 27 AUGUST

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) 25 AUG 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

2A 90

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fins RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 57, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused ~~(are)~~ is brought before the Court. At 1340 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2).~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to [illegible] as interpreter? Ans ...

The Interpreter is sworn.(1) Do you object to ... as shorthand writer? Ans ...

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans N/A (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, (8, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs composing the Court, etc:

President	MAJOR	A.M. RUSSELL	1 CDN BASE RFT WING
Member	CAPT	H.A. STEPHENS	7 BN 2 CBRD
Member	CAPT	J.H. WELLS	6 BN 2 CBRD
Judge-Advocate			
Prosecutor	LIEUT	R.W. MACKENZIE	NO 2 RE. ALLOR CAN FD PUNISHMENT CAMP
Defending Offr	CAPT	B.A. DUNCAN	5 BN 2 CBRD

Questions by President: Is the Prosecutor a lawyer? Ans N/A Is the Defending Offr a lawyer? Ans N/A (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused SPR NORMAN SMITH before arraignment make(s) (no) (a) plea (of) special (3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in All ranks and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is sworn~~ and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 68(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP* 35 *fn* 3. *2. MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)
(*1. RP* 37(*B*). *2. RP* 37(*D*) *fn* 6. *3. RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. *4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change ~~his~~ (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP* 27(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have not been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. *4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans..... Do you intend to call witnesses on your behalf ?
Ans..... Are they witnesses as to character only ? Ans.....
(*1. RP* 115. *2. RP* 40(*A*), *see* 80(*D*). *3. RP* 40 *fn* 10. *4. RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP* 43, 117(*A*). *See Notes in Part I of Schedule. 2. RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA* 54(3) (*c*), *RP* 45, 120(*A*). *2. AA* 54(3), *RP* 45, 117. *This alternative pronouncement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans.....
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(*1. MFB* 353 *or MFB* 296. *2. MFM* 6. *3. RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans.....(2)
(*1. RP* 37(*C*), 46(*D*). *2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 338, 330, 563-566. *Overseas RO* 309, 1313, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(18), 68(1), *KR Can See.* *2. RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see insstrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

B. 2

CHARGE SHEET

The accused B53700 Spr., Norman, SMITH, R.C.E., 7 Bn. 2 C.B.R.D., a soldier undergoing sentence at No. 2 Canadian Field Punishment Camp, a soldier of the Canadian Army Overseas is charged with:-

CHARGE
Section 15(1)(a)
ARMY ACT

When on active service absenting himself without leave,

in that he:-

In the field in Italy, while in confinement, absented himself from approximately 1530 hours 26 July 1944, until apprehended by 418 F.S., Section at approximately 0130 Hours 5 Aug 44.

Time absent:- 9 days, 10 hours.

Commandant,
No. 2 Cdn. Fd. Pun. Camp.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
In Italy
21 Aug 44

(E. W. HALDENBY) Brigadier
Comd 1 Cdn Base Rft Gp
Cdn Army-CMF

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 67(b).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B53700	Spr		Norman	SMITH	2 Cdn Fd Pun Camp

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge ~~(Charges)~~ attached and on (*date*) 21 Aug 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	A N MUSGROVE (GIG)	1 Pn 1 CHRD

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt or Lieut to be detailed by OC 7 Pn 2 CHRD		
Capt or Lieut to be detailed by OC 8 Pn 2 CHRD		

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lieut to be detailed by OC 5 Pn 2 CHRD		

~~JUDGE-ADVOCATE~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy (*Country.*)

Date 21 Aug 44

(*Signed personally. RP 105 fn 2.*)

(E. N. MUSGROVE)

Commanding 1 Cdn Base ADS

Convening Officer.

Brigadier (*Rank.*)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (PAMD /DD DMS OF AFAS) 46/F & S/1067

(See overleaf for oaths and notes for use on trial.)

25 Aug '44

MEDICAL CERTIFICATE

I have inspected B53700 Spr., SMITH, N., this day 25 Aug 1944 and find him fit to undergo his trial.

F.C. Macwhite Captain
M.C.A.M.C.

F.G.C.M. – B53700, Spr. Smith, N., 2 Can. Fd. Pk. Coy. 25 Aug 44

E1. The accused, Spr. Smith, N., B53700 being duly sworn states:

I am at present serving one year's hard labour at 2 Can. Fd. Pk. Camp. I escaped from custody on 26 July 44. My reason for escaping was to recover family photographs, personal ~~effects~~ belongings, etc. which were left in Bari at the time I was previously sentenced. On reaching Bari I did secure the effects mentioned and they were mailed home. I then intended to return to 2 Can. Fd. Pk. Camp within a few days but was apprehended before reaching my destination.

R.P. 83(6) complied with.

E3. The in Mitigation of Punishment by defending officer:

In examination of the conduct sheet of the accused, in spite of the fact he has been sentenced for numerous minor charges, in my opinion it fails to show actual viciousness. The accused has given under oath the reasons for the escape under which he is at present charged. I think the reasons are humane and understandable and in view of the fact that the accused is at present serving a very long sentence I respectfully plead for the utmost possible leniency on this charge.

R.P. 83(6) complied with.

Army. B.51.

Summary of Evidence

In the Case of

B53700 Sapper Smith N a Canadian Soldier undergoing sentence in No 2 Canadian Field Punishment Camp No 1. C.B.R.C. Canadian Army Overseas.

The Acting Officer Commanding directs that the evidence be taken under oath

---

1st Witness for
Prosecution.

D98553 a/Sgt. Hayes E.J. No 2
Aust. Field Ammunition Coy 1.C.B.R.G.
C.A.O. having been duly Sworn States-

I am D98553 a/Sgt Hayes E.J
No 2 F.A. Coy. On 26 July 43
I was O. Coy commander the
accused B53700 Sapper Smith N
who was attached to my Coy. I called
the roll at the 1330 parade 26 July 43
the accused was present. At appell 1530
hrs. the escape alarm was sounded
I immediately fell in my Coy. Pte Smith
was absent. I searched for him but he
had escaped. I have called the
roll each day since and have looked
for the accused but he has been absent
until reporting in under escort 7 August

I submit as evidence certificate of
Arrest in accordance with a.a. Sec 163 (1) (g)
showing the arrest of the accused B53700
Pte Smith N at Wellino at appx 0130 hrs
6 Aug 43. This certificate came into my
possession through normal channels.

~~I further submit as evidence in accordance~~
~~with A A Sec 163 a Statement~~
~~signed by B53700 Sgt Schuppan G. and NX96355~~
~~Sgt Davies J of 4th F.A. Section. This document~~
~~came into my possession through Normal~~
~~Channels~~

E J Hayes

The accused elects to cross examine the witness

Confession of arrest referred to in the Summary of Evidence marked exhibit "A" read over shown to the accused and attached to the summary.

Kennedy
Officer detailed to take
Summary of Evidence

Statement referred to by the witness in the Summary of Evidence, read over, shown to the accused and attached to the summary

Kennedy
Officer detailed to take
Summary of Evidence

Question by officer taking summary.

Do you wish to cross examine the witnesses referred to in the statement

I do not wish to Cross examine the witnesses.

Sgt W Smith.

3rd Witness for Prosecution } 6d.00073 Sgt. Schiliggi G. No 418 F.S. Section

A Written Statement purporting to be signed by the above Witness (Hereto annexed and marked exhibit B1. was read to the accused.

The accused did not require the presence of the above Witness for cross examination

B53700 Sgt. Smith V.
Smith V.

I hereby certify that in my opinion due to the exigencies of the service excluding the loss of time and expense involved the attendance of the above named Witness is not reasonably procurable.

Schiliggi
Officer taking summons & evidence

Witness for
Prosecution.

M.19957 Cph. Tuson. R.E. No
2. Field Punishment Comp. 1 C.B.R.G.
C.A.O. having been duly sworn states.

I am M.19957 Cph Tuson R.E.
of No 2. F.P. Comp. D. Coy, on 26 July 14
at apprx 1530 hrs. the escape alarm
was sounded. The Coy fell in and
Pte Smith the accused was absent
I searched the grounds for him and
he was not in the camp. I have
called the roll at least once a day each
day since and the accused has been
absent until reporting in last Week
under escort.

A.E. Tuson

The accused declines to cross
examine the Witness

The accused was cautioned in accordance with R.P. 4(c) as follows:

"Do you wish to make a statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused reserves his defence

I certify that the foregoing Summary of Evidence was taken down in the presence of the accused in accordance with R.P. 4. (c)(d)(f)(g) and (h) and that these rules have been complied with

Accordingly I
Officer detailed to take Summary of Evidence

Sgn No Field
14 Aug 44

B.S.

CERTIFICATE OF APPREHENSION

Exhibit "A"
Officer taking Sum

In accordance with Army Act Sec 163 (1) (JJ)

I certify that Regt No. B-53700 Rank Pte

Name SMITH E. Unit R.C.E.?

was apprehended by 418 F.S. Section.

at Between Avellino and Monteforte, Italy, at approx. 0130 hrs. 6 Aug. 1944.

At the time of his apprehension he was wearing Military Uniform.

C.M.Rowe C.S.M.

Signature C.M.Rowe C.S.M.
(Name) (Rank)

418 F.S.Section

B.S. Case

Exhibit "B"

Statement by 6400075 Sgt Schilizzi G. and 7596355 Sgt Davies A.J. 418 F.S. Section.

Regarding Pte Smith, Pte Wilson (alleged Name), Pte Evans.

At about 0130 hrs on the morning of 5 Aug 44 I was onduty on a security check at a point about midway between Avellino and Monteforte on the AVELLINO-NAPLES Road. A 3 ton truck was seen to ~~xxxxxxx~~ emerge from the side road which leads from Mercogliano and joins the AVELLINO-Naples road. This truck was stopped in the usual manner and the occupants checked.

The occupants were found to be three soldiers and one Italian civilian the latter being the driver. The civilian driver could produce no WD work ticket but had a civilian identity card issued at SARI; he claimed to be a pick up passenger reliving the driver.

Beside the driver was a soldier dressed in KD shirt, slacks, Kahki Beret(with no badge), and boots. He was wearing the rank of Cpl. He produced A.B.64 pts 1. and 11. but the page in part one showing particulars was missing. A.B.64 Pt11 showed that the bearer had been paid in 1944 but the last two apparent payments were dated 1945. Pts 1 and 11 had been mutilated and seemed highly suspicious. This man's Pt 11 showed him as being 4250997 Pte Evans and he claimed to be a Cpl. and to belong to "5th Seaforths". He claimed that he had gone AWOL on the night of 3/4 Aug and been to Rome. He further calimed that he was returning to his unit anf begged to be released as he needed to be back 0730 hrs on 5 Aug.

In the back of the truck were found the remaining two soldiers as follows.

One wearing KD shirt and shorts, boots, gaetops and puttees, FS side hat(no badge). He could produce no means of identity and claimed to be S-33700 Pte Smith of R.C.E. He offered no excuses or explanations.

While the aforementioned were being questioned the third soldier escaped by leaping on a moving vehicle which was in fact slowing down to stop at the check post. Immediately the vehicle stopped this soldier leaped out of the side and made off into the fields. Cdn F.S. personnel on duty with the check point fired several shots but this failed to frighten him into surrendering himself. The Cdn FS Personnel gave chase and returned about half an hour afetr his escape, having captured him. He was then handcuffed to prevent further escape. He could produce no means of identity and claimed to be Pte Williams of R.C.A. He was limping and had slightly lacerated face as the result of falling from a wall during his capture. He waswearing KD shorts, shirt, boots, hosetops and puttees, no headdress.

The vehicle on examination was found to be a Chevrolet 3 Ton Truck with WD No. L-4137696, containing a quantity of petrol.

In view of the obvious non-bonafides of these men they were disposed of as follows:

(1) The civilian was handed over to the Questure, Avellino and a receipt obtained.

(2) The three soldiers were handed over to No 1 Cdn L of C Provost Coy and a body receipt was received, it is noted that, on handing over the soldier , who had previously ~~xxxx~~ attempted to escape gave his particulars as K-98253 Pte Wilson, E. of R.C.A.

Above report for information of No 1 Cdn L of C Provost Coy.

G. Schilizzi Sgt.

I have read over and corroborate the above statement.

5 Aug 44. A.J. Davies Sgt.

ARMY FORM B.200.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B53706	Spr	Smith, N.	RCE

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this statement may be compiled from the 1940 conduct sheet.

The conduct sheets mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The statement herein required should correspond with the number set against it in the conduct sheets, the absence being given in the most serious offence in each entry, and to any recorded special acts of gallantry or distinguished conduct.

INSTRUCTIONS.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For AWL	times	6 times.
For AA 40	times	2 times.
For AA 11	times	1 times.
For AA 3(2)	times	1 times.
For AA 24	times	1 times.

[redacted]

or

There are no entries in the conduct sheets of the accused.

2. [redacted]

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. [redacted] or The accused at the present time is under sentence for AA 15(1) Imp. with HL 1 Year beginning on the 14 day of July 1944

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and See para 3 days in military custody, making a total of days, of which days were spent in hospital.

5. The present age of the accused according to his record of service is 2 yrs. 6 mnths. 7 days.

6. The date of his [redacted] attestation specified in his record of service is 31 Dec 41

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 yrs. 7 mn. 24 days (Less Sick. etc.)

8. The accused is entitled to deferred pay or gratuity in respect of 2 yrs. 7 mn. 21 days service. Less Sick. etc.

9. The accused is entitled to reckon ✓ service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award [redacted]

11. [redacted] rank of

12. [redacted] and in his regiment (or corps or department) the rank of dated

(Name) [illegible] A.A.F.W.1120 Gp.699

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B53700 Rank Spr Name Smith, H. of RCE Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
PGCM	Field 14 July 44	AA 15(1) AWL from 0830 hrs 26 Feb 44 until apprehended by CMP at Bari 1755 hrs 7 June 44. Absent 102 days 8 hrs 25 mins	Imp with HL for 1 Year	

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 17 day of August 1944

Captain Commandant
2 Cdn. Field Punishment Camp.

If the accused has served as a non-commissioned officer continuously without reduction, to the present date,

In the rank of ..... years

To the rank of .....

Date of Promotion.

In the rank of ..... years

To the rank of .....

Date of Promotion.

(NOTE.—If any matter in any of the above particulars cannot be stated from the regimental books the particulars must be struck through with red ink in the case of a RCMP by field punishment centre and the particulars subsequently recorded accordingly.)

Reviewed in accordance with CARO 2084 9 Dec 42 3rd "Lieut"

No B53700 Name SMITH, Norman Sqn, Battery, or Company Corps Coy C.E. Date of enlistment 31.12.41 GC Badges — Service or Proficiency Pay NA

MFM 6 (AFB 122) 40/PAS/136 (3438)

Date of last entry in Company Conduct Sheet N.A. No and date of last drunk N.A. Period not reckoning towards freedom from extra fine — Sheet No 1 Signature OC Company, etc "GO Gibson" Captain Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Verified	from M.P.M. 2 and M.P.M. 4 in accordance with C.A.R.O. 2084, 31 Aug 42							"G.E. Atkinson" Lieut.	
Field	12.10.42	Spr		A.A. 15 (1) WOAS AWL from 1200 hrs till 0645 hrs Absent 20 hrs 45 minutes.	Doc	Admonished	14.10.42	Lt.Col C.M. Mithcell	Wfts 1 days pay PRI 149 (1) (a)
Field	5.12.42	Spr		WOAS AWL from 0630 hrs 5 Dec 42 to 0915 hrs 5 Dec 42. Absent 2 hours 45 minutes.	L/Sgt Elliot Cpl Senechal Documentary AA 46	Forfeits 1 days pay		Lt.Col Cs Mithhell	Stoppage of pay £0-11-10 cost of apprehension

Certified true copy, from records in our possession.

Captain Commandant

2 Can. Field Punishment Camp. (PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	5.1.43	Spr		A.A Sec., 15(1) Absent from parade.	L/Cpl Bell	3 Days CB	7.1.43	MAJOR HGJ Woods	
Field	20.1.43	Spr		A.A. Sec., 40. Failed to leave the mess hall when ordered to so by Cpl Wallington.	Cpl Wallington	3 Days CB	21.1.43	Major HGJ Woods RCE	
Field	20.2.43	Spr		AA. Sec., 15 (1) A.W.L. from 0415 hrs 20 Feb 43 to 0500 20 Feb 43. Absent 45 minutes.	L/Cpl Barlees	7 days CB	22.2.43	Major HGJ Woods RCE	
Field	8.3.43	Spr		An offence under A.A. Sec., 11	Cpl B. McAleer	7 Days F.Pun.	2.43	Colonel GH Whyte	Forf 7 days pay PRI 149(1)(b)
Field	17.3.	Spr		An offence under A.A. Sec 9 (2)		Pf 3 days pay PRI 149 1(a)	18.3.43	Colonel GH Whyte	

No | Name | Sqn, Battery, or Company | Corps | Date of enlistment | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAM/136 (3428)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				SHEET NO. 1 CONTINUED					
Field	1.4.43	Spr		A..A. Sec 15 (1) Absent without leave from 0815 hrs 1 Apr 43 until 0845 hrs 1 Apr 43 (Absent 30 minutes)	Sgt Richardson	14 days CB	2.4.43	Major HCJ Woods, RCE	

Certified true Copy from records.

Captain Commandant
2 Con. Field Punishment Camp.

(PTO)

No B53700 Name SMITH, Norman. Sqn, Battery, or Company | Corps R.C.E. | Date of enlistment 31.12.41 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/136 (34528)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine NA | Sheet No 2 | Signature OC Company, etc "GO Gibson" Capt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	5.6.43	Spr		(1) A.A. 40 Conduct to the prejudice etc.. (2) A.A. 24 Wilfully damaging Gov., property	Sgt Munro	14 days FP	10.6.43	LtCol VS Thompson	Stoppages of pay for damage £1-1-10½
Field	10.6.43	Spr		A.A. Sec 15 (1) WOAS AWL from 1330 hrs 10 Jun 43 until 1800 hrs 21 Jun 43. ABsent 11 days 4 hrs 30 minutes.	DOC	168 hrs detention Dep 7 days pay FRI 149 1 (b)	22.6.43	Lt.Col CN Mitchell	Forf 12 days pays FRI 149 1 (a)

P. T. O.

Certified true copy, from records in our possession.

Captain Commandant

2 Cdn. Field Punishment Camp. (PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	26.2 44	Spr		Sec 15 (1) AWL from 0830 hrs 26 Feb 44 until apprehended by CMP AT Bari 1755 hrs 7 Jun 44 TTA ~~102~~ 102 days 9 hrs 25 mins.	Documentary	Hard Labour for a period of on year.	14 Jul44	F.G.C.M.	103 dys pay FRI 149 (1) (a) 35 dys pay FRI 149 (1) (c) (ii) (11) 365 dys pay FRI 149 (b)

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B 53700 Spr Norman SMITH

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn 6.)

At present under sentence for one year hard labour beginning on (date) 14 Jul 44 (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of / days, of which / "AMR" were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with hard labour for fourteen months.

(Sgd) N/A Judge-Advocate, if any. 25 Aug 44 Date awarded. (Sgd) "AM Russell Major" President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

[illegible] "EWH"
(1. AA 57A. Delete if not used.)

(Sgd) "E W Haldenby" Brig.
COMMANDER
Date 27 Aug 44 Commanding 1 CDN BASE RFT GROUP
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Cor 576, 577.)

Accused.	Date.	Signature of Offr.
B53700 Spr Norman SMITH	29 Aug 44	"D Dick Capt" Captain Commandant 2 Cdn Field Punishment Camp.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CERTIFIED TRUE COPY (Capt Owen) Capt.

WWW-127

CPA86 (To Dep of APA81) 40/P 36 H-1608 (40/50) 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brigadier E.W. Haldenby MC VD Comd 1 Cdn Base Rft Gp CMF dated 21 Aug 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B 53700	Spr	Norman	SMITH	2 Cdn Fd Pun Camp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date) 25 Aug 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED AS DIRS OF JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp. 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF AF5, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-115. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1340 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)
[illegible]
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to / as interpreter? Ans

The Interpreter is sworn.(1) Do you object to / as shorthand writer? Ans
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	A.M. RUSSELL	CIC	1 Bn 1 CBRD
Member	Capt	H.A. STEPHENS	CIC	7 Bn 2 CBRD
Member	Capt	J.H. WELLS	RCA	8 Bn 2 CBRD
Judge-Advocate				
Prosecutor	Lieut	K.A.W. MacKENZIE	CIC	No 2 Re-Alloc Centre
Defending Offr	Capt	B.J. DUNCAN	CAC	5 Bn 2 CBRD

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused Spr Norman SMITH before arraignment make(s) (no) plea "AMR" (1)
(1. If a special plea is made for separate trial as one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(6), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to Rs² cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
"AMR"
(1. RP 21, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court [illegible] considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

MFM 6
(AFB 122)
40/PAS/136 (3438)

No B53700 Name SMITH, Norman. Sqn, Battery, or Company | Corps R.C.E. | Date of enlistment 31.12.41 | GC Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine NA | Sheet No 2 | Signature OC & Company, etc "GO Gibson" Capt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award of order (Agreeing with trial)	By whom awarded	Remarks
Field	5.6.43	Spr		(1) A.A. 40 Conduct to the prejudice etc.. (2) A.A. 24 Wilfully damaging Gov., property	Sgt Munro	14 days FP	10.6.43	LtCol VS Thompson	Stoppages of pay for damage £1-1-10½
Field	10.6.43	Spr		A.A. Sec 15 (1) WOAS AWL from 1330 hrs 10 Jun 43 until 1800 hrs 21 Jun 43. Absent 11 days 4 hrs 30 minutes.	DOC	168 hrs detention Dep 7 days pay FRI 149 1 (b)	22.6.43	Lt.Col CN Mitchell	Forf 12 days pays FRI 149 1 (a)

P. T. O.

Certified true copy, from records in our possession.

Captain Commandant
2 Cdn. Field Punishment Camp. (PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	26 Feb 44	Spr		Sec 15 (1) AWL from 0830 hrs 26 Feb 44 until apprehended by CMP AT Bari 1755 hrs 7 Jun 44 TTA ~~182~~ 102 days 9 hrs 25 mins.	Documentary	Hard Labour for a period of on year.	14 Jul44	F.G.C.M.	103 dys pay FRI 149 (1) (a) (i) 35 dys pay FRI 149 (1) (c) (ii) 365 dys pay FRI 149 (b)

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*b*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

"AMR" B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.[2]
(*1. RP 25 fn 3. 2. MML p 54 para 47.*)

"AMR" B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).[1] If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]

President to accused: Do you wish to make a statement? Ans No.[5]
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

"AMR" B3. [redacted]
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

"AMR"
B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.[1]
(*1. RP 37(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex B 5, initialled and read aloud by the President.[1]
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by [redacted] paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY [redacted] again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by [redacted] with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*) "AMR"

C3. The [redacted] found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....[1]
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.[1]
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.[1]
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.[1] The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).[2] The Court is closed, and considers the submission.[3] The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).[4]
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

"AMR"
D5. President to accused: You will now proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn, and you will not be subject to cross-examination.[3] But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.[4] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans.....

Do you intend to call witnesses on your behalf? Ans.....

Are they witnesses as to character only? Ans.....
(*1. RP 115. 2. RP 40(A), see 90(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1]
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.
(*1. RP 43, 117(B). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.[1]

One/The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.[2]
(*1. AA 54(3) (d), RP 43, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character? Ans Yes[1]
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded*) "AMR"

E2. The Prosecutor produces Statement[1] as to Character and Particulars of Service[1], and certified true copy [redacted] of Conduct Sheet[1][1], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier[1] having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex E 2 and Ex E 3 respectively.[2]
(*1. MFB 255 or MFB 256. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement[1] and Conduct Sheet[1], and in mitigation of punishment?[2] Ans "AMR" Yes
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 1.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]
(*1. AA 54(3), RP 120(A).*)

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.[2]
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-564. Overseas RO 309, 2323. MML p 661, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest for Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B 53700 Spr Norman SMITH

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for one year hard labour beginning on (date) 14 Jul 44 (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of / days, of which / "AMR" days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with hard labour for fourteen months.

(Sgd) N/A Judge-Advocate, if any. 25 Aug 44 Date awarded. (Sgd) "AMRussell Major" President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 122(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I DISAPPROVE THE FINDING(S) AND SENTENCE IN THIS CASE OF [illegible] "EWH"
(1. AA 57A. Delete if not used.)

(Sgd) "E W Haldenby" Brig.
COMMANDER
Date 27 Aug 44 Commanding 1 CDN BASE RFT GROUP
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B53700 Spr Norman SMITH	29 Aug 44	"D Dick Capt" Captain Commandant 2 Cdn Field Punishment Camp.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CERTIFIED TRUE COPY (Lt Col Owen) Capt

WWW-127

CF A98 (To lieu of AFA3) 40-P-N-8/1898 (4650) 4-38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brigadier E.W. Haldenby MC VD Comd 1 Cdn Base Rft Gp CMF dated 21 Aug 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B 53700	Spr	Norman	SMITH	2 Cdn Fd Pun Camp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date) 25 Aug 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.) "AMR"

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 4. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.) "AMR"

A3. The Court is opened. The accused is (are) brought before the Court. At 1340 hours trial commences.

"AMR" A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) [illegible]
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to / "AMR" / as interpreter? Ans
The Interpreter is sworn.(1) Do you object to / as shorthand writer? Ans
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No (2)
(1. RP 116. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 31, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	A.M. RUSSELL	CIC	1 Bn 1 CBRD
Member	Capt	H.A. STEPHENS	CIC	7 Bn 2 CBRD
Member	Capt	J.H. WELLS	RCA	8 Bn 2 CBRD
Judge-Advocate				Centre
Prosecutor	Lieut	K.A.W. MacKENZIE	CIC	No 2 Re-Alloc
Defending Offr	Capt	B.J. DUNCAN	CAC	5 Bn 2 CBRD

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (3) and fn 2 were not followed. See Oct p 3.)

A8. The accused Spr Norman SMITH before arraignment makes(s) (no) [illegible] plea. "AMR" (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.) PLEAD"

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does [illegible] not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.) "AMR"

A10. The Court [illegible] considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

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3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

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"AMR" B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 25 *fn* 3. 2. *MML p* 54 *para* 47.)

"AMR" B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No (5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E. 5. *Statement, if any, recorded per Notes.*)

"AMR" B3. [redacted]
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

"AMR"
B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 25(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex B 5 initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY [redacted] again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under* B5 *such parts only of the Summary of Evidence to be read as relate to the charges dealt with under* C2. *If any plea is changed to Not Guilty, trial thereon proceeds by use of paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

"AMR"
C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here. Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. (2)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused(2) on the charge(s).(3) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para* D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115*.)

"AMR"
D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. Do you intend to call witnesses on your behalf ? Ans. Are they witnesses as to character only ? Ans.
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. Cf. RP*5. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(1)
Or The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(2) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(2), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. Yes
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

"AMR"
E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(2), and certified true copy of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex E 2 and Ex E 5 respectively.(3)
(1. *MFB* 355 *or MFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

"AMR"
E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes (2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas RO* 309, 1323, *MML p* 86, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1*B*), 68(*5*), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see notes on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

B 2

"AMR"

CHARGE SHEET

The accused B53700 Spr. Norman, SMITH, R.C.E., 7 Bn. 2 C.B.R.D., a soldier undergoing sentence at No. 2 Canadian Field Punishment Camp, a soldier of the Canadian Army Overseas is charged with:-

CHARGE
Section 15(1)(a)
ARMY ACT

When on active service absenting himself without leave,

in that he:-

In the field in Italy, while in confinement, absented himself from approximately 1530 hours 26 July 1944, until apprehended by 418 F.S. Section at approximately 0130 hours 5 Aug 44.

Time absent:- 9 days, 10 hours.

"D Dick Capt"
Commandant,
No 2 Cdn Fd Pun Camp.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
In Italy
21 Aug 44

"E W Haldenby"
(E.W. HALDENBY) Brigadier,
Comd 1 Cdn Base Rft Gp
Cdn Army-CMF

FIELD GENERAL COURT-MARTIAL

CFA55 (In lieu of AFA3)
40/PAS/1007 (2nd/d)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B53700	Spr		Norman	SMITH	2 Cdn Fd Pun Camp

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has (~~he~~) committed the offence(s) set forth in the Charge Sheet attached and on (date) 21 Aug 44 endorsed by me, (~~he~~), "To be tried by Field General Court-Martial",

"EWH"

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial;

(Delete part in brackets when not required for compliance with RP 105(C).)

"EWH"

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~[illegible]~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

"EWH"

5. ~~[illegible]~~

(RP 106(E). Delete, if none appointed.)

"EWH"

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	A M RUSSELL	(CIC)	1 Bn 1 CBRD

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt or Lieut to be detailed by OC 7 Bn 2 CBRD		
Capt or Lieut to be detailed by OC 8 Bn 2 CBRD		

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lieut to be detailed by OC 5 Bn 2 CBRD		

~~[illegible]~~ "EWH"

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd (Country.) in Italy

Dated 21 Aug 44

"E W Haldenby" (Signed personally. RP 105 fn 2.)

(E.W. HALDENBY)

Brigadier (Rank.)

Commanding 1 Cdn Base Rft Gp-CMF

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

"AMR" 25 Aug 44

MEDICAL CERTIFICATE

I have inspected B53700 Spr. SMITH, N., this day 25 Aug 1944 and find him fit to undergo his trial.

"F.C. Macarthur" Captain
R.C.A.M.C.

"A"R"

F.G.C.M. - B 53700 Spr. Smith, N., 2 Cdn Fd Pun Camp. 25 Aug 44.

E 1 The accused, Spr Smith, N., B53700 being duly sworn states:

I am at present serving one year's hard labour at 2 Cdn Fd Pun Camp. I escaped from custody on 26 July 44. My reason for esaping was to recover family photographs, personal belongings, etc. which were left in Bari at the time I was previously sentenced. On reaching Bari, I did secure the effects mentioned and they were mailed home. I then intended to return to 2 Cdn Fd Pun Camp within a few days, but was apprehended before reaching my destination.

R.P. 83 (b) complied with.

E 3 Plea in Mitigation of Punishment by defending officer

In reexamination of the conduct sheet of the accused, in spite of the fact he has been sentenced for numerious minor charges, in my opinion it fails to show actual viciousness. The accused has given under oath the reasons for the escape under which he is at present charged. I think the reasons are humane and understandable and in view of the fact that the accused is at present serving a very long sentence I respectfully plead for the utmost possible leniency on this charge.

R.P. 83 (b) complied with.

"A"R"

"AMR" B 5.

Summary of Evidence
In the case of

B53700 Sapper Smith, N., a Canadian Soldier undergoing sentence in No 2 Canadian Field Punishment Camp. No. 1 C.B.R.C. Canadian Army Oversees.

The Acting Officer Commanding directs that the evidence be taken under oath.

1st Witness for Prosecution

D98553 A-Sgt Hayes, E.J., No. 2 Can Field Punishment Camp,1 CBRG CAO, having been duly sworn states:-

I am D 98553 A/Sgt Hayes, E.J., No 2 F.P. Camp, on 26 July 44 I was D Coy Commander the accused B53700 Sapper Smith, N., was attached to my Coy. I called the roll at the 1330 parade 26 July 44, the accused was present. At approx 1530 hrs. the escape alarm was sounded. I immediately fell in my Coy. Pte Smith was absent. I searched for him but he had escaped. I have called the roll each day since and have looked for the accused but he has been absent until reporting in under escort 7 Aug 44. I submit as evidence certificate of Arrest in accordance with A.A. Sec 163 (1) (jj) showing the arrest of the accused B53700 Pte Smith, N., at AVELLINO at approx 0130 hrs 5 Aug 44. This certificate came into my possession through normal channels.

"E J Hayes"

The accused declines to cross examine the witness.

Certificate of arrest referred to in the Summary of Evidence marked exhibit "A" read over shown to the accused and attached to the summary.

"K MacKenzie"
Officer detailed to take
Summary of Evidence.

Statmeent referred to by the witness in the summary of Evidence, read over, shown to the accused and attached to the Summary.

"K MacKenzie"
Officer detailed to take
Summary of Evidence

Question by Officer taking Summary.

Do you wish to cross examine the witness/es referred to in the Statement?

I do not wish to croas examine the witnesses.

"Spr N Smith"

3rd Witness for Prosecution

6400073 Sgt Schilizzie, G., No 418 F.S. Section

A written statement purporting to be signed by the above witness (Hereto annexed and marked exhibit B.1) Was read to the accused.
The accused did not require the presence of the above witness for cross examination.

"B53700 Spr Smith, N)
Smith, N.

I hereby certify that in my opinion due to the exigencies of the service including the loss of time and expence involved, the attendance of the above named witness is not readily procurable.

"K MacKenzie"
Officer taking Summary of Evidence.

Witness for Prosecution

M49957 Cpl Tuson, R.E. No 2 Field Punishment Camp, 1 CBRD, CAC, having been duly sworn states:-

I am M49957 Cpl Tuson, R.E. of No 2 F.P. Camp. D Coy, on 26 July 44 at approx 1530 hrs the escape alarm was sounded. The Coy fell in and Pte Smith the accused was absent. I searched the Grounds for him and he was not in the camp. I have called the roll at least once a day each day since and the accused has been absent until reporting in last Week under escort.

"R.E. Tuson"

The accused declines to cross examine the witness.

The accused was cautioned in accordance with R.P. 4 (e) as follows:

"Do you wish to make a statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused reserves his defence.

I certify that the foregoing Summary of Evidence was taken down in the presence of the accused, in accordance with R.P. 4 (c)(d)(e)(f) and (g) and that these rules have been complied with.

In the Field
14 Aug 44

"K MacKenzie Lt"
Officer detailed to take
Summary of Evidence.

Exhibit "A"
"K MacKenzie"
Officer taking Summary

B 5 "AMR"

CERTIFICATE OF APPREHENSION

In accordance with Army Act Sec 163 (1) (JJ)

I certify that Regt No B-53700 Rank Pte

Name SMITH, N. Unit R.C.E. ?

Was apprehended by 418 F.S. Section at between Avellino and Monteforte, Italy, at approx 0130 hrs 5 Aug 1944.

At the time of his apprehension he was wearing Military Uniform.

Signature "C.M. Rowe CSM"
C.M. Rowe CSM
(Name) (Rank)

418 F.S. Section.

B 5 "AMR" Exhibit "B" "K MacKenzie"
Officer taking Summary.

Statement by 6400073 Sgt Schilizzi G. and 7896355 Sgt Davies A.
418 F.S. Section

Regarding Pte Smith, Pte Wilson (alleged Name), Pte Evans.

At about 0130 hrs on the morning of 5 Aug 44 I was on duty on a security check at a point about midway between Avellino and Monteforte on the AVELLINO-NAPLES Road. A 3 ton truck was seen to emerge from the side road which leads from Mercogliano and joins the AVELLINO-NAPLES road. This truck was stopped in the usual manner and the occupants checked.

The occupants were found to be three soldiers and one Italian civilian the latter being the driver. The civilian driver could produce no WD work ticket but had a civilian identity card issued at BARI; he claimed to be apick up passenger releiving the driver.

Beside the driver was a soldier dressed in KD shirt, slacks, Kahki Beret(with no badge), and boots. He was wearing the rank of Cpl. He produced A.B. 64 pts I and II. but the page in part one showing particulars was missing. A.B. 64 Pt II showed that the bearer had been paid in 1944 but the last two apparent payments were dated 1943. Pts I and II had been mutilated and seemed highly suspicious. This man's Pt II showed him as being 4230997 Pte Evans and he claimed to be a Cpl. and to belong to "5th Seaforths". He claimed that he had gone AWOL on the night of 3/4 Aug and been to Rome. He further claimed that he was returning to his unit and begged to be released as he needed to be back 0730 hrs on 5 Aug.

In the back of the truck were found the remaining two soldiers as follows.

One wearing KD shirt and shorts, boots, hosetops and puttees, FS side hat(no badge). He could produce no means of identity and claimed to be B-53700 Pte Smith of R.C.E. He offered no excuses or explanations.

While the aforementioned were being questioned the third soldier escaped by leaping on a moving vehicle which was in fact slowing down to stop at the check post. Immediately the vehicle stopped this soldier leaped out of the side and made off into the fields. Cdn F.S. personnel on duty with the check point fired several shots but this failed to frighten him into surrendering himself. The Cdn FS personnel gave chase and returned about half an hour after his escape, having captured him. He was then handcuffed to prevent further escape. He could produce no means of identity and claimed to be Pte Williams of R.C.A. He was limping and had slightly lacerated face as the result of falling from a wall during his capture. He was wearing KD shorts, shirt, boots, hosetops and puttees, no headdress.

The vehicle on examination was found to be a Chevrolet 3 Ton Truck with WD No. L-4137896, containing a quantity of petrol.

In view of the obvious non-bonafides of these men they were disposed of as follows:

(1) The civilian was handed over to the Questure, Avellino and a receipt obtained.

(2) The three soldiers were handed over to No 1 Cdn L of C Provost Coy and a body receipt was received, it is noted that, on handing over the soldier, who had previously attempted to escape gave his particulars as K-98253 Pte Wilson, E. of R.C.A.

Above report for information of No 1 Cdn L of C Provost Coy.

"J Shilizzi"
J. Shilizzi Sgt

I have read over and corroborate the above statement.

"ADavies"
A.C. Davies Sgt

5 Aug 44.

ARMY FORM B.296.

"AMR"

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B53700	Spr	Smith, N.	RCE

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be omitted from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not entered in the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated would correspond with the number or points in the conduct sheets, plus amount (e.g., days) given in the court column relative to each entry, and to any endorsed special acts of gallantry or distinguished conduct.

Insert here—(i) the charge-sheet number, (ii) the nature of disposal, and (iii) if stated separately and dated.

	* Within last 12 months.	* Since Enlistment.
For AWL	- times.	6 times.
For AA 40	times.	2 times.
For AA 11	times.	1 times.
For AA 9(2)	times.	1 times.
For AA 24	times.	1 times.

~~[illegible]~~

or

There are no entries in the conduct sheets of the accused.

2 ~~[illegible]~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act and dispensations with trial under section 78 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for A# 15(1) Imp.with HL 1 Year beginning on the 14 day of July 1944

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and See Apara 3 days in military custody, making a total of days, of which days were spent in hospital.

5. The present age of the accused according to his record of service ~~[illegible]~~ is 21 yrs 6 months 7 days

6. The date of his ~~[illegible]~~ attestation specified in his record of service ~~[illegible]~~ is 31 Dec 41

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 yrs 7 mos

8. The accused is entitled to deferred pay or gratuity in respect of 2 yrs 7 mos 21 dys 24 dys(less detn etc) less detn etc .

9. The accused is entitled to reckon / service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award ~~[illegible]~~

11. ~~[illegible]~~ rank of

12. ~~[illegible]~~ and in his regiment (or corps or department) the rank of dated

(P16000) [illegible]

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B53700 Rank Spr Name Smith, H. of RCE Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating thus convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted
FGCM	Field 14 July 44	AA 15(1) AWL from 0830 hrs 26 Feb 44 until apprehended by CMP at Bari 1755 hrs 7 June 44. Absent 102 days 8 hrs 25 mins	Imp with HL for 1 year.	

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 17 day of August 1944

"D Dick"
Captain Commandant
2 Cdn Field Punishment Camp.

14. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

In the rank of ..... Date of Promotion.

In the rank of ..... years ..... months.

In the rank of ..... years ..... months.

[illegible] ... of a week by field general court-martial, the information may be collected from such entries as are available amongst [illegible] concerned amongst [illegible]

Reviewed in accordance with CARO 2084 9 Dec 42 Sgd "Lieut"

No B53700 Name SMITH, Norman Regt. Number or Company Corps R.C.E. Date of enlistment 31.12.41 GC Badges Service or Proficiency Pay N/A MFM 6 (AFB 122) 40/P&S/136 (3438)

Company Conduct Sheet Date of last entry in N/A No and date of last drunk N/A Period not reckoning towards freedom from extra fine Sheet No 1 Signature OC Company, etc "GO Gibson" Captain Character

Place	Date of offence	Rank	Cases of drunkenness	"AMR" OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Verified from MFM 2 and MFM 4 in accordance with CARO 2084, 31 Aug 42 "G.E. Aikinson" Lieut.									
Field	12-10-42	Spr		A.A. 15(1) WOAS AWL from 1200 hrs till 0845 hrs Absent 20 hrs 45 minutes.	Doc	Admonished	14-10-42	Lt-col CN Mitchell	Fts 1 days pay FRI 149 (1)(a)
Field	5-12-42	Spr		WOAS AWL from 0630 hrs 5 Dec 42 to 0915 hrs 5 Dec 42. Absent 2 hours 45 minutes.	L/Sgt Elliot Cpl Senechal Documentary AA 46	Forfeits 1 days pay		Lt-col CN Mitchell	Stoppage of pay £0-11-10 cost of apprehension

Certified true copy, from records in our possession "D Dick" Captain Commandant 2 Cdn Field Punishment Camp.

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	5.1.43	Spr		AA Sec 15(1) Absent from Parade	L/C. Bell	3 Days CB	7.1.43	Maj HGJ Woods RCE	
Field	20.1.43	Spr		AA Sec 40, failed to leave the mess hall when ordered to so by Cpl.Wallington.	Cpl.Wallington	3 dys CB	21.1.43	Maj HGJ Woods RCE	
Field	20.2.43	Spr		AA Sec 15(1) AWL from 0415hrs 20 Feb43 to 0500 20 FEB 43. Absent 45 minutes.	L/C Barlees	7 dys CB	22.2.43	Maj HGJ Woods RCE	
Field	8.3.43	Spr		An offence under A.A. sec., 11	Cpl.B. McAleer	7 dys F.Pun.	2.43	Colonel GH Whyte	Forf: 7 dys pay FRI 149(1) (b)
Field	17.3.	Spr		An offence under A.A. Sec 9(2)		Ff 3dys pay FRI 149 1 (a)	18.3.43	Colonel GH Whyte	

MFM 6
(AFB 122)
40/P&S/136 (3438)

No. B53700 Name SMITH, Norman | Sqn, Battery or Company | Corps R.C.E. | Date of enlistment 31.12.41 | GC Badges | Service or Proficiency Pay | Character

Company Conduct Sheet Date of last entry in | No and date of last drunk | Period not reckoning towards freedom from extra fine n/a | Sheet No 2 | Signature OC Company, etc "GO [redacted] Gibson" Capt.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	5.6.43	Spr		(1) AA 40 Conduct to the prejudice etc. (2) AA 24 Wilfully damaging Gov. property.	Sgt. Munro	14 dys FP	10.6.43	Lt-col VS Thompson	Stoppages of pay for damage £1-1-10½
Field	10.6.43	Spr		AA Sec 15(1) WOAS AWL from 1330 hrs 10 JUN 43 until 1800hrs 21 JUN 43. Absent 11 days 4 hrs 30 minutes.	DOC.	168 hrs detention Dep 7 dys pay FRI 149 (1) (b)	22.6.43	Lt-col. CN Mitchell	Forf 12 dys pay FRI 149 1 (a)

P.T.O.

Certified true copy, from records in our possession. "H. DICK"
Captain Commandant, 2 Cdn Field Punishment Camp.

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	26.2.44	Spr		Sec 15(1)AWL from 0830hrs 26FEB 44 until apprehended by CMP at BARI 1755hrs 7 JUN 44. TTA 102 days 9 hrs 25 mins.	Documentary	Hard Labour for a period of on year	14 Jul44	FGCM	103 dys pay FRI 149 (1)(a) 35dys payFRI 149(1)(c)(11) 365 dys pay FRI 149 (b)

MFM 6
(AFB 122)
40/P&S/136 (3438)

No | Name | Sqn, Battery or Company | Corps | Date of enlistment | GC Badges | Service or Proficiency Pay | Character

Company Conduct Sheet Date of last entry in | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				SHEET NO. 1 CONTINUED.					
Field	1.4.43	Spr		A.A. Sec 15(1) Absent without leave from 0815hrs 1 APR 43 until 0845 hrs 1 APR43 (Absent 30 minutes)	Sgt. Richardson	14 dys CB	2.4.43	Maj. HGJ Woods, RCE	

Certified truecopy from records
"H. Dick"
Captain Commandant
2 Cdn Field Punishment Camp

(PTO)

No | Name | Sqn, Battery or Company | Corps | Date of enlistment | GC Badges | Service or Proficiency Pay

MFM 6 (AFB 122) 60/P&S/136 (3438)

Company Conduct Sheet Date of last entry in | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				SHEET NO. 1 CONTINUED.					
Field	1.4.43	Spr		A.A. Sec 15(1) Absent without leave from 0815hrs 1 APR 43 until 0845 hrs 1 APR43 (Absent 30 minutes)	Sgt. Richardson	14 dys CB	2.4.43	Maj. HGJ Woods, RCE	

Certified truecopy from records
"H. Dick"
Captain Commandant
2 Cdn Field Punishment Camp

(PTO)

TTT-217

Spr Smith, N

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B 53700 Spr. NORMAN SMITH (RCE) 3 Bn. 1 C.B.R.D.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A A Sec 15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lass of kit see RP 44 fn 6.)

~~As present sentence for~~ "KES" ~~beginning on date~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 36 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with Hard labor for a period of one (1) year.

(Sgd) ~~Judge Advocate or~~ "KES" 14th July 1944 (Sgd) "K.E. Smith Major" President. (RP 45, 50.)

Date awarded.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

CONFIRMED

~~I direct that the accused be not committed to prison, or detention barracks on his further release.~~ (1) "EWH"

(1. AA 57A. Delete if not used.)

Date 17 Jul 44 (Sgd) "E.W. Haldenby" Brig COMMANDER

Commanding 1 Cdn Base Rft Group

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B 53700 "Spr Smith Norman"	19 July 44	"J.H. Morgan Maj"

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

CERTIFIED TRUE COPY (D.K. Owen) Lieut.

TTT. 217

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA32) 40/P & S/1098 (1626) 4/38B

Convened by Order of Brig E.W. Haldenby dated 11th July 1944

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B 53700	Spr		NORMAN	SMITH	R.C.E. 3 Bn 1 CBRD

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) 14th July 1944

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JA if any, and shtr under instr~~ "KES" if any, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet ~~are~~ "KES" attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ "KES" amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ "KES" brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~are~~ "KES" fit to undergo trial by court-martial.(1) ~~The Prosecutor and some (no) Def Counsel produced to the Court by professional escort(s) and (no) guard, who was (were) marched in and (2)~~ "KES"

(1. KR Con 537. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~Jurisdiction to proceed is also questioned on the ground that~~ "KES" ~~The interpreter sworn (1) – The case object to~~ as shorthand writer. ~~Arte the shorthand writer is sworn~~ (2)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA if not the Offrs under instr, if any~~ "KES", are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	K.E. SMITH	(RCA)	8 Bn 2 CBRD
Member	Lieut	M. SAUVE	(RCHA)	2 Cdn Re-all Centre
Member	Lieut	J. LABAN	(CAC)	2 Cdn Re-all Centre
~~Judge Advocate~~ "KES"				
Prosecutor	Lieut	A.D. EGAN		3 Bn 1 C.B.R.D.
Defending Offr	Lieut	M.J. CLOKEY		3 Bn 1 C.B.R.D.

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 2.)

A8. The accused "KES" before arraignment makes(s) (no) ~~are~~ "KES" pleas. (3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~are~~ "KES" arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~do~~ "KES" not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty to them, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans "NO" (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

"YES" "YES" "YES"
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

"YES" B3. On the charge(s) to which the plea(s) of Guilty is XXX not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 15(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex D , initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded "GUILTY" are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, KR Can 555.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. Cf 495. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(2).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed by the JA.
(*1. AA 54(2) (d), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there is a finding of Guilty outstanding and dealt with under Record Form B or C.*)

The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans "NO"
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy XXXXX of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 162(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex E and Ex F respectively.(3)
(*1. MFB 255 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

"YES" "YES" "YES" E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or call anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 363-366, Overseas RO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET "KESmith Major"

The accused B53700 Sapper Norman SMITH, Royal Canadian Engineers, attached to 3 Canadian Reinforcement Battalion, 1 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas, is charged with:

First Charge
Army Act
Sec 15(1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field in Italy on 26 Feb 44 absented himself without leave from 0830 hours on 26 Feb 44 until apprehended by the C.M.P. at Bari at approximately 1755 hours on 7 Jun 44.

Total Time Absent: 102 days, 9 hours, 25 minutes.

"E Stochart" Major
for Commanding Officer,
3 Cdn Rft Bn, 1 CBRD.

In the Field
7 Jul 44.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

"E W Haldenby"
(E.W. Haldenby) Brigadier
Commander
HQ 1 Cdn Base Rft Gp
Cdn Army - CMF

In Italy
In the Field
11 July 1944

"K E Smith Major"

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apprnt, A/rank or A/apprnt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apprnt, A/R or A/Apprnt.	Full Christian Names.	Surname.	Unit.
B 53700	Spr		Norman	SMITH	RCE 3 Bn 1 CBRD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has/~~have~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 11 Jul 44 endorsed by me, ~~(or by my predecessor in command)~~ "To be tried by Field General Court-Martial". "EWH"

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that by reason of the exigencies of service it is necessary that the accused should be tried by a court-martial not later than)~~ "EWH"
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~A/ No qualified Offr is available for detailing to this court for the reasons stated in the Schedule hereto.~~ "EWH"
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~A/ No qualified Offr of Allied Armies is available for detailing to this court.~~ "EWH"
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	K.E. Smith		8 Bn 1 CBRD

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Lieut	J. Laban	(CAC)	2 Cdn Reallocation Centre
Lieut	M. Sauve	(RCHA)	2 Cdn Reallocation Centre

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lieut	to be detailed by O C		2 Cdn Reallocation Centre

~~JUDGE ADVOCATE.~~

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in	(Country.)	(Signed personally. RP 105 fn 2.)	(Rank.)
ITALY		"EW Haldenby"	Brigadier

Date 11 July 1944 Commanding HQ 1 Cdn Base Rft Group
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (PAM. (To issue of AFAS) 60/P & S/1867 (6601))

(See overleaf for oaths and notes for use on trial.)

"KE SMITH MAJOR"

Medical Officer's Certificate

I hereby certify that I have this day examined

No B53700 Rank Spr Name SMITH N.

and in my Opinion is fit to undergo trial by

Court Martial

Date July 14/44

"R.E. Sidenburg Capt"
(Medical Officer)

EX "D" SUMMARY OF EVIDENCE "K E Smith MAJOR" PRES

In the case of B 53700 Sapper Norman Smith, Royal Canadian Engineers, 3 Canadian Reinforcement Battalion, 1 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas, placed on Active Service.

By direction of the Commanding Officer the evidence is taken on oath.

FIRST WITNESS FOR THE PROSECUTION Capt. A.W. Roy, Adjt 3 Bn., 1 C.B.R.D. having been duly sworn, states:-

I am Capt A.W. Roy, Adjt 3 Bn., 1 C.B.R.D. I submit an X list R.C.E. Part II Order issued by Cdn Section GHQ 2nd Echelon AAI No 103 dated 23 June 44. This order shows in para 7 page 5 that the accused B 53700 Sapper Smith N. to be A.W.L. from 0830 hours 26 Feb 44. It further publishes the 8th and 22nd day and shows him to be apprehended 1755 hours 7 June 44 marked exhibit "A" and attached to the summary.

"A W Roy" Capt

The accused does not wish to cross-examine the witness at this time.

"Spr. Smith N"

"KES"

SECOND WITNESS FOR THE PROSECUTION

CAPT G W AKEHURST Adjt 2 Cdn N.E.T.D. (B) C.M.F.

A statement purported to be signed by this witness was read to the accused marked exhibit "B" and attached to the summary.

The accused does not require the presence of this witness for cross-examination at this time.

"Spr Smith N"

I certify that due to the exigencies of the service and the loss of time involved the presence of this witness is not readily procurable.

"J.K. Rumball (Lt)"
Officer detailed to take the summary.

THIRD WITNESS FOR THE PROSECUTION

Capt. L.F. Hunt Officer Commanding 230 Provost Company.

A certificate of Arrest purported to be signed by this witness was read to the accused marked exhibit "C" and attached to the Summary.

The accused does not require the presence of this witness for cross-examination at this time.

"Spr Smith N"

I certify that due to the exigencies of the service and the loss of time involved the presence of this witness is not readily procurable.

"J.K. Rumball (Lt)"
Officer detailed to take the Summary.

"KEES"

THE accused was cautioned under Rule of Procedure 4(e) as follows:-

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make any statement or give evidence at this time and reserves his defence.

"Spr Smith N"

I certify that the foregoing Summary of Evidence was taken down by me in the presence of the accused and Rules of Procedure 4 (C) (D)(E) (F) AND (G) have been complied with.

"J.K. Rumball (Lt)"

Officer detailed to take the Summary

EXHIBIT "B"
EX "B"

"K E Smith Major"

STATEMENT by Capt. Geo W. Akehurst

"I am Adjutant of No. 2 Cdn NETD (B) and in that capacity have custody of all Regimental records. I hereby certify that there is no record of B53700 Spr. SMITH N. (RCE) having peported to No. 2 N.E.T.D. (B), formerly known as NET Wing 1 CBRGp, and have no record of Spr. SMITH, ever having been on the strength of this Unit.

"Geo W Akehurst" Capt
Geo W. Akehurst
Adjutant
2 Cdn NETD (B) CMF

"K E SMITH MAJOR"
PRES EX "A" EXHIBIT "A"

EXTRACT FROM "X" LIST R.C.E. PART II ORDER No 103
dated 23 Jun 44

---

7. ABSENT WITHOUT LEAVE

(a) A.W.L. from 0830 hrs 26 Feb 44 Still absent 0830 hrs 27 Feb 44 (1st day)
B 53700 Spr Smith, N.

(b) A.W.L. from 0830 hrs 26 Feb 44 Still absent 0830 hrs 5 Mar 44 (8th day)
B 53700 Spr Smith, N.

(c) A.W.L. from 0830 hrs 26 Feb 44 Still absent 0830 hrs 19 Mar 44 (22nd day)
B 53700 Spr Smith, N.

(d) A.W.L. from 0830 hrs 26 Feb 44 App by C. Prov. C. 1755 hrs 7 Jun 44.
B53700 Spr Smith, N.

In the Case of B 53700 Sapper SMITH, N.

"K E SMITH MAJOR
PRES"

PLEA IN MITIGATION

The accused enlisted at 18 years of age, in the Canadian Army (Active) at Hamilton, Ontario, on Dec. 29th, 1941 with the R.C.O.C. After basic training at Brantford, the accused was posted to the R.C.E. and did further training at Petawawa Ontario.

He came overseas in June, 1942 - having volunteered to implement a draft. After over a year of service with the R.CE. in England, he again volunteered to proceed on draft to North Africa - landing there in October, 1943.

On arriving in Africa, the accused was taken to the Hospital with fever and was treated and in convalescence for two months. He was between M.O's interviews and hospital due to a leg ailment, for some time. Having little hope of joining his comrades in the First Field Coy of the 1st Divisional Engineers for some time to come, if [redacted], with enthusiasm and eagerness, he decided to make his own way to his unit. He obtained a job on a merchant ship and landed in Bari, Italy.

Having received excellent treatment and friendly hospitality there,

the accused delayed and tarried on until his apprehension early in June, 1944.

Since his apprehension, he has been most honest and frank with the Army authorities, has assisted them in little ways in checking on his case-history and has not withheld.

He realizes that there has been a good deal of administration muddling in his case, that the charge is incorrectly framed as to the time and place of absenting himself and that the documentary evidence does not provide a logical explanation of his absence. Nevertheless, he has made up his mind to plead guilty and "take his medicine.". He is also ready and willing to do whatever is required of him after he has served his sentence.

The accused is not an intentional criminal or mischievous absentee. He is a clear-minded, forthright soldier who can and will be of use to the Army. His conduct-sheet discloses only minor offences which were lightly dealt with by his superior officers. I would respectfully request the court not be impressed by the number of petty offences - but rather delve into their nature.

EX "E"

"K E Smith Major"

EXTRACT FROM ARMY FORM B.296.

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED.

B53700 Spr Smith, N. R.C.E. 3 Cdn Rft Bn, 1 C.B.R.D.

1. The following is a fair and true summary of the entries in the regimental and company conduct sheets of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army act, and of cases in which trial has been dispensed with:-

	Within last 12 months	Since Enlistment.
For A.A. 15 (1)	0 times	6 times.
For A.A. 40	0 times	2 times
For A.A. 11	0 times	1 time
For A.A. 9 (2)	0 times	1 time
For A.A. 24	0 times	1 time

2. The accused has not been previously convicted.

3. The accused is not under sentence at the present time.

4. The accused has been in confinement, awaiting trial on the present charges, for 0 days in civil custody, and 36 days in military custody, making a total of 36 days, of which 0 days were spent in hospital.

5. The present age of the accused according to his MNM 1 Pt 1 is 21 years 148 days.

6. The date of his attestation specified in his MNM 1 Pt 1 is 31 Dec 41

7. The service which the accused is allowed to reckon towards discharge or transfer is 2 years 195 days.

9. The accused is entitled to reckon 2 years 195 days service for the purpose of determining his pension, etc.

10. The accused is entitled to CVSM & CLASP.

"A.W. Roy" Capt
Officer Having Charge of Regt'l Books

PREVIOUS CONVICTIONS BY FGCM, ETC.

" N I L "

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 14 day of July 44

"W W Mathers"
Lt-Col.

Renewed in accordance with CARO 2084, 9 Dec 42 "T.G. Wilkinson Lieut"

MFM 6 (AFB 122) 60/PAM/136 (3438)

No B53700 Name SMITH, Norman Regt, Battery, or Company Corps R.C.E. Date of enlistment 31-12-41 GC Badges Service or Proficiency Pay N/A

Date of last entry in Company Conduct Sheet N/A No and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No Signature OC Company, etc "G.D. Gibson Capt" Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Verified from MFM 2 and MFM 4 in accordance with C.A.R.O.					2084, 31 Aug 41 "G.E. Atkinson, Lieut"				
Field	12 Oct 42	Spr		A.A. 15(1) W.O.A.S. AWL from 1200 hrs till 0845 hrs Absent 20 hrs, 45 mins.	Docy	Admonished	14 Oct 42	Lt-Col C.N. Mitchell	Ffts 1 days pay FR&I 149(1)a "JW"
Field	5 Dec 42	Spr		WOAS AWL from 0630 hrs 5 Dec 42 to 0915 hrs 5 Dec 42 Absent 2 hrs., 45 mins.	L/Sgt Elliott Cpl Senechal Documentary	Forfeits 1 days pay A.A. 46	8 Dec 42	Lt-Col CN. Mitchell	Stoppage of Pay £0-11-10 Cost of Apprehension
Field	5 Jan 43	Spr		A.A. Sec 15(1) Absent from parade			7/1/43	H.G.J. Woods "H.J.W."	

(PTO)

"K B SMITH MAJOR"

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field	20 Jan 1943	Spr		A.A. Sec 40. Failed to leave the mess hall when ordered to do so by Cpl. Wallington	L/Cpl Bell Cpl Wallington	3 days C.B.	21 Jan 43	H.G.J. Woods, Major R.C.E. "HGJW"	
Field	20 Feb 1943	Spr		A.A. Sec. 15(1) A.W.L. from 0415 hrs 20 Feb 43 to 0500 hrs 20 Feb 43 Absent 45 mins. An offence under A.A. Sec 11	L/Cpl Barless	7 days C.B.	22 Feb 43	H.G.J. Woods Major R.C.E. "HJW"	
Field	8 Mar 1943	Spr				Forf. 3 days pay FR&I 149 (1) a	19 Mar 43	Colonel G.H. Whyte	Forfs 7 days pay FR&I 149(1)b "HJW"
Field	1 Apr 1943	Spr		A.A. Sec 15(1) Absent without leave from 0815 hrs 1 Apr 43 until 0845 hrs 1 Apr 43 (Absent 30 min.)	Sgt. Richardson	14 days C.B.	2 Apr 43	H.G.J. Woods Major R.C.E. "HRB"	

MFM 6
(AFB 122)
40/PAM/139 (3458)

No B53700 Name SMITH, Norman | Sqn, Battery, or Company | Corps R.C.E. | Date of enlistment 31-12-41 | GC Badges | Service or Proficiency Pay |

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc (?? Gibson) Capt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	5 Jun 43	Spr		(1) A.A. 40 Cond. to the prej. etc (2) A.A. 24 Wilfully damaging Gov property	Sgt. Munro CSM Martin	14 days F.P.	10 Jun 43	Lt-Col W.S. Thompson	Stoppages of pay for damage £1-1-10½ "MF
"KES" Field	10/6/ 43	Spr		A.A. Sec 15(1) WOAS-AWL from 1330 hrs Jun 43. Absent 11 days 4 hrs 30 mins.		168 hrs Detn Dep 7 days pay FR&I 149 1(b)	22/6/43	Lt-Col W.N. Mitchell	Forfs 12 days pay FR&I 149 (1) a

CERTIFIED TO BE A TRUE COPY FROM REGT'L BOOKS IN MY CUSTODY
"A.W. ROY CAPT"
Officer Having Charge of Regt'l Books.

(PTO)

#Ex "C"

CERTIFICATE OF ARREST UNDER A.A. 163 (1) (JJ) Copy

I, Capt L.F. Hunt certify that No. B53700 Rank Pte

Name SMITH N. Unit R.C.E.

was arrested at BARI at about 1755 hours on the 7th June

1944.

"K E SMITH MAJOR"

"L F Hunt" Captain
Officer Commanding
230 Provost Company,
The Officer into whose custody
the above named person was
taken on arrest.

" K E S "

LIST OF EXHIBITS

in the case of B53700 Spr Smith, N.

1. Exhibit "A" X List RCE Pt II Order No. 103 d/23 Jun 44.
2. Exhibit "B" Statement by Capt. G.W. Akehurst Adjutant 2 Cdn NETD (B) CMF.
3. Exhibit "C" Certificate of Arrest signed by Capt. L.F. Hunt, OC 230 Provost Coy.

LIST OF WITNESSES

In the case of B53700 Spr Smith, N.

FOR THE PROSECUTION

1.	Capt A.W. Roy	Adjt 3 Bn 1 C.B.R.D.
2.	Capt. G.W. Akehurst	Adjt 2 Cdn N.E.T.D. (B) CMF.
3.	Capt. L.F. Hunt	O.C. 230 Provost Coy.

FOR THE DEFENCE

NIL.

I request the Convening Officer to appoint Lieut J.M. Choney to defend me at my forthcoming trial by Court Martial.

Date 3 July 44 "Spr Smith, N" Sgd

"K E S"

I hereby acknowledge having received a copy of the Charge Sheet and Summary of Evidence in connection with my forthcoming Trial by Field General Court Martial.

"Spr Smith N"

In the Field
30 Jun 44

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B 53700 SPR. NORMAN SMITH. (RCE) 3Bn. 1CBRD.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	A.A. Sec 15(1)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for ... beginning on (date) ...~~ KES (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 36 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To be imprisoned with hard labor for a period of one (1) year.

(Sgd) ~~Judge Advocate, if any~~ KES 14th JULY 1944 (Sgd) K.E. Smith Major
Date awarded. President. (AP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ... (Sgd) ... Commanding ...

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: Confirmed EWH

~~I direct that the accused be kept committed to prison or detention barracks until further orders.~~(1)
(1. AA 57A. Delete if not used.)

(Sgd) E.W. Hardenby Brig.
Date 17 Jul 44 Commanding COMMANDER 1 CDN BASE REP GROUP

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B53700 Spr Smith Norman	19 July 44	J.F. Morgan Maj

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 ... TTT 217

RECEIVED 21 AUG 1944 JAG/DJAG/CMHQ

FIELD GENERAL COURT-MARTIAL

CPA96 (To 2461 of AFA2) 40/P & S/160B (40/38) 4/38B

Convened by Order of Brig E.W. HALDENBY Comd 1 CBRB Grp dated 11 July 1944

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt. A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-53700	SPR.	NORMAN	SMITH. RCE.	3Bn 1CBRD.

PROCEEDINGS REVIEWED
J. Rutiquelet Capt
21 Aug 44
REVIEWING OFFICER, JAG/DJAG/CMHQ

I 76

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) 14th JULY 1944

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JA, if any,~~ and Offrs ~~under instr, if any,~~ assemble, and the Court is closed. KES

~~TWO MATTER NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA.~~ The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 895, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 96, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is ~~being~~ KES amenable to military law, and each charge discloses an offence.(4)

(1. As to use of Summary of Evidence see RP 17 fn 1. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~not~~ KES brought before the Court. At 1060 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~not~~ KES fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused was directed to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~ KES

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ... as interpreter? Ans ...~~
~~The Interpreter is sworn.(1) Do you object to ... as shorthand writer? Ans ...~~
~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 56(2). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JAs if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	K.E. SMITH. (RCA)	9Bn 203.R.A.
Member	LIEUT.	M. SAUVE (RCHA)	1 Cdn Re-All. Centre
Member	LIEUT.	J. LABAN (CAC)	2 Cdn. Re-All. Centre.
~~Judge Advocate~~ KES			
Prosecutor	LIEUT.	A.D. EGAN.	3Bn 1CBRD.
Defending Offr	LIEUT	M.J. CLONEY	3Bn 1.CBRD.

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 2.)

A8. The accused ... before arraignment makes(s) (no) ~~no~~ plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~not~~ KES arraigned ~~separately~~ KES on all charges in the charge sheet.(1) The accused does ~~not~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 895 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form. B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (does not) the Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty to the charge(s). The accused is (are) so informed, and he (they) changes his (their) plea(s) on the charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 535. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed to make your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. .....
Do you intend to call witnesses on your behalf ?
Ans. .....
Are they witnesses as to character only ? Ans. .....
(1. *RP 115.* 2. *RP 40(A). See 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, B6(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 40, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(2) (b), RP 45, 120(A).* 2. *AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true (copy) (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex E and Ex F respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM a.* 3. *RP 46, KR Can 538. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. YES.
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(4), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its gravamen, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(7), KR Can 564.* 2. *RP 50. As to release from arrest by Convening Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

K.E. Smith Major

CHARGE SHEET

The accused B53700 Sapper Norman SMITH, Royal Canadian Engineers, attached to 3 Canadian Reinforcement Battalion, 1 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas, is charged with:

First Charge
Army Act
Sec 15(1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field in Italy on 26 Feb 44 absented himself without leave from 0830 hours on 26 Feb 44 until apprehended by the C.M.P. at Bari at approximately 1755 hours on 7 Jun 44.

Total Time Absent: 102 days, 9 hours, 25 minutes.

Error

~~(W.W. Wathers) Lt-Col,~~ Major
Commanding Officer,
3 Cdn Rft Bn, 1 CBRD.

In the Field,
7 Jul 44.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

E.W. Haldenby

(E.W. Haldenby) Brigadier
Commander
HQ 1 Cdn Base Rft Gp
Cdn Army - CMF

In Italy
In the Field
11 July 1944

K.E. Smith Maj

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 81(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
B-63700	Spr.		Norman	SMITH	RCE 3 Bn 1 CBRD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached ~~and~~ on (date) 11 July 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial". GWH

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~ GWH

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto~~ GWH

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge Advocate thereat the Offr mentioned hereunder~~ GWH

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	K.E. Smith	3 Bn 1 CBRD

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Lieut	J. Laban (CAC)	2 Cdn Reallocation Centre
Lieut	M. Sauve (RCHA)	2 Cdn Reallocation Centre

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lieut	to be detailed by OC	2 Cdn Reallocation Centre

~~JUDGE ADVOCATE~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy (Country.)

GWHaldenby (Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Date 11 July 1944

Commanding HQ 1 Cdn Base Rft Group

Convening Officer.

CONVENING OFFR. WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (Form 110 Hdq of AFAS) W.D. A.G. 8/1087 1400

(See overleaf for oaths and notes for use at trial.)

N.G. Smith major

.. Medical Officer's Certificate ..

I hereby certify that I have this day examined

No. B53700 Rank SPR. Name SMITH N.

a nd in my Opinion is fit to undergo trial by

Court Martial

Date. July 14/44

R. E. Sidenberg Capt.
(Medical Officer)

Ex "D"

Summary of Evidence

In the case of B 53700 Sapper Norman Smith, Royal Canadian Engineers, 3 Canadian Reinforcement Battalion, 1 Canadian Base Reinforcement Depot, a soldier of the Canadian Army Overseas, placed on Active Service.

By direction of the Commanding Officer the evidence is taken on oath.

First Witness for the Prosecution

Capt. A. W. Roy, Adjt 3 Bn., 1 C.B.R.D. having been duly sworn states.

I am Capt A. W. Roy Adjt 3 Bn., 1 C.B.R.D. I submit an X list R.C.E. 8th Field Park Coy issued by Cdn Section G.H.Q. 2nd echelon A.A.I. No 103 dated 23 June 44 This order shows in para 7 page 5 that ch named B-53700 Sapper Smith N. is to be A.W.L. from 0530 hours 26 Feb 44 I further publish the Standard Routine Order and shows him to be apprehended 1755 hours 7 June 44 marked exhibit "A" and attached to the summary.

A.W. Roy Capt

The accused does not wish to cross-examine the witness at this time

Lt. Smith N.

K86

Second Witness for the Prosecution

Capt. G. W. Lakehurst Adj't
2 Cdn. M.E.T.D. (B) C.M.F.

A statement purported to be signed by this witness was read to the accused marked exhibit "B" and attached to the summary.

The accused does not require the presence of this witness for cross-examination at this time.

Sgt. Smith M.

I certify that due to the exigencies of the service and the loss of time involved the presence of this witness is not readily procurable.

J. K. Lumbard (Lt)
Officer detailed to take the summary.

Third Witness for the Prosecution

Capt. T. F. Hunt Officer Commanding 230 Provost Company.

A statement of Hunt purported to be signed by this witness was read to the accused marked exhibit "C" and attached to the Summary.

The accused does not require the presence of this witness for cross-examination at this time.

Sgt. Smith M.

I certify that due to the exigencies of the service and the loss of time involved the presence of this witness is not readily procurable.

J. K. Lumbard (Lt)
Officer detailed to take the summary.

The accused was cautioned under Rule 6 of Procedure 4 (c) as follows:-

"Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make any statement or give evidence at this time and reserves his defence.

Sgt. Smith

I certify that the foregoing Summary of Evidence was taken down by me in the presence of the accused and Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

J.K. Rumball (Lt)
Officer detailed to take the summary.

Exhibit 'B' V

STATEMENT by Capt. Geo W. Akehurst Ex. 'B'

"I am Adjutant of No.2 Cdn NETD (B) and in that capacity have custody of all Regimental records. I hereby certify that there is no record of B53700 Spr. SMITH N. (RCE) having reported to No. 2 N.E.T.D.(B), formerly known as NET Wing 1 CBRGp, and have no record of Spr. SMITH, ever having been on the strength of this Unit.

Geo. W. Akehurst Capt.
Geo. W. Akehurst
Adjutant
2 Cdn NETD (B) CMF

Ex. "A"

Exhibit A

K.E. Smithson
Sgt

Last Order	"X" List R.C.E.	This Order
No 102	Part II Orders issued by	No 103
20 Jun 44	Canadian Section GHQ 2nd Echelon A.A.I.	23 Jun 44

"A" OFFICERS

1. STRENGTH DETCHELSH
(a) T.O.S. X-4 List (7Bn) to 9 Field Park Coy RCE 22 Jun 44
Auth - CECH/Demand RE2/584 d/17 Jun 44
Capt E.D.B. Mingoo

(b) S.O.S. X-4 List (7Bn) to 1 Field Sqn RCE (Trng Inor) 20 Jun 44
Auth - TI/2 d/19 Jun 44
Lieut W.C. Manocarrow

2. QUALIFICATIONS
(a) Having attended Drafting and Watermanship (RE) Course No.6 at School of Military Engineering (CMF) from 21 May 44 to 3 Jun 44, was classified "B.Y."
Capt R.C. Woolands

"B" OTHER RANKS

3. STRENGTH INCREASE
(a) T.O.S. X-3 List from 13 Field Coy RCE 21 Jun 44
G51093 Spr Picard, A. Bricklayer B

(b) T.O.S. X-3 List from 1 Cdn Mech Dept Sec "C" CMF 20 Jun 44
M22126 Spr Ronauld, A.S. Operator SWT "C"

(c) T.O.S. X-3 List from 1 Drilling Coy RCE 12 Jun 44
M39185 Spr Mahon, C.

(d) AMENDMENT Part II Order No.101, para 1(s) of 19 Jun 44 insofar as it refers to the w/n deleto "1 Field Coy RCE" and substitute "1 Drilling Coy RCE"
M59892 Spr Jenkinson, W.

(e) T.O.S. X-4 List (7Bn) from 14 Field Coy RCE 23 Jun 44
Auth - CECH/43/Post RCE/1 (..7) d/21 Jun 44
D16008 Spr Nolan, T.

(f) T.O.S. X-2 List from 1 Field Sqn RCE 16 May 44
G25714 Spr Kenney, W.R. Dr Mech C
M36698 Spr McNicol, J.S.G. Pioneer C

(g) T.O.S. X-2 List from 1 Div Bridging Pltn RCE 12 Jun 44
L3080 Spr Short, L.

(h) T.O.S. X-3 List from 4 Field Coy RCE 12 Jun 44
D16117 Spr Courey, J. Pioneer C
K46154 Spr Del Puppo, E.J. Blacksmith C

(i) T.O.S. X-3 List from 4 Field Coy RCE 11 Jun 44
D16305 Spr McCaw, W. Stoker C

3. STRENGTH INCREASE (CONT'D)

(j) T.O.S. X-3 List from 4 Field Coy RCE 10 Jun 44
K43060 Spr Norfoot, .D. Bricklayer C

(k) T.O.S. X-3 List from 4 Field Coy RCE 14 Jun 44
K29340 Cpl Hoff, J.B. Carpenter C

(l) T.O.S. X-3 List from 13 Field Coy RCE 13 Jun 44
D27952 Spr Miller, G.

(m) T.O.S. X-4 List (7Bn) from X-9 List 18 Jun 44
Auth - Posting Order 461 d/17 Jun 44
M161 Spr Christonson, L.L. Fitter MV "A"

(n) AMENDMENT Part II Order No.47A, para 7(o) of 24 Dec 43 insofar as it refers to the u/n is amended by adding "Pioneer C"
M41325 Spr Maloy, L.

(o) T.O.S. X-3 List from 14 Field Coy RCE 18 Jun 44
B18442 Spr Schofield, W.A. Tinsmith B

(p) T.O.S. X-4 List (7Bn) from 13 Field Coy RCE 19 Jun 44
Auth - CEOR/43/Post RCE/1 (..7) d/16 Jun 44
W22379 Sgt MacKinnon, J.N.

(q) T.O.S. X-3 List from 13 Field Coy RCE 20 Jun 44
W30804 Spr Stewart, E.W. Pioneer C

(r) T.O.S. X-4 List (4Bn) on return from desertion 14 Jun 44 on admission to No.4 R.P Gon Hosp (dr unknown)
D29953 Spr(A/Cpl) Coleman, J.

(s) T.O.S. X-3 List from 13 Field Coy RCE 18 Jun 44
L66342 Spr Harder, L.C. Electrician C
D26394 Spr Stewart, D.H. Pioneer C

(t) T.O.S. X-3 List from 5 Armd Div Bridging Troop RCE 20 Jun 44
C110049 Spr Fleming, C.C.
D114550 Spr Murray, R.H.

(u) T.O.S. X-3 List from 1 Div Bridging Pltn RCE 13 Jun 44
B23458 Spr Wiltshire, R....

(v) T.O.S. X-3 List from 9 Field Park Coy RCE 19 Jun 44
B92816 Spr Ming, J.D.

(w) T.O.S. X-4 List (7Bn) from 2 Field Park Coy RCE 17 Jun 44
Auth - CEE 788 d/15 Jun 44
D25908 Spr Brown, J.H. Blacksmith B

(x) T.O.S. X-3 List from 12 Field Coy RCE 19 Jun 44
D16032 Spr Brunet, R. Stoker C

(y) T.O.S. X-4 List (7Bn) from X-4 List RCASC (7Bn) 15 Jun 44
Auth - CEOR/43/Post RCE/1 d/19 Jun 44
..2363 Spr Danby, J.G.C.
M66480 Spr Hooks, H.C.

3. STRENGTH INCREASE (CONT'D)

(z) T.O.S. X-3 List from 10 Field Sqn RCE 20 Jun 44
G53444 Spr Patterson, W.H. Blacksmith C
H20258 Spr Slater, S. Pioneer C

(aa) T.O.S. X-4 List (7Dn) from X-4 List RCE(A) (6Dn) 20 Jun 44
Auth - CRCN/44/Trans Gen/6 (A7) 4/17 Jun 44
F24452 Spr Vorbiski, A.S.

(ab) T.O.S. X-3 List from 4 Field Coy RCE 7 Jun 44
H02148 Spr Erickson, C.E. Carpenter B
D16180 CQMS Hoad, T.D.

(ac) T.O.S. X-3 List from 3 Field Coy RCE 11 Jun 44
M59555 Spr Brown, R.J.

(ad) T.O.S. X-3 List from 12 Field Coy RCE 14 Jun 44
D29237 Spr Bost, R. Pioneer C

(ae) T.O.S. X-3 List from 12 Field Coy RCE 18 Jun 44
B28654 Spr O'Flaherty, J.N. Carpenter C

(af) T.O.S. X-3 List from 3 Field Coy RCE 10 Jun 44
D131193 Spr Church, A. Blacksmith C
K51033 Spr Irwin, A.W. Pioneer C

(ag) T.O.S. X-3 List from 10 Field Sqn RCE 16 Jun 44
D166831 Spr Smallcombe, W. Painter B

(ah) T.O.S. X-3 List from 10 Field Sqn RCE 17 Jun 44
D114929 Spr Kotchon, A.W.

(ai) T.O.S. X-3 List from 10 Field Sqn RCE 18 Jun 44
M65645 Spr Dion, H.D.
H17313 Spr Routhor, P.

(aj) T.O.S. X-3 List from 1 Cdn Gen Hosp RCAMC 10 Jun 44
B28066 Spr Burns, D.

(ak) T.O.S. X-3 List from 14 Field Coy RCE 11 Jun 44
L19230 Cpl MacPherson, M.G.

(al) T.O.S. X-3 List from 3 Field Coy RCE 9 Jun 44
M1835 Spr Sirm, R.H. Bricklayer B

(am) T.O.S. X-3 List from 1 Div Bridging Pltn RCE 10 Jun 44
Y51975 Spr Swirm, L.E.

(an) T.O.S. X-3 List from 1 Cdn E.& M. Coy (A) RCE 13 Jun 44
U1715 Spr Lilburn, H.F. Engr Hand i/c "C"

(ao) T.O.S. X-3 List from 3 Field Coy RCE 12 Jun 44
C2162 L/Sgt MacConnell, R. Dr Mech C

3. STRENGTH INCREASE (CONT'D)
(ap) T.O.S. X-3 List from 3rd Field Coy RCE 14 Jun 44
D5998 Spr Shoopwash, F.H. Concretor D

4. INTERNAL POSTINGS
(a) Posted from X-4 List (4Dn) to X-4 List (7Dn) 21 Jun 44
Auth - Cdn G2H/ARMY/313 d/11 Jun 44
K46154 Spr Del Puppo, E.F. Blacksmith C
D29994 Spr Kelly, J. Pioneer C
K29340 Cpl Neff, J.B. Carpenter C
K54275 Spr Walker, R. Pioneer C

(b) Posted from X-3 List to X-4 List (7Dn) 21 Jun 44
K51033 Spr Irwin, A.W. Pioneer C
K09223 Spr MacKillop, K.C. Pioneer C
D16924 Spr St Armour, [illegible] Pioneer C
D25584 Spr Worstonecroft, A.W. Bricklayer D

(c) Posted from X-4 List (7Dn) to X-10 List whilst att to Chief Engineers Branch, HQ 1 Cdn Corps 4 Jun 44
Auth - CEC/H/Attach Order No.218 d/2 Jun 44
D26052 Spr Clarke, W.J. Draughts Mech "A"

(d) Posted from X-2 List to X-4 List (7Dn) on release from 2 Cdn F.P. Camp 22 Jun 44
C25714 Spr Kenney, W.R. Dr Mech C
M56698 Spr MacNicol, J.D.G. Pioneer C

(e) Posted from X-2 List to X-3 List 19 Jun 44
A3080 Spr Short, L.

(f) AMENDMENT Part II Order No.34, para 13(a) of 5 Jan 44 insofar as it refers to the u/m is amended by deleting "Bricklayer D"
F76487 Spr Dowie, J.D. Bricklayer D

(g) Posted from X-3 List to X-4 List (4Dn) 19 Jun 44
K46154 Spr Del Puppo, E.F. Blacksmith C
D29994 Spr Kelly, J. Pioneer C

(h) Posted from X-4 List (7Dn) to X-10 List whilst att to 14 Field Coy RCE f.a.p. 15 Jun 44
Auth - 1 Cdn Att Order 183 d/16 May 44
F71062 Sgt Wilkie, G.A.R. Foreman of Wks "B"

(i) Posted from X-3 List to X-4 List (7Dn) 17 Jun 44
D76357 Spr Menard, W.H.
K54260 Spr Sykes, C.

(j) Posted from X-3 List to X-4 List (7Dn) 19 Jun 44
B92933 Spr Chappel, J.S. Dr Mech C
F91529 Cpl Holland, W.D. Carpenter D

(k) Posted from X-3 List to X-4 List (7 Dn) 13 Jun 44
D113162 Spr Gilpin, R.T.

4. INTERNAL POSTINGS (CONT'D)

(l) Posted from X-3 List to X-4 List (4Dn) 20 Jun 44
K29340 Cpl Neff, J.B. Carpenter C

(m) Posted from X-4 List (4Dn) to X-3 List 14 Jun 44
B29953 Spr(A/Cpl) Coleman, J.

(n) Posted from X-3 List to X-4 List (7Dn) 20 Jun 44
D16305 Spr McGaw, W. Stoker C.

(o) AMENDMENT Part II Order No.31, para 3(c) of 5 Mar 44 insofar as it refers to the u/n is amended by adding "Pioneer C"
M41325 Spr Maley, L.

(p) AMENDMENT Part II Order No.37, para 3(i) of 13 Mar 44 insofar as it refers to the u/n is amended by adding "Pioneer C"
M41325 Spr Maley, L.

5. TRANSFERS

(a) Trans from RCASC to RCE 15 Jun 44
Auth - CZCH/43/Post RCE/1 d/19 Jun 44
A42363 Pte Danby, J.C.C.
M66480 Pte Hooks, M.C.

(b) Trans from RCA(A) to RCE 20 Jun 44
Auth - CZCH/44/Trans Gen/6 (A7) d/17 Jun 44
F24452 Gnr Verbiski, A.S.

(c) Trans from RCA(A) to RCE 18 Jun 44
Auth - CZCH/46/Re-Allocation/(A7) d/17 Jun 44 Fitter MV "A"
M161 Gnr Christensen, L.L.

6. TRADESMEN'S RATES OF PAY

(a) Granted tradesman's rates of pay Clerk "B" 14 Jun 44 Clerk C
A55354 Spr Lockwood, W.C.

(b) Reverts to daily regtl rate of pay of $1.50 19 Jun 44 Storeman T&D "C"
F86433 Spr Foggoe, W.P.

7. ABSENT WITHOUT LEAVE

(a) A.W.L. from 0830 hrs 26 Feb 44 Still absent 0830 hrs 27 Feb 44 (1st day)
B53700 Spr Smith, N.

(b) A.W.L. from 0830 hrs 26 Feb 44 Still absent 0830 hrs 5 Mar 44 (8th day)
B53700 Spr Smith, N.

(c) A.W.L. from 0830 hrs 26 Feb 44 Still absent 0830 hrs 19 Mar 44 (22nd day)
B53700 Spr Smith, N.

(d) A.W.L. from 0830 hrs 26 Feb 44 App by C. Prov. C. 1755 hrs 7 Jun 44
B53700 Spr Smith, N.

8. PUNISHMENTS

(a) On 19 Jun 44 awarded a forf of 5 days pay for an offence under A. 15(1) A.W.L. from 2100 hrs 18 Jun 44 to 2250 hrs 18 Jun 44 (absent 1 hr 50 mins) Forf 5 days pay under FR&I 149(2)
K31033 Spr Irwin, A.W.

(b) On 21 Jun 44 awarded 14 days F.P. and a forf of 14 days pay for two offences under A. 11 Forf 14 days pay under FR&I 149(2)
F59951 Spr Bernard, E.E.

(c) Released from 2 Cdn F.P. Camp 22 Jun 44 sentence having expired 20 days remission earned under Rules for Detn Bks and Mil Prisons
C25714 Spr Konnoy, W.R.
M36698 Spr McNicol, J.O.C.

9. PROMOTION AND DISTINCTION

(a) AMENDMENT Part II Order No.444, para 9(a) of 10 Dec 43 insofar as it refers to the u/n is amended by deleting "Bricklayer D"
F76487 Spr Dowie, J.D. Bricklayer D

10 STRENGTH DECREASE

(a) S.O.S. X-3 List to X-8 List 19 Jun 44
Auth - T.O.E. 2225
D29199 Cpl Gowan, A. Operator SET "A"

(b) S.O.S. X-3 List to 13 Field Coy RCE 16 Jun 44
D27952 Spr Miller, G.

(c) AMENDMENT Part II Order No.39, para 6(a) of 15 Mar 44 insofar as it refers to the u/n is amended by adding "Pioneer C"
M41325 Spr Maloy, L.

(d) S.O.S. X-3 List to X-8 List 20 Jun 44
Auth - A.F.W. 5169 d/21 Jun 44
D27127 Spr Feggans, W.H. Pioneer C
D25718 Spr Glasson, J.O. Eng Mand i/c "C"
D26726 Spr Gyatt, H.P. Pioneer C
L12265 L/Cpl Klassen, P.T. Dr Mech C
[illegible] Spr Martens, P.J.
[illegible] Spr Martineau, L.D.
C51233 Spr Rolls, H.C. Bricklayer B
D93660 Cpl Wilson, R. Carpenter B

(e) AMENDMENT Part II Order No.10, para 14(1) of 26 Jun 44 insofar as it refers to the u/n is amended by deleting "Bricklayer B"
F76487 Spr Dowie, J.D. Bricklayer B

(f) S.O.S. X-4 List (7Bn) to 10 Field Sqn RCE 20 Jun 44
Auth - CEC/H/Demand/ARS/567 d/17 Jun 44
B74147 Spr Bennett, J.S. Pioneer C
M54409 Spr Wetmore, H.H.

(g) S.O.S. X-4 List (7Bn) to 1 Cdn Mech Eqpt Sec "C" CMP 21 Jun 44
Auth - CEC/H/43/Post RCE/1-4-19 Jun 44
[illegible] Spr Danby, J.G.C.
M66480 Spr Hooks, M.C.

10. STRENGTH DECREASE (CONT'D)

(h) S.O.S. X-4 List (7Bn) to 10 Field Sqn RCE 20 Jun 44
Auth - CEC/H/Demand ARS/ 567 d/ 17 Jun 44

C33448	L/ Cpl	Lance, H.	Pioneer C
J82864	Spr	Little, E.H.	Pioneer C
H54745	Spr	Sinclair, J.M.	
B29760	Spr	Sudds, W.A.	Pioneer C
D45361	Spr	Taylor, A.C.	
L102962	Spr	Taylor, C.N.H.	
K66419	Spr	Thompson, G.D.	
K50023	Spr	White, W.R.	

(i) S.O.S. X-4 List (7Bn) to 12 Field Coy RCE 20 Jun 44
Auth - CEC/H/Demand ARS/ 587 d/ 17 Jun 44

D20202	Spr	Gilbert, F.E.	
M65088	Spr	Mulcaster, D.A.	
B112230	Spr	O'Halloran, W.P.	

(j) S.O.S. X-4 List (7Bn) to 13 Field Coy RCE 20 Jun 44
Auth - CEC/H/Demand ARS/ 504 d/ 17 Jun 44

L60754	Spr	Reid, L.A.	
B44267	Spr	Seifried, A.M.	

(k) S.O.S. X-4 List (7Bn) to 5 Armd Div Bridging Troop RCE 20 Jun 44
Auth - CEC/H/Demand ARS/ 569 d/ 17 Jun 44

D21420	Spr	Burns, F.M.	
L11304	Spr	Chubinski, N.	
H76073	Spr	Dustin, D.W.	

(l) S.O.S. X-3 List to X-9 List 18 Jun 44 Pending reboard

M16275	Spr	Grundy, G.W.	

(m) S.O.S. X-4 List (7Bn) to X-8 List 20 Jun 44
Auth - Post Order 492 EXIT (P.W. Escort) d/ 19 Jun 44

H82221	Spr	Cartwright, W.E.	Dmg Hand l/c "C"

(n) S.O.S. X-3 List to Cdn Pioneer Coy (CMF) 6 Jun 44
Auth - Psychiatrist

H16288	Spr	Williams, C.C.	Carpenter B

(o) S.O.S. X-4 List (7Bn) to 14 Field Coy RCE 20 Jun 44
Auth - CEC/H/Demand/ ARS/ 639 d/ 18 Jun 44

H36228	L/ Cpl	Coutts, C.W.	Pioneer C
Z5880	Spr	Paquin, A.	Bricklayer C
C70732	Spr	Putman, R.H.	Carpenter B
M60132	Spr	St Armand, R.W.	

(p) S.O.S. X-4 List (7Bn) to 2 Field Park Coy RCE 20 Jun 44
Auth - CEC/H/Demand/ ARS/ 627 d/ 18 Jun 44

B28065	Sgt	Hamilton, G.R.	

(q) S.O.S. X-4 List (7Bn) to 13 Field Coy RCE 20 Jun 44
Auth - CEC/H/Demand/ ARS/ 504 d/ 17 Jun 44

B03423	Spr	Marshall, E.T.	

10. STRENGTH DECREASE (CONT'D)

(r) S.O.S. X-4 List (7Bn) to 1 Field Sqn RCE 20 Jun 44
Auth - CECH/Demand/ARS/560 d/17 Jun 44
L19309 Spr Clare, J.A.M.
H20261 Spr Howe, D.
A19267 L/Cpl Martin, J.H. Carpenter B

(s) S.O.S. X-4 List (7Bn) to 5 Armd Div Bridging Troop RCE 20 Jun 44
Auth - CECH/Demand/ARS/569 d/17 Jun 44
D113162 Spr Gilpin, R.T.

(J. E. Campbell) Lieut
for Officer i/c
Cdn Sec CHQ 2nd Echelon AAI

/JVS

In the Case of B 53700 Sapper SMITH, N.

PLEA IN MITIGATION

The accused, at 18 years of age, enlisted in the Canadian Army (Active) at Hamilton, Ontario, on Dec. 29th, 1941 - with the R.C.O.C. After basic training at Brantford, the accused was posted to the R.C.E. and did further training at Petawawa, Ontario.

He came overseas in June, 1942 - having volunteered to implement a draft. After over a year of service with the R.C.E. in England, he again volunteered to proceed on draft to North Africa - landing there in October, 1943.

On arriving in Africa, the accused was taken to the Hospital with fever and was treated and in convalescence for two months. He was between M.O's interviews and hospitals, due to a leg ailment, for some time. Having little hope of joining his comrades in the First Field Coy of the 1st Divisional Engineers for some time to come, if at all - in his youthful enthusiasm and eagerness, he decided to make his own way to his unit. He obtained a job on a merchant ship and landed in Bari, Italy, [redacted]

Having received excellent treatment and friendly hospitality there,

The accused delayed and tarried on until his apprehension early in June, 1944.

Since his apprehension, he has been most honest and frank with the Army authorities, has assisted them in little ways in checking on his case-history and has not withheld.

He realizes that there has been a good deal of administrative muddling in his case, that the charge is incorrectly framed as to the times and place of absenting himself and that the documentary evidence does not provide a logical explanation of his absence. Nevertheless, he has made up his mind to plead guilty and "take his medicine" He is also ready and willing to do whatever is required of him after he has served his sentence.

The accused is not an intentional criminal or mischievous absentee. He is a clear-minded, forthright soldier who can and will be of use to the Army. His conduct sheet discloses only minor offences which were lightly dealt with by his superior officers. I would respectfully request the Court not be impressed by the number of petty offenses - but rather delve into their nature.

ARMY FORM B.206.

Statement as to Character and Particulars of Service of Accused.

Number.	Rank.	Name.	Regiment (or as the case may be).
B-53700	Spr.	Smith, N.	R.C.E. 3 Cdn Rft Bn, 1 C.B.R.D.

1. The following is a fair and true summary of the entries in the regimental and ~~squadron, battery or~~ company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 877, K.R., 1940.

* The entries to be stated should correspond with the entries given in the regimental conduct sheet, and in any exceptional cases of entries in the "Remarks" column.

	* Within last 12 months.	*Since Enlistment.
For A.A. 15 (1)	0 times	6 times.
For A.A. 40	0 times	2 times.
For A.A. 11	0 times	1 times.
[redacted]	0 times	1 times.
For A.A. 24	0 times	1 times.

Instructions.—If the absence is for desertion, the entries for desertion must be stated separately and dated.

[redacted]

2. The accused has not been previously convicted.

[redacted]

3. The accused is not under sentence at the present time.

[redacted]

4. The accused has been in confinement, awaiting trial on the present charges, for 0 days in civil custody, and 36 days in military custody, making a total of 36 days, of which 0 days were spent in hospital.

5. The present age of the accused according to his [redacted] MBM 1 Pt 1 is 21 years 148 days

6. The date of his [redacted] attestation specified in his [redacted] MBM 1 Pt 1 is 31 Dec 41

7. The service which the accused is allowed to reckon towards discharge or transfer [redacted] is 2 years 198 days

8. [redacted]

9. The accused is entitled to reckon 2 years 198 days service for the purpose of determining his pension, etc.

10. The accused is [redacted] entitled to (*state any military decoration or reward*) CVSM & CLASP

11. [redacted]

12. [redacted]

A.W. Ray Capt

Officer Having Charge of Regtl Books

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. ..... Rank ..... Name ..... of ..... Regiment (or as the case may be).

(INSTRUCTION.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 17 day of JULY 44

Lt.-Col.

NES

The accused has served as a non-commissioned officer continuously, without reduction, to the present date, viz.:

In the rank of ..... years .....

In the rank of ..... years .....

In the rank of ..... years .....

Date of Promotion

(Memorandum—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck out, except that in the case of a trial by field general court-martial the information may be collated from such sources as are available and the paragraph retained amended accordingly.*)

Reviewed in accordance with CARO 2084 9 Dec 42 "T.G.Wilkinson Lieut"

MFM 6 (AFB 122) 40/PAM/136 (3438)

No B-53700 Name SMITH, Norman | Sqn, Battery, or Company | Corps R.C.E. | Date of enlistment 31-12-41 | GC Badges | Service or Proficiency Pay N/A | Character

Date of last entry in Company Conduct Sheet N/A | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No | Signature OC Company, etc "G.D.Gibson Capt"

Plate	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Verified from MFM 2 and MFM 4 in accordance with C.A.R.O. 2084, 31 Aug 41 "G.E.Atkinson, Lieut"									
Field	12 Oct 42	Spr		A.A. 15(1) W.O.A.S. A.W.L. from 1200 hrs till 0845 hrs Absent 20 hrs, 45 mins.	Doc'y	Admonished	14 Oct 42	Lt-col C.N. Mitchell	Ffts 1 days pay FR&I 149(1)a "J.W."
Field	5 Dec 42	Spr.		WOAS AWL from 0630 hrs 5 Dec 42 to 0915 hrs 5 Dec 42 Absent 2 hrs., 45 mins.	L/Sgt Elliot Cpl Senechal Documentary	Forfeits 1 days pay A.A.46	8 Dec 42	Lt-col C.N. Mitchell	Stoppage of pay £0-11-10 Cost of Apprehension
Field	5 Jan43	Spr		A.A.Sec 15(1) Absent from parade			7/1/43	H.G.J. Woods "H.J.W."	

(FTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	20 Jan 1943	Spr		A.A.Sec.40. Failed to leave the mess hall when ordered to do so by Cpl. Wallington	L/Cpl Bell Cpl Wallington	3 days C.B.	21 Jan 43	H.G.J. Woods Major R.C.E.	"H.J.W."
Field	20 Feb 1943	Spr		A.A. Sec.15(1) A.W.L. from 0415 hrs 20 Feb 43 to 0500 hrs 20 Feb 43 Absent 45 mins.	L/Cpl Barless	7 days C.B.	22 Feb 43	H.G.J. Woods Major R.C.E.	"H.J.W."
Field	8 Mar 1943	Spr		An Offence under A.A.Sec. 11	Cpl B. McAleer	7 days Fd.Pun.	Mar 43	Colonel G.H.Whyte	Forfs 7 days pay FR&I 149(1)b "H.J.W."
Field	17/3 1943	Spr		An Offence under A.A.Sec.9(2)		Forf. 3 days pay FR&I 149(1)a	19 Mar 43	Colonel G.H.Whyte	"H.J.W."
Field	1 Apr 1943	Spr		A.A.Sec.15(1) Absent without leave from 0815 hrs 1 Apr 43 until 0845 hrs 1 Apr 43 (Absent 30 min)	Sgt. Richardson	14 days C.B.	2 Apr 43	H.G.J.Woods Major R.C.E.	"H.R.B."

MFM 6
(AFB 122)
o/s/P&N/130 (3428)

No B-53700 Name SMITH, Norman | Sqn, Battery, or Company | Corps R.C.E. | Date of enlistment 31-12-41 | GC Badges | Service or Proficiency Pay |

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc (??Gibson) Capt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	5 Jun 43	Spr		(1) A.A. 40 Cond. to the prej. etc (2) A.A.24 Wilfully damaging Gov property	Sgt. Munro CSM Martin	14 days F.P.	10 Jun 43	Lt-col V.S. Thompson	Stoppages of pay for damage £1-1-10½ "MP"
Field	10/6/ 43	Spr		A.A.Sec 15(1) WOAS-AWL from 1330 hrs 10 Jun 43 until 1800 hrs 21 Jun 43. Absent 11 days 4 hrs 30 mins.	DOC	168 hrs Detn Dep 7 days pay FR&I 149 1 (b)	22/6/43	Lt-col V.W. Mitchell	Forfs 12 days pay FR&I 149(1)a

CERTIFIED TO BE A TRUE COPY FROM REGT'L BOOKS IN MY CUSTODY

A W Roy Capt

Officer Having Charge of Regt'l Books

(PTO)

CA.11(2) (a) of Army Form W.3347. ... 163(1)(JJ). Copy Exhibit "E" Ex "E"

Capt. T. Flemg certify that No. B 53700 Rank Pte.

Name SMITH R. Unit R.C.E.

was arrested at BARI at about 1755 hours on the 7th June 1944.

T. Flemg Captain.
[illegible] Coy. maint.
230 Fr vcat Company.
The officer into whose custody the above named person was taken on arrest.

NES

LIST OF EXHIBITS

in the caseof B53700 Spr Smith, N.

1. Exhibit "A" X List RCE Pt II Order No. 103 d/23 Jun 44.

2. Exhibit "B" Statement by Capt. G.W. Akehurst Adjutant 2 Cdn NETD (B) CMF.

3. Exhibit "C" Certificate of Arrest signed by Capt. L.F. Hunt, OC 230 Provost Coy.

LIST OF WITNESSES

in the case of B53700 Spr Smith, N.

FOR THE PROSECUTION

1. Capt. A.W.Roy
2. Capt. G.W. Akehurst Adjt 3 Bn, 1 C.B.R.D.
3. Capt. L.F. Hunt Adjt 2 Cdn N.E.T.D. (B) CMF.
   O.C. 230 Provost Coy.

FOR THE DEFENCE

NIL.

NES

LIST OF EXHIBITS

in the caseof B53700 Spr Smith, N.

1.	Exhibit "A"	X List RCE Pt II Order No. 103 d/23 Jun 44.
2.	Exhibit "B"	Statement by Capt. G.W. Akehurst Adjutant 2 Cdn NETD (B) CMF.
3.	Exhibit "C"	Certificate of Arrest signed by Capt. L.F. Hunt, OC 230 Provost Coy.

LIST OF WITNESSES

in the case of B53700 Spr Smith, N.

FOR THE PROSECUTION

1.	Capt. A.W.Roy	Adjt 3 Bn, 1 C.B.R.D.
2.	Capt. G.W. Akehurst	Adjt 2 Cdn N.E.T.D. (B) CMF.
3.	Capt. L.F. Hunt	O.C. 230 Provost Coy.

FOR THE DEFENCE

NIL.

I request the Convening Officer to appoint Lieut J. M. Clowes
to defend me at my forthcoming trial by Court Martial.

Date 3 July 44 Sgd Sgt. Smith R.

KES

I hereby acknowledge having received a copy of the Charge Sheet and Summary of Evidence in connection with my forthcoming trial by Field General Court Martial.

Sgt. Smith N.

In the Field
30 Jun 44

38. Q.

Pte SMITH, N.G.

O. H. M. S.

M. F. B. 270

Correspondence to be PINNED here.

38 Q.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this TWLEPTH day of OCTOBER, 19 42

Whereas it appears to me, the undersigned, an officer in Command of 2nd Canadian Division Canadian Army Overseas, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to superior qualified officers]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

*[I am unable to appoint—

*(1. Three Officers to form the Court.)

*(2. A Field Officer as President)

for the following reasons, namely:—]

In my opinion, military exigencies, namely the dispersion of units, difficulties of communication, and other difficulties, render it inexpedient to comply with those rules inconsistent with Appendix "A" to D.R.O. 772 on the trial of the soldier named in the annexed schedule.

President.

Rank.	Name.	Regiment.
MAJOR	F. W. COURT	1st Scot R (MG)

Members.

Rank.	Name.	Regiment.
A LIEUT.	TO BE DETAILED BY CRCASC 2 CDN DIV	R.C.A.S.C.
A LIEUT.	TO BE DETAILED BY DAAG 2 CDN DIV	H.Q. 2 CDN DIV.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

*Signed J.H. Roberts (J.H. Roberts) Major-General
Commanding 2 Canadian Division
Convening Officer.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

PROCEEDINGS REVIEWED

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D91643, Pte Norman G Smith, 2 Cdn Div Pet Coy (5 Coy) RCASC, a soldier of the Canadian Army Overseas, is charged with:	FIRST CHARGE A.A.Sec. 8(1) WHEN ON ACTIVE SERVICE STRIKING HIS SUPERIOR OFFICER BEING IN THE EXECUTION OF HIS OFFICE, in that he in the field, at 1420 hours on 1 Oct 42, struck B83193, Cpl Somers C.R., 2 Cdn Div Pet Coy (5 Coy), R.C.A.S.C., on the shoulder	Not Guilty	Guilty	
	SECOND CHARGE A.A.Sec. 8(2) WHEN ON ACTIVE SERVICE, USING THREATENING LANGUAGE TO HIS SUPERIOR OFFICER, in that he in the field, at 1420 hours on 1 Oct 42, said to B83193, Cpl Somers C.R., his superior officer, "Interfere with me and I'll blacken both your bloody eyes."	Not Guilty	Guilty 90 DAYS DETENTION 14 Oct 42 M Court Maj	Confirmed. J.L.

* Question to be asked of accused, if he pleads not guilty (R. of P. 89 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— No Reply M Court Maj

(Signed) (Chas. Roberts) Major-General (Signed)
Commanding 2 Canadian Division *Convening Officer (e)*

(Signed) *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 14th day of October 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—

1. The members of the Court
2. The witnesses

~~3. The interpreter.~~
~~4. The officers under instruction.~~

* Omit if not applicable.

were duly sworn.

Signed this 14th day of October 1942.

M Court Maj

President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

~~I certify that the terms of A.A.I. 370 of 1918 have been complied with.~~

~~Signed this~~ ~~day of~~ ~~19~~

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~ J.L.

Signed this 14 day of Oct 1942

J L Roberts Maj-Gen

Confirming Officer.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Promulgated and extracts taken in the case of

(a) (Dated) 16 Oct 42. (Signed) G R Trafford Capt

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

W.1. 47787/1307 50 M. 5/41 K.[illegible] Gp. 698.3

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D91643, Pte Norman G Smith, 2 Cdn Div Pet Coy (5 Coy) RCASC, a soldier of the Canadian Army Overseas, is charged with:	FIRST CHARGE A.A.Sec. 8(1) ~~WHEN ON ACTIVE~~ SERVICE STRIKING HIS SUPERIOR OFFICER BEING IN THE EXECUTION OF HIS OFFICE, in that he in the field, at 1420 hours on 1 Oct 42, struck B83193, Cpl Somers C.R., 2 Cdn Div Pet Coy (5 Coy), R.C.A.S.C., on the shoulder SECOND CHARGE A.A.Sec. 8(2) ~~WHEN ON ACTIVE~~ SERVICE, USING THREATENING LANGUAGE TO HIS SUPERIOR OFFICER, in that he in the field, at 1420 hours on 1 Oct 42, said to B83193, Cpl Somers C.R., his superior officer, "Interfere with me and I'll blacken both your bloody eyes."	Not Guilty Not Guilty	Guilty Guilty 90 DAYS DETENTION 14 Oct 42. M. Court Mayor	Confirmed. J.W.R.

* Question to be asked of accused, if he pleads not guilty (R. of P. 89 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) J.W. Roberts Major-General (Signed) M. Court Mayor
Commanding 2 Canadian Division — President.
Convening Officer (e)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) [illegible] recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 14th day of October 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses

* Omit if not applicable.

~~(3. The interpreter.)~~
~~(4. The officers under instruction.)~~

were duly sworn.

Signed this 14th day of October 1942.

M. Court Mayor
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 782 M.M.L. 1929.

~~I certify that the terms of A.A.Act 1917 s. 70 & 1918 have been complied with.~~

~~Signed this day of 19~~

~~*President of the Court Martial.*~~

D. *Confirming Officer.*

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~(1 direct that the soldier named in the margin be undergo~~ J.W.R. ~~mitted to prison or detention barrack until further orders.)~~

Signed this 14 day of Oct 1942.

J.W. Roberts Maj-Gen
Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) 16 Oct 42. (Signed) A.R. Trafford Captain

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused, D91643, Pte Norman George Smith, 2 Cdn Div Pet Coy (5 Coy) R.C.A.S.C., a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
A.A.Sec. 8(1)

WHEN ON ACTIVE SERVICE, STRIKING HIS SUPERIOR OFFICER BEING IN THE EXECUTION OF HIS OFFICE

in that he

in the field at 1420 hours on 1 Oct 42, struck B83193, Cpl Somers, C.R., 2 Cdn Div Pet Coy (5 Coy), RCASC in the shoulder

SECOND CHARGE
A.A.Sec. 8(2)

WHEN ON ACTIVE SERVICE, USING THREATENING LANGUAGE TO HIS SUPERIOR OFFICER

in that he

in the field, at 1420 hours on 1 Oct 42, said to B83193, Cpl Somers, C. R., his superior officer, "Interfere with me and I'll blacken both your bloody eyes."

A R Tedford
(A.R.Tedford), Capt.,
A/O.C. 2 Cdn Div Pet Coy (5 Coy)
R.C.A.S.C.

In the field
1 Oct 42

TO BE TRIED BY F.G.C.M.

(J.H. Roberts) Major-General
Comd 2 Canadian Division

J H Roberts Maj Gen

MEDICAL CERTIFICATE

14 Oct 42

This is to certify that I have examined D-91643 Pte. Smith, N.G. of 2 Cdn Div Pet Coy (5 Coy) R.C.A.S.C., and find him free from infectious and contagious diseases and fit to undergo trial by Court Martial.

J.W.Merritt,)Captain,
Medical Officer,
2 Cdn Div R.C.A.S.C.

M Court
Inquiry

Trial of: D 91643, Pte Norman George Smith, 2 Cdn Dis Pet Coy (5 Coy) RCASC held in the field 14 Oct 42

President:- Major F.W. Court, Jor Scot R(M&S)
Members:- Lieut J.F. Primeau, 2 Cdn Dis Amn Coy, RCASC
Lieut A.A. Campbell, 14 Fd Regt, RCA, attached HQ, 2 Cdn Div.

Prosecutor - Capt A.R. MacFarlane, 2 Cdn Dis Pet Coy (5 Coy) RCASC
Defending Officer:- Capt E.G. Swift, 2 Cdn Dis Sup Coy, RCASC
Convening order read
Accused is asked if he objects to President or members and answers "No Sir"
Court sworn
Medical certificate presented
Accused is arraigned and pleads "Not guilty" to 1st charge
"Not guilty" to 2nd charge
Accused is asked question at bottom page 2 of AFA3 and answers "No Sir"

1st Wit Pros — B83193 Cpl Somers, C.R., 2 Cdn Dis Pet Coy (5 Coy) RCASC duly sworn, states:-

On 1 Oct @ 1330 hrs 2 was put in sports parade - at 1430 hrs Pte Smith, the accused, came along & criticized & interfered with the players - 2 ordered him to keep quiet - he said he intended to have a game of horseshoes - 2 told him to return to guard room because he was still on duty - he said "Interfere with me, Somers, & I'll blacken both your bloody eyes" 2 told him he wasn't bluffing me & with that he struck 2 a blow on the right shoulder with his fist - it came so fast that 2 imagine it was his right - 2 placed him under close arrest & ordered him escorted to guard room. 2 enquired from Cpl of guard in presence of accused if accused had permission to play horseshoes & he told me the only permission accused had was to go to the latrine - latrine is in opposite direction from guard room than horseshoe ground

Cross-exam

2 had a stick in each hand & he was standing slightly to my right.

Accused in my section for few months - no fooling or kidding on parade in section - after parade is different matter - consider sports afternoon is a parade - after parade 2 have taken part in horse play & have wrestled & sparred with accused as well as other members of section - accused's place was in the guard room & my job is to see that orders given on

parade must be obeyed – Smith a good soldier & good driver but has rotten temper – Hooking & kidding is permitted on sports parade but accused was on another duty – Kibitzing is certainly allowed while sports are on but there isn't great deal among the players, they want to get the game over, – ~~no~~ no spectators this day & only ~~3~~ times things were said were sober – shoes rolled away.

2 have been accused Cpl long enough to know that when he gets an order it must be obeyed.

Whole thing happened in seconds because 2 hadn't even had chance to throw shoes.

No re-exam.

2 was also

Court 2 was playing horseshoes when accused came along & 2 was in horseshoes parade.

2nd Wit Pros

R 93263 A/Cpl Hatten, F. C., 2 Cdn. Dis Ret Coy (5 Coy) RCASC duly sworn, states:-

Was playing horseshoes on afternoon of 1 Oct 42 Cpl Somers was there & Smith came down from guard room & said he was going to play horseshoes & Cpl told him to return to guard room. 2 had my back to them

Cross-exam

They were talking back & forth – went on for about a minute or so – would have had time to say 4 or 5 sentences.

Smith said he had permission to come down – heard Cpl tell him to go back to guard room.

2 had my back to them picking up horseshoes. No horseplay between Cpl & Smith on parade but they does in the room.

Thought at first were fooling but didn't later.

No re-exam.

Court Smith is accused.

Somers had his shoes on in each hand & 2 was picking mine up.

3rd Wit Pros

D91088 Pte Person, N. P., 2 Cdn Dis Ret Coy (5 Coy) RCASC, duly sworn. states:-

Was playing horseshoes on 1 Oct ~~I was~~ Cpl Somers heard Smith say he was going to play & Cpl say he wasn't – 2 was behind Smith & saw his right arm move but didn't see where it went – he was 3 ft away from Cpl at the time

Cross-Exam

am not in same section as Smith but live in same billets – don't see a great deal of section in ~~which~~ accused. Have seldom seen fooling around in billets – only a couple of times – have seen Smith & Somers fooling around.

No re-exam.

Court 2 was spectator waiting to play.
Smith is the accused.

Prosecution closed.

R.P. 40 complied with.

Accused does not wish to give evidence, make statement or call witnesses as to facts.

Prosecutor in closing:- Submits proven.

Defending officer in closing:- Cpl Somers only one who says he was hit. Person said standing quite a bit apart. Somers only witness as to threatening language - great deal of foolery in this section & this was merely continuation of it.

Court closed to consider finding.

Court re-opened.

Prosecutor, duly sworn, presents AFB 296 & NFM6 and states they relate to the accused, are pair extracts from regtl books as compared by him.
No Cross-exam.

1st Pint Character — # D91421 Cpl Hale, T.G., 2 Cdn Div Pet Coy (5 Coy) RCA
RCASC duly sworn states:-
In same platoon as Smith - Very good worker & does what he is told - good driver but very hot temper - have to warn about it now & then - have nothing against him - Very good soldier.
No Cross-exam.

Defending officer in mitigation:- nil
Court closed.

Certified a true record
of this trial 14 Oct 42.

W. Court
President

SUMMARY OF EVIDENCE

In the Case of

D.91643 Pte. Norman G. Smith, 2 Cdn Div Pet Coy (5 Coy)
R. C. A. S. C.

By direction of the Commanding Officer the abstract of evidence is taken on oath.

FIRST CHARGE A.A.Sec. 8(1) WHEN ON ACTIVE SERVICE, STRIKING HIS SUPERIOR OFFICER BEING IN THE EXECUTION OF HIS OFFICE

in that he

in the field at 1420 hours on 1 Oct 42, struck B83193, Cpl Somers, C.R., 2 Cdn Div Pet Coy (5 Coy), RCASC in the shoulder

SECOND CHARGE A.A.Sec. 8(2) WHEN ON ACTIVE SERVICE, USING THREATENING LANGUAGE TO HIS SUPERIOR OFFICER

in that he

in the field, at 1420 hours on 1 Oct 42, said to B83193, Cpl Somers, C.R., his superior officer, "Interfere with me and I'll blacken both your bloody eyes."

FIRST WITNESS B83193 Cpl. Somers, C.R. 2 Cdn Div Pet Coy (5 Coy) R.C.A.S.C., having been duly sworn states:

"On October 1st at 1330 hours orders were given that there would be a sports afternoon. At 1420 hours Pte. Smith, who finished his tour of guard duty at 1400 hours, but was still on duty as part of the guard, came from the guard room down to the horseshoe pitch and criticized the play of the players. I ordered him to keep quiet and return to the guard room as I was in charge of the personnel on sports. He said he had permission to come down and intended to have a game of horseshoes. I told him he was on duty and would not be allowed to play. "Interfere with me, he said, and I'll blacken both your bloody eyes". I replied, "You're not bluffing me Smith", and with that he struck me on the left shoulder. I placed Pte. Smith under arrest and had two men escort him to the guard room".

The accused declines to cross examine witness.

SECOND WITNESS B83263 L/Cpl Hatton, F.C., 2 Cdn Div Pet Coy (5 Coy) R.C.A.S.C., having been duly sworn states:

"On October 1st at about 1430 hours I was playing horseshoes with some other men of the Company. I heard Cpl. Somers say to Pte. Smith, "Return to the Guard Room". I also heard them arguing but did not hear what was said, and then I heard Cpl. Somers tell Pte. Smith that he was under arrest. Two men then marched Pte. Smith to the Guard Room".

Cross-examined by the witness.

Q. Did you think at the time this happened whether we were serious or fun (return to the guard room)?

A. I think Cpl. Somers was serious and meant what he said.

THIRD WITNESS D.91088 Pte. Perron, N.P., 2 Cdn Div Pet Coy (5 Coy) R.C.A.S.C., having been duly sworn states:

"On October 1st at approximately 1430 hours I was playing horseshoes with some other soldiers. I heard Cpl. Somers say to Pte. Smith that Pte. Smith was not to play horseshoes. Pte. Smith said he was going to play as he was off duty. I then noticed that Pte. Smith struck at Cpl. Somers. I did not notice the blow land, but I noticed the movement".

The accused declines to cross-examine witness.

FOURTH WITNESS D.91106 Pte. Sweet, V., 2 Cdn Div Pet Coy (5 Coy) R.C.A.S.C., having been duly sworn states:

"On October 1st at approximately 1415 hours I was playing horseshoes with some other soldiers. I heard Pte. Smith say that he would like to have a game of horseshoes. The next thing I knew Cpl. Somers said to Pte. Smith that he was under arrest and Cpl. Somers fell in two men and marched Pte. Smith to the guard room.

The accused declines to cross-examine witness.

The accused having been duly cautioned in accordance with R.P. 4(e) reserves his defence.

Certified that R.P. 4(c)(d)(e)(f) have been complied with.

Taken down by me in the presence and hearing of the accused this third day of October 1942 at, In the Field.

A.R. MacFarlane Capt.

(A.R. MacFarlane) Capt.,
2 Cdn Div Pet Coy (5 Coy)
R. C. A. S. C.

No. D91643 Name Smith, N.G. | Sqn., Battery, or Company: 2 Div Corps R.C.A.S.C. Petrol | Date of enlistment: 16-9-39 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 A.F.B. 142

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Entries transferred from previous sheet which was destroyed 16-9-41 on completion of two years service CRC(o/s)2071									
Camp Borden	18-6-40	Pte		A.A.Sec.40 While acting as sentinel, was found sleeping on his post 1145hrs.	Lt.Roberts	28 days det.	19-6-40	O.C.Coy.	
Field	2-8-41	Pte		A.A.Sec.15(1)AWL from 2245hrs until 2315hrs 2-8-41 A.A.Sec.40 Conducted himself in disorderly manner after lights out	Sgt Ford Cpl Cassidy	14 days C.B.	3-8-41	R J Dufresne Major	
Field	27-12-41	L/Cpl		A.A.Sec.40 Neg to the p of g o & m d neglected to obey order given by Cpl Wilson	Cpl Wilson	Reduced to permanent rank of Pte	29-12-41.	ES Williams Capt	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	13-1-42	Pte		A.A.Sec.40 Act to the p of g o d m d did damage to barrack room property while under the influence of liquor.	Sgt Aitken Cpl Cassidy L/C Turmel	14 days F.P.	13-1-42	R J Dufresne Major	For.14 days pay plus cost of damages when assessed.

CERTIFIED TRUE COPY

(J.R.Session) Lieut/Adjt.,
2 Cdn Div Pet Coy (5 Coy)
R. C. A. S. C.

STATEMENT OF CHARACTER AND PARTICULARS
OF SERVICE OF THE ACCUSED

No.D.91643 Name: Norman, G.Smith UNIT: 2 Cdn Div Pet Coy (5 Coy) RCASC

Age: 22 Married or Single: Single No. of Dependents:

Date of Attestation: 16 Sep 39.

No. of days spent in close arrest (To date of trial) 14 days

Civil: Military: 14 Hospital: Total: 14 days

Dates of Promotions, Appointments and Confirmation of Rank, if any:

Nil

A certified true copy of N.P.M. 6 must accompany this form.

(Officer i/c Records)

[illegible]
2 Cdn Div Pet Coy (5 Coy) R.C.A.S.C.

Dated at: Field

This 14 day of Oct 1942.

(To be dated and signed as of date of trial)

W. Lieut
Adjt.

2290 - Pte Smith N.L.

A-3691 Pte. Smith, N.L.
No.1 C.I.H.U.

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this 10th day of November, 19 41

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS, CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[redacted]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*[redacted]

*(1. [redacted])

*(2. [redacted])

*(3. [redacted])

[redacted]

PROCEEDINGS REVISED

President.

Rank.	Name.	Regiment.
Major	R.H. Perry	No.1 Cdn Gen Hldg Unit

Members.

Rank.	Name.	Regiment.
Captain	R.P. Scott	No.2 Cdn Inf Hldg Unit
Lieutenant	J.L. Carnegie	No.2 Cdn Inf Hldg Unit
Lieutenant	W.M. Mercer	No.1 Cdn A.S.C. Hldg Unit

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed [redacted] Brigadier

Commanding Cdn Base Units, Cdn Army.
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
A-3691 PTE. SMITH, M.L. No.1 Cdn Inf Hldg Unit.	First Charge A.A. sec 18(4) See charge sheet attached.	Not Guilty	Not Guilty	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) [signature] Brigadier (Signed) [signature] President.
Commanding Cdn Base Units, Cdn Army.
Convening Officer (*e*)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the Fourteenth day of November, 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~ The shorthand writer
*(4. The officers under instruction)

were duly sworn.

Signed this 14 day of Nov. 1941.

[signature]
President of the Court Martial.

* Omit if not applicable.

C. Certificate in case of death sentence.

~~I certify that the terms of *A.A. sec. 18 (4) have been complied with~~

~~Signed this day of 19~~

~~President of the Court Martial~~

* See footnote (*i*) on page 762 M.M.L. 1929.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison until further orders.)

Signed this day of 19

Confirming Officer.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Promulgated and extracts taken in the case of

(*a*) (Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] P. D. G. [illegible]

By R. A. Swayne Maj

CHARGE-SHEET

The accused, No. A-3691 Pte. Smith, N.L. (The Royal Canadian Regiment), on the strength of No. 1 Canadian Infantry Holding Unit as a reinforcement, a soldier of the Canadian Army (Overseas), is charged with:-

First Charge Sec. 18(4) Army Act

Stealing property belonging to a person subject to military law,

in that he,

at Haslemere, at about 2215 hrs. 15 October 1941, stole a service respirator, the property of D-81459 L/Cpl. Jalbert, K., Canadian Provost Corps, a person subject to military law.

L.W.W. Slack
.....Lt.-Col.
(L.W.W. Slack) Officer Commanding,
No. 1 Cdn. Infantry Holding Unit.

Witley, Surrey,
30 October 1941.

To be tried by Field General Court Martial

F.R. Phelan
(F.R. Phelan) Brigadier
Commanding Cdn Base Units.

Farnborough, Hants
This 10th day of Nov 41.

SUMMARY OF EVIDENCE

In the case of A-3691 Pte. Smith, N.L. (The Royal Canadian Regiment) No. 1 Canadian Infantry Holding Unit.

By direction of the Commanding Officer, the Summary of Evidence is taken on Oath.

1st Witness B-15259 Cpl. Terry, W.R., (The Royal Canadian Regiment), having been duly sworn, states:

On the evening of the 15th of October, 1941, Pte. Smith and myself spent some time in the Royal Arms public house in Haslemere. At about 2220 hrs. we went to the station to look at the time-table, and as we had to wait some time before we could get a train, we went to a dance down the street. At about 2245 hrs. we went back to the station to catch a train, and I was told that the accused had been placed in arrest. I went outside and asked two members of the Canadian Provost Corps what the trouble was. They placed me in arrest and escorted both the accused and I to No. 1 Road Construction Coy., R.C.E., where we were stationed.

I had not seen the military police before this. I did not see any fight. I was with Smith at all times and think I would have noticed if he had not had his respirator.

(The accused W.R. Terry Cpl.....Cpl.

(The accused declines to cross-examine this witness)

2nd Witness L/Cpl. Jalbert, K. No. D-81459 (Canadian Provost Corps), having been duly sworn, states:

On the 15th October, 1941, around 2215 hrs. while on duty in the company of Cpl. Matteson, I left my W.D. Vehicle to assist in stopping a fight and upon returning we found two Cdn. soldiers standing near the truck. One of them was the a/m soldier and he was carrying no respirator with him at the time and upon questionning him he claimed he had left it in a Pub. House and was just then going for it. Upon looking into the truck I found my respirator was missing. Around 2240 hrs. in the R.R. Station we saw the a/m soldier enter carrying a respirator with him. I asked him to let me check it and upon doing so I found the identification disc with #D81459 Jalbert, K. on it. Upon questioning he claimed that he had got it in the dance-hall. I placed him under close arrest and he was escorted back to his respective guard room.

K. Jalbert L/Cpl.

(The accused cross-examines this witness)

Q. Can you identify me?

A. Yes, positively.

Q. Can you identify the man who was with me?

A. Yes, Terry. I got the names from your pay-books.

Q. Did you take names when you first spoke to us?

A. No, we were interested in the fight and you said you were going into the Pub. to get your respirator.

Q. When did you check us?

A. On returning from fight.

3rd Witness M-36622 Cpl. Matteson, C.K., (Canadian Provost Corps) having been duly sworn, states:

I had been called by civil police to investigate a fight in Haselmere at the bus station. I parked the truck in the square at the bus station. I investigated the fight, and on returning to the truck, Jalbert saw two soldiers standing by the truck. One soldier had no respirator. Jalbert checked and Smith said he had left his in a pub. We told him to go and get it. I turned and came in conversation with the civilian police. Smith was then standing at the drivers door. After talking to the Civil police for five minutes, I returned to the truck and Jalbert, who had been with me, informed me that his respirator was missing. The respirator had been hanging on the rifle clip in the front seat. Smith and Terry had gone. There had been a 1500-wte. truck there and we took after it and they didn't have the respirator. We returned to the R.R. Station, and saw the two soldiers again. L/Cpl. Jalbert checked Smith for the respirator, and found that it was his. Smith said he had gotten it in a dance-hall. I placed him under arrest and returned him to his guard room.

.....C.K. Matteson.....Cpl.

(The accused cross-examines this witness)

Q. Where were you standing when talking to the Civil Police?

A. To the right and 10 to 15 feet in front of the truck.

Q. I was also on the right-hand side?

A. Yes.

Q. What time was this?

A. 2215 hrs.

Q. It was dark. Did you use a flash to recognize my face?

A. No.

Q. How did you recognize me in the R.R. Station?

A. Jalbert said he did.

Q. Can you positively identify me as the man Jalbert was talking to at 2215 hrs?

A. No, I can't.

Q. Did you speak to me at 2215 hrs?

A. No.

Q. Did you have anythigh at all to do with me before 2240 hrs.?

A. No, actually not.

Q. Actually the first time you saw me that you can swear to is 2240 hrs.

A. Yes.

The accused having been duly cautioned in accordance with Rule of Procedure 4 (e), elects to make a statement.

The accused, No. A-3691 Pte. Smith, N.L. (The Royal Canadian Regiment), having been duly sworn, states:

Cpl Derry and I were together all evening. I had mt own respirator when I left camp. About 2205 hrs. we left the Pub. and went to the R.R. Station. At 2220 hrs. we went to a dance down the street. Then we went back to the R.R. Station, arriving there at about 2245 hrs. The military police then stopped me and we found out that it was his. He placed me in arrest and took me to the R.C.E. guard room.

I had my respirator down beside a chair in the Pub. I picked up the respirator at 2205 hrs. thinking that it was my own. I had this respirator from then on, but later found out that it was not mine.

I did not see any military police, or have anything to do with them until we arrived at the Station at 2245 hrs.

W. L. Smith.....

Certified that Rule of Procedure 4 (c), (d), (e) and (f) has been complied with.

Taken down by me in the presence and hearing of the accused this 21st day of October, 1941.

F.S. Whalley Lieut.
(Officer taking the Summary)

MEDICAL OFFICER'S CERTIFICATE

- K.R. (Can) Para. 557 -

I certify that I have this morning examined No. A-3691 Pte. Smith, N.L. (The Royal Canadian Regiment) No. 1 Canadian Infantry Holding Unit, and in my opinion he is fit ~~unfit~~ to undergo trial by Court-Martial.

Witley, Surrey,
14 November 1941

H.C. Johnson Capt
(Medical Officer)

No. A-3691 Name Smith, N.L. | Sqn., Battery, or Company | Corps R.C.R. | Date of enlistment 29-1-40 | G.C. Badges | Service or Proficiency Pay

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. two | Signature O.C. Company, etc. I.R. Gray, Capt. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
PREVIOUS SHEET DESTROYED 29-7-40								"R.B. Meredith"	
Bordon, Hants.	7-10-40	Pte.	1st	Conduct to the prej. of good order & military disc., etc. 1. "Urinating in the barrack room and on another mans bed 2. Drunkenness	Cpl. Soubar	7 days C.B.	8/10/40	Capt. A.A. Kennedy	"A.A.F."
Witley Surrey.	29-12-40	Pte.		Failing to appear at a place of parade app. by his C.O. at 0700 hrs. 29-12-40 A.A. Sec. 15(2)	Sgt. Robbins	Forf. 1 days reg. pay. Forf. 3 days Ord. pay.	30-12-40	Lt.-Col. L.W.W. Black	"B.W."

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Witley	27-5-41	Pte.		Disobaying a lawful command A.A. Sec. 40	Sgt. Rowan. Pte. Meyers	120 hours detention	28-5-41	Lt.-Col. Slack	Forf 5 days pay FR&I 149(1)(3) "E.J.R."
Witley	9-8-41	Pte.		A.W.L. from 2459 hrs. 9-8-41 to 1100 hrs. 10-8-41 A.A.Sec.15(1)	L/Cpl. Dodd	Forf. 1 days pay,7 days C.B.	11-8-41	Lt.-Col. L.W.W. Slack	"E.J.R."
Witley	6-9-41	Pte.		A.W.L. from 2359 hrs. 2-9-41 to 2130 hrs 5-9-41 A.A. SEC.15(1)	Cpl. Paladyczuk	168 hrs.detn.	6-9-41	Lt.-Col. Slack	Forf. 3 days pay. "A.W.L."
Eng.	1-5-41	Pte.		1. Cond. to the prej. etc., Jostling civilians, using obscene language & being improperly dressed, A.A. Sec. 40. 2. Resisting an escort A.A. Sec. 10(3)	Documentary	21 days detn. fined $5.00	19-5-41	Lt.-Col. Slack	Forf. 21 days pay FR&I 149 (1) B
			2nd	3. Drunkenness A.A. Sec. 19.					

CERTIFIED TRUE COPY (Officer i/c Records) C. M. Wooster ..... Lieut. No. 1 Cdn. Inf. Holding Unit.

Description of Court by which tried, or date of Officer disposing of the charge or dispensing with Trial	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 5th day of November, 1941.

G. Thurston Lieut.
(Officer i/c Records)
No. 1 Cdn. Infantry Holding Unit.

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

A-3691 Pte. Smith, N.L. of the Royal Canadian Regiment

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced to Court with this statement but are not to be annexed to the proceedings.

†See Para. 664, K.R. 1935.

	*Within last 12 months.		*Since Enlistment.	
For Absence without leave	1	times	1	times.
For Failing to appear at a place of parade	1	times	1	times.
For Disobeying a lawful command	1	times	1	times.
For Disorderly conduct.	1	times	1	times.
For Drunkenness	1	time	2	times

*The numbers herein stated should correspond with the number of Entries in the Conduct sheets, permanence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instructions.—If the charge is for Drunkenness the entries for drunkenness must be stated separately and dated.

Number of instances of gallantry or distinguished conduct.

Nil

or,

~~There are no entries in the Conduct sheets of the accused.~~

2. The accused has not been previously convicted,

or,

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time,

or,

~~The accused at the present time is under sentence for~~
~~beginning on the day of~~

4. The accused has been in confinement, awaiting trial on the present charges

for 0 days in Civil Custody,

and 3 days in Military Custody.

Total 3 days.

Of which 0 days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 22 years

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 29-1-40

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 22 months

8. The accused is entitled to deferred pay or gratuity in respect of 22 months ~~years~~ service.

9. The accused is entitled to reckon 22 mos ~~years~~ service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward [*or* is in possession of *or* entitled to

Nil

~~11. (*If the accused is a warrant officer.*) The accused before he was made a~~ warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of , dated , and in his regiment (*or* corps *or* department) the rank of dated

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

		Date of Promotion
In the rank of	years,	
In the rank of	years,	
In the rank of	years,	

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the ~~president~~ and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

of the

Army Number, Rank and Name

NOTE.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*

Description of Court by which tried, or status of Officer imposing of the charge or dispensing with Trial	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

(*Continued overleaf.*)

B-B-96

PTE SMITH, N.W.

COPY

Correspondence to be PINNED here.

W. W. Haugh Capt
8 Oct 43

F-95911 Pte SMITH, Napean, Wilson.
West Nova Scotia Regiment
7 Cdn Infantry Reinforcement Unit

Army Form A.3. BB - 96

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this first day of April, 19 43.

Whereas it appears to me, the undersigned, an officer in Command of "D" Group, Canadian Reinforcement Units, Canadian Army Overseas, , on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [and that it is not practicable to delay the trial for reference to a superior qualified officer.] GHB

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* [I am unable to appoint
*(1. Three Officers to form the Court;
*(2. A Field Officer as President;
for the following reasons, namely:—] GHB

*Omit if not applicable.

Proceedings Reviewed
W. Bredin, Capt.
Reviewing Officer
21 Apr 43

President.

Rank.	Name.	Regiment.
Lieut. Col.	D.L. Redman	Calg. Highrs.

Members.

Rank.	Name.	Regiment.
A Major	from	3 C I R U
A Captain	from	3 C I R U

Note.—The President must be named. The members and waiting member (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

*Signed C. Hedley Basher Colonel
Commanding "D" Group Cdn Rft Units.
D.L.Redman Lt.Col. *Convening Officer.*

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
F-95911 Pte. SMITH Hapean, Wilson West N.S.R.	First Charge ..... A.A. Sec. 18(2) ------ Second Charge ..... A.A. Sec. 40 See Charge Sheet attached	Guilty withdrawn	Guilty sentence To undergo Detention for a period of One (1) year. 3rd Apr 1943 DLR	I confirm the finding and sentence of the Court. G.Hedley Basher,Col Commander "D" Group (Cdn.Reinforcement Units) C.A.

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) G.Hedley Basher Colonel (Signed) D.L. Redman, Lt. Col.

Commanding "D" Group C.R.U.
Convening Officer (*e*) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 3rd day of April 1943. , and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. ~~The witness~~
*(3. ~~The interpreter~~)
DLR *(4. The officers under instruction)
were duly sworn.

*Omit if not applicable.

Signed this 3rd day of April 1943.

D.L. Redman, Lt. Col.
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 702 M.M.L. 1929. ~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19 .~~

DLR

~~*President of the Court Martial.*~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~*If direct that the soldier named in the margin be not committed to prison or detention barrack until further order.~~

Signed this 5 day of Apr. 1943.

G. Hedley Basher, Col.
Confirming Officer. Commander "D" Group (Cdn Reinforcement Units) C.A.

Promulgated and extracts taken in the case of F.95911 Pte Smith N.W. West N.S.R. S.S.544 /6 Apr 43 7 C.I.R.U.

(*a*) (Dated) 6 April 43 (Signed) signature illegible Capt/Adjt 7 Cdn Inf Reinf Unit.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

COPY

CHARGE SHEET

The accused No. F-95911 Private Hapean Wilson SMITH, West Nova Scotia Regiment, on the strength of 7 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army (Overseas), is charged with:

FIRST CHARGE
SEC 18(2)
ARMY ACT

When on Active Service, wilfully injuring himself, a person subject to Military Law, with intent thereby to render himself unfit for service,

in that he,

at Algonquin Camp, Witley, Surrey, on 18 Jan 43, by discharging his rifle, wilfully injured himself in the left foot with intent thereby to render himself unfit for service.

SECOND CHARGE
(ALTERNATIVE)
SEC 40
ARMY ACT

When on Active Service, neglect to the prejudice of good order and military discipline,

in that he,

at Algonquin Camp, Witley, Surrey, on 18 Jan 43, so negligently handled his rifle as to cause it to be discharged and thereby injured his left foot and rendered himself temporarily unfit for service.

(sgd) J.R. Calkin, Col.
.....
(J.R. Calkin) Colonel
Commander
7 Cdn. Inf. Reinf. Unit

In the Field,
26th day of March,
1943.

To be tried by Field General Court Martial

In the Field
1 Apr 43

(sgd) G. Hedley Basher.
.....
(G. Hedley Basher) Colonel
Commander
"D" Group, Cdn Rft Units.

(sgd) D.L. Redman, Lt. Col.

COPY.

MEDICAL OFFICERS CERTIFICATE
K.R. (Can) Para 557 -

I certify that I have this day examined No. F 95911
Pte Smith N.W. .....7 Cdn Inf Reinf Unit.
and in my opinion, he is fit ~~or unfit~~ to undergo trial
by Court Martial. (Categorised E)

Leipzic Barracks
Date 3 Apr 43

.....J..Capt,.Capt.....
Medical Officer

(sgd) D.L.Redman, Lt.Col.

COPY.

PROCEEDINGS OF A FILE GENERAL COURT MARTIAL
HELD AT BAROSSA BARRACKS, ALDERSHOT, HANTS.
ON THE 3rd DAY OF APRIL, 1943.

The accused..F.95911 Pte Smith, N.W.....Unit WNSR. 7 C.I.R.U.

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P.22&23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the president or any member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President..Lt.Col.D.L. Redman, VD Unit H.Q. C.R.U.

Members Major B.J. Mothersill Unit 3 C.I.R.U.

Captain H.A. Echlin Unit 3 C.I.R.U.

The officers under instruction are duly sworn:-

Capt M.K. Reed Unit 1 C.I.R.U.

Lieut. H.R. Barclay Unit 1 C.I.R.U.

Prosecutor Capt W.R. Moore Unit 7.C.I.R.U.

Defending Officer Lieut. J.C. McNeil Unit 7 C.I.R.U.

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(b) is complied with. Alt. charge withdrawn by prosecutor.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B).
The Summary of Evidence is read.
DLR The Prosecutor produces ~~nil~~ and MFM 6. AFB 296
The Court complies with R.P. 46(B)

Pursuant to R.P. 37 THE ACCUSED:-

(a) ~~makes a statement in mitigation of punishment.~~
DLR (b) ~~calls witnesses as to character.~~
(c) ~~calls witnesses in mitigation of punishment.~~
(d) addresses the Court by his Defending Officer.
attached hereto.

The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE and ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER

Note: It was purported that the accused, while outside the Court Room was in possession of a loaded .45 revolver, which was taken away from him. Under these circumstances he was brought into the court room handcuffed. The prosecutor undertook to report the incident to his commanding officer.

D.L. Redman.

COPY

Pte Smith, N.W. DLR

Reasons behind Smith shooting himself in the foot:-

Had been suffering from pain in his chest since before he left Canada. They became so painful that he was frightened of T.B. (as he said in his sworn statement at Summary of Evidence). He had been going on sick parade, but the only treatment he had received was aspirin tablets.

On the morning he shot himself he was late for sick parade - in desperation he put a bullet into his foot, knowing that this would put him into the hospital. Once there he hoped he would get the treatment he thought he needed. There was no intent to maim himself if there was he could have shot himself in the ankle or heel.

The fact that he took such a desperate step to get to hospital suggests that he was mentally deranged at the time of his act. He had only been O.S. 4 weeks, a normal person would have foreseen the result of his act. Even though he [redacted] (while in hospital with the injured foot) get treatment for his chest no sensible man could have imagined he'd get away with the act.

I submit that this man should be psycho-analyzed.

And that the foregoing should be taken into account in rendering sentence.

J.C. MacNeil, Lieut.
Defending Officer.

SUMMARY OF EVIDENCE

In the case of F95911 Private Napean Wilson SMITH, West Nova Scotia Regiment, on the strength of 7 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken under oath.

FIRST WITNESS for the Prosecution

F41661 L/Cpl. Bent, B.H., West Nova Scotia Regiment, 7 Cdn. Inf. Reinf. Unit, having been duly sworn, states:

I am F41661 L/Cpl. Bent, B.H., West Noval Scotia Regiment, 7 Cdn. Inf. Reinf. Unit. On the 18 Jan 43, I was Cpl. in charge of the W.N.S.R. lines at 1 C.D.I.R.U., Witley. I was making my daily rounds as usual between 0800 hours and 0830 hrs. I went into C1 hut to check on the cleanliness of same, and saw Pte. Smith, whom I now recognise, who had apparently come back from sick parade, talking to the hut orderly, Pte. Shaffner. Pte. Smith said to Pte. Shaffner, something like this, "I am not going on parade." I then went out of the hut and went to the wash room which is almost opposite C1 hut. I checked the wash room; on my way out Pte. Smith came out of C1 hut and went into the toilet carrying his rifle. I followed him in order to inspect the toilets. Smith went into one of the stalls. I left the toilets and started for C6 hut to inspect it. I just got abreast of the toilet doorway which is across from C6 hut when I noticed Pte. Smith standing approximately 10 feet from C1 doorway. He was standing easy with the muzzle of the rifle resting on his foot. I started towards C6 hut when suddenly I heard the rifle explode. I looked in the direction of Pte. Smith and saw him lying on the ground. I immediately went to him and saw that he had been shot in the foot. I looked at it for a second or two. The company was on the parade square when I reported the occurrence to the C.S.M. He came onto the scene and Sgt. Rhodenizer and I took Smith's boot off and put a field dressing on it. A few minutes later a stretcher arrived and Pte. Smith was carried away.

...B.H..Bent.....L/Cpl.

(The accused declines to cross-examine this witness)

SECOND WITNESS for the prosecution

F41582 Pte. Shaffner, R., West Nova Scotia Regiment, 7 Cdn. Inf. Reinf. Unit, having beenduly sworn, states:

I am F41582 Pte.Shaffner, R., West Nova Scotia Regiment, 7 Cdn. Inf. Reinf. Unit. On 18 Jan 43 I was hut orderly of No. C1 hut, W.N.S.R. lines at No. 1 C.D.I.R.U. On this particular morning Pte. Smith said he was going on sick parade. He was a long time getting ready for this parade and I told him if he did not hurry he would be late. A few minutes later I started for the Orderly Room. I saw the sick parade had fallen and was ready to leave. I came back to the hut and told Smith to hurry, and then he went up to the Orderly Room, but he was too late. I then askedhim what he was going to do. He replied, "I don't know but I am not going on parade today." He then put his sling on his rifle

(cont'd)

DLR

SECOND WITNESS for the Prosecution (cont'd)

and went out of the hut carrying it. The next thing I knew was a very short time later hearing a rifle shot.. I rushed to the door and saw Smith laying on the ground with his rifle beside him. Sgt. Rhodenizer and L/Cpl Bent took his boot off and bandaged his foot and then carried him into the hut. Later a stretcher was brought and he was carried away.

...R.Shaffner.....Pte.

(The accused declines to cross-examine this witness)

THIRD WITNESS for the Prosecution

F43555 C.S.M. Nauss, E.E., West Nova Scotia Regiment, 7 Cdn. Inf. Reinf.Unit, having been duly sworn, states:

I am F43555 C.S.M. Nauss, E.E., West Nova Scotia Regiment, 7 Cdn Inf. Reinf. Unit. On 18 Jan 43, at approximately 0815 hours while on the company parade at Algonquin Camp, I heard a shot in the vicinity of our huts. I went around to investigate. I found Pte Smith, N.W. laying in front of C1 hut with a rifle along side of him. Upon examining Pte. Smith, I saw he had been shot through the foot. I then called Sgt. Rhodenizer off parade and turned the matter over to him to look after. I went back on the company parade again.

.....E.E..Nauss.....C.S.M.

(The accused declines to cross examine this witness)

The accused having been warned according to Rule of Procedure 4(E) elects to make the following statement on oath.

The accused, F95911 Pte Smith, N.W. West N.S.R., 7 Cdn Inf. Reinf. Unit, having been duly sworn, states:
I am F95911 Pte Smith, N.W., West,N.S.R., 7 C.I.R.U.
I had a cold in my chest and head. My chest pained me so badly that I thought I would get T.B. I went to the M.O. at Algonquin Camp, and he gave me two aspirin tablets. A day or two later I went to go on sick parade but was too late. I was feeling miserable and could not endure it any longer. In order to get to hospital I put a bullet into my foot with my own rifle.

(sgd) .N.W.Smith.Pte.

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4(C), (D), (E), and (F) have been complied with.

signature illegible.Capt.
(Officer taking Summary)

In the Field,
26th day of March,
1943.

D.L. Redman, Lt.Col.

ADDITIONAL SUMMARY OF EVIDENCE

In the case of F95911 Private Napean Wilson SMITH, West Nova Scotia Regiment, on the strength of 7 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken under oath.

FIRST WITNESS

for the Prosecution

Lieut. L.E. Donkin, Cape Breton Highlanders, 7 Canadian Infantry Reinforcement Unit, having been duly sworn, states:

I am Lieut. L.E. Donkin, Cape Breton Highlanders, 7 Cdn Inf. Reinf. Unit. I produce AGR Form 66, Report on Injuries, relating to the accused whom I now recognise. This document is purported to be signed by Capt. W.G. Williams, R.C.A.M.C., Medical Officer of 1 C.D.I.R.U. I also produce M.F.B. 371, Report on Wounds or other Injuries, relating to the accused. This document is purported to be signed by Capt. J.R. Mills, Medical Officer, Bramshott. The above documents are marked Exhibits "A" and "B" respectively.

.....L.E..Donkin....Lieut.

(The accused declines to cross-examine this witness)

The accused having been warned in accordance with Rule of Procedure 4(E), reserves his defence.

I certify that the foregoing summary of evidence consisting of one page was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4(C), (D), (E), and (F), have been complied with.

signature illegible....Capt.

In the Field,
26 March, 1943.

D.L. Redman, Lt. Col.

COPY

AGR FORM 66

REPORT ON INJURIES
Other than wounds received in Action

Ex "A"

Certificate to be signed by injured Officer or soldier:

F-95911	Pte.	SMITH, N.W.	Napean,	Wilson
(a) Name	(b) Rank	(c) Surname	(d) Christian name in full	

W.N.S.R. #1 CDIRU Hereby declare that the injury

sustained by me on the 18 January 1943 did not occur
(e) date of casualty

while I was in the performance of military duty

Napean W. Smith
(Signature of Officer or Soldier)

#1 CDIRU 18 January 1943
Station Date

2.(a) Description of injuries G.S.W. - Left Foot

(b) Are the injuries serious or of such a nature that they might be the exciting cause of disability later? — Unknown - see NFB 371 from 15 Gen Hosp

(c) Whether admitted to hospital or sick in quarters? — Admitted to #15 Cdn Gen Hosp. 18-1-43.

(d) How long before initial treatment was given? — 15 minutes.

#1 C.D.I.R.U. 18 Jan 43 Signature of Medical Officer

W.C. Williams.
(W.C. Williams, Capt.) R.C.A.M.C.

M.O. 1 CDIRU

3. Short statement by injured person of the circumstances of the injury (see instruction 5), signed statements of witnesses, or of persons to whom the injured person may have mentioned his injury, to be attached (see instructions 3 and 4)

"About 0845 hours I took my rifle, a 303 Enfield, outside the Hut (C-1) and shot myself through the left foot."

Strike out whichever is not applicable

Signed..... Napean W. Smith

DLR

(a) Was the individual in the performance of military duty No.
(b) Nature of duty? N.A.
(c) Was it incurred in a game or other form of physical recreation definitely organized with the approval of the unit comd? No.
(d) If it was incurred on leave, was such leave with or without pay no (e) Was anyone else to blame? no
(f) (1) Whom no
(f) Did the injuries occur on military premises, and if so, in what part of such premises? Yes, Hut C-1 (outside) #1 C.D.T.P.U.
(g) Court of Inquiry:
(i) Was it been held? No (ii) Will it be held? Yes
(iii) Date and Place - 1 Admin - 20 Jan 43

Date 19 Jan 43 Commanding (Sgd) A. PEARSON COL
ADMINISTRATION 1 GROUP

5. Reserve OC District officer commanding or Divisional Commander

Date 19 Jan 43

6. Received by N.D.H.Q.

7. Forwarded to D.G.M.S.

INSTRUCTIONS

EX "B"

COPY

REPORT ON WOUNDS OR OTHER INJURIES, EXCEPT ON WOUNDS RECEIVED IN ACTION

No F95911 Rank Pte. Name Smith N.W.

Unit 1 CDIRU was reported on the 18 Jan 43 19

suffering from Gun Shot of left foot

The disability is of a minor nature, and in all probability will not interfere with his future efficiency as a soldier.

X Here insert "claims" or "does not claim"

He X does not claim that he was in the performance of military duty at the time of the accident

(If the soldier makes no claim that he was on duty at the time, the certificate below should be signed by him).

STATION Bramshott

DATE 19 Jan 43.

J.R. Mills Capt.
.....
Medical Officer in charge.

CERTIFICATE TO BE SIGNED BY SOLDIER

I, Napean Wilson Smith hereby declare that the injury sustained by me on the 18 Jan 43 did not occur while I was in the performance of military duty

(sgd) Napean W. Smith (Soldier's Signature

STATION Bramshott (sgd) J.R.Mills Capt. (Signature of Medical Officer

DATE 19 Jan 43.

CERTIFICATE OF COMMANDING OFFICER

(This certificate will be completed only in case of trivial injury where the soldier claims to have been injured while on duty).

* Here insert "occurred" or "did not occur"

I certify that the injury to the above named soldier..... while he was in the performance of military duty.

* If "on duty" the nature of the duty should be stated..... and whether the soldier was in uniform at the time, the date on which the injury and the place..... It should also be stated whether the soldiers has been so informed or not.

.....
Commanding.....

STATION .....
DATE .....

MFB 371
40/P&S/683

COPY

(1) I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at Leipzic Barracks Ewshott, Hants, preliminary to my Court-Martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court-Martial

Dated at Leipzic Barracks,
Ewshott, Hants,
this....31....day of
March, 1943.

Smith N.W. Pte.

(2) I hereby acknowledge that I have been served with a true copy of an additional Summary of Evidence taken at Leipzic Barracks, Ewshott, Hants, preliminary to my Court-Martial.

(3) I hereby request that the Convening Officer appoint an officer to represent me at my trial.

I desire the services of...Lieut.J.C..MacWeill...WNSH if he is available.

Dated at Leipzic Barracks,
Ewshott, Hants,
This 31 day of
March 1943.

Smith N.W. Pte.

COPY

M.F.M. 6

No. F.95911 Name Smith W. H. | Sqn., Battery, or Company | Corps W.N.S.R. | Date of enlistment 5 Jun [illegible] | Service or Proficiency Pay | A.C.I. 122 40/P & S/136 (2637)

Date of last entry in Company Conduct Sheet 20.9.42 | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Badges | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Old Sheet destroyed 5 Dec 42 on completion of 6 months service					
				Nil Entries					
				Certified true copy consisting of one sheet					
				H. McDougall Lieut.					
				(Officer having original custody of documents)					

D.L. Redman, Lt. C.F.

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field	18/1/43	Pte		Discharging his rifle Willfully injuring himself in his left foot with the intent thereby to render himself unfit for service Sec 18(2)	Pte.Shaffner CSM Nauss L/Cpl Bent Sgt. Rodenizer	1 year Detention	FGCM 3/Apr 43	Gr.Comdr. "D" Group	

Certified True Copy

Lieut.
Officer having original Custody of Documents.

DLR

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
F05911	Pte.	Smith N.W.	West N.S.R., 7 C.I.R.U

1. The following is a fair and true summary of the entries in the Service and General Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, Air Force Act of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	nil times	[illegible] times
For	times	times
For	times	times
For	times	times

HMcD ~~Number of instances of gallantry or distinguished conduct~~ HMcD

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

~~Previous convictions of the accused by a Court-Martial or a Civil Court, of summary awards under~~ HMcD ~~Air Force Act Section 47 of the Army Act and the convictions with trial under "A.F.A. 75" are set out in the Schedule annexed to this statement.~~ HMcD

3. The accused is not under sentence at the present time.

or,

HMcD ~~The accused at the present time is under sentence (or) beginning on the~~ day of HMcD

WRM

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 75 WRM days in military Air Force custody, making a total of 75 WRM days in custody, of which 65 WRM days were spent in hospital.

HMcD HMcD

5. The present age of the accused according to his ~~record of service~~ attestation paper is 22 years

HMcD HMcD HMcD HMcD

6. The date of his ~~enlistment~~ attestation specified in his ~~record of service~~ attestation paper 6 June 42

7. The service which the accused is allowed to reckon towards discharge is or transfer to the reserve is 257 days

8. The accused is entitled to deferred pay or gratuity in respect of 257 days service. The accused is entitled to reckon 257 service for the purpose of determining his pension, etc.

HMcD

9. The accused is in possession of or entitled to no ~~air force decoration, or air force award (or R.A.F.~~ military military HMcD ~~Possession of or entitled to) "Efficiency" air force decoration or award~~ military

HMcD 10. ~~(If the accused a warrant officer.) The accused held the undermentioned warrant rank in the~~ HMcD ~~air force:~~ the regimental rank of

D.L.Redman, Lt.Col.

11. (In the case of an officer) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

dated , and in the regiment (or corps) the rank of

dated .

12. The accused has served as a non-commissioned officer continuously, without reduction to the present date:—

Date of promotion

In the rank of years

In the rank of years

In the rank of years

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, Air Force Act, and of cases in which trial has been dispensed with of accused. Number P96911 Rank Pte Unit

Name Smith N.W. of West NSR 7 CIRU Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 3 day of April 1945

WRM

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked H. McDougall, Lieut. signed by the president, and annexed to the proceedings.

Records Officer,
No. 7 CIRU

VV 89

PTE SMITH B.M.

VV-89

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA3) 40/P & S/1698 (2864)

Convened by Order of Colonel J.A. McIntosh A/ Comd "D" Gp, CRU dated 16 Nov 43

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmt R. (b) Appmt, A/R or A/Appmt, Proceedings Reviewed	Full Christian Names.	Surname.	Unit.
A.59958	Pte. 3 Dec 43	Owen, Mack	SMITH	H.L.I. of C. 3 C.I.R.U.

Reviewing Officer J.A.G. C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 17 Nov 43

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr,~~ if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Instn RQs. For guidance on procedure when a variation in this form arises, see Form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0910 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to~~ ~~as interpreter?~~ Ans ~~The interpreter is sworn.(1) Do you object to~~ ~~as shorthand writer?~~ Ans ~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No sir.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, ~~Members, JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj'n Lowabee	Can't Yark	7 C.I.R.U.
Member	Capt J.D. Lewis		3 C.I.R.U.
Member	Lieut H.C.T. Elliot	O.O.R.f.C.	4 C.I.R.U.
Judge-Advocate			
Prosecutor	Lieut R.C.O. O'Hagan		3 C.I.R.U.
Defending Offr	Lieut C.M. Mc Arthur		3 C.I.R.U.

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans ~~No~~ Yes

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused ~~before arraignment~~ make(s) [no] (a) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and Finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (does) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 21, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A.59958 Pte. Owen Mack SMITH - H.L.I. of C. - 3 C.I.R.U.

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	A.A. Sec 15(1)	Guilty	Guilty	
2nd	A.A. Sec 40	Guilty	Guilty	
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

~~At present under sentence for~~ beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 10 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF 5296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo detention for a period of Twelve (12) months.

(Sgd) Judge-Advocate, if any. 17 Nov 43 Date awarded. (Sgd) A. McIntosh President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date 5 D N 43 (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 562-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Finding and sentence set forth in Part I is confirmed.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

(Sgd) G Finnecane Brig

Date 6 D NOV 1943 Commanding D' GP CONFT UNITS Confirming Officer

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
A 59958 Pte Smith Owen Mack	19/Nov/43	D.C. "H" Wing No 3 C.I.R.U.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans Nil. (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.*
5. *Statement, if any, recorded per Notes.*)

~~B3. The Court considers the accused's statement (5). The Court decides (not) to advise accused to change his~~ (their) plea(s) of Guilty to Not Guilty on See charge(s). The accused is (are) so informed, and he (they) ~~change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

~~D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules~~ relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 93(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para. if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn [redacted] examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans .....
Do you intend to call witnesses on your behalf ?
Ans .....
Are they witnesses as to character only ? Ans .....
(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(b).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 42, 117(A).* *See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated forthwith, *Or*, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (b), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans .....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy ~~(copies)~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans You are through my Defending Officer (See attached)(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~ (2).
(1. *When several accused tried separately see RP* [redacted]. *One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 89, 118, 119(A), KR Con 308, 330, 563-566, Overseas HO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Con 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, Regt No A 59958, Pte Owen Mack SMITH, H.L.I. of C., a reinforcement on the strength of No 3 C.I.R.U., a soldier in the Canadian Army Overseas, is charged with:-

FIRST CHARGE
N.D.A. Sec 15(1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field absented himself without leave from 2300 hours 9 Aug 43 until apprehended (in civilian clothing) by Canadian Provost Corps in London at 1430 hours 8 Nov 43. (Total time absent - 90 days, 15 hours, 30 minutes).

SECOND CHARGE
N.D.A. Sec 40

WHEN ON ACTIVE SERVICE, AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

when apprehended in London at 1430 hours, 8 Nov 43, was in improper possession of three leave passes - one completed and signed, one signed, but without particulars, and one blank.

D. Fletcher

(D.Fletcher) Lt-Col,
A/Commanding Officer,
3 Cdn Inf Reinf Unit.

In the Field
15 Nov 43

To be tried by Field General Court Martial.

J.A. McIntosh

(J.A. McIntosh) Colonel
A/Commander
"D" Group, Cdn. Rft. Units

In the Field
16 Nov 43

Medical Officers Certificate
(Can) para 907

I certify that I have this morning examined No. Smith O M. Pte.
Name & Rank
of HLIC and in my opinion he is fit to undergo trial
by Court Martial.

Station aldershot.
Date 17/10/43

R.A.M.C.
Medical Officer
3 Can. Inf. Reinf. Unit.

CFA 90 (In lieu of AFA 8)
40/FAR/1697 (50SB)

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A.59958	Pte.	Owen, Mack	SMITH	H.L.I. of C. 3 C.I.B.U.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has ~~(Name)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 10 Nov 43 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr)~~ (Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ (AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder~~. (RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	C.W. Abell	Carl & York R. 7 C.I.B.U.

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A Captain	to be detailed by C.O.	3 C.I.B.U.
A Lieutenant	to be detailed by C.O.	4 C.I.B.U.

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 16 Nov 43

J.A. McDonald (Signed personally. RP 105 fn 2.) Colonel (Rank.)

Commanding 7th Group, Cdn. Fd. Units Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

F. G. & M. R. A59958 Pte. Owen Mack Smith.

Statement of Defence.

The accused, O. M. Smith, has pleaded guilty to both charges and having interrogated him find that his chief reason for going A.W.L. was that he became disconsolate on returning to # 3 C.I.R.U. from his visit. He returned from his visit on 3rd Aug 1943 and on 8th Aug 43 he received a parcel of civilian clothing from Canada. Being single and having a lady friend in London, he visited her on week-end of Aug 7-43 and was swayed by her to absent himself without leave.

I therefore put him to the mercy of the court and plead for mitigation of sentence.

G. M. McArthur Lt
Defending Officer

This is Exhibit "A" referred to in the summary of evidence in the case of A.59958 Pte SMITH O.M. (HLI of C)

RECORDS & REP & S&O

PART II D.O. EXTRACT FORM

Extracted from: .....

No: Rank: Name: Unit: 3 Cdn Inf Reinf Unit

A.59958 Pte SMITH O.M.(HLI of C) D.O. No. 159 Date: 11 Aug 43

Casualty: AWL from 2300 hrs 9 Aug 43

.....

Certified True Extract from 3 CIRU PT II O #159 d/11 Aug 43

.....
(W.E.THORNE)Captain
Records Officer
3 Cdn Inf Reinf Unit

C. M. H. Q.
Records Office

Entered by.....

Date.....

Section:.....

Where entered:

Unit:.....

Card Index:
Shows
Unit:.....

Date:.....

Final verification:

"Exhibit "B" referred to in the
Summary of Evidence in the case of
A.5995[illegible], Pte. SMITH, C.W. (HLI of C).

B

CERTIFICATE IN ACCORDANCE WITH P.C.2797 of 10 Apr.42.

I Certify that No. A.5[illegible] Rank Pte. Name Smith, C.W.

Unit No. 3 C.I.R.U. was arrested at London (Place)

at 1A30 (hour) on 8 Nov. 43. (date) and that at the time of his arrest he was wearing ~~[illegible]~~ (Civilian Clothes).

Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable).

London
8 Nov. 43.

L.S. Grayson
Capt.,
(L.S. Grayson), D.A.P.M.,
London Area.

Exhibit "C" referred to in the Summary of Evidence in the case of A.59958, Pte. SMITH, C.M. (HLI of C).

A-59958 Pte.Smith,C.M.
No.3 C.I.R.U.

Sir:

At about 14.50 hrs,on the 8-Nov-43,I was on duty at No.6 (Area) Provost Coy.Detention Room,Cdn.Provost Corps,when the a/m soldier was brought to this office under arrest for being A.W.L.by Sgt.Carriere and Sgt. Nelson.

While I was searching the a/m soldier I found in his possession three blank passes,one of which had been filled in and signed.

London
8-Nov-43.

J. Goldstein .....L/Cpl.
D-118542 Goldstein,J.

REMARKS

Exhibit "A" referred to in the Summary of Evidence in the case of A.59958, Pte. SMITH, O.M. (RLI of C).

A-59958 Pte.Smith,O.M.
No.3 C.I.R.U.

Sir:

At about 14.50 hrs,on the 8-Nov-43,I was on duty at No.6 (Area) Provost Coy.Detention Room,Cdn.Provost Corps,when the a/m soldier was brought to this office under arrest for being A.W.L.by Sgt.Carriere and Sgt. Nelson.

While I was searching the a/m soldier I found in his possession three blank passes,one of which had been filled in and signed.

London
8-Nov-43.

J. Goldstein .....L/Cpl.
D-118542 Goldstein,J.

REMARKS

CHARGE

Army Form N 252
(See King's Regulations)

No. 3 C.I.R.U. Regiment / Battery / Squadron / Troop or Company

CHARGE against No. A-59958 Rank Pte.

Name Smith,O.M.

Place London Date of Offence 8-Nov-43.

OFFENCE W.O.A.S. was in possession of three blank leave passes,one of which was filled in and signed.

Names of Witnesses :—

L/Cpl.Goldstein,J. Cdn.Provost Corps.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

P.T.O.

"Exhibit "B" referred to in the
Summary of Evidence in the case of
A.5998S, Pte. SMITH, O.M. (HLI of C).

CERTIFICATE IN ACCORDANCE WITH P.C.2797 of 10 Apr.42.

I Certify that No. A.5998S Rank Pte. Name Smith, O.M.

Unit No. 3 C.I.R.U. was arrested at London (Place)

at 1430 (hour) on 8 Nov. 43. (date) and that at the time of his arrest he was wearing ~~(illegible)~~ (Civilian Clothes).
Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest.
(Strike out part inapplicable).

London
8 Nov. 43.

L.S. Grayson Capt.,
(L.S. Grayson), D.A.P.M.,
London Area.

Exhibit "D" referred to in the Summary of Evidence in the case of A.59958; Pte. SMITH, O.M. (HLI of C).

CANADIAN ARMY OVERSEAS

LEAVE PASS

Pass No. A 46 Date Nov 3/43

No. A-59958 Rank Pte Name Smith O.M.

has permission to be absent from his unit from 0600 hrs. 3/11/43.

to 2359 hrs. 8/11/43. for the purpose of proceeding to

LONDON

6 CDN INF BDE GP GP (TOR SCOT R)

Orderly Room Stamp

N.C. Clayton Capt.

6 CDN INF BDE SP GP (TOR SCOT R) C.A.(O)

(Unit Signature Stamp)

CANADIAN ARMY OVERSEAS

LEAVE PASS

Pass No. Date

No. Rank Name

has permission to be absent from his unit from hrs.

to hrs. for the purpose of proceeding to

1 CAC - RU

Orderly Room Stamp

(Unit Signature Stamp

CANADIAN ARMY OVERSEAS

LEAVE PASS

Pass No. Date

No. Rank Name

has permission to be absent from his unit from hrs.

to hrs. for the purpose of proceeding to

6 CDN INF BDE GP GP (TOR SCOT R)

Orderly Room Stamp

6 CDN INF BDE SP GP (TOR SCOT R) C.A.(O)

(Unit Signature Stamp)

ENDORSEMENTS

	Sec. 10(i)	R.T.O.—Station Master—Local Police

INSTRUCTIONS

1. If you are travelling with free warrant have this pass stamped or endorsed in the space provided above by the R.T.O. station-master or local police at the place where you spend your leave. If you are unable to return to your unit due to interruption of transportation facilities have it endorsed to that effect by one of these officials.

2. Arms and equipment will not be checked at railway stations except during a wait-over between trains.

3. Carry this pass and your pay book (M.D.M.1) at all times while on leave.

4. **Illness on leave.**
(a) Apply to the nearest unit of the Canadian Army, or
(b) If none in the area, apply to the nearest unit of the British Army, request necessary treatment and that the O.C. communicate the facts to your unit. If unable to rejoin your unit before the end of your leave obtain a written report from the M.O. and hand to your C.O. on rejoining, or
(c) If no military unit in the area, apply to a civilian doctor or the nearest Emergency Medical Service Hospital. Obtain a letter verifying the facts and send to your C.O. at once. If unable to rejoin your unit before the end of your leave obtain a certificate and hand to your C.O. on rejoining.

5. Turn this pass in on rejoining your unit.

CFA 24
40-P & S-(1369
(In pads of 100)(24221

ENDORSEMENTS

	Sec. 10(i)	R.T.O.—Station Master—Local Police

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CFA 24
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(c) If no military unit in the area, apply to a civilian doctor or the nearest Emergency Medical Service Hospital. Obtain a letter verifying the facts and send to your C.O. at once. If unable to rejoin your unit before the end of your leave obtain a certificate and hand to your C.O. on rejoining.

5. Turn this pass in on rejoining your unit.

CFA 24

SUMMARY OF EVIDENCE

In the case of A.59958, Pte. SMITH, O.M., H.L.I, of C., on the strength of No. 3 C.I.R.U., a soldier of the Canadian Army Overseas.

(By direction of the Commanding Officer, the Summary of Evidence is taken on oath).

FIRST WITNESS: Prosecution — Capt. W.E. Thorne, Records Officer, 3 C.I.R.U., having been duly sworn states:-

I am Capt. W.E. Thorne, Records Officer, 3 C.I.R.U., and have custody of the regimental documents of that Unit. I hereby produce a certified true extract of 3 CIRU Part II Order No. 159 d/ 11 Aug 43 (Extract marked Exhibit "A" to this Summary of Evidence), showing A.59958, Pte. Smith, O.M. to be absent from his quarters from 2300 hours 9 Aug 43.

"A"

The accused declines to cross-examine this witness.

(W.E. Thorne) Capt.
Records Officer, 3 CIRU.

SECOND WITNESS: Prosecution — Capt. R.H. Lund, E.S.R., 3 C.I.R.U., having been duly sworn states:-

I produce a certificate relating to A.59958, Pte. Smith, O.M., whom I now recognize, purporting to be signed by the Deputy Assistant Provost Marshall at Canadian Military Headquarters. (Certificate marked as Exhibit "B" to the Summary of Evidence, and read to the accused).

I further submit a statement of evidence signed by D.118542 L/Cpl. Goldstein, J., Canadian Provost Corps. (Statement of Evidence marked Exhibit "C"and read to the accused) and three Leave passes referred to in his statement by L/Cpl. Goldstein (Passes marked Exhibit "D" to this Summary of Evidence).

The accused declines to cross-examine this witness.

(R.H. Lund) Capt.
E.S.R., 3 C.I.R.U.

The accused was cautioned as follows:

"Do you wish to make any statement, or to give evidence on oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say, or any evidence you give will be taken down in writing, and may be given in evidence."

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence, consisting of two pages, was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

R.C.O. O'Hagan

(R.C.O. O'Hagan), Lieut.
Officer detailed to take the
Summary of Evidence

Aldershot, Hants,
12 Nov 43.

LIST OF WITNESSES

Prosecution: Capt. W.E. thorne, C.M.S.C., Records Officer, 3 C.I.R.U.

Capt. R.H. Lund, Essex Scottish Regt., 3 CIRU.

Defence: N I L.

LIST OF EXHIBITS

Exhibit "A" Certified true extract of 3 CIRU D.O. Part II Order No. 189 d/ 11 Aug 43.

Exhibit "B" Certificate in accordance with P.C. 2797 of 10 Apr 42.

Exhibit "C" Statement of Evidence from D.118642 L/Cpl. Goldstein, J., Canadian Provost Corps.

Exhibit "D" Three (3) Leave passes.

STATEMENT OF ACCUSED

I certify having received free of charge a copy of the Charge Sheet, Summary of Evidence, List of Witnesses, and a list of the Exhibits.

I do ~~do not~~ desire the services of an Officer to represent me at my trial.

Mack Smith
A.69958, Pte. SMITH, C.M.

Date:
12 Nov 43.

No. A 59958 Name SMITH O.M. Sqn., Battery, or Company — Corps HLI OF C — Date of enlistment 8 Jan 42 — G.C. Badges — Service or Proficiency Pay

M.F.M. 6 (A.F.B. 133)

Date of last entry in Company Conduct Sheet 17-6-42 — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. — Signature O.C. Company, etc. F.A. TILSTON A/Capt.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Old Sheet destroyed Cert Correct.					
Field	4-9-42	Pte.		WOAS AWL from 2200 hrs 4-9-42 to 2255 hrs 4-9-42 Absent 55 mins AA Sec 15(1)	L/Cpl. McKinney L/Cpl. Parker	5 dys CB	7-9-42	Capt. D.M. Durward	
Field	13-10-42	Pte.		AA 15(1) AWL 3 Hrs 45 Mins.	Sgt. Krull	7 dys CB Forf 7 dys pay	15 Oct 43	Lt-Col. J.A. McIntosh	Forf 7 dys pay
Field	4-1-43	Pte.		AA Sec 15(1) AWL 9 dys 22 hrs 45 mins.	L/Cp; Lidston	28 dys FP	26-1-43	Lt-Cpl. H.J. Foster	Forf 10 dys Pay

W.E. Thorne

(W.E. THORNE) Captain
Records Officer
3 Cdn InfReinf Unit

CERTIFIED TRUE COPY OF ORIGINAL MFM 6 in My Possession.

(P.T.O.)

"B"

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
A-59958	Pte	Smith, O.M.	R.L.I. of C. (3 C.I.B.D.)

1. The following is a fair and true summary of the entries in the ~~regimental~~ FIELD conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, punishment being given to the most serious offence in each entry, and to any recommended special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated

	* Within last 12 months.	*Since Enlistment.
For Absence without leave (once)	times	(Three) times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

2. The accused has not been previously convicted, *or*

3. The accused is not under sentence at the present time.

4. The accused has been in confinement, awaiting trial on the present charges, for NIL days in civil custody, and (CIVIL ARREST) 10 days in military custody, making a total of TEN (10) days, of which NIL days were spent in hospital.

5. The present age of the accused according to his attestation paper is 26 yrs. 130 days.

6. The date of his attestation specified in his attestation paper is 4 APR 47.

10. The accused is in possession of, or entitled to, no military decoration or military award

(*160-6) W1.30245/902 75,000 11/40 A.& E.W.Ltd. Gp.A/89

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. A-69955 Rank Pte. Name Smith, O.E. of C.I.R.U. (Y...R.U.) Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority	Punishment remitted.
		Nil.		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the ~~regimental books~~ M.F.A. in my custody.

Signed this 15 day of November, 1943.

E.J. Ferguson
(E.J. Ferguson,) Lieut.
Asst. Records Officer, 3 C.I.R.U.

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of ..... years, ...

In the rank of ..... years ..... "

In the rank of ..... years, ...

(Insert any addition to any of the above paragraphs caused by facts stated from the regimental books the paragraph must be struck through, and the fact in the case of a trial by field general court-martial the information may be collated from such sources as are available and the paragraph inserted accordingly.)

364@ 10/5/39

D. 7102 Lpr. Smith P.

4 Jct Log A C E

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this Seventh day of April, 1941.

Whereas it appears to me, the undersigned, an officer in Command of 3rd C.Sn. Inf. Bde. Gp, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~(and that it is not practicable to delay the trial for reference to a superior qualified officer.)~~

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*~~(I am unable to appoint~~
*~~(1. Three Officers to form the Court.)~~
*~~(2. A Field Officer as President.)~~
*~~(3. Three Officers having more than one year's service.)~~
~~for the following reasons, namely:-~~

President.

Rank.	Name.	Regiment.
Major	J.P.E. Bernatchez	R 22e R

Members.

Rank.	Name.	Regiment.
Captain	J.K. Hayden	Carls & York R.
Lieut.	A.B. Cook	West N.S.R.
Acting Lieut.	P. Hart	R 22e R

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature]
Commanding 3rd Infantry Brigade
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
D. 71102 Spr. Smith, P. 4 Cdn. Fd. Coy	(See Charge Sheet A/M) 1. Sec. 40, A.A. 2. Sec. 19, A.A.	Not guilty Guilty	Guilty Guilty 14th April 1941 48 days detention R.E. Smedley Maj. 14th April 1941	Confirmed H.W. Jamieson

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— no [illegible]

(Signed) J.K. Hayden Capt. C.I.R. (Signed) Rhode, Lt. W.S.R.
Commanding [illegible] Brigade. President.

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 14th day of April 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
~~*(3. The interpreter)~~
~~*(4. The officers under instruction)~~
were duly sworn.

* Omit if not applicable.

Signed this 14th day of April 1941.

P.E. Smedley Maj.
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison until further orders.)

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 17 day of April 1941

H.W. Jamieson Brigadier,
Commanding [illegible] Confirming Officer.

Promulgated and extracts taken in the case of D-71102 Spr. Smith P. 4 Cdn. Fd. Coy. R.C.E.

(*a*) (Dated) 17 Apr. '41 (Signed) Robt J. Cassidy Major

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

E 3 The accused elects trial by Court Martial

CHARGE SHEET.

The accused No. D-71102 Spr. Smith, P., 4th. Field Company, R.C.E. a soldier of the Canadian Army is charged with:-

FIRST CHARGE - When on Active Service, conduct to the prejudice of good order and military discipline,
Sec. 40 Army Act. in that he at CATERHAM, Surrey, on 29th Mar. 41 after having been placed under close arrest said to C.S.M. Murdock, 4th. Field Company, R.C.E. "I'll get you yet for this. I'll fix you, you ---"

SECOND CHARGE- When on Active Service, drunkenness, (1st offence)
Sec. 19 Army Act. in that he at CATERHAM, Surrey, on 29th Mar. 41 while on pay parade was drunk.

R.J. Cassidy, Major, R.C.E.
COMMANDING - 4th. Field Company, R.C.E.

CATERHAM, Surrey,
1 Apr. 41.

14th April 1

D 71102 Sgt Smith P. 4th Fd Coy RCE

Lieut H N E Curry 4th Fd Coy RCE
Capt P Lamson R22eR

Nil

the Medical certificate as marked E, signed by the President and annexed to the proceedings

AB.

No — AB.

AB.

2nd —

AB

AB.

The prosecution will endeavour to show the accused was not intoxicated enough to not realise the import of his words.

The prosecutor proceeds to call witnesses:-

FIRST WITNESS FOR PROSECUTION. D. 10267, C.S.M. Murdock, D., 4th Fd. Coy., R.C.E., being duly sworn is examined by the Prosecutor.

Q- C.S.M. Murdock will you state what took place Sat. 29 Mar 41.

A- On the day and date mentioned the accused appeared on pay parade he approached me while I was speaking to the Orderly Officer. He said something about wanting to get paid for proceeding on his Priviledge Leave the following Monday. His breath smelt strongly of liquor and it was apparent he was semi-intoxicated. I told him to get in line and keep quiet and generally behave himself. He did get in line and I approached him and told him to button his tunic up and appear on pay parade properly dressed. He answered me in an aggressive manner. I don't remember his exact words. I was patient and just overlooked it. When he came up to the Pay. Sgt. he said he wanted so much money and [illegible] me that I won't go on leave. He was agressive to the Pay Sgt., He got toe the Pay Master Capt. Smith, failed to salute his superior Officer, the Paymaster. I called him back and told him to salute the Paymaster. He then went out of the room in which we were being paid. He came back and wanted to know why I was always picking on him, I told him to get out of the room and behave or I'd put him in the Guard Room. He answered:" What the hell do I care. Stick me in the Guard Room." which I did at once. The Cpl. of the Guard on that day didn't seem quite familiar with his duties and brought the accused to the Orderly Room to see me at about 1700 hours. He asked me how long I was going to keep him under arrest in the Guard Room. I did not answer him and told the picquet to take him back to the Guard Room at once as he had no business to bebrought over to the Orderly Room. He thereupon started to address me with abusive language. He called me a Bastard, Cocksucker. "I'll get you for this you son of a bitch, I'll fix you." By that time the picquet got him out of the Orderly Room and back to the Guard Room.

Q- Ca n you state the degree of his intoxication ?

A- I would say he had control of all his faculties.

Q- How idd you know he was intoxicated ?

A- By his breath Sir.

Q- What was the condition of his speech.

A- His speach was quite garbled but he seemed to know what he was doing when he came to the Paymaster with regard to the amount of money he wanted.

Cross-examined by the Defending Officer.

Q- Does the accused normally salute his superiors when he meets them ?

A- Yes Sir, as far as I know.

Q- Is it not your responsibility to see the men who are to be on parade are fit in condition.

A- Yes. The reason I allowed him on parade that afternoon was because it was Saturday afternoon, everyone off duty, except for pay parade.

Q- Have you any medical knowledge allowing you to establish the fact the accused had control of his faculties.?

A- None other than my own judgement.

Question by the Court.

A- What do you mean by semi-drunk ?

A- It was quite apparent the ma n had a couple of drinks.

Q- Did the accused stagger out of line ?

A- No.

R.A.P. 83 (b) has been complied with.

SECOND WITNESS. D. 16030, Cpl. Anderson, J.S., 4th Fd. Coy., R.C.E., being FOR PROSECUTION. duly sworn, is examined by the Prosecutor.

Q- Cpl. Anderson what were your duties on 29 Mar 41.

A- Orderly N.C.O.

Q- State what took place in regard to the accused ?

A- I was attending pay Parade when Sprp Smith broke ranks and came to get paid out of turn. When he got paid he did not salute the Paymaster. Then he went out came back in again and asked the C.S.M. if he could talk to him. The C.S.M. said he could. Then Spr. Smith walked over ot the corner of the room, and called over the C.S.M. The Sgt. Major turned around and asked him why he couldn't talk to him where he was. He came back again to the C.S.M. spoke to him and the C.S.M. called to me to put him under arrest. He came over to the Orderly Room under escort wanting to know why he was in the Guard Room. The C.S.M. ordered him back to the Guard Room and he was leaving he said to C.S.M. Murdock" I'll get you for this. I 'll fix you, you son of a bithc."

Q- How drunk was he ?

A- He wasn't staggering but more or less under the influence of liquor.

Q- In your opinion did he know what he was doing ?

A- Yes Sir.

Defence declines to cross-examine the witness.

Question by the Court.

Q- Were you in the room where they were being paid ?

A- Yes Sir.

R.A.P. 83 (b) has been complied with.

THIRD WITNESS. D. 16147, Cpl. Bartropp, R.F.C., 4th Fd. Coy., R.C.E., FOR THE PROSECUTION. being duly sworn is examined by the Prosecution.

Q- Tell the court what took place Saturday 29 Mar 41 in relation to this case.

A- On Saturday afternoon 29 Mar 41 between 1600 and 1700 hours I was in the Company Orderly Room waiting for a late pass. While I was there Spr. Smith was brought in under escort. He asked the C.S.M. how long he was to be in the Guard Room. The C.S.M. asked the escort who had given permission to take him out of the Guard Room. He stated the Cpl. of the Guard. He then ordered him to be escorted back to the Guard Room under escort and Cpl. Anderson escorted him back. Then the accused told the C.S.M. to "Fuck yourself" and as he was going out he said" I'll get you for this you son of a bitho, I'll fix you."

Q- What was hid condition?

A- He had been drinking, but when I saw him he knew what he was doing ?

The defence declines to cross-examine the witness.

Question by the Court.

Q- Do you recognize the accused then ?

A- Yes sir.

R.A.P. 83 (b) has been complied with.

FOURTH WITNESS FOR PROSECUTION, D. 16248, Spr. Parrott, H.Q., 4th Fd. Coy., R.C.E., being duly sworn, is examined by the Prosecution.

Q- State what took place on Saturday 29 Mar 41 with regard to the accused.

A- I was orderly Runner for the day, and was in the Coy. Orderly Room. The accused came in under escort. He asked some questions which I didn't hear, then started swearing. When one word led to another and when he was going out said:" I'll get you for this" you could smell he had had a drink, but as far as judging any man drunk I'm not in a position to do that."

Q- In your opinion was he capable of knowing what he was doing ?

A- Think he was sir.

Defence declines to cross-examine the witness.

Question by the Court.

Q- Do you recognize the accused ?

A- Yes Sir.

R.A.P. 83 (b) has been complied with.

Prosecution is closed.

F. Lamontagne Maj
President

No YES

Yes

Yes Sir.

Q- Do you wish to make a statement

A- No

Executive Officer
President

FIRST WITNESS. FOR DEFENCE. D. 16089, Sgt. [redacted] F., 4th Fd. Coy., R.C.E., being duly sworn is examined by the Defence.

Q- What is your function in the Unit.

A- I am Sec. Storeman and act as foreman of works on various jobs.

Q- Do you know Spr. Smith.

A- Yes Sir.

Q- Will you show him to the Court, please ?

(The Witness points to the accused).

Q- Did you ever have Spr. Smith under your charge on any jobs?

A- I've had Spr. Smith on various jobs and he has proved satisfactory.

Q- Did he on any occasion use insubordinate language?

A- Not to me Sir.

Q- You have known him long ?

A- The past eight years.

Prosecution declines to cross-examine the witness.

R.A.P. 83 (b) has been complied with.

[redacted] Major
President

Closing address by the Prosecutor.

The Prosecutor points out that the state of intoxication of the man was not so much as to prevent him knowing wekll enough what he was doing, and draws the attention of the Court to Page 25 and 106 of M.M.L.

Defence makes the following Closing Address.

The prosecution has endeavoured to establish that the accused was not drunk to a point that it would affect his subsequent actions.
M.M.L. Chap. III sec. 45 states that: There cannot be any distinction between various degrees of drunkness.
The accused was charged with drunkness and has pleaded guilty to drunkness. He was drunk. The evidence of facts proves it clearly.
M.M.L. Chap. III Sec. 45 states: If a superior Officer knowing a man to be drunk out of good nature allows him to proceed with the duty (pay Parade) the man should not be treated as having been drunk on duty.

The accused [redacted] fore be found guilty for any offences that were caused by drunkness, further even this Offence cannot be considered because of the superior Officer neglecting to carry out his duty in letting this man go on parade knowing that he was drunk.

[illegible] Lieutenant May
President

Lieut H N E Curry 4th Fd Coy RCE

MFM 6 [illegible]

E2

[illegible]

Nov [illegible]

The man has been with the unit since November 37 and has only two charges. He has been under arrest 11 days pending the C.M. The evidence given by Sgt Bradley as to his character shows he is of good character. I should like to ask the Court to bear in mind these facts if a sentence is passed.

(The charge sheet and summary of evidence are marked E2 signed by the Pres and attached to the proceedings.)

[illegible] Lieut
President

Summary of Evidence in the case of
No. D 711021 Spr. Smith, P.

Evidence taken under oath by order of
the Commanding Officer.

First Witness: No. D 16267 C.S.M. Murdock, having been duly sworn, states as follows:

"Spr. Smith P. appeared on pay parade on Saturday 29 Mar 41 in an intoxicated condition. I spoke to him about it and he answered me in an aggressive manner. In view of his condition I ignored his reply and told him to behave himself or I would not allow him to be paid. He persisted in giving his aggressive answers such as "What the hell do I care if you put me in the guard room - You can't put me in the guard room." When he reached the pay sergeant to have the entry made in his pay book he addressed the pay sergeant in a very belligerent manner. He reached the paymaster, Capt Smith, to receive his pay and failed to stand properly at attention. On being paid he did not salute the paymaster and I recalled him to do so. He went out of the room and came back five minutes later and used insubordinate and abusive language in speaking to me. I placed him under close arrest. Spr. Smith came with a request to Coy. Orderly Room at 1500 hours Saturday 29 Mar 41 to see me. I ordered the prisoner to take him back to the guard room whereupon the accused became aggressive again and called me a "bastard" "son of a bitch" and said "I'll get you for this you son of a bitch I'll fix you". I told him to keep quiet as he was only making things worse for himself. He paid no attention to me and continued addressing me in such similar terms."

D. Murdock S & M.

The accused cross-examines this witness as follows:

Q: Why did you not put me under arrest when I asked you if I would get paid right away, or wait till Monday as I was going on leave

A: I first told the accused that he had no business appearing on parade in his condition but if he behaved himself he would be paid.

Q: Why did you not let me know what the charge was?

A: I informed the corporal of the guard and the accused that I had 24 hours to the hours to place the charge according to K.R.R.O. I gave the corporal of the guard a charge within half an hour of the arrest.

The accused declines to cross-examine this witness further.

Second Witness: D16080 Cpl Anderson. J.S having been duly sworn, states as follows:

"On Saturday 29 March 41 I was Orderly N.C.O. I attended Pay parade. Spr. Smith was disorderly on pay parade talking back to the C.S.M. I noticed that Spr. Smith had been drinking. He came in the doorway before his turn. He seemed to be talking all right. The C.S.M. ordered me to place Spr Smith under arrest after he had come back after having been paid. He had not saluted the paymaster and after he was placed under arrest I noticed the smell of liquor on his breath. About 1610 hours I was in the Coy Orderly Room when a prisoner brought Spr Smith to see C.S.M. Murdock. He started to argue with the C.S.M. about being under close arrest. He was speaking in a loud tone of voice. I recall that he said "I'll get you for this. I'll fix you. You took a hitch". He was then taken back to the guard room."

J. S. Anderson

The accused declines to cross examine this witness.

Third Witness: D16248 Spr. Parrett H.A. having been duly sworn states as follows:

"On Saturday 29 Mar 41 I was Orderly runner. I was in the Company Orderly room with C.S.M. Murdock, Cpl Anderson and Cpl Bartropp about 1600 hours Spr Smith came into the Orderly room under arrest I knew that he had been drinking by the smell on his breath. He was talking quite a lot. Spr. Smith asked the C.S.M. to see an Officer and the C.S.M. said that he could not. Spr Smith then began to swear at the C.S.M. and said "I'll get you for this". He was then taken out by the escort.

H.A. Parrett

The accused declines to cross examine this witness.

Fourth Witness: D16147 Cpl Bartropp. R.F.G. having been duly sworn states as follows:

"On Saturday 29 Mar 41 I was in the Company Orderly Room about 1600 hours to collect a pass. C.S.M. Murdock, Cpl Anderson and Spr. Parrett were also in the Orderly Room. An escort brought Spr Smith into the Orderly Room and he asked the C.S.M. how long he was to be kept in the guardroom. The C.S.M. ordered him returned to the guardroom. Spr. Smith then started using obscene and profane language. He said to the C.S.M. "I'll get you. I'll get you for this you bow [illegible] you.

hitch. I'll fix you." He was removed by the escort"

The accused declines to make any statement in this matter. The accused is then warned in accordance with the provisions of R.P. 4(E) and declines to make a statement or give evidence.

Certified that R.P. 4(C) (D) and (E) have been complied with.

Taken down in writing by me in the presence of the accused at Catterick, Surrey, on the 1st and 2nd days of April 1941.

[signature]
being R.C.E.

LIST OF WITNESSES FOR THE PROSECUTION AND DEFENCE IN THE CASE OF No. D-71102 Sapper Smith, P., of 4th. Field Company, R.C.E.

WITNESSES FOR THE PROSECUTION.

1. D-16267 C.S.M. Murdock, D. 4 Fd. Coy.,RCE., - Caterham, Surrey.
2. D-16030 Cpl. Anderson,J. 4 Fd. Coy.,RCE., - " "
3. D-16147 Cpl. Bartropp,R. 4 Fd. Coy.,RCE., - " "
4. D-16248 Spr. Parrett,H.A.4 Fd. Coy.,RCE., - " "

WITNESSES FOR THE DEFENCE.

NIL.

I, Spr. Smith, P. No. D 71102, request that an officer be appointed to represent me at my trial and request that Major E. Styles, Carleton and York Regiment, be so appointed, if available.

Caterham, Surrey.
1 Apr. 41.

Spr P Smith

Capt. M.E.P. Gouraud
C/S "C"

1. Veuillez prendre avis que vous avez été désigné par la B de pour défendre en cour-martiale, demain, le soldat Smith, au 4e Fd. Coy. R.C.E.

2. J'avis m'en a été communiqué par téléphone mais le message écrit parviendra ce soir.

1815 hrs 13 avril 41 — A.J. Brient Lieut Amb. Adjt

(15) - -

Copt. M.E.P. Gorman

Cie "C"

URGENT

Unit 4th Field Coy R.O.C.

Squadron, battery or company

MORNING SICK REPORT
MEDICAL INSPECTION REPORT

Army Form B 256

Station and Date April-14-41 194

Army No.	Rank and Name (Christian name in full Surname first; M under name if married)	Completed Years of Age	Completed Years of Service	Religion	If for duty?	Whether a Defaulter	Lines or Barracks	Room of Mess	Disease	Disposal Medical Officer's Remarks and Signature
0.71102	Spr Smith P	45	3	RC		O.			For C.M.	7 dt To undergo Trial
										F.M. Isolate Capt Rehfisch 14 Apr. 41 1100 hrs.
	E.I. Absent after Parade Reported									

*Strike out whichever is not applicable. State nature of duty for which warned. In the case of men for medical inspection, the reason, such as "for trial by Court Martial," or "joining the station," &c., should be stated against their names

Sgt Welcher R Orderly N.C.O.

W1 22823/1124. 2,000m. 11.40. D.P.W. Sl.&pm.

To be Discharged from Hospital to-morrow.

Unit	Squadron, Battery, or Company	Army No.	Rank and Name	

E2 [illegible]

D71102 Name Smith, P., Sqn., Battery, or Company 4 Fd. Coy. Corps R.C.E. Date of enlistment 29/9/39 G.C. Badges Service or Proficiency Pay

M.F.M. 6 A.F.B. 1231

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field.	1 Apr. 40.	Spr.		SHEET DESTROYED ON COMPLETION OF 6 MONTHS SERVICE., K.R.(Can)					
Field.	3 Jul. 40.	Spr.		A.A.40. Conduct to the prejudice of good order and military discipline.	Sgt. Bradley, L/S. Watt, W.	14 days pay.	4 Jul. 40	M.A.Woolsey, Lieut., O.C. # 1 Section., 4 Cdn. Fd. Coy., R.C.E.	
Field.	13 Sep. 40.	Spr.		A.A.15(1) A.W.L. from 2200 hrs. 13 Sep. 40 to 1500 hrs. 16 Sep. 40. (Abs. 2 days & 17 hours)	Cpl. Bishop.	14 days DETENTION., 17 d's pay.	20 Sep. 40.	R.J.Cassidy, Major.	

Certified true copy
[illegible] Major R.C.E.
A/Adjutant 4 Fd Coy RCE

(P.T.O.)

CERTIFIED TRUE COPY.

SHORT STATEMENT AS TO PARTICULARS OF SERVICE OF THE ACCUSED

(a) The acused has been in confinement awaiting trial on the present charges for Nil days in Civil Custody and 4 days in military custody making a total of 4 days of which Nil days were spent in hospital.

(b) The present age of the accused according to his attestation paper is 44 years, 9 mos. & 23 days.

(c) The date of his attestation specified in his attestation paper is 26th day of September 1939.

(d) The accused is in possession of, ~~or entitled to no military decoration or military award, (or is in possession of or entitled to~~ 1914-15 Medal, General Service Medal and Victory Medal.

I hereby certify that the foregoing particulars are true extracts from the Regimental Books in my custody.

for E.H.Wright Lieut.
O.C. 4th. Field Company, R.E.

52-68 Smith, R

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D 71483 Pte. Robert SMITH. 3 Cdn Transit Camp

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 12 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for six months

(Sgd) _____ Judge-Advocate, if any. 18 Mar 46. Date awarded. (Sgd) W.W. Lockhart Lt Col President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date _____ (Sgd) _____ Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I mitigate the sentence to read to undergo detention for a period of one Hundred and twenty (120) days and I confirm the finding and the sentence as so mitigated

I direct that the accused be not committed to prison or detention barracks until further order.(1) Sgt

(1. AA 57A. Delete if not used.)

(Sgd) R.H. Rutherford Brig

Date 18 Mar 46 Commanding Dep Comd CFN Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D. 71483 Pte Smith R X 4 dist. C.I.C. 3 Cdn Transit Camp CFN	18 Mar 46	R.I. Stewart Capt 3 Cdn Transit Camp CFN

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN 5 VOLS 52-48

FIELD GENERAL COURT-MARTIAL

CFA66 (To take place of AFA81) 40/P & S/1098 (8144) 4/38B

Convened By Order of Brig T.J. Rutherford CBE Dep Comd HQ CFN dated 18 Mar 46

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apprmt, A/rank or A/apprmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apprmt, A/R or A/Apprmt.	Full Christian Names.	Surname.	Unit.
D71483	Pte.	Robert	SMITH	x4 dist C.I.C. 3 Cdn Transit Camp CFN.

PROCEEDINGS REVIEWED

3 Apr 46 C.H. Tait Maj

PRESIDING OFFICER'S/JAG BRANCH STAMP

PROCEEDINGS OF TRIAL.

Held in the ~~Fd~~ in (country) HOLLAND on (date(s)) 18 Mar 46

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 495, for oaths and instrs on how to record addresses, evidence, etc. which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is ~~was~~ amenable to military law, and each charge discloses an offence.(4)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~was~~ brought before the Court. At 1510 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~was~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to ... as interpreter? Ans~~

~~The Interpreter is sworn.(1) Do you object to ... as shorthand writer? Ans~~
~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 56(E). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt. Col.	W.W. LOCKHART	RCCS	3 Cdn Transit Camp.
Member	Lt. Col.	E.L. dePENCIER E.D.	ACA	3 Cdn Transit Camp.
Member	Lt. Col.	A.P. DODDS	RCA	3 Cdn Transit Camp
~~Judge-Advocate~~				
Prosecutor	Capt	Y. VEZINA	C.I.C.	3 Cdn Transit Camp
Defending Offr	Lieut.	R.G. HILL	C.I.C.	3 Cdn Transit Camp

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 33.)

A8. The accused Pte Robert SMITH before arraignment makes(s) (no) ~~a~~ plea(s) (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~was~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~not~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(G), and use separate copies of CF AB6 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~re-closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

AB 160 p. 61

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No sir.(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

~~B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) ~~change(s)~~ his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records findings of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(F). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans.....Do you intend to call witnesses on your behalf ? Ans.....Are they witnesses as to character only ? Ans.....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 84(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 47, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(2) (c), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. : No sir.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement as to Character and Particulars of Service(1), and certified true copy ~~record~~ of Conduct Sheet, purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(2)
(*1. MFB 355 or AFB 296. 2. MFM 6. 2. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. No. I have no written statement or explanation of any kind.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 122(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any (2)~~.
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishments or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 142, RP 46-50, 69, 118, 119(A), KR Con 328, 336, 343-346. Overseas AO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 58(7), KR Con 344. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 367. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

WL

MEDICAL CERTIFICATE

(AR(Can) Para 557)
(CFHC CL 173)

I certify that I have this day examined D71483 (No.)

Pte Smith R (Rank) (Name) and in my opinion he is

fit to ~~unfit~~ to undergo trial by Court-Martial.

Station In the Field

Date 18 May 44

(Sgd).
Medical Officer

(Unit) 32 FDS

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D-71483	Pte.		Robert	SMITH,	(X-4 list CIC) 3 Cdn Transit Camp, C.F.N.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has(~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and one~~s~~ (date) 19 Mar 46 endorsed by me, "~~is~~ ~~are~~ to be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable that~~ (Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~XX Pte~~ ~~appointed~~ ~~to act as Officer~~ ~~of the Court, not a Fd Offr as President, for the reason that~~ ~~XX Pte~~ ~~appointed~~ ~~as Judge Advocate, not a Fd Offr, for the reason that~~ (AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-Col.	W.W. LOCKHART, RCCS	3 Cdn Transit Camp

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Lt-Col.	E.L. de PENCIER, ED., RCA	3 Cdn Transit Camp
Lt-Col.	A.P. DODDS, RCA	3 Cdn Transit Camp

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Lt-Col.	R.G.L. PARKER, OBE., ED., ~~CAC~~	3 Cdn Transit Camp

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in the Field (Country.)

Date 18 March 1946

(Sig. personally. RP 105(C)(2).)
(T.J. Rutherford) C.B.E. Brigadier (Rank.)
~~XXXXXXXX~~ Deputy Commander, ~~XXX~~., C.F.N.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (See overleaf for oaths and notes for use on trial.)

CHARGE SHEET

The accused, D-71483 Pte. Robert SMITH, X-4 list, Canadian Infantry Corps, on strength of 3 Canadian Transit Camp, Canadian Forces in the Netherlands, a soldier of the Canadian Army Overseas, is charged with:-

Sec. 15(1) Army Act — WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

In that he

In the Field, at 2300 hrs 5 September 1945 absented himself without leave until he surrendered himself at 2245 hrs. 6 March 1946.
(Absent 181 days 23 hrs. 45 mins)

M.A. Frank

IN THE FIELD
16 March 1946

(M.A. Frank) Major
Officer Commanding
3 Cdn Transit Camp, CFN

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL.

T. J. Rutherford

IN THE FIELD
19 March 1946

(T.J. Rutherford) C.B.E.,
Brigadier,
Deputy Commander
~~Headquarters~~, C.F.N.,

Plea of Mitigation WS

This re in re to B71483 Pte Smith R.

This soldier joined up Aug 9 1940 and came to England in 1942 as a reinforcement He was sent to the Essex Scottish and served faithfully with this regiment throughout the campaign He landed on the continent on the 6th of June 1944 as a member of the 1st Brand of the Reg. and served as a member of this brand until the cessation of hostilities. To day he is the only living member of his original lot he.

Gentleman this soldier has been guilty of an A.W.L. charge and I know there is no excuse for such deliberate breaking of rules but I would like to point out to the court the reasoning of the soldiers mind, which will account for his actions.

At the time of his original regiment move towards repat he was transfered to the R. H. Rly ~~[illegible]~~ in order that he might be repated to his home military district.

The lad applied at his former Reg. for permission to marry but was told he would have to wait until he joined the new Reg.

When he reached the R. H. Reg he again applied for permission to marry and was told it was to late. He then requested to remain on the continent and again was told it was to late. He as his last resort he applied for service with C. A. O. F. and again was refused on the excuse that there were no vacancies.

Gentlemen you can easily see that this soldier had tried to act in the proper manner, but had been frustrated in his every attempt to do so, by lack of interest on the part of his superior officers.

It was natural therefore being been refused help on every hand, that this soldier tried to help himself. He met A. W. L. but found that he was unable to help himself being out of touch with military authorities & he therefore surrendered himself. He now repents and wishes to pay his penalty and have his affairs straightened out

In view of the circumstances of the case I would ask that the court be as lenient as possible in determining the cost which this soldier must pay for his seemingly wilful disobedience.

R. B. Hall Lt
Selective Trans Camp.

EXHIBIT "A" page 1

SUMMARY OF EVIDENCE

In the case of D-71483 Pte. Robert SMITH, X-4 list, Canadian Infantry Corps, on strength of 3 Canadian Transit Camp, Canadian Forces in the Netherlands, a soldie r of the Canadian Army overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on oath.

The following documents were laid before the Officer detailed to take the Summary of evidence, marked as exhibits "A" and "B" respectively, purporting to the accused, and initialled by him for the purpuse of identification.

"A" A certified true extract of 1st BN THE BLACK WATCH (RHR) OF CANADA Pt.II Order # 54 dated 18 Sep 45, showing the accused Absent from 2300 hrs 5 Sep 45.

"B" A certificate of arrest of the accused, at 2245 hrs. 6 march 1946.

The accused does not question the documents.

D R Saunderson

(D.R. Saunderson)Lieut.
Officer detailed to take
Summary of Evidence.

The accused was cautioned as follows:-

Do you wish to make a statement or give evidence on oath ? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement and reserves his defence.

Certified that all the provisions of R.P. 4 (c)(d)(e) and (f) have been complied with. Taken down by me in the presence and hearing of the accused this 16 day of March 1946, In the Field.

D R Saunderson

(D.R. Saunderson)Lieut.
Officer detailed to take
Summary of Evidence.

EXHIBIT A pages 1 & 8

LIST OF WITNESSES

In the case of D-71483 Pte. Robert SMITH.

(For the Prosecution)

NONE

(For the Defence)

NONE

LIST OF EXHIBITS

In the case of D-71483 Pte. Robert SMITH.

(For the Prosecution)

"A" A certified true extract of 1st BN THE BLACK WATCH (RHR) OF CANADA Pt. II Order # 54 dated 18 Sep 45, showing the accused absent from 2300 hrs 5 Sep 45.

"B" A certificate of arrest of the accused, at 2245 hrs. 6 March 1946.

(For the Defence)

NONE

CERTIFICATE OF ACCUSED

I, D-71483 Pte. Robert SMITH, hereby acknowledge that I have received, free of charge, one copy of the Summary of Evidence and one copy of the Charge Sheet therein.

I also request that an Officer be appointed to act as my Defending Officer at my forthcoming Court-Martia l.

R. Smith
(R. SMITH)

Ex "A"
DRS WS

PART II ORDER EXTRACT FORM

TO: D & P

99/20/ 1 Bn BW(RHR)/1

10 JAN 46 19

EXTRACT FROM: Unit 1st BN THE BLACK WATCH (RHR) OF CANADA

Part II Order No. 54 dated 18 SEP 45

ABSENT WITHOUT LEAVE

AWL from 2300 hrs 5 SEP 45 Still absent 2300 hrs 13 SEP 45
(8th day)

D71483 Pte SMITH R

[redacted]

The following documents are { attached. Please acknowledge receipt on attached duplicate.
required. Please forward same.

Certified to be a true extract from the regimental books and documents in my custody.
Officer IC Records
Cdn. Sec. 2 Echn. HQ 21 A GP

for

Originating Clerk's Initials .....

Officer in Charge
Canadian Section, G.H.Q., 2nd Echelon

ECH.—6
40/P & S/1276 (2671)

Ex. 8
DRS

"CERTIFICATE UNDER THE ARMY ACT, SECTION 163(1)(J)

I.....Lieut. A.E. Brock .....certify that

Reg. No.L71483. Rank.Pte.....Name...Smith,R.....

REGIMENT.Black Watch Regt.(RHR).....

UNIT.....

STATIONED AT.....

Surrendered himself to/Was apprehended by ..Rank Cpl...Name Butt,D...

of the.11 Cdn.Provost.Coy.Army.CAOW.... ....

on the ...8... day of.MAY.....1946, at 2245.. hours.....

..... AS AN DESERTER WITHOUT LEAVE.....

at the time of his surrender he was wearing (military uniform)

~~or civilian clothes~~)

Signature of Provost-Marshal, Assistant Provost-Marshal or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army, into whose custody the above named person was taken or surrender."

A.E. Brock Lieut.

(A E Brock) Lieut
Officer Commanding,
11 Cdn Provost Coy CAOW

EX. "B" WS
DRS

"CERTIFICATE UNDER THE ARMY ACT, SECTION 163(1)(J)

I.....Lieut. A.E. Brock .....certify that

Reg. No. D71483 Rank. Pte. Name. Smith H.

REGIMENT. Black Watch Regt (RHR).....

UNIT.....

STATIONED AT.....

Surrendered himself to No. A56001 Rank Cpl Name Butt G.

of the 11 Cdn Provost Company CAOF.....

on the ...8... day of MAY.....1945, at 0945 hours.....

..... AS AN ABSENTEE VICTORY LEAVE.....

at the time of his surrender he was wearing (military uniform)

~~civilian clothes~~)

Signature of Provost-Marshal, Assistant)
Provost-Marshal or other officer or the)
Commanding Officer of the portion of His)
Majesty's Forces or the officer, warrant-)
officer or non-commissioned officer in)
charge of the detachment of the Canadian)
Provost Corps, Canadian Army, into whose)
custody the above named person was taken)
on surrender."

A.E. Brock Lieut.
(A.E. Brock) Lieut
Officer Commanding,
11 Cdn Provost Coy CAOF

EXHIBIT "B" wf

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D-71483	Pte.	SMITH, R.	3 Cdn Transit Camp, CFN.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not screened to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instruction.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.		*Since Enlistment.	
For	NIL	times.	NIL	times.
For	NIL	times.	NIL	times.
For	NIL	times.	NIL	times.
For	NIL	times.	NIL	times.
For	NIL	times.	NIL	times.

[redacted]

or

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted, or [redacted]

3. The accused is not under sentence at the present time, or [redacted]

4. The accused has been in confinement, awaiting trial on the present charges, for 0 days in civil custody, and 12 days in military custody, making a total of 12 days, of which 0 days were spent in hospital.

5. The present age of the accused according to his [redacted] attestation paper is 25 Yrs.

6. The date of his [redacted] attestation specified in his [redacted] attestation paper is 9 Aug 40

[redacted]

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*)). 1939-45 Star, Fr.& Germ Star, Defence Medal, CVSM & Clasp.

[redacted]

(P2000) W1/14600/1750 20,000 10/43 A.& E.W.Ltd. Gp.698
(2000d) W1/15254/1600 15,000 2.44 " "

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. D-71483 Rank Pte. Name SMITH, R. of X-4 list CIC Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 18th day of March 1946

(J.H. Watson) Lieut.

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

Date of Promotion.

In the rank of ..... years.

In the rank of NIL years

In the rank of ..... years.

In the rank of ..... years.

(Instructions—*If any matter in any of the above five spaces cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs numbered accordingly.*)

EXHIBIT "C" wof

No. D-71483 Name SMITH, Robert Sqn, Battery, or Company — Corps CIC Date of enlistment 10 Aug 40 Badges — Service or Proficiency Pay — 3747 MFM 6 (AFB 122) 40(FAS/138 (5418))

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No — Signature OC Company, etc — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				CERTIFIED TRUE EXTRACT FROM MFM 4, Original Not Available(J.H. Watson)Lieut.) 16 Mar 46					
				Certified true copy of the original in my possession J.H. Watson, Lieut. (J.H. Watson)Lieut. Officer having custody of Original.					

(PTO)

42 H cpl SMITH R

O. H. M. S.

M. F. B. 270

D-61636 Cpl. Smith, R.
R.C.D.I.R.U.

42 H.

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this 21st day of April, 19 43

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN REINFORCEMENT UNITS, CDN ARMY, OVERSEAS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer];

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named appointed or detailed hereunder.

* Omit if not applicable.

*[I am unable to appoint:—

*(1. Three Officers to form the Court.)

*(2. A Field Officer as President.)

*(3. Three Officers having more than one year's service.)

for the following reasons, namely:—]

PROCEEDINGS REVIEWED.
Lt-Col Commanding Officer
6 May 43

President.

Rank.	Name.	Regiment.
Major	E.M. Miller	No. 1 Cdn Ord Reinf Unit

Members.

Rank.	Name.	Regiment.
A Captain	from	No. 1 Cdn Ord Reinf Unit
A Captain (RCASC)	from	Cdn Training School
A Lieutenant	from WAITING MEMBER	No. 1 Cdn Ord Reinf Unit

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed [signature] Brigadier

Commanding Cdn Reinforcement Units.

Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
D-41636 CPL. SMITH R. R.H.C. (Black Watch) 2 Cdn Div Inf Reinf Unit.	First Charge A.A. sec 41 Alternative Second Charge A.A. sec 40	Guilty Not Guilty	Guilty. To be reduced to the ranks and to undergo detention for Sixty days Not Guilty of 2nd charge (alternative)	Confirmed J.H. Nelson Brig
See charge sheet attached.				

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(*Signed*) J.H. Nelson Brigadier (*Signed*) E.A. Rivers Rogers Major

Commanding Cdn Reinforcement Unit, No. 2 Depot *President.*
Convening Officer (*c*)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 22nd day of April 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) The Shorthand writer
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 22nd day of April 1942

E.A. Rivers Rogers Major
President of the Court Martial.

C. Certificate in case of death sentence.

* See footnote (*b*) on page 762 M.M.L. 1939

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison until further orders.)~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 25 day of April 1942

J.H. Nelson Brig
Confirming Officer.

Promulgated and extracts taken in the case of D-41636 CPL R. SMITH PT II DO 101 OF 2 CDN DIV.

(*a*) (Dated) 29 April 1942 (Signed) The Shorthand writer

Promulgated and extracts taken in the case of ~~D-41636 CPL R. SMITH~~

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused No.D-81836 Corporal Robert SMITH,(R.H.C.) Administrative Wing, 2nd Canadian Division Infantry Reinforcement Unit, a soldier of the Canadian Army (Overseas) is charged with,

Charge 1 — COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, RECEIVING STOLEN GOODS

SECT 41 ARMY ACT

in that he

at Laurentide Camp between the 1st and the 9th days of April 1942, did receive 12 pairs of socks and 20 mufflers the property of the Canadian Red Cross, which property he knew to have been stolen from the Regimental Quartermaster Stores.

Alternative Charge 2 — CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

SECT 40 ARMY ACT

in that he

at Laurentide Camp at about 2100 hrs on the 10th day of April 1942, was improperly in possession of property belonging to the Canadian Red Cross to wit, 12 pairs of socks and 20 mufflers.

Col.
(M.E.Greene) Col.
Officer Commanding
2nd Cdn. Div. Inf. Reinf. Unit.

Laurentide Camp
18th April 1942.

To be tried by Field General Court Martial

(F.R. Phelan)Brigadier
Commanding Cdn Reinforcement Units.
Convening Officer.

Farnborough, Hants
This [illegible] of Apr 42.

2 C.D.I.R.U.
Laurentide Camp
Witley, Surrey
22 April 1942

re: D81836 Cpl. Smith, R.

I certify that the a/m soldier has been medically examined and found FIT to undergo trial by Field General Court Martial.

Medical Officer
2 C.D.I.R.U.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD
AT WITLEY, Surrey ON THE 22 DAY OF APR 42

TRIAL OF:- No.D-81836, CPL SMITH R., Unit 2 CDIRU.

The order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:- (Name) Lt. J.H. Louson, (Unit) 2 CDIRU.

Defending Officer:- (Name) Lt. H.E. Clements, (Unit) 2 CDIRU.

At 1430 hrs the trial commences.

The order convening the court is read, signed by the President and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1 Do you object to be tried by me as President or by any of the officers whose names you have heard read over? A1 -No, sir.

The President, members and judge-advocate (if any) are duly sworn.

The following constitute the Court:

President ..Major E. Miller,.....(Unit) No 1 CORU.

Members ....Capt. A. Sanders,.....(Unit) No 1 CORU.

....Capt. A.W. Searle,.....(Unit) C. T. S.

The officers under instruction are duly sworn.

Q2 Do you object to ...Sgt. T. Pyburn.....acting as shorthand writer? A2.No, sir.

The shorthand writer is duly sworn.

The accused pleading Guilty to the charges in the above mentioned charge sheet, R.P.35(B) is duly complied with.

The summary of evidence is read, signed by the President, and attached to the proceedings.

Court is closed to consider its finding. Court is re-opened.

Name..Lt. J.H. Louson.....(Unit)....2 CDIRU..... sworn, produces AFB 296 and MFM 6 and upon being questioned by Court states that the accused is the person named in these documents which have been compared by him with Regt'l records and are true extracts of the same. No cross-examination. Above documents read, signed by President and attached to the proceedings.

Q3. (To accused) - Do you wish to make any statement in mitigation of punishment? A3 -Yes, sir.

Q4. Do you wish to give evidence yourself or to call any witnesses as to character? A4 -Yes, sir.

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER GIVEN BEFORE THE COURT IS CLOSED FOR THE CONSIDERATION OF THE SENTENCE

ACCUSED, sworn, stated "I am more or less the third party in this case." Did not know where to get rid of articles. Never in trouble of this kind previously. Soldier working under accused stated he knew where to dispose of articles, apparently informed police and accused "walked into trap." "I did not sell this stuff for monetary value to myself because there was practically nothing in it for myself. I hope you will be a bit lenient with me owing to that, sir. I feel very bad about it." Questioned by the prosecutor, accused admitted he recd £3 for articles, but it was his intention to turn that sum over to a third party, Pte McGregor in Q.M. stores.

P.T.O.

LIST OF WITNESSES

In the case of No.D-81876 Cpl. R.Smith.

(For the Prosecution)

1. Capt. F.B. Creasy — C.R.U. Aldershot
2. K-86437 Sgt.S.L.Johnson — " "
3. E-8481 Pte.C.McGregor — 2nd C.D.I.R.U. Laurentide Camp

(For the Defence)

None

I hereby acknowledge that I have received a true copy of the Summary of Evidence taken at **Laurentide** Camp preliminary to my Court Martial and I further acknowledge receipt of a copy of the Charge Sheet under which I am being brought to Court Martial.

R Smith

Laurentide Camp
18 April 1942

Capt. R.P Scott

I hereby request that the Convening Officer appoint an ~~Officer~~ to represent me at my forthcoming Court Martial.

R Smith

Laurentide Camp
18 April 1942

No. D 81836 Name Smith R Sqn., Battery or Company No 3 Corps BW (R H C) Date of enlistment O.C. Badges Service or Proficiency Pay MFM 6 (A F)

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

F. J. Hawthorn
Major,
O.C. Administrative Wing
2 C.D.I.(H)

Cert. pro Tune Copy.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD
AT WITLEY, Surrey ON THE 22 DAY OF APR 42

TRIAL OF:- No. D-81836, CPL SMITH R., Unit 2 CDIRU.

The order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:- (Name) Lt. J.H. Louson, (Unit) 2 CDIRU.

Defending Officer:- (Name) Lt. H.E. Clements, (Unit) 2 CDIRU.

At 1430 hrs the trial commences.

The order convening the court is read, signed by the President and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1 Do you object to be tried by me as President or by any of the officers whose names you have heard read over? A1 -No, sir.

The President, members and judge-advocate (if any) are duly sworn.

The following constitute the Court:

President ..Major E.". Miller,.....(Unit) No 1 CDRU.

Members ....Capt. A. Sanders,.....(Unit) No 1 CDRU.

....Capt. A.W. Searle,.....(Unit) C. T. S.

The officers under instruction are duly sworn.

Q2 Do you object to ...Sgt. T. Pyburn.....acting as shorthand writer? A2.No, sir.

The shorthand writer is duly sworn.

The accused pleading Guilty to the charges in the above mentioned charge sheet, R.P.35(B) is duly complied with.

The summary of evidence is read, signed by the President, and attached to the proceedings.

Court is closed to consider its finding. Court is re-opened.

Name, Lt. J.H. Louson,....(Unit)....2 CDIRU,..... sworn, produces AFB 296 and MFM 6 and upon being questioned by Court states that the accused is the person named in those documents which have been compared by him with Regt'l records and are true extracts of the same. No cross-examination. Above documents read, signed by President and attached to the proceedings.

Q3. (To accused) - Do you wish to make any statement in mitigation of punishment? A3 -Yes, sir.

Q4. Do you wish to give evidence yourself or to call any witnesses as to character? A4 -Yes, sir.

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER GIVEN BEFORE THE COURT IS CLOSED FOR THE CONSIDERATION OF THE SENTENCE

ACCUSED, sworn, stated "I am more or less the third party in this case." Did not know where to get rid of articles. Never in trouble of this kind previously. Soldier working under accused stated he knew where to dispose of articles, apparently informed police and accused "walked into trap." "I did not sell this stuff for monetary value to myself because there was practically nothing in it for myself. I hope you will be a bit lenient with me owing to that, sir. I feel very bad about it." Questioned by the prosecutor, accused admitted he recd £3 for articles, but it was his intention to turn that sum over to a third party, Pte McGregor in Q.M. stores.

P.T.O.

CAPT I A POIRIER, formerly Q.M. 2 CIHU, now of 2 CDIRU, sworn, states accused formerly i/c sanitary sec. No complaints against accused; always found him good worker, reliable and honest. Known accused approx 18 mos. In cross-examination stated accused was looking after salvage in incinerators under O.C. HQ Coy.

DEFENDING OFFICER stated accused had clean record in last war. Reviews circumstances and requests leniency.

ACCUSED: "In the last war I had nearly 4 yrs in army." Served only in Canada, therefore not entitled to decorations. Turned down for o/s service and kept in Canada on special service. Good record, no trouble.

CERTIFIED a true and correct
report of the proceedings:-

Shorthand Writer.

LIST OF WITNESSES

In the case of No.D-81836 Cpl. R.Smith.

(For the Prosecution)

1.	Capt. F.B. Creasy	C.R.U. Aldershot
2.	K-85437 Sgt.S.L.Johnson	" "
3.	E-5481 Pte.C.McGregor	2nd C.D.I.R.U. Laurentide Camp

(For the Defence)

None

I hereby acknowledge that I have received a true copy of the Summary of Evidence taken at Laurentide Camp preliminary to my Court Martial and I further acknowledge receipt of a copy of the Charge Sheet under which I am being brought to Court Martial.

R Smith

Laurentide Camp
18 April 1942

Capt R.P Scott

I hereby request that the Convening Officer appoint an ~~officer~~ to represent me at my forthcoming Court Martial.

R Smith

Laurentide Camp
18 April 1942

No. D 81836 Name Smith R | Sqn., Battery or Company No 3 Corps | BW (R H C) | Date of enlistment | G.C. Badges | Signature O.C. Company, etc. | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

H. H. Henchy
Major,
O.C. Administrative Wing
2 C.D.I.(W)
Cert. pro True Copy.

P.T.O.

ARMY FORM B 296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D81836	Cpl.	R.Smith	(R.H.C.) 2nd C.D.I.R.U.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, preference being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	times	times.
For	times	times.
For	times	times.
For	4 times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct,

or

There are no entries in the conduct sheets of the accused.

2. ~~The accused has not been previously convicted, or~~

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 78 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, or ~~The accused at the present time is under sentence for~~ beginning on the day of

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 11 days in military custody, making a total of 11 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~regimental~~ attestation paper is 44

6. The date of his ~~enlistment~~ attestation specified in his ~~regimental~~ attestation paper is 13-11-39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 2 yrs 5 mos

8. The accused is entitled to deferred pay or gratuity in respect of 2 yrs 5 mos service.

9. The accused is entitled to reckon 2 yrs 5 mos service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or is in possession of or entitled to (state any military decoration or reward)*).

11. (*If the accused is a warrant officer.*) The accused ~~before he~~ was made a warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of dated and in his regiment (*or corps or department*) the rank of dated

(*)[9440] Wt.20345/6032 Th.[illegible] 12/40 A.& E.W.Ltd. Gp.698

Pte.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. ..... Rank ..... Name ..... of ..... Regiment (or as the case may be)

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be entered.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 22nd day of April 1942

H Mackup Major,
O.C. Administrative Wing
2 C.D.L.U.

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of Corporal 1 year 3mos. 20/8/40

In the rank of ..... years .....

In the rank of ..... years .....

In the rank of .....

(INSTRUCTION—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be obtained from such sources as are available and the paragraph inserted accordingly.)

SUMMARY OF EVIDENCE
in the case of

D81836 Corporal SMITH, R., Administration Wing, No. 2 Canadian Division Infantry Reinforcement Unit, a soldier of the Canadian Army (Overseas)

Evidence taken under oath by direction of the Commanding Officer.

FIRST WITNESS PROSECUTION — Captain F.B. Creasy, D.A.P.M., C.R.U., Aldershot, having been duly sworn, states:

"I am Captain F.B. Creasy of C.R.U. Aldershot. On the 10th April 1942 at about 2130 hours Corporal Smith was brought to me, having been placed under arrest by Sgt. Hewett. I placed him in my station wagon and drove to No 2 C.D.I.R.U. Detention Barracks. Prior to placing him in Detention, I had him searched. There were found in his possession three £1 Notes U 66 D064220, U66 D064221 and U66 D064222, also two two-shilling pieces and a slip of paper bearing the address S.L. Johnston, 63 Bridge Street, Guildford 872, on the reverse side of which was written: Socks 2/- Scarf 2/- Boots 15/-, Shirt 5/-, Vest 2/6, Drawers 2/6. I took possession of the above articles and placed Cpl. Smith in detention.

F.B. Creasy Captain
(F.B. CREASY)

The accused declines to cross-examine this witness.

SECOND WITNESS PROSECUTION — K85437 Sgt. S.L. Johnson C.R.U. A statement of this witnesses' evidence purporting to be signed by him has been read to the accused, and is included in the Summary of Evidence. Having regard to the expense and loss of time involved, the attendance of this witness at this Summary of Evidence cannot, in my opinion, be readily procured.

I.H. Lousson Lieut
(I.H. Lousson) R.H.C.

THIRD WITNESS PROSECUTION — E5481 Pte. McGregor, C. Administration Wing, 2 C.D.I.R.U having been duly sworn, states:

"A few days ago Cpl. Smith asked me if I could get him some scarfs and socks. I said I would try to get them. Cpl. Smith told me he could give me one shilling per pair for the socks and one shilling each for the scarfs. I took 10 or 12 pairs of socks from the Red Cross barrel and put them in a cardboard box. I also put 2 packages of mufflers in the box. I think each package contained 10 mufflers. Wednesday or Thursday, Cpl. Smith and another man came in to collect salvage. I gave them the box of wool and they took them out. They did not tell me when they were going to sell these, but I expected to receive 32 shillings from them when they were sold.
R.Q.M.S. Sommers did not know anything about this deal.

C McGregor Pte
(C. McGregor) E5481

The accused declines to cross-examine this witness.

The accused having been duly cautioned under R.P. 4 (e) elects to make the following statement:

"Pte. McGregor who works in the Q.M. stores asked me if I could get rid of a few things for him. I told him I did not know how to do it but that I would see Pte Boden and find out how to sell it. Pte. Boden said he would make arrangements and later introduced me to S.L. Johnson. I approached Pte. Boden and asked him to sell it for me.
I sold rags from the salvage to the junk dealer on the back road. Pte. Boden went down the next day and collected the money. Pte. McGregor is the man who asked me to sell this stuff. We collected salvage once a week. This stuff was carried out of the Q.M. stores in daylight in a cardboard box. This box was given to me by Pte. McGregor. Pte. McGregor said he wanted 1 shilling per pair for the socks and 1 shilling each for the scarfs. I sold them for 2 shillings each and made the extra profit for myself.
On Thursday April 9, 1942, we (Pte Garceau) went to Tongham salvage yard with a load of burnt tin cans. We returned to the incinerator and loaded up 2 bags of rags and some bottles. We left Garceau in camp. Boden and myself went down to a junkyard back of Witley Camp. Boden went in to see the boss. I sat in the truck; the boss was not in. We left the bags inside the gate of the junkyard. On Friday Boden went to the junkyard to collect. On his return he took me to the N.A.A.F.I. and bought me two beers and gave me a shilling.

R Smith CPL.
D81836 Smith, R.

Certified that Rules of Procedure 4 (c) (d) (e) (f) and (g) have been duly complied with.

Taken down by me in the presence and hearing of the accused this 18th day of April 1942 at Laurentide Camp, Witley, Surrey.

I.H. Louson Lieut
I.H. Louson (R.H.C.)
Officer detailed to take Summary of Evidence.

D.A.P.M. C.R.U.

Farnborough 11 Apr 42

D 81836 Cpl. SMITH, R. No.2 C.D.I.R.U.
E 5481 Pte McGREGOR,C.No.2 C.D.I.R.U.

ILLEGAL SALE OF RED CROSS GOODS THAT HAD BEEN SENT FOR DISTRIBUTION TO H.M. FORCES.

1. With reference to the above I beg to report that at about 1730 hours 10 Apr 42 I proceeded to Laurentide Camp, Witley where I contacted Pte Boden No.2 C.D.I.R.U. who told me he would introduce me to a Cpl.Smith who had several pairs of socks and several mufflers for sale. At about 1800 hours 10 Apr 42 Boden in company with Cpl.Smith approached me on the Barrack square where I was introduced to Cpl.Smith as Mr.Johnson from Guildford who would purchase any articles he had for sale. Cpl.Smith then told me that he had several pairs of socks and mufflers locked in the incinerator and that we could go along and see them. We proceeded to the incinerator where Cpl.Smith unlocked a door on the left side of the incinerator and we went inside. Just inside the door was a large cardboard box containing 12 pairs of socks and 20 mufflers. Cpl.Smith asked for 2 shillings each for the socks and mufflers but stated that he did not want to carry them across the open field in daylight and asked me to return at 2100 hours at which time he would have them put into sacks and would deliver them to me on the road, he then said that he was able to remove rags, wool and bottles in the salvage truck without being noticed. I asked him where he sold these rags and bottles and he stated that they were sold to a junk dealer below the camp and that he received 1d per pound for rags and 5d per pound of wool, he stated that he had sold this dealer 40 pound of rags on Thursday.

2. Cpl.Smith asked that I furnish him with my address and phone number and a list of prices so that he could do business in the future. At 2100 hours 10 Apr 42 I again contacted Cpl.Smith and was told by him that he had put the articles in two sacks and would bring them to the road if I had the money ready. Cpl. Smith brought two sacks containing 12 pairs of socks and 20 mufflers to me on the road below the incinerator and I handed him three one pound notes and two - two shilling pieces. The numbers of the notes were U 66 D 064220 - U 66 D 064221 - U 66 D 064222. At the same time I gave him a slip of paper with the following particulars S.L.Johnson, 63 Bridge Street, Guildford 872., Call and ask for Sam or Frank. On the back of the paper was this list of prices. Socks 2/, Scarf 2/, Boots 15/, Shirt 5/, Vest 2/6 Drawers 2/6.

3. After Cpl.Smith had accepted the money he started to walk down the road with me. About 50 feet from where the sale had been made Sgt.Hewett No.2 section L.of C. approached us and asked what we were carrying. Cpl.Smith said just some wool which I have just sold to this gentleman. Sgt.Hewett informed Cpl.Smith that he was under arrest and signaled for the station wagon. Cpl Smith was returned to Camp 102 where he was lodged in the Guardroom by Capt.Creasy. On being searched by Capt.Creasy the three one pound notes and the address were taken from his pockets. Cpl.Smith stated that he was not alone in this and some others would be involved.

S. L. Johnson Sgt.
(K5547) Johnson S.L.)
Canadian Provost Corps

W 6

Cpl SMITH, R

Correspondence to be PINNED here

Army Form A.3.

W.6.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this TENTH day of December, 1942.

Whereas it appears to me, the undersigned, an officer in Command of 1 Canadian Artillery Group, First Canadian Army, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to superior qualified officer.]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*[I am unable to appoint:—

*(1. Three Officers to form the Court.)

*(2. A Field Officer as President.)

for the following reason, namely:—]

* Omit if not applicable.

Proceedings Reviewed (Capt.) A/Brigadier General Staff (A.G.) H.Q. 2 Feb 43

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	J.J.McAsey, R.C.C.S.	HQ, First Cdn Army.

Members.

Rank.	Name.	Regiment.
Capt.	J. W. Drennan,	HQ First Cdn Army Def Coy (Lorne Scots).
Capt.	R. A. Packman, R.C.O.C.	HQ, First Cdn Army.
Lieut.	E. G. Vernon, R.C.C.S.	First Cdn Army Signals.

WAITING MEMBER

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (B.J. Leach) Brigadier,
Commanding 1 Cdn Arty Group.
Convening Officer.

2

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
L1316, Cpl SMITH, Roy, HQ, First Cdn Army	FIRST CHARGE ~~Army Act 19~~ WHEN ON ACTIVE SERVICE, DRUNKENESS. See Charge Sheet Attached.	~~not~~ guilty	guilty Severely Reprimanded ~~16 Dec 42~~ 17 Dec 42 Jmcl	Confirmed KCL

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"
Answer (*to be recorded on separate sheet if necessary*) :— no

(Signed) (R.J. Leech) Brigadier, (Signed) J.McCleary Maj
Commanding 1 Cdn Arty Gp.
Convening Officer (e) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 16 & 17th day of December 1942 and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*~~(3. The interpreter)~~ sworn
*~~(4. The officers under instruction)~~ sworn

were duly sworn.

Signed this 17th day of December 1942.

J.McCleary Maj
President of the Court Martial.

* Omit if not applicable.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further order.~~ KCL

Signed this 20th day of Dec 1942.

R.J. Leech Brigadier
COMD. 1 CDN. ARTY. GP.
FIRST CDN. ARMY
Confirming Officer.

Promulgated and extracts taken in the case of L1316 Cpl Smith Roy. 749 First Cdn Army.

(*a*) (Dated) 23 Dec 42 (Signed) [illegible] Major, Off. i/c Details, H.Q. First Cdn. Army.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

120/[illegible] R/1/J

H.Q., First Cdn Army
24 Dec 42

W 6

REVIEW SHEET

M. PROCEEDINGS - Dated 16th & 17th Dec 42
Cpl Smith R
First Cdn Army

1. Finding and Sentence duly confirmed and promulgated.

2. No Comments.

3. Passed.

(T.G. Norris) Major
D.J.A.
First Cdn Army

GM/GLP

- CHARGE SHEET -

The Accused No. L1316 Corporal Roy SMITH on the strength of Headquarters, First Cdn Army, Overseas, is charged with, when on Active Service:-

1st Charge
A.A. Sec 19

Drunkeness

in that he

at Spring Gardens, London, at about 1510 hours, on the 20 November 1942, was drunk.

In the field
5-12-42

J McCreight
Pres.

W.B. Martin
(W.B. Martin) Major,
Offr i/c Details,
HQ First Cdn Army.

To be tried by Field General Court Martial.

In the Field
Dec 42

(R.J.LEACH) Brigadier
Comd
First Cdn Arty Group

I certify that I have this morning examined 16/12/42.

No. L 1316 Rank Cpl. Name Smith R

and in my opinion he is fit/~~unfit~~ to undergo trial by Court Martial.

J.A. Gardiner Maj. RCAMC.

(Medical Officer)

Headquarters First Canadian Army.

J.M. Casey Maj
P.M.

I certify that I have this morning examined 17/12/42.

No. L6316 Rank Cpl. Name Smith R

and in my opinion he is fit/~~unfit~~ to undergo trial by Court Martial.

per ---J. A. [illegible] Maj. RAMC

(Medical Officer)
Headquarters First Canadian Army.

PROCEEDINGS OF TRIAL

Accused H316 Cpl ~~Driver~~ Roy SMITH HQ First Cdn Army
(Number) (Rank) (Christian Names) (Surname) (Unit)

Held in the Field in ENGLAND on 16 Dec 42
(Country)

	Rank	Name	Unit
President	Major	J.J. McCASEY RCCS	HQ First Canadian Army
Members	Capt	J.W. Drennan	HQ First Cdn Army Rest Camp (Home Secty)
	Capt	R.A. Patterson	RECC HQ First Cdn Army
Judge-Advocate (if any)			
Prosecuting Officer	Lieut C.S. McKAY-Ferris - 1 Hamilton Regt.		Lawyer? Ans. No
Defending Officer	Capt A DesRosiers - 4 Lincoln Regt.		Lawyer? Ans. YES

(The following procedure must be actually carried out.)

The President produces the Convening Order, Charge Sheet(s) and Summary of Evidence. (Rs.P. 17(E); 22(A))

The President, in closed court (R.P. 22 fn 1), reads the Convening Order and the Charge Sheet(s) to the members, and the Court satisfy themselves that it is properly convened (A.A.49; R.P.105) and constituted, that the accused is (are) amenable to Military Law, and that each charge discloses an offence. (R.P.108)

The accused is (are) brought before the Court, and at 1450 hours the trial commences.

The Prosecuting Officer produces a Medical Certificate under K.R. (Can) 557 that the accused is (are) fit to undergo trial by court-martial. The certificate is initialled by the President, and attached to the proceedings.

President to accused

Do you object to N/A as interpreter? Ans. N/A

Do you object to N/A as shorthand writer? Ans. N/A

The names of the President and Members of the Court are read to the accused (R.P. 110)

President to accused

Do you object to be tried by me as President or by any of the officers whose names you have heard read over? Ans. Yes. (no detail attached)

The President, Members, Judge-Advocate, officers under instruction, interpreter and shorthand writer are duly sworn. (R.P. 26-27) (Forms of Oath, p.3)

The Charge Sheet(s) is (are) initialled by the President.

The Prosecuting Officer informs the Court that the accused has (not) elected trial by court-martial. (A.A. 46(8))

President to accused

Do you wish to make any special pleas before arraignment, that is to say, before you plead guilty or not guilty? Ans. No

(If special plea(s) is (are) made for separate trial on one or more charges (Rs.P. 62(E), 108); or as to the jurisdiction of the Court (R.P. 34); or in bar of trial (R.P.36); or as to accused's mental fitness to stand trial (A.A.30, R.P.57), record such plea and evidence (if any) on separate sheet(s) to be initialled by the President and attached to the proceedings.)

Each charge is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty (R.P.112). He pleads as follows:-

First Charge	Second Charge	Third Charge	Fourth Charge
Not guilty			

(For procedure on alternative charges, see RP.37 fn 2.)

Further proceedings are recorded on Pages hereto attached.

PAGE "B"

(For Use when Accused Pleads Not Guilty to All Charges.)

(All printed matter not applicable to be struck out, and all alterations erasures, and additions to be initialled by the President.)

1. President to accused:-
   Q. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence? (R.P. 39(A)) Ans. No.

2. The Prosecutor's opening address (if any) (R.P. 39(B)) and the evidence for the Prosecution are recorded on separate sheets, initialled by the President and attached hereto.

3. The Prosecution is closed. (If submission that there is no prima facie case established, see R.P.40 fn 1; R.P.70 fn 1.)

4. The accused is informed that he may, if he wishes, give evidence, but if he does so, he will be liable to cross-examination (R.P. 40 fn 2).

5. President to accused:-
   Q. Do you apply to give evidence yourself as a witness? Ans. Yes
   Q. Do you intend to call any other witness in your defence? Ans. Yes
   Q. Is he a witness as to character only? (R.P.40(B)) Ans No

6. The evidence for the Defence (if any) is recorded on separate sheets, initialled by the President and attached hereto.

7. The closing addresses of the Prosecutor, Defending Officer and Judge-Advocate (if any) are recorded on separate sheets, initialled by the President and attached hereto. (For order of addresses, see Rs.P. 40, 41 and 42.)

8. The Court is now closed to consider the finding. (Rs.P. 43 and 117) (Record finding on p.3.)

9. The Court being re-opened, the accused is again brought before it and the findings of Not Guilty (if any) are pronounced and (if findings of Not Guilty on all charges) the accused is released. (R.P. 117(B))

10. Lieut C.S. McKay Ferris 1 Med. Regt sworn
    (Rank) (Christian Names) (Surname) (Unit)
    produces Statement of Character and Service, and Field Conduct Sheet, duly certified by the Officer having custody of the Regimental Books. The said documents are read, marked "A", "B", initialled by the President and attached to the proceedings (R.P.46).

11. President to accused:-
    Q. Do you wish to address the Court on the Statements of Character, Service and Conduct and in mitigation of punishment? (R.P. 46(D)) Ans. ~~NO~~ YES.
    No cross-examination.
    (Record address, if any, on separate sheet, initialled by the President and attached hereto.)

12. The Court is now closed to consider the sentence. (Record on p.3.)

(Punishments, A.A. 44, K.R.(Can) 563-566; one sentence only awarded, R.P.48; jurisdiction of F.G.C.M., R.P.116.)

The sentence is not announced to the accused by the Court.

J. McAdam Kay
(Signature of President)

Defense objects to present court on following grounds:-

Present court has heard former trial in which Sgt Stockwell was the accused, which charge came out of a series of facts which are identical ones with which present one comes on.

The present assertion is based on fact that same witnesses appear on both charges, summaries of evidence are the same, & it has been brought out in Stockwell case that he was one of the trio of NCO's arrested 2 a Nov 42.

There is no doubt but what evidence will be the same, & the court having passed judgment on the evidence, I submit that it is a necessary conclusion that it will come to the same judgment in present instance, otherwise the court would not be consistent with itself, which cannot be admitted.

Essential principle of law accused when having to trial, is that he is presumed innocent until proved guilty. The accused in present case, if tried by present court will be deprived of that essential principle, & will be prejudged throughout his whole defence.

I wish to point out that these remarks apply to the court as a court, not to the members.

To sum up. It would be humanly impossible for each officer to know of a series of facts & not to know about them at the same time.

For these reasons, the accused respectfully requests that Convening Officer appoints a new court to try the charge accused

court as rules that as this was not a plea to give jurisdiction nor plea to bar of trial, objection will have to be made to individual officers.

11

Pointed that objections must be made by individual members of the court.

Objections taken to Pres. on grounds of prejudice for reasons given in previous argument.

Court re-opened + objection disallowed (reason).

Defence raised objection to junior member of court for same reasons as originally.

Court re-opened + objection disallowed (reason).

Reasons for not allowing -

- evidence as to charge (drunkenness) was not given specifically about previous accused, + reasons given explains, the evidence were specific reasons with regard to previous acc, + were not applied to present accused, or to any group of which he was the accused

---

1st witness for prosecution

L.H.H. L/Cpl. Shields. S.R.

- duly sworn, states
- #6 Provost Coy
- recognize accused
- 20 Nov 42 - 1500 hrs - Sgt Gardner met acc + 2 other soldiers, hanging on to each other, clothing unbuttoned + disarranged, singing + shouting
- approached + asked them to straighten themselves up + behave properly
- asked when supt met them? - replied - 15 min. later
- attendant at B.C. asked me to come on + at S mess Bar, accused + others were in bathroom.
- on being called to B.O. we proceeded to P130 where acc + others were shoving people around + yelling + shouting
- action taken by you? asked him + 2 others to accompany me to office downstairs. While there, acc. repeatedly told Lt. [illegible] Capt Stockwell to order [illegible] to stand to attn. when talking to a Sgt.
- [illegible]
- when was arrest made? In office when we took them downstairs
- Why? - accused was drunk + disorderly
- Why was acc. drunk in your opinion? - he could [illegible]

stand up properly & couldn't answer questions put to him properly. Breath smelled strongly of liquor. The accused also repeatedly told Sgt. S. to order me to stand to attn when talking to a Sgt.
- Why didn't you arrest him upstairs? We intended letting him go.

Cross Ex -
- when you saw acc. first time was he alone?
- No - he was in company with 2 others
- Was he in middle, inside, or outside of pavement?
- I couldn't tell you, sir, I don't pay that much attn. to whether the men are standing.
- Did he have his cap on?
- Yes, he had his cap on.
- Did he have his tunic on?
- Yes
- Was it buttoned
- No, it wasn't.
- Was that of other 2 NCO's buttoned?
- No, they were all unbuttoned.
- Did they have gt. coats on?
- The accused had gt. coat on.
- How far were you from acc. when you first saw him?
- About 50 ft.
- Were you facing him, or the back of him?
- Facing him when they came in the gate
- ~~were they~~ the acc singing at that time?
- ~~they were creating a disturbance~~
- I couldn't say if the acc. was singing at that time.
- When was acc. singing?
- I have already stated they were 50 ft. away when I first saw them, they were all singing, he might have stopped for air.
- Did you not say before that the acc. was not necessarily singing but creating a disturbance?
- I said the acc. was singing & shouting & hanging onto the other 2 soldiers.

- What was he singing?
- I never paid no attention. To what they were singing.
- Would it be possible that only 2 of these chaps were singing?
- The three of them were singing + shouting
- When you asked them to show passes did they comply?
- Yes, they did
- There was no reason to detain them then?
- No, other than to ask them to straighten their clothing which they did
- Did they walk properly to Leamington?
- They straightened their clothing + walked to B.C.
- Did they walk properly when they left you?
- They must have walked properly as we would have checked them up.
- Don't you remember?
- Yes, they walked in an orderly manner into B.C.
- Like any ordinary soldier?
- They walked into B.C. like any ordinary soldier.
- Did they talk normally when you questioned them?
- No, they talked as though they'd been drinking but they gave me no reason to believe that they were drunk at that particular time.
- When the acc. + his companion said that they'd behave, did you think they would behave like sober people?
- They had been drinking
- Did you think that they talked like people who were drunk?
- They were not drunk when we were talking to them
- At that particular time what was the behaviour of acc?
- Boisterous
- About how long after we you called to B.C.?
- Approx. 15' min
- You moved over to S.B.?

Dwell

V

- We went upstairs to SB
- Did you have intentions of arresting anybody there?
- No, we never have intentions of arresting anybody unless the cause is a just one, or something to that effect.
- And you asked the accused to come downstairs?
- To come down stairs
- Who did you ask first to come downstairs?
- I asked the acc., Cpl Smith
- Who did you ask his companion?
- We asked Sgt S. at the same time
- And they came down together?
- Yes they came down together
- And did they put up any objection?
- They talked a lot about not going down, but Sgt. convinced the acc. that they should go downstairs. The Sgt passed remark that he'd fix things up.
- At that special moment, who the acc. & his companion were coming down the stairs, you had no intention of putting them under arrest?
- No
- Who was interrogated first - the acc. or Sgt. S.
- Sgt. Stockwell questioned first
- What was asked to him?
- There wasn't much asked. We intended talking to them when the acc. kept ordering the Sgt to tell us to stand to attention, & the Sgt started pushing around. They were both using profane language at this time so I arrested them.
- In other words you arrested them because they were using profane language?
- ~~That was one of the reasons~~ Because they were drunk & disorderly.
- Were they drunk before they got to the officers downstairs?
- Yes, they were.

Recess

- Were they drunk coming downstairs from cantina to office?
- Yes
- Were they drunk in the S.B.?
- Yes.
- Were they drunk on the street?
- I cannot say
- Why didn't you arrest them in the S.B.?
- There were too many people around. On anything like that we try to get as much little bad publicity as possible.
- Then you would have arrested them in the S.B.?
- If I couldn't have talked to them
- Why did you have the intention of letting drunk people go. Is that the way you proceed?
- No. That isn't the way we proceed.
- Why did you have the intention of letting them go then?
- Because if they had only been drunk & were just noisy we wouldn't have had ~~to~~ arrested them, or had any intentions of arresting them
- So the accused was not drunk in the S.B.
- Yes, he was drunk.
- You just said previously that if they were had only been drunk & noisy you would not have arrested him. Therefore your ~~conduct caused~~ decision whether or not he was drunk in the S.B?
- Not till we decided to take them downstairs
- You told the court that going down the stairs from S.B. to office you didn't have any intention of arresting the acc. Do you persist in that statement?
- Yes

Mac

- You further said that it is not the habit of your corps to let drunk people go, is that right?
- Yes.
- You explained when asked why you had not arrested the acc. & had merely taken him of during so while going down the stairs, was because the acc. might have only been drunk & noisy. Is that a fact?
- That is correct.
- Then how can you swear he was drunk in the S.B?
- By his actions.
- How do you reconcile the two versions you gave, Which one do you choose to give to the court?
- ~~If a person~~
If a person is just drunk we can talk them into going home to bed until they sober up. That was why we took the down stairs
- In one part of your testimony you swore under oath that acc was drunk in S.B., do you admit that?
- Yes
- Immed. afterwards you implied that ~~he was~~ you admit how whether the acc, was drunk or not by saying that if he had been only dirty & noisy you would have had no intention of arresting him?
- Yes.
- Do you understand me?
- Yes.
- You come here & swear that these fellows were drunk ~~in the S.B~~ from the time ~~they~~ you first saw them in the S.B.
- ~~When~~ When we entered the canteen we didn't know if they had been drinking & were just noisy & after questioning ~~them~~ I asked them to come down stairs with me as he was drunk.

VIII

- So the questioning took place upstairs & not downstairs?
- We asked them a few questions upstairs
- Why didn't you state that before in your statement?
- You didn't ask me.
- As a matter of fact when the arc. went down stairs you didn't have any intention of arresting him.
- Not if I could have talked to arc. to see if he wouldn't straighten out & go home to bed till he straightened up.
- Isn't it a fact that if dec had not ordered Sgt. St. to tell the L/Cpl. to stand to attn. while addressing the Sgt. you wouldn't have arrested the arc. & his companions?
- That was one of the reasons I arrested him.
- I put it to you that you were sore about the arc ordering Sgt to tell L/Cpl. to stand to attn
- No.
- Then you arrested the arc. because of above order?
- I couldn't say, he repeated it so often. A Cpl. in who had been drinking a reason a state that was not fit state to walk around. He was drunk.
- That was main reason you decided he was drunk?
- One of the reasons.
- If arc. had not said that he wouldn't have been free?
- I can't answer that

Pass

First witness (cont'd) Cross Exa.

Q - At what precise moment did you actually decide to arrest the acc?

A - When I found out they were drunk & couldn't be trusted to get out into street & conduct themselves in proper manner.

Q - Same questions as above

A - In the office downstairs

Q - As soon as acc. got into the office, or a while after?

A - A while after

Q - Was it after an argument occurred between acc. & yourself?

A - No, it wasn't

Q - Then there was no argument between you & acc. before you elected to arrest?

A - No

Q - Was it after the acc. told Sgt. He to order you Detained to cells?

A - Yes

Q - Cool license of that?

A - That was one of the reasons

Q - That acc. came down the stairs by himself?

A - Yes

Q - He didn't have to be helped?

A - No the Sgt commenced him to come with us

Q He didn't fall down the steps?

A - No.

Q - He walked down properly?

A - Yes

Q Then do you mean to say that one moment he could walk down stairs properly & the next moment he couldn't stand up?

A - Yes

Q - As soon as he got in office he couldn't stand up?

A - He could stand up, but not properly

Q But in your opinion he wasn't able to stand properly?

A - Yes.

Fusca

Q - There was no [illegible] in the office downstairs?
A - There was a great crowd standing around.
Q - Is there a door back of that door
A - It is the B.C. office
Q - And are you down at same time as S.S. + T/O3dr - -?
A - At same time as Sgt S.
Q - Did you arrest the two at same time?
A - Yes.
Q - Who made arrest?
A - I did.
Q - Consult your companion before?
A - No
Q - What did you actually say when you put acc + Sgt S. under arrest
A - I told I was putting them under arrest they wanted to know what charge before I told them drunk + disorderly
Q - Did you put both under arrest at same time
A - Don't remember
Q - Don't a fact that you first put Sgt S. under arrest?
A - I am not sure
Q - If I tell you that Sgt S was first under arrest + the acc protested, what was when you put him under arrest?
A - No ~~I don't say I put the handcuffs on that~~
Q - When did you arrest T/B3dr
A - After he kept interfering with my duty + was around
Q - Did you have nothing with complainant last night?
A No
Q - Sgt S + acc came down to gether to office downstairs
A - Yes
Q - + after a while you put both under arrest?
A - Yes
Q - Was acc present all the time - that office
A Yes
Q - Did you let him go away after he was arrested
A - He might have taken a step out of the door

Q - went you make ~~it~~ [illegible] ?
A - There were two of them.
Q - Did I tell you that he went up stairs again will you deny it ?
A - I don't remember him going upstairs.
Q - So you don't remember your men after from the two of you took them till you took them away ?
A - I don't think I handed up upstairs.
Q - But you can't swear that he didn't ?
A - I'd can't swear.

Prosecution

Q Two arrest created [illegible]
A Cpl. Hawes

President of Court

Q - Did you search all arrests ?
A - No I arrested Cpl S. & Sgt. S
Q - You both looked after all prisoners
A - We all worked together.
Q ~~Two arrests created by~~ [illegible] one.
A ~~He left [illegible]~~

JMcA

Court closed to discuss while question/sentence
court reopened.

JMcA

Case of L-1316 Cpl Smith, R

Second Witness M-25880 L/Cpl. Davis, C.H. being sworn states:

I am M-25880, L/Cpl. Davis, C.H. of #6 Cdn. Provost Coy.

Prosecutor examines.

Q. Do you recognize the accused?
A. I Do.
Q. Where did you first encounter the accused?
A. On Spring Garden Lane at entrance to Beaver Club.
Q. What date and time?
A. 20 Nov 42 at approx. 1500 hrs.
Q. Why was your attention directed to him?
A. I saw him coming down the entrance to the Lane, singing, shouting, overcoat unbuttoned and he had his arms arms two other soldiers.
Q. What action did you take?
A. We ordered Cpl. Smith to button up his clothing.
Q. Did he comply?
A. Yes.
Q. What happened then?
A. We allowed accused and his companions to proceed into Beaver Club.
Q. Where did you next encounter accused?
A. Up stairs in the Snack Bar at the Beaver Club.
Q. Was the Beaver Club part of your patrol.
A. No.
Q. What were you doing inside then?
A. We were called in.
Q. Did you know why you were called in to the Beaver Club?
A. The attendent at the Beaver Club called us in.
Q. Did you have any idea when you were called in the Beaver Club, what you were being called in for?

Defence objected to question. Objection overruled.

A. We had a very good idea.

Q. You had a good idea of what?
A. That Cpl. Smith and two other N.C.O.'s were causing a disturbance.
Q. Why should you suspect Cpl. Smith and his companions?
A. We knew Cpl. Smith was under the influence of liquor from his previous actions.
Q. And yet knowing these men were under the influence of liquor you permitted them to proceed?
A. After being checked they were quite presentable.
Q. And Cpl. Smiths actions were all that could be expected of him? A. Yes.
Q. Was the accused drunk at the time of this first encounter?
A. He was acting in a drunken manner.
Q. What was the action of accused when you saw him in the Beaver Club.
A. He had his clothing undone and was pushing through a queue at the Snack Bar.
Q. What action did you take with reference to the accused?
A. We told accused he would have to leave with us.
Q. Did accused object?
A. Yes.
Q. Did he leave the Beaver Club?
A. He came donw to the front office with L/Cpl. Shields.
Q. Was there an arrest made?
A. Yes in the office.
Q. After arrest in whose custody xxx was accused placed?
A. He was in custody of L/Cpl Shields and myself.
Q. Was he in xxx the charge of any particular person?
A. No.
Q. Was accused drunk in the office?
A. He was acting in a drunken manner, kept hollering at Sgt. Stockwell to make us stand to attention.
Q. When did accused leave the office?
A. He was out of the office once on his own.
Q. How was he returned to the office?
A. He came back on his own.

Q. Did he leave the office again?
A. When taken to the van.
Q. Was he under arrest when he left the office the first time?
A. Yes.
Q. What action did you take when he left the office?
A. None. We were both holding Sgt. Stockwell.

THE DEFENCE DECLINES TO CROSS EXAMINE.

Court asked witness:
In answer to the question "Was the man drunk"?, you anawered "The man was acting in a drunken manner" can you state whether the man was drunk or not drunk.

Defence objected that it was a leading question, Overruled.

Witness: I said the man was acting in a drunken manner because I understood it was only a Medical Officer who could definitely xxx state that a man was drunk.
Court instructed witness that he was entitled to no state condition of anyone

Third Witness

B. 74166 A/Sgt. Chenery, A.R.E. being sworn states, I am B-74166 A/Sgt Chenery, A.R.E. of #6 Cdn. Provost Coy.

Prosecutor examines:
Recognize
Q. Do you ~~know~~ the accused?
A. Yes.
Q. When did you see him before?
A. When he was escorted in to #6 Provost station at about 1530 hrs. 20 Nov. 42.
Q. Was the accused drunk on that occassion?
A. I would say he was under the influence of liquor.
Q. What is the basis for your assumption?
A. He staggered to a certain extent, he was very quiet and on being placed in a cell he fell into a deep sleep.
X.
Defence Cross Examines

Q. You say accused had had a drink?
A. He was under the influence of liquor.

Counsel for accused submits there is no Prima Facie Case established for the following reasons:
1st. There is contradiction in testimony of L/Cpl. Shields.
2nd. In the reasons he gives for his opinion of drunkenness, the last thing he gives is that the accused could not stand properly, this should have been the very first reason.
3rd. Even this is contradicted by L/Cpl. Shields evidence that the accused could walk xxxxxx properly down the steps immediately before he was arrested.
4th. L/Cpl. Davis does not mention the fact that accused could not stand properly.

Court Closed to consider submission. Submission not agreed to. Court re-opened.

First Witness for defence.

L-1316 Cpl Smith R. CMSC H.Q.First Cdn Army being sworn states: I amd L-1316 Cpl. Smith R. CMSC H.Q.First Cdn Army.

Q. Were you drunk on 20 Nov 42?
A. No.
Q. Were you staggering?
A. No.
Q. Were you first to be arrested?
A. I was first to be checked up.
Q. What happened in the snack bar.
Q. When we went there it was crowded, we pushed to the head of the line.

Q. What happened when the Provost appeared?
A. They said we were not conducting ourselves properly and asked us to do down stairs with them.
Q. Did you walk straight down stairs?
A. Yes.
Q. Did he arrest you?
A. No.
Q. Did you leave the office again.
A. Yes.
Q. When you came back what did you find?
A. Provost and Sgt. Stockwell arguing, I remarked to Sgt. Stockwell that xxx the Provost were not addressing him properly. Then I was put under arrest.
Q. Was Sgt. Stockwell arrested then?
A. I did not hear him arrested.
Q. When was L/Bdr. Gordon arrested.
A. About five minutes after I was.
Q. How was L/Bdr. Gordon arrested?
A. I was arrested. L/Bdr. Gordon spoke to the Provost and asked them to release us and we would go home. Provost said you keep out of this or we will arrest you. So they arrested him.
Q. Have you taken a drink before?
A. Yes.
Q. Have you been more under the influence of liquor before, than you were that day.
A. Yes.
Q. Tell the Court your condition that day.
A. I had had a few drinks. I was happy.

Prosecutor declines to question.

Second witness for defence.

M.2840 Sgt. Stockwell, R.N. being sworn states, I am M-2840 Sgt. Stockwell, R.N. of CMSC, H.Q. First Cdn Army.

Q. On 20 Nov 42 was accussed drunk?
A. No.
Q. What was condition of accused?
A. He was not even feeling good.
Q. Had you had some drinks?
A. Yes.
Q. Was he less affected by the liquor than the rest of you?
A. Yes.
Q. How did he walk?
A. He did not sway or stagger.
Q. When the provost say he was drunk is it an exageration or the truth?
A. Exaggeration.
Q. Was he drunk?
A. No.
Q. What happened at the Snack Bar?
A. We were pushing in the queue, the Provost came and talked to me, they asked me to go down to the office. I went.
Q. Was there any argument with the Provost?
A. Yes.
Q. How was accused arrested?
A. I Don not know.
Q. When was L/Bdr. Gordon arrested?
A. Several minutes after accused.
Q. Were any words exchanged before L/Bdr Gordon was arrested?
A. Yes he said "You can't do this to me".

Prosecutor Questions:

Q. Do you work with the accused?
A. Yes.
Q. Is accused usually law abiding?
A. Yes.

Third Witness for Defence.
D-119630 L/Bdr. Gordon, G.T. being sworn states, I am L/Bdr. Gordon G.T. RCA H.Q.First Cdn Army.

Q. On 20 Nov 42 was accused drunk?
A. No.
Q. In what state was he?
A. Happy.
Q. Did he stagger?
A. No
Q. Making noise?
A. Just average.
Q. Were you present when arrests were made?
A. Yes.
Q. How were arrests made?
A. I overheard them being arrested.

Prosecutor questions.

Q. When was accused brought down stairs?
A. I do not know.

Address by Defence Counsel.

All the arguments put forth in my argument in support of No Prima Facie case, submission applies here.

The Court has to choose between the version of the Provost and Defence. Unless the evidence brought by accused in cross examination is destroyed the Court is bound to give it full value. The same applies to the other two witnesses who are not to be considered accomplices. The weight of evidence favours the defence, three witnesses against two.

L/Cpl Shields testimony contains contradictions on essential facts like time of arrest, who was in charge of accused and his companion Sgt. Stockwell. There is also contradiction when he states accused was drunk in the Snack Bar and then says he could walk properly down stairs.

When asked to give his reasons as to his opinion of drunkenness, the very last one he gives is the fact that accused could not stand properly any ordinary man would have given that as the first reason.

L/Cpl Mavis does not even mention that fact.

All the explanation given by the two witnesses for the prosecution to justify their assertion that accused was drunk, does not necessarily conclude to drunkenness and they must do so to justify a conviction of drunkenness.

We submit that the reason for the arrests was the antagonism which developed between accused and his party with the provost following an argument about their dress and behaviour and way of talking to the Provost.

Prosecutor being sworn presents the following documents.

MFM 355 being a statement of charachter and service of the accused.

MFM 6 of accused. Prosecutor pointed out that this document contained six entries that did not bear the signature of the officer making the award and suggested these entries should be disregarded.

Court considered this matter and directed the Prosecutor to rule out the entries that were not properly signed.

The MFM 6 was then accepted by the Court.

CHARACTER WITNESS
A-37204 Sgt. Slidders, A.W. being sworn states, I am A-37204 Sgt Slidders A.W. of the Regimental Police, H.Q.First Cdn Army.

Q. Do you know the accused?
A. Yes.
Q. State his character.
A. I have known accused for six months, I have had no trouble of any kind with him.

mca

Court Closed to consider findings.

Court re-opened.

Defence Counsel makes statement in mitigation of punishment.

The accused deserves the gr ates leniency, he has been a good soldier and on this occassion was on leave after a spell of hard work. He was not concerned with anything serious, you might call it an escapade. I would ask the Court to give him the utmost clemency.

Note:

The Court found accused guilty and sentenced him to be severely reprimanded. The punishment was not made more severe because it was felt a large part of the reason of accused being arrested was due more to his argument with the Provost rather than his drunken condition. Accused was not charged with being disorderly but with drunkenness, the Court therefore feel that his drunkenness was not sufficiently serious as to merit severe punishment.

J.W.A.

SUMMARY OF EVIDENCE

in the case of

L1316 Cpl. Smith, R.

of C.M.S.C. at Headquarters First Cdn Army.

First Witness: I hereby certify that owing to the exigencies of the service on the grounds of expense and loss of time involved, the attendance of

144 L/Cpl. Shields, G.R.
125880 L/Cpl. Davis, C.H.

could not readily be procured and their statements of evidence purporting to be signed by them has been read to the accused in accordance with R.P. 4 (G) and is included in this summary as Exhibit "A".

The accused having been duly warned as follows. "Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence".

The accused makes the following statement:

"I am L1316 Cpl. Smith, R. of C.M.S.C. at Headquarters First Cdn Army. On the 20th day of November, at about 1510 hrs, in the company of a Sgt. and L/Bdr., I was proceeding along Spring Gardens to the Beaver Club. We were stopped by the Provost and asked for our passes. We were then allowed to proceed on into the Beaver Club. While we were in the Snack Bar, apparently we were making too much noise and the Provost came up to us and took us down to the lobby. After the Provost had spoken to me I returned upstairs. When I came downstairs again a few minutes later, the Provost were still talking to Sgt. Stockwell. I took offence to the manner of the Provost who was talking to Sgt. Stockwell and remarked about it. I was also then placed under arrest and taken to H.Q. No. 6 Cdn Provost Coy, in the van.

R. Smith .....Cpl.
(R. Smith) L1316

Certified that R.P. 4 (C) (D) (E) (F) have been complied with.

Taken down before me in the presence and hearing of the accused, this first day of December 1942.

R.E. Morden .....Capt.,
(R.E. Morden) Capt.,
H.Q. First Cdn Army.

/DCW

Pres.

No. L1316 Name Smith R. Sqn., Battery, or Company — Corps S.L.I.(R.C.) Date of enlistment 23 Sept39 G.C. Badges — Service or Proficiency Pay — M.F.M. 6 (A.F.B. 177) (11M—7-41 (1218-20)) H.Q. 1771-35-1652

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. — Signature O.C. Company, etc. — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	22/6/41	Pte		Sec 15(1)A.A.AWL from 2230 hrs 22-6-41 to 1800 hrs 25/6/41		Reprimand	30-6-41		Forfeits 3days pay
Field	30-7-41	"		Sec 40 A.A.		Forfeits 7days pay	31-7-41		
Field	17-10-41	CPl		Sec15(1)A.A.AWL from 2300 hrs 17-10-41 to 1800 hrs 19-10-41		Reduced to the ranks	20-10-41		Forfeits 2days pay
Field	29-10-41	Pte		Sec 10(4) A.A &Sec15(1) .A.A.		10days F.P.	31-10-41		Forfeits 10days pay
Field	2-1-42	"		Sec15(1) A.A. AWL fromfrom 0800hrs 2-1-42 to 1600 hrs 2-1-42		Forfeits 5days pay	3-1-42		Forfeits 1 day pay
Ewshot	2-242	"		Sec15(1) A.A.AWL from 0800 hrs 2-2-42 to 1030 hrs 3-2-42		Admonished	4-2-42		Forfeits 1 Day pay

P.T.O.

B

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	30 Oct 42	A/C		WOAS neglecting to obey the standing orders of GS Branch First Cdn Army inthat he went off duty before his work was up to date, contrary to para 3(b) of the said Standing Orders. A.A. Sec 11.	S.M. Wolchuk	Reprimanded	1 Nov 42.	(W.B. Martin) Major Offr i/c Detals, HQ First Cdn Army.	

CERTIFIED TRUE COPY

(A.C. MacWilliams) Captain,
Camp Commandant,
HQ First Cdn Army.

May Pres

M.F.S. 355
40/P & S/675

A

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
L1316	Cpl.	Smith. R.	6 M.S.C. at HQ 2nd Ld Army

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
For	X times	X times
For	1 times	1 times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct None.

or,

There are no entries in the conduct sheets of the accused. Only as listed above.

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted As above.

or,

Previous convictions of the accused by a court-martial or a civil court, of ~~summary awards under Air Force Act~~ A.F.A. 73 Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time. No.

or,

The accused at the present time is under sentence for - beginning on the - day of - N/A

4. The accused has been in confinement awaiting trial on the present charges, for N/A days in civil custody, and - days in military custody, making a total of - days in custody, of which - days were spent in hospital.

5. The present age of the accused according to his record of service is attestation paper is - 22 yrs.

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 28-9-39

7. The service which the accused is allowed to reckon towards discharge is N/A.

8. The accused is entitled to reckon N/A service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward (or is in possession of or entitled to). State any ~~air force~~ military decoration or reward. N/A

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

N/A dated ....., and in his regiment (or corps), the rank of

..... dated ..... N/A

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

8-12-40 . L/Cpl
27-2-41 A/Cpl
22-6-41 Reverts Pte. ..... 1/9/42 .....Date of promotion.
19-8-41 A/Cpl

In the rank of ..... years.

In the rank of 20-10-41 - Reverts Pte ..... years.
1-5-42 - L/Cpl

In the rank of 1-9-42 A/Cpl - 3 mos. 2 days. years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank .....

Name ..... of ..... Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 9 day of Dec 42 .....

Camp Commandant
H.Q. First Cdn. A.F.V.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked A and signed by the president, and annexed to the proceedings.

pres.

LDA-76

SPR SMITH R.

Correspondence to be PINNED here.

12/Hqrs RG11 DD-76

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

On Active Service, this 16th day of April, 1943.

Order convening the Court.

Whereas it appears to me, the undersigned, an officer in Command of 2 Cdn Corps Troops, Royal Canadian Engineers, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~(and that it is not practicable to delay the trial for reference to a superior qualified officer.)~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*~~(I am unable to appoint :—~~

*~~(1 Three Officers to form the Court.)~~

*~~(2 A Field Officer as President.)~~

*Omit if not applicable.

~~for the following reasons, namely :—~~

17 May 43

Proceedings Reviewed

[illegible]

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

President.

Rank.	Name.	Regiment.
Major	R. J. Smallman R.C.E.	4 Bn R.C.E.

Members.

Rank.	Name.	Regiment.
Capt.	J. Lang R.C.E.	H.Q. 2 Cdn Corps Tps.
Lt.	J. M. Thompson R.C.E.	No 2 Tun Coy.
Lt.	(To be named by O.C. No 1 Tun Coy R.C.E.)	as Waiting Member.

*Signed [illegible] Lt-Col

Commanding R.C.E. 2 Cdn Corps Tps

Convening Officer.

Draw out two alternates in case any challenges which arise during course of trial.

Ltr Comdr Corps to OC 2 Fd Coy RCE 27 May 43.

SCHEDULE

Number, Rank (a) Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B-88279 Sapper Smith, R.	First Charge A.A. Sec 15(1) N.O.A. Absenting himself without leave (see attached charge sheet	GUILTY	GUILTY 84 days Detention	Confirmed 20 Apr 43 [illegible] Lt. Col. H.Q. R.C.E. 2 Cdn. Corps Tps.

*Question to be asked of accused, if he pleads not guilty (K. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

X (Signed) [signature] (Signed) [signature] Maj R.C.E.
H.Q. R.C.E. 2 Cdn. Corps
X Commanding [signature] 4 Bn R.C.E.
~~Convening Officer~~ (c) Lt. Col. President.
H.Q. R.C.E. 2 Cdn. Corps Tps.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 20th day of April 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

*Omit if not applicable.

1. The members of the Court
2. The witnesses
*(3. ~~The Interpreter~~) R'L
*(4. ~~The officers under instruction~~)

were duly sworn.

Signed this 27th day of April 1943.

R'L Smellie Maj
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 282 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this 27th day of April 1943.

R'L Smellie Maj
President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*~~I direct that the soldier named in the margin be not committed to prison or detention barracks until further orders.~~)

CAC

Signed this 1 day of May 1943

[signature]
H.Q. R.C.E. 2 Cdn. Corps Tps.

Promulgated and extracts taken in the case of B 88279 Spr. Smith R.

(a) (Dated) 1 May 43 (Signed) [signature] MAJ.
O.C. No. 1 Cdn. Tunnelling Coy. R.C.E.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

Exhibit B

CHARGE SHEET

The accused, No.B88279 Sapper Smith,R. of No.1.Canadian Tunnelling Company, Royal Canadian Engineers, Canadian Army Oversens is charged with:

First Charge AA Sec 15(1) While on active service, absenting himself without leave in that he at Betchworth, Surrey absented himself without leave from 2359 hours 8 March 1943 till 1600 hours 12 April 1943.
Time absent 34 days 16 hours 1 minute.

J.Watson
(W.Watson) Major,
Officer Commanding, 1 Cdn Tunn Coy RCE
Canadian Army Overseas.

20 Apr 43

In the field

13 April 43.

To be tried by Field General Court Martial.

16 Apr 43

C.B.H. Campbell
Lt. Col.
H.Q. R.C.E. 2 Cdn. Corps Tps.

Exhibit A.

MEDICAL OFFICER'S CERTIFICATE

K.R.(CAN) PARA 557

I certify that I have this morning examined

Name Spr Smith, R. Number H88370

of No. 1 Cdn Tunn Coy RCE and in my opinion he

is fit to undergo Field General Court Martial

Station Field

Date 20 Apr 45

Medical Officer

Accused B98279 Spr ROBERT SMITH No 1 Tunnelling Coy RCE
(Number) (Rank) (Christian Names) (Surname) (Unit)

Held in the Field in ENGLAND on 20 Apr 43
(Country) (Date)

	Rank	Name	Unit
PRESIDENT:	Major	R.J. SMALLIAN	4 Bn RCE
MEMBERS:	Capt	J. LANG	No RCE 2 Cdn Corps Tps
	Lieut	J.M. THOMPSON	2 Cdn Tunn Coy RCE

JUDGE ADVOCATE: (If any)

OFFICERS UNDER INSTRUCTION:

PROSECUTING OFFICER: Lieut G. REID Lawyer? Ans No

DEFENDING OFFICER: Lieut F.J. STEPHENSON Lawyer? Ans No.

(The following procedure must be actually carried out)

The President produced the Convening Order, Charge Sheet(s) and Summary of Evidence. (Rs P 17(E), 22(A)).

The President, in closed court (R.P.22, fn 1), reads the Convening Order and the Charge Sheet(X) to the Members, and the Court satisfy themselves that it is properly convened (A.A.49; R.P.105) and constituted, that the accused is (~~X~~) amenable to Military Law, and that each charge discloses an offence. (R.P.106)

The accused is (~~X~~) brought before the Court, and at 1015 hours, the trial commences.

The Prosecuting Officer produces a Medical Certificate under K.R. (Can)557 (See CMHQ Circular Letter 173) that the accused is (are) fit to undergo trial by Court Martial. The certificate is initialled by the President and attached to the Proceedings.

President to accused: Do you object to NA as interpreter? Ans N.A.

The interpreter is duly sworn.

Do you object to ~~#74168 Spencer E~~ [illegible] as shorthand writer? No

The shorthand writer is duly sworn. (Forms of Oath on Page 'D'.
The Convening Order is read in the hearing of the accused.
The names of the President and Members of the Court are read to the accused (R.P.10)

President to accused: Do you object to be tried by me as President or by any of the Officers whose names you have heard read over? Ans No

The President, Members, Judge Advocate and Officers under Instruction are duly sworn (R.P.25-27 (Forms of Oath on Page 'D'))

The Charge Sheet(X) is (~~X~~) initialled by the President.

The Prosecuting Officer informs the Court that the accused has (has not) elected trial by Court Martial (A.A.46(8))

(If special plea/s is/are made for separate trial on one or more charges (Rs P 62(E), 108); or as to the jurisdiction of the Court (R.P.34); or in bar of trial (R.P.36); or as to accused's mental fitness to stand trial (A.A.130, R.P.57), record such pleas and evidence (if any) on separate sheet/s to be initialled by the President and attached to the proceedings.

Each charge is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty (R.P.112). He pleads as follows:

First Charge GUILTY

Second Charge _____

Third Charge _____

Fourth Charge _____

Fifth Charge _____

Sixth Charge _____

Seventh Charge _____

Eighth Charge _____

(For procedure on alternative charges, see R.P. 37, fn 2)

Further proceedings are recorded on Pages hereto attached.

PAGE 'A'

(For use when accused pleads guilty to all charges)

(All printed matter not applicable to be struck out and all alterations, erasures and additions to be initialled by the President)

1. R.P.35(B) is complied with, by the President ascertaining that accused understands the nature of the charge/s (fn 3) and his plea thereto, explaining the difference in procedure by the plea (R.P. 37(B) and advising him to withdraw his plea if he thinks the accused ought to plead 'Not Guilty' thereto.

2. President to accused:
Q. Do you desire to make any statement of the circumstances, in reference to the charge/~~s~~? (R.P.37(B) Ans NO

(Statement, if any, not on oath is recorded on separate sheet, initialled by the President and attached hereto. Accused is not subject to cross-examination thereon)

3. Summary of Evidence is read aloud, in the presence of the accused, initialled by the President and attached to the proceedings. (If no such summary, it is necessary for determination of sentence that sufficient evidence be taken and recorded on separate sheet, initialled by the President and attached to the proceedings (R.P.37(B)).

4. President to accused:
Q. Do you wish to make any statement in mitigation of punishment? (R.P.37(C). Ans NO

(Statement, if any, is recorded on separate sheet, initialled by the President and attached hereto. No cross-examination)

5. President to accused:
Q. Do you wish to give evidence yourself or call any witnesses as to character? (R.P.37(C). Ans YES

(Such evidence, confined to character only, is recorded on separate sheet, initialled by the President and attached hereto)

6. Statement of Character and Service (A.F.B.296) and Field Conduct Sheet (M.F.N.6), signed in the manner required by A.A.163(1)(n) and purporting to refer to the accused by his number(if any), rank, name and Corps, are produced to the Court, read, marked " ", and " ", initialled by the President and attached to the proceedings. (R.P. 46; Overseas R.O. 3131)

7. President to accused:
Q. Do you wish to address the Court on your Statements of Character, Service and Conduct in further mitigation of punishment? (R.P.46(D)). Ans NO (No cross-examination)
(Record address, if any, on separate sheet, initialled by the President and attached hereto)

8. The Court is now closed to consider sentence. (Record on Page 2 of A.F.A.3)
(Punishments, A.A.44, K.R.(Can)563-566; one sentence only awarded, R.P.48). Sentence should be dated)

The sentence is not announced to the accused by the Court.

R.J. Mackay Major
(Signature of President)

E V I D E N C E

A N D

S T A T E M E N T S

I N T H E

CASE OF

SPR. SMITH R. B- 88279

RA
27 Apr 43

20th APRIL 1943

Court is declared open at 1030 hours 20 April, 1943.

President and Members and Clerk of Court were sworn in and The Summary of Evidence read. Charge is Read. Accused plends "Guilty".

President
Maj. R.J.Smallian — Do you wish to give evidence on behalf of the accused ?

Defence
Lt. F.J.Stephenson — Yes, I will call Major Watson and C.Q.M.S. Cowan.

Major H. Watson, Commanding Officer, #1 Cdn. Tunnelling Coy., R.C.E. is called.

Defence — Will you be good enough to tell the Court as to the behaviour of Spr. Smith?

Major Watson - — Spr. Smith is one of the original recruits in this Company and to my knowledge his general character has been good. I consider him a valuable soldier in the Company.

Defence — To your knowledge has he ever been absent without leave before, Sir?

Major Watson - — I am not certain, I understand his only crimes in the Army were one or two A.W.L.s, just minor absences.

Defence — Do you consider Spr. Smith to be a good tradesman?

Major Watson - — He is a valuable tradesman.

Defence — That is all Sir.

C.Q.M.S. Cowan, A., B-73399, #1 Cdn. Tunnelling Coy., R.C.E. is called.

Defence — Sergeant Cowan I want you to tell the Court the conduct of Spr. Smith while in the Shetland Islands.

C.Q.M.S. Cowan — I had a detachment of twenty nine men in the Shetland Islands, during that time Spr. Smith was employed in the kitchen which entailed long hours of duty. It was a very isolated spot and all through Spr. Smith did his best to keep up the morale of the men, which was very necessary in such an isolated spot. Previous to going to the Shetlands, I have had Spr. Smith in my charge on various occasions and I can truly state that he has always been a good and efficient soldier.

President — Have you the statement of character and a certified copy of the NFM 6?

Defence — Yes, Sir.

Court is adjourned for five minutes.

Court is opened.

President — Are there any further witnesses as to character?

Defence — I have, I wish to corroborate C.Q.M.S. Cowan's statement. I wish to corroborate the evidence given by C.Q.M.S. Cowan I first met the accused three years ago and worked with him in the field when I was an N.C.O. I always found him a good soldier, possessing initiative, and always a good example to men in his sub-section. That is all Sir.

President — Do you wish to address the court in further mitigation of punishment?

Defence — No, Sir.

President — The Court is now closed to consider sentence.

Court closed at 1130 hours April 20, 1943.

Exhibit D.

SUMMARY OF EVIDENCE in the case of B88279 Sapper Smith,R of No.1.Canadian Tunnelling Company, R.C.E. The evidence is taken on oath by direction of the Officer Commanding.

First witness for the prosecution - Capt.R.E.Neelands, having been duly sworn states:

I am Cap. R.E.Neelands of No.1.Tunnelling Company, R.C.E. I submit a true copy of the Court of Inquiry taken from your Regimental Book on Illegal Absence of Soldiers in the case B88279 Sapper Smith,R, dated 30 March, 1943.

R.E.Neelands.
Sgd(R.E.Neelands)

The accused declines to cross-examine this witness.

Second witness for the prosecution - B25209 Sgt.Nicholas,E.W., Having been dul y sworn states:

I was H.Q. section sgt. and called the daily roll daily from the 9th of March 1943 till the 30th of March 1943 inclusive, and marked Smith,R absent in the roll book each day.

E.W.Nicholas
Sgd(E.W.Nicholas)

The accused declines to cross-examine this witness.

Third witness for the prosecution - B29358 Sapper E.A.W.Keays, having been duly sworn states:

The 12th April,1943 at 1300 hours Sapper Smith,R rep orted as returned to me at the guard room. I placed him under open arrest.

E.A.W.Keays.
Sgd(E.A.W.Keays)

The accused declines to cross-examine this witness.

Fourth witness for the prosecution - H39225 Cpl.Illsley,C.W., having been duly sworn states:

On the 12th of April 1943 I was acting Company Orderly Sgt., and at 1545 hrs it was rep orted that Sapper Smith,R was in the Camp Area. Knowing him to be A.W.L. for a considerable length of time I immediately hunted him up and placed him under close arrest in the guard room. Then reported the matter to the C.S.M.

Question by the accused - When was I put under close arrest.

Answer - Approx. 1630 hours.

C.W.Illsley
(Sgd) C.W.Illsley.

Sheet #2

The accused having been duly cautioned in accordance with Rule of Proceedure 4 (e) elects to reserve his defence.

Certified that Rule of Proceedure 4 (c)(d)(e)(f)(h) has been complied with.

Taken down by me in the presence and hearing of the accused this 13th day of April 1943.

(Y.H.Williamson) Lieut.
No.1.Tunnelling Company.
Royal Canadian Engineers.

Exhibit C

RECORD of the Declaration of a Court of Inquiry assembled at Betchworth on the 30 Day of March 1943, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B88279 Spr.Smith,R.

DECLARATION

The Court declare, that B88279 Spr.Smith,R. illegally absented himself without leave on 8 March,1943, that he is still so absent, and that his kit is dificient of the following artisles:

		Price			Price
			Brought foward		1-16-4
Brushes clothes	1	1-1	Spoon dessert	1	4½
Brushes hair	1	1-1	Towels, hand	2	1-1
Drawers Woolen	1	5-3	Blouses -Battle dress	1	27-8
Fork NS Table Small	1	5	Vests,woollen	2	10-2
Jersies pullover	1	6-9	Trousers,serge	1	19-8
Laces, boot	1	1	Boots,ankle pairs	1	21-6
Shirts, angola	2	18-4	Tins,rectangular	1	1-8
Socks, worsted prs.	2	3-4			
		1-16-4			£5-18-5½

Names of President and Members:

Pres. Sgd (Capt.R.E.Woolands) RCE
Members Sgd (LieutJ.D.Whittaker) RCE
Sgd (Lieut.G.Reid) RCE

Signature of Commanding Officer Sgd (H.Watson) Major.

CERTIFIED TRUE COPY of Army Book 161- "Record of Declarations of Courts of Inquiry on Illegal Absence of Soldiers"

H.Watson - MAJ.
O.C. No. 1 Cdn. Tunnelling Coy. R.C.E.

Exhibit DE

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number B86279 *Rank.* Sapper *Name.* Smith,R. *Regiment (or as the case may be).* No.1.Tunnelling Coy.,R.C.E.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For AWL	times	2 times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

~~Number of instances of gallantry or distinguished conduct.~~

or

~~There are no entries in the conduct sheets of the accused.~~

2. The accused has not been previously convicted, *or*

Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensation, with trial under section 73 of the Army Act, are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time, *or* The accused at the present time is under sentence for N.A. beginning on the N.A. day of N.A.

4. The accused has been in confinement, awaiting trial on the present charges, for N.A. NO days in civil custody, and ~~NIL~~. 9 days in military custody, making a total of ~~NIL~~. 9 days, of which ~~NIL~~. NO days were spent in hospital.

5. The present age of the accused according to his ~~attestation paper~~ record of service is 25 yrs.

6. The date of his ~~enlistment~~ attestation specified in his ~~attestation paper~~ record of service is 21/11/39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is N.A.

8. The accused is entitled to deferred pay or gratuity in respect of N.A. service.

9. The accused is entitled to reckon N.A. service for the purpose of determining his pension, etc.

10. The accused is in possession of, ~~was awarded~~, no military decoration or military award (*or is in possession of or entitled to (state any military decoration or reward)*).

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of N.A.

12. (*In the case of an officer.*) The accused holds in the army the rank of N.A. dated No. and in his regiment (*or corps or department*) the rank of N.A. dated N.A.

(*16645) Wt.30244/3602 75,000 12/40 A.& E.W.Ltd. Gp.698

21 Apr 43

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B 88279 Rank A/A. Name Lovell A. of the Queens Own Regiment (or as the case may be).

(INSTRUCTION—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial	Charges upon which convicted, or in respect of which trial was dispensed with	Sentence of the court or authority disposing of the charge, or order of the disposing authority	Punishment remitted

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 20 day of Apr. 43

O Watson Maj

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

	Date of Promotion.
In the rank of ..... years,	.....
In the rank of ..... years	.....
In the rank of ..... years,	.....

(INSTRUCTION—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs inserted amended accordingly.*)

No. B88279 Name Smith, R. Sqn., Battery, or Company No.1.Cdn.Tunnelling Coy.RCE Corps #2 D.D. C.A.S.F. Date of enlistment 21/11/39 G.C. Badges Service or Proficiency Pay

M.F.M. 6
A F H 1737
175M—7-41 (2219-20)
H.Q. 1772-39-1652

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Verified to date 21/5/40 (Colin A Campbell) Major C.C.No.1.Cdn.Tunnelling Coy. R.C.E.					
Wanston	15-8-41	L/Cpl		WOAS A.W.L. - at Wanston, was absent without leave from 0800 hrs 15/8/41 to 0700 hrs. 18/8/41 Absent 2 days 23 hours AA.15(1)	M.C. DeForest.	Reprimand & Forfeiture of 3 days pay FRAI 149(1)(a)	(C.A.Campbell) Major.		
Mortson	15/12/41	Spr.		W.O.A.S. A.W.L. from 0800 hrs. 15/12/41 to 1900 hrs. 18/12/41 Absent 2 days 9 hours AA Sec 15(1)	L/Sgt. Foster.	Forfeits 3 days pay. Total 6 days pay.	9/1/42	(C.A.Campbell) Maj. Less 3 days pay.	

CERTIFIED TRUE COPY/

D Watson MAJ.
O.C. No. 1 Cdn. Tunnelling Coy, R.C.E.

Exhibit E

(P.T.O.)

QQQ-91

... SPR SMITH R

RECORDED AT CMHQ IN AB 160 pp 90 91

FIELD GENERAL COURT-MARTIAL

CFASB (In lieu of AFAB) 40/P&B/160B (46016) 4/38B

Convened by Order of Brig G Francoeur Comd 2 CBRG dated 29 JUN 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-88279	Spr		Robert	SMITH	RCE, 13 CBR Bn

PROCEEDINGS REVIEWED Date 9 Jul 44 D.J.A., Actg Dep. G.H.Q. 2 Echn. 21 Army Gp

PROCEEDINGS REVIEWED 12 Jul 44 Lieut-Colonel Asst Capt

REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 30 JUN

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 8/139

A1. The President, Members, waiting Member, JA, ~~if any~~, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for notes and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 72, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is subject to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 & fn 3. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~was~~ brought before the Court. At 2145 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~was~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the Unit.~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to~~ as interpreter ? Ans ~~The Interpreter is sworn.(1) Do you object to~~ as shorthand writer ? Ans ~~The shorthand writer is sworn.~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO (2)

(1. RP 110. 2. If no objection, ~~swearing of witnesses~~. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, ~~if any~~, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc. :

President	Major	D W MacLEOD	ROSS, 13 CBR Bn
Member	CAPT	D E McPHEE	RCA 12 CBR BN
Member	LIEUT	R P ST PIERRE	RCASC 13 CBR BN
Judge-Advocate			
Prosecutor	LT.	WATSON, T.R.B.	RCE 13 BN
Defending Offr	LT.	WRIGHT, R.P.	RCE 13 BN

Questions by President : Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See CF p 32)

~~At this stage~~ ACCUSED B-88279 SPR R.E. 13 CBR Inf. Bde ~~before arraignment, applies~~ (3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused ~~making the plea~~.)

A9. The accused is ~~was~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~did~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 30, 112. See para 1 of Instrs p 2. 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 3. RP 32. RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is about to~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Vol 1/2 CBRE P28

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : B-88279 Spr Robert SMITH, RCE, 13 CBR Bn

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AWL 15(1) AA	GUILTY	GUILTY	
2nd				
3rd				
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present ~~stands~~ undergo ~~undergoing~~ for ~~sentence~~ beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 9 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

six months detention

(Sgd) Judge-Advocate, if any. Date awarded: 30 Jun 44 (Sgd) D W MacLeod, Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is : Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further order.~~ (1)

(1. AA 57A. Delete if not used.)

Date 3 Jul 44 (Sgd) G Francoeur (G. Francoeur) Brig Commanding Officer Comd 2 Can Armd Bde Rft Gp

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Date. Signature of Offr.

B-88279 Spr Robert Smith 4 July 44 M. J. Frank, Capt Adjt 13 Can Base Rft Coy

C.R. 338 (RCE) 2/5 Jul 44

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (RP 37(A).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii)*, Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans NO (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 3 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement (if any). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on the charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on the charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may hear evidence to consider the statement, or any part or whole of it.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records findings of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3.* RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will be dealt with by the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence yourself or make a statement or neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans..... Do you intend to call witnesses on your behalf?
Ans..... Are they witnesses as to character only? Ans.....
(1. *RP 115.* 2. *RP 40(A), see 60(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF 355. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(2) (a), RP 45, 120(A).* 2. *AA 54(2), RP 43, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and deals with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character 1(1)
Ans NO
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB 255 or MFB 296.* 2. *MFM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment 1(1) Ans No I do not wish to address the Defending Offr (2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to give on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 562-566. Overseas AO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Con 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Army Form A 3104.

REVIEW OF SENTENCES AWARDED BY COURT MARTIAL.

I.—Case of No. B.88279 Spr SMITH, R. (RCE) Unit 13 Bn 2 CBRG

Sentenced to six months detention on 30 Jun 44

Age on, and date of, enlistment 21, 3 Jan 1940 Term of service duration

FIRST TRIAL.

For details of offence, see paragraph VII.
For C.O.'s remarks, see paragraph IX.

II.—To ..... Superior Military Authority.

I have directed that the above-named be not committed to undergo his sentence, which I recommend should be (suspended) (put into execution) (1) for reasons given in paragraph X.

Place .....

Date ..... Confirming Authority.

III.—I direct that the sentence (which I hereby commute to .....) (of which I remit .....) (1) (2) (be suspended) (be put into execution) (1) and be reviewed on .....(3).

Place .....

Date ..... Superior Military Authority (4).

(For action on review, see paragraph VII.)

SECOND TRIAL.

For details of offence, see paragraph VIII.
For C.O.'s remarks, see paragraph XII.

IV.—(5) To ..... Superior Military Authority.

This man was again convicted on ..... and sentenced to .....

and I have directed that he shall not be committed to undergo his sentence, which I recommend should be (suspended) (put into execution) (1) and run (concurrently) (consecutively) (1) with the previous (6) sentence for the reasons given in paragraph XIII.

Place .....

Date ..... Confirming Authority.

V.—(5) I direct that the sentence (which I hereby commute to .....) (of which I remit .....) (1) (2) (be suspended) (be put into execution) and that it run (concurrently) (consecutively) (1) with the previous (6) sentence of .....and be reviewed on .....(3).

Place .....

Date ..... Superior Military Authority (4).

(1) Erase words not required, and initial erasures.
(2) A sentence of penal servitude or imprisonment, combined with Discharge with ignominy, cannot be suspended unless the Discharge with ignominy is remitted.
(3) A suspended sentence must be reviewed at least once every three months, and a sentence put into execution should be reviewed at not more than six months.
(4) An order directing a sentence to be put into execution must be signed by the Superior Military Authority personally.
(5) If the case is considered a third time, a fresh form, using only paragraphs IV and V, will be made out and attached to this form, and all further services will be on the attached form.
(6) A previous sentence of imprisonment or detention in a state of suspension is avoided by the award of a subsequent sentence of penal servitude

(*22944) Wt 30830/311 60,000 11/42 A & F.W.Ltd. Gp.698 Forms/A.3104/11.

VI. Action on Review.
(Whether the sentence or sentences are suspended or in execution.)

Any Reviewing Authority *under Section 57 of the Army Act* may under that Section mitigate, remit or commute a sentence which is in execution, and if the sentence as commuted or mitigated is penal servitude, imprisonment or detention, it will remain subject to the powers granted by Section 57A of the Army Act. A partial remission of a sentence in suspension is not legal.

Date	Direction	Signature and Appointment of Authority giving the direction.	If sentence suspended, actual date of release and marks earned to count towards remission, and signature of O.C. Prison or Detention Barracks

(Continued on page 4.)

All recommendations, etc., considered upon review, should be pasted here.

Charge or Charges giving particulars	Date of Offence	Date of Trial
VII.—First Trial. AA Sec 15(1) AWL from 0800 9 Apr 44 until 1930 hrs 21 Jun 44. Total T.A. 73 days 11 hrs 30 mins. Cost of apprehension 5s 8d.	9 Apr 44	30 Jun 44

Signature of Officer making entry.

VIII.—Second Trial.

Signature of Officer making entry.

IX.—C.O.'s remarks and recommendations on First Trial.

Date	Signature
6 July 1944	From recent contact with this soldier only while in our guard room, it is my opinion that he will soldier after serving his sentence. I recommend that he be sent to an active unit after remission.

(J Cdn Base Rft B—

If further space required, an additional slip should be pasted here.

X.—Confirming Officer's remarks and recommendations on First Trial.

Date	Signature
7 Jul '44	I concur with C.O.'s remarks

(G. Francoeur) Brig
Comd 1 Cdn Base Rft Gp

CHARGE SHEET

The accused B.88279 SPR. ROBERT SMITH, R.C.E. 13 Bn., 2 C.B.R.G. a soldier of the Canadian Army Overseas is charged with:-

First Charge
Sec 15 (1)
A.A.

WHEN ON ACTIVE SERVICE - ABSENTING HIMSELF WITHOUT LEAVE

In that he

In the field absented himself without leave from 0800 hrs 9 April 44 until 1930 hrs 21 June 44 when he surrendered to the Civil Police in London.

Total time absent:- (73 days 11 hrs. 30 mins)
Costs of apprehension:-(£ 0.5.8)

(W.J.STEWART) Lt-Col.
Commanding
13 Bn., 2 C.B.R.G.

In the Field
28 June 44

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(G Francoeur) Brig
Comd
2 Cdn Base Rft Gp

In the Field
29 JUN 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-88279	Spr		Robert	SMITH	RCE, 13 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 29 JUN 44 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(~~s~~) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the case for reference to a superior qualified offr.~~)
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

~~5. I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

Major (Rank.)	D M MacLEOD (Must be named. RP 106.)	RCOS,	13 CBR Bn (Unit.)

MEMBERS.

Capt	to be detailed by OC 12 CBR Bn	12 CBR Bn
Lieut (Rank.)	to be detailed by OC 13 CBR Bn (Named or detailed. RP 106.)	13 CBR Bn (Unit.)

WAITING MEMBER.

Capt (Rank.)	to be detailed by OC 13 CBR Bn (Named or detailed, if any. RP 106.)	13 CBR Bn (Unit.)

~~JUDGE ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ENGLAND (Country.)

Date 29 JUN 44

G Francoeur Brigadier
(Signed personally. RP 105 fn 2.) (Rank.)

(G Francoeur)
Commanding 2 Cdn Base Rft Gp
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (CFAO 19a Secs of AFAI; 40/P & R/1607 (1951))

(*See overleaf for oaths and notes for use on trial.*)

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 557)
(CMHQ CL 173)

I certify that I have this day examined B.88279 (No.)

SPR. SMITH, R (Rank) (Name) and in my opinion he is

fit / unfit to undergo trial by Court-Martial.

Station Field

Date. 30 June 44

R. Laing Capt. (Sgd)
Medical Officer
(unit) 16 Fd Amb RCA.

Ex "A" J.M.M.

SUMMARY OF EVIDENCE IN THE CASE OF B.88279 SAPPER ROBERT SMITH, R.C.E. 13 Bn. 2 C.B.R.C. A SOLDIER IN THE CANADIAN ARMY OVERSEAS.

By direction of the Commanding Officer all evidence is given upon oath.

1ST WITNESS FOR PROS.

LT. W.A. MURREY Records Officer 13 Bn. 2 C.B.R.C. having been duly sworn states:

" I am Lt. W.A. Murrey, Records Officer 13 Bn. 2 C.B.R.C. and present the following documents pertaining to the accused B.88279 SAPPER SMITH, R.

1. Certified true copy of a declaration of a Court of Inquiry finding B.88279 Sapper Smith R. R.C.E. absent from 0800 hrs 9 Apr 44.

2. A.F.C. 1617 certificate of surrender showing B.88279 Spr. Smith R. R.C.E. as surrendering to the Civil Police in London at 1930 hrs 21 Jun 44.

3. C.M.H.Q. 1000:55 statement of expenses incurred in returning accused to unit."

W.A. Murray

(W.A. Murrey) Lt.
Records Officer
13 Bn. 2 C.B.R. Group.

The accused declines to cross examine this witness.

The accused was cautioned in accordance with Rules of Procedure 4 E. of the Army Act.

The accused declined to make a statement at this time.

I certify that the foregoing Summary of Evidence consisting of 1 page was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4, C, D & E were complied with.

J.E. Miller

(J.E. Miller) Lt.
Officer Taking S. of E.
13 Bn. 2 C.B.R.C.

LIST OF WITNESSES FOR THE PROSECUTION AND DEFENSE

For the Prosecution

Lt. W.A. Murrey, 13 Bn., 2 C.B.R.C.

For the Defence Nil.

LIST OF EXHIBITS (WITH SUMMARY OF EVIDENCE)

1. Certified True Copy of a declaration of a Court of Inquiry findin- B.88279 Spr. Smith, R., R.C.E. absent from 0800 hrs. 9 April 44.

2. A.F.C. 1617 Certificate of Surrender showin- B.88279 Spr. Smith R., R.C.E. as surrenderin- to the Civil Police in London at 1930 hrs. 21 June 44

3. C.M.H.Q. 1000:55 Statement of Expenses incurred in returnin- accused to unit.

I, B.88279 Spr. Smith, R. wish the convenin- authorities to appoint a competant officer to defend me at my forthcomin- Court-Martial.

R. Smith

(B.88279 Spr. Smith R.)

Exhibit 64
WITH SUMMARY OF EVIDENCE

Army Form D.1641
R.A.F. Form 1613

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

The refund of expenses incurred by the Police applies only in the case of the Police Authorities in Northern Ireland, the Isle of Man and the Counties of Orkney and Shetland.

Statement of Expenses chargeable to Army or Air Force Funds

incurred by the _____ Police in the case

of No. _____

who surrendered to the Police at _____ on _____

Payable to _____

CERTIFIED that this statement of expenses is correct.

N T Lloydd Supt. — Superintendent or Officer in charge of Police Station at Gravesend

21st June 1944 — Date of Signature.

I CERTIFY that the man whose personal description is given below surrendered himself to *PC 41 Robt W Forsyth at Gravesend at (hour) 19.30 hrs on the 21st day of June 1944 as being No. 3885279 (Rank and Name) Sapper Robt Smith a deserter (or absentee without leave) from 11th Field Coy RCE and it appears to me from his confession that he is a deserter or absentee without leave.

*After the word "to" to be inserted the name and rank of the police officer concerned.

Age 26 Height 5 Feet 9 Inches

Complexion Fresh Hair Lt brown

Eyes blue

Marks —

In uniform or plain clothes Uniform

Probable Date and Place of Attestation	Sault St Marie Ontario Canada 3/1/40
Probable Date of Desertion or beginning of absence, and from what place	9th April 1944 Maidstone

N T Lloydd Supt.

Signature of Officer of Police in charge of Gravesend Station.

21st June 1944 Date of Signature.

IMMEDIATE.

Army Form O.1617
R.A.F. Form 1617

PART 1.

CERTIFICATE OF SURRENDER TO THE CIVIL POLICE OF A DESERTER OR ABSENTEE WITHOUT LEAVE.

This Form is ONLY applicable where a person surrenders to a Constable as being a Deserter or Absentee.

Instructions for the Guidance of the Police.

When a person surrenders himself to a constable as being a deserter or absentee without leave, the officer of police in charge of the police station to which he is brought shall forthwith inquire into the case, and if it appears to him from the confession of that person that he is a deserter or absentee without leave he may cause him to be delivered into military or Air Force custody without bringing him before a court of summary jurisdiction.

In such a case a telegram should be despatched to the Officer Commanding the Man's Unit*† in the case of soldiers and in the case of airmen the O.C. the station at which the airman last served, notifying that he has surrendered, and stating the number, rank, name and unit of the man, and that officer will at once arrange to send an escort for the man to be taken into military or Air Force custody. Where an absentee's unit is stationed overseas (outside Great Britain, Northern Ireland District and the Channel Islands) the telegram will be despatched to the O.C. Regimental Depot in the case of a soldier and in the case of an airman to the O.C. No. 1 R.A.F. Depot, Uxbridge, who will arrange escort. This certificate will be handed to the escort on arrival.

* Stations of Units and Depots are shown in the Monthly Army List.

† Note.—Special instructions apply in war for the disposal of absentees and deserters from the Army who surrender to the civil police; see A.C.I. 680/1940.

(22745) Wt. 45663/121 25,000 10/42 A. & E. W. Ltd. Gp. 699
(45656) M.1.45/28.1288 25,000 2/42 " " Forms/O.1617/18

EXHIBIT (3)

Expense Voucher Re—: Ref: K.R. & O. (Can) 539 WITH SUMMARY OF EVIDENCE

Reg. No 988219 Rank Spr. Name Smith, R Unit 2 C BRC

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars (1st portion)	Amount		
22 Jan 44	Escorts return fare from LONDON To Aldershot		2	10
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Aldershot		2	10
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		5	8

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

W.E. Birch CAPTAIN.

Officer Issuing Railway Warrant and Expense money. E. BIRCH.
No. 6 Provost Company, Canadian Provost Corps (Section) ADMINISTRATIVE OFFICER—D.P.M's BR. C.M.H.Q.

C.M.H.Q. 1000-55
40/P & S. 483

CERTIFIED TRUE COPY OF AN ENTRY IN WD 68 11 Cdn Fd Coy R.C.E. (S)

F.W. Hamilton Capt.
(F.W. Hamilton) Capt. R.C.E.
A/Officer Commanding
11 Cdn Fd Coy R.C.E.

In the Field 4 May 44

RECORD of the Declaration of a Court of Inquiry assembled at In the Field on the 1st day of MAY 19 44, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B 88279 Sapper Smith R. 11 Cdn Fd Coy R.C.E.

DECLARATION

Exhibit (3) WITH SUMMARY OF EVIDENCE

The Court declare that No. B 88279 Sapper Smith, R. 11 Cdn Fd Coy R.C.E.

illegally absented himself without leave in the field

at 0800 hrs on the 9th day of April 1944;

and that on the 1 May 44 and is still so absent. he was deficient, and that he is still deficient of

the following articles:—

Vocabulary Rate — Unexpired Wear

ARTICLES		VALUE		ARTICLES	VALUE	
					$	75
Anklets Web Prs	1		99		3	94
Blouses Battle Dress	1	5	25		4	09
Boots Ankle Prs	1	5	46			42
Caps Field Service	1		56			33
Drawers Cellular prs	1		45			90
" Woollen prs	1	1	20		1	35
Pullover, Jersey	1	1	79		1	98
Blouses Oversl Denim	1	2	64		4	04
Trousers Battle Dress	1	5	30		1	80
Vests Woollen&l.20	2	2	40			09
Badges Cap	1		11			2
Braces Prs	1		28			09
Brushes Tooth	1		11			05
Forks NS Table	1		07			04
Razors Safety	1		06			58
Belts Waist	1		78			
		27	52		20	66

A.Hanson Lieut. R.C.E. **President**

O.H.Taylor Lieut R.C.E. **Member**

L.W. Young Lieut. R.C.E. **Member**

Signed at in the field

this 1st **day of** May 19 44

F.W. Hamilton Capt.

Signature of Commanding Officer F.W. Hamilton Capt. R.C.E.
A/Officer Commanding 11 Fd Coy RCE

Mil. Rp. 69
1000 Blks.—6-43 (3445)
M.Q. 1773-61-69

RECORD of the Declaration of a Court of Inquiry assembled at on the day of 19 , for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No.

DECLARATION

The Court declare that No. _____

_____

illegally absented himself without leave _____

at _____ on the _____ day of _____;

and that on the _____ he was deficient, and that he is still deficient of the following articles:—

ARTICLES	VALUE	ARTICLES	VALUE

_____ President

Signed at _____ _____ Member

this _____ day of _____ 19__ _____ Member

Signature of Commanding Officer _____

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried	Date and Place of Trial	Charges upon which convicted	Sentence of the Court	Punishment remitted or sentence suspended
F.G.C.M.	20 Apr 43 in the Field	A.A. Sec 15 (1)	84 Days Det.	28 days

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental book in my custody, are correct to the best of my knowledge and belief.

Signed this 22 day of June 44

J.E. Miller Lt.

(J.E. Miller) Lieut.
13 Bn., 2 CBRG

Exhibit "B"
J.P.M.

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martial only)

Number	Rank	Name	Regiment (or as the case may be)
B.88279	Sapper	Smith, R.	13 Bn. 2C.E.R.O.

* 1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:-

For A.A. Sec 15 (1) ____ 4 ____ times
For _____ _____ times
For _____ _____ times
For _____ _____ times

Date of first entry in Field Conduct Sheet 15 Aug 41

Date of last entry in Field Conduct Sheet 15 Sept. 43

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

†3. The accused at the present time is under sentence for N/A beginning on the N/A day of N/A

4. The accused has been awaiting trial on the present charges for N/A days in civil custody; and for 5 days in military custody, i.e., NIL days in open arrest, 5 days in close arrest; of which NIL days were spent in hospital.

5. The present age of the accused is 26

6. The date of his attestation is 3 Jan 1940

7. The service which the accused is allowed to reckon is 4 yrs. 5 months

8. The accused is in possession of†

9. (If the accused is a warrant officer or N.C.O.) The accused has served continuously, without reduction, to the present date:

	Date of promotion
In the substantive rank of _____	N/A
In the war substantive rank of _____	N/A
In the acting rank of _____	N/A

INSTRUCTION: If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.

NOTE: The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

*Strike out if not applicable.

†State the military decorations (if any) held by accused.

Exhibit "C"

MEM 6

No. B88279 Name SMITH R | Sqn., Battery, or Company: 1 Cdn Tunnelling Coy RCE | Date of enlistment: 21.11.39 | Trade Badges | Service or Proficiency Pay | Character: Good

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc.: D. Watson

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				VERIFIED TO DATE 21.5-40 COLIN A CAMPBELL MAJOR OC 1 CDN TUNNELLING COY RCE					
Manston	15-8-41	L/Cpl		WOAS AWL at Manston was absent without leave from 0800 hrs 15-8-41 to 070. hrs 18-8-41. Absent 2 days 23 hrs AA 15(1)	HG DeMOREST	Reprimand & forf 3 days pay		C.A. CAMPBELL	
Merston	18-12-41	Spr		WOAS AWL from 0800 hrs 15-12-41 to 1700 hrs 18-12-41. Absent 2 days 9 hrs AA Sec 15(1)	L/SGT FOSTER	Forf 3 days pay	9-1-42	C.A. CAMPBELL Maj	3 days pay.
Field	8-3-43	Spr		AA 15(1) AWL from 2359 hrs 8-3-43 to 1600 hrs 12-4-43 ABSENT 34 days 16 hrs 1 min	Doc	Loss of 84 days pay 84 days dtn 8 days pay	20-4-43	F.C.C.M.	Loss of 35 days pay.

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	15-8-43	Spr		AA Sec 15(1) AWL from 2359 hrs 15 Aug 43 to 1000 hrs 16 Aug 43. Absent 10 hrs 1 min)	Cpl HUNGETT H.K.	Forf 5 days pay FR & I 149 (2)	21-8-43	Maj C.W. KINDERLEY	Forf 1 days pay FR & I 149(1)(a)
Field	15 Sep 43	Spr		AA Sec 15 (1) AWL Absent 1thout leave, in t at he was absent from 2359 hrs 15 Sep 43 until 2200 hrs 22 Sep 43 (Absent 6 days 22 hrs)		27 days FP Forfs 7 days pay.	25 Sep 43	N.J.W. Smith Lt-col	Walker Kayes Capt for Lt-col N.J.W. Smith

CERTIFIED TRUE COPY

(J.W. Miller) Lt 13 Bn, 2 C.B.H.C. 28 June 44
Officerhaving custody of Regimental Books

Case of

Sgt Smith. 6/9/41

Sgt Smith has been in this country for 4 yrs and during this time met a married woman, Mrs. Lewis who had 3 children and was separated from her husband. In due course, this friendship ripened into love. Mrs Lewis' husband appeared to be ~~[illegible]~~ willing to consent to an uncontested divorce in favour of his wife.

Smith was advised by the Legal Aid to let matters rest for the time being. In the meantime the husband changed his mind and served divorce proceedings on his wife, naming Smith as co-respondent. He obtained a court order to take the children away from the custody of Mrs. Lewis on the grounds that she was no longer capable of

CANADIAN LEGION WAR SERVICES Inc.

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ON ACTIVE SERVICE

CANADIAN Y.M.C.A. OVERSEAS

THE SALVATION ARMY CANADIAN WAR SERVICES

serving for them. He then turned her out of her home. She tried to commit suicide being prevented from doing so on both occasions by Smith. While he was absent he found a home for her. He was the only one she could turn to for assistance.

Smith was waiting for a court order to release the children to her care, but when it did not materialize after 73 days decided to surrender himself to the authorities. Smith would absent only for the reasons I have just stated, not because he was being badly treated by the Army or any similar reason. He has learned his lesson and will be a good soldier in future. All the offences on his sentence sheet relate to the same circumstances

CFA 170

PLEASE WRITE ON BOTH SIDES

40-V.

Pte (A/Sgt) SMITH, R.E.

K-42008 A/Sgt SMITH, Ronald Emerson
1 Cdn. Gen. Pioneer Coy.

40-V.

Correspondence to be PINNED here.

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A. Order convening the Court.

On Active Service, this 18th day of December, 1943.

Whereas it appears to me, the undersigned, an officer in Command of "D" Group, Canadian Reinforcement Units, Canadian Army, (Overseas), on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

*~~[I am unable to appoint:—~~

*~~(1. Three Officers to form the Court;)~~

*~~(2. A Field Officer as President;)~~

~~for the following reasons, namely:—]~~

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Lieut.-Colonel	D.L. Redman	Calg. Highrs

Members.

	Rank.	Name.	Regiment.
A	Major	from	3 C.T.P.C.
A	Captain	from	1 C.M.G.R.U.
A	Lieutenant	WAITING MEMBER from	1 C.M.G.R.U.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed G. Mathey Basher Lieut.-Colonel

Commanding "D" Group, Cdn. Reinf. Units
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
	First Charge A.A. Sec 18(4)	Not Guilty	Guilty	
	Alternative Charge A.A. Sec 40	Not Guilty	Not Guilty	
	Second Charge A.A. Sec 18(4)	Not Guilty	Guilty	
X-42008 A/Sgt SMITH, Ronald Emerson 1 Can. Gen. Pioneer Company.	Alternative Charge A.A. Sec 40	Not Guilty	Not Guilty	
	Third Charge A.A. Sec 18(4)	Not Guilty	Guilty	
	Alternative Charge A.A. Sec 40	Not Guilty	Not Guilty	
	Fourth Charge A.A. Sec 18(4)	Not Guilty	Guilty	
	Alternative Charge A.A. Sec 40	Not Guilty	Not Guilty	
	Fifth Charge A.A. Sec 18(4)	Not Guilty	Not Guilty	
	Alternative Charge A.A. Sec 40	Not Guilty	Not Guilty	

MS

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) G. Mackey Basher (Colonel) (Signed) M. Newman Lt Col

Commanding "D" Group, C.R.U.
Convening Officer (*e*) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 22nd day of December, 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
3. *(3. The interpreter) are the Shorthand Writer
4. *(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 22nd day of December 1942.

M. Newman Lt Col
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (*b*) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

MS

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

MS

Signed this 24th day of December 1942.

G. Mackey Basher Colonel
Confirming Officer.

Promulgated and extracts taken in the case of

(*a*) (Dated) December 26th 1942 (Signed) Woods Major O.C. 1 CDN. GENERAL PIONEER COMPANY (C.A.O.S.)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

W.L. 47807/1007 30 M. 1/42 K.P.C./3382 Gp. 698.2

MEDICAL INSPECTION

22 Dec 42. Date

K.42008 A/Sgt Smith R.E.

1 Cdn. Gen. Pioneer Coy.
Holding Unit

CERTIFICATE of MEDICAL INSPECTION

at 0730 hrs.

I hereby certify that I have examined ~~all persons on draft detailed for~~ the above

22 Dec 42. date and found ~~them/him~~ medically fit to ~~proceed on this draft~~ stand trail by Court Martial.

Medical Officer

DISTRIBUTION
1 copy for Field Unit
1 " " M.O
1 " " Records Officer

HOLD—10
40/F & S/194 (8/42)

Correspondence to be PINNED here.

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A. Order convening the Court.

On Active Service, this day of , 19 .

Whereas it appears to me, the undersigned, an officer in Command of , on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

*[I am unable to appoint :—

*(1. Three Officers to form the Court.)

*(2. A Field Officer as President.)

for the following reasons, namely :—]

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.

Members.

Rank.	Name.	Regiment.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed

Commanding *Convening Officer.*

SCHEDULE.

- 2 -

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
K-42008 A/Sgt. SMITH, Ronald Emerson 1 Cdn. Gen. Pioneer Company.	Sixth Charge A.A. Sec 18(4)	Not Guilty	Guilty	
	Alternative Charge A.A. Sec 40	Not Guilty	Not Guilty	
	Seventh Charge A.A. Sec 18(4)	Not Guilty	Guilty	
	Alternative Charge A.A. Sec 40	Not Guilty	Not Guilty	
	Eighth Charge A.A. Sec 18(4)	Not Guilty	Not Guilty	
	Alternative Charge A.A. Sec 40	Not Guilty	Not Guilty	
	Ninth Charge A.A. Sec 18(4)	Not Guilty	Guilty	
	Alternative Charge A.A. Sec 40	Not Guilty	Not Guilty	
	Tenth Charge A.A. Sec 18(4)	Not Guilty	Guilty	
	Alternative Charge A.A. Sec 40	Not Guilty	Not Guilty	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—

"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"

Answer (*to be recorded on separate sheet if necessary*):—

(Signed) G. Jeffery Archer Colonel (Signed) M. M. McNichol

Commanding "D" Group, C.R.E.

Convening Officer (*c*) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Correspondence to be PINNED here.

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this day of , 19 .

Whereas it appears to me, the undersigned, an officer in Command of , on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

*[I am unable to appoint :—
*(1. Three Officers to form the Court.)
*(2. A Field Officer as President.)
for the following reasons, namely :—]

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.

Members.

Rank.	Name.	Regiment.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed

Commanding *Convening Officer.*

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
K-42008 A/Sgt SMITH, Ronald Emerson 1 Cdn. Geu, Pioneer Coy.	Eleventh Charge A.A. Sec 18(4)	Not Guilty	Not Guilty	
	Twelfth Charge A.A. Sec 18(4)	Not Guilty	Guilty	
	Thirteenth Charge A.A. Sec 18(4)	Not Guilty	Not Guilty	
	Fourteenth Charge A.A. Sec 18(4)	Not Guilty	Guilty	
	Fifteenth Charge A.A. Sec 18(4)	Not Guilty	Guilty	
	Sixteenth Charge A.A. Sec 18(4)	Not Guilty	Guilty except that the date 15th day of July 1942 should be varied to 23rd day of June 1942.	
	Seventeenth Charge A.A. Sec 18(4)	Not Guilty	Not Guilty	
	Eighteenth Charge A.A. Sec 18(4)	Not Guilty	Guilty	
	Nineteenth Charge A.A. Sec 18(4)	Not Guilty	Guilty except that the date "between 15th day of July 1942 and 3rd Dec 42" should be varied to 24th June 1942.	
	Twentieth Charge A.A. Sec 18(4)	Guilty	Guilty	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) G. Fidney Rasher, Colonel (Signed) [illegible]
Commanding [illegible] Group, C.R.E.
Convening Officer (*c*) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Correspondence to be PINNED here.

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this day of , 19 .

Whereas it appears to me, the undersigned, an officer in Command of , on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

*[I am unable to appoint :—

*(1. Three Officers to form the Court.)

*(2. A Field Officer as President.)

for the following reasons, namely :—]

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.

Members.

Rank.	Name.	Regiment.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court by the initialled by him.

*Signed

Commanding

Convening Officer.

SCHEDULE.

- 4 -

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
K-42000 A/Sgt SMITH Ronald Emerson 1 Can. Sen. Pioneer Company.	Twenty First Charge A.A. Sec 18(4)	Not Guilty	Not Guilty	I confirm the findings and sentence of the Court. G Mackay Bascher Colonel
	Twenty Second Charge A.A. Sec 18(4)	Guilty	Guilty	
	Twenty Third Charge A.A. Sec 41(5)	Guilty	Guilty	
	Twenty Fourth Charge A.A. Sec 40 " "	Not Guilty	Guilty WM	
	See Charge Sheet Attached.		Sentence To undergo detention for period of Eighteen (18) months 23rd Dec 1942 WM	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):—

Signed G Mackay Bascher Colonel (Signed) [illegible]
Commanding [illegible] Pioneer Company, C.E.F.
Convening Officer (c) President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

CHARGE SHEET

THE accused, K-42008, Pte. (Paid Sergeant) Ronald Emerson Smith, of 1 Canadian General Pioneer Coy., on the strength of 1 Canadian General Pioneer Coy., a soldier of the Canadian Army Overseas, is charged with:-

1st. Charge Sec. 18(u) A.A. WHILE ON ACTIVE SERVICE, stealing property belonging to a person subject to Military Law,

in that he

at Haig Hutments, Crookham, Hants., between the 15th., day of July, 1942 and the 3rd day of December, 1942, while employed as Postal Orderly in the Post Office of 1 Canadian General Pioneer Coy., stole 300 cigarettes, the contents of a parcel order No. AUA-14687, addressed to and the property of F-77504 Pte. Gallant R., a person subject to Military Law.

Alternative Charge, Sec. 40 A.A. WHILE ON ACTIVE SERVICE, neglect to the prejudice of good order and Military Discipline,

in that he

at Haig Hutments, Crookham, Hants., between the 15th., day of July, 1942 and the 3rd day of December, 1942, while employed as Postal Orderly in the Post Office of 1 Canadian General Pioneer Coy., so negligently performed his duties as to be unable to account for 300 cigarettes, the contents of a parcel order No. AUA-14687, addressed to and the property of F-77504 Pte. Gallant R., a person subject to Military Law.

2nd. Charge Sec. 18 (u) A.A. WHILE ON ACTIVE SERVICE, stealing property belonging to a person subject to Military Law,

in that he

at Haig Hutments, Crookham, Hants., between the 15th., day of July, 1942 and the 3rd day of December, 1942, while employed as Postal Orderly in the Post Office of 1 Canadian General Pioneer Coy., stole 300 cigarettes, the contents of a parcel order No. D-36143, addressed to and the property of F-77504 Pte. Gallant R., a person subject to Military Law.

Alternative Charge Sec. 40 A.A. WHILE ON ACTIVE SERVICE, neglect to prejudice of good order and Military Discipline,

in that he

at Haig Hutments, Crookham, Hants., between the 15th., day of July, 1942 and the 3rd day of December, 1942, while employed as Postal Orderly in the Post Office of 1 Canadian General Pioneer Coy., so negligently performed his duties as to be unable to account for 300 cigarettes, the contents of a parcel order No. D-36143, addressed to and the property of F-77504 Pte. Gallant R., a person subject to Military Law.

3rd. Charge Sec. 18 (u) A.A. WHILE ON ACTIVE SERVICE, stealing property belonging to a person subject to Military Law,

in that he

at Haig Hutments, Crookham, Hants., between the 15th., day of July, 1942 and the 3rd day of December, 1942, while employed as Postal Orderly in the Post Office of 1 Canadian General Pioneer Coy., stole 300 cigarettes, the contents of a parcel order No. 17527, addressed to and the property of F-77504, Pte. Gallant R, a person subject to Military Law.

3rd. Alternative Charge.

Sec 40 A A

WH LE ON ACTIVE SERVICE, neglect to prejudice of good order and Military Discipline,

in that he,

at Haig Hutments, Crookham, Hants., between the 15th., day of July, 1942 and the 3rd day of December, 1942, while employed as Postal Orderly in the Post Office of 1 Canadian General Pioneer Coy., so negligently performed his duties as to be unable to account for 300 cigarettes, the contents of a parcel order No. 17527, a dressed to and the property of F-77504, Pte. Gallant, R., a person subject to Military Law.

4th. Charge

Sec. 18 (4) A A

WHILE ON ACTIVE SERVICE, stealing property belonging to a person subject to Military Law,

in that he,

at Haig Hutments, Crookham, Hants., between the 15th., day of July 1942, and the 3rd day of December, 1942, while employed as Postal Orderly in the Post Office of 1 Canadian General Pioneer Coy., stole 300 cigarettes, the contents of a parcel order No. GYA-69709, addressed to and the property of G-49689, Gnr. Kains, F.G., a person subject to Military Law.

Alternative Charge

Sec. 40 A A

WHILE ON ACTIVE SERVICE, neglect to prejudice of good order and Military Discipline,

in that he,

at Haig Hutments, Crookham, Hants., between the 15th., day of July, 1942 and the 3rd day of December, 1942, while employed as Postal Orderly in the Post Office of 1 Canadian General Pioneer Coy., so negligently performed his duties as to be unable to account for 300 cigarettes, the contents of a parcel order No. GYA-69709, addressed to and the property of G-49689 Gnr. Kains, F.G., a person subject to Military Law.

5th. Charge

Sec 18 (4) A A

WHILE ON ACTIVE SERVICE, steal ng property belonging to a person subject to Military Law,

in that he

at Haig Hutments, Crookham, Hants., between the 15th., day of July, 1942 and the 3rd day of December, 1942, while employed as Postal Orderly in the Post Office of 1 Canadian General Pioneer Coy., stole 1000 cigarettes, the contents of a parcel order No. addressed to and the property of D-59051, Pte. Lippe, L., a person subject to Military Law.

Alternative Charge.

Sec 40 A A

WHILE ON ACTIV SERVICE, neglect to prejudice of good order and Military Discipline,

in that he

at Haig Hutments, Crookham, Hants., between th 15th., day of July, 1942 and the 3rd day of December, 1942, while employed as Postal Orderly in the Post Office of 1 Canadian General Pioneer Coy., so negligently performed his duties as to be unable to account for 1000 cigarettes, the contents of a parcel addressed to and the property of D-59051, Pte. Lippe L., a person subject to Military Law.

6th. Charge — WHILE ON ACTIVE SERVICE, stealing property belonging to a person subject to Military Law,

Sec. 18 (u) A.A.

in that he,

at Haig Hutments, Crookham, Hants., between the 15th., day of July, 1942 and the 3rd day of December, 1942, while employed as Postal Orderly in the Post Office of 1 Canadian General Pioneer Coy., stole 1000 cigarettes, the contents of a parcel order No. SC-3252, addressed to and the property of G-18842, Pte. Roussel, T., a person subject to Military Law.

Alternative Charge — WHILE ON ACTIVE SERVICE, neglect to prejudice of good order and Military Discipline,

Sec. 40 A.A.

in that he,

at Haig Hutments, Crookham, Hants., between the 15th., day of July 1942 and the 3rd day of December, 1942, while employed as Postal Orderly in the Post Office of 1 Canadian General Pioneer Coy., so negligently performed his duties as to be unable to account for 1000 cigarettes, the contents of a parcel order No. SC-3252, addressed to and the property of G-18842, Pte. Roussel T., a person subject to Military Law.

7th. Charge — WHILE ON ACTIVE SERVICE, stealing property belonging to a person subject to Military Law,

Sec. 18 (u) A.A.

in that he,

at Minley Camp, Hants., between the 15th., day of July, 1942 and the 3rd day of December, 1942, while employed as Postal Orderly in the Post Office of 1 Canadian General Pioneer Coy., stole 1000 cigarettes, the contents of a parcel, order No. J-71142, addressed to and the property of E-12031, Pte. Dion P. a person subject to Military Law.

Alternative Charge — WHILE ON ACTIVE SERVICE, neglect to prejudice of good order and Military Discipline,

Sec. 40 A.A.

in that he,

at Minley Camp, Hants., between the 15th., day of July, 1942 and the 3rd day of December, 1942, while employed as Postal Orderly in the Post Office of 1 Canadian General Pioneer Coy., so negligently performed his duties as to be unable to account for 1000 cigarettes, the contents of a parcel order No. J-71142 addressed to and the property of E-12031, Pte. Dion P., a person subject to Military Law.

8th. Charge — WHILE ON ACTIVE SERVICE, stealing property belonging to a person subject to Military Law,

Sec. 18 (u) A.A.

in that he,

at Minley Camp, Hants., between the 15th., day of July, 1942 and the 3rd day of December, 1942, while employed as Postal Orderly in the Post Office of 1 Canadian General Pioneer Coy., stole 1000 cigarettes, the contents of a parcel addressed to and the property of D-57812, Pte. Seguin, W., a person subject to Military Law.

Alternative Charge — WHILE ON ACTIVE SERVICE, neglect to prejudice of good order and Military Discipline,

Sec. 40 A.A.

in that he,

at Minley Camp, Hants., between the 15th., day of July, 1942 and the 3rd day of December, 1942, while employed as Postal Orderly in the Post Office of 1 Canadian General Pioneer Coy., so negligently performed his duties as to be unable to account for 1000 cigarettes, the content of a parcel addressed to and the property of D-57812, Pte. Seguin, W. a person subject to Military Law

9th. Charge

Sec. 18 (4) A.A.

WHILE ON ACTIVE SERVICE, stealing property belonging to a person subject to Military Law,

in that he,

at Minley Camp, Hants., between the 15th., day of July, 1942 and the 3rd day of December, 1942, while employed as Postal Orderly in the Post Office of 1 Canadian General Pioneer Coy., stole 300 cigarettes, the contents of a parcel order No.J-64656 addressed to and the property of D-62829, Spr. Desrosiers L, a person subject to Military Law.

Alternative Charge

Sec. 40 A.A.

WHILE ON ACTIVE SERVICE, neglect to prejudice of good order and Military Discipline,

in that he,

at Minley Camp, Hants., between the 15th day of July, 1942 and the 3rd day of December, 1942, while employed as Postal Orderly in the Post Office of 1 Canadian General Pioneer Coy., so negligently performed his duties as to be unable to account for 300 cigarettes, the contents of a parcel order No. J-64656 addressed to and the property of D-62829, Spr. Desrosiers L, a person subject to Military Law.

10th. Charge

Sec. 18 (4) A.A.

WHILE ON ACTIVE SERVICE, stealing property belonging to a person subject to Military Law,

in that he,

at Minley Camp, Hants., between the 15th., day of July, 1942 and the 3rd day of December, 1942, while employed as Postal Orderly in the Post Office of 1 Canadian General Pioneer Coy., stole 300 cigarettes, the contents of a parcel order No. JUA-61549, addressed to and the property of G-19149, Pte. Chiasson A., a person subject to Military Law.

Alternative Charge

Sec 40 A.A.

WHILE ON ACTIVE SERVICE, neglect to prejudice of good order and Military Discipline,

in that he,

at Minley Camp, Hants., between the 15th., day of July, 1942 and the 3rd day of December, 1942, while employed as Postal Orderly in the Post Office of 1 Canadian General Pioneer Coy., so negligently performed his duties as to be unable to account for 300 cigarettes, the contents of a parcel order No. JUA-61549, addressed to and the property of G-19149, Pte. Chiasson A., a person subject to Military Law.

11th. Charge
Sec. 18 (4)
A.A.

WHILE ON ACTIVE SERVICE, fraudulent misapplication of property belonging to a person subject to Military Law,

in that he

at Haig Hutments, Crookham, Hants., between the 27th day of September, 1942 and the 3rd day of December 1942, while employed as Postal Orderly in the Post Office of 1 Canadian General Pioneer Coy., when entrusted by Lieut P. Kench, a person subject to Military Law, the sum of one shilling to cover postage of Armed Forces Air Letters, fraudulently applied the said sum to his own use.

12th. Charge
Sec. 18 (4)
A.A.

WHILE ON ACTIVE SERVICE, fraudulent misapplication of property belonging to a person subject to Military Law,

in that he

at Haig Hutments, Crookham, Hants., between the 27th day of September, 1942 and the 3rd day of December 1942, while employed as Postal Orderly in the Post Office of 1 Canadian General Pioneer Coy., when entrusted by Lieut W.R.Travers, a person subject to Military Law, the sum of six pence to cover postage on Armed Forces Air Letters, fraudulently applied the said sum to his own use.

13th. Charge
Sec. 18 (4)
A.A

WHILE ON ACTIVE SERVICE, fraudulent misapplication of property belonging to a person subject to Military Law,

in that he

at Haig Hutments, Crookham, Hants., between the 27th day of September, 1942 and the 3rd day of December 1942, while employed as Postal Orderly in the Post Office of 1 Canadian General Pioneer Coy., when entrusted by Lieut. H. Priske., a person subject to Military Law, the sum of six pence to cover the postage on Armed Forces Air Letters, fraudulently applied the said sum to his own use.

14th. Charge
Sec. 18 (4)
A.A.

WHILE ON ACTIVE SERVICE, fraudulent misapplication of property belonging to a person subject to Military Law,

in that he

at Haig Hutments, Crookham, Hants., between the 27th day of September, 1942 and the 3rd day of December 1942, while employed as Postal Orderly in the Post Office of 1 Canadian General Pioneer Coy., when entrusted by E-5671 Pte., Doyon A. a person subject to Military Law, the sum of six pence to cover the postage on Armed Forces Air Letters, fraudulently applied the said sum to his own use.

15th. Charge
Sec. 18 (4)
A.A

WHILE ON ACTIVE SERVICE, fraudulent misapplication of property belonging to a person subject to Military Law,

in that he

at Haig Hutments, Crookham, Hants., between the 27th day of September, 1942 and the 3rd day of December 1942, while employed as Postal Orderly in the Post Office of 1 Canadian General Pioneer Coy., when entrusted by H-40779 Cpl. Martin D.G. a person subject to Military Law, the sum of six pence to cover the postage on Armed Forces Air Letters, fraudulently applied the said sum to his own use.

16th. Charge
Sec. 18(4)
A.A.

WHILE ON ACTIVE SERVICE, fraudulent misapplication of property belonging to a person subject to Military Law,

in that he

at Minley Camp, Hants., between the 15th day of July, 1942 and the 3rd day of December, 1942, while employed as Postal Orderly in the Post Office of 1 Canadian General Pioneer Coy., when entrusted by L/65754, Sgm. Levesque H.J., a person subject to Military Law, the sum of one shilling and three pence to cover the postage on an Air Mail Letter, fraudulently applied the said sum to his own use.

17th. Charge
Sec. 18(4)
A.A.

WHILE ON ACTIVE SERVICE, fraudulent misapplication of property belonging to a person subject to Military Law,

in that he

at Minley Camp, Hants., between the 15th day of July, 1942 and the 3rd day of December, 1942, while employed as Postal Orderly in the Post Office of 1 Canadian General Pioneer Coy., when entrusted by Major R.J.Wride, R.C.A.M.C., a person subject to Military Law, the sum of one shilling and three pence, to cover the postage on an Air Mail Letter, fraudulently applied the said sum to his own use.

18th. Charge
Sec. 18(4)
A.A.

WHILE ON ACTIVE SERVICE, fraudulent misapplication of property belonging to a person subject to Military Law,

in that he

at Minley Camp, Hants., between the 15th day of July, 1942 and the 3rd day of December, 1942, while employed as Postal Orderly in the Post Office of 1 Canadian General Pioneer Coy., when entrusted by D.116463, L/Cpl. Kohane H. a person subject to Military Law, the sum of one shilling and three pence to cover postage on an Air Mail Letter, fraudulently applied the said sum to his own use.

19th. Charge
Sec. 18(4)
A.A.

WHILE ON ACTIVE SERVICE, fraudulent misapplication of property belonging to a person subject to Military Law,

in that he

at Minley Camp, Hants., between the 15th day of July, 1942 and the 3rd day of December, 1942, while employed as Postal Orderly in the Post Office of 1 Canadian General Pioneer Coy., when entrusted by H.3511 C.S.M. Tanner S.C., a person subject to Military Law, the sum of one shilling and three pence to cover postage of an Air Mail Letter, fraudulently applied the said sum to his own use.

20th. Charge
Sec. 18(4)
A.A.

WHILE ON ACTIVE SERVICE, fraudulent misapplication of property belonging to a person subject to Military Law,

in that he

at Haig Hutments, Crookham, Hants., between the 1st day of November, 1942 and the 3rd day of December, 1942, while employed as Postal Orderly in the Post Office of 1 Canadian General Pioneer Coy., when entrusted by Maj. J.S.Burton, R.C.A.M.C. a person subject to Military Law, the sum of two shillings to cover the postage of a parcel, fraudulently applied the said sum to his own use.

21st. Charge
Sec. 18(4) N.D.

WHILE ON ACTIVE SERVICE, fraudulent misapplication of property belonging to a person subject to Military Law,

in that he

at Minley Camp, Hants., between the 15th day of July, 1942 and the 3rd day of December, 1942, while employed as Postal Orderly in the Post Office of 1 Canadian General Pioneer Company, when entrusted by K-80541, R.Q.M.S. Leason G.W., a person subject to Military Law, a sum to cover the postage of a parcel, fraudulently applied the said sum to his own use.

22nd. Charge
Sec. 18(4). N.D.

WHILE ON ACTIVE SERVICE, fraudulent misapplication of property belonging to a person subject to Military Law,

in that he

at Haig Hutments, Crookham, Hants., between the 15th day of November, 1942 and the 3rd day of December, 1942, while employed as Postal Orderly in the Post Office of 1 Canadian General Pioneer Coy., when entrusted by H-26269, L/Cpl. McGovern W.A. a person subject to Military Law, the sum of one shilling and [redacted] to cover the postage on a parcel, fraudulently applied the said sum to his own use.

23rd. Charge — WHILE ON ACTIVE SERVICE, committing a civil offence, that is to say, selling tobacco contrary to Section 13, of the Tobacco Act, 1842

Sec 41(5) AA.

In that he,

at Haig Hutments, Crookham, Hants., a place not his entered premises, between the 1st day of November, 1942 and the 30th. day of November 1942, sold to Lieut. P. Kench, 24 packages of cigarettes at one shilling and three pence per package.

24th. Charge — WHILE ON ACTIVE SERVICE, neglect to prejudice of good order and Military Discipline,

in that he,

Sec 40 AA — at Minley Camp, Hants., between the 15th day of July, 1942 and the 3rd day of December, 1942, while employed as Postal Orderly in the Post Office of 1 Canadian General Pioneer Coy., was negligent in the performance of his duties thus causing delay in the transmission of Airgraph Letters, entrusted to Him for Posting.

.....
(P.A.Woods) Major, O.C.
1 Canadian General Pioneer Coy.

In the Field,
8 Dec 42

To be tried by Field General Court Martial.

(G. Hedley Basher) Colonel
Commander
"D" Group, Cdn. Reinf. Units

In the Field.
18 December 42

TRANSCRIPT OF EVIDENCE

in the case of K 42008 A/Sjt. SMITH R.E. 1 Cdn. Gen. Pioneer Coy., held at Haig Lines, Crookham, Hants. on the 22 day of December, 1942.

The order convening the court, the charge sheet, the summary of evidence and the medical certificate are laid before the court.
The Court satisfy themselves as provided by R.s P. 22 and 23.
The accused is brought before the court.
Prosecutor:- Lieut. A.J. DAVIES, No. 3 Gen. Pioneer Coy.
Defending Officer:- Lieut. A.E. BRODIE 8th Recce.
At 0930 hrs. the trial commences.
The Order convening the court is read, signed by the president, and attached to the proceedings.
The names of the president and members of the Court are read overin the hearing of the accused,and they severally answer to their names.
Do you object to be tried by me as president, or by any of the officers whose names you have heard read over ?
A:- No, sir.
The President and members are duly sworn.
PRESIDENT:- LT. -COL. D.L. REDMAN, V.D. CALH. HIGHRS.
MEMBERS :- MAJOR W. WORSICK 3 C.G.P.C.
CAPTAIN H.W. LONG 1 C.M.G.R.U.
Lieut. J.H. Gillies, C.H. of C. 1 C.M.G.R.U., officer under instruction, is duly sworn.
Do you object to H 20133 Pte. Millard R. acting as shorthand writer ?
A:- No, sir.
The shorthand writer is duly sworn.
The charge sheet is signed by the president,and annexed to the proceedings.
The accused is arraigned upon the charges in the above-mentioned charge sheet.
The accused plead guilty to the 20th, 22nd, and 23rd charges, and not guilty to the other charges on the charge sheet.
R.P. 35(B) complied with in respect to the guilty pleas.
R.P. 39(A) complied with in respect to the not guilty pleas.

1ST WITNESS FOR THE PROSECUTION:- Lieut. J. Foxe C.P.C., having been duly sworn, is EXAMINED BY THE PROSECUTOR:-
Q1:- You are an officer of the C.P.C. ?
A1:- Yes, sir, at H.Q. C.M.U. I had occasion to inspect the arrangements at No. 1. C.G.P.C. at approximately 1430 hrs. on December 3rd. It was a routine inspection, to help the unit, and to see that there were no irregularities.in handling. It was obvious from the first that there were grievious irregularities. First that mail that should have been forwarded was being held. Second, letters intended for delivery within the unit were being retained. Next, that letters intended for personnel now no longer with that unit were not being returned to the P.P.O. Fourthly, that there was a discrepancy in the handling of cigarette parcels, and that records did not check. Nor was there any evidence to show that certain parcels had been delivered. Firtnly that official register slips were found in the ash box, and one mailed by Major Woods was also found in the ash box. It was obvious that irregularities were present. I asked permission of the adjutant to have the postal orderly kit inspected. We accompanied Sjt. Smith to his billets, he laid out his kit, and produced a quantity of letters from the bottom drawer of his cupboard. I saw that these were letters which had been handed to the accused for air-mail transmission. The majority were air mail letters that would cost 1/3 to transmit.
Q2:- I produce an envelope of various postal records, can you identify them ?
A2:- I can, they are postal records, which have been checked by me. Unit Postal Parcel Records submitted by the prosecutor, admitted as evidence, and marked exhibit 1.
These are the various records concerning receipt, issue, and re-shipment of parcels.
Q3:- I produce to you a parcel addressed to Mrs. Burton, do you identify it ?
A3:- I do. We found it buried in a cupboard in the unit mail room. I found it in company with Captain Todd, when we were investigating.
Parcel addressed to Mrs. G.S. Burton marked exhibit 2.
Q4:- I have here a parcel addressed to Mrs. W.A. McGovern, do you identify it ?

A4:- I do. On the morning of December 4th I found this parcel when in company with C.Q.M.S. Tanner, in one of the cupboards in the unit mail room.

Parcel addressed as stated marked exhibit 3.

Q5:- I have here a rolland flat parcel tied together. Do you identify them ?

A5:- I do. They were discovered in the mail room. The flat roll if a book I think. I submit here two out going parcels, one from Major Woods, and one from Lt. Travers.

Parcels marked exhibit 4.

Q6:- I have here a bundle of 10 letters, have you seen them before ?

A6:- I have. I saw them at approximately 1430 hours on December 3rd., in company with S.M. Tanner and the accused. The accused produced them from the lower drawer in his billets.

Bundle of letters marked exhibit 5.

Q7:- The majority are out going air-mail letters, which have not been mailed. I have here a package of air-mail letters, out going, have you seen them before ?

A7:- Yes, sir. at approximately 1630 hours on December 3rd, in Sjt. Smith's billets, when I insisted he turn out his pockets, he produced these.

Five blue armed forces air-mail letters at mailing price of 6d. each marked exhibit 6.

Q8:- I have here a newspaper, 10 letters, and 2 photographs, have you seen them before ?

A8:- Yes, on December 3rd, about 1500 hours, we collected these from various dust corners, unused pigeon holes, etc., in the presence of the accused. They are mostly ordinary letters for transmission to Canada, and a few blue armed forces air-mail letters.

Miscellaneous letters marked exhibit 7.

Q9:- I also have a bundle of 41letters, 3 of which are air-mail letters, and one ordinary air-mail letter have, you seen them before ?

A9:- These items were produced from the accused's pocket on December 3rd, at 1630 hours, in his billets, in company with C.S.M. Tanner.

Bundle marked exhibit 8.

Q10:- I have here tobacco advice slips, 4 white and four blue, have you seen them before ?

A10:- The blue ones, tobacco advice slips, are put in the bags in Canada. They were found in the unit mail room. I did not find them myself.

Q11:- I hand you 4 blue tobacco advice sheets, and 4 white advice tobacco slips, what are these ?

A11:- The blue ones are despatches direct from Canada to the unit. The accused signed for certain parcels at the F.P.O., copy being retained by the F.P.O. with the accused's receipt thereon. These were obtained from the F.P.O.

Tobacco advice slips marked exhibit 9.

Q12:- Do recipients sign for their parcels on the white advice slip ?

A12:- No, they sign in the parcels record book (exhibit 1).

Q13:- Did you find that some of the parcels listed in exhibit 9 are not signed for in the receipt book exhibit 1, by the recipients. ?

A13:- Yes, sir.

Q14:- I produce to you 3 acknowledgment cards of the type contained in each parcel of cigarettes, do you identify them ?

A14:- Yes. They were produced by the accused about December the 3rd from the lower drawer of his cupboard.

Acknowledgment cards marked exhibit 10.

The number on each card is the order number of the parcel of cigarettes sent out by the tobacco company.

Q15:- Does the number on this card, JYA 69709 appear on any of the exhibits submitted ?

A15:- Yes, sir. It is referred to in one of the white receipts in exhibit 9. as having been received by the accused, on behalf of the unit It was received on the 21st of September 1942. This indicates that the said card had been contained in a cigarette parcel received by the accused for unit on the 21st of September, 1942.

Q16:- I now show you the unit parcel book record, contained in exhibit 1, was this parcel entered in that book ?

A16:- No, sir. I have carefully searched for the entry, nor is there any record of this parcel having been returned to the F.P.O.

Prosecutor:- This is the parcel referred to in the 4th charge and its alternative.

Q17:- I produce another cigarette acknowledgment card, "umber AUA14687 will you tell us if it appears in the records exhibited ?
A17:- I found record of that parcel as having been received for the unit by the accused on the 27th of September, 1942, on the tobacco advice list from the F.P.O. It was not delivered. I find no record of the parcel having been entered in the parcel record book, nor any record of its return to the F.P.O.
Prosecutor:- This card relates to the first charge and its alternative.
Q18:- With respect to the first and fourth charges, and in view of the evidence thus far, is there any other possible disposition that could have been made by the accused, in pursuance of his duties ?
A18:- I would say he was very negligent in his duties at the very least, and I know of no other proper disposition he could have made of them.
Q19:- Did you have any conversation with the accused in connection with the alleged irregularities ?
A19:- Yes, That was on December 5th, I believe, in S.M. Tanners' office. The accused at that time was under escort. I asked permission of Major Woods to interview the accused. When permission was granted, I, in company with S.M. Tanner and Cpl. Massel interviewed the accused. There was no one else present. I explained to the accused that he had made a voluntary confession of stealing approximately 4000 cigarettes, and that I had documentary evidence with me to show that approximately 1000 cigarettes could not be accounted for. He decided to make a clean breast of his dealing with the mail. He furnished us with names, amounts, and dates of the parcels which he had appropriated for his own use. The accused was properly warned. I explained that any statement he might make would be used as evidence, and we then asked him if would sign a statement in the presence of his commanding officer.
Q20:- Were there any inducement, promises, or threats ?
A20:- "o, sir. I explained to him that no promises could be made to him on any condition, I also explained to him that we did not want to prosecute for more than was actually taken. I asked him for the full details of the parcels. I mean by this that I wanted the details of the parcels taken within his own recollection. I also meant that there irregularities, and that a great number of parcels appeared to be unaccounted for, and that it would take weeks of checking to establish the parcels that actually were handed in to the unit for delivery, therefore I requested his assistance.
Q21:- Was there anything that would indicate to the accused tht this statement was an inducement for him to make a confession. ?
A21:- No, sir. He readily assented. He furnished names and addresses of parcels he had appropriated, and approximate dates of appropriation. He rendered every assistance in fixing even the number of cigarettes and what he had done with them to the best of his recollection.
Q22:- Did he at tht time make a written statement ?
A22:- He signed a written statement under oath, in the presence of the C.C. Major Woods.
Q23:- Which statement are you referring to now ?
A23:- The one in the handwriting of Cpl. Massell, of the provost corps.
CROSS-EXAMINED BY THE DEFENDING OFFICER
Q24:- Are you certain both these statement were made on the same day ?
A24:- I cannot state definitely, I am almost s
Q25:- Do you recall having heard the words " I name two persons who have bought cigarettes from you, tne number of prospective charges will be reduced. If those names are not submitted, the company will be called on parade, including out-lying work parties, if necessary, and questioned regarding the sale of cigarettes ?
A25:- I do not.

In order to take the evidence of the officers and other witnesses, so tht they can be released for duty, the balance of the evidence from Lieut. Foxe will be taken after their testimony.

2ND WITNESS FOR THE PROSECUTION:- Major M.J. WRIDE, M.C.A.M.C., having been duly sworn, is EXAMINED BY THE PROSECUTOR:-
Q26:- "id you write this letter ?
A26:- Yes, I was written on the 20th of June to my wife.
Q27:- "hom did you hand it to ?
A27:- It is an air-mail letter. I handed it to someone connected with the Post Office at Minley Manor.
Q28:- Do you recognise the accused ?
A28:- I recognise the accused as the postal clerk at that time. But I cannot swear I handed it to him personnaly. It was on or about the 20th

of June.

Letter above referred to marked exhibit N

3RD WITNESS FOR THE PROSECUTION:- Lieut. P. KENCH No. 1. Pro. Coy., having been duly sworn, is EXAMINED BY THE PROSECUTOR:-

Q29:- Do you recognise this letters?

A29:- I do. I wrote them on the 3rd of November to Miss Paxton, and one to my mother on the 4th of November. They are air-mail letters. I do not remember definitely whether I handed them to Sjt. Smith or laid them on his table. Usually, if he was there, I handed them to him, if not, I laid them on his desk. They were handed in about the 3rd of November.

Letter above referred to marked exhibit O

CROSS-EXAMINED BY THE DEFENDING OFFICER

Q30:- Do you recall if the accused was there at that time ?

A30:- I do not recall if he was there or not.

4TH WITNESS FOR THE PROSECUTION:- Lieut. W.H. TRAVERS No. 1 Pro. Coy., having been duly sworn, is EXAMINED BY THE PROSECUTOR:-

Q31:- Do you recognise this letter ?

A31:- I do. I wrote it on the 5th of November to my wife. I gave it to Sjt. Smith, whom I recognise as the mail orderly. It was an air-mail letter, and I gave him sixpence to cover cost of postage, as I had no stamps.

Letter above marked exhibit H

CROSS-EXAMINED BY THE DEFENDING OFFICER

Q32:- Were there other times when, not having the proper change, Sjt. Smith might stamp them for you ?

A32:- He might, but I would have the change by night.

Q33:- There might be small sums owing either way ?

A33:- Only on parcels, as I could not know what they would come to.

5TH WITNESS FOR THE PROSECUTION:- Lieut. H. PRISKE no. 1 C.G.P.C., having been duly sworn, is EXAMINED BY THE PROSECUTOR:-

Q34:- Do you recognise this letter ?

A34:- Yes, I wrote it to Miss Juanita George, on November 24th. I left it on my table, and my batman took it down with sixpence. I did not hand it personally to the mail orderly.

Letter above referred to marked exhibit J.

THE DEFENSE DECLINES TO CROSS-EXAMINE THIS WITNESS

The prosecutor stated he would not call the batman as witness.

Lieut. Charles A. Bellin, 1 C.G.P.C., interpeter, is duly sworn.

6TH WITNESS FOR THE PROSECUTION:- E 50711 Pte. DOYON, A. 1 C.G.P.C., having been duly sworn, is EXAMINED BY THE PROSECUTOR:-

Q35:- Do you recognise this letter ?

A35:- A friend wrote it for me, addressed to Miss Adrianne Chacotte. It was written on the 10th of November. I gave it to Sjt. Smith, whom I recognise. I gave him a shilling, and he gave me sixpence change, that was for postage, as it was an air-mail letter.

Letter above referred to marked exhibit K.

THE DEFENSE DECLINES TO CROSS-EXAMINE THIS WITNESS

7TH WITNESS FOR THE PROSECUTION:- L 65754 Sgm. LEVESQUE H.J. R.C.C.S., 1st Army Corps Signals, having been duly sworn, is EXAMINED BY THE PROSECUTOR:-

Q36:- Do you recognise this letter ?

A36:- Yes, sir. I wrote it to my mother and father on the 25th of June. I handed it to Sjt. Smith, whom I recognise. I gave him I think 1/6, as it was to go by air-mail. I did not receive any change. I mailed it between the 25th and 28th of June.

Letter above referred to marked exhibit M

THE DEFENSE DECLINES TO CROSS-EXAMINE THIS WITNESS

Q

8TH WITNESS FOR THE PROSECUTION:- H 3511 C.S.M. TANNER, S.C. No. 1 C.G.P.C. having been duly sworn, is EXAMINED BY THE PROSECUTOR:-

Q37:-Do you recognise this letter ?

A37:- I do. I wrote it on or about the 24th of June, 1942, and I gave it to Sjt. Smith, whom I recognise, with the sum of 1/6, to cover cost of mailing. It is addressed to Q.C. Wpg. Rifles, Winnipeg.

Letter above referred to marked exhibit P

THE DEFENSE DECLINES TO CROSS-EXAMINE THIS WITNESS

9TH WITNESS FOR THE PROSECUTION:- D 116463 Sgm. KOHANE H. No. 1. CSRU having been duly sworn, is EXAMINED BY THE PROSECUTOR:-
Q38:- Do you recognise this letter ?
A38:- I do. I wrote it to me father on the 29th of August of this year. I handed it in to the postmaster, whom I recognise. I gave it to him on the same day the letter was written. It is an air mail letter. I handed him 1/3 to cover cost of postage.
Letter above referred to marked exhibit O
The DEFENDING OFFICER DECLINES TO CROSS-EXAMINE THIS WITNESS
10TH WITNESS FOR THE PROSECUTION:- H 40779 Cpl. MARTIN D.G. R.N.Z.A.F., Having been duly sworn, is EXAMINED BY THE PROSECUTOR:-
Q39:- Do you recognise this letter ?
A39:- I do. I wrote it to my wife on the 3rd of November. It is an air-mail letter. I handed it to Sjt. Smith whom I recognise. I handed it to him on or about the 3rd of November, together with 6d. to cover cost of postage.
Letter above referred to marked exhibit L
CROSS-EXAMINED BY THE DEFENDING OFFICER
Q40:- How long had the accused been postal clerk ?
A40:- About six months I think.

1ST WITNESS FOR THE PROSECUTION:- Lieut. J. FOX, C.P.O. recalled, remains under oath, and is RE-EXAMINED BY THE PROSECUTOR:-
Q41:- With respect to order No. D 30143, addressed to Pte. Gallant, and mentioned in the second charge and its alternative, involving 300 cigarettes, can you point out in the record that parcel ?
A41:- That parcel is shown on the blue slip for the 29th of October, as having been received and signed for by the accused. I have the reciept book signed by the recipients, I have checked it and find no record of said parcel therin. It is not recorded in the unit parcel record book contained in Exhibit 1. There is no record of this parcel having been returned to the F.P.O., and no evidence of any other legal disposition thereof.
Q42:- Is there any other record that this parcel was properly disposed of?
A42:- No, sir. If Gallant had moved, the accused would have a receipt for this parcel from the F.P.O.
Q43:- With respect to the third charge, and its alternative, regarding parcel No. 17527, have you any evidence to offer ?
A43:- I find it entered in the blue sheet in exhibit 9 as having been received in the unit from F.P.O. It is not recorded in the unit parcel book contained in exhibit 1. There is no record of this parcel having been returned to the F.P.O. and no evidence of other legal disposition.
The prosecutor said he had no evidence to offer with respect to the fifth charge.

Q44:- Have you any evidence to offer with respect to parcel no. S.C. 3252 mentioned in the 8th charge and its alternative ?
A44:- I find it entered in the blue sheet in exhibit 9 as having been received in the unit from F.P.O. It is not recorded in the unit parcel book contained in exhibit 1. There is no record of this parcel having been returned to the F.P.O. and no evidence of other legal disposition.
WITNESS:- (I MIGHT SAY THAT HAVE HAD THREE DIFFERENT POSTAL PERSONNEL CHECK ALL BOOKS RESPECTING ALL OF THE PARCELS IN THE CHARGES, AND THAT MY ANSWERS ARE BASED UPON THE RESULTS OF SUCH CHECKING)

Q45:- Respecting parcel no. J. 71142, mentioned in the 7th charge and its alternative ?
A45:- I find this parcel receipted for by the accused in the white field tobacco advice slip, dated 28th of August, 1942 contained in exhibit 9. It is not recorded in the unit parcel book contained in exhibit 1. There is no record of this parcel having been returned to the F.P.O., and no evidence of other legal disposition.
The prosecutor said he had no evidence to offer with respect to the 6th charge.

Q46:- Respecting the 9th charge and its alternative, package of 300 cigarettes, number J 84090 , what evidence have you ?
A46:- I find it entered in the blue sheet in exhibit 9 as having been received in the unit from F.P.O. It is not recorded in the unit parcel book contained in exhibit 1. There is no evidence of this parcel

having been returned to the F.P.O., and no evidence of other legal disposition.
Q47:- Respecting the 10th charge, and its alternative, in which is mentioned a carton of 300 cigarettes, number JUA 61549, what evidence have you to offer ?
A47:- I find it entered on the white tobacco advice list, dated 11th August, 1942, as having been received at the unit post office, contained in exhibit 9. It is not recorded in the unit parcel book contained in exhibit 1. There is no record of this parcel having been returned to the F.P.O., and no evidence of other legal disposition.

The court announced that they would not admit to evidence the confession of the accused obtained by Lieut. Foxe.

The president complied with M.F. 40(A) note 2 and the accused stated that he had nothing to say, neither did he wish to call any witnesses on his behalf.

Closing address by the Prosecutor:-
I submit sir, that we have established a prima facie case on all charges against the accused in connection with the stealing of cigarettes, and in some cases, of the other charges. He pleaded guilty to the charge of selling cigarettes. The charge of neglect, thus causing delay in the posting of letter, is covered by Lieut. Foxe's evidence. To my mind, the charges have been amply proven.

THE COURT IS CLOSED TO CONSIDER ITS FINDING.

The court re-opens, finding the accused not guilty of (1) all the alternative charges, (2) not guilty with respect to the 5th, 8th, 11th, 13th, 17th, and 21st. charges.

Lieut. A.J. DAVIES, No. 3 CGPC, having been duly sworn, produces A.F.B. 29b and M.F.M. b, and states:-
"I produce herewith A.F.B. 29b and M.F.M. b, both relating to the accused, whom I recognise. They have been compared with the regimental books, and are true extracts therefrom. The entries on the b have been compared with the original, and are certified to be correct"

The defending officer and accused offer no objection to these two documents now produced.

STATEMENT IN MITIGATION OF PUNISHMENT BY THE DEFENDING OFFICER ATTACHED HERETO

THE COURT IS CLOSED FOR THE CONSIDERATION OF THE SENTENCE.

K42008.

Sgt. Smith, Ronald Emerson.

Born May 1, 1907, at St. Johns' N.B. Attended school at Consolidated Schools, Florenceville, N. B. until 1917.
1 Year At Charlotte Street School, Frederickton, N. B.
1919 1 Year At School in St.Stephen, N.B.
1926 to Horton Academy, Wolfville, N.B.
2 Years at Acadia University, Wolfville, N.S.

In 1929 worked in a clerical position in a general Store. Government gravel contract for himself in 1930. In 1930, that fall, became general mamager: St. John's Valley Produce Exchange.

In 1933 became outside superintendent in charge of all warehouses. 1935 Investigator for the Eastern Canada Marketting Board, City of Ottawa.

1935 worked in Government Fish Hatchery. 1936 Salesman Building Products, Montreal.

1937 went to B.C. and remained there milling lumber until date of enlistment, 1st day of September 1939--with the Rocky Mountain Rangers. Transferred the 27th November, 1939, to the Seaforth Highlanders of Canada. Became Transport clerk.

September 1940 came to 3. C.I.H.U., where he went to work in the pay office. On Dec 1st, 1941 he went to 2 C.D.I.R.U. receiveing a promotion to Corporal. Transferred from Seaforth Highlanders of Canada to the Queens Own Cameron Highlanders of Canada in January 1942.

In may was promoted to acting Sgt. and transferred to # 1 Cdn. Gen. Pioneer Coy. in the Pay Services.

Itwas in 1940 that the difficulty of a trouble home life began. Letters were very infrequent and off hand.

From Dec. 1940 until Dec. 1942. He received only 10 letters. (Please see exhibits July 22, 1941.)

Mail job came up when I relieved postal Orderly from 22nd of June until the 29th of June. He went on leave. Took over permanently on the 15th of July.

Several jobs and overwork, at one time held job of Pay Sgt: Postal Sgt; Sports Sgt; Ration Sgt., and Orderly Sgt. Every third day. I was Section Sgt. as well.

When he took over job of Postal Sgt. had no instruction. Had no visits from Postal authorities until 3rd day of December, 1942.

At Minley Camp no under canvas. No strong box. Thin cupboard in which doors could be sprung by hand. Was not in the Pay tent, which was postal tent all the time.

At Haig Hutments provisions for safeguarding of mail no better at first. At his own expense purchased a lock.

Asked for compassionate leave in April 1942. Was qualified but heard nothing.

Got despondent and owing to the haphazard way in which money and parcles without directions were left on your desk in your absence, became discouraged and at times stamped and posted parcels for which he paid for from his own pocket.

Regarding cigarettes the same prevailed. Would endeavour to keep the personnel supplied even if at times it meant giving them the same from personal supply which was plentiful.

Having had no complaints until enquiry took place was always able to adjust cigarette ration to the satisfactin of the Unit. Could have made adjustments from personal packages received for any shortage suffered, if inspection had not hindered.

Letters unposted were due to having no suitable system as well as to any personal disregard. Had no fund with which to buy stamps. At times was out of pocket to the extent of $1.10.

When despondent, and brooding over wrongs,fancied or real, because fancied wrongs can prey equally on a man's mind and offer the same motive for redress, he would from time to time drink more excessively than he was accustomed, because Sgt. Smith was never addicted to the liquor habit as his M.F.M.#6 will prove. At times he felt incapable of handling his various jobs and as early as a few months ago he found himself hampered in his daily tasks by the haze which his indulgence had brought upon him. But in all this time he was not checked by any postal authorities altough it must have been apprent to those in charge of Field Post Office S.C. 12 that he was not at his highest grade of efficiency.

We are dealing with a man who has in all his past business experience never suffered a failure, a man who could if functioning in his true capable fashion could have,with assistance and facilities have averted any disagreeable consequences.

This is a new Unit, formed early in April,1942. Difficulties which always face a new venture were found present.

N.C.O. material and assistance in such jobs that required administrative ability was sadly lacking.

I submit for the study of this court these facts. This N.C.O. who was holding down several jobs demanding time and detail work, had not the tools with which to work, nor the supervision and instruction of such a job as called for by being postal clerk.

We all know that food and mail play the most important part in bolstering the morale of a unit. Before the 3rd day of December this Postal Sgt. had not been checked. We can assume from this that his work was entirely satisfactory from the point of view of the Postal services.

Why were there no complaints? Registered mail and parcels must have been satisfactorily despatched.

Can we assume therefore that this N.C? O. is to be blamed for this avalanche of inefficiency? I think not. Certainly there is great doubt in our minds that a matter of such importance could have drifted to such an end if the proper authority had exercised its supervision.

Duplicate

CANADIAN PROVOST CORPS

DATE:- 5 December 1942

SUBJECT:- Postal Thefts at No 1 Can. Pioneer Coy. K2

STATEMENT of Regt. No. K-42008

of Sgt. R.E. Smith Taken at:- Haig Hutments

'I have been warned that I am not obliged to say anything unless I wish to do so, but that anything I now say will be taken down in writing and may be given in evidence.

'To show that I understand the above warning, I make this statement voluntarily and sign my name herewith. And I make the following statement on oath.

SIGNED:-

STATES:-

Ever since August I have been using ~~the~~ money given to me by the men in the unit for postage for air letters, parcels and ordinary mail. I would estimate the amount to be around three pound ten (£3.10.0.)

I also took from the post office around ten thousand cigarettes as shown in ~~copy~~ testimonial given, amounts and from whom the parcels were taken. I smoked the majority of those cigarettes, the remainder I sold to the men in the unit at 1/6 and 1/3 a pack. I never sold any of these cigarettes to civilians nor did I ever steal food parcels or registered letters.

I have read the above statement and it is

Witness:- Signed:- R E Smith

Capt. CDN. GENERAL

SUMMARY OF EVIDENCE

CHARGES: 1, 2, & 3

SUMMARY OF EVIDENCE IN THE CASE OF K-42008, Pte. (Paid Sergeant) SMITH, RONALD, EMERSON, 1 CANADIAN GENERAL PIONEER COY., A SOLDIER OF THE CANADIAN ARMY OVERSEAS, CHARGED UNDER SEC. 18(4) A.A., WITH: WHILE ON ACTIVE SERVICE STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW.
BY DIRECTION OF MAJOR P.A.WOODS, E.D., OFFICER COMMANDING 1 CANADIAN GENERAL PIONEER COY., The SUMMARY OF EVIDENCE IS TAKEN ON OATH.

First Witness for prosecution, F-77504, Pte. Gallant R.

"I, No. F-77504, Pte. Gallant, R., 1 Canadian General Pioneer Coy., having been duly sworn, give evidence as follows:-

I did not received a parcel of 300 cigarettes from Ladies Aux., Canadian Legion, c/o Mrs. John Stewart: Sec. P.O.Box, 181, Reserve Mines C.B., N.S., on or after 27 Sept. 42.

I can not tell without reference to postal records at the detachment i.e. H.Q. No. 1 C.B.C.D. whether I received cigarettes on or about 17 or 29 Oct. 42

Cross-Examined by Accused:-
Q.- "Have you always received your full allotment of 1000 cigarettes per month since August 1942 ?."
A.- "I could not say without reference to the above mentioned records."

Signed:- F-77504, R. Gallant

Documentary Evidence:-
Exhibits T & U

Charge No.4

SUMMARY OF EVIDENCE IN THE CASE OF K-42008, Pte. (Paid Sergeant) SMITH, RONALD, EMERSON, 1 CANADIAN GENERAL PIONEER COY., A SOLDIER OF THE CANADIAN ARMY OVERSEAS, CHARGED UNDER SEC. 18(4) A.A. WITH: WHILE ON ACTIVE SERVICE STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW.
BY DIRECTION OF MAJOR P.A.WOODS, E.D., OFFICER COMMANDING 1 CANADIAN GENERAL PIONEER COY., THE SUMMARY OF EVIDENCE IS TAKEN ON OATH.

First Witness, For Prosecution, G-49689, Gnr. Kaine F.G.

"I, No. G-49689, Gnr. Kaine, F.G., 1 Canadian General Pioneer Coy.. having been duly sworn, give evidence as follows:-

During the time I have been in England, that is from December 1941, to date, I have received 300 cigarettes every month from my mother Mrs. Minnie Kaine, St. Croix, York Co. N.B. So far as I know, I have not missed any parcels of cigarettes."

Cross-Examined by Accused:-
Q.-"Have you returned all cards contained in these packages. ?. "
A.- No, I hav'nt.

Signed:- G-49689, F.G.Kaine.

Documentary Evidence:
Exhibit marked "T"

Charge No. 5

SUMMARY OF EVIDENCE IN THE CASE OF K-42008, Pte. (Paid Sergeant) SMITH, RONALD, EMERSON, 1 CANADIAN GENERAL PIONEER COY., A SOLDIER OF THE CANADIAN ARMY OVERSEAS, CHARGED UNDER SEC. 18(4) A.A. WITH: WHILE ON ACTIVE SERVICE STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW.
BY DIRECTION OF MAJOR P.A.WOODS., E.D., OFFICER COMMANDING 1 CANADIAN GENERAL PIONEER COY., THE SUMMARY OF EVIDENCE IS TAKEN ON OATH.

First Witness for Prosecution D-59051, Pte. Lippe L

"I, No. D-59051, Pte. Lippe L, 1 Canadian General Pioneer Coy., having been duly sworn, give evidence as follows:

"I have no reason to believe that any parcels of cigarettes sent to me from Canada during the period 15 July 42 to 3 Dec. 42 have not been received by me with the exeption of one parcel of 1000 which my girl friend Melle. Marie Rivard advised me had been dispatched about the beginning of October, 1942."

The Accused declines to cross-examine the witness.

Signed: D-59051, Lippe L.

Charge No. 6

SUMMARY OF EVIDENCE IN THE CASE OF K-42008, Pte. (Paid Sergeant) SMITH, RONALD, EMERSON, 1 CANADIAN GENERAL PIONEER COY., A SOLDIER OF THE CANADIAN ARMY OVERSEAS, CHARGED UNDER SEC. 18(4) A.A., WITH: WHILE ON ACTIVE SERVICE STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW.
BY DIRECTION OF MAJOR P.A.WOODS., E.D., OFFICER COMMANDING 1 CANADIAN GENERAL PIONEER COY., THE SUMMARY OF EVIDENCE IS TAKEN ON OATH.

First Witness for Prosecution G-18842, Pte. Roussel T.

"I, No. G-18842, Pte., Roussel T., 1 Canadian General Pioneer Coy., having been duly sworn, give evidence as follows:

I remember receiving a parcel of 1000 cigarettes around the end of September, 1942 when I was stationed in Croydon on detachment. Since then I have received no other parcel of cigarettes."

The accused declines to cross-examine this witness.

Signed: G-18842, Roussell T

Documentary Evidence
Exhibit Marked "Y"

Charge No. 7

SUMMARY OF EVIDENCE IN THE CASE OF K-42008 Pte. (Paid Sergeant) SMITH, RONALD, EMERSON, 1 CANADIAN GENERAL PIONEER COY., A SOLDIER OF THE CANADIAN ARMY OVERSEAS, CHARGED UNDER SEC. 18(4) A.A., WITH: WHILE ON ACTIVE SERVICE, STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW.
BY DIRECTION OF MAJOR P.A.WOODS, E.D., OFFICER COMMANDING 1 CANADIAN GENERAL PIONEER COY., THE SUMMARY OF EVIDENCE IS TAKEN ON OATH.

First Witness, for Prosecution. E-12031, Pte. Dion P.

"I, E-12031, Pte. Dion P., 1 Canadian General Pioneer Coy., having been duly sworn, give evidence as follows:

I was on detachment at Pinewood from early in July 42, until the first week in October 42 when I was transferred direct from there to Dorking where I was stationed for a little more than three weeks. In the first week in October, I received a parcel of 1000 cigarettes from Sgt. Smith.

The accused declines to cross-examine this witness.

Signed: E-12031, P. Dion

Documentary Evidence, Exhibit marked "U"

Charge No. 8

SUMMARY OF EVIDENCE IN THE CASE OF K-42008 Pte. (Paid Sergeant) SMITH, RONALD, EMERSON, 1 CANADIAN GENERAL PIONEER COY., A SOLDIER OF THE CANADIAN ARMY OVERSEAS, CHARGED UNDER SEC. 18(4) A.A., WITH: WHILE ON ACTIVE SERVICE STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW.
BY DIRECTION OF MAJOR P.A.WOODS., E.D., OFFICER COMMANDING 1 CANADIAN GENERAL PIONEER COY., THE SUMMARY OF EVIDENCE IS TAKEN ON OATH.

First Witness, for Prosecution D-57812, Pte. Seguin, W.

"I, D-57812, Pte. Seguin W., 1 Canadian General Pioneer Coy., having been duly sworn, give evidence as follows:

During the period 15 July 42., and 3 Dec. 42, I have no reason to believe that any cigarettes sent to me from Canada have not been received by me."

The Accused declines to cross-examine this witness.

Signed. D-57812, Wilfrid Seguin

Charge No. 9

SUMMARY OF EVIDENCE IN THE CASE OF K-42908 Pte. (Paid Sergeant) SMITH, RONALD, EMERSON, 1 CANADIAN GENERAL PIONEER COY., A SOLDIER OF THE CANADIAN ARMY OVERSEAS, CHARGED UNDER SEC. 18(4) A.A., WITH: WHILE ON ACTIVE SERVICE STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW.
BY DIRECTION OF MAJOR P.A.WOODS E.D., OFFICER COMMANDING 1 CANADIAN GENERAL PIONEER COY., THE SUMMARY OF EVIDENCE IS TAKEN ON OATH.

First Witness,
for Prosecution
No. D-62829,
Spr. Desrosiers C.

I, No. D-62829, Pte. Desrosiers, C. 1 Canadian General Pioneer Coy., having been duly sworn, give evidence as follows:

I have been in the habit of receiving a parcel of cigarettes each month for the past nine months with the exception of the month of July, 1942, when I received no parcel. I used to hear from my girl friend in Canada, about a week before the parcels arrived and it was my custom to go to the unit post office about a week after hearing from her to ask for my parcel,. This custom I followed in July 1942 and when I asked Sgt. Smith, the postal clerk for my parcel, he told me, first time I asked that there was no parcel for me so I went to see C.S.M. Tanner and explained that I had received a letter from my girl friend notifying me that a parcel of cigarettes had been sent. The C.S.M. came with me to the post office and Sgt. Smith then told me that there was a parcel but I could not have it as I was only supposed to receive 1000 cigarettes a month. I received a parcel of 1000 cigarettes in June 1942 and there was no question about them.

Cross-examined by Accused:-

Q.- When did you go to Croydon ?.
A.- I went to Croydon in June 1942
Q.- How long did you stay in Croydon ?.
A.- About a month the first time,
Q.- How long were you in Minley before returning to Croydon ?.
A.- About two days.

Signed: D-62829, L Desrosiers, Pte

Documentary Evidence
Exhibit Marked "U"

Charge No. 10

SUMMARY OF EVIDENCE IN THE CASE OF K-42008 Pte. (Paid Sergeant) SMITH, RONALD, EMERSON 1 CANADIAN GENERAL PIONEER COY.? A SOLDIER OF THE CANADIAN ARMY OVERSEAS, CHARGED UNDER SEC.18(4) A.A., WITH: WHILE ON ACTIVE SERVICE STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW
BY DIRECTION OF MAJOR P.A.WOODS, E.D., OFFICER COMMANDING 1 CANADIAN GENERAL PIONEER COY., THE SUMMARY OF EVIDENCE IS TAKEN ON OATH.

First Witness,
for Prosecution,
G-19149, Pte. Chiasson, A.

I, No. G-19149, Pte. Chiasson A., 1 Canadian General Pioneer Coy., having been duly sworn give evidence as follows:

I received 900 cigarettes in the month of August 1942, between the 11 Aug 42 and the end of September 42 when we moved from Minley [redacted] Huts, Crookham."

The accused declines to cross-examine this witness.

Signed:- G-19149 Chiasson A

Documentary Evidence
Exhibit Marked: "U"

11th. CHARGE

SUMMARY OF EVIDENCE IN THE CASE OF NO. K-42008 Pte. (Paid Sergeant) SMITH, RONALD, EMERSON, 1 CANADIAN GENERAL PIONEER COY., CHARGED UNDER SEC. 18(4) A.A., AT HAIG HUTMENTS, CROOKHAM, Hants., WITH:- WHILE ON ACTIVE SERVICE, FRAUDULENT MIS-APPLICATION OF PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW.
BY DIRECTION OF MAJOR P.A. WOODS, E.D., OFFICER COMMANDING 1 CANADIAN GENERAL PIONEER COY., THE EVIDENCE IS TAKEN ON OATH.

First Witness
for prosecution

Lieut. P. Kench

" I Lieut. P. Kench, 1 Canadian General Pioneer Coy., having been duly sworn, give evidence as follows:
Two letters addressed respectively to Mrs., Kench Chervill, Alta, Canada and Miss, Paxton, 615, 2nd. Street, Nelson B.C., Canada, and dated 4 Nov 42 and 3 Nov 42 respectively have been handed to me at this Summary of Evidence and I identify them as letters written to my mother Mrs., Kench and my aunt Miss Paxton, and were placed on the Postal Orderly's table, on or about 5 Nov 42, together with the sum of one shilling (1/-) to cover the Air Mail postage. I identify the accused as No. K-42008 Sgt. Smith R.E. the Postal Orderly of 1 Canadian General Pioneer Coy.,

The accused declines to cross-examine the witness

Signed..... P. KENCH, Lieut

Document Attached.
Exhibit "G"

12th. CHARGE

SUMMARY OF EVIDENCE IN THE CASE OF NO. K-42008 Pte. (Paid Sergeant) SMITH, RONALD, EMERSON, 1 CANADIAN GENERAL PIONEER COY., CHARGED UNDER SEC. 18(4) A.A., WITH:- WHILE ON ACTIVE SERVICE FRAUDULENT MISAPPLICATION OF PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW.
BY DIRECTION OF MAJOR P.A. WOODS, E.D., OFFICER COMMANDING 1 CANADIAN GENERAL PIONEER COY., THE EVIDENCE IS TAKEN ON OATH.

First Witness
for prosecution

Lieut. W.R.Travers,

" I, Lieut., W.R. Travers, 1 Canadian General Pioneer Coy., having duly sworn give evidence as follows:
A letter addressed to Mrs., W.R.Travers, 120 Earl Street Kingston, Ont. Canada, and dated 5 Nov 42, has been handed to me at this Summary of Evidence and I identify it as a letter written by me to my wife, Mrs. W.R.Travers and handed by me to the Postal Orderly No. K-42008, Sgt., Smith R.E., 1 Canadian General Pioneer Coy., on or about the 5 Nov 42, together with the sum of six pence (-/6) to cover Air Mail postage. I identify the accused as the Mail Orderly, Sgt. Smith R.E. "

The accused declines to cross examine the witness

Signed.....W.R.TRAVERS Lieut.

Document Attached.
Exhibit "H"

13th. CHARGE

SUMMARY OF EVIDENCE IN THE CASE OF NO. K-42008 Pte. (Paid Sergeant) SMITH, RONALD, EMERSON, 1 CANADIAN GENERAL PIONEER COY., CHARGED UNDER SEC. 18(4) A.A., WITH: WHILE ON ACTIVE SERVICE, FRAUDULENT MISAPPLICATION OF PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW.
BY DIRECTION OF MAJOR P.A.WOODS, E.D, OFFICER COMMANDING 1 CANADIAN GENERAL PIONEER COY., THE EVIDENCE IS TAKEN ON OATH.

First Witness for prosecution

Lt. H. Priske

"I Lieut. H. Priske, 1 Canadian General Pioneer Coy., having been duly sworn, give evidence as follows:
A letter addressed to Miss Juanita George, Box 1087, Kirkland Lake Ont., Canada and dated 24 Nov 42, has been handed to me at this Summary of Evidence and I identify it as a letter written by me to Miss Juanita George and left on the table in my quarters together with the sum of six pence (-/6) for delivery to the Postal Clerk of 1 Canadian General Pioneer Coy., Sgt. Smith. This would be on or about 25 Nov 42"

The accused declines to cross-examine the witness.

Signed...H. PRISKE, Lieut.....

Document attached.
Exhibit "J"

14th. CHARGE

SUMMARY OF EVIDENCE IN THE CASE OF NO. K-42008 Pte. (Paid Sergeant) SMITH, RONALD, EMERSON, 1 CANADIAN GENERAL PIONEER COY., CHARGED UNDER SEC. 18(4) A.A. WITH:- WHILE ON ACTIVE SERVICE FRAUDULENT MISAPPLICATION OF PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW.
BY DIRECTION OF MAJOR P.A.WOODS, E.D., OFFICER COMMANDING 1 CANADIAN GENERAL PIONEER COY., THE EVIDENCE IS TAKEN ON OATH.

First Witness for prosecution

E-5671, Pte. Doyon A.

"I No. E-5671, Pte. Doyon A., 1 Canadian General Pioneer Coy., having been duly sworn, give evidence as follows:
A letter addressed to Melle. Adrienne Chabotte, 1721 Panait Doit, Montreal, P.Q. Canada and dated 3 Nov 42, has been handed to me at this summary of evidence and I identify it as a letter written to my friend Melle Adrienne Chabotte and handed by me to the Postal Orderly No. K-42008 Sgt. Smith R.E. 1 Canadian General Pioneer Coy, on or about 4 Nov 42, together with the sum of six pence (-/6) to cover Air Mail postage. I identify the accused as the Mail Orderly Sgt. R.E.Smith"

The accused declines to cross-examine the witness

Signed.....DOYON, A.....

Document attached.
Exhibit "K"

15th CHARGE

SUMMARY OF EVIDENCE IN THE CASE OF NO. K-42008 Pte. (Paid Sergeant) SMITH, RONALD, EMERSON, 1 CANADIAN GENERAL PIONEER COY., CHARGED UNDER SEC. 18(4) A.A., WITH: WHILE ON ACTIVE SERVICE FRAUDULENT MISAPPLICATION OF PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW.
BY DIRECTION OF MAJOR P.A.WOODS, E.D., OFFICER COMMANDING 1 CANADIAN GENERAL PIONEER COY., THE EVIDENCE IS TAKEN ON OATH.

First Witness for prosecution

H-40779 Cpl. Martin D.G.

"I, No. H-40779, Cpl. Martin D.G., 1 Canadian General Pioneer Coy, having been duly sworn give evidence as follows:
A letter addressed to Mrs. D.G.Martin, 248 St. Winnipeg, Man., Canada, and dated 3 Nov 42, has been handed to me at this summary of evidence and I identify this letter as a letter written by me to my wife Mrs. D.G.Martin and handed by me to the Postal Orderly No. k-42008 Sgt. Smith R.E., 1 Canadian General Pioneer Coy., whom I now identify, on or about 3 Nov 42, together with the sum of six pence (-/6) to cover Air Mail postage.

The accused declines to cross-examine the witness.

D.G. MARTIN

Signed..... .....

Document attached.
Exhibit "L"

16th CHARGE

SUMMARY OF EVIDENCE IN THE CASE OF NO. K-42008 Pte. (Paid Sergeant) SMITH, RONALD, EMERSON, 1 CANADIAN GENERAL PIONEER COY., CHARGED UNDER SEC. 18(4) A.A., WITH: WHILE ON ACTIVE SERVICE FRAUDULENT MISAPPLICATION OF PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW.
BY DIRECTION OF MAJOR P.A.WOODS, E.D., OFFICER COMMANDING 1 CANADIAN GENERAL PIONEER COY., THE EVIDENCE IS TAKEN ON OATH.

First Witness for Prosecution
L-65754, Sgmn. Levesque N.J.

I, No. L-65754, Sgmn. Levesque N.J., 1st. Army Signals, R.C.C.S. having been duly sworn give evidence as follows:
A letter addressed to Mr. & Mrs., Eugene Levesque Prud'Homme, Sask, Canada and dated 25 June 42 has been handed to me at this summary of evidence and I identify it as a letter written by me to my father and mother Mr. & Mrs. Eugene Levesque and handed to the Postal Clerk No. K-42008 Sgt. Smith R.E. 1 Canadian General Pioneer Company whom I now identify, between the dates 25 June 42 and 10 July 42 together with the sum of one shilling and three pence (1/3) to cover Air Mail postage.

The accused declines to cross-examine the witness.

Signed..... LEVESQUE N.J. .....

Document Attached.
Exhibit "M"

17th. CHARGE

SUMMARY OF EVIDENCE IN THE CASE OF NO. K-42008 Pte. (Paid Sergeant) SMITH, RONALD, EMERSON, 1 CANADIAN GENERAL PIONEER COY., CHARGED UNDER SEC. 18(4) A.A., WITH: WHILE ON ACTIVE SERVICE FRAUDULENT MISAPPLICATION OF PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW.
BY DIRECTION OF MAJOR P.A.WOODS., E.D., OFFICER COMMANDING 1 CANADIAN GENERAL PIONEER COY., THE EVIDENCE IS TAKEN ON OATH.

First Witness for Prosecution

Major R.J.Wride

"I, Major R.J.Wride, R.C.A.M.C., having been duly sworn, give evidence as follows:
A letter addressed to Mrs., R.J.Wride, 2570 Nottingham Rd. Victoria B.C., Canada, dated 26 June 42 has been handed to me at this summary of evidence and I identify this letter as a letter written by me to my wife Mrs. R.J.Wride and handed to the Postal Clerk No. K-42008 Sgt. Smith R.E., 1 Canadian General Pioneer Coy., whom I now identify by sight, together with the sum of one shilling and three pence (1/3) to cover Air Mail postage. This letter was handed to the accused between the dates 26 June 42 and 23 August 42.

Q.- "Was this letter handed to me personally ?."
A.- "Because of the elapsed time, I cannot swear that it was handed to you personally"

R.J. WRIDE, Major

Signed.....

Document Attached.
Exhibit "N"

18th. CHARGE

SUMMARY OF EVIDENCE IN THE CASE OF NO. K-42008 Pte. (Paid Sergeant) SMITH, RONALD, EMERSON, 1 CANADIAN GENERAL PIONEER COY., CHARGED UNDER SEC. 18(4) A.A., WITH: WHILE ON ACTIVE SERVICE FRAUDULENT MISAPPLICATION OF PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW.
BY DIRECTION OF MAJOR P.A.WOODS, E.D., OFFICER COMMANDING 1 CANADIAN GENERAL PIONEER COY., THE EVIDENCE IS TAKEN ON OATH.

First Witness for Prosecution

D-116463, Sgmn. Kahane H

"I, No. D-116463, Sgmn. Kahane H. 1 C.S.H.U. having been duly sworn, give evidence as follows:
A letter addressed to Mr. Max. Kahane, 1800 McGregor St. Apt. 303, Montreal, P.Q. Canada, and dated 29 August 42 has been handed to me at this summary of evidence and I identify it as a letter written by me to my father, Mr. Max Kahane and handed by me to the postal clerk No. K-42008 Sgt. Smith R.E., 1 Canadian General Pioneer Coy., whom I now identify, on the 29 Aug 42, together with the sum of one shilling and three pence (1/3) to cover Air Mail postage.

The accused declines to cross-examine the witness.

H. KAHANE

Signed.....

Document Attached.

Exhibit "O"

19th. CHARGE

SUMMARY OF EVIDENCE IN THE CASE OF NO. K-42008 Pte. (Paid Sergeant) SMITH, RONALD, EMERSON, 1 CANADIAN GENERAL PIONEER COY., CHARGED UNDER SEC. 18(4) A.A., WITH: WHILE ON ACTIVE SERVICE FRAUDULENT MISAPPLICATION OF PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW.
BY DIRECTION OF MAJOR P.A.WOODS, E.D., OFFICER COMMANDING 1 CANADIAN GENERAL PIONEER COY., THE EVIDENCE IS TAKEN ON OATH.

First Witness for Prosecution

H-3511 CSM, Tanner S.C.

"I, No. H-3511, C.S.M. Tanner, S.C., 1 Canadian General Pioneer Coy., having been duly sworn, give evidence as follows:
A letter addressed to Officer Commanding Winnipeg Light Infantry, McGregor Barracks, Winnipeg, Man., Canada and dated 24 June 42, has been handed to me at this summary of evidence and I identify it as a letter written by me to the Officer Commanding Winnipeg Light Infantry and handed by me to the Postal Clerk No. K-42008, Sgt. Smith R.E. 1 Canadian General Pioneer Coy., whom I now identify, on or about the 25 June 42, together with the sum of one shilling and three pence (1/3 to cover Air Mail Postage."

The accused declines to cross-examine the witness.

Signed S.C. TANNER C.S.M.

Document Attached.
Exhibit "P"

20th. CHARGE

SUMMARY OF EVIDENCE IN THE CASE OF NO. K-42008 Pte.(Paid Sergeant) SMITH, RONALD, EMERSON, 1 CANADIAN GENERAL PIONEER COY., CHARGED UNDER SEC. 18(4) A.A., WITH: WHILE ON ACTIVE SERVICE FRAUDULENT MISAPPLICATION OF PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW.
BY DIRECTION OF MAJOR P.A.WOODS, E.D., OFFICER COMMANDING 1 CANADIAN GENERAL PIONEER COY., THE EVIDENCE IS TAKEN ON OATH.

First Witness for Prosecution
Major G.S.Burton

"I, Major G.S.Burton, R.C.A.M.C., having been duly sworn give evidence as follows:
A parcel addressed to Mrs. G.S. Burton, 132 King St. E. Kingston Ont. Canada, has been handed to me at this summary of evidence and I identify it as a parcel packaged by me to my wife, Mrs. G.S.Burton and handed to the Postal Clerk, No. K-42008 Sgt. Smith R.E. 1 Canadian General Pioneer Company, whom I now identify, between the dates 6 Nov 42 and 10 Nov 42, together with the sum of two shillings (2/- to cover postage.

Q.-"Has this parcel been tampered with to the best of your knowledge since it was handed to me ?."

A.-"No."

Signed G.S.BURTON Major.

Document Attached.
Exhibit "P"

21st. CHARGE

SUMMARY OF EVIDENCE IN THE CASE OF K-42008 Pte. (Paid Sergeant) SMITH, RONALD, EMERSON, 1 CANADIAN GENERAL PIONEER COY., CHARGED UNDER SEC. 18(4) A.A. WITH: WHILE ON ACTIVE SERVICE FRAUDULENT MISAPPLICATION OF PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW.

NOTE. No evidence is offered in this charge.

.....Lieut.
3 Canadian General Pioneer Coy.,
Officer taking Evidence.

22nd. CHARGE

SUMMARY OF EVIDENCE IN THE CASE OF NO. K-42008 Pte. (Paid Sergeant) SMITH, RONALD, EMERSON, 1 CANADIAN GENERAL PIONEER COY., CHARGE UNDER SEC. 18(4) A.A. WITH: WHILE ON ACTIVE SERVICE FRAUDULENT MISAPPLICATION OF PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW.
BY DIRECTION OF MAJOR P.A.WOODS, E.D., OFFICER COMMANDING 1 CANADIAN GENERAL PIONEER COY., THE EVIDENCE IS TAKEN ON OATH.

First Witness for Prosecution

B-26269 L/Cpl. Mc Govern W.A.

"I, No. B-26269 L/Cpl. Mc Govern, W.A., 1 Canadian General Pioneer Coy., having been duly sworn, give evidence as follows:
A parcel addressed to Mrs. W.A.McGovern, 3 Dow Terrace, Temple Ewell, near Dover, England, has been handed to me at this summary of evidence and I identify it as a parcel packaged by me to my wife Mrs. W.A.McGovern and handed by me to the Postal clerk No. K-42008, Sgt. Smith R.E., 1 Canadian General Pioneer Coy., whom I now identify, on or about the 17 Nov, 42 together with the sum of one shilling to cover postage.

Q.-"Did I or Did I not while awaiting meal parade, Wednesday afternoon 2 Dec 42, tell you that the parcel might be delayed but your wife would receive it in due course ?."

A.-"Yes"

W.A.MC.GOVERN
Signed.....

Document Attached.
Exhibit "F"

23rd. CHARGE

SUMMARY OF EVIDENCE IN THE CASE OF NO. K-42008 Pte. (Paid Sergeant) SMITH, RONALD, EMERSON, 1 CANADIAN GENERAL PIONEER COY.? CHARGED UNDER SEC. 41, A.A. WITH: WHILE ON ACTIVE SERVICE, COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, SELLING TOBACCO CONTRARY TO SECTION 13 OF THE TOBACCO ACT, 1842.
BY DIRECTION OF MAJOR P.A.WOODS, E.D., OFFICER COMMANDING 1 CANADIAN GENERAL PIONEER COY., THE EVIDENCE IS TAKEN ON OATH.

First Witness for Prosecution

Lieut P.Kench,

"I, Lieut. P. Kench, 1 Canadian General Pioneer Coy., having been duly sworn, give evidence as follows:
Between the dates 1 Nov 42 and 30 Nov 42, I purchased 24 (twenty four) packages of Sweet Caporal Cigarettes consisting of 600 individual cigarettes and gave No. K-42008, Sgt. Smith R.E. the sum of thirty shillings (30/-) for same."

The accused declines to cross-examine this witness.

P. KENCH Lieut.
Signed.....

24th. CHARGE

SUMMARY OF EVIDENCE IN THE CASE OF NO. K-42008 Pte. (Paid Sergeant) SMITH, RONALD, EMERSON, 1 CANADIAN GENERAL PIONEER COY., CHARGED UNDER SEC. 40 A.A. WITH: NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE.
BY DIRECTION OF MAJOR F.A.WOODS, E.D., OFFICER COMMANDING 1 CANADIAN GENERAL PIONEER COY., THE EVIDENCE IS TAKEN ON OATH.

First Witness for Prosecution

Lieut. J. Foxe.

I, Lieut., J. Foxe, Canadian Postal Corps, attached to Canadian Reinforcement Units, Postal Unit, having been duly sworn, give evidence as follows:-

On 3 Dec. 42., at approximately 1530 hours, I arrived in company with C.Q.M.S. Woods C.A., (Cdn. Postal Corps, attached C.R.U. Postal Unit), at the Orderly Room of 1 Canadian General Pioneer Coy., and there asked permission to make an investigation of the postal arrangements and method of handling mail within the unit. Permission was granted by Lieut. Begin who accompanied the C.S.M. and myself to the mail-room The mail room was locked; Sgt. Smith, the mail orderly was sent for. When Sgt. Smith opened the office, I proceeded to make an investigation.
Letters and parcels were observed placed in unused pigeon holes, cupboards, etc., one letter in particular was observed in a pigeon hole partly filled with old tobacco records and other letters. This letter was addressed to Sgt. W.J.Winter, K-52347(exhibit attached) When I questioned Sgt. Smith, as to the reason why these letters should be stuffed away with old records, he reached up, took the letters and records out of the pigeon hole and placed them on the table.
For a few seconds, my attention was deverted to C.Q.M.S Woods and I did not observed Sgt. Smith's actions for those few moments. However, when I turned around and proceeded to check the mailing dates of the various items, I noticed that the items addressed to Sgt. Winter was not in evidence. I demanded the letter and Sgt. Smith produced it from his pocket. When questioned as to the reason for secreting the letter he stated that he did not want me to see it as the addressee had returned to Canada. I here enter the letter in question as an exhibit (Exhibit "A"). As it was evident that there were irregularities, I returned to the Orderly Room and then asked Lt. Begin if he would make arrangement to have Sgt. Smith's personal belongings examined He called C.S.M. Tanner and we returned to the mail room where we picked up Sgt. Smith, informing him that his kit was to be searched.
After turning out his personal belongings, Sgt. Smith produced a number of letters from the lower drawer of his cupboard and also three (3) acknowledgement cards from tobacco or cigarette cartons, two Imperial and one MacDonald's Tobacco Coy. It was observed that the letters were in the majority letters intended to be forwarded to Canada via Air Mail.
Sgt. Smith, when pressed furtner produced eight (8) Air Mail Letters from his tunic pocket. Sgt. Smith was immediately placed under arrest by C.S.M. Tanner.
On the following day, I returned to the Mail Room and again searched it. In a large cupboard, I found the items which I submit as an exhibit.
I also found a parcel addressed to Mrs. G.S.Burton in a cupboard in the Mail-Room.
A close check of the tobacco records received, dispatched and delivered from, showed a number of discrepancies.
I submit the tobacco records collected from the mail-room as exhibits.
Sgt. Smith when interviewed 6 Dec. 42, decided to make a full confession concerning the letters and cigarettes

mishandled and taken. I submit herewith a copy of the confession duly sworn and attested as an exhibit.

With the documentary evidence, I am able to show that two of the acknowledgement cards found amongst Sgt. Smith's belongings, can be traced as belonging to cartons addressed to G-49689 Gnr. Kaine F.G. and F-77524 Pte. Gallant R.
We are also able to show a number of tobacco parcels as shown in Sgt. Smith's confession, cannot be accounted for.

The accused declines to cross-examine the witness.

J. FOXE Lieut.

Signed.....

Documents Attached.
Exhibits "A", "B" & "Z"

The accused was cautioned as follows:
"Do you wish to make any statement as to give evidence on oath. You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence. "

After the above caution, the accused declines to give any evidence.

The accused calls the following witness for the defence.

First Witness for Defence

B-86266 Sgt. Horton L.C.

"I, B-86266, Sgt. Horton L.C. having been duly sworn give evidence as follows:
Sgt. Smith being in my custody, Friday, 4 Dec 42, between the hours of 1100 and 1200, a Captain of the Cdn. Postal Corps, in company with a lance-corporal of the Cdn. Provost Corps, called to see Sgt. Smith. After being duly cautioned about making a statement, Sgt. Smith, was told that if he named two persons who had bought cigarettes from him, [redacted] number of any prospective charges would be reduced. Sgt. Smith, in my hearing, agreed to this condition provided no action were taken against the two men he would name. It was stated by the Postal Corps Captain that if these names were not submitted, the Company would be called on parade including outlying work parties, if necessary and questioned as a body regarding sale of cigarettes. Therefore, two men were named by Sgt. Smith; their names being C.Q.M.S. Luettge and Cpl. Forsyth C.B. both on the strenght of No. 1 Canadian General Pioneer Coy.,

L.C. HORTON Sgt.
Signed.....

I certify that the foregoing Summary of Evidence consisting of 2½ pages, were taken down by me in the presence of the accused and that Rules of Procedure 4-(C)(D)(E) and (F) have been complied with.

Lieut.
.....
(A.B.Davies) Lieut.

Hqrs [redacted]
Crookham, Hants.,
11th Dec, 42.

[redacted]

D.A. .M. C.M.U.

Farnborough 6/12/42

K-42008 SGT. N.R. SMITH

POSTAL THEFTS AT No.1 CDN. GEN. PIONEER COY.

1. On the 3/12 /42 a telephone message was received at this office from Capt. Todd, Cdn. Postal Corps, stating that an inspection of the unit post office at No.1 Cdn. Gen. Pioneer Coy., by Lieut. Foxe, Cdn. Postal Corps, had revealed facts that pointed to pilfering of the mails by the U.C.O. i/c, Sgt. N.R. Smith.

2. Pursuant to instructions from Capt. F.B. Cressy, D.A.P.M. C.M.U., I contacted Capt. Todd and accompanied by Lieut. Foxe and C.M.S. Woods, we proceeded to No.1 Cdn. Pioneer Coy., on the 4/12/42. After informing the O.C. of the purpose of the visit, a thorough search of the unit post office was conducted. Numerous letters and parcels were found, which had been given to Sgt. Smith some time ago, along with money for postage, to be mailed. These, with a number of letters which had been found in Sgt. Smiths personal belongings were labelled and turned over to the O.C. for safekeeping. All records were confiscated by the postal authorities for a thorough check.

3. Sgt. Smith was then interviewed by Capt. Todd and the writer and at first admitted only the misappropiation of money given him in lieu of postage stamps by men in the unit. After a lengthy period of questioning he admitted stealing three or four thousand cigarettes. A statement was then taken to this effect and signed by Sgt. Smith.

4. On the 5/12/42 I again proceeded to No.1 Cdn. Pioneer Coy., accompanied by Lieut. Foxe and C.M.S. Woods. Sgt. Smith was again questioned and informed that the check on his records revealed more cigarettes missing than what he had admitted stealing. In the face of this he stated that he would give a full confession. After being sworn in the presence of Lieut. Foxe and C.M.S. Woods Sgt. Smith gave the attached statements, one of which covers the amounts of the cigarette parcels, the names of the addressees and the time stolen, as near as Sgt. Smith can remember.

5. Sgt. Smith has arranged that he will write a letter, subject to Orderly Room censorship, to his sister in Canada, giving the names of men from whom he stole cigarettes and arrange to have cigarettes sent to them in restitution for what he stole.

6. Major Woods, O.C. No.1 Cdn. Gen. Pioneer Coy., has been informed of the facts as rebated above and is awaiting copies of this and the postal authorities report in order to proceed with the case. The investigation is concluded.

CONCLUDED

C.B. Wansell

A-56056 L/Cpl C.B. Wansell,
Canadian Provost Corps,
D.A.P.M. Branch, C.M.U.

CANADIAN PROVOST CORPS

SUBJECT: POSTAL THEFTS AT No.1 CDN. GEN. PIONEER COY.

STATEMENT OF: K-42008 SGT. R.E. SMITH

TAKEN AT: HAIG HUTMENTS

CERTIFIED TRUE TESTIMONY AS TO NAMES AND AMOUNTS OF THEFTS BY ME WHILE ACTING AS POSTAL CLERK AT No.1 CDN. GEN. PIONEER COY.

Total of 900 cigarettes addressed to F-77524 Pte. R. Gallant, 300 of which were taken approximately one week ago.

Total of 1000 cigarettes addressed to D-59051 Pte. L. Lippe, taken sometime in November.

Total of 300 cigarettes addressed to G-49689 Gnr. Kaine F.C., taken in latter part of August.

Total of 1000 cigarettes addressed to D-18842 Pte. Roussel T. taken in latter part of October.

Total of 1000 cigarettes addressed to K-12031 Pte. Dion B., taken sometime in September.

Total of 1000 cigarettes addressed to D-57812 Pte. Seguin R., taken sometime in September.

Total of 300 cigarettes addressed to D-62829 Pte. Desrosiers, taken in August or September.

Total of 2000 cigarettes addressed to Pte. Lucien Lachance taken within November. This man S.O.S. to N.E.T.O. for return to Canada in July.

Total of 300 cigarettes addressed to G-19149 Pte. Chiasson A., taken in September.

The above names and dates are, to the best of my knowledge correct.

Signed: R.E. SMITH

Witnessed: Major WOODS,
O.C. No.1 CDN. GEN. PIONEER COY.

Taken by L/Cpl C.B. Massel, Cdn. Provost Corps.

CANADIAN PROVOST CORPS

DATE:- 9th December 1942

SUBJECT:-

POSTAL THEFTS AT No.1 CDN. PIONEER COY.

STATEMENT of Regt. No. K-42008

of Taken at:-

SGT. N.E. SMITH HQ2 MOVEMENTS

'I have been warned that I am not obliged to say anything unless I wish to do so, but that anything I now say will be taken down in writing and may be given in evidence.

'To show that I understand the above warning, I make this statement voluntarily and sign my name herewith.'

SIGNED:-

N.E. SMITH

STATE:-

Ever since August 1942 I have been using money given to me by the men in the unit for postage for air letters, parcels, and ordinary mail for my own uses. I would estimate the total amount to be around three pound, ten shillings. (£3.10.0.)

I also took from the post office around ten thousand cigarettes as shown in testimonial giving amounts and from when the parcels were stolen. I smoked the majority of these cigarettes, the remainder I sold to the men in the unit at 1/3 and 1/6 a package. I never sold any of these cigarettes to civilians nor did I ever steal food parcels or registered letters.

I have read the above statement and it is true.

Signed: N.E. SMITH

Witnessed: Major WOODS,
O.C. No.1 Cdn. Gen. Pioneer Coy.

Statement taken by L/Cpl C.B. Massel, Cdn. Provost Corps.

PROFORMA

1 CANADIAN GENERAL PIONEER COY.,

LIST OF WITNESSES

For the Prosecution

Major	R.J. Wride, R.C.A.M.C.	16th Cdn. Gen. Hospital	
Major	G.S. Burton, R.C.A.M.C.	1 Cdn. Gen. Pioneer Coy.	
Lieut.	P. Kench,	" " " "	
Lieut.	W.R. Travers,	" " " "	
Lieut.	R. Priske	" " " "	
H-3511	CSM. Tanner, S.G.	" " " "	
H-40779	Cpl. Martin, D.G.	" " " "	
B-26269	L/Cpl. Mc.Govern, W.A.	" " " "	
D-59051	Pte. Lippe L.	" " " "	
G-18842	Pte. Roussel T.	" " " "	
D-62829	Pte. Desrosiers L	" " " "	
G-19149	Pte. Chiasson A.	" " " "	
D-57812	Pte. Seguin W.	" " " "	
F-77504	Pte. Gallant R.	2 Cdn. Gen. Pioneer Coy.	
G-49689	Pte. Kaine F.G.	" " " "	
E-12031	Pte. Dion P.	" " " "	
E-5671	Pte. Doyon A.	" " " "	
L-65754	Sgmn. Levesque H.J.	1st. Cdn. Army	
D-116463	L/Cpl. Kohane H.	1. C.S.R.U.	
Lieut.	J. Foxe.	Cdn. Postal Corps, C.R.U.	

For the Defence

B-86266	Sgt. Horton L.C.	1 Cdn. Gen. Pioneer Coy.	

.....
(P.A.Woods) Major. Commanding.
1 Canadian General Pioneer Company.

CANADIAN PROVOST CORPS

DATE:- 5th Dec. 1942

SUBJECT:- POSTAL THEFTS AT No.1 Cdn. Pioneer Coy., R.C.E.

STATEMENT of Regt. No. K-42008

of Sgt. R.E. SMITH Taken at:- HAIG HUTMENTS

'I have been warned that I am not obliged to say anything unless I wish to do so, but that anything I now say will be taken down in writing and may be given in evidence.

'To show that I understand the above warning, I make this statement voluntarily and sign my name herewith.'

SIGNED:-

STATED:-

CERTIFIED TRUE STATEMENT AS TO NAMES AND AMOUNTS OF THEFTS BY ME WHILE ACTING AS POSTAL CLERK AT No.1 Cdn. Gen. Pioneer Coy., [redacted].

Totl of nine hundred F-77524 Pte. R. GAILANT
Three hundred of which were taken approximately one week ago.

Parcel No. AHA 14687 (Card found in personal possessions of Sgt. Smith by Lieut. Foxe and C.S.M. Tanner.

Total of one thousnad cigarettes addressed to D/59031 Pte. L. Lippe taken some time in November. Parcel No.104656. Card also found in possession by Lieut. Foxe and C.S.M. Tanner.

Totsl of three hundred cigarettes addressed to G49689 Gnr. Kaine F.G. Parcel No. JYA 09709. Acknowledgement card found in my possession by the s/m officer and W.O.These cigarettes arrived in August.

Total of one thousand cigarettes addressed to W-18842 Roussel T. taken one month or five weeks ago.

Total of one thousnad cigarettes addressed to M.18031 Pte. Dionne S. taken sometime in September.

Total of one thousand addressed to D-57812 Pte. Seguin W. taken sometime in September.

Total of three hundred addressed to D-62329 Pte. Desrosiers taken in Aug. or Sept.

Two thousnad cigarettes addressed to Lucien Lachance taken within the last month. This man S.O.S. to N.E.F.D. for return to Canada in July.

Three hundred cigarettes addressed to G-19149 Pte. Chiasson A. Parcel No L41865 taken in Sept.

The above is to the best of my knowledge correct.

Witnessed:- Signed: - R.E. Smith

Major, 1 CDN. GENERAL PIONEER COMPANY (C.A.O.S.)

LIST OF EXHIBITS

IN THE CASE OF K 42008 PRIVATE(PAID SERGEANT)RONALD EMERSON SMITH
1 CANADIAN GENERAL PIONEER COMPANY

Exhibit A;-One letter addressed to Sgt.W.J.Winter K52347.
" B;-One large envelope containing tobacco and cigarette records,letter registration slips,parcel records etc.,
" C;-One large envelope containing cube sugar,cake, fountain pen and parcel list.
" D; One parcel addressed to Mrs. G.S.Burton,132 King St. E. Kingston. Ont. Canada.
" E; Two packages addressed to Mrs. W.R.Travers and Mr. H.Woods, respectively.
" F; One parcel addressed to Mrs. W.A.McGovern
" G; Two Air Mail letters addressed to Mrs. Kench and Miss Paxton.
" H; One letter addressed to Mrs. W.R.Travers. (Air Mail)
" J; One letter addressed to Miss Juanita George (Air Mail)
" K; One letter addressed to Mlle Adrienne Chabotte.(Air Mail)
" L; One letter addressed to Mrs. D.G.Martin (Air Mail)
" M; One letter addressed to Mr & Mrs Eugene Levesque(Air Mail)
" N; One letter addressed to Mrs. R.J.wride (Air Mail)
" O; One letter addressed to Mr. Max Mahane(Air Mail)
" P; One letter addressed to Officer Commanding Winnipeg Light Infantry(Air Mail)
" Q; Twelve letters and one draft telegraph.
" R; Four letters.
" S; Ten letters.
" T; Three tobacco or cigarette acknowledgment cards addressed to;-Mrs.Minnie Kaine,St. Croix,York Co N.B.
Miss Marguerite Bedard,Lorettville,Rang St,Romain Que.
Ladies Aux.,Can.Legion,c/o Mrs.John Stewart,Sec, P.O.Box 101,Reserve Mines C.B. N.S.
Parcel Numbers,JY.A.69709, 164656 and AU A14687 respectively.
" U; Documentary evidence partly found in Unit Mail-room and partially obtained from Field Post Office records
" V; Six letters.
" W; Thirty seven Airgraph Letters.
" X; Sixteen letters.
" Y; Twelve letters,one small package and one newspaper.
" Z; Statement of the accused

(P.A.Woods) Major, O.C.
1 Canadian General Pioneer Coy.

Last sheet destroyed after 6 mos service, 1-Mar-40

No. K42008 Name Smith, R.C. | Sqn., Battery, or Company: Posted:- 1 Can Base Pioneer Coy. | Corps 3 C.I.H.H. | Date of enlistment 1-Sep-39 | G.C. Badges | Service or Proficiency Pay | Character

MFM 6 (A.F.B. 133) 30000—6-39 (1763) H.Q. 1772-45-18

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. W Richmond Capt

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Certified a True Copy. W Richmond Capt for Officer Commanding					

1 CDN. GENERAL
PIONEER COMPANY (C.A.O.S.)

(P.T.O.)

ARMY FORM B.206.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
K42008	Pte (Paid Sergeant)	SMITH R.E.	Kdn. General Pioneer Coy.

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.

The conduct sheet(s) mentioned should be produced in court with the statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number or period in the conduct sheets, performance being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Incorrections.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For	times	times.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Nil

~~Number of instances of gallantry or distinguished conduct,~~

~~There are no entries in the conduct sheets of the accused~~

2. ~~The accused has not been previously convicted, or~~

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 78 of the Army Act, are set out in the schedule annexed to this statement.~~

3. ~~The accused is not under sentence at the present time, or The accused at the present time is under sentence for~~ beginning on the ~~day of~~

4. The accused has been in confinement awaiting trial on the present charges, for ~~7~~ 20 days ~~in civil custody, and~~ in military custody, making a total of 20 days, ~~of which days were spent in hospital.~~

5. The present age of the accused according to his ~~enlistment~~ attestation paper is 34 years and 214 days

6. The date of his ~~enlistment~~ attestation specified in his ~~enlistment~~ attestation paper is 26 Nov 39

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is

8. ~~The accused is entitled to deferred pay or gratuity on account of service.~~

9. ~~The accused is entitled to reckon service for the purpose of determining his pensionable etc.~~

10. ~~The accused is in possession of, or entitled to, no military decoration or military award (or is in possession of or entitled to [state any military decoration or award]).~~

11. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of~~

12. ~~(In the case of an officer.) The accused holds in the army the rank of [illegible] and in his regiment (or corps or department) the rank of [illegible].~~

W. Smith

F

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. K42008 Rank Pte (Paid Sgt) Name Smith R.E. of 1 Cdn Corps Troops Engineers for as the case may be).

(*INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.
		NIL.		

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from regimental books in my custody.

Commanding Major
1 CDN. GENERAL

day of

13. The accused has served as a non-commissioned officer continously, without reduction, to the present date,

In the rank of Acting Corporal. Date of Promotion. 2 Dec 41.

In the rank of Acting Sergeant 7 months

In the rank of 20 May 42.

In the rank of years,

(*Insert "none."—If any matter in any of the above paragraphs ceased to exist, how the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collated from such sources as are available and the paragraphs concerned amended accordingly.*)

STATEMENT OF ACCUSED RE ASSIGNMENT OF
DEFENDING OFFICER

"I do not require an officer assigned by the Convening Officer to represent me at my trial"

Kfz006 R.E. Smith A/Sgt.

Haig Lines
Crookham, Hants,
11 Dec.42.

QQ-45
GNR SMITH R.G.

65

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Twenty - First day of September, 1943.

Whereas it appears to me, the undersigned, an officer in Command of Royal Canadian Artillery, 3 Canadian Infantry Division, Cdn Army Overseas, on active service, that the persons named in the annexed Schedule, being subject to Military Law, has committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to delay the trial of the offenders to a superior qualified officer;~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

~~It is unusable to appoint~~

*~~Three Officers to form the Court~~

*~~A Field Officer as President~~

~~for the following reasons, namely~~

*Omit if not applicable.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	F E Goulding	8 Cdn Army Fd Regt

Members.

Rank.	Name.	Regiment.
Captain	D McCarthy	3 Cdn A/T Regt
Lieutenant	P P F Clay	13 Cdn Fd Regt
Waiting Member Lieut.	J A Harshaw	~~12 Cdn Fd Regt~~

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (H. S. Griffin) Lt-col.
A/Commanding RCA 3 Cdn Inf Div
Convening Officer.

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B 11129 Gnr. Raymond Grenville SMITH, 12 Cdn Fd Regt	A.A. Sec. 15(1)	guilty	guilty. To serve Sixty (60) days detention. R. Goulding Maj 23 Sep 43.	Confirmed 24 Sep 43. a/C.R.A. 3 Cdn. Inf. Div.

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—

"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"

Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) H. S. Griffin (Lt-col.) (Signed) R. Goulding, Major

a/ Commanding ROA 3 Cdn Inf Div — Convening Officer (*c*) — President.

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (If necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 23 day of September, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*~~(3. The Interpreter)~~ ~~(4. The officers under instruction)~~

were duly sworn.

*Omit if not applicable.

Signed this 23 day of September 1943.

R. Goulding Major.

President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 788 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded. the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

Signed this 24 day of Sep 19 43.

H. S. Griffin Lt-Col.

Confirming Officer.

a/C.R.A. 3 Cdn. Inf. Div.

Promulgated and extracts taken in the case of B 11129 Gnr. Raymond Grenville Smith

(a) (Dated) 24 Sep 43 (Signed) H. S. Griffin Capt

Asst Jt Cdn Adv Pty T

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused No. B11129 Gnr. Raymond Grenville SMITH 11 Fd Bty., 12 Cdn Field Regiment, a soldier of the Cdn Army Overseas is charged with:-

FIRST CHARGE
Sec. 15 (1)
A.A.

ABSENTING HIMSELF WITHOUT LEAVE in that he, in the field at 1800 hrs 15 Sept. 43, while serving a sentence of 14 days C.B. awarded 13 Sept. 43 by his Commanding Officer, absented himself without leave until delivering himself up at the Unit Guard Room at 1900 hrs 17 Sept. 43.

(Absent 2 days 1 hour).

Dated in the Field this
20 day of September 1943.

E. Pickering
(E. PICKERING) Major
T/C.O. 12 Cdn Field Regiment.

J. B. Spalding Major

To be tried by
F. G. C. M.
A/S.A.A. [illegible]
A/S.A.A. 3 Cdn Inf. Div.

12 CANADIAN FIELD REGIMENT

Medical Officers Certificate

K.R. (Can.) Para. 557

I certify that I have this morning examined No. B.11.1.2.7., Rank. Gnr. Name. SMITH, R.E. and in my opinion he is fit to undergo trial by court-martial.

Date. 23 Sept 43.

W. E. Lumbers Capt. RCAMC
M.O., 12 Fd. Reg't., RCA

*All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

A

**Form of Proceedings for General and District Courts-Martial

Proceedings of a FIELD GENERAL Court-Martial held ~~at~~ IN THE FIELD

on the 23 day of SEPTEMBER 1943 by order of LT.COL. H.S. GRIFFIN A/CRA Commanding 3 CDN. INF. DIV.

dated the 21 day of SEPTEMBER 1943

President.
MAJ. F.E. COULDING

Members.
CAPT. D. M^c CARTHY
LT. R.P.F. CLAY

, ~~Judge Advocate~~. RG

Trial of* B111129 GNR. RAYMOND GRENVILLE SMITH

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ ~~is not available~~ RG ~~to serve owing to~~

~~, waiting member takes his place as a member of the Court.~~ RG

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

The accused is brought before the Court.

Prosecutor,† LT. R.A. MAHON - 12 Fd Regt RCA

Counsel‡ or defending officer† LT. J.E. HARRISON - 12 Fd Regt RCA

At 1000 o'clock the Trial commences.

The order convening the Court is read, and is marked signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?

Answer by accused. No

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

* Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Mil. Form B. 271
10M—8-41 (3219)
H.Q. 1772-39-254

B

The President, members and ~~judge-advocate~~ are duly sworn. N/A

~~The following officers under instruction are duly sworn.~~ N/A

Charge-Sheet

Instruction.
If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? *Question to the accused.*

GUILTY *Answer.*

~~Are you guilty or not guilty of the second charge against you, which you have heard read~~? *Question.* N/A

Answer.

~~Are you guilty or not guilty of the third charge against you, which you have heard read~~? *Question.* N/A

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read~~? *Question.* N/A

Answer.

The accused having pleaded Guilty to FIRST charge, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

CC

Proceedings on Plea of Guilty

*To be struck out in case no plea of "Not Guilty" has been proceeded with.

~~*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]~~ 72

The accused B 11129 GNR. RAYMOND GRENVILLE SMITH.

is found guilty of ABSENTING HIMSELF WITHOUT LEAVE

*The summary (or abstract) of evidence is read, marked , signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. ~~The accused in mitigation of punishment says:-~~ Yes

~~[or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]~~ Yes

Instruction.

* If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

Do you wish to give evidence yourself or to call any witnesses as to character? *Question to the accused.*

Yes. *Answer.*

Evidence as to character.

FIRST WITNESS – Lt J A Barshaw 11 Bty – 12 Fd Regt RCA states – I am Lt J A Barshaw CPO in the 11 Bty and have known the accused since Nov. 40. Gnr Smith is an efficient signaller, a man of good character and his offences have been only minor.

SECOND WITNESS ~~T-BSM~~ B11042 TBSM KUKULSKI S states – I am B11042 TBSM Kukulski S and have know the accused since July 1940. He has always done good work and his only trouble small ones. As a signaller know job and does it well

K Kukulski

B11129 Gnr. Smith R. G. has been with the Regt. since 11 Jun 40 when the unit was mobilized. He has had only a few crimes during over three years — most of these crimes in the last half year directly connected with this personal difficulty. It will be noted his AWL was short, only 5 hrs. to clear up his personal affairs. He returned and surrendered himself. Gnr. Smith has made the statement that he is most willing to table his punishment and get back to his duties once more. Considering the facts that he stands high in the opinion of his officers and NCOs as an efficient soldier and such are needed badly by the Can. Army, the personal trouble which was the cause of the last series of AWLs is now cleared up and there is every evidence that he will not repeat the same. His main desire is to pay his debt and get back to work. I therefore submit that the best interests of all will be served by a sentence as light as possible.

J. P. Harrison Lt.

J. C. Greeley Maj.

E

Finding

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

~~The Court is closed for the consideration of the finding.~~

~~The Court find that the accused~~

Proceedings on Conviction *before Sentence*

*When the Court is already open this sentence will be struck out.

~~*The Court being re-opened, the accused is again brought before it.~~

~~is duly sworn.~~

Evidence of character, &c.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* ~~SEE PAGE 20~~ YES

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked , signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* YES

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* N/A CARD 3131

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* N/A

~~Cross-examined by the accused.~~

[Instruction.—If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.* NO

The Court is closed for the consideration of the sentence.

F

Sentence

The Court sentence the accused To Serve (60) days detention Sentence.

J E Goulding
Maj

EXHIBIT "A" Sworn Capt.
E.J. Pickering

(Margin for filing purposes.)

Army Form W.3010A. (Books of 100.)

Serial No.....

Number of sheets to this return 14

CASUALTIES (OTHER THAN BATTLE, ACCIDENTS AND SICKNESS) OFFICERS AND NURSES.

Personal No.	Rank.	Name and Initials.	Corps or Regiment.	Casualty. Nature of Casualty.	Casualty. Date.	REMARKS.
B11129	Pnr.	SMITH R.G.	12 CFR			Was on the 13 Sept 43 awarded 14 days C.B. and 28 days forft pay for an off under Sec 15(1) A.A. A.W.L. from 1800 hrs 12 Sept 43 until 2340 hrs 12 Sep 43(5 hrs 40 min) Forfts 28 days pay FR&I 148(2) Tot forft 28 days pay.

CERTIFIED TRUE COPY OF ORIGINAL

H Sanderson Capt
.....Major
for (E. PICKERING)
P/C.O. 12 Cdn Field Regiment

(Date) 14 Sept 43 19[illegible]

H Sanderson Capt.
(H. SANDERSON Paymaster)

12 Cdn Field Regiment
3 Cdn Division
(Bde., Div., Area, etc., with which unit is serving)

Forms W.3010A-1

SUMMARY OF EVIDENCE IN THE CASE OF B11129 GNR SMITH, R.G.
11 Fd Bty., 12 CDN FIELD REGIMENT R.C.A.

Exhibit D1
R24

The accused is informed of his rights.

The accused does not demand and the C.O. does not direct that evidence be taken on oath.

FIRST WITNESS FOR THE PROSECUTION

A35202 - RSM. CLAYTON 12 Fd Regt., RCA States:- I am A35202 - R.S.M. J. CLAYTON of 12 Cdn Field Regiment. On the 15 Sept. 1943 at 1800 hrs. Gnr. SMITH, R.G. failed to report on defaulters parade. I telephoned to his Bty, the 11 Fd Bty to find out why he wasn't there, and found that he was not in his Unit lines. I left instructions with N.C.O. i/c Regt'l Police to inform me if and when Gnr. SMITH reported. It was reported to me on the morning of 18 Sept. 43 that Gnr. SMITH had returned at 1900 hrs on 17 Sept. 1943.

The accused declines to cross-examine.

J. Clayton R.S.M.

SECOND WITNESS FOR THE PROSECUTION

A35223 - Bdr. McTAVISH, R.M. 43 Fd Bty states:- I am A35223 Bdr. McTAVISH, R.M., of 43 Fd bty 12 Cdn Field Regiment. On the 15 Sept. 43 I was N.C.O. i/c defaulters. Gnr. SMITH was to report to me at 1800 hrs on 15 Sept. 43 but he did NOT report to me at the time, nor at any time during my tour of duty which ceased at 2200 hrs on 15 Sept. 43.

The accused declines to cross-examine.

R.M. McTavish Bdr.

THIRD WITNESS FOR THE PROSECUTION

B11245 - Bdr. GREENWOOD, J.R. 11 Fd Bty., 12 Cdn Field Regiment RCA. states:-

I am B11245 - Bdr. GREENWOOD J.R. 11 Fd Bty., 12 Cdn Field Regiment RCA. On 18 Sept. 43 I was Bty Orderly Bdr. At approx. 1830 hrs I received a telephone call from HEQ and as a result attempted to locate Gnr. SMITH. I was NOT able to do so and did not see him again until approx. 18 Sept. 43. At 2230 hrs. 15 Sept. 43 Gnr. SMITH was reported as A.W.L. on Tattoo report telephoned to me.

The accused declines to cross-examine.

J.R. Greenwood Bdr.

...../2

SUMMARY OF EVIDENCE IN THE CASE OF B11129 Gnr. SMITH, R.C.
11 Fd Bty., 12 CDN FIELD REGIMENT. R.C.A.

FOURTH WITNESS FOR THE PROSECUTION

B11173 - Bdr. DEWAR, C.R. 11 Fd Bty., 12 Cdn Field Regiment, RCA states:-

I am B11173 Bdr. Dewar, C.R. 11 Fd Bty., 12 Cdn Field Regiment. RCA. On night of 15 Sept. 43 when taking the roll call at 2230 hrs Gnr. SMITH, R.C. was absent. He reported in to me in the guard room at 1900 hrs. 17 Sept. 43 at which time I was N.C.O. i/c main gate guard.

The accused declines to cross-examine.

..C.R.Dewar Bdr

FIFTH WITNESS FOR THE PROSECUTION

A35437 - Bdr. COADY, R.J. R.H.C. 12 Cdn Field Regiment, RCA states:-

I am A35437 Bdr. Coady, R.J. I present a certified true copy of a Casualty Return dated 14 Sept. 43 forwarded by me, showing punishment of 14 day C.B. and 28 day forfeiture of pay by Major E. Pickering for an offence under A.A. Sec. 15 (1) and this was awarded on 13 Sept. 43.

The accused declines to cross-examine.

..R.J.Coady...Bdr

The accused having been duly cautioned in accordance with R.P. 4 E says:-

"I want to make a statement".

"On Wed. Sept. 15 1943 at 1800 hrs. while under C.B. I left the camp area and went to NEWPORT MON. S. WALES. On Friday Sept 17th 1943 at 1900 hrs I returned and reported to the main gate guard commander. When paraded before Major Pickering on Saturday I explained to him in a personal interview the reasons why I did this. They were, of course, personal reasons which I considered vital and affected others besides myself and for this reason do not want them made public. I do wish to say though, that I did only what I thought best at the time and returned to my unit as soon as my business in NEWPORT was concluded. I realize that the time is growing close when the Regt, will see action and having been with the unit since it was first organized, I was hoping that the acting O.C. of the Regiment could give me the punishment due, and so enable me to stay with them. He pointed out to me however that personal reasons could be no excuse for breaking military law and remanded me to higher authority. I do not wish to appear in contempt of this court, but I would like to point out that the story behind my crime is not mine to tell. My action was what I considered to be the only decent thing to do and I will be only glad to serve my punishment and then go back to my duties once more.

..R.G.Smith

...../3

SUMMARY OF EVIDENCE IN THE CASE OF B11129 Gnr. SMITH, R.C.
11 Fd Bty., 12 CDN FIELD REGIMENT R.C.A.

The accused does not wish to call witness in his defence at this time.

Certified that R.P. 4 complied with.
In the Field
20 Sept. 43

E. J. Hadigan ..... Capt.
(E. J. HADIGAN)
12 CDN FIELD REGIMENT R.C.A.

J54.

No. B11129 Name SMITH, R.G. Sqn., Battery, or Company | Corps R.C.A. | Date of enlistment 11-6-40 | G.C. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet 11-11-40 | No. and date of last drunk Nil | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc.

M.F.M. 6
A.F.B. 122
175M—7-41 (1215-20)
H.Q. 1771-30-1602

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Old sheet destroyed 23 Feb. 43 in accordance with C.A.R.O. (O) 2064					
Sussex	22-1-42	Gnr		AWOL from 2200 hrs 22-1-41 to 0205 hrs 23-141 4 hrs 5 mins	Sgt.Hendry	7 days C.B.	25-1-41	Capt. Tuchtie	
Sussex	17-3-41	Gnr		Spoke improperly to a sup.officer	Sgt.Johnson	5 days C.B.	17-3-41	Capt. Tuchtie	
Sussex	15-4-41	Gnr		AWL from 0800 hrs 15-4-41 to 0300 hrs 16-4-41	Sgt.Simmons	Forfts 1 dys pay 5 dy CB	21-4-41	Col. Inch	1 day pay PR & I
Field	19-1-42	Gnr		Neglect to the prejudice	Capt. D.May	7 days C.B.	Capt.Parr		
Field	29-2-42	Gnr.		Conduct to the prejudice	Sgt.Fletcher	3 days C.B.	2/2-42	Capt. Parr	

(F.T.O.)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	3-3-42	Gnr		Failing to appear on parade	Sgt.Johnston	7 days C.B.	9-3-42	Capt. Farr	
Field	18-4-42	Gnr		Neglecting to obey Bty. Orders AWOL 3 min	Documentry	3 days C.B.	29-4-42	Maj. Wilkinson	
Field	20-9-42	Gnr		Neglect to the prej. in that he did fail to carry out his duties as a guard.					
Field	1-2-43	Gnr		Sec. 15 (1) AA WOAS AWL. from 2200 hrs 1-2-43 until reporting in at 2015 hrs 2-2-43 Absent 22 hrs 15 mins.	Documentary L/Bdr. Raymond	5 days F.P. and forf 5 days pay under FR&I (2)	3-2-43	Maj F.W. Gilroy	Aut. Forf 1 days pay FR&I 49 (1) (a)
Field	24-4-43	Gnr		Sec 15 (1) AA. WOAS AWL from 2200 hrs 24 Apr 43 until 0745 hrs 27 Apr 43. Absent 2 days 9 hrs 45 mins.	Bdr. Ruest	7 days C.B.	27-4-43	Lt-Col F.B. Conrad	3 days pay FR&I 149 (1) (a)
In the Fd	17-7-43	Gnr		W.O.A.S. was A.W.L. 5 hrs	S/M Kukulski	S. 7 dys CB	19 July 43	Maj. D.M. Wilson	
Field	2-8-43	Gnr		A.W.L. 3 days 9 hrs	Sgt. Grant, W.B. Sjt. Grant	28 days F.P.	9-8-43	Major Pickering	Forf 4 days pay FR&I

No. B11129 Name SMITH, R.C. Sqn., Battery, or Company — Corps R.C.A. — Date of enlistment 11-6-40 — G.C. Badges — Service or Proficiency Pay — M.F.M. 6 (A.F.B. 122) 175M—7-41 (1212-20) H.Q. 1772-20-1652

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. 2 — Signature O.C. Company, etc. — Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	12-9-43	Gnr		A.W.L. from 1800 hrs 12-9-43 to 2340 hrs 12-9-43 (5 hrs 40 min) Sec. 15 (1)	Lt. E.J. FARAH	28 days pay 14 days C.B.	13-9-43	Major Pickering.	

THIS IS A CERTIFIED TRUE COPY

E. J. Farah Capt

P.T.O.

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-99-630
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B11129	Gnr	SMITH, R.G.	11 Bty., 12 Fd Regt. RCA

1. The following is a fair and true summary of the entries in the Service and General Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act Air Force Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For Neg. to the Frej.	one times	Five times
For A.W.L.	five times	Seven times
For	times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct~~

~~or~~

~~There are no entries in the conduct sheets of the accused.~~

~~Note.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.~~

2. The accused has not been previously convicted

~~or~~

~~Previous convictions of the accused by a court-martial or a civil court of summary awards under Air Force Act and dispensing with trial under Acts, etc., are set out in the Schedule~~ ~~section 47 of the Army Act~~ ~~and dispensing with trial under Acts, etc., are set out in the Schedule~~ ~~endorsed on this statement.~~

~~The accused is not under sentence at the present time~~

~~or~~

The accused at the present time is under sentence for 14 days beginning on the 13 day of Sept. 42

4. The accused has been in confinement awaiting trial on the present charge for 0 days in ~~Air Force~~ civil custody, and ~~X~~ days in military custody, making a total of ~~X~~ days in custody, of which 0 days were spent in hospital.

5. The present age of the accused according to his record of service is 22 Years ~~attestation paper~~.

6. The date of his ~~enlistment~~ attestation specified in his record of service is ~~XX/XX/XX~~ ~~attestation paper~~ 11 June 1940

7. ~~The service which the accused is allowed to reckon towards discharge~~

8. ~~The accused is entitled to reckon XXXXXX service for the purpose of determining his pension, etc.~~

9. The accused ~~is in possession of or~~ is entitled to no ~~Air Force~~ military decoration, ~~or Air Force~~ military reward (or is in possession of or entitled to). ~~Such military Air Force decoration or reward~~ military.

10. ~~If the accused is a warrant officer:~~ ~~The accused before he was made a warrant officer had held Air Force~~ ~~the substantive rank of~~

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

.....dated....., and in his regiment (or corps), the rank of

.....dated.....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

.....Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with, of accused. Number ..... Rank ..... Unit ..... Regiment of .....

Name .....

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 5th day of September 1943

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

E. Bradshaw Capt

12 Cdn Field R. Coy

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

..... dated ....., and in his regiment (or corps), the rank of

..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number ..... Rank .....

Unit

Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 25 2nd day of September 1943

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

E. H. Radley Capt

Adjt

12 Cdn Field Regiment RCA.

000-42

GNR SMITH R.H.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D 6694 Gnr Smith R.H

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty.	Guilty.	
2nd	Guilty.	Guilty.	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for 120 days beginning on (date) 15 May 44 (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 18 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: 90 Days. Detention.

(Sgd) N.A. Judge-Advocate, if any. 26 May 1944 Date awarded. (Sgd) Wm. E. Tremblay Major President. (RP 45, 46)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:—

Confirmed.

I direct that the accused be not committed to prison or detention barracks until further orders.(1) (1. AA 57A. Delete if not used.)

Date 31 May 44 (Sgd) E.A. Sutherland Brig Commanding Can AGRA Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
D6694 Gnr Smith, R.H.	31 May 44	W. J. Brigger Lt.-Col. Cond: 3 Cdn Medium Regt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED AT CMHQ IN AB 160 008 92

RECEIVED 10 AUG 1944 JAG BRANCH C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA3) A1-1-2 B/1808 (2004)

Convened by Order of Brigadier E.A. Sutherland Comd 2 Cdn. AGRA dated 15 May 44.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D 6694	Gnr.	Richard Harold	Smith.	3 Cdn Med Regt

PROCEEDINGS REVIEWED
J.C. Campbell Major
16 June 44
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED Date 13 JUN 1944 Cdn. Sec. H.Q. 2 Echelon 21st Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England. on (date(s)) 26 May

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, ~~JA, if any, and Offrs under instr~~, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant finn KOs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 52, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0950 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to NA - Nil as interpreter? Ans

The Interpreter is sworn.(1) Do you object to C.4/H 36 Bdr Bailey as shorthand writer? Ans No.

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(3). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr~~, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	E.W. Tremblay.	4 Cdn Med Regt.
Member	Capt.	W. McGeagh.	15 Med Regt RA.
Member	Lieut.	K. McFarlane.	7 Cdn. Med Regt.
Judge-Advocate			
Prosecutor	Capt.	W.F. Davey.	3 Cdn. Med. Regt.
Defending Offr	Lieut.	T.R. O'Donnell	3 Cdn. Med. Regt.

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans Yes.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 6.)

A8. The accused D 6694 Gnr. Smith K.H. before arraignment make(s) (no) ~~[illegible]~~ plea.(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 62; where several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is closed and considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans Yes.(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 2, MML p 54 para 47.* 4. *See para E3 of Record Form E.*
5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on Both charge(s). The accused is (not) so informed, ~~and he (they) change(s) his (their) plea(s) on ..... charge(s).~~ ~~Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

~~C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)~~
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereof proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans.....Do you intend to call witnesses on your behalf? Ans.....Are they witnesses as to character only? Ans.....
(1. *RP 155.* 2. *RP 40(A), see 60(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 34(3) (b), RP 43, 120(A).* 2. *AA 34(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans .....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB 255 or MFB 256.* 2. *MFB fn 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans .....(2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), cf 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 309, 2323, MML p 60, 752-759. As to sentences assigned for civil offences by the law of England see AA 4(1)(b), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 98(1)(b), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE-SHEET

The accused, D-6694 Gnr. SMITH, Richard Harold, 87th Med Bty, 3 Cdn Med Regt, a soldier of the Cdn Army Overseas, when on Active Service, is charged with:

FIRST CHARGE
Section 15(1)
Army Act

ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, on 9 Apr 44, absented himself without leave from his regiment 3 Cdn Med Regt from 0800 hrs on said 9 Apr 44 until 0020 hrs 13 Apr 44.
(Absent 3 days 16 hrs 20 mins)

SECOND CHARGE
Section 15(1)
Army Act

ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, on 18 Apr 44, absented himself without leave from his regiment 3 Cdn Med Regt from 1715 hrs on said 18 Apr 44 until 2345 hrs 7 May 44.
(Absent 19 days 6 hrs 30 mins)

(W.J. BRIGGER) Lieut-Col.,
Comd: 3 Cdn Medium Reg't.

In the Field
12 May 44

To be tried by Field General Court Martial.

(E.R. Suttie) Brigadier
Comd - 2 Cdn AGRA
First Cdn Army

In the Field
15 May 44

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/F&N/1697 (2003)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D6694	Gnr		Richard Harold	SMITH	3 Cdn Med Regt

~~CONVENING~~ ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above, the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 15 May 44 endorsed by me, (~~or by an offr of my staff for me~~) "to be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have~~ attached hereto.
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	W.E. Tremblay (Must be named. RP 106.)	4 Cdn Med Regt (Unit.)

MEMBERS.

Capt	W. McGeagh	15 Med Regt RA
Lieut (Rank.)	K. McFarlane (Named or detailed. RP 106.)	7 Cdn Med Regt (Unit.)

WAITING MEMBER.

Lieut (Rank.)	To be detailed by CO 4 Cdn Med Regt (Named or detailed, if any. RP 106.)	4 Cdn Med Regt (Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

(E.B. Suttie) (Signed personally. RP 105 fn 2.)

Brigadier (Rank.)

Date 26 May 44

Commanding 2 Cdn AGRA, First Cdn Army
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S REPORT

I certify that No. D6694 Gnr Smith, R.H.
of 3 Cdn Med Regt is in a good state of health,
and fit to undergo Trial by Court martial.

C Greenberg Capt
Medical Officer
(C. Greenberg) Captain RCAMC

Station Field

Date 26 May 44

M. F. B. 246

SUMMARY OF EVIDENCE
in the case of
D-6694 Gnr. SMITH, R.H.
87th Bty - 3 Cdn Med Reg't
taken under oath by order of
Lt.-Col. W. J. Brigger
Commanding Officer

FIRST WITNESS: B-76998 BQMS. GILBERT, W.S., 87th Med Bty, 3 Cdn Med Regt, having been duly sworn states:

During the period 10 - 26 Apr 44 I was NCO i/c 87th Bty, 3 Cdn Med Regt, Rear Party. I am also BQMS of 87th Bty. At approximately 0800 hrs 9 Apr 44 I checked to see if Smith, R.H., had returned from pass the previous night. He had a pass until 0100 hrs 9 Apr. I could not find him. When a man returns from pass he reports to the guard commander and turns his pass in. The guard commander reported to me that Smith, R.H., had not returned and was therefore AWL. I reported this fact to the Bty Orderly Room. He was not present at tattoo and reveille roll calls from 9 to 13 Apr. On the morning of 13 Apr, I saw that Gnr. Smith had returned and I placed him under open arrest. Bdr Bodger, the Guard Commander, reported to me that Smith had returned at 0020 hrs 13 Apr. At approx 1730 hrs 18 Apr 44 Bdr Bodger, Guard Commander for the day, reported to me that Smith R.H. was AWL from guard and reported to me the next morning that Smith was still absent. I checked the Bty area in the evening of the 18th and the morning of the 19th and did not find Gnr. Smith. Gnr. Smith lives in the house of which I have charge. He was not present at tattoo or reveille from 18 Apr until 7 May when I checked the roll.

.....
B-76998 BQMS. Gilbert, W.S.

The accused declines to cross-examine this witness.

SECOND WITNESS: K-10189 Bdr. BODGER, E.E., 87th Med Bty, 3 Cdn Med Regt, having been duly sworn states:

On 13 Apr 44 I was guard commander 87th Bty 3 Cdn Med Regt. At 0020 hrs 13 Apr 44 Gnr. Smith, R.H., was was AWL reported in to me. I ordered him to report to BQMS. Gilbert. On 18 Apr 44 I was guard commander 87th Bty 3 Cdn Med Regt. Gnr. Smith was one of the guard. At 1715 hrs I checked my picket, who at the time was Gnr. Smith, R.H., and found that he was absent. I searched the camp area and did not find him. He was still absent at 1800 hrs when the guard changed over. I reported to BQMS. Gilbert that Gnr. Smith, R.H., was absent as from 1715 hrs.

The accused wishes to cross-examine this witness:-

Q.1 When you checked the area to find me did you check all the houses and the "D" Tp area?
A.1 Yes.

Q.2 Did the guard actually go through dismounting drill?
A.2 No, the guard just changed over.

.....
K-10189 Bdr. Bodger, E.E.

-------/2

THIRD WITNESS: K-11263 Sgt. GOAD, H.F.J., 87th Med Bty, 3 Cdn Med Regt, having been duly sworn states:

On 7 May 44 I was Orderly Sergeant 87th Bty 3 Cdn Med Regt. Gnr. Smith, R.H., who was on the absentee report reported to me at 2345 hrs. I placed him under close arrest and put him in the custody of Bdr. Bargh, the guard commander.

The accused declines to cross-examine this witness.

H.F.J. Goad
K-11263 Sgt. Goad, H.F.J.

FOURTH WITNESS: Capt. T.S. HOGAN, Pmr, 3 Cdn Med Regt, having been duly sworn states:

I present extracts from Regimental Part II Orders No. 19 (Attached as EXHIBIT "A")

T.S. Hogan Capt
(T.S. Hogan) Captain RCAPC

QUESTION TO THE ACCUSED:

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

ANSWER BY THE ACCUSED:

I have nothing to say at this time, sir.

I certify that Rule of Proceedure 4 has been complied with.

Taken down by me in the Field in the presence and hearing of the accused this 11th day of ~~March~~ May, 1944.

G.A. Speer
(G.A. SPEER) Lieutenant RCA
Officer directed to take the Summary by the Commanding Offr.

EXHIBIT - "A"

Extract from Regimental Part II Order No. 19, Section "B", sub para 8, dated 4 May 44:-

"ABSENT WITHOUT LEAVE

(b) A.W.L. from 1715 hrs 18 Apr 44. Still absent 1715 hrs 26 Apr 44 (8th day).
D-6694 Gnr SMITH, R.H."

CERTIFIED TRUE COPY OF REGT'L BOOKS IN MY POSSESSION.

W.F. Davey Capt

(W.F. DAVEY) Captain,
Adjutant - 3 Cdn Medium Regiment

M.F.B. 353
22M—5-41 (372-3)
H.Q. 1772-20-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D-6694	Gunner	Smith, Richard Harold	3 Cdn Med Regt

1. The following is a fair and true summary of the entries in the [redacted] Conduct sheets [redacted] of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For AA Sec 15(1) A.W.L.	11 times	[redacted] times
For AA Sec 40	1 times	times
For	times	times
For	times	times

[redacted]

or,

[redacted]

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

[redacted]

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 12 days in military custody, making a total of 12 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his [redacted] attestation paper is 27 years

6. The date of his [redacted] attestation specified in his [redacted] attestation paper 16 Jan 1940

7. [redacted]

8. [redacted]

9. [redacted]

10. [redacted]

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ..... Permanent Force, dated N/A, and in his regiment (or corps), the rank of ..... unit dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

In the rank of ..... Date of promotion.

In the rank of N/A years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number D6694 Rank Gnr Name Smith, R.H. of 3 Cdn Medium Regiment Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
	NIL			

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 12 May day of May 44

(W. J. Briggs) Lt.-Col.
Commanding 3 Cdn Medium Regt

The above statement (with the schedule of convictions and dispensations with trial thereto annexed) is read, marked ..... in the proceedings.

..... signed by the president, and annexed to the

No. D6694 Name SMITH, R.H. Sqn., Battery, or Company — Corps R.C.A. — Date of enlistment 16 Jan 40 — G.C. Badges — Service or Proficiency Pay — Character

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No.1 — Signature O.C. Company, etc.

M.F.M. 6 (A.F.B. 122) 175M—7-41 (1219-20) H.Q. 1772-39-1612

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Two years service completed without any regt'l entries. 16 Jan 42									
Field	20 May 43	L/Bdr		AA 15(1) WOAS was AWL from 1200 hrs 20 May 43 until 1500 hrs 21 may 43 (Absent 1 day 3 hrs)	Bdr Tompkins,H	Reverts to perm grade of gunner	22 May 43	Major E.H. Smith	
Field	5 Sep 43	Gnr		1.AA Sec 15(1) AWL from 2359 hrs 5 Sep to 2359 hrs 6 Sep 43 (Absent 1 day) 2.AA Sec 15(1) WOAS AWL from 2300 hrs 29 Aug 43 to 0010 hrs 1 Sep 43 (Absent 2 days 1 hrs 10 mins)	Documentary	7 days C.B.	7 Sep 43	Lt.-Col. J.W.C. Thompson	From 4 days pay FR&I 149(1)(a)

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	20-9-43	Gnr	Nil	AWL from 0800 hrs 20 Sep 43 to 2000 hrs 20 Sep 43 (Absent 12 hrs) A.A. Sec 15(1)	Bdr Doggett, G.	Admonished	21-9-43	Major G.R. Flawn	Frft 1 days pay FR&I 149(1)(a)
Field	14 Oct 43	Gnr	"(1)	A.A. Sec 15(1) AWL from 2359 hrs to 0530 hrs 21 Oct 43 (Absent 6 days 5 hrs 31 min)	Bdr Peters JW L/Sgt Carson L.M.	Awarded 14 days C.B.	22 Oct 43	Major H.D. Hayden	Forf 7 days pay FR&I 149(1)(a) Total forf. 11 days pay
			(2)	A.A. Sec 15(1) AWL from 0800 hrs 27 Sep 43 to 1330 hrs 30 Sep 43 (Absent 3 days 5 hrs 30 min)	Captain T.S. Hogan				
Field	8 Nov 43	Gnr	"	AA Sec 15(1) AWL from 1730 hrs 8 Nov 43 until 2230 hrs 12 Nov 43 (Absent 4 days 5 hrs)	BQMS Gilbert W.S. Sgt Trites, W.J.	Admonished	15 Nov 43	Lt.-Col. W.J. Brigger	Forf 5 days pay FR&I 149(1)(a)

No. D6694 Name Smith, R.H. Sqn., Battery, or Company Corps R.C.A. Date of enlistment 16 Jan 1940 G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 122) 175M—7-41 (1219-20) H.Q. 1772-99-1852

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 2 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	20 Jan 1944	Gnr	Nil	AA Sec 15(1) W.O.A.S. A.W.L. from 2230 hrs 1 Jan 44 until 1615 hrs 20 Jan 44 (Absent 18 days 17 hrs 45 min)	BQMS Gilbert W.S. Sgt Trites W.J.	Forf 28 days pay FR&I 149(2)	2 Feb 1944	Lieut-Col W.J. Brigger	Forf 19 days pay FR&I 149(1)(a)
Field	6 Feb 1944	Gnr	-	WOAS CONDUCT TO THE PREJUDICE ETC., appeared for Guard Mounting 30 mins late(AA Sec 40)	Lieut J.R. MacArthur Sgt Dujay C	7 days C.B.	7 Feb 1944	Major S. Kanee	
	15 Feb 1944	Gnr	-	AWL from 2230 hrs 15 Feb 44 to 0900 hrs 16 Feb 44 (Absent 10 hrs 30 mins) AA Sec 15(1)	BQMS Gilbert BSM MacManus	7 days C.B.	16 Feb 1944	Capt. E.B. Burnett A/OC	Forf 1 days FR&I 149(1)(a)

(P.T.O.)

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	28 Feb 44	Gnr	-	AA Sec 15(1) AWL from 2230 hrs 28 Feb 44 until 0715 hrs 29 Feb 44 (Absent 8 hrs 45 min)	BQMS Gilbert W.S.	15 days Field punishment	29 Feb 44	Lt.-Col. W.J. Brigger	Forf 1 days pay FR&I 149(1)(a)
Field	27 May 44			AWL from 0100 hrs 27 Mar 44 to 0635 hrs 27 Mar 44 (Absent 4 hrs 35 mins) A.A. Sec 15(1)	BQMS Gilbert, WS L/Bdr Troicuk	7 days C.B.		Capt E.B. Burnett A/OC	Forf 15 days pay FR&I 149(1)(b)

12 May 44 Certified true copy from the regimental books in my possession.

W. F. Davey Capt

(W. F. Davey) Captain
Adjutant - 3 Cdn Medium Regiment

D-6694 Gnr. SMITH, R.H., having been duly sworn states: [illegible]

I came over in this country, sir, in 1940 and I have been a Tech storeman since then, sir. I was in the 5th med regt as tech storman, and I went to hospital from there. I was in the 5 med regt two years. I was sent to the 3 med regt when I came out of hospital. When I came here I understood that I'd do the job as tech storeman and when I saw that I couldn't do the job here as tech storeman I tried to get back to the 5th med. I was told that the transfer was out of the question and got in trouble here and went A.W.L. and was in field punishment camp. When I got out of field punishment camp, I got paraded to the major and asked him if he would give me a transfer out of this regt before I got into more trouble and I was told that I was unable to get a transfer out of this regt. I knew, sir, that if I did get a transfer out of this regt I would have made good in the 5th med regt as I hold a Class A qualification. I know if I had been back in the 5th med regt I could have made good because all the fellows in the 5th med were from Montreal. All the time I was with the 5th med regt I had a clean crime sheet, for three years, sir. I think that is all I want to say, sir.

Questioned by the Defending Offr:

Q. You came to this regt as tech storeman?
A. Yes, sir.

Q. Were you not employed as tech storeman?
A. Well, I was marked down as tech storeman but not employed as one.

Q. What were you doing - what was your job of work?
A. Well I was in the stores giving out socks and things like that, a tech storemans job is keeping track of technical equipment in the regt.

Q. Why did you continuously go A.W.L.?
A. Sir, I no that if I could have got out of here and got back to the boys I trained with all the time that I could have made good.

Q. Are you married or single?
A. Married, sir.

Q. Any children?
A. One, sir, in this country.

Q. Do you make an assignment to them?
A. I make an assignment of $23.00 a month to my wife and I think it is $11.00 or $12.00 to my mother.

Questioned by the Prosecuting Offr:

Q. When did you apply for transfer to the 5th Med regt?
A. I was paraded to the major, sir. It was just about, it was the time Sgt. Neville was here from 5 med.

Q. Will you give me an approximate date?
A. I don't know.

Q. Can you give me the day, the month, the year?
A. When I first got here I asked Major Flawn if I could get back because the 5th med regt were still in the country at this time and I heared from the boys that they were going to Italy.

Q. Did you say your Bty Comd regused to arrange a transfer?
A. Well, I was paraded, sir, and told that I couldn't get a transfer to 5 med regt. There was no application made. The same thing happened with Major Cowan.

Q. Did you ask to be paraded to the Commanding Officer?
A. What was that sir.

Q. Did you as a result of the Bty Comd telling you that the transfer to 5th med regt could not be arranged, demand to be paraded to the Commanding Officer as a result of this?
A. No sir.

Q. Do you read Part I Orders?
A. Yes, sir.

Q. Have you ever read Part I Orders in which it lays down the chain of command, for example, what a man in this regt does if he is not satisfied with the result of being paraded to his Bty Comd under any matter?
A. I have, but I took the Major's word as final.

Q. Now, did you ever actually sign an army transfer pro forma for transfer to the 5th med regt?
A. No sir I was never given the chance.

Q. But you did sign one to P.R.O.?
A. Yes sir, but it was refused because I was Category A and I was only 27.

Q. Refused by whom?
A. There was a notice came back from 2nd Echelon stating that I was category A, too young, and that it was a non-combatant job.

Q. Have you ever seen published in Part I Orders extracts from Routine Orders whereby it says that transfers must be in the interests of the service and not in the interests of the individual concerned?
A. Yes, sir, I have read that.

Q. Now, were you in charge of the tech stores in "Q" Bty QM stores?
A. No sir.

Q. Who was?
A. BQMS. Gilbert was in charge of the stores, Bdr Peters was the tech storeman but he was unqualified and as I saw that they weren't going to put him out of the stores, I thought I'd get back to my own regt and keep up the good work I'd been doing for four years.

Q. A short while ago, did the second in command, 3 med regt, make a check of "Q" Bty tech stores?
A. Yes sir.

Q. Who did he go over these stores with?
A. With Camp Burnett and BQMS Gilbert. I didn't have anything to do at all with it.

Q. Did he not question you regarding the stores?
A. The major came in and asked about differend technical things and the QM didn't know what they were and he asked me about them and I told him what they were.

Q. Do you realize that the B.Q.M.S. is responsible for all stores in the bty stores?
A. Yes, he is responsible.

Q. Why does he have a tech storeman?
A. He has a tech storeman to keep track of his books and to indent for new parts for guns, etc.

Q. Therefore the tech storeman is the assistant of the B.Q.M.S. in controlling tech stores?
A. The tech storeman is to keep track of where the stores are or to indent for new parts, or to get parts repaired, and to take care of small arms.

Q. Did you as tech storeman consider yourself as sole controller of those technical stores?
A. Yes, sir, if an ordnance officer had have come around there to check as they usually do I would have been totally responsible for the lack of records as I hadn't been given an opportunity to keep any books.

Q. Why do you think that an ordnance officer could hold you personally responsible for technical stores and not the B.Q.M.S.?
A. Because that is why a tech storeman is paid trades pay, and that is why he takes a course to take charge of them.

Q. Then you consider that the B.Q.M.S. had nothing to do with the technical stores - had no responsibilities whatsoever?
A. I wouldn't say that he had no responsibilities. He is responsible to see that the tech storeman does his job.

Q. But you admit that you had been giving assistance to BQMS Gilbert in controlling tech stores?
A. Only manual labour.

Q. In technical advise?
A. There were loads of times he was stuck and he asked me and I told him.

Q. Then the position in the bty stores was this: that the BQMS used you for technical advise and help and also used you to do some of the manual labour involved?
A. Mostly manual labour.

Questioned by the Court:

Q. Were you at this time drawing pay as tech storeman?
A. Yes, sir, I was drawing my trades pay.

FLASH NUMBER TWO

FLASH NUMBER TWO

FLASH NUMBER TWO

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FLASH NUMBER TWO

FLASH NUMBER TWO

LLL-149
SGMN. SMITH R.J.

RECORDED AT CMHQ IN AS 160 LLL-149

RECEIVED 31 MAY 1944 JAG BRANCH

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA3) 40-P-M-B/1608 (2804)

Convened by Order of P.R.Shields, Brigadier Comd "B" Gp-CRU dated 14 May 44.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-62506	Sjgn	Robert John	SMITH	1 CSRU

PROCEEDINGS REVIEWED 2 June 44
W.C. Bench Lieut
REVIEWING OFFICER, JAG BRANCH G.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date) 17 May 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Members, J.A. if any, and Offrs under instr.~~ if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR J.A. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF AF5, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~not~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 1020 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(1)~~

(1. KR Can 557. 2. AA 44(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to an interpreter? Ans.~~ ~~The Interpreter is sworn.(1) Do you object to a shorthand writer? Ans.~~ ~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused (by the President). President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans. No, Sir

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~J.A., if any,~~ and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	D.L.Redman	HQ CRU
Member	Capt	GKN JOHNSTON	1 CGRU
Member	Lt.	AC THORN	1 CGRU
~~Judge Advocate~~			
Prosecutor	Lt	NA DE BOE	1 CSRU
Defending Offr	Lt	CN HALL	1 CSRU

Questions by President: Is the Prosecutor a lawyer? Ans. No Is the Defending Offr a lawyer? Ans. No (1)

(1. RP 24, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 99 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused before arraignment makes(s) (no) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB name and name of the accused making the plea.)

A9. The accused is (~~not~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~not~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. ~~After J.A.'s (1) has been completed with Prosecutor's~~ NB 3rd alt Charge

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is cleared and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 2B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-62506 Sjgn Robert John SMITH-1 CSRU

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 15(1)	Guilty	Guilty	
2nd	AA 18(4)	Guilty	Guilty	
3rd	AA 40(alternative)	(withdrawn)		
4th	AA 40	Guilty	Guilty	
5th	AA 40	Guilty	Guilty	

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in lieu of s/t see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 20 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:
To undergo 6 detention for a period of 6 (six) months

(Sgd) Judge Advocate, if any. Date awarded. 17 May/44 President. (RP 45, 50)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) H.D.W. Brigadier

Date 18 May 44 Commanding "B" group, 1 C.R.U. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Can 576, 577.)

Accused: B62506, Sjgn Robert John Smith

Date: 19 May 44

Signature of Offr: H.H.Portsmouth Major. A/Maj Comdt 2 Hold Q Unit 1.C.S.R.U.

1 CSRU Do #122 d/23 May 44

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*b*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No Sir (5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 3 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E. 5. *Statement, if any, recorded per Notes.*)

~~B3. The Court considers the accused's statement (4) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 25(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*), 114, *KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans..... Do you intend to call witnesses on your behalf ?

Ans..... Are they witnesses as to character only ? Ans.....

(1. *RP* 105. 2. *RP* 80(*A*), *see* 80(*D*). 3. *RP* 40 *fns* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E3 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*E*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA* 54(3) (*c*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans NO - SIR

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(1) as to Character and Particulars of Service(2), and certified true copy ~~copies~~ of Conduct Sheet(s)(3), purporting to refer to the accused, which he submits to the Defending Offr for copy examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(*d*) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(2)

(1. *AFB* 255 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(1) and Conduct Sheet(s), and in mitigation of punishment ?(2) Ans. By Def Offr - Note Ctd

(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA if any~~.(2)

(1. *When several accused tried separately see RP* 240. *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see JSP* 44, 138, 182, *RP* 46-50, 49, 118, 119(*A*), *KR Con* 308, 330, 563-566, *Overseas RO* 309, 2323, *RP* 48. *As to sentences see JSP* 44, 138, 182, *RP* 46-50, 49, 118, 119(*A*), *KR Con* 308, 330, 563-566, *Overseas RO* 309, 2323. *MML p* 86, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(18), 98(1), *KR Con* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

C H A R G E S H E E T

The accused, B-62506 Signalman SMITH, Robert, John, Royal Canadian Corps of Signals, on strength of No. 1 Canadian Signals Reinforcement Unit, a soldier of the Canadian Army Overseas,

is charged with:-

WHEN ON ACTIVE SERVICE

FIRST CHARGE: Absenting himself without leave, in that he, in the field, absented himself without leave from 1300 hours, March 26th, 1944, until apprehended at 2130 hours, April 27th, 1944. (Absent 32 days, 8 hours, 30 minutes)

Army Act Section 15(1)

WHEN ON ACTIVE SERVICE

SECOND CHARGE: Stealing property belonging to a person subject to military law, in that he, in the field, between the hours of 1500 and 1700 hours on April 22nd, 1944, stole one pair of brown oxfords, the property of D-116627 Signalman Larkin, G.C., Royal Canadian Corps of Signals, on strength of No. 1 [redacted] Signals, a person subject to military law.

Army Act Section 18(4)

WHEN ON ACTIVE SERVICE

THIRD CHARGE: (Alternative Charge) Conduct to the prejudice of good order and military discipline, in that he, in the field, at or about 2130 hours, April 27th, 1944 was improperly in possession of one pair of brown oxfords, the property of D-116627 Signalman Larkin, G.C., Royal Canadian Corps of Signals, on strength of No. 1 Canadian Line of Communications Signals, a person subject to military law.

Army Act Section 40

WHEN ON ACTIVE SERVICE

FOURTH CHARGE: Conduct to the prejudice of good order and military discipline, in that he, in the field, on April 27th, 1944, was improperly in possession of the following Ministry of Food Ration Cards, namely:-
Ration Card RB 12, Numbers CD 548842 A and B, CD 548843 A, CD 548844 A and B, CD 548845 A and B, Ration Card RB 8A, Numbers AN 161256, AN 161257, and AN 161258.

Army Act Section 40

WHEN ON ACTIVE SERVICE

FIFTH CHARGE: An act to the prejudice of good order and military discipline, in that he, in the field, between October 1st, 1943 and April 27th, 1944, did improperly and without authority write the name and rank "F.E. Sorenson Lt." as the signature of Lieutenant F.E. Sorensen of No. 1 Canadian Line of Communications Signals on Ministry of Food Ration Card RB 12 numbers CD 548845 A and CD 548845 B.

Army Act Section 40

Lt.-Col.
[redacted],
Officer Commanding,
No. 1 Cdn. Signals Reinforcement Unit.

(R)

In the field,
11 May 44.

TO BE TRIED BY FIELD GENERAL COURTS MARTIAL.

(P.R. Shields) Brigadier
Comd "B" Group
Cdn Rft Units.

18 May 44

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA5)
40/P&R/1697 (D168)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
R-62506	Sigmn	Robert John	SMITH	1 CGRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on 14 May 44 (date) endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint~~ (a) three Offrs to form the Court, ~~(b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Rank.	Name.	Unit.
Lt-Col	D.L.Redman	HQ CRU

(Must be named. RP 106.)

MEMBERS.

Rank.	Name.	Unit.
A Captain	to be detailed by	1 CGRU
A Lieutenant	to be detailed by	1 CGRU

(Named or detailed. RP 106.)

WAITING MEMBER.

Rank.	Name.	Unit.

(Named or detailed, if any. RP 106.)

JUDGE-ADVOCATE.

Rank.	Name.	Unit.

(Must be named, if any. RP 106.)

On Active Service in the Fd

in England (Country.)

Date 14 May 44

(Signed personally. RP 105 fn 2.)

(Rank.)

"B" Gp-CRU Commanding (P.R.Shields) Brigadier Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for notes and notes for use on trial.)

Medical Officers' Certificate
KR(Can para 557)

I certify that I have this morning examined No B.67506 Rank Sergeant.

Name Lamith R.J. of 1 Cdn R.H. (Unit) and in my opinion he is

fit to undergo trial by Court Martial.

~~Unfit~~

(cross out one N/A and initial)

Station Field

Date(of Court Martial) 17 May 44.

sgd. H. Murphy Capt
Unit
Medical Officer, RCAMC.

Pvt Smith has no past record of
consistant misbehavior either in civilian life
or in the army. Since serving overseas
he has proven by 14 months service on the
field that he is capable of being a good soldier
Having six months of Chesterfield service he held the
rank of T/5 gr. Clerk.

This soldier admits he has done wrong
in his recent misbehavior. He is repentant
and determined that his future army
record will be a good one

It is felt that if the court could see its way
clear to give as lenient as possible in passing sentence
on this soldier, they will be able to salvage a good
soldier

Cpt Robertson Inf

The accused is unmarried
" " is 20 yrs of Age
Three years high school
left school at age of 17
~~Had one previous~~
Likes the army and would like to get this
matter straightened out and get on with the
job.

Was a shipper for 6 months after leaving school
then joined the army

Cpt Robertson Inf

R.C.R.D.S. Exhibit "A" Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at Delville Bks, Cove, Hants on the 19th day of April 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. B-62506 Signn Smith, R.J. (RCCS) "P" Coy, No. 2 Holding Wing No. 1 Canadian Signals Reinforcement Unit

DECLARATION.

The Court declare that No. B-62506 Signn Smith, R.J. "P" Coy No. 2 Holding Wing, No. 1 Cdn Sigs Reinf Unit, illegally absented himself without leave at 1300 hrs at Delville Bks on the 26th day of March and is still absent and that on the 19th Apr 44 he was deficient, and that he is still deficient of the following articles:-

Articles	No.	Full Price $	Full Price ¢	Price $	Price ¢
Blouses, Battle Dress	1	5	05	3	94
Boots Ankle	1	5	46	4	10
Drawers Cellc	1		43		32
Gloves K.D.	1		47		35
Great Coat	1	11	31	8	46
Jacket Sweater	1	1	79	1	54
Shoes Canvas	1		65		44
Trousers B.D.	1	5	39	4	04
Badges Cap	1		09		07
Brushes Cloth	1		48		36
Brushes Shaving	1		37		28
Combs Hair	1		04		03
Dressing Field	1		24		18
Fork M.S.	1		07		05
Holdall	1		19		14
Knife Clasp	1		88		66
Knife Table	1		15		11
Razor	1		06		05
Shorts Gym	1		43		32
Spoon M.S.	1		07		06
Vests Gym	1		36		27
Braces W.E. Right	1		30		30
Haversack	1	1	79	1	79
Helmet Steel	1	1	60	1	60
Straps, Web Supporting	1		18		18
Respirator Haversack	1	1	42	1	42
TOTAL		39	30	30	71

Exhibit "B" 29

CERTIFICATE IN ACCORDANCE WITH P.C.8797 of 10 Apr.42.

I Certify that No. B.62506 Rank Sgmn. Name Smith, R.J.

Unit No. 1 C.S.R.U. was arrested at London (Place)

at 2130 (hour) on 27 Apr 44 (Date) and that at the time of his arrest he was wearing (Military Uniform) ~~XXXX

"C" I have been cautioned by Lt. P.W. Blanwalt, No. 1. Special Investigation Section, First C.M.A. Army, that I need not say anything unless I wish to do so, and that anything I do say will be taken down in writing and may be given as evidence. To show that I understand this caution I sign my name.

B62206
Sgm. R.J. Smith

I went absent without leave from No 1. C.S.R.U. on the 26 mar 44. I had been on a 48 hr pass to Droitwich and overstayed same. I had approximately £48.10.0 in my possession when I left the unit. I won this money in a Poker game

at the unit the evening before I left to go on 4 8 hour pass. I first went to Kingston from Droitwich, living in the Y. M. C. A. there. I remained in Kingston for about 3 days. I then came to London staying at different hotels including Beaver Club, and I stayed in London for about a week, spending most of my time going to shows. From London I went back Kingston and spent the most of the remainder of my leave between Kingston and Wimbledon. When I Kingston I slept at the Y. M. C. A. and the nights I stayed in Wimbledon, I slept in the Station.

I paid about 5 or 6 visits to my old unit,

The no. 1. L. of C. Sign
while being a w. l. The
last time I was there
was yesterday, the 27 Apr 44
and I was there about 3 hrs
on this occasion. I did not
see anyone that I know, but
I spoke to a couple of the
boys that I know by sight
The time before that I was at
the no. 1 L of C. Sign on
Tuesday the 18 Apr 44 remaining
there for 4 or five hours during
the middle of the day. I
never saw anyone on this
occasion. Sunday
On ~~Saturday~~ 23 Apr 44
I went to South Corner where
5 L/M. Sec no 3 Company
billetted. I did not
arrive there until about
8 a.m and was there until
about 6 O'clock the same
~~morning~~ morning.

after leaving South Carver at 6 A. M. I walked into Carlisle. The small pack showed me by Sgt Chamberlain was left by me in the M. I. R. room Willoughby House on or about the 15 Apr 44.

I recognize the small pack and the articles contained therein, with the exception of the F. S. caps, as being my own.

As far as I can remember, when I left Willoughby House on Tuesday the 18 Apr 44, I took a pair of brown Oxfords from one of the rooms upstairs. I did not know who owned the shoes. I never took any cigarettes or any other articles.

I have read over this statement and it is true.

witness: [illegible] 862506
[illegible] Sgt. E. J. Smith

Statement of D-116627, Sgmn Larkin, G.C.

I have been shown a pair of brown oxfords by Sgt P. W. Clearwater of No 1. S.I.S. 7th Cdn Army and I positively identify them as being the pair that was taken from my room in Willoughby House, Alk 1 Cdn I of C Sigs between the hours of 3 and 5 p.m. of Sat 22 Apr 44.

W Witness. Sgmn Larkin J.G.
P.W.C. Clearwater. Sgt D-116627
No. 1. S.I.S. 7th Cdn Army.
24 Apr 44.

BEVIES - PTE. ARSCOTT, J.F. APM - CPM.

Exhibit "L". WD.

CANADIAN PROVOST CORPS

DATE 5 May 44

SUBJECT:-

STATEMENT of Regt. No. B-62506 Sigmn. Smith R.T.

of 1 CSRU Taken at:-

"I have been warned that I am not obliged to say anything unless I wish to do so, but anything I now say will be taken down in writing and may be given in evidence."

"To show that I understand the above warning, I make this statement voluntarily and sign my name herewith."

SIGNED:- B62506
Sgm. Smith R.T.

STATES:-

In addition to the statement I made to the S.I.B. in London when I was interviewed there, I did have in my possession at that time a number of ration cards which covered various periods of time. These cards came into my possession through a friend of mine B150219 Sgm. Mac Donald J. whom I now believe to be in Prov to Tel. Of the 1 Can Corps.

He had a considerable number of these cards in his possession at that time, which was approx. October 43. At the time he gave me the cards found in my possession, I asked where he had procured these cards and he told me that while employed in the capacity of clerk with No 1 Coy of the said unit, who was at that time billeted in Monn Barracks, Aldershot, that an Englishman had left an envelope containing a large number of these cards in the Orderly Room, and as they were not counted he (Mac Donald) had taken some for himself.

Two of the cards which I had in my possession had the Orderly Room Stamp [illegible]

(Cont.)

II

affixed the signature of "Lieut. K. C. Sorensen" in my own handwriting. I have never used any of these Kotian Cards.

This statement has been made by me in my own handwriting and it is true.

5/5/44

B62505
Jno. Smith K.J.

J D Arcott

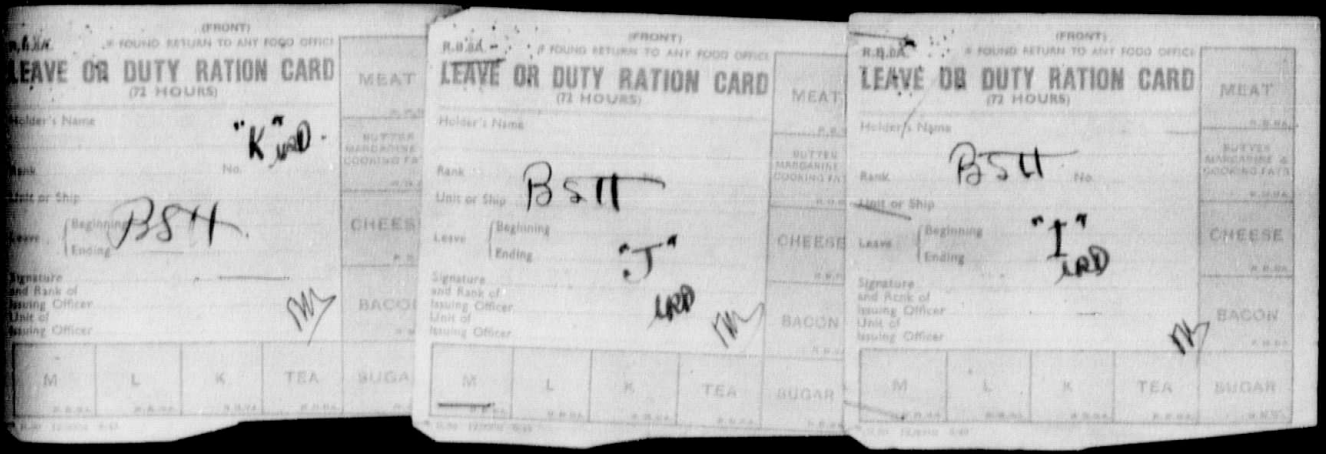
STATEMENT BY THE ACCUSED IN ACCORDANCE WITH R.P. 14 (B)

I desire to have an officer assigned to represent me at my trial by Field General Court Martial.

I request the services of ~~LIEUT F.R. WICES~~ TO BE DETAILED BY 1 C.S.R.U. ..... No. 1 C.S.R.U. ..... if he is available.

B.62506 Sgm. Smith R.J.

B-62506 Sigmn. Smith R.J. (R.C.C.S.)
No. 1 CDN. SIGNALS REINF. UNIT.



(FRONT)

R.B.D.A. IF FOUND RETURN TO ANY FOOD OFFICE

LEAVE OR DUTY RATION CARD
(72 HOURS)

Holder's Name "K" LRD.

Rank No.

Unit or Ship B S H

Leave { Beginning / Ending

Signature and Rank of Issuing Officer

Unit of Issuing Officer

MEAT

BUTTER MARGARINE COOKING FATS

CHEESE

BACON

M | L | K | TEA | SUGAR

(FRONT)

R.B.D.A. IF FOUND RETURN TO ANY FOOD OFFICE

LEAVE OR DUTY RATION CARD
(72 HOURS)

Holder's Name

Rank

Unit or Ship B S H

Leave { Beginning / Ending "J" LRD

Signature and Rank of Issuing Officer

Unit of Issuing Officer

MEAT

BUTTER MARGARINE COOKING FATS

CHEESE

BACON

M | L | K | TEA | SUGAR

(FRONT)

R.B.D.A. IF FOUND RETURN TO ANY FOOD OFFICE

LEAVE OR DUTY RATION CARD
(72 HOURS)

Holder's Name

Rank B S H No.

Unit or Ship

Leave { Beginning / Ending "I" LRD

Signature and Rank of Issuing Officer

Unit of Issuing Officer

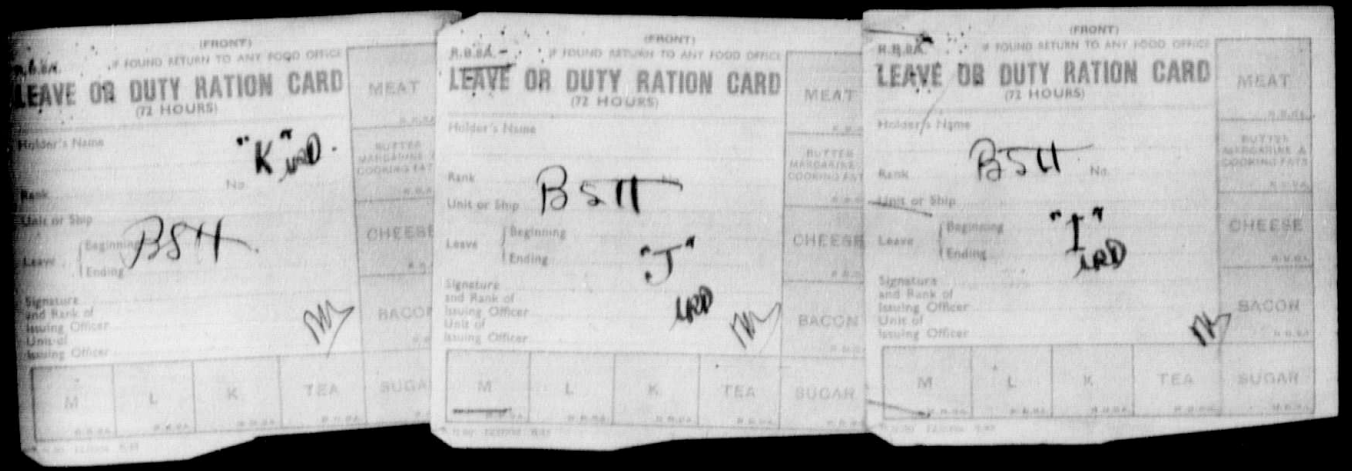
MEAT

BUTTER MARGARINE & COOKING FATS

CHEESE

BACON

M | L | K | TEA | SUGAR



(FRONT)

R.B.S.A. IF FOUND RETURN TO ANY FOOD OFFICE

LEAVE OR DUTY RATION CARD
(72 HOURS)

Holder's Name "K" 1RD

Rank No.

Unit or Ship B S H

Leave Beginning
Ending

Signature and Rank of Issuing Officer

Unit of Issuing Officer

MEAT

BUTTER MARGARINE & COOKING FATS

CHEESE

BACON

M L K TEA SUGAR

(FRONT)

R.B.S.A. IF FOUND RETURN TO ANY FOOD OFFICE

LEAVE OR DUTY RATION CARD
(72 HOURS)

Holder's Name

Rank

Unit or Ship B S H

Leave Beginning
Ending "J" 1RD

Signature and Rank of Issuing Officer

Unit of Issuing Officer

MEAT

BUTTER MARGARINE & COOKING FATS

CHEESE

BACON

M L K TEA SUGAR

(FRONT)

R.B.S.A. IF FOUND RETURN TO ANY FOOD OFFICE

LEAVE OR DUTY RATION CARD
(72 HOURS)

Holder's Name

Rank B S H No.

Unit or Ship

Leave Beginning "I" 1RD
Ending

Signature and Rank of Issuing Officer

Unit of Issuing Officer

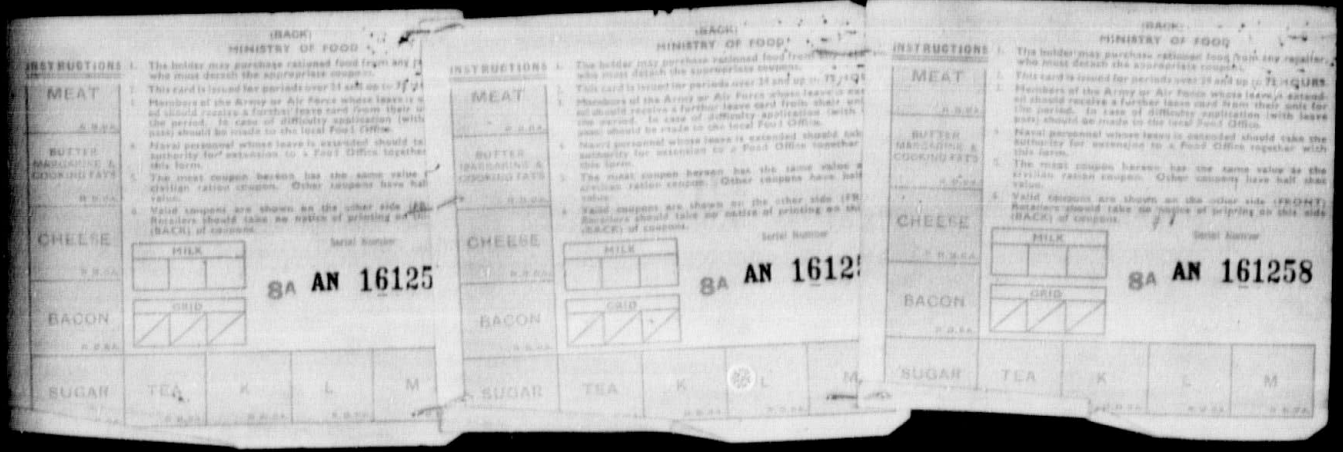
MEAT

BUTTER MARGARINE & COOKING FATS

CHEESE

BACON

M L K TEA SUGAR



(BACK)

MINISTRY OF FOOD

INSTRUCTIONS

1. The holder may purchase rationed food from any [r] who must detach the appropriate coupons.
2. This card is issued for periods over 14 and up to 7[1] [DAYS]
3. Members of the Army or Air Force whose leave is e[xt]ended should receive a further leave card from their u[nit] for the period. In case of difficulty application (with leave pass) should be made to the local Food Office.
4. Naval personnel whose leave is extended should ta[ke the] authority for extension to a Food Office together with this form.
5. The meat coupon hereon has the same value as the civilian ration coupon. Other coupons have half that value.
6. Valid coupons are shown on the other side (FRONT). Retailers should take no notice of printing on this side (BACK) of coupons.

MEAT

BUTTER MARGARINE & COOKING FATS

CHEESE

MILK

BACON

GRID

Serial Number

8A AN 16125

SUGAR

TEA

K

L

M

(BACK)

MINISTRY OF FOOD

INSTRUCTIONS

1. The holder may purchase rationed food from any [r] who must detach the appropriate coupons.
2. This card is issued for periods over 14 and up to 7[1] [DAYS]
3. Members of the Army or Air Force whose leave is e[xt]ended should receive a further leave card from their u[nit] for the period. In case of difficulty application (with leave pass) should be made to the local Food Office.
4. Naval personnel whose leave is extended should ta[ke the] authority for extension to a Food Office together with this form.
5. The meat coupon hereon has the same value as the civilian ration coupon. Other coupons have half that value.
6. Valid coupons are shown on the other side (FRONT). Retailers should take no notice of printing on this side (BACK) of coupons.

MEAT

BUTTER MARGARINE & COOKING FATS

CHEESE

MILK

BACON

GRID

Serial Number

8A AN 16125

SUGAR

TEA

K

L

M

(BACK)

MINISTRY OF FOOD

INSTRUCTIONS

1. The holder may purchase rationed food from any retailer who must detach the appropriate coupons.
2. This card is issued for periods over 14 and up to 7[1] DAYS
3. Members of the Army or Air Force whose leave is extended should receive a further leave card from their unit for the period. In case of difficulty application (with leave pass) should be made to the local Food Office.
4. Naval personnel whose leave is extended should take the authority for extension to a Food Office together with this form.
5. The meat coupon hereon has the same value as the civilian ration coupon. Other coupons have half that value.
6. Valid coupons are shown on the other side (FRONT). Retailers should take no notice of printing on this side (BACK) of coupons.

MEAT

BUTTER MARGARINE & COOKING FATS

CHEESE

MILK

BACON

GRID

Serial Number

8A AN 161258

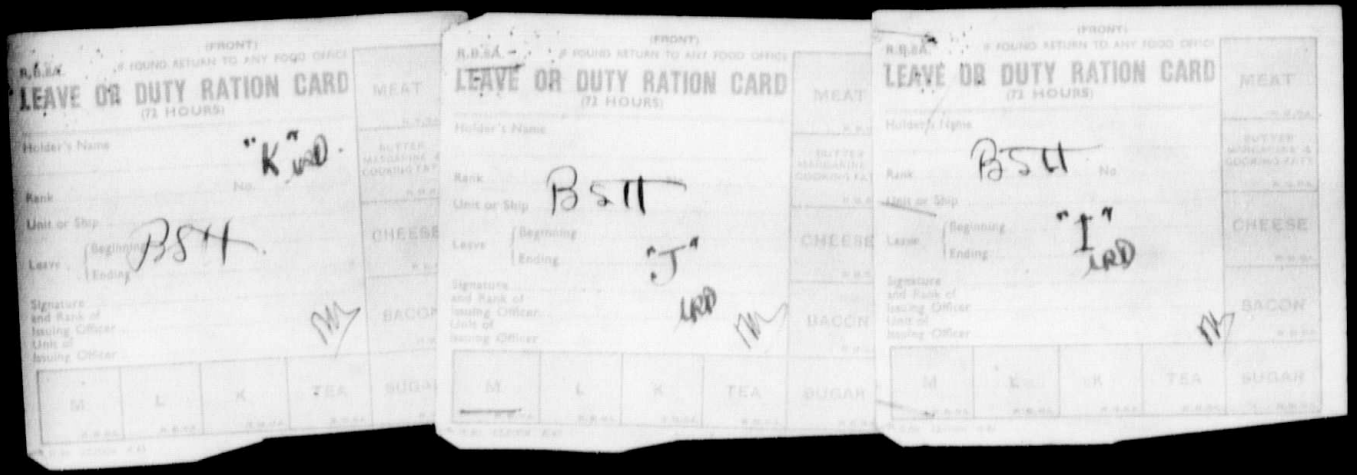
SUGAR

TEA

K

L

M



(FRONT)

R.B.S.A. IF FOUND RETURN TO ANY FOOD OFFICE

LEAVE OR DUTY RATION CARD

(72 HOURS)

Holder's Name "K" LRD

Rank No.

Unit or Ship B5H

Leave Beginning Ending

Signature and Rank of Issuing Officer

Unit of Issuing Officer

MEAT

BUTTER MARGARINE & COOKING FAT

CHEESE

BACON

M L K TEA SUGAR

(FRONT)

R.B.S.A. IF FOUND RETURN TO ANY FOOD OFFICE

LEAVE OR DUTY RATION CARD

(72 HOURS)

Holder's Name

Rank B5H

Unit or Ship

Leave Beginning Ending "J" LRD

Signature and Rank of Issuing Officer

Unit of Issuing Officer

MEAT

BUTTER MARGARINE & COOKING FAT

CHEESE

BACON

M L K TEA SUGAR

(FRONT)

R.B.S.A. IF FOUND RETURN TO ANY FOOD OFFICE

LEAVE OR DUTY RATION CARD

(72 HOURS)

Holder's Name

Rank B5H No.

Unit or Ship

Leave Beginning Ending "I" LRD

Signature and Rank of Issuing Officer

Unit of Issuing Officer

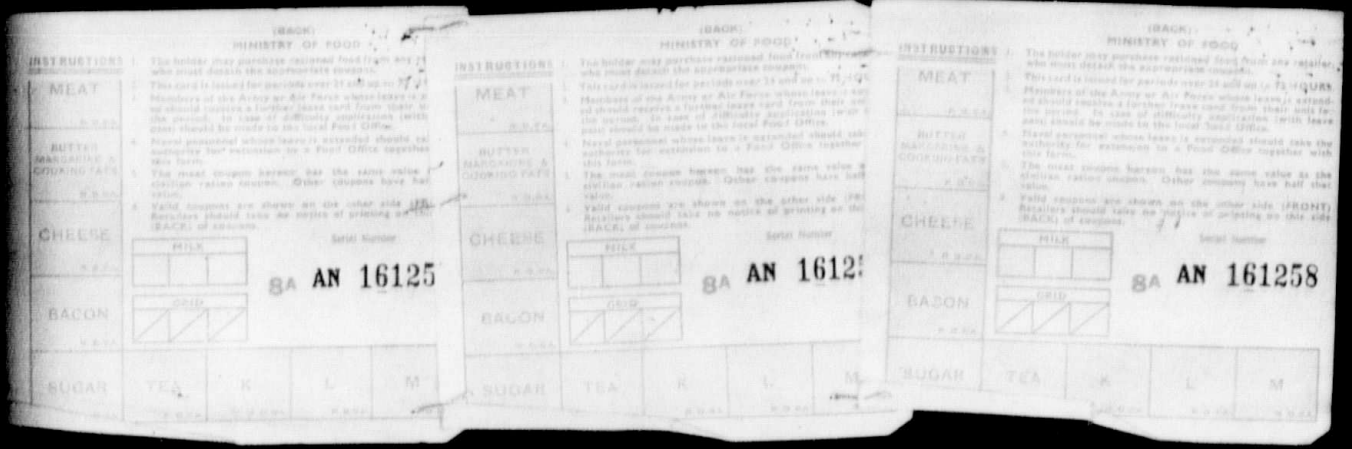
MEAT

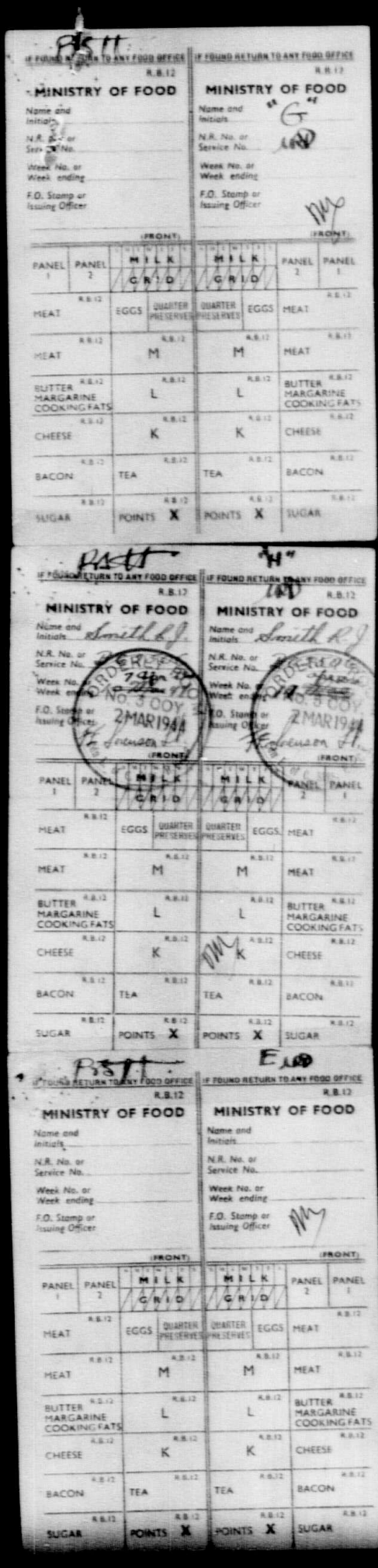
BUTTER MARGARINE & COOKING FAT

CHEESE

BACON

M L K TEA SUGAR


(BACK)
MINISTRY OF FOOD
INSTRUCTIONS
MEAT
BUTTER, MARGARINE & COOKING FATS
CHEESE
BACON
SUGAR
TEA
K
L
M
MILK
GRID
Serial Number
8A AN 16125
(BACK)
MINISTRY OF FOOD
INSTRUCTIONS
MEAT
BUTTER, MARGARINE & COOKING FATS
CHEESE
BACON
SUGAR
TEA
K
L
M
MILK
GRID
Serial Number
8A AN 16125
(BACK)
MINISTRY OF FOOD
INSTRUCTIONS
MEAT
BUTTER
CHEESE
BACON
SUGAR
TEA
K
L
M
MILK
GRID
Serial Number
8A AN 161258



IF FOUND RETURN TO ANY FOOD OFFICE

R.B.12

MINISTRY OF FOOD

Name and Initials

N.R. No. or Service No.

Week No. or Week ending

F.O. Stamp or Issuing Officer

(FRONT)

PANEL 1	PANEL 2	MILK GRID			MILK GRID	PANEL 2	PANEL 1
MEAT		EGGS	QUARTER PRESERVES	QUARTER PRESERVES	EGGS	MEAT	
MEAT		M		M		MEAT	
BUTTER MARGARINE COOKING FATS		L		L		BUTTER MARGARINE COOKING FATS	
CHEESE		K		K		CHEESE	
BACON		TEA		TEA		BACON	
SUGAR		POINTS X		POINTS X		SUGAR	

R.B.12

1. The coupons have the same value as those in the general ration book, except those for points and preserves, and will enable the holder to purchase from any retailer during the period for which this form is valid.

B

2. The form must be produced to the retailer who must detach or cancel coupons in accordance with his instructions.

3. A member of the Army or Air Force whose leave is extended should receive a further form from his unit. If in difficulty he should apply to a food office and produce his pass.

4. Naval personnel whose leave is extended should take the authority for extension to a food office together with this form.

(BACK)

PANEL 1	PANEL 2	TO RETAILER
R.B.12 MEAT		Valid coupons are shown on the other side (front). Take no notice of printing on this side (back) of coupons.
R.B.12 MEAT	R.B.12 M	
R.B.12 BUTTER MARGARINE COOKING FATS	R.B.12 L	
R.B.12 CHEESE	R.B.12 K	
R.B.12 BACON	R.B.12 TEA	
R.B.12 SUGAR	R.B.12 POINTS X	

R.B.12

1. The coupons have the same value as those in the general ration book, except those for points and preserves, and will enable the holder to purchase from any retailer during the period for which this form is valid.

CD 548844 A

2. The form must be produced to the retailer who must detach or cancel coupons in accordance with his instructions.

3. A member of the Army or Air Force whose leave is extended should receive a further form from his unit. If in difficulty he should apply to a food office and produce his pass.

4. Naval personnel whose leave is extended should take the authority for extension to a food office together with this form.

(BACK)

TO RETAILER	PANEL 2	PANEL 1
Valid coupons are shown on the other side (front). Take no notice of printing on this side (back) of coupons.	R.B.12 MEAT	
R.B.12 M	R.B.12 MEAT	
R.B.12 L	R.B.12 BUTTER MARGARINE COOKING FATS	
R.B.12 K	R.B.12 CHEESE	
R.B.12 TEA	R.B.12 BACON	
R.B.12 POINTS X	R.B.12 SUGAR	

R.B.12

1. The coupons have the same value as those in the general ration book, except those for points and preserves, and will enable the holder to purchase from any retailer during the period for which this form is valid.

B

2. The form must be produced to the retailer who must detach or cancel coupons in accordance with his instructions.

3. A member of the Army or Air Force whose leave is extended should receive a further form from his unit. If in difficulty he should apply to a food office and produce his pass.

4. Naval personnel whose leave is extended should take the authority for extension to a food office together with this form.

(BACK)

PANEL 1	PANEL 2	TO RETAILER
R.B.12 MEAT		Valid coupons are shown on the other side (front). Take no notice of printing on this side (back) of coupons.
R.B.12 MEAT	R.B.12 M	
R.B.12 BUTTER MARGARINE COOKING FATS	R.B.12 L	
R.B.12 CHEESE	R.B.12 K	
R.B.12 BACON	R.B.12 TEA	
R.B.12 SUGAR	R.B.12 POINTS X	

R.B.12

1. The coupons have the same value as those in the general ration book, except those for points and preserves, and will enable the holder to purchase from any retailer during the period for which this form is valid.

CD 548845 A

2. The form must be produced to the retailer who must detach or cancel coupons in accordance with his instructions.

3. A member of the Army or Air Force whose leave is extended should receive a further form from his unit. If in difficulty he should apply to a food office and produce his pass.

4. Naval personnel whose leave is extended should take the authority for extension to a food office together with this form.

(BACK)

TO RETAILER	PANEL 2	PANEL 1
Valid coupons are shown on the other side (front). Take no notice of printing on this side (back) of coupons.	R.B.12 MEAT	
R.B.12 M	R.B.12 MEAT	
R.B.12 L	R.B.12 BUTTER MARGARINE COOKING FATS	
R.B.12 K	R.B.12 CHEESE	
R.B.12 TEA	R.B.12 BACON	
R.B.12 POINTS X	R.B.12 SUGAR	

R.B.12

1. The coupons have the same value as those in the general ration book, except those for points and preserves, and will enable the holder to purchase from any retailer during the period for which this form is valid.

B

2. The form must be produced to the retailer who must detach or cancel coupons in accordance with his instructions.

3. A member of the Army or Air Force whose leave is extended should receive a further form from his unit. If in difficulty he should apply to a food office and produce his pass.

4. Naval personnel whose leave is extended should take the authority for extension to a food office together with this form.

(BACK)

PANEL 1	PANEL 2	TO RETAILER
R.B.12 MEAT		Valid coupons are shown on the other side (front). Take no notice of printing on this side (back) of coupons.
R.B.12 MEAT	R.B.12 M	
R.B.12 BUTTER MARGARINE COOKING FATS	R.B.12 L	
R.B.12 CHEESE	R.B.12 K	
R.B.12 BACON	R.B.12 TEA	
R.B.12 SUGAR	R.B.12 POINTS X	

R.B.12

1. The coupons have the same value as those in the general ration book, except those for points and preserves, and will enable the holder to purchase from any retailer during the period for which this form is valid.

CD 548842 A

2. The form must be produced to the retailer who must detach or cancel coupons in accordance with his instructions.

3. A member of the Army or Air Force whose leave is extended should receive a further form from his unit. If in difficulty he should apply to a food office and produce his pass.

4. Naval personnel whose leave is extended should take the authority for extension to a food office together with this form.

(BACK)

TO RETAILER	PANEL 2	PANEL 1
Valid coupons are shown on the other side (front). Take no notice of printing on this side (back) of coupons.	R.B.12 MEAT	
R.B.12 M	R.B.12 MEAT	
R.B.12 L	R.B.12 BUTTER MARGARINE COOKING FATS	
R.B.12 K	R.B.12 CHEESE	
R.B.12 TEA	R.B.12 BACON	
R.B.12 POINTS X	R.B.12 SUGAR	

Received one pair of brown oxfords, mentioned in Second Charge against B62506 Signmn Smith, R. J., to be held by Adjutant, No 2 Holding Wing ICSRU pending further orders.

17 May 44

Lieut
RCCS ICSRU.

LIST OF WITNESSES FOR THE PROSECUTION

A/Capt. C.B. Macqueen - Headquarters No 2 Holding Wing - No 1 CSRU

Lieut. F.E. Sorensen - No 1 Cdn Line of Communication Signals

C-31002 Sgt Clearwater, P.W. - No 1 Special Investigation Section - Cdn Provost Corps.

D-116627 Signm Larkin, G.C. - No 1 Cdn Line of Communication Signals.

L-27870 L/Cpl Hebert, B.S. - No 6 Area Provost Coy - Cdn Provost Corps.

B-25125 Pte Arscott, J.F. - Special Investigation Section - Cdn Provost Corps - HQ C.R.W.

H-64839 A/Sgt Fenske, R.T. - No 6 Coy - No 1 Cdn Sigs Rft Unit (Witness in lieu of AP#115)

B-105062 A/Cpl Knowles, I.B. - "A" Wing - No1 Cdn Sigs Rft Unit. (Witness in lieu of AP#115)

LIST OF EXHIBITS

Exhibit "A" - Certified True Copy of AFB-115 - Record of Declaration of a Court of Inquiry

Exhibit "B" - Certificate pursuant to Section 163 (JJ) purporting to be signed by Capt. R.R.J. Holmes, DAPM CMHQ.

Exhibit "C" - Statement (signed by Sigmn Smith, R.J.)

Exhibit "D" - Statement (signed by D-116627 Sigmn Larkin, G.C.)

Exhibit "E" - Ration Card, RB 12 No.CD548842A and B.

Exhibit "F" - Ration Card RB 12 No.CD548843A

Exhibit "G" - Ration Card RB 12 No.CD548844A and B.

Exhibit "H" - Ration Card RB 12 No.CD548845A and B.

Exhibit "I" - Ration Card RB 8A No.AN161256

Exhibit "J" - Ration Card RB 8A No.AN161257

Exhibit "K" - Ration Card RB 8A No.AN161258

Exhibit "L" - Statement (signed by Sigmn Smith, R.J.)

Exhibit "M" - Pair of Brown Oxfords (held at this No. 1 C.S.R.U.) (will be produced at the trial).

SUMMARY OF EVIDENCE

Summary of Evidence in the case of B-62506 Signalman Smith, Robert, John, Royal Canadian Corps of Signals, on strength of No. 1 Canadian Signals Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Officer Commanding No 2 Holding Wing, No 1 Canadian Signals Reinforcement Unit, the Summary of Evidence is taken on Oath.

FIRST WITNESS for the prosecution

A/Capt C.B. Macqueen, Royal Canadian Corps of Signals, on strength of No 1 Cdn Signals Reinforcement Unit, an officer of the Canadian Army Overseas, having been duly sworn states:-

"I am A/Captain C.B. Macqueen, Administrative Officer No 2 Holding Wing, No 1 Cdn Signals Reinforcement Unit, I produce a certified true copy of A.F.B-115, record of the Declaration of a Court of Inquiry (Marked Exhibit "A") relating to the accused, whom I now recognize. I produce a certificate pursuant to Army Act Section 103 (1)(jj), purporting to be signed by Captain R.W.B.W. Holmes, DAPM, Canadian Military Headquarters, relating to the accused, (Certificate marked Exhibit "B").

.....
Acting Captain C.B. Macqueen(RCCS)
No 1 Cdn Signals Reinf. Unit.

The accused declines to cross-examine this witness.

SECOND WITNESS for the prosecution

Lieut. F.E. Sorenson, Royal Canadian Corps of Signals, on strength No 1 Cdn Line of Communication Signals, an officer of the Canadian Army Overseas. A written statement of this witness's evidence purporting to be signed by him, has been read to the accused and is included in this Summary of Evidence and marked Appendix "A".

Having regard to the exigencies of the service and the loss of time involved, the attendance of this witness cannot in my opinion be readily procured.

.....
Lieut N.R. DePoe (RCCS)
No 1 Cdn Signals Reinf. Unit.
Officer detailed to take Summary of Evidence.

The accused does not demand the attendance of this witness.

THIRD WITNESS for the prosecution

C-31002 Sgt Clearwater, P.W. Canadian Provost Corps, on strength of No 1 Cdn Special Investigation Section, a soldier of the Canadian Army Overseas, having been duly sworn states:-

"I am C-31002 Sgt Clearwater, P.W. on strength of No 1 Cdn Special Investigation Section, Cdn Provost Corps. On the 28 Apr 44 I proceeded to the Guard Room of No 6 Provost Company, London, to interview Sigmn Smith, whom I now recognize, in connection with some thefts which occurred at No 1 Cdn Line of Communication Signals. Sigmn Smith was in possession of a pair of brown oxfords which resembled a pair which were missing. I took possession of this pair of oxfords and after cautioning Sigmn Smith and obtaining his signature to the following words. "I have been cautioned by Sgt P.W. Clearwater, of No 1 S.I.S. First Cdn Army that I need not say anythingunless I wish to do so, and that anything that I will say will be taken down in writing and maybe given in evidence. To show that I understand this caution I

THIRD WITNESS for the prosecution

sign my name". I took down a statement. I produce the original statement (marked Exhibit "C"). On the 29 Apr 1944, I showed the oxfords to D-116627 Sigmn Larkin, G.C. who identified them as being his own property. A statement to this effect was taken, which I produce (Statement marked Exhibit "D").

P.W. Clearwater
.....
C-31002 Sgt Clearwater, P.W.
No 1 Special Investigation Section
Canadian Provost Corps.

The accused declines to cross-examine this witness.

FOURTH WITNESS for the prosecution

D-116627 Sigmn Larkin, G.C. (Royal Canadian Corps of Signals, on strength of No 1 Canadian Line of Communications Signals, a soldier of the Canadian Army Overseas. A written statement of this witnesses evidence purporting to be signed by him has been read to the accused, and is included in this Summary of Evidence and marked [redacted]

Having regard to the exigencies of the service and the loss of time involved, the attendance of this witness cannot, in my opinion, be readily procured.

.....
(N.R. DePoe) Lieut, (RCCS)
Officer detailed to take the Summary of Evidence.

The accused does not demand the attendance of this witness for cross-examination.

FIFTH WITNESS for the prosecution

L-27870 L/Cpl Hebert, B.S. Canadian Provost Corps, on strength of No 6 Canadian Area Provost Company, a soldier of the Canadian Army Overseas, having been duly sworn, states:-

"I am L/Cpl Hebert, B.S. of No 6 Area Provost Company. At London, on the 27th of April 1944, I was on duty at Kingston-on-Thames, in company with L/Cpl O'Brien, P.H. At 2130 hours, as we proceeded along Hampden Court Road, we had occassion to check the accused, whom I now recognize. He was asked if he was on leave, when he replied "No." I asked him if he could produce a pass, when he said, "No, I haven't got one because I am only up for the evening." Not being satisfied with his information I placed the accused under close arrest and we escorted Sigmn Smith, to the Kingston Civil Police Station for further investigation. On examining the accused's documents he was found to be in possession of Seven RB 12's and three RB 8A's. I recognize RB 12 Numbers CD 548842, A and B, CD 548843 A, CD 548844, A and B, CD 548845, A and B, and RB 8A numbers AN 161256, AN 161257, and AN 161258 as being the ones I took from Sigmn Smith by my initials, which I placed on them at the time. CD 548845 A and B were filled out, stamped, and signed. He could offer no satisfactory explanation of how he got these. He subsequently stated that he was absent and he was detained at the police station until the escort arrived from London. (Ration Cards marked Exhibits "E", "F", "G", "H", "I", "J", and "K".)

B.S. Hebert
.....
L-27870 L/Cpl Hebert, B.S.
Canadian Provost Corps
No 6 Area Provost Company.

The accused declines to cross-examine this witness.

SIXTH WITNESS for the prosecution

B-25125 Pte Arscott, J.F. Canadian Provost Corps, on strength of Special Investigation Section, HQ Canadian Reinforcement Units, a soldier of the Canadian Army Overseas, having been duly sworn states:-

"I am B-25125 Pte Arscott, J.F., on strength of the Special Investigation Section, HQ C.R.U. On the 5th of May 1944, I interviewed the accused, whom I now recognize, regarding ten ration cards. After I had cautioned him, he made a signed statement in his own handwriting, which I now produce. (Statement marked Exhibit "L").

J.F. Arscott
B-25125 Pte Arscott, J.F.
Special Investigation Section
HQ Cdn Rft Units.

The accused declines to cross-examine this witness.

The accused was cautioned as follows: "Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give, will be taken down in writing and may be given in evidence."

The accused declines to make a statement and reserves his defence.

R.J. Smith
B-62506 Sigmn Smith, R.J. (RCCS)

I certify that the foregoing summary of evidence consisting of three (3) pages, twelve (12) exhibits and one (1) appendix was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4 (c), (d), (e), (f) and (g) have been complied with.

(H.R. DePoe) Lieut (RCCS)
No 1 Cdn Pigs Rft Unit.
Officer detailed to take the Summary of Evidence

Cove, Hants
9 May 1944

EXA

Appendix "A"

Statement by Lieut. F.E. Sorensen, an officer of the Canadian Army Overseas, on strength of No. 3 Coy, 1 Canadian Line of Communication Signals:-

"In the absence of Lieut. F.G. Walker, I was acting as Administrative Officer, No. 3 Company, 1 Canadian L of C Signals for the period 10th March 1944. Signalman Smith at that time was employed as assistant clerk in the company office. Prior to March 10th, Smith was responsible for making up compery leave ration cards, the procedure for which was that the Administrative Officer drew the blank forms from the company strongbox, and gave them to the clerk for entry of particulars prior to their being signed. I did sign one seven day ration card and one forty eight hour ration card for Signalman Smith's leave. This was later cancelled at Signn. Smith's own request, and the unused ration card was returned to the company. The cards numbered CD 548645A was not signed by me, and I declare it to be a forgery. The writing in no way resembles mine, and my name is spelled incorrectly."

The above statement has been read over to me and is true.

.....
(F.E. Sorensen) Lieut.

Taken down in the field
3 May 44.

Appendix "A"

Statement by Lieut. F.E. Sorensen, an officer of the Canadian Army Overseas, on strength of No. 3 Coy, 1 Canadian Line of Communication Signals:-

"In the absence of Lieut. F.G. Walker, I was acting as Administrative Officer, No. 3 Company, 1 Canadian L of C Signals for the period including 10th March 1944. Signalman Smith at that time was employed as assistant clerk in the company office. Prior to March 10th, Smith was responsible for making up company leave ration cards, the procedure for which was that the Administrative Officer drew the blank forms from the company strongbox, and gave them to the clerk for entry of particulars prior to their being signed. I did sign one seven day ration card and one forty eight hour ration card for Signalman Smith's leave. This was later cancelled at Sigmn. Smith's own request, and the unused ration card was returned to the company. The cards numbered CD 548845A was not signed by me, and I declare it to be a forgery. The writing in no way resembles mine, and my name is spelled incorrectly."

The above statement has been read over to me and is true.

.....
(F.E. Sorensen) Lieut.

Taken down in the field
3 May 44.

Appendix "A" WD.

Statement by Lieut. F.E. Sorensen, an officer of the Canadian Army Overseas, on strength of No. 3 Coy, 1 Canadian Line of Communication Signals:-

"In the absence of Lieut. F.G. Walker, I was acting as Administrative Officer, No. 3 Company, 1 Canadian L of C Signals for the period including 10th March 1944. Signalman Smith at that time was employed as assistant clerk in the company office. Prior to March 10th, Smith was responsible for making up company leave ration cards, the procedure for which was that the Administrative Officer drew the blank forms from the company strongbox, and gave them to the clerk for entry of particulars prior to their being signed. I did sign one seven day ration card and one forty eight hour ration card for Signalman Smith's leave. This was later cancelled at Sigmn. Smith's own request, and the unused ration card was returned to the company. The cards numbered CD 548645A was not signed by me, and I declare it to be a forgery. The writing in no way resembles mine, and my name is spelled incorrectly."

The above statement has been read over to me and is true.

.....
(F.E. Sorensen) Lieut.

Taken down in the field
3 May 44.

No. B62506 Name Smith R.J. | Sqn, Battery, or Company | Corps RCCS | Date of enlistment 30 Dec 41 | GC Badges | Service or Proficiency Pay NIA | 3/17 MFM 6 (AFB 122) 40/TAS/136/3418

* Date of last entry in Company Conduct Sheet NIA | No. and date of last drunk NIA | Period not reckoning towards freedom from extra fine NIA | Sheet No 1 | Signature OC Company, etc JAC Nicol Lieut | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Previous sheet destroyed upon completion of first 6 months service							22 Jan 43	JAC Nicol Lieut	
Field	6 Jul42	Sigmn		A.A.Sec 15(1) A.W.L. from 0600 hrs 6 Jul 42 to 0430 hrs 23 Aug 42 (Absent 47 days, 4 hrs, 30 min) (Cost of apprenhension $6.16) A.A. Sec. 24. Losing by neglect kit to the value of $2.10	Documentary	30 days Detention Stoppage of pay $8.26	30 Sept 42	DCM Confirmed 2 STC D.O. 246 16 Oct 42	Forfeits 48 days pay under FR&I 149(1) JAC
Field	2 Nov 42	Sigmn		A.A. SEC 15(1) A.W.L. from 0615 hrs 2 Nov 42 to 0620 hrs 9 Nov 42 (Absent 7 days 10 min)	L/Cpl Davis Major A.C. Whitting	168 hrs Detn. Stoppage of pay $6.16 for apprehension	11 Nov 42	Lt.Col. A.A. Anderson DSO	Forfeits 8 days FR&I pay 149 (1)
Field	23 May 43	Sigmn		A.A. Sec 40 neglect to blanco anklets	CSM Milligan A.A.	3 days C.B.	25 May 43	Major A.J ?????	
Field	26 Oct 43	L/C		AA Sec 15 (1) AWL 10 hrs 30 mins	Sgt Dragon	Reprimanded	27 Oct 43	Major Holman J.L.	Forf 1 days (PTO) pay

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	3 Feb 44	L/C		A.A. Sec 40 Failed to attend NCOs lecture, after been duly warned	K-34795 CSM Grant E.B.	Reprimanded	4 Feb 44	JH Townsend Capt.	
Field	6 May 1944	Sigm		A.A. SEC. 24(2) WOAS Losing by neglect his clothing, equipment and regt'l necessaries, in that he in the field on 6 May 44, was deficient the following articles: (Vocab Price $19.55) (¾ Vocab Price $16.37)(£3-14-0)	Documentary	Placed under stoppages to make good loss of value of £3-14-0	10May44	Lt.-Colonel W.O. Peffers	

E + C
May

"CERTIFIED TRUE COPY"

(F.T. Portsmouth) Major
Officer Commanding, No 6 Coy
No 2 Holding Wing

Officer in charge of Regt'l Books.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B.62506	Sigmn.	SMITH, Robert John	R.C.C.S.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognised special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.A.SEC 15(1) A.W.L. 2 times.

For A.A.SEC 40 Neglect to the prejudice etc. 1 times.

For ~~A.A.SEC.24(2) Losing by neglect~~ 1 times.

For A.A.SEC. 40 Failed to attend NCO's lecture 1 times.

Date of first entry in Field Conduct Sheet 6 July 1942

Date of last entry in Field Conduct Sheet 3 Feb 1944

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*~~3. The accused at the present time is under sentence of~~

~~beginning on the~~ ~~day of~~

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for 20 days in military custody, *i.e.*, Nil days in open arrest, 20 days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 20 years, 186 days

6. The date of his attestation is 30 DECEMBER 1941

~~attestation or of the commencement of his present military service~~

7. The service which the accused is allowed to reckon is 2 years 138 days

~~8. The accused is in possession of~~

State the military decorations if any held by accused.

~~9. If the accused is a warrant officer or N.C.O.~~ The accused has served continuously, without reduction, to the present date—

~~As the substantive rank of~~ Date of Promotion

~~As the war substantive rank of~~

~~As the acting rank of~~

E + B

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(81113) W.L.8670/869 200,000 4/42 A.S.F.W.Ltd. Gp.698 Forms/B.296(War)/2
(81113) W1.23926/1873 60,000 9/42

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
D.C.M.	30 Sep 1942 Field	A.A.SEC 15(1) ABSENCE WITHOUT LEAVE 47 days, 14 hours, 30 mins.	30 Days Detention.	

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 17th day of May 1944

(C.P. Macqueen) Capt.
Admin Officer
No 2 Holding Wing - 1 C.S.R.U.

4X-132.

Pte. Smith, R.O.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: L 7260 Pte Robert Osborne SMITH

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 36, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 723, and in lieu of kit see RP 44 fn b.)

~~XXXX

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*ii*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*H*), *and of witnesses see RP* 85-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President [illegible], complies with RP 35(B) by explaining to the accused the nature and meaning of the charge[x](1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge[x], call witnesses as to character and make an address in mitigation of punishment.(2) "JNM"

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In the witnesses for the Prosecution will not be sworn or subject to cross-examination ; and anything you say will not be used making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No (5)

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his [illegible] plea[x] of Guilty to Not Guilty on First charge [illegible] "JNM"

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge[x] to which the plea[x] of Guilty is ([xx] not changed the President records finding[x] of Guilty in Part I of the Schedule.(1)

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea, and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1) "JNM"

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B on p 2.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C1. If any plea is changed to Not Guilty, trial proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

(2) The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)

(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans. ..... Do you intend to call witnesses on your behalf ?

Ans. ..... Are they witnesses as to character only ? Ans. .....

(*1. RP 115. 2. RP 40(A), see 60(B). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP 114, 115, 116. For procedure see notes on back of Convening Order, CF 895. Evidence for accused as to his character should, if in his interests, be given before the finding. See RP 46(A) fn 1, 84(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP 43, 113(B). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(*1. AA 54(3) (b), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans. No

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement[x] as to Character and Particulars of Service(1), and certified true copy (or [xx] of Conduct Sheet[x](2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex "C" respectively.(3) "JNM"

(*1. MFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement[x] and Conduct Sheet[x], and in mitigation of punishment ?(1) Ans. Yes through my defending officer "JNM"

(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him[illegible](2) "JNM"

(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishments or punishments laid down in AA 41, 44 and its proviso, as to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 89, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 86, 737-739. As to sentences assigned the civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

"JNM"

CHARGE SHEET

THE ACCUSED, L7260 Pte SMITH, Robert Osborne, Canadian Section 1 Echelon AFHQ, a soldier of the Canadian Army Overseas, is charged with

FIRST CHARGE
AA Sec 15(1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, in Italy, absented himself without leave from 1630 hours on 12 Jan 45 until apprehended at ROME at 1400 hours on 18 Jan 45. (Total absence 5 days, 21 hours, 30 minutes).

In the Field
31 Jan 45

(D H Jupp) Lt-col
AAG
Cdn Sec 1 Ech AFHQ

To be tried by Field General Court Martial.

In the Field
31 Jan 45

(W G H Roaf) Brigadier
Officer IC
Cdn Sec 1 Echelon AFHQ

"JNM"

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/FAS/1647 (2068)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L-7260	Pte		Robert Osborne	SMITH	Cdn Sec 1 Ech AFHQ.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 31 Jan 45 endorsed by me, (~~I am satisfied that there is sufficient evidence~~ "WGHR"), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is not practicable to assemble a detachment of a suitable size~~ "WGHR"

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder. "WGHR"

4. ~~I nominate ... to form the Court, the [illegible] Offr to be President, for the accused [illegible] attached hereto~~ "WGHR"

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. ~~I also appoint ... to be the prosecutor~~ "WGHR"

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)		(Unit.)
Lt-Col	J N Medhurst, OBE, ED	(CIC)	Cdn Sec 1 Ech AFHQ	

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)		(Unit.)
Lt (A/Capt)	D G MacLaren	(RCAPC)	PWCT	
Lt	B D McLellan	(CIC)	Cdn Sec 1 Ech AFHQ	

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)		(Unit.)
	N/A			

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)		(Unit.)
	N/A			

On Active Service in the Fd

in Italy (*Country.*)

Date 31 Jan 45

"W.G.H. Roaf" (*Signed personally. RP 105 fn 2.*) Brigadier (*Rank.*)

(W G H Roaf) Brigadier

Commanding OIC Cdn Sec 1 Echelon AFHQ

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(*See overleaf for oaths and notes for use on trial.*)

"JNM"
"

MEDICAL OFFICER'S CERTIFICATE

I certify that No. L-7260 Pte Smith R.O1, att Cdn Sec 1 Ech AFHQ Regt is FIT to undergo trial by Court-Martial.

"????????" Major RCAMC
Signature of the Medical Officer

Dated: 2 Feb 45.

"JNM"

Defending Officer.

E 3

The accused is a single man and has been in the army a long time. Though his record is lengthy he has no crimes of a serious nature. The consist mostly of A.W.L. and once or twice drunkeness. He has been in and out of hospital almost continuously with a skin infection. On this occasion he got a pass with no intention of going AWL. He got drunk and consequently did not get back and continued in that state for five days.

While in conversation with him found he was of weak character, can't say No. When drunk he forgets his duty which is unfortunate but just his weakness of character.

In view of the above and his present state of health I ask the court to make his punishment as lenient as possible as he does not fully appreciate the hardships of field punishment or imprisonment.

SUMMARY OF EVIDENCE IN THE CASE OF

L7260 PTE SMITH, R.O., 5 CDN TPT COY., RCASC

CHARGED WITH

I. In the Field WOAS AA 15 (1). Absent without leave in the Field in Italy. Did absent himself without leave from 5 Cdn Gen Hosp RCAMC from 1630 hrs 12 Jan 45 until apprehended in Rome at approximately 1230 hrs 15 Jan 45.

(Absent 3 days 2 hrs)

2. In the Field 15 Jan 45 WOAS AA 18 (4). Stealing property belonging to a person subject to Military Law, in that he in Italy on 15 Jan 45 stole:-

1 blanket
1 greatcoat

the property of M1143 Pte Forster, D.L., I Cdn Corps Tpt Coln, a person subject to Military Law.

3. In the Field 15 Jan 45 WOAS AA 15 (1). AWL in that he in the Field in Italy when in arrest absented himself without leave from 1245 hrs 15 Jan 45 until apprehended in Rome at 1415 hrs 18 Jan 45.

(absent 2 days 19 hrs 30 minutes)

THE CO DIRECTS THAT ALL EVIDENCE BE TAKEN UNDER OATH

FIRST WITNESS

L7159 L/Cpl Peterson, E.T., having been duly sworn states:-

I am employed as a DR of HQ I Cdn Corps Tpt Col at I Ech. I recognize PTE SMITH, R.O., present at this Court. At approximately 1830 hrs on 15 Jan 45 I was in my quarters with Pte Wilson. Pte Pound has a small room adjoining the room which I am in. At the said time Pte Pound entered my room with a blanket and greatcoat under his arm accompanied by Pte Smith, R.O. Pte Pound tried to tell me something and put the blanket and greatcoat on the bed. At the same time Pte Smith tried to tell me something. Pte Smith then asked me to come outside as he wanted to tell me something. I agreed. Pte Smith and I went out together. Pte Smith brought the greatcoat and blanket along.

I could not understand Pte Smith as his tongue was a bit thick. I then got a suspicion that I had seen the greatcoat some place before. I then went into the room, occupied by Pte Forester and Pound and found that Pte Forester's greatcoat was missing. Pte Pound then told me that the blanket and greatcoat that Pte Smith had was the property of Pte Forester. I then ordered Pte Smith into a small room and told Pte Pound to guard him until I came back. I proceeded to the office to report this to RSM Ryder.

I returned to the hut about 15 minutes later and was told by Pte Pound that Pte Smith was gone, but had left the greatcoat and blanket. The next morning Pte Forester identified the blanket and greatcoat in my presence. He identified the blanket as it still contained a pair of pliers that he had placed in one of the pockets a day ago. He also identified the greatcoat as it still had the name in it.

At approximately 1400 hrs 18 Jan 45 I walked into a wine shop in Rome and saw Pte Smith, R.O. there. I ordered Pte Smith to return to camp with me which he did willingly. I turned him over to RSM Ryder at approx 1415 hrs the same date.

Q (1): When you ordered Pte Smith into the small room did you or did you not place him under arrest?

A (1): No Sir.

The above evidence is read back to the witness in the presence of the accused.

The accused declines to cross-examine the witness.

(Sgd) E.G. Peterson.

SECOND WITNESS

D105772 Pte Wilson, C.W. having been duly sworn states:-

I am employed as an Orderly Room clerk, I Can Corps Tpt Coln at I Ech.

At approximately 1830 hrs 15 Jan 45 I was in my hut changing preparing to go out when Pte Pound, one of the men of my unit, who lives in one of the adjoining rooms of our hut, came into our room with the accused and carrying a greatcoat and a blanket. Cpl. Peterson was also in the room. Pte Pound told the Cpl that the accused had taken the greatcoat and blanket from the small adjoining room shared by Pte Pound and Forester. Pte Pound also stated that the greatcoat and blanket belonged to Pte Forester. Pte Smith then asked the Cpl to stay outside as he wished to talk to him. The Cpl and accused went out together. After being outside a short time the Cpl and the accused returned to our quarters. The Cpl then ordered the accused into Pte Pounds room, this was approximately 1840 hrs, 15 Jan 45, and also told Pte Pound to keep an eye on him until he returned. About 5 or 10 minutes later Pte Pound told me that the accused had left. Both Pte Pound and myself went and looked for the accused in the Veh Park but found no trace of him. L/Cpl Peterson returned about 5 minutes later. We met him in the yard and told him that the accused had got away.

Q. (1): Did you or did you not hear L/Cpl Peterson tell the accused that he was under arrest?

A. (1): No Sir. He just told the accused to stay in the room and told Pound to keep an eye on him.

THE ACCUSED PUTS THE FOLLOWING QUESTION TO THE ABOVE WITNESS

Q. (2): When I asked Cpl Peterson to step outside as I wished to speak to him did you see me take out the greatcoat and blanket?

A. (2): No. They had been placed on the bed previously.

The accused declines to further cross examine the witness.

The above evidence was read back in the presence of the accused.

(Sgd) C.W. Wilson.

WITNESS NUMBER

I/Cpl Snyder, G.J. having been duly sworn states:-

I recognize the accused to be Pte Smith, R.C.
On the 15 Jan 45 I was NCO of 1 Cdn Corps Tpt Coln RASC at 1 Echelon. At approx 1630 hrs 15 Jan 45 I was called from a Sgts' Mess meeting by L/Cpl Peterson, 1 Cdn Corps Tpt Coln RASC, who informed me that he arrested Pte Smith, R.C. for stealing one greatcoat and one blanket. I immediately detailed L/Cpl Peterson to return to the hut and stay with this man until I got down there. Approx 15 minutes later he again called me from the Sgts' Mess meeting and informed me that Pte Smith, R.C. had absconded.

At approx 1615 hrs on the 16 Jan 45 I again was informed by L/Cpl Peterson that he had picked up Pte Smith, R.C. in a bar in Rome. I saw Pte Smith and asked him if he was AWL from hospital and he said, "Yes, Sir." I instructed L/Cpl Peterson to place this man in arrest.

Q. (1): On 16 Jan 45 at what time did L/Cpl Peterson hand over the accused to you?

A. (1): It was approx 1415 hrs that L/Cpl Peterson informed me that he had Pte Smith.

Q. (2): On 15 Jan 45 when L/Cpl Peterson reported the incident of the greatcoat and blanket to you did you or did you not detail L/Cpl Peterson to place the accused under arrest?

A. (2): I detailed Cpl Petersonto hold this man until I got downstairs.

Q. (3): Did L/Cpl Peterson parade the accused to you on the 16 Jan 45?

A. (3): No. He informed me that he had Pte Smith in the building.

Q. (4): Did L/Cpl Peterson parade the accused to you on the 16 Jan 45?

A. (4): No. He informed me that he was in the building.

Q. (5): When was the accused placed in your custody?

A. (5): This man was not placed into my custody.

Q. (6): Who apprehended the accused? Where and at what time on the 15 Jan 45?

A. (6): He was apprehended to the best of my knowledge by L/Cpl Peterson at approx 1400 hrs on the 16 Jan 45 in a bar or wine shop of one of the streets of Rome. What street I do not know.

The accused put the following questions to the above witness:

Q. (1): On the 15 Jan 45 did L/Cpl Peterson inform you that he had placed the accused under arrest.

A. (1): Yes, and he had left him in the mens' quarters with Pte Pound.

The accused declines to further cross examine the witness;

The evidence of the above witness was read back in the presence of the accused.

(sgd) Geo. J. Snyder.
W.O.

questions to the accused.

Q. (1): Do you wish to call any witnesses?

A. (1): No, Sir.

Q. (2): Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. (2): The accused states that he wishes to give evidence under oath.

Caution:

The above caution was read to the accused in the presence of M100853 Pte Neil, A.T., Can Med Div 1 Kch Amb.

The accused 7960 Pte Smith, N.O. having been duly sworn and cautioned states:-

I am Pte Smith, N.O. While a patient at 5 Cdn Gen Hosp obtained a pass from 1300 hrs 14 Jan 45 till 1600 hrs 12 Jan 45. While on this pass I got intoxicated and did not return that day until I was apprehended the 16 Jan 45 at 1400 hrs. by L/Cpl Peterson. Previous to this on 15 Jan 45 at 1600 hrs I went over to visit L/Cpl Peterson. I was intoxicated at the time and as I had taken my greatcoat from the hospital, while in the state of mind I thought I had left my greatcoat in Cpl Peterson's hut. But was informed by Pte Pound that I had made a mistake. He said that I was in the wrong hut. He took the blanket which was wrapped up in a greatcoat and give them to L/Cpl Peterson. I went outside with L/Cpl Peterson but what took place after that I do not know. On the 16 Jan 45 I was in a bar in Rome and L/Cpl Peterson came in and asked me to come over to 1st echelon. I proceeded with him and he took me to Lt Major Ryder and said here is Pte Smith, N.O. Lt Major Ryder informed me that I was under close arrest and took me to the C.M.P. & S Orderly Room, and told me they would get me blankets and mess tins which they did. From there I went to the Guard Room at 1600 hrs.

The above evidence was read back to the accused.

(Sgd) N.O. Smith.

Documentary evidence.

The officer taking the summary produces to the accused and reads to him statements which are marked Exhibit "A" and "B" and attached to the proceedings.

Question to the accused:

Q. Do you wish to call the witnesses referred to in Exhibit "A" and "B"?

A. No. The accused declines to call these witnesses for cross examination.

Owing to the exigencies of the service the attendance of the above witnesses noted in Appendix "A" and "B" cannot be readily procured.

(Sgd) H.H. Garfunkel, Capt
Officer detailed to take summary

R.P. 4 D,E,F and G have been complied with.

I certify that the foregoing summary of evidence consisting of five pages was taken down in writing in the presence and hearing of the accused this 19 Jan 45.

(sgd) B.H. Garfunkel, Capt
Officer detailed to take summary.

Further witness was called 20 Jan 45.

The CO directs that all evidence be taken under oath.

FOURTH WITNESS

M1143 Pte Forster, W.L., having been duly sworn states:-

At 1700 hrs 18 Jan 45 I left the camp area as I was off duty until curfew. I returned to camp approx 2.30 hrs. As I had been drinking I returned to my quarters and laid down on my bed, with my clothes on and fell asleep. I arose the next morning at approx 0645 hrs and carried on normally. At approx 7 o'clock Cpl Peterson accosted me just outside the quarters and asked me where my greatcoat and blankets were. (As I have a comforter I now have only two blankets one of which I keep inside the comforter). I replied on my bed. Cpl Peterson and I then went into my room together. (I share this room with Pte Pound). Cpl Peterson pointed to a greatcoat and asked if that was mine. I replied No. I then picked up the other greatcoat and told the cpl that this was mine. The cpl then asked me to identify which of the blankets in the room were mine. I identified one and cpl Peterson told me that was good enough. He then told me that the night before at approx 1830 hrs Pte Smith had been apprehended with this greatcoat and blanket of mine attempting to take it out of the hut. He said Smith was first apprehended by Pound and shortly afterwards by himself.

Q. (1): When you left your quarters at 1700 hrs 18 Jan 45 did you see your greatcoat?

A. (1): Yes, Sir. I took it off at 1830 hrs the same day.

Q. (2): How can you identify your greatcoat?

A. (2): It was issued to me about 7 days previous, it has the new type of button on it. I had arrows on my right sleeve. I also had a pair of pliers in my pocket, and a pocketbook containing photographs and my pay book.

Q. (3): How many of these articles were found?

A. (3): All of them.

Q. (4): Under what circumstances did you recover any of these articles and in whose presence?

A. (4): When I next put on my greatcoat at 0630 hrs 19 Jan 45 I found nothing missing from my pockets.

The evidence is read back in the presence of the accused.

The accused declines to cross-examine the witness.

(sgd) W.L. Forster

R.P. 4 D, E, F and G are complied with.

Question to the accused.

Q. Do you wish to call any further witnesses?

A. No, Sir.

Question to the accused.

Q. Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. The accused declines to make a further statement.

The accused was cautioned in the presence of [illegible] Pte Danielsen, J.K., N.Z. 1 Edn Corps Dpt Coln attached 1 Echelon.

R.P. 4 D, E, F and G have been complied with.

I certify that the foregoing summary of evidence consisting seven pages was taken down in writing in the presence and hearing of the accused this 30th Jan 40.

(Sgd) B.M. Garfunkel, Capt
Officer detailed to take summary.

FIFTH WITNESS

P44991 Pte Pound, G.A.

Certificate

I certify that in my opinion, the attendance of P44991 Pte Pound, G.A. is, owing to the exigencies of the service, expense or loss of time involved or illness, not readily procurable; a written statement of his evidence signed by him has been read to the accused and is attached hereto as Exhibit 'C'.

(B H Garfunkel) Capt.
Officer taking Summary of Evidence.

The accused does not require the attendance of this witness for the purpose of cross-examination.

(Sgd) R.O. Smith.

Question to the accused

Q. (1): Do you wish to call any further witnesses?

A. (1): No.

Q. (2): Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. (2): No, Sir.

Caution

The above caution was read to the accused in the presence of PSO091 Tpr Rhodenhiyer, D.R. attached 1 Fch.

R.P. 4 D, E, F and G have been complied with.

I certify that the foregoing Summary of Evidence, consisting of eight pages was taken down in writing in the presence and hearing of the accused this 24 Jan 45.

(B H Garfunkel) Capt
Officer detailed to take Summary of Evidence

COPY

Exhibit 'A'

L7260,
Pte Smith, R.C.
5 Cdn Tp Tpt RCASC.

The a/m soldier was a patient in No. 5 Cdn Gen Hosp Ward B, he was granted a pass from 1300 hrs 12 Jan 45 until 1630 hrs 12 Jan 1945, he failed to return and was picked up RSM Ryder G.J. 1 Cdn Corps Transport RCASC at 1415 hrs 18 Jan 1945.

Time of absence from hospital 6 days 21 hrs and 45 mins.

(Sgd) H.S. Crawford QMS
No.5 Cdn Gen Hosp RCAMC

This is Exhibit 'A' re Summary of Evidence in the case of L7260 Pte Smith, R.C. taken down before me this 19th day of Jan 45.

(B H Garfunkel) Capt

C O P Y

Exhibit 'B'

L7260, Jan 19/45
Pte Smith, R.O. Ward B.

Sir,

The a/m man was granted a pass from 1330 hrs 12 Jan to be absent from his ward till 1630 hrs 12 Jan he failed to returned he was apprehended by RSM Ryder GJ 1 Cdn Cps Transport RCASC at 1415 hrs 18 Jan 45. 5 days 21 hrs 45 mins.

(Sgd) F. Millsted Sgt R.P.
5 Cdn Gen Hospital.

This is exhibit 'B' to Summary of Evidence in the case of L7260 Pte Smith, R.O., taken down before me this 19th day of Jan 1945.

(B H Garfunkel) Capt

COPY

Exhibit 'C'

Documentary evidence

F44991 Pte Pound, G.A., having been duly sworn states:-

I am a driver on strength of 1 Cdn Corps Tpt Coln located at 1 Echelon. At approx 1830 hrs 15 Jan 44 I was moving my bed around in the room which I shared with Pte Forester. I noticed the accused (Pte Smith) standing in the corner of my room. When he saw me moving my bed around he proceeded to help me. After we finished moving the bed he started to mumble something which I did not understand. The next thing I heard him say was to the effect, "I guess I will take my coat and blanket and go." I immediately recognized the coat as belonging to Pte Forester. I told him that he must be mistaken that the coat belonged to Pte Forester. I then took both the coat and blanket away from him and then took them to the adjoining room and laid them down on one of the beds there. Pte Wilson was present in this large room then when I did this. I told Pte Wilson that the accused was trying to make off with Pte Forester's coat and blanket. When the accused picked up the coat and blanket in my room I took it away from him before he had a chance to go out of my small room.

At that moment L/Cpl Peterson came into the large room and that at point the accused told L/Cpl Peterson that he would like to speak to him privately. They then both went outside together. I did not hear their conversation. L/Cpl Peterson and the accused seemed to know each other fairly well. It would appear

The next thing I saw was the accused passing the door again alone carrying the blanket and greatcoat. I called to L/Cpl Peterson that the accused was taking Forester's greatcoat and blanket again. I then saw Cpl Peterson take the coat and blanket from the accused and place it back on a bed in our small room. He then brought Smith into our small room and told me to keep an eye on him while he went for his Sgt-Major. I told Smith to sit down and wait till the Cpl returned. He sat down on the head of Forester's bed and I proceeded to turn down my blankets on my bed. While my back was to Smith he bolted out the door. As Pte Wilson and myself heard the accused run out we ran out ourselves to try and locate him. We looked around the M.T. yard but the accused was not to be found.

L/Cpl Peterson returned shortly and we reported what happened. He said he knew his name and could have him located.

(Sgd) Gordon Pound.

EXHIBIT "B" "JNM"

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused

(For Use at Trials by Field General Courts-Martial only)

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
L 7260	Pte	SMITH, R O	1 Cdn Corps Tpt Coln

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of ENTRIES in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court:—

For	Sec 40 AA 1 Sec 10 AA 1	Sec 6 (h) AA Sec 8 (2) AA	1 1	times.
For	Sec 40 AA 1	Sec 10 AA	3	times.
For	Sec 40 AA 1 Sec 15 (1) AA 1	Sec 15 AA Sec 11 AA	8 1	times.
For		Sec 19 Sec 24 Sec 40	3 1 5	times.

Date of first entry in Field Conduct Sheet

Date of last entry in Field Conduct Sheet

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence for

beginning on the day of

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for 5 days in military custody, *i.e.*, nil days in open arrest, 5 days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is

6. The date of his attestation / calling up for military service is

~~7. The accused was appointed to the~~

†State the military decorations (if any) held by accused.

8. The accused is in possession of CVSM and Clasp

~~and is entitled to wear the~~ without reduction, to the present date—

Date of Promotion.

In the substantive ~~rank~~

In the ~~substantive~~ rank of

~~acting~~ rank of

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

Wt 44010/1601 20,000 3/44 H 4751. Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 2nd day of February 1945

"?????????" Capt.
Camp Commandant Cdn Sec GHQ 1 Ech

No L7260 Name SMITH R.O. Sqn, Battery, or Company | Corps RCASC | Date of enlistment 11-9-39 | GC Badges | Service or Proficiency Pay N/A

MFM 6 (AFB 122) 49/PAM/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc | Character "JNM"

Exhibit "C"

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	2.10.40	Pte		(1) Absent from parade (2) Absent from guard	Sgt Leonard Sgt Leslie	Forf 1 days pay 3 extra guards	3.10-40	Major PR Beare	
Field	13.12-40	Pte		Sec.15(1)AA AWL 9 hrs 30 mins	Sgt Ryder	4 days C.B. 1 days pay	14-12-40	Major PR Beare	
Field	31-1-41	Pte		Sec.40 AA Using improper & profane language	Cpl Vincent	4 days FP #2	31-1-41	Major PR Beare	Forf 4 days pay.
Field	28-2-41	Pte		Sec 15(1) AA AWL 2 days 12 hrs	Cpl Sidaway	12 days FP #2	3-3-41	Major PR Beare	
Field	3-3-41	Pte		Sec 24(2)AA Losing by neglect his arms	Cpl Sidaway	4 days FP #2	21-3-41	Capt RL Mummery	Forf 4 days pay FRI 149(1)(b) (PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	1-4-41	Pte		Sec 40 AA When on sentry left his post without permission	Sgt Wheeler HW	7 days C.B.	2-4-41	Capt RL Mummery	
Field	13-9-41 15-9-41 15-9-41	Pte		(1) Sec 15(1) AA AWL 1 day 17 hrs 45 mins (2) Sec 10(4) AA Breaking barracks (3) Sec 15(1) AA AWL 1 day 22½ hrs	Pte Richardson	On 3 charges awarded 12 days	19-9-41 FP #2	Major PR Beare	Forf (Chg 1)2 days pay.Forf(chg.3) 2 days pay.Forf 12 days pay FRI 149(1)(b). Forf 2 days pay FRI 149(1)(c)(ii).Total Forf 18 days pay.
Field	7-1-42	Pte		Sec 11 AA Disobedience to Unit Part I Orders in that he sold a quantity of Cdn cigarettes contrary to Unit Part I Orders.	Pte McLellan R Pte Berube A Pte Bauchard Pte Deschenes Cpl Woonie	15 days FP #2	16-1-42	Major PR Beare	Forf 15 days pay FRI 149(1)(b)

No L7260 Name SMITH RO | Sqn, Battery, or Company: 63 Cdn Gen Tpt Coy | Corps RCASC | Date of enlistment: 11-9-39 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAM/126 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	1Apr42	Pte		(1) Sec 15(1) AA AWL 1 hr & 45 mins	Cpl Moonie	28 days FP #2	4Apr42	H Sheperd Major	Forf 2 days pay FRI 149(1)(c)(ii
				(2) Sec 15(1) AA AWL from duty another man having to take his place	Pte Miller Cpl Rogers Sgt Clemenshaw	Forf 28 days pay FRI 149(1)(b)			Total forf 30 days pay
			(1)	(3) Drunkenness Sec 19 AA	Pte Parr				
Field	2Aug42	Pte		Sec15(1) AA AWL in that WCAS he absented himself without leave from 1800 hrs 2-8-42 until 1230 hrs 4-8-42 Absent 1 day, 18 hrs, 30 mins.	L/C Hogan Cpl Cox	3 days F.P.	5-8-42	Major HG Shephard	Forf 2 days pay FRI 149(1)(a) Forf 3 days pay FRI 149(1)(b) Total 5 days

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	3-11-42	Pte	(2)	Sec 19 AA WOAS Drunkenness in that he at approx 2100 hrs 31 Oct 42 was drunk in billets	Pte Christie L/S Clemenshaw CSM Gardiner	7 days C.B. $5.00 fine (2nd Offence)	3-11-42	Major HG Sheperd	Fine $5.00 FRI 162(1)(b)
Field	13Nov42		(3)	Sec 19 AA WOAS Drunkenness in that he at approx 2000 hrs 13 Nov 42 was drunk and unable to carry out his duty as night fireman	L/C Hartley Cpl Jacobs	$10.00 Fine (3rd Offence)	16Nov42	Major HG Sheperd	Fine $10.00 FRI 162(1)(c)
Field	2-1-43	Pte		Sec 8(2) AA WOAS using insubordinate language to his superior officer, in that he at approx 1215 hrs 12 Jan 43 after being ordered by Sgt Moonie not to eat in the kitchen, he did act and use language of an insubordinate nature.	Sgt Moonie AA Pte Bean J	14 days CB forf 14 days pay	13Jan43	Major G Gibb	Forf 14 days pay FRI 149(2)

No. L7260 Name Smith RO | Sqn, Battery, or Company [illegible] | Corps | Date of enlistment 11-9-39 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122)

Date of last entry in Company Conduct Sheet 12/1/43 | No and date of last drunk (3) 13-11-42 | Period not reckoning towards freedom from e[illegible] | N/A | Sheet No 3 | Signature OC Company, etc | Character "[illegible]"

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	14Jun43	Pte		Sec 40 AA In that he, WOAS failed to arise at revsille and was still in bed at 0800 hrs and was absent from morning parade	Cpl Jacobs J Sgt Holt F	7 days C.B.		Capt GE Miles	
Field	14Jun43	Pte		Sec 10 AA para 4 - In that MX WOAS he did break barracks whilst under punishment C.B.	L7268 Sgt Holt FJ L7604 Cpl Mill CN	27 days F.P. 28 days pay FRI 149(2)	16Jun 43	Major WM Arnold	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	15-7-43	Pte		(1) Sec 15(1) AA WOAS AWL in that he did absent himself without permission from 1100 hrs 15-7-43 to 1545 hrs 15.7.43 TTA: 3 hrs 45 mins. (2) Sec 10(4)AA WOAS being a soldier breaks out of barracks whilst under open arrest from 1330 hrs 15.7.43 to 1605 hrs 16.7.43.	L/Cpl Ethier Sgt Rogers H Sgt Rogers H	27 days F.P.	17.7.43	Major W Hamilton	Forf 28 days pay PRI 149 (2)
Field	10.11.43	Pte		Sec 40 AA Conduct to the prejudice of good order and military discipline in that he on 10 Nov 43 did cause a disturbance while under the influence of liquor.	Sgt Clemenshaw CJ	28 days pay	11.11.43	Major W Hamilton	

No L7260 Name SMITH RO | Sqn, Battery, or Company | Corps | Date of enlistment 11-9-39 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/148 (3438)

Date of last entry in Company Conduct Sheet 11Nov43 | No and date of last drunk (3) 13 Nov 42 | Period not reckoning towards freedom from extra fine | Sheet No 4 | Signature OC Company, etc | Character "JNAN"

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	22Nov43	Pte		Sec 40 AA In that he was improperly in the possession of clothing the property of L7131 Sgt Sidaway JH	L7131 Sgt Sidaway J Cpl Waldrum AY Pte Doucet B Pte Cloutier JAP	28 days FP	23Nov43	Major W Hamilton	FRAI 149(2)

CERTIFIED TRUE COPY FROM THE REGIMENTAL BOOKS IN MY POSSESSION.

(E D C Thomson) Capt
Camp Comd
Cdn Sec 1 Ech AFHQ

(PTO)

10 I Pte SMITH R.S.

O. H. M. S.

M. F. B. 270

Correspondence to be PINNED here.

23.

B.

D. Certificate of President as to proceedings.

Number
Name
A

Form for Assembly and Pr
General Court Martial

PROCEED

On Active Service, this Twenty fi
of April , 1942.

Whereas it appears to me, the undersigned,
Command of FOURTH CANADIAN INFANTRY BRIGA
, on active service, th
persons named in the annexed Schedule, being subject to Milita
Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial ~~[and that it is not practicable for delay the trial for reference to a superior qualified officer.]~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

~~[I am unable to appoint]~~
~~*1.—Three Officers to form the Court.]~~
~~*2.—A Field Officer as President.]~~

~~for the following reasons, namely:—~~

In my opinion, military exigencies, namely the dispersion of units, and difficulties of communication and other difficulties, render it inexpedient to observe the provisions of those rules inconsistent with appendix "A" to D.R.O. 772 on the trial of the person named in the annexed schedule.

PROCEEDINGS REVIEWED

28th day of

*Omit if not Convening Officer.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

WAITING MEMBER

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

President.		
Rank	Name.	Regiment.
Major	F.B. WEST	R. Regt. C.
Members.		
Rank.	Name.	Regiment.
One Lieutenant detailed by C.C., Essex Scot.		Essex Scot.
Lieutenant	F.D. GOODERHAM	HQ 4 Cdn Inf Bde
Lieutenant	R.G. STRUTHERS	16 L.A.D.

*Signed (SHERWOOD LEE) Brigadier
Commanding 4 CDN INF BDE. Convening Officer.

10 I
3

Correspondence to be PINNED here.

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

On Active Service, this Twenty fifth day of April, 1942. (Order convening the Court.)

Whereas it appears to me, the undersigned, an officer in Command of FOURTH CANADIAN INFANTRY BRIGADE, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial ~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*And I do not appeal from the decision of the Convening Officer. [I am unable to appoint :—

~~(1.—Three Officers to form the Court.)~~

~~(2.—A Field Officer as President.)~~

~~for the following reasons, namely :—]~~

In my opinion, military exigencies, namely the dispersion of units, and difficulties of communication and other difficulties, render it inexpedient to observe the provisions of those rules inconsistent with appendix "A" to D.R.O. 772 on the trial of the person named in the annexed schedule.

PROCEEDINGS REVIEWED by Convening Officer 25th day of April 1942

President.

Rank.	Name.	Regiment.
Major	F.B. WEST	R. Regt. C.

Members.

Rank.	Name.	Regiment.
One Lieutenant detailed by O.C., Essex Scot.		Essex Scot.
Lieutenant	F.D. GOODERHAM	HQ 4 Cdn Inf Bde
Lieutenant	R.G. STRUTHERS	16 L.A.D.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

WAITING MEMBER

*Signed E.L.M. Burns (SUBSTITUTE) Brigadier

Commanding 4 CDN INF BDE.

Convening Officer.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
No,B.37285 Private Robert.S. SMITH, Headquarters 4 Canadian Infantry Brigade, a soldier of the Canadian Army (Active)	FIRST CHARGE A.A. Sec.15(1) Absenting himself without leave	Guilty	Guilty	
	SECOND CHARGE A.A. Sec.40 Conduct to the prejudice of good order and military discipline (SEE CHARGE SHEET ATTACHED)	Guilty	Guilty To undergo detention for a period of thirty days. J.R.West Major President 29 Apr 42	Confirmed DR

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— No

(Signed) (A.D.McGOUGH,Lt.Col.) Brigadier (Signed) R.West Major
Commanding 4 CDN INF BDE. 1 R Regt C
Convening Officer (c) *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

23.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 29 day of April 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses (Nil)
*(3. The interpreter) (Nil)
*(4. The officers under instruction) (Nil)

were duly sworn.

* Omit if not applicable.

Signed this 29 day of April 1942.

R.West Major
President of the Court Martial.

* See footnote (b) on page 702 M.M.L. 1929.

C. Certificate in case of death sentences.

~~I certify that the terms of *A.C.I. 579 of 1918 have been complied with.~~

~~Signed this day of 19 .~~

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 30 day of Apr 1942.

D.Mcd Ld
Confirming Officer.
Comd. 4 Cdn. Inf. Bde. Brig.

Promulgated and extracts taken in the case of B 37285, Pte Smith, R.S.

(a) (Dated) 1 May 42 (Signed) D Kennedy
Lieut & Capt Int. Corps

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

MEDICAL OFFICER'S REPORT

I certify that No. B37285 Pte Smith R S
of HQ H C I B is in a Normal state of health,
and fit to undergo Trial by Court martial.

J D L Walmsley
Medical Officer
Capt RCAMC

Station Ilkley

Date 29/4/42.

M. F. B. 246

No. B37285 Name SMITH, R.S. Sqn., Battery, or Company HQ Corps R.H.L.I. C.A.S.F. Date of enlistment 29/9/39 G.C. Badges Service or Proficiency Pay S

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1. | Signature O.C., Company, etc. D.L. McCu[illegible] Capt & Adjt

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Barracks, Standard Camp Borden	6/6/40	Pte	1	Drunk in a public place	Pte McKillop	Stoppage 168 hrs Detn	19/2/40	Wright Lt-Col. HQ	JCB Lt.
	3/6/40	A/Cpl		AWOL 0200, 2-6-40 to 2130, 3-6-40	Pte Bowden, Pte Brown, Pte Anderson	Forfeits 2 Days Pay			
Aldershot	31/8/40	Pte		AWL 2300 hrs 31-8-40 to 1130 hrs 1-9-40	L/Sgt Taylor, W.	Admonished, 72 hrs	4/5/40 3-9-40	Capt Upper HCA Lt. Lt-Col Labatt	Forfeits 1 day pay
				[illegible]	Sgt Toms, F.A. Sgt Mountain, C.O.				RRRL"
Aldershot, Hants	11 Oct 40	Pte		AA Sec 40 "Conduct to the prejudice and etc." in that appeared on morning parade with a dirty rifle	Lieut JD Mingay	3 days' C.B.	12 Oct 40	Major JSH Line	
					Condr Bellmer				
Brede	12 Nov 41	Pte		AA Sec 16(1) - Absenting himself without leave from 2300 hrs, 12 Nov 41 until 0100 hrs, 13 Nov 41	Lieut D.B. Warner	7 Days C.B.	13 Nov 41	Capt F.L. Nicholls	

CERTIFIED A TRUE COPY

D.N. Kol

28 Apr 42. A/S.C. 4 CDN. INF. BDE.

(P.T.O.)

7

CHARGE SHEET

The Accused No. B.37285 Pte Robert S. Smith of Headquarters 4 Canadian Infantry Brigade, a soldier of the Canadian Army (Active), is charged with:-

FIRST CHARGE
A.A.Sec.15(1)

Absenting himself without leave

in that he

at Rotherfield, Sussex did absent himself without leave from 2300 hrs 5 Apr 42 until 1030 hrs 16 Apr 42.

SECOND CHARGE
A.A.Sec.40

Conduct to the prejudice of good order and military discipline

in that he

between the 5th of April 1942 and the 16th of April 1942 at or about Mayfield, Sussex did join with D.105590 Pte Cunningham,R. in the wrongful taking and/or improper use of D.N.D. Vehicle CM 195192, lubricating oil and petrol for private purposes.

(D.G. Cunningham) Major,
B.M., 4 Canadian Infantry Brigade.

In the field
19 Apr. 42

To be tried by F.G.C.M.
In the field
15 Apr 42

St. Leonards,
Hastings, Sussex
19 Apr 42.

I request that Major H.F. Lazier of the R.H.L.I. defend me at my Court-Martial.

(R.S. Smith)
B.37285.

Record of Proceedings of a T. G. C. M.

1. Trial of B 37285 Pte Robert S. Smith HQ 4 Cdn Inf Bde
Held at Horsham, Sussex on 29 day of April 1942

2 Actual Court

President
Major J Brewster 1 R. Regt. C.

Members
Lieut E A Winstenley Essex Scots
Lieut J D Gooderham Lorne Scots

3. Prosecutor
Lt. M.E. Fairweather HQ 4 Cdn Inf Bde
Maj H J. Lazier R.H.L.I. Barrister at law

4 The accused is arraigned and pleads "Guilty" to the following charges:
1st charge, 2nd charge.

5 Rule of Procedure 35(B) is complied with.

6 The abstract of evidence is read.

7 The Prosecutor files A.F.B.276 and certified copy of No. D.M. 6.

8 The accused makes the following statement in mitigation of sentence:
"We took the car for a joy ride and we had no intention of stealing it. We did not damage it in any way and returned it voluntarily

I have spent thirteen days in
custody awaiting trial.

Certified a True Record of this Trial
29 day of April 1942.
Asst major
President

ABSTRACT OF EVIDENCE
in the cases of those soldiers whose names appear on the attached charge sheets.

Prepared by Lieut. M.E. Fairweather, HQ 4 Canadian Infantry Brigade.

By direction of the Acting Brigade Major in accordance with Appendix "A" to D.R.O.772.

FIRST WITNESS — Capt. G.P. Copeman, R.C.A.S.C. posted to HQ 4 Cdn Inf Bde as Supply Officer states:

"D.105590 Pte. Cunningham, R., was my driver batman. I last saw him at approximately 1430 hours on 5 Apr 42 when I told him that, as I only had to go to the Supply Column a matter of a few miles, I would drive myself and he could have the rest of the day to himself. I returned to the Officers mess, Cranesden, Mayfield, Sussex at about 2300 hrs 5 Apr 42, left the car, locked, in front of the mess, went in and went to bed. Pte. Cunningham was supposed to waken me in the morning after breakfast, drive me down to the office when he didn't show up by 0900 hrs I went out to get the car to drive myself and it was not there. Knowing that Mondays are vehicle holidays I assumed that possibly Pte Cunningham might have taken the car down to the M.T. garage at Five Ashes for maintenance. I proceeded over to my office in the Gables. At approximately 1200 hrs when the car or Pte Cunningham had still not appeared and I could not trace either of them I reported the fact that they were missing to the Camp Commandant, Lieut. Gooderham. He, in my presence, contacted by phone, the D.A.P.M., the 12th Corps M.Ps., Mayfield and Rotherfield Police. There were two sets of keys for the car, one set which I had and still have, and one set which had been turned over to Pte. Cunningham when he took charge of the car as the driver. I had the petrol tank filled on my way to the Supply Column in the afternoon of 5 Apr 42 and had not driven it more than 10 miles when I left it in front of the mess at 2300 hrs. There were also two 2 gal. petrol tins full of petrol and a 1 gal container full of lubricating oil in the trunk compartment in the rear of the car. I did not give Pte. Cunningham permission in any way to stay out after 2300 hrs on 5 Apr 42. The car was W.D. Ford V8 sedan No.CM 195192".

SECOND WITNESS — B.36653, Cpl. Evanson, F.W., Mess steward officers mess, H.Q. 4 Cdn Inf Bde states:

"I am mess steward, officers mess, HQ 4 Cdn Inf Bde. I am in charge of all batmen and drivers who are quartered in the officers mess and was when the mess was in Cranesden Mayfield Sussex. All passes for this personnel had to go through me by order of the mess committee. The time for this personnel to be in their quarters, unless on pass was 2300 hrs. During our stay in Cranesden, Pte. Cunningham, who was batman driver for Capt. Copeman was in my charge and his quarters were on the third floor of the house. Pte Smith had been quartered in Cranesden on the night of 4 Apr 42 but as there would be no room on the night of 5 Apr 42 he told me he would report at Green Hill and sleep in the quarters there. At about 2355 hrs 5 Apr 42 I went into the room where Pte. Cunningham was quartered and found that he was not in. I checked again at 0630 hrs 6 Apr 42 and found that he hadn't been in all night. To my knowledge Pte. Cunningham had not been issued a pass to remain out of his quarters after 2300 hrs on the night of 5 Apr 42. The next time I saw either Pte Smith or Pte Cunningham was on 7Apr 42, the day after I was told they had been arrested. At about 0800 hrs 6 Apr 42 I reported to the Duty Officer that Pte. Cunningham was missing. Pte. Cunningham was the only man who was absent without leave from the officers mess on the night of 5 Apr 42.

THIRD WITNESS

B.66552 CSM Nettleton, T, HQ 4 Cdn Inf Bde Def Pl (Lorne Scots) states:

"On 16 Apr 42 at about 1040 hrs I was in the Orderly Room at the Gables, Rotherfield Sussex when Cpl Niven reported something to me. I immediately went to the Guard Room and saw the two Accused there, that is Pte Cunningham and Pte Smith. Then I reported the matter to the Acting Brigade Major, Capt. D.F. MacRae who asked me to get Cpl Gow of the transport office. Together we went out and locked up the car just as it had been driven in by the two Accused. The car was the Ford V8 sedan used generally by the Supply officer. It's military number is CM 195192. I did not go near the car again until approximately 1500 hrs 16 Apr 42 when accompanied by Lieut. Fairweather and Cpl Gow. We unlocked the car to make a check of the tool kit petrol tank, speedometer. Particulars of tool kit shortages were recored in the AB412 which showed waht tools should have been with the car. We found the AB 412 in the glove compartment of the car. On examination the petrol tank showed empty and the oil was one quart down. We drove the car a hundred yards along the road and found the speedometer was not registering. The mileage registered on the speedometer was 35400.9 miles. In the rear trunk of the car was found a 2 gal petrol can full of petrol. We could not find any work ticket in the car. When I interviewed the Accused in the Guard Room at approximately 1040 hrs 16 Apr 42 they were both clean and sober. There were no marks showing that any of the doors or windows of the car had been forced."

FOURTH WITNESS

B.66935 L/Cpl Gow, J.T. HQ 4 Cdn Inf Bde states:-

"At about 1100 hrs 16 Apr 42 I was in the transport office at HQ 4 Cdn Inf Bde. The Orderly Cpl, Cpl Niven brought me a message from Capt MacRae to go out into the yard and check over Ford V8 sedan No. CM 195192. ~~The vehicle I knew had been missing from Capt Brymner Lord Strathcona~~ I made a thorough check of the body of the car for possible damages from accidents. On my inspection I found no recent marks of damages. I then locked the car up and handed the keys to Capt MacRae. At about 1500 hrs accompanied by Lieut Fairweather and CSM Nettleton I unlocked the car again in order to check AB 412, look for work ticket check mileage, petrol, oil and tools and equipment. We found the following tools missing:

1 hammer
1 screwdriver
1 spanner
1 pressure gauge
1 can, oil lubricating

We found in the car one rifle No. J.6170 and one respirator with the name of Capt Copeman on it. We found in the trunk compartment in the rear one two gal petrol can full of petrol The mileage registered on the speedometer was 35400.9 miles The petrol in the tank amounted to approximately ⅜ of one gallon. We took a short run with the vehicle and found that the speedometer was not registering. We could not find a work ticket in the car. We locked the car up again and I returned the keys to Capt. MacRae. There are four sedans on HQ 4 Cdn Inf Bde, one used by the Brigadier, one used by the Brigade Major, one used by the Staff Captain and one used by Supply Officer. As Cpl in the transport Section I would know where each vehcile should be. I make out most of the work tickets and sign them. I saw these sedans used by the Brigadier and the Brigade Major several times each day between the 9th of Apr and the 13th of Apr as the Bde HQ was on a scheme and I was with it. We had sent the Staff Captains car to the M.T. garage prior to going on the scheme. There were no marks on the W.D. vehicle CM 195192 when we inspected it on 16 Apr 42 to show that any doors or windows had been forced. The capacity of the petrol tank on this car is 12 gallons.

17

FIFTH WITNESS B.67524 Cpl. Niven, G. HQ 4 Cdn Inf Bde Def Pl (Lorne Scots) states:

"I was Orderly Cpl on 7 Apr 42 and Cpl Clive, who was Orderly Cpl on 6 Apr 42 reported that Ptes Smith and Cunningham were absent without leave. At about 1030 hrs on 16 Apr 42 I was in the mens' kitchen at the Gables when Ptes Cunningham and Smith drove into the yard alongside the kitchen window in W.D. Vehicle CM195192 a Ford V8 sedan. I believe Smith was driving it. They stopped car got out and entered the kitchen. I immediately p them under close arrest with Pte. Gottesman as guard left them in the kitchen until I reported the matter Duty Officer who I believe was Lieut. Wright. I the reported to CSM Nettleton who ordered me to lock th up in the room we generally used for the Guard Room Cunningham and Smith were clean, sober, and in quit spirits".

SIXTH WITNESS B.67557 Cpl Shepherd, J.E. HQ 4 Cdn Inf Bde Def Pl Scots) states:-

"I was Orderly Cpl on 5 Apr 42 and it was one duties to check the roll call at 2300 hrs. Our sys of roll call is to have the N.C.O. in charge of eac call the roll of his hut and report to the Orderly The N.C.O. in charge of the hut in which B.37285 Pt Smith was quartered reported him absent when he cal roll at 2300 hrs 5 Apr 42 and I verified this by ca the roll myself. There were no other absentees repo to me that night".

EVENTH WITNESS B.37582 Pte. Reid, T.P. of 'A' Coy R.H.L.I. 4 Cdn Inf states:

"Between 1530 and 1600 hrs on 11 Apr 42 I was wai for a street car in Coatsbridge, about five miles out Glasgow, Scotland when I saw a Ford Sedan with the 2 C Divisional markings and a sign of the 4 Cdn Inf Bde HQ it. This sign is a red sign about 8 inches square wit big white 81 on it. The car was too far away for me t the number or to recognize the people in it. There mi have been several people in the car but I only saw the markings on both the front and back of the car. The 2 Cdn Div sign is a dark blue square about 8" by 8" and h a big "C" on it in gilt letters with the Roman numerals II inside the "C",".

TH WITNESS P.35305 Sgt. Richards, O., HQ 4 Cdn Inf Bde attached fr RCOC states:-

"We have had four sedans on Bde HQ each one is mark with the 2 Cdn Divisional marking and all have the red square sign with the white '81' on them. On Saturday 11 Apr 42 I was on duty all day at the M.T. garage Five Ash Sussex. There was one sedan in the garage all that day, it's number was CM4202249, it was the sedan used by Staff Captain. This sedan was out of commission from 9 Apr 42 until 16 Apr 42 as we had torn the rear end and transmission out of it on the 8th and it wasn't until Apr 42 that the repairs were completed and the car re to move".

TH WITNESS Lieut. D. Whiteside, Petrol Supply Officer, 2 Cdn Div Pet Coy (5 Coy) RCASC will state Evidence on the values of petrol and lubricating oil.

H WITNESS Condr. Casselman, E.H. P.35059 Bde W.O. (RCOC) HQ 4 Cdn Inf Bde will give Evidence on the values of tools and equipment missing from the vehicle NO.CM 195192.

ABSTRACT OF EVIDENCE taken on 16th, 17th, 18th and 19th of April 1942, in the field.

Kaw

M.E. Fairweather

(M.E. Fairweather) Lieut.

(Substitute for A.F.B. 296)
(or M.F.B. 355)

10

STATEMENT OF CHARACTER AND PARTICULARS
OF SERVICE OF THE ACCUSED

No. 105590 Name CUNNINGHAM, Roy UNIT HEADQUARTERS, FOURTH CANADIAN INFANTRY BRIGADE, Canadian Army (A.F.)

AGE 21 MARRIED OR SINGLE SINGLE NO. OF DEPENDENTS N/A

DATE OF ATTESTATION 11 Apr 40

NO. OF DAYS SPENT IN CLOSE ARREST (TO DATE OF TRIAL)

CIVIL N/A MILITARY 13 HOSPITAL N/A TOTAL 13

DATES OF PROMOTIONS, APPOINTMENTS AND CONFIRMATION OR RANK, IF ANY

N/A

A CERTIFIED TRUE COPY OF M.F.M. 6 MUST ACCOMPANY THIS FORM

(D. . ROSE) Lieut.
A/S.C. 4 CDN. INF. BDE.

Headquarters Fourth Canadian Infantry Brigade. Unit

Dated at HORAM
This 29th day of April 1942.

(To be dated and signed as of date of trial).

CC-4

TPR SMITH R.S.

CC-4

Correspondence to be PINNED here.

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Eighth day of April, 19 43,

Whereas it appears to me, the undersigned, an officer in Command of Second Canadian Division, Canadian Army Overseas, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned;

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable that the said offences should be tried by any other General Court Martial available for the purpose];

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable.

*[to be composed as follows:—

*(1. [illegible])

*(2. [illegible])

for the following reason, namely:—]

18

President.

Rank.	Name.	Regiment.
Maj	P.W. Court	Tor Scot R (MG)

Members.

Rank.	Name.	Regiment.
Capt or Lieut	(to be detailed by OC 6 Cdn Recce Regt (14H))	6 Cdn Recce Regt (14H)
Capt or Lieut	(to be detailed by CRE 2 Cdn Div)	RCE
Waiting Member		
Capt or Lieut	(to be detailed by OC 6 Cdn Recce Regt (14H)	6 Cdn Recce Regt (14H)

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (J.H. ROBERTS) Maj-Gen
Commanding 2 Cdn Div
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
L.12524 Tpr Raymond Stanley SMITH, 8 Cdn Recce Regt (14H)	A.A. Sec 18(4) (See Charge Sheet attached)	Guilty	Guilty To undergo detention for 6 months 9 April 43 M Court Mayn	Confirmed. J.H.R.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) J.H. ROBERTS Major-General
Commanding 2 Cdn Div
Convening Officer (*e*)

(Signed) M Court Mayn
President.

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 9th day of April 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. ~~The officers under instruction~~) The officer under instruction

* Omit if not applicable.

were duly sworn.

Signed this 9th day of April 1943.

M. Court Mayn
President of the Court Martial.

* See footnote (*b*) on page 762 M.M.L. 1929.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.) J.H.R.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 10 day of Apr 1943,

J.H. Roberts Maj-Gen.
Confirming Officer.

Promulgated and extracts taken in the case of L12524 Tpr. Smith, R.S.

(*a*) (Dated) 12 Apr 43 (Signed) J.C. Dalton, Lieut.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

S.L. 67961/1937 30 M. 1941 K.L.O.S.H.Q. Gp. 1083

Charge Sheet

The accused, L 12584 Tpr. Smith Raymond Stanley, 8 Cdn Reconnaissance Regiment (14 CH) a soldier of the Cdn Army (A.F) is charged with:

FIRST CHARGE
A.A. Sec 16 (1)

STEALING PROPERTY BELONGING TO A PERSON SUBJECT TO MILITARY LAW;

in that he,
In the Field, on the 31 day of March, 1943 stole five pounds (£5-0-0) the property of L 51804 Tpr. Dax A.J.

F.A. Young Lt.-col.
C.O. 8 Cdn Reconnaissance Regiment (14 CH)

TO BE TRIED BY F.G.C.M.

Signed In the Field, this
8 day of APRIL, 1943.

J.M. Roberts, Major-General
G.O.C. 2 Cdn Div.

COURT MARTIAL MEDICAL CERTIFICATE

I certify that I have on this date examined.....

L 12524 Tpr Smith R S.....

and he is fit/~~unfit~~ to undergo trial by Court Martial.

Date 9-4-43... ....Jno Fleming Capt.... Capt.
R.C.A.M.C.

Flood Major

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a ~~Field General~~ Court-Martial held at In the field

on the 9 day of April 1943 by order of

Maj Gen J H Roberts

Commanding 2 Cdn Inf Div

dated the 8 day of Apr 1943

President.

Maj F W Court, Ser Regt R (M&S)

Members.

Capt A W Hamilton 8 Cdn Recce R (14H)

Lieut W A Everett, 7 Cdn Fd Coy RCE

~~Judge Advocate~~

Trial of* L12524 Sgt Raymond Stanley Smith

8 Cdn Recce R (14H)

The order convening the Court, the charge-sheet and the summary (~~or abstract~~) of evidence are laid before the Court.

The Court satisfy themselves that ~~is not available~~

to ~~serve owing to~~

, ~~waiting member~~ takes his place ~~as a member of the Court~~.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lieut J A Dixon, 8 Cdn Recce R (14H)

~~Counsel, or~~ defending officer† Lieut J S Pantry " " " "

At 1115 o'clock the Trial commences.

The order convening the Court is read, and is marked "X" signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No, Sir

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).

† Here state Rank and Name, and Regiment (if any).

‡ Qualification to be stated.

[illegible] 2/43. K. & S. Ltd. 64[illegible] Forms A 9(a).

B

The President, members and ~~judge-advocate~~ are duly sworn.

The following officers under instruction are duly sworn.
Capt W M A Shaw, NB, 2 Can Div

Charge-Sheet.

Instruction. *If the accused has elected to be tried under Army Act, sec. 16 (8) the fact should be here recorded.*

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [~~first~~] charge against you, which you have heard read? *Question to the accused.*

guilty *Answer.*

~~Are you guilty or not guilty of the second charge against you, which you have heard read?~~ *Question.*

Answer.

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~ *Question.*

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~ *Question.*

Answer.

The accused having pleaded Guilty to the charge, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

* ~~The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.~~

The accused L 12524 Spr Raymond Stanley Smith is found guilty of the charge

†The summary (~~or abstract~~) of evidence is read, marked "G" signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. No, Sir

~~The accused in mitigation of punishment says:—~~

~~(or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.)~~

Instructions.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

Do you wish to give evidence yourself or to call any witnesses as to character? No, Sir

Question to the accused.

Answer.

Evidence as to character.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

~~The Court is closed for the consideration of the finding.~~

~~The Court find that the accused~~

Proceedings on Conviction *before* Sentence.

*When the Court is already open this sentence will be struck out.

*~~The Court being re-opened, the accused is again brought before it.~~

Evidence of character, &c.

Lieut J A Dixon is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* AFB 296 & MFM 6

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked H × 2, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer* yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer* yes

[illegible] Not Cross-examined by the accused.

[illegible]

Question to the accused.

Do you wish to address the Court? *Answer* ~~Him~~ my defending officer

~~The Court is closed for the consideration of the sentence.~~

F

~~Sentence~~.

~~The Court sentence the accused~~

Sentence

~~Has~~ pleaded guilty to theft – ~~Has~~ returned $2-10-0 – did not need to but did on his own volition. Had contracted debts which couldn't pay & seeing temptation could not resist since arrest has drawn 10/ from Paymaster and has paid this over to Base. Will repay it all. Has 2 yrs overseas and 1 in Can. – Army records show him 20 but correct age is only 18 yrs.

Heavy punishment to youth would not have good effect on accused

MFM 6 shows crimes for only army offences & has had only one minor offence for quite some time. First offence resembling anything criminal.

Requests leniency

Court closed to consider sentence.

SUMMARY OF EVIDENCE

Summary of Evidence in the case of:

L 12524 Tpr. Smith, Raymond Stanley,
8 Canadian Reconnaissance Regiment (14 CH)

Prepared at the direction of Lt.-Col. F.A. Yokes, Comd 8 Cdn. Reconnaissance Regiment (14 CH) by Lieut. J.A. Dixon, 8 Cdn Reconnaissance Regiment (14 CH)

The accused is informed of his rights.

The C.O. does not direct and the accused does not demand that the evidence be taken on oath.

Evidence for the Prosecution

FIRST WITNESS

L 51804 Tpr. Bar R.W.

" I am L 51804 Tpr. Bar R.W. on the night of 31 Mar 45 I put £5-0-0 in my paybook and laid it on top of my bed, in my trousers pocket. At noon, 1 Apr 45, I noticed it was missing. I reported the matter to Sgt. Townsend. We went to the gate and enquired of Lt. Percy Belchin if anyone had left any money with him for safekeeping. When Tpr. Smith came in we questioned him. After some time he admitted to me that he had taken the money. I wanted him to give it back to me then and there. He gave me back £20-0-0, as that was all he had. I reported the matter to the R.S.M. Sgt. Wessell.

R.W. Bar
L 51804 Tpr. Bar R.W.
8 Cdn Recce Regt (14 CH)

SECOND WITNESS

L 18806 Sgt. Townsend C.H.

I am L 18806 Sgt. Townsend C.H., on morning 1 Apr 45, Tpr. Bar reported to me that he had had £5-0-0 taken from his pocket and that it had been in his pocket when he went to bed at approx. 2030 hrs 31 Mar 45. I enquired into the matter. Suspicion focused on Tpr. Smith and I checked with the amount he had drawn on 31 Apr 45 and the amounts he had paid out were greater than the amount drawn by a fair margin. Just how much I cannot say with accuracy.

C.H. Townsend
L 18806 Sgt. Townsend C.H.
8 Cdn Recce Regt (14 CH)

THIRD WITNESS

R 86646 Sgt. Wessel R.M.

I am R 86646 Sgt. Wessel R.M. On 2 Apr 45 I was R.S.M. At about 2000 hrs Tpr. Bell C.H. came up to me and asked if Tpr. Smith R.W. could be placed under close arrest as he had confessed to stealing £5-0-0 from Tpr. Bar. I went down to the hut and found Tpr. Smith outside his hut with Cpl. Strunk, Tpr. Bar and Tpr. Bell. I ordered Cpl. Strunk to escort Smith to the guard room which he did. While

at the hut I had asked Tpr. Smith what it was all about and he had replied, "I was one of the wise guys, I thought I could get away with it." He then stated that he had stolen the money and he was ready to take what was coming to him.

O A Wessel

(D 66046 Sgt. Wessel O.A.)
8 Cdn Recce Regt (14 CH)

The accused, when asked with proper caution if he wished to make a statement or give evidence on oath, said,

I 12524 Tpr. Smith R.E.

On evening 31 Mar 45 at approximately 2000 hrs I took £8-0-0 belonging to Tpr. Dan R.E. The following morning I paid Dr. Belchin two pounds that I owed him. Enquiries were made and I was the suspected person. On 2 Apr 45 I confessed to Dr. Dan to stealing the money and I returned him £8-10-0.

I 12524 Tpr. Smith R.E.
8 Cdn Recce Regt (14 CH)

Taken by me, in the Field, in the presence of the accused, this 3rd day of April, 1945. Certified that the above has been complied with.

(W.A. Dixon, Lieut)
8 Cdn Recce Regt (14 CH)

1st Sheet destroyed on completion of 6 months service 23-9-40

M.F.M. 6 (A.F.B. 122) 12BM—7-41 (1215-39) H.Q. 1772-39-1612

No. N.12524 Name SMITH, R.S. Sqn., Battery, or Company Corps 8 Cdn Recce Re t. (14CH) Date of enlistment 2[illegible]-3-40 G.C. Badges Service or Proficiency Pay Character

Date of last entry in Company Conduct Sheet N/A No. and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No. 2 Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Regina	1-11-40	Pte		A.A. Sec. 15 (1) A.W.L. from Tattoo to Reveille (2) Breaking out of barracks while under open arrest.		14 days Detn.	4-11-40	Major Driver	Forfs 31 days pay FR&I
Regina	3-11-40	Pte.		A.A. Sec. 40, Conduct to the etc. Signing wrong initials.		14 days Det on expiration of previous sentence.	4-11-40	Major Driver	
Field	27-9-42	Tpr.		A.A. Sec. 15 (1) A.W.L. from 2359 hrs 27-9-42 until 1600 hrs 28-9-42. Time absent 16 hrs. 1 min.	Cpl. Potts	7 days C.B. 7 days pay	29-9-42	Lt.-Col. F.A. Vokes	Auto Forf. 1 days pay
Field	4-11-42	Tpr.		A.A. Sec. 40. Neglect etc. in that he did lose his Pt. II paybook.	Doc'y	3 days C.B.	12-11-42	Maj or D.J. Scott	

PTO

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

CERTIFIED TRUE COPY

.....Capt.

for (C.D.W. BLYTH)

(substitute for ...
(215 or 1...365)

STATEMENT OF CHARACTER AND PARTICULARS
OF SERVICE OF THE ACCUSED

No [illegible] R... E [illegible] UNIT [illegible] Sqn Recce Regt (3AGH)

AGE 20 ; MARRIED or SINGLE SINGLE No Of CHILDREN NIL

DATE OF ATTESTATION [illegible] 40

NO OF DAYS SPENT IN CLINK SINCE LAST (TO DATE OF TRIAL)

CIVIL NIL ; MILITARY 6 DAYS 10 HOURS ; CIVIL NIL ; MIL 6 DAYS 10 HOURS

DATE OF PROMOTION [illegible]

[illegible]

[illegible]

[illegible]

I CERTIFY THAT COPY OF [illegible] WAS DULY SERVED ON THE [illegible]

(Officer i/c Records)

[illegible] (RANK)

Dated at

This 9TH day of [illegible] 1945

(to be dated and signe as of date of trial)

[illegible], Capt
[illegible], 1st Sqn
[illegible] Sqn Recce Regt (3AGH)

"H"

XX-39 (case #2)

TPR SMITH R.V.M.

See EE-133 for 1st case.

XX-39

FIELD GENERAL COURT-MARTIAL

CPA96 (To item of AFA3) 41/P & C/1898 (2804)

Convened by Order of Brig T. J. Rutherford Comd "E" Gp, CRU dated 6 Dec 43

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names	Surname.	Unit.
A-55524	Tpr	Robert Van Meter	SMITH	3 CACRU

Proceedings Reviewed
E Miller Dow all Capt
Reviewing Officer (J.A.G.) R.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 8 Dec 43

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~ assemble, and the Court is closed. FBT.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns to ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (~~are~~) amenable to military law, and each charge discloses an offence.(3) FBT.

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 0940 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~ FBT

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to as interpreter? Ans~~

The Interpreter is sworn.(1) Do you object to FBT as shorthand writer? Ans

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans Nil.(2) FBT.

(1. RP 110. 2. If no objection, waiting member returns. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Capt	B. A. Mulqueen	2 CACRU
Member	Lieut Col	F. D. Imbrie	180 C.R.U.
Member	Lieut	M. B. Kent	2 CACRU
Judge-Advocate			
Prosecutor	Lieut	G. E. Collins	3 CACRU
Defending Offr	Capt	J. M. Prescott	3 CACRU

FBT.

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused before arraignment make(s) (no) (~~a~~) plea FBT (3)

(1. If a special plea is made for separate trial on one or more charges (RP 53(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or in case of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. FBT.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is cleared and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form FBT.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A-55524 Tpr Robert Van Meter SMITH

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	A.A., Sec 15(2)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 64; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 5 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for 180 days.

(Sgd) Judge-Advocate, if any. 8 Dec 43 Date awarded. (Sgd) F D Imbrie Lt Col President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(G) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Finding and sentence confirmed.

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~ (1. AA 57A. Delete if not used.)

(Sgd) H. Rutherford Brig
Date 10 Dec 43 Commanding E Gp 6 R.U. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
A 55524 Tpr Smith R.Vm. 3 CACRU	13 Dec 1943	H. Larson Capt Adjt 3 CACRU

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] *3.*

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will* [redacted] *make the foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 80, 87(*C*), 92(*B*), *and of witnesses and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans No (5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his~~ (their) plea(s) of Guilty to Not Guilty on ~~of~~ [illegible] charge(s). ~~The~~ accused is (are) so informed, and he (they) ~~changes(s) his (their) plea(s) on~~ charge(s). ~~Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is ~~(are)~~ not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. ~~As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8~~ inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. ~~President to accused: Do you wish to apply for an adjournment on the ground that any of the rules~~ relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(2) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(3) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans ..... Do you intend to call witnesses on your behalf?
Ans ..... Are they witnesses as to character only? Ans .....
(1. *RP* 155. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 84(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using ~~Record Form E below.~~

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans Good character myself + attested
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) bearing the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *AFB* 355 *or AFB* 294. 2. *MFM* 6. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans No - The statement speaks for itself (2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove or call anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(4), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) *RP* 120(*D*)
(1. *When several accused tried separately see RP* 120. *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 130, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Con* 308, 330, 563-566, *Overseas RO* 309, 1202/3, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), 46(1), *KR Con* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see insets on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Comd'g Group C.R.U.

F.G.C.M. - A 555 24 Pfc.
R.V.M. Smith - 3 CACRU.

1. Attention is respectfully called to fact as set out in accused's statement with the idea in mind that after he has served his sentence if he is given special attention he may be salvaged & usefully employed.

J. O. Tweedie Lt Col
President F.G.C.M.

8 Dec 43.

CHARGE SHEET

The accused, A55524 Tpr. Robert Van Meter SMITH on the strength of No. 3 C.A.C.R.U. a soldier of the Canadian Army Overseas is charged with

FIRST CHARGE
A.A. SEC. 15 (1)

WHEN ON ACTIVE SERVICE, ABSENT WITHOUT LEAVE

in that he

at No. 3 C.A.C.R.U. absented himself without leave from 1600 hours 25 Aug 43 until apprehended at 1430 hours 30 Nov 43. (Total time absent 96 days, 22 hrs., 30 mins.)

G.W. Little

"G.W.LITTLE" COLONEL
Commanding
No. 3 C.A.C.R.U.

In the Field
4 Dec 43

To be tried by F.G.C.M.

In the Field
6 Dec 43

G.R. Rutherford Maj
(T. J. RUTHERFORD) Brig
Commanding
"E" Group, CRU

D.A.A.&Q.M.G.
"E" Group
CDN. REIN. UNITS

701.

Medical Officer's Certificate
K.R.(Can) para 557.

I certify that I have this morning examined No A355.24.....
Lpr.....Arnett.R.W.R.M.....and in my opinion he is ~~not~~ fit to
(rank) (name)
undergo trail by Court Martial.

Station: In the Field.....

Date. 9 Dec 43.....

(Sgd).....
(Medical Officer)

FIELD GENERAL COURT-MARTIAL

CFA56 (In lieu of AFAE) 40/PAR/1697 (2002)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
A-55524	Tpr		Robert Van Meter	SMITH	3 CACRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 5 Dec 43 endorsed by me, (~~accompanying this order~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~and that it is expedient and necessary that he should be tried by a field general court-martial~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~You are hereby ordered to keep the accused in safe custody until he is delivered in due course of law.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as judge advocate the officer named hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Lt.-col	F. D. Tweedie		HQ, CRU

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by CO 2 CACRU		2 CACRU
Lt	to be detailed by CO 2 CACRU		2 CACRU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

(Signature of Officer, RP 106.)
(T. J. RUTHERFORD)

Brig (Rank.)

Date 6 Dec 43

Commanding "S" Group, CRU
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

Compliance with A.W. 89 B is waived by the defending officer.

Note E

The accused, sworn, states:

I was born in West Virginia in 1906. I am a graduate of West Point. I have served 8 yrs 9 mos as an officer in the U.S. Army. I resigned in peace time voluntarily in 1938. I enlisted in Windsor Ont Aug 7, 41. At Windsor I was advised to go into Armoured Corps as I had had 6 yrs experience in M.G. weapons. After 2 weeks refresher course I was advanced from Pte. to Sgt & made an instructor in gunnery. I was recommended for a commission & sent to O.C.T.U. Due to certain circumstances & my own personal troubles which interfered with my duties, I did not graduate. I asked to be placed on Overseas draft & eventually that request was granted. I have been in England since Jan 17. 43. I have completed a gunnery course & been recommended as a gunnery instructor. In the meantime I have contacted U.S. officers whom I have served with & have been advised by them & Edna to try to effect my transfer. A letter is on file at C.M.H.Q. from Gen Abbot asking for my transfer. I served with Gen Abbot 3 yrs in Texas. I have read the letter at C.M.H.Q.

plane wreck 89 B is waived by the flying officer.

point. I have served 8 yrs & 9 mos
as an officer in the U.S. Army. I
resigned in peace time voluntarily -
1938 Enlisted in Windsor Ont
Aug 7. 41 At Windsor I was
advised to go into Armored Corps as
I had had 6 yrs experience in M.G.
weapons. After 2 weeks reflection
course I was advanced for Hon. D
Lyt to make an instructor in
gunnery - I was recommended
for a commission & sent to O.C.T.U.
Due to certain circumstances & my
own personal troubles which
interfered with my duties, I did
not graduate. I asked to be
placed on Overseas draft & eventually
that request was granted. I have
been in England since Nov 17. 43.
I have completed a gunnery course
& been recommended as a gunnery
instructor. In the meantime I
have contacted Dr. & officers whom
I have served with & have been
advised by them & Edna to buy
to effect my transfer. a letter
is on file at C.M.H.Q. from Gen Abbott
asking for my transfer. I served
with Gen Abbott 3 yrs in Texas.
I have read the letter at C.M.H.Q

Compliance with 11 89 B is waived by the appointing officer.

Sole E

The accused, on oath, states:

I was born in West Virginia in 1906. I am a graduate of West Point. I have served 8 yrs 8 mos as an officer in the U.S. Army. I resigned in peace time voluntarily - 1938. Enlisted in Windsor Ont Aug 7, 41. At Windsor I was advised to go into Armoured Corps as I had had 6 yrs experience in M G weapons. After 2 weeks refresher course I was advanced from Sgt. to Sgt Major and instructor in gunnery. - I was recommended for a commission & sent to O.C.T.U. Due to certain circumstances & my own personal troubles which interfered with my duties, I did not graduate. I asked to be placed on overseas draft & eventually that request was granted. I have been in England since Mar 17. 43. I have completed a gunnery course & been recommended as a gunnery instructor. In the meantime I have contacted Hq. & officers whom I have served with & have been advised by them & Gen Crerar to take steps to effect my transfer. A letter is in file at C.M.H.Q. from Gen Abbot asking for my transfer. I served with Gen Abbot 3 yrs in Texas. I have read the letter at C.M.H.Q.

2

As for my transfer has been disapproved. I do know that others have been approved. I have copy of answer from C. M. H. D. Since taking summary court here I have not been used as an instructor at all but have been doing general duties here. I have had only one previous A.W.L. of 4 days in my record. I got 60 days Detention for that. I asked & had an interview with my C.O. who told me after my sentence I would be given same chance as any other soldier. I served my sentence. On return I was offered a job with Ed. Services & asked for a transfer which was not granted. I continued on general duties. I don't feel I have been given a chance. I have been known about as little opportunity I had to go & Education Services was refused. I don't appreciate my pass. I feel I can still be of service better than I am given an opportunity to do.

The undersigned is read over to the writers.

Summary of Evidence in the case of No. A55524 Tpr. SMITH, R.V.M. on the strength of No. 3 C.A.C.R.U., a soldier of the Canadian Army Overseas

The Commanding Officer directs that the evidence be taken on oath.

First Witness for The Prosecution

Documentary: No. 3 C.A.C.R.U. Part II Order No. 201, para. 17(b) dated 30 Aug 43. A copy of this order has been shown to the accused, marked by me as Exhibit "A" for the Prosecution and attached to the Summary of Evidence.

(C.L.Nelson) A/Capt.
Officer detailed to take
The Summary of Evidence

Second Witness for The Prosecution

Documentary: Certificate in accordance with P.C. 2797 of 10 Apr 42 signed by Capt. L.S. Grayson, D.A.P.M., London Area. This certificate has been shown to the accused, marked by me as Exhibit "B" for the prosecution and attached to the Summary of Evidence.

(C.L.Nelson) A/Capt.
Officer detailed to take
The Summary of Evidence

Third Witness for The Prosecution

B88071 L/Cpl. Whitten, E.D. a soldier of the Canadian Army Overseas on the strength of Canadian Provost Corps, No. 6 Coy. I certify that in my opinion due to the exigencies of the service, loss of time and expense involved, the attendance of this witness is not readily procurable. A statement of his evidence, signed by him, has been read to the accused, marked by me as Exhibit "C" and attached to the Summary of Evidence.

(C.L.Nelson) A/Capt.
Officer detailed to take
The Summary of Evidence

Ex A
1st

The accused was cautioned as follows:

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to give evidence on oath or to make a statement.

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence of the accused and that Rules of Procedure 4 (c) (d) (e) and (f) and (g) have been complied with.

(C.L.Nelson) A/Capt.
Officer detailed to take
The Summary of Evidence

In the Field
4 Dec 43

Exhibit "A"

3 CANADIAN ARMOURED CORPS REINFORCEMENT UNIT
PART II ORDERS
by

Last Order No. 200 Dated 28 Aug 43 — Colonel G. W. LITTLE, M.V.O., M.C. Commanding Officer — This Order No. 201 Dated 30 Aug 43.

"A"

1. STRENGTH INCREASE;

Lieut. G.[illegible]C. FENTON, E.C.S. from 21 CAR w.e.f. 25 Aug 43 and posted to Reinfs "A" Sqn (Auth: EA2/3613, d/25 Aug 43)

2. ATTACHMENTS:

Capt. A.L. GOODMAN, is att'd f.d.p. from No. 9 Coy C.D.C. w.e.f. 14 Aug 43. (Auth: CRU/409/CDC/1(DAAG), Rod/CDC/1, d/12 Aug 43)

3. COURSES:

Lieut. W.T.[illegible] BIRD, (C SQN) returned from C/HQ Cree 856 Scr 452A at AFV School Bovington.

4. LEAVES:

Republication: 28th CAR Pt IIDC 39, d/28 Aug 43.

Lieut. K.C. LIDDELL, granted 7 Days P.L. with RA in lieu of rations under FR&I 769 (3)a(4) w.e.f. 12 Aug 43 to 19Aug 43.

5. ESTABLISHMENT:

Lieut. R.G. LANCASTER, is posted from PS Spec Inc (Lieut Instr) to Reinfs "A" Sqn w.e.f. 25 Aug 43.

6. STRENGTH DECREASE:

(a) Lt-Col. R.H.F. DACK, is S.C.S. to No. 2 C.A.C.R.U. w.e.f. 25 Aug 43. (Auth: EG/A-59, d/25 Aug 43)

(b) Major C.I. STUART, is S.C.S. to 22nd CAR w.e.f. 24 Aug 43. (Auth: EA2/3619, d/23 Aug 43)

(c) Lieut. A.C. MacNEAIL, is S.C.S. to 21 CAR w.e.f. 24 Aug 43. (Auth: EA2/3618, d/23 Aug 43)

"D"

7. STRENGTH INCREASE:

(a) H-36527 L/Sgt. MARTIN, E.H., is T.C.S. from No.1 CSRU w.e.f. 23 Aug 43 and is posted to Reinfs "D" Sqn (Auth: No.1 CSRU Pt II DO812, d/25 Aug 43)

(b) T.C.S. from 22 CAR w.e.f. 10/Aug 43 on adm to No. 1 Cdn Gen Hosp and are posted to Reinfs "D" Sqn (Auth 22 CAR Pt II DO 30, d/23 Aug 43)

D-62156	Gdsm. DAVIS, H.A.	Dvr	Mech TK "C"
D-26577	Gdsm. MCBRIEN, A.C.	Dvr	Mech Tk "C"
D-36806	Sgt. DUMERCNAIS, A.W.	C-41502	Gdsm. KELLY, C.E.
D-26038	Gdsm. LUCAS, J.	D-26027	Cpl. OWEN, D.G.

(c) T.C.S. from 22 CAR w.e.f. 19 Aug 43 whilst attending C/HQ Cree 853, Sherman Tk Gunnery at AFV School Lulworth and are posted to Reinfs "D" Sqn (Auth: 22 CAR Pt II DO 30, d/23 Aug 43)

D-27103	Cpl.(A/L/Sgt) MacDONALD, H.W.	(To retain acting rank)
D-26623	Gdsm. SMITHE, W.A.	(Gnr Spor "C")

1701

(2)

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to give evidence on oath or to make a statement.

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence of the accused and that Rules of Procedure 4 (c) (d) (e) and (f) and (g) have been complied with.

(C.L.Nelson) A/Capt.
Officer detailed to take
The Summary of Evidence

In the Field
4 Dec 43

407.

I, A55524 Tpr. Smith, R.V.M., desire
~~do not desire~~

to have an officer assigned to represent me
at my trial by Court Martial.
I request the services of Capt. Prescott
if this officer is available.

Robert V. Smith
(A55524 Tpr. Smith, R.V.M.

Exhibit "A"

3 CANADIAN ARMOURED CORPS REINFORCEMENT UNIT
PART II ORDERS
by
Last Order No. 200 Colonel G. W. LITTLE, M.V.O., M.C. This Order No. 201
Dated 28 Aug 43 Commanding Officer Dated 30 Aug 43.

"A"

1. STRENGTH INCREASE;

Lieut. G.F.C. FENTON, T.O.S. from 21 CAR w.e.f. 25 Aug 43 and posted to Reinfs "A" Sqn (Auth: EA2/8618, d/23 Aug 43)

2. ATTACHMENTS:

Capt. A.L. GOODMAN, is att'd f.d.D. from No. 9 Coy C.D.C. w.e.f. 14 Aug 43. (Auth: CRU/409/cpc/1(DAAG), 408/cpc/1, d/12 Aug 43)

3. COURSES:

Lieut. W.T.C. BIRD, (T Sqn) returned from C/HQ Crse 656 Ser 4524 at AFV School Bovington.

4. LEAVES:

Republication: 28th CAR Pt IIDC 39, d/28 Aug 43.

Lieut. K.C. LIDDELL, granted 7 Days P.L. with M1 in lieu of rations under FR&I 709 (3)&(4) w.e.f. 12 Aug 43 to 19Aug 43.

5. ESTABLISHMENT:

Lieut. R.G. LANCASTER, is posted from PE Spec Inc (Lieut Instr) to Reinfs "A" Sqn w.e.f. 25 Aug 43.

6. STRENGTH DECREASE:

(a) Lt-Col. R.H.F. DACK, is S.C.S. to No. 2 C.A.C.H.U. w.e.f. 25 Aug 43. (Auth: EG/A-59, d/25 Aug 43)

(b) Major C.I. STUART, is S.C.S. to 22nd CAR w.e.f. 24 Aug 43. (Auth: EA2/8019, d/23 Aug 43)

(c) Lieut. A.C. MacPHAIL, is S.C.S. to 21 CAR w.e.f. 24 Aug 43. (Auth: EA2/8016, d/23 Aug 43)

"B"

7. STRENGTH INCREASE:

(a) H-38527 L/Sgt. MARTIN, E.V. is T.O.S. from No.1 CSRU w.e.f. 23 Aug 43 and is posted to Reinfs "B" Sqn (Auth: No.1 CSRU Pt II DO 212, d/25 Aug 43)

(b) T.O.S. from 22 CAR w.e.f. 10 Aug 43 on adn to No. 1 Cdn Gen Hosp and are posted to Reinfs "B" Sqn (Auth 22 CAR Pt II DO 30, d/23 Aug 43)

D-62156 Gdsm. DAVIS, H.A. Dvr Mech Tk "C"
D-26677 Gdsm. MORETON, A.C. DVR Mech Tk "C"
D-36206 Sgt. BOURGEOIS, A.W. C-41602 Gdsm. KELLY, C.E.
D-26638 Gdsm. LUCAS, J. D-26627 Cpl.. OWEN, D.G.

(c) T.O.S. from 22 CAR w.e.f. 19 Aug 43 whilst attending C/HQ Crse 353, Sherman Tk Gunnery at AFV School Lulworth and are posted to Reinfs "B" Sqn (Auth: 22 CAR Pt II DO 30, d/23 Aug 43)

D-27103 Cpl.(A/L/Sgt) MacDONALD, H.W. (To retain acting rank)
D-26623 Gdsm. SMYTHE, W.A. (Gnr Oper "C")

7. STRENGTH INCREASE: (Cont)

(d) L-84628 Tpr. ANDERSON, H.V. is T.O.S. from 28th CAR w.e.f. 19 Aug 43 on adm to Royal Infirmary Glasgow, and is posted to Reinfs "C" Sqn. (Auth: 28 CAR pt II DO 39, d/28 Aug 43)
(Gnr Oper "C")

(e) M-17421 Tpr. CAMPBELL, F.J. is T.O.S. from 2nd CAR w.e.f. 25 Aug 43 on adm to No. 18 Cdn Gen Hosp and is posted to Reinfs "D" Sqn (Auth: 2 CAR Pt II DO 45, d/1 Sep 43)

(f) Cancellation: Pt II DO 191, d/18 Aug 43 para 6(e) insofar as it pertains to B-133249 Tpr. CHOBL, A.J. (C) delete all reference.

(g) K-639 Sgt. GALLAGHER, F.P. is T.O.S. from 9th CAR w.e.f. 26 Aug 43 and is posted to Reinfs "B" Sqn (Auth: EA2/8070, d/24 Aug 43)

8. ATTACHMENTS:

(a) The u/m O/Rs are s.t.b.s. for ROAP w.e.f. 26 Aug 43 from HQ "E" Group (Auth: "E" Group Pt II DO 53, d/24 Aug 43)

L-51049 A/L/C. WEHAUS, M.J. B-121043 Pte. YEAGER, O.

(b) L-36236 L/Cpl. ANDERSON, H.A. is att'd for ROAP w.e.f. 26 Aug 43 from "E" Group (Auth: "E" Group Pt II DO 53, d/24 Aug 43)

(c) The u/m O/Rs are att'd f.a.p. from No. 3 C.A.R.U. w.e.f. 21 Aug 43, and are att'd to Adm Wing (Auth: 40E/3 CANRU/1, (SCA), d/17 Aug 43)

B-97836	L/Cpl.	HOWE, W.H.	A-31367	Gnr. COLVILL, W.C.
M-66696	Gnr.	JOHNSTON, H.B.	A-116921	Gnr. BRUSH, J.F.G.
R-101713	"	BOYER, A.J.	A-103375	Gnr. ANDERSON, A.L.
L-102036	"	MEITZER, A.	G-60866	" McCAUL, A.W.
G-63058	"	ROBICHAUD, T.	F-76664	" HOPKINS, F.W.
K-69309	"	McIVOR, G.	F-76421	" MILLER, E.C.
B-46684	"	KUNZ, L.H.W.	C-48753	" WEBSTER, C.B.
L-27715	"	ANDREWS, W.J.	A-116869	" HADRILL, W.
A-116867	"	McVICAR, M.K.	A-89247	L/C. OXFORD, F.S.
F-31362	"	CLOW, W.	M-66139	Gnr. McREA, L.G.
G-26661	"	LYNCH, G.H.		

(d) The u/m O/Rs c.t.b.s. f.a.p. from 21st CAR w.e.f. 27 Aug 43. (Auth: EA7/5968, d/24 Aug 43)

B-48586	Sgt.	CLARKE, J.C.	B-143336	Tpr. FERGUSON, A.L.
B-49048	Cpl.	GRUENKE, A.F.	B-62085	" McKEE, J.C.
B-48510	Sgt.	GLOVICHAUK, M.J.	B-49344	Sgt. MURRAY, F.B.
B-50822	Tpr.	POPPLE, C.A.	B-50031	Tpr. WHITEFIELD, G.D.
B-93413	Cpl.	SPRUNG, W.		

(e) The u/m O/Rs c.t.b.s. f.a.p. from 10th CAR w.e.f. 27 Aug 43. (Auth: EA7/5968, d/24 Aug 43)

B-48700 RQMS. BURR, H.M. B-63319 Tpr. EVANS, C.

(f) The u/m O/Rs are c.t.b.s. f.a.p. from 6 CAR w.e.f. 27 Aug 43. (Auth: EA7/5968, d/24 Aug 43)

B-48931 Tpr. MORRIS, P.T. B-48642 Sgt. MUTRIE, W.C.

(g) B-48642 Sgt. HENDERSON, D.S. c.t.b.s. f.a.p. from 2nd CAR w.e.f. 27 Aug 43. (Auth: EA7/5968, d/24 Aug 43)

(h) The u/m O/Rs are c.t.b.s. f.a.p. from No. 1 C.A.R.U. w.e.f. 27 Aug 43 [illegible]/2 (SCA), d/23 Aug 43).

C-74211 Gnr. LEHMAN, L.C. A-102356 Gnr. DESLIPPE, E.C.

8. ATTACHMENTS: (Cont)

(i) The u/m O/Rs are att'd f.a.p. to HQ CRU w.e.f. 26 Aug 43.(Auth: 405/BATHQ/1, 405/CRU CMHP/1, d/24 Aug 43)

L-36977 Tpr. WELLINGOTN, J. (D) L-9565 Tpr. BULLIS, G. (D)
H-103575 " GAIES, R.E. (D) A-554 " JEWELL, K. (D)

(j) The u/m O/RS c.t.b.o. f.a.p. from 6th Fld Regt RCA w.e.f. 25 Aug 43. (Auth: HQ 1st Can Army/61-8-16/Trg) on completion of Crse at CAC Sch.

H-76290 Gnr. SMITH, J.W. K-98322 L/Bdr. WARE, W.H.
M-3195 " PAINE, W. H-59574 Gnr. LEYLAND, W.

(k) The u/m O/Rs c.t.b.o. f.a.p. from 4th Fd Regt RCA w.e.f. 26 Aug 43 on completion of Crse at CAC School (30CRU) (Auth: HQ 1st Can Army/61-8-16/Trg)

C-19563 Gnr. BOOTH, J.R. B-9105 Gnr. GARDNER, L.J.H.
C-18361 Gnr. GARROW, L.E. A-17213 " PRINCE, C.E.
A-17234 Gnr. STATTON, C.H.

(l) The u/m O/Rs c.t.b.o. f.a.p. from 6th Fd Regt RCA w.e.f. 26 Aug 43 on completion of Crse at CAC School (3 CRU) (Auth: HQ 1st Can Army/61-8-16/Trg)

H-3677 L/Bdr. TALLOCK, G.U. L-18522 Gnr. BUSTRUG, J.G.

(m) The u/m O/Rs are att'd f.a.p. from Units shown w.e.f. 14 Aug 43 whilst attending CMHQ Crse 749 Sqn 1 at #6 EOTC and are att'd to A/L Wing.

M-10761	Cpl.	STEVENS,	V.C.	No. 1 C.I.T.U.
B-37010	L/Cpl.	BUCKLE,	J.B.	No. 4 C.I.T.U.
A-21312	Pte.	LAMB,	W.H.J.	No. 3 C.I.T.U.
L-18891	L/Cpl.	[illegible],	P.	No. 1 C.A.S.C.R.U.
D-31084	Cpl.	[illegible],	W.	No. 1 C.A.S.C.R.U.
C-33833	Pte.	JOHNSON,	W.B.	No. 1 C.A.S.C.R.U.
B-90969	Cpl.	MUNSHIRW,	A.	No. 1 C.A.S.C.R.U.
H-20354	Gnr.	DUCHARME,	A.	No. 1 C.A.S.C.R.U.
D-26510	L/Cpl.	O'REILLY,	M.B.	22nd C.A.R.
D-26715	Gnr.	GORMELEY,	E.V.	22nd C.A.R.
D-26136	Gnr.	SZKOMSKI,	F.J.	22nd C.A.R.
D-26475	Gnr.	YOUNG,	J.	22nd C.A.R.
H-56845	Cpl.	BRELLE,	A.	No. 3 C.A.S.C.R.U.
K-98322	Cpl.	STILLER,	E.H.R.	No. 3 C.A.S.C.R.U.
L-53825	Cpl.	MITZEMER,	E.C.	No. 1 C.A.S.C.R.U.
F-76625	Pte.	KING,	J.P.	No. 1 C.A.S.C.R.U.
H-19114	A/Cpl.	MURRAY,	R.M.	No. 2 C.A.S.C.R.U.
D-56713	L/Cpl.	MERCIER,	R.	No. 1 C.A.S.C.R.U.
B-66704	A/Cpl.	CLACK,	F.	No. 1 C.A.S.C.R.U.
F-30777	Pte.	NICKERSON,	M.B.	No. 1 C.A.S.C.R.U.
B-112451	Pte.	BADLER,	W.G.	No. 1 C.A.S.C.R.U.
G-100774	Pte.	TURPIN,	R.	No. 1 C.A.S.C.R.U.
F-30869	Pte.	SIMPSON,	D.M.	No. 1 C.A.S.C.R.U.
F-96676	Pte.	HYNES,	V.E.	No. 1 C.A.S.C.R.U.
B-112610	Pte.	WILSON,	J.H.	No. 1 C.A.S.C.R.U.
B-108619	Pte.	DANIELS,	A.A.	No. 1 C.A.S.C.R.U.
B-75957	L/Cpl.	BRANT,	W.J.	No. 4 CIRU (6 CIB)
B-76840	L/Cpl.	JONES,	R.	No. 4 CIRU (6 CIB)
B-76154	L/Cpl.	DOOMER,	E.E.	No. 4 CIRU (6 CIB)

(n) D-27126 Gdsm. TUTTCHS F.F. c.t.b.o. f.a.p. from 22nd CAR w.e.f. 29 Aug 43 on being S.O.S. (Auth: MA7/6053, d/26 Aug 43)

9. COURSES:

(a) H-43527 L/Sgt. MARTIN, E.W. proceeded on OCTU Crse and is att'd f.a.p. to C.T.S. w.e.f. 23 Aug 43. (Auth: No. 1 CBRU ltr II DC 212, d/23 Aug 43)

9. COURSES:(Cont)

(b) The u/m O/Rs returned from Pre-OCTU Crse and c.t.b.a. f.n.d. to No. 1 Pre-OCTU RAC w.e.f. 28 Aug 43. (Auth: No. 1 Pre-OCTU RAC Pt IIIDO 89, d/27 Aug 43)

A-31096 Sgt. BASKERVILLE, C.H.
B-6670 Sgt. RADIE, J.H.P.
M-44324 Sgt. PIERPOINT, L.D.
D-21048 Sgt. CROSS, T.W.
G-233 Sgt. EVERETT, H.R.
A-32124 L/Sgt. ROLLASON, R.W.
P-7471 L/Sgt. COCKRELL, L.P.
F-77731 Cpl. HARPER, I.P.
K-37832 Sgt. SMYTH, R.B.
G-339 Sgt. CRAWFORD, D.R.
K-37907 L/Sgt. NICHOLS, R.A.
K-30160 Sgt. MCDONALD, J.M.S.

(c) The u/m Cadets proceeded on OCTU Crse and presented f.o.p. to No. 100 (Sandhurst) OCTU RAC w.e.f. 29 Aug 43 (Auth: No. 1 Pre-OCTU Pt IIIDO 89, d/27 Aug 43)

A-31096 Sgt. BASKERVILLE, C.H.
B-6670 Sgt. RADIE, J.H.P.
M-44324 Sgt. PIERPOINT, L.D.
D-21048 Sgt. CROSS, T.W.
G-233 Sgt. EVERETT, H.R.
A-32124 L/Sgt. ROLLASON, R.W.
P-7471 L/Sgt. COCKRELL, L.P.
F-77731 Cpl. HARPER, I.P.
K-37832 Sgt. SMYTH, R.B.
G-339 Sgt. CRAWFORD, D.R.
K-37907 L/Sgt. NICHOLS, R.A.
K-30160 Sgt. MCDONALD, J.M.S.

(d) B-4627 Tpr. TILLEY, E.M. (Spec Ins) proceeded on CMHQ Crse 1033 (Fitter MV) at No. 1 C.A.O.T.U. w.e.f. 27 Aug 43.(Auth: Z3/4-6-3-10, d/25 Aug 43)

(e) K-42119 Sgt. KAUFMAN, T.R. (Spec Ins) proceeded on Armourers Crse at No. 1 C.A.O.T.U. w.e.f. 27 Aug 43. (Auth: Z3/4-640, d/13 Aug 43)

(f) H-95710 Tpr. QUINT, W. returned from CMHQ Crse 1034; Ser 14 w.e.f. 27 Aug 43.

(g) The u/m C/R returned from CMHQ Crse 626 Ser 16 at No. 33 Tech Trg Group w.e.f. 27 Aug 43.

B-63602 Tpr. TANGUAY, D.
G-20900 Tpr. YARROW, W.
D-50030 Cpl. DOLL, L.
M-63716 Tpr. ARCHIBALD, R.P.
G-65721 Tpr. VAIL, P.C.

10. HOSPITALS:

(a) L-36924 Tpr. GILLIES, C.J. transferred from No. 7 Cdn Gen Hosp to No. 6 Cdn Gen Hosp w.e.f. 23 Aug 43.

(b) The u/m C/Rs discharged from hosps as shown w.e.f. 27 Aug 43.

K-37836 A/Sgt. GUIDING, V.H. — No. 16 Cdn Gen Hosp,
B-133936 Gdsm. FIRTH, A.S. — No. 13 Cdn Gen Hosp.
G-41602 " KELLY, G.E. — No. 16 Cdn Gen Hosp,
D-26007 Cpl. OWEN, D.G. — No. 16 Cdn Gen Hosp.

(c) The u/m C/Rs transferred from No. 1 Cdn Gen Hosp to No. 16 Cdn Gen Hosp w.e.f. 23 Aug 43.

G-41602 Gds. KELLY, G.E. D-26007 Cpl. OWEN, D.G.

(d) The u/m C/Rs are discharged from No. 16 Cdn Gen Hosp w.e.f. 14 Aug 43.

D-14597 Tpr. FREMONT, L.A. H-322 Tpr. INGLIS, R.C.

11. APPOINTMENTS,PROMOTIONS,REVERSIONS:

A-11219 CQMS EWART, W.P. is appointed A/SgnSM (WO II) w.e.f. 12 Aug 43 whilst covering vacancy of SM (WO I) on PE-Spec Inc.

12. QUALIFICATIONS:

(a) L-101069 Tpr. WOOLSEY, P. (C SGN) attended CMHQ Crse 1109 Ser 17 at No. 4 Tech Trg Group w.e.f. 23 Jun 43 to 4 Aug 43 and qualified Mtr Mech III.

12. QUALIFICATIONS: (Cont)

(b) The u/m O/Rs attended Wireless Instrs Crse IV/16 from 21 Jun 43 to 14 Aug 43 and qualified as shown.

B-134681	Tpr.	REID, G.	No. 1 C, A.C.R.U.	"P-2"
B-63382	Tpr.	SPRINGSTEAD, D.	"	"P-1"
H-102579	Tpr.	CHUDY, M.	"	"P-1"
H-133250	Tpr.	THOMPSON, J.G.	"	"P-2"
L-102609	Tpr.	ANDREWS, R.E.	"	"P-3"
B-135272	Tpr.	BRANSON, G.H.	"	"P-2"
B-131398	Tpr.	LAMBOURNE, W.M.	"	"P-1"
B-135401	Tpr.	DURWARD, D.J.	"	"P-1"

(c) B-101015 A/Sgt. STANLEY, K.M. attended Short Advanced Crse at Army School of Physical Training from 1 Jun 43 to 4 Aug 43 and qualified "G-1".

(d) The u/m O/Rs attended D&M Crse I/DM/20 from 14 Jun 43 to 14 Aug 43 and qualified "P-2"

L-58776 A/Sgt. BUSH, E.L.(E) B-4830 A/Cpl. NEILSON, J. (Spec Inc)
A-59246 Tpr. SEXTON, F.S. (B)

(e) G-121 Sgt. SCOTT, J.J. attended CMHQ Crse 136 (Camouflage) from 2 Aug 43 to 6 Aug 43 and qualified "Passed 77%".

(f) Republication: 22nd CAR Pt II DO 38, d/23 Aug 43.

D-26369 Gdsm. DAVIS, M.L. is qualified Dvr I/C (M) by Regt'l Board w.e.f. 13 Aug 43.

(g) The u/m O/Rs attended CMHQ Crse 858 Ser 4490 (Gunnery) at AFV School Lulworth from 17 Jun 43 to 3 Aug 43 and qualified as shown.

B-24221 A/Cpl. PENNIE, M. "P-1" B-69776 A/Cpl. CAREY, M. "P-1"
M-103699 Tpr. HANSON, A. "P-2"

(h) H-63677 A/Sgt. KROEKER, A.M. attended D&M Crse A/DM/85, at CAC School from 6 Aug 43 to 14 Aug 43 and qualified Dvr i/c III (A)

(i) B-62229 A/Cpl. HALL, H. attended CMHQ Crse 856 Ser 447A from 3 Jun 43 to 20 Jul 43 and qualified "P-1".

(j) The u/m O/RS attended CMHQ Crse 1163, at RAF Stn Cosford from 7 Jul 43 to 20 Jul 43 and qualified as shown.

H-63777 A/Sgt. KROEKER, A.M. (A-75%) L-53863 A/Cpl. BOGDEN, G.G. (B-70%)
K-80057 SqnSM JACKSON, W.C. (B-68%).

13. TRADESMEN'S QUALIFICATIONS:

(a) The u/m O/Rs having been trades tested passed as Dvr Mech (MV) "C" w.e.f. 27 Aug 43. (Auth: T.T.B., d/26 Aug 43)

H-63677 A/Sgt. KROEKER, A.M. K-70668 A/Sgt. DORAN, E.W.

(b) The u/m O/Rs having been trades tested passed as Dvr Mech (Tk) "C" w.e.f. 27 Aug 43. (Auth: T.T.B. d/26 Aug 43)

H-63526 A/Sgt. RUTHERFORD, J.N. B-62158 A/Cpl. BRANSCOMBE, R.
K-70868 A/Sgt. DORAN, E.W.

(c) The u/m O/Rs having been trades tested passed as CAC Oper "C" w.e.f. 25 Aug 43. (Auth: T.T.B., d/25 Aug 43)

L-87659 Sgt. ASTLES, R.C. H-46309 Tpr. ALEXANDER, W.G.

14. HONOURS AND AWARDS:

M-36173 A/L/Cpl. JACOBS, J.S. awarded One Good Conduct Badge w.e.f. 31 Jul 43. (Auth: C.R.O. 308)

15. CHANGE OF CATEGORY:

A-102375 Tpr. KING, T.V. changes medical category from "A" to "C-2" w.e.f. 17 Aug 43)

16. ESTABLISHMENT:

Amendment: Pt II DO 199, d/27 Aug 43 para 16(a) insofar as it pertains to B-58663 Tpr. SEMENIUK, J. amend to read M-58663 Tpr. SEMENIUK, J.

17. ABSENT WITHOUT LEAVE:

(a) Republication: No. 1 C.B.C.D. Pt II DO 197, d/23 Aug 43.

K-71757 Tpr. SOLEMENKO, G. absent without leave w.e.f. 0630 hrs 31 Jul 43. Still absent without leave 0630 hrs 21 Aug 43 (21st day).

(b) The u/m O/Rs are A.W.L. from times and dates as shown.

A-55524 Tpr. SMITH, R.V.M. 1600 hrs 26 Aug 43.
~~A-26416 Gnr. MOFFAT, W.J. 2300 hrs 26 Aug 43.~~

(c) A-26416 Gnr. MOFFAT, W.J. returned from A.W.L. 2100 hrs 27 Aug 43)

18. PUNISHMENTS:

F-75908 Tpr. McNEIL, G.F. (E SQN)

Charges: A.A. Sec 15(1) A.W.L. from 2359 hrs 15 Aug 43 to 0600 hrs 16 Aug 43 (Absent 6 hrs 1 min)

Awarded: To forfeit 1 days pay.

Forfeiture: 1 days pay FRAI 149 (1)(a) (Awarded 19 Aug 43)

19. STRENGTH DECREASE:

(a) A-444 L/Cpl. CUNNINGHAM, D. to S.C.S. to No. 2 C.A.C.R.U. w.e.f. 25 Aug 43. (Auth: EG/A-90, d/25 Aug 43)

(b) D-27126 Gnr. BUTTON, F.F. to S.C.S. to 22nd CAR w.e.f. 29 Aug 43. (Auth: EA7/6063, d/26 Aug 43)

(c) The u/m O/Rs are S.C.S. to No. 13 Cdn Gen Hosp w.e.f. 27 Aug 43. (Auth: 444/HOSP/1(SCA), d/21 Aug 43)

B-62240 Tpr. MAYO, F.("A" Wing Reinfs) M-101040 Tpr. SMITH, W.W. (PE)
G-414 Tpr. GOMEAU, P. " " " M-66371 Tpr. ZARFINUK, S. (PE)

(d) The u/m are S.C.S. to 22nd CAR w.e.f. 24 Aug 43. (Auth: EAR/6019, d/23 Aug 43)

D-26230 Sgt. ATKINSON, H.F.B. D-26026 Cpl. FAZACKERLEY, C.F.

(L.A. ROSE) Lieut.
A/Records Officer,
No. 3 C.A.C.R.U.

Certified True Copy
From Regimental Books
In my Custody

CAPT.
ADJUTANT 3 C.A.C.R.U.

Certified True Copy

ADJUTANT 3 C.A.C.R.U.

27 Aug 43

12. QUALIFICATIONS: (Cont)

(b) The u/m O/RS attended Wireless Instrs Crse IW/16 from 21 Jun 43 to 14 Aug 43 and qualified as shown.

B-134681	Tpr.	REID, G.	No. 1 C.A.C.R.U.	"P-2"
B-63368	Tpr.	SPRINGSTEAD, D.	"	"P-1"
H-102579	Tpr.	CHUDY, M.	"	"P-1"
H-133860	Tpr.	THOMPSON, J.G.	"	"P-2"
L-102699	Tpr.	ANDREWS, R.E.	"	"P-3"
B-135272	Tpr.	BRANSON, G.H.	"	"P-2"
B-131896	Tpr.	LAMBOURNE, W.M.	"	"P-1"
B-135401	Tpr.	DURWARD, S.J.	"	"P-1"

(c) B-101015 A/Sgt. STANLEY, K.M. attended Short Advanced Crse at Army School of Physical Training from 1 Jun 43 to 4 Aug 43 and qualified "Q-1".

(d) The u/m O/Rs attended D&M Crse I/DM/20 from 14 Jun 43 to 14 Aug 43 and qualified "P-2"

L-58776 A/Sgt. BUSH, E.L.(E) B-4630 A/Cpl. NEILSON, J. (Spec Inc)
A-59246 Tpr. SEXTON, F.S. (E)

(e) G-121 Sgt. SCOTT, J.J. attended CMHQ Crse 136 (Camouflage) from 2 Aug 43 to 6 Aug 43 and qualified "Passed 77%".

(f) Republication: 22nd CAR Pt II DO 36, d/23 Aug 43.

D-26369 Gdsm. DAVIS, M.L. is qualified Dvr I/C (T) by Regt'l Board w.e.f. 13 Aug 43.

(g) The u/m O/Rs attended CMHQ Crse 856 Ser 449C (Summary) at AFV School Lulworth from 17 Jun 43 to 3 Aug 43 and qualified as shown.

B-24221 A/Cpl. PENNIE, W. "P-1" B-69776 A/Cpl. CASEY, T. "P-1"
M-103699 Tpr. HAMSON, A. "P-2"

(h) H-63677 A/Sgt. KROEKER, A.W. attended D&M Crse A/DM/22 at CAC School from 6 Aug 43 to 14 Aug 43 and qualified Dvr i/c III (½)

(i) B-62289 A/Cpl. HALL, R. attended CMHQ Crse 856 Ser 447A from 3 Jun 43 to 20 Jul 43 and qualified "P-1".

(j) The u/m O/RS attended CMHQ Crse 1163, at RAF Stn Cosford from 7 Jul 43 to 20 Jul 43 and qualified as shown.

H-63777 A/Sgt. KROEKER, A.W. (A-75%) L-53863 A/Cpl. BOGDEN, G.G. (B-70%)
K-60057 SqnSM JACKSON, W.C. (B-68%).

13. TRADESMEN'S QUALIFICATIONS:

(a) The u/m O/Rs having been trades tested passed as Dvr Mech (MV) "C" w.e.f. 27 Aug 43. (Auth: T.T.B., d/26 Aug 43)

H-63677 A/Sgt. KROEKER, A.W. K-70868 A/Sgt. DORAN, E.W.

(b) The u/m O/Rs having been trades tested passed as Dvr Mech (Tk) "C" w.e.f. 27 Aug 43. (Auth: T.T.B. d/26 Aug 43)

H-63586 A/Sgt. RUTHERFORD, J.N. B-62158 A/Cpl. B[illegible]MBOURNE, W.
K-70868 A/Sgt. DORAN, E.W.

(c) The u/m O/Rs having been trades tested passed as CAD-Spec "C" w.e.f. 25 Aug 43. (Auth: T.T.B., d/25 Aug 43)

L-27859 Sgt. ASTLES, R.C. H-46309 Tpr. ALEXANDER, W.G.

CHARGE

Army Form B 252
(See King's Regulations)

No. 3 C.A.C.R.U. Regiment
Battery / Squadron / Troop or / Company

CHARGE against No. A-5552[illegible] Rank Tpr.

Name SMITH, R.V.M.

Place LONDON Date of Offence 30 Nov. 43.

OFFENCE W.O.A.S. was A.W.L. from ..?.. until apprehended by the Gdn. Provost Corps at COLUMBIA CLUB, LONDON at about 1430 hrs. 30 Nov. 43.

L. S. Grayson
CAPT.
L. S. GRAYSON O.A.P.M.
LONDON AREA.

Names of Witnesses :—

1/Cpl. Whitten, Gdn. Provost Corps. No. 6 Coy.

Signature of O.C. Battery, Squadron, Troop or Company }

Punishment Awarded }

By whom Awarded }

Adjutant.

84089 Wt.W2197/2030 2,000,000 7/41 K. & E., Ltd. 0667/47

P.T.O

Appendix "C"
Exhibit "C"

Statement of **EVIDENCE** in the case of:

A.55524 Tpr. Smith, R.V.M.
No. 3 C.A.C.R.U.

Sir,

At LONDON, at about 1430 hrs, 30 Nov. 43, acting on information received I proceeded to the COLUMBIA CLUB, where I apprehended the a/m soldier as an absentee from his unit.

I placed him under arrest and escorted him to No. 6 (Area) Provost Coy., Cdn. Provost Corps, Detention Room and handed him over to the N.C.O. i/c of Cells, to be detained.

London
30 Nov. 43.

E.D. Whitten
.....L/Cpl.
(B.88071 E.D. Whitten)

REMARKS

Exhibit "B"
con.

CERTIFICATE IN ACCORDANCE WITH P.C. 3797 of 10 Apr.43

I certify that No. A.9592.. Rank. Tpr. . .Name. SMITH, R.V.M. . . . . .

Unit. . No. 3, C.A.C.R.U. . . .was arrested at. London. . . . .(Place)

at. 1430hrs. .(hour) on 30.Nov.43. .(date) and that at the time of his arrest he was wearing (Military Uniform) or (Civilian Clothes)

Signature of Provost Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable).

London

[illegible] Capt.,
London Area.

No A55524 Name Robert Van Meter SMITH — Unit, Battery, or Company — Corps C.A.C. — Date of enlistment 8 Jul 41 — GC Badges — Service or Proficiency Pay N/A — MFM 6 (AFB 122) 40/P&S/136 (3458)

Date of last entry in Company Conduct Sheet N/A — No and date of last drunk N/A — Period not reckoning towards freedom from extra fine N/A — Sheet No 1 — Signature OC Company, etc C.M.Lewis Major — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing with trial	By whom awarded	Remarks
Brockville	20 Jan 42	Cadet		Absent without leave from 0630 hrs 20 Jan 42 until 2200 hrs 25 Jan 42 (absent 5 days, 15 hrs 30 mins)	Lt.Egan Lt. Carroll Lt. D.H. Thompson Capt Leslie	Severe Reprimand	27 Jan 42	Col. R.G. Whitelaw Commandant	Forf 6 days pay under F.R.&I.
	25 Jan 42	Cadet	1	Drunkenness					
Borden	8 Mar 42	Tpr	1	A.W.L. 1 day 1 hr. 59 mins.	L.C. Clark H75	4 days C.B.	11 Mar 42	E.G. Vance Lieut.	Forf 2 days pay
Borden	26 Mar 42	Tpr	1	A.W.L. from 0600 hrs. 26 Mar 42 to 0445 hrs. 31 Mar 42 (absent 4 days 22 hrs. 45 mins.)		12 days Detention	1 Apr 42	J.A.McCamus Lt.Col.	Forf 5 days pay and allowances
Camp Borden	21 Jun 42	Tpr.	1	Sec. 15(1) A.A. A.W.L.					

Ex C
F.D.T.

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Borden	20 Apr 42	Tpr		A.W.L. from 0600 hrs. 20 Apr 42 to 0200 hrs. 24 May 42 (absent 33 days 20 hrs.)	Cpl. Strawford	18 days Detention	26 May 42	J.A.McCamus Lt.Col.	
C/Borden	21 Jun 42	Tpr.		A.W.L. from 0600 hrs. 21 Jun 42 till apprehended by M.P. 1820 hrs. 12 Jul 42 (absent 21 days 12 hrs. 20 mins.)	L/C Harrylock Documentary evidence of apprehension	18 days Detention	14 Jul 42	J.A.McCamus Lt.Col.	
C/Borden	10 Aug 42	Tpr		Sec 15(1) AA A.W.L. from 0730 hrs 10 Aug 42 till apprehended at 1110 hrs. 4 Sep 42.	RJMS James	21 days Detention	17 Sep 42	J.A.McCamus Lt.Col.	Auto Forf 26 days pay
C/Borden	4 Nov 42	Tpr		Sec. 15(1)AA AWL from 0630 hrs. 4 Nov 42 till 0110 hrs. 7 Nov 42 (absent 2 days 17 hrs. 40 mins.)	Documentary	14 days C.B.	9 Nov 42	K. Ramsay Capt.	Auto Forf 3 days pay
C/Borden	28 Dec 42	Tpr		Sec 15(1) AA A.W.L. from 1830 hrs. 28 Dec 42 till 0830 hrs 2 Jan 43 Absent 4 days 14 hrs. 30 mins.	Cpl. Bradbury	28 days Detention	5 Jan 43	J.W.Graham Major	Forf 5 days pay FR&I

CERTIFIED TRUE COPY R.G.P. Maclellan, Lieut.

No | Name | Sqn, Battery, or Company | Corps C.A.C. | Date of enlistment | GC Badges | Service or Proficiency Pay | N/A | MFM 6 (AFD 122) 40/PAS/156 (3488)

Date of last entry in Company Conduct Sheet | N/A | No and date of last drunk | N/A | Period not reckoning towards freedom from extra fine | N/A | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with DSA	By whom awarded	Remarks
Field	19 Jun 43	Tpr		A.A. Sec 15(1) A.W.L. from 0600 hrs. 19 Jun 43 to 1515 hrs. 22 Jun 43. (Absent 3 days, 9 hrs. 15 mins)	F.G.C.M.	60 days Detn RELEASED FROM THE DETENTION BARRACK Field on AUG 11 1943. SENTENCE HAVING EXPIRED. REMISSION EARNED UNDER "RULES FOR DETENTION BARRACKS AND MILITARY PRISONS" 18 days COMMANDANTS Initials J.A. Lt.	1 Jul 43	F.G.C.M.	Pt.II D.O. #156 d/8 Jul 43

CERTIFIED TRUE COPY FROM THE REGIMENTAL BOOKS IN MY CUSTODY.

8 Dec 43.

(C.L.Nelson) Capt. & Adjt.
Training Wing 3 CACRU.

(PTO)

M.F.B. 386
40/P & S/678

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
A.55524	Tpr.	SMITH, R.V.M.	3 C.A.C.R.U.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment	
For	A.A. Sec.15(1) 2	times	A.A. Sec.15 (1) 10	times
For		times		times
For		times		times
For		times		times

or,

2. or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 5 days in military custody, making a total of 5 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his attestation paper is 37 yrs old

6. The date of his attestation specified in his attestation paper is 7 May 1941

7. The service which the accused is allowed to reckon towards discharge is 2 yrs 120 days.

8. The accused is entitled to reckon 2 yrs 120 days service for the purpose of determining his pension, etc.

9.

10.

67 "B"
7.8.41.

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

N/A dated N/A, and in his regiment (or corps), the rank of

N/A dated N/A

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of N/A years.

In the rank of years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Army Act, and of cases in which trial has been dispensed with of accused, Number A55524 Rank TPT

Name SMITH, R.V.M. of 3 C.A.C.H.U. Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	In the Field 1 Jul 43	A.A. Sec. 15 (1) A.W.L. 3 days, 9 hrs and 15 mins.	60 days detention	N I L

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 5 day of Dec 1943 [signature] (H. T. Lawson) Capt.
A/C No 3 C.A.C.H.U.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

II-133

TPR SMITH R V M.

A 55524 Tpr Smith R.V.M.
5 CACRU

II-133

Correspondence to be PINNED here.

RECEIVED
5 JUL 1943
H.Q. "E" GROUP
C.R.U.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this Thirtieth day of June, 1943.

Whereas it appears to me, the undersigned, an officer in Command of "E" Group, Cdn Rft Units, Cdn Army Overseas, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to delay the trial for reference to a superior qualified officer~~*

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*~~I am unable to appoint~~
*(1. Three Officers to form the Court)
*(2. A Field Officer as President)
~~for the following reasons, namely~~

*Omit if not applicable.

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	A.S. Pettaplece	HQ, CRU

Members.

Rank.	Name.	Regiment.
Captain		5 CIRU
Lieut.		5 CIRU

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed J.J. Cattanach
(Lt.-Col., Interrogation Staff)
Commanding "E" Gp, CRU
Convening Officer.

Arthur S. Pettapiece, Major

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
A 55524 Trooper SMITH, Robert Van Meter 3 CACRU	First Charge Army Act Sec 15(1) ABSENTING HIMSELF WITHOUT LEAVE	Guilty 1/7/43	Guilty Sentenced to undergo detention for a period of sixty (60) days. 1/7/43	Finding and sentence confirmed JHR

~~Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—~~

~~"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"~~

~~Answer (to be recorded on separate sheet if necessary) :—~~

(Signed) J H Rutherford (Signed) Arthur S McTaggart, Major

J. H. Rutherford Brig.

Commanding "E" Group, Cdn Armd Units

Convening Officer (d) *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 1st day of July 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
~~*3. The Interpreter)~~
*4. The officers under instruction)

*Omit if not applicable.

were duly sworn.

Signed this 1st day of July 1943.

Arthur S McTaggart, Major
President of the Court Martial.

C. Certificate in case of remission of sentence.

*See footnote (b) on page 702 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19~~

~~President of the Court Martial.~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)~~

Signed this 2 day of July 1943.

J H Rutherford Brig.
Confirming Officer.

Promulgated and extracts taken in the case of A55524 2/Lt. Smith R.V.M.

(a) (Dated) 5 July 43 (Signed) H Lawson Capt & Adjt.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(23679) W.A.(H.Q.)(S) 50,000 2/43 A.& E.W.L.(S) Gp.698

CHARGE SHEET

The accused A-55524 Tpr. Robert, Van Meter, Smith, No. 3 Canadian Armoured Corps Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:-

First Charge
Sec. 15 (1)
Army Act.

WHEN ON ACTIVE SERVICE ABSENT WITHOUT LEAVE

in that he

at Dettingen Barracks on the 19 Jun 43, absented himself without leave from 0600 hours, 19 Jun 43, until apprehended by Canadian Military Police at 1515 hours, 22 Jun 43., in London.

In the Field
29 Jun 43.

(G.W. Little) Col.,
Commanding,
No. 3 C.A.C.R.U.

To be tried by Field General Court Martial

In the Field
30 Jun 43

(T.J. Rutherford) Brig
Comd "E" Gp, CRU

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Commanding,
No. 3 C.A.C.R.U.

To be tried by Field General Court Martial

In the Field
30 Jun 43

(J.G. Rutherford) Brig
Comd "E" Gp, CRU

Arthur S. Pettypiece, Major
President

MEDICAL OFFICER'S REPORT

I certify that No A35524 Spr Arnett R.V.M.C.

of 30 HCRU is in a good state of health,

and fit to undergo Trial by Court martial.

A. B. Stewart Capt RCAMC

Medical Officer

Station In the Field

Date 1 July 43

Arthur S. Pettapiece, Major

M. F. B. 246

BBM—8-41 (TPD)
H-Q. 1772-39-680

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT Inkerman Barracks, Bury St. Edmunds, Suffolk
ON THE 1st DAY OF July 1943

The accused A.755234 Tpr. Smith. R. W. ..Unit. 3 C.A.C.R.U. .....

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P. 22 and 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the president or any member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President Maj. A. J. Pettigrew .....Unit. H.Q. C.R.U. ....
Members Capt. D. G. Hennis .....Unit. 3 C.R.U. .....
Lt. D. K. Austin .....Unit. 3 C.R.U. .....

The officers under instruction are duly sworn:-
Lt. Col. J. F. Allen 2 Sub Dept. I.C.B.D.
Maj. E. J. R. Magan .....Unit. 2 Sub dept. I.C.B.D.
Capt. L. M. Hunt .....Unit. 2 Sub dept. I.C.B.D.

Prosecutor Lt. L. Macdonald .....Unit. 3 C.A.C.R.U. ....
Defending Officer Capt. J. Sumsion ....Unit. 3 C.A.C.R.U. ...

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge ~~(s)~~ and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge ~~(s)~~. R.P. 37(B).
The Summary of Evidence is read.
The Prosecutor produces MFB 355, ~~AFB 2/6~~ and MFH 6.
The Court complies with R.P. 46(B).

Pursuant to R.P. 37 THE ACCUSED:-

~~(a) Makes a statement in mitigation of punishment.~~
(b) Calls witnesses as to character.
~~(c) Calls witnesses in mitigation of punishment.~~
(d) Addresses the Court by his Defending Officer.

Overseas R.O. 3262 complied with.
The Court is closed to consider the sentence.

~~SUMMARY OF STATEMENT IN MITIGATION~~, CHARACTER EVIDENCE and ADDRESS OF ~~ACCUSED OR~~ HIS DEFENDING OFFICER attached hereto.

Sentence and Witness

Capt. R. L. Rogers of 3 C.A.C.R.U. having been duly sworn, states. I am O.C. 3 Squadron, the Unit of the accused. I have the accused on my roll. His character and conduct is exemplary. The accused has stated to me that he wishes to be tried by Court Martial as soon as possible. The accused is due to be posted overseas shortly. I am in possession of the accused's Pay Book and Identity Card. The accused has been granted his application for Voluntary Overseas Service. I have no knowledge of any previous convictions recorded against the accused.

Alan J. Pettigrew Maj.
Commanding

Plea in Mitigation in re No A 5-5-524
Tpr Smith R.C.M.

The accused graduated from West Point Military College 1929 and served as an Officer in the American army until 1938 He joined the Canadian forces in 1941 and was gunnery instructor Camp Borden He, some months ago made application for a transfer to the American forces. Brig. O.B. Abbott of the U.S. army H.Q London asked C.M.H.Q to grant this transfer having a particular job for Tpr Smith. On June 17/43 Tpr Smith received a pass to go to London to find out what action had been taken in his case. He was told at C.M.H.Q that the transfer was refused. He then interviewed American H.Q and was advised to take the matter up with Mr Winant American Ambassador He wired for an extension of leave. This was refused and in order to do what he could while in London he overstayed his pass for 3 days. His Sqn O.C. stated, had he known the reason he would have granted the extension.

The accused is a man with exceptional army experience. He is valuable as an instructor and as his Sqn O.C. has stated his conduct while at

No 3 C.A.C.R.M. has been excellent. I would ask in the interest both of Pvt Smith and all concerned that the Court consider these matters in sentencing the accused and that a light sentence be given in this case.

Jno A Prescott. Capt
CAC.

Corps

P.A.S.S.

Sqdn. D Unit: No. 3 C.A.C. R.U.

No. 403224 Name Smith R.V.M.

has permission to be ~~absent~~ from his quarters from:- AD 16-6-43

Wednesday to 2359 18-6-43

Not Available for Duty or proceeding to

FILE Fra. London.

Station: In the Field.

REINFORCEMENT UNIT.

Date: 16-6-43

S. Symmes Maj.

Commanding

A.P.

Charges to pay
_____ s. _____ d.
RECEIVED 3 20 PM

POST OFFICE

TELEGRAM

No. _____
OFFICE STAMP

AUTON B.O. 13 JUN 43 W.3

Prefix T 54 Time handed in. Office of Origin and Service Instructions. Words

From _____ 35 RP 1.49 OXFORD ST D 27 To _____

=RP 9 D= OFFICER COMMANDING D SQDN 5 CACRU
CANADIANARMY =ENG CANRECORDS= W 3 =

REQUEST 48 HOURS EXTENSION OF LEAVE TO TAKE CARE OF
PERSONAL AFFAIRS PLEASE WIRE COLLECT =
TPR SMITH RVM =

For free enquiries [illegible] phone "TELEGRAMS ENQUIRY" or call with this form

OC 5 CACRU ALEXANDRIA ONT 13 6 43 48 RVM D = W 3 =

19 Jun 43

TO:- RECORDS OFFICE.

SQDN	No.	Name.	Absent from	Returned at.
"D"	A-55824	Tpr. Smith, R.V.M.	0600 hrs 19 Jun 43	

Certified true Copy.

R.B. Macmillan Lieut. signed

TO:- RECORDS OFFICE. 19 Jun 43

SQDN	No.	Name.	Absent from	Returned at.
"D"	A-55524	Tpr. Smith, R.V.M.	0600 hrs 19 Jun 43	

Certified true Copy.

A.B. Macmillan Lieut. Signed

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 Apr.42

I CERTIFY that No. 4-55524. Rank . Tpr. . Name SMITH R.V. . . . . .

Unit D/Sgt. #3.C.A.P.R.U. . . . was arrested at . .London. . .(place)

at . 1515 . .(hour) on 22-June.43. .(date) and that at the time of his arrest he was wearing (Military Uniform) or (~~Civilian clothes~~)

Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, or non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable).

London.
22-June 43.

. . . . . Capt.
(Form) D. A. P. M.,
London Area

SUMMARY OF EVIDENCE

(Accused present at Summary when evidence of witnesses taken down in writing.)

No. 3 Canadian Armoured Corps Reinforcement Unit
29 Jun 43.

Summary of Evidence in the case of A-55524 Tpr. Smith, R.V.M., on the strength of No. 3 CACRU., a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS For the Prosecution

P-3355 Sgt. Adams, R.M.J., a soldier of the Canadian Army Overseas, on strength of No. 3 CACRU., having been duly sworn, states:-

I was acting Sergeant-Major of "D" Sqn. No. 2 Training Wing, No. 3 CACRU on 16 Jun 43. I made out Tpr. Smith's pass on the 16 Jun 43. It was from after duty 16 Jun 43., until 2359 hrs 18 Jun 43. The pass was made out for London. I initialled the pass and gave it to Major Symmes for his signature. I now present this pass as Exhibit "A".

At approximately 1200 hrs., 19 Jun 43., two telegrams arrived at the Orderly Room for the Officer Commanding "D" Squadron. When Capt. Payne received the first telegram he read it and handed it to me to read. It was a request for an extension of leave from Tpr. Smith. The second telegram gave Tpr. Smith's address. Capt. Payne dictated to the clerk on a return collect telegram that Tpr. Smith was to return immediately. I was present when this was dictated. I now present the first telegram as Exhibit "B".

The accused declines to cross-examine this witness.

P-3355 Sgt. Adams, R.M.J.

SECOND WITNESS For the Prosecution

M-66547 L/Cpl. Vaness, J.P., a soldier of the Canadian Army Overseas, on strength of No. 3 CACRU., having been duly sworn, states:-

Sir, I am L/Cpl. Vaness, J.P. I was on duty at the Unit Guard Room from 1600 hrs., to 2359 hrs., 18 Jun 43. I checked all passes that came in with the Squadron pass books. In "D" Squadron, the pass of Tpr. Smith, R.V.M., was not turned in.

The accused declines to cross-examine this witness.

M-66547 L/Cpl. Vaness, J.P.

THIRD WITNESS For the Prosecution

M-103457 Tpr. Costello, S.C., a soldier of the Canadian Army Overseas, on strength of No. 3 CACRU., having been duly sworn states:-

Sir, I am Tpr. Costello, S.C. On the 19 Jun 43., I was Orderly Corporal. I took the Reveille Absentee Report at 0600 hrs. Finding Tpr. Smith to be absent from his quarters, I enquired of the hut Corporal if Smith had been in. He had not. I placed him on the Absentee Report as being absent from 0600 hrs. I now present a certified true copy of the Absentee Report as Exhibit "C".

The accused declines to cross-examine this witness.

S.C. Costello
M-103457 Tpr. Costello, S.C.

FOURTH WITNESS For the Prosecution

M-65640 L/Cpl. Miller, S.G., a soldier of the Canadian Army Overseas, on strength of No. 3 CACRU., having been duly sworn states:-

Sir, I am L/Cpl. Miller, S.G. At 1430 hrs., 23 Jun 43., I was on duty in the Unit Guard Room when Tpr. Smith, R.V.M., was brought in by No. 6 Canadian Provost Company. I received the certificate of his arrest from the Provost who brought him in. I now present this certificate as Exhibit "D". I immediately took the accused into custody.

The accused declines to cross-examine this witness.

S. Cpl. Miller S.G.
M-65640 L/Cpl. Miller, S.G.

FIFTH WITNESS For the Prosecution

Capt. W. Fern, D.A.P.M., London Area., Canadian Army Overseas.

Certificate purporting to be a signed statement of the evidence of Capt. W. Fern, D.A.P.M., London Area., was read over to the accused, marked Exhibit "D", signed by me and attached hereto.

"I certify that in my opinion, owing to the exigencies of the service, including the time and expense involved, the attendance of this witness at the taking of the Summary of Evidence cannot be readily procured.

R.G.P. Maclellan
(R.G.P. Maclellan) Lieut.

SIXTH WITNESS For the Prosecution

P-3431 S.S.M. Davidson, R.A., a soldier of the Canadian Army Overseas, on strength of No. 3 CACRU., having been duly sworn, states:-

I am S.S.M. of "D" Squadron, No. 2 Training Wing, No. 3 CACRU. On the morning of 19 Jun 43., Sgt. Adams reported A-55524 Tpr. Smith, R.V.M., as being absent from 2359 hrs., 18 Jun 43. I ascertained from Sgt. Adams that the matter had been reported to the proper authorities. Tpr. Smith was still absent on the 20th,

SIXTH WITNESS For the Prosecution (Cont'd)

21st and 22nd Jun 43., when it was reported to me by the Provost that Tpr. Smith had been apprehended at 1515 hrs., 22 Jun 43 and that he was being held in close arrest.

The accused declines to cross-examine this witness.

R Davidson Maj
P-3431 S.S.M. Davidson, R.A.

SEVENTH WITNESS For the Prosecution

A/Capt. L.S. Payne, an Officer of the Canadian Army Overseas, 2 C.A.R. (LdSH), on strength of No. 3 CACRU., having been duly sworn, states:-

I am O/C "D" Squadron, Payne of "D" Squadron, No. 3 CACRU. At approximately 1300 hrs., 19 Jun 43., I received a telegram from Tpr. Smith, R.V.M., asking for a 48 hour extension of leave. The leave had already expired at 2359 hrs., 18 Jun 43. I sent a return wire to the address which the accused had given in his telegram ordering him to return to camp immediately.

The accused declines to cross-examine this witness.

L S Payne
(L.S. Payne) A/Capt.

The accused was cautioned as follows:

Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to give any evidence.

The accused desires to call one witness for the defence.

Robert V Smith
A-55524 Tpr. Smith, R.V.M.

I certify that the foregoing Summary of Evidence consisting of three pages was taken down by me in the presence of the accused and that rules of procedure 4 (c), (d), (e), (f) and (g) have been complied with.

R G P Maclellan
(R.G.P. Maclellan) Lieut., on strength of No. 3 CACRU., Officer detailed to take this Summary of Evidence.

In the Field
29 Jun 43.

Arthur J. Wagner Maj

LIST OF EXHIBITS

Exhibit "A" - Pass issued to Tpr. Smith, R.V.M.

Exhibit "B" - Telegram from Tpr. Smith, R.V.M.

Exhibit "C" - Certified true copy of the Absentee Report for 19 Jun 43.

Exhibit "D" - Certificate of arrest from the D.A.P.M., London Area.

I, A-55524 Tpr. Smith, R.V.M., desire to have Capt. P.W.H. Higgs assigned to represent me at my trial by Court Martial.

Robert V. M. Smith
A-55524 Tpr. Smith, R.V.M

In the Field
29 Jun 43.

LIST OF WITNESSES FOR THE PROSECUTION

P-3355 Sgt. Adams, R.M.J.	2 CAR (LdSH) on strength of No. 3 CACRU.
M-66547 L/Cpl. Vaness, J.P.	on strength of No. 3 CACRU.
M-103457 Tpr. Costello, S.C.	2 CAR (LdSH)
M-65640 L/Cpl. Miller, L.G.	on strength of No. 3 CACRU.
Capt. W. Fern	D.A.P.M., London Area.
P-3431 S.S.M. Davidson, R.A.	on strength of No. 3 CACRU.
A/Capt. L.S. Payne	2 CAR (LdSH) on strength of No. 3 CACRU.

LIST OF WITNESSES FOR THE DEFENCE

A/Capt. L.S. Payne (Character Witness)	2 CAR (LdSH) on strength of No. 3 CACRU.

SUMMARY OF EVIDENCE

(Accused present at Summary)
(when evidence of witnesses)
(taken down in writing.)

No. 3 Canadian Armoured Corps
Reinforcement Unit
29 Jun 43.

Summary of Evidence in the case of A-55524 Tpr. Smith, R.V.M., on the strength of No. 3 CACRU., a soldier of the Canadian Army Overseas.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS
For the
Prosecution

P-3355 Sgt. Adams, R.M.J., a soldier of the Canadian Army Overseas, on strength of No. 3 CACRU., having been duly sworn, states:-

I was acting Sergeant-Major of "D" Sqn. No. 2 Training Wing, No. 3 CACRU on 16 Jun 43. I made out Tpr. Smith's pass on the 16 Jun 43. It was from after duty 16 Jun 43., until 2359 hrs 18 Jun 43. The pass was made out for London. I initialled the pass and gave it to Major Symmes for his signature. I now present this pass as Exhibit "A".

At approximately 1200 hrs., 19 Jun 43., two telegrams arrived at the Orderly Room for the Officer Commanding "D" Squadron. When Capt. Payne received the first telegram he read it and handed it to me to read. It was a request for an extension of leave from Tpr. Smith. The second telegram gave Tpr. Smith's address. Capt. Payne dictated to the clerk on a return collect telegram that Tpr. Smith was to return immediately. I was present when this was dictated. I now present the first telegram as Exhibit "B".

The accused declines to cross-examine this witness.

P-3355 Sgt. Adams, R.M.J.

SECOND WITNESS
For the
Prosecution

M-66547 L/Cpl. Vaness, J.P., a soldier of the Canadian Army Overseas, on strength of No. 3 CACRU., having been duly sworn, states:-

Sir, I am L/Cpl. Vaness, J.P. I was on duty at the Unit Guard Room from 1600 hrs., to 2359 hrs., 18 Jun 43. I checked all passes that came in with the Squadron pass books. In "D" Squadron, the pass of Tpr. Smith, R.V.M., was not turned in.

The accused declines to cross-examine this witness.

M-66547 L/Cpl. Vaness, J.P.

THIRD WITNESS
For the
Prosecution

M-103457 Tpr. Costello, S.C., a soldier of the Canadian Army Overseas, on strength of No. 3 CACRU., having been duly sworn states:-

Sir, I am Tpr. Costello, S.C. On the 19 Jun 43., I was Orderly Corporal. I took the Reveille Absentee Report at 0600 hrs. Finding Tpr. Smith to be absent from his quarters, I enquired of the hut Corporal if Smith had been in. He had not. I placed him on the Absentee Report as being absent from 0600 hrs. I now present a certified true copy of the Absentee Report as Exhibit "C".

The accused declines to cross-examine this witness.

S.C. Costello
M-103457 Tpr. Costello, S.C.

FOURTH WITNESS
For the
Prosecution

M-65040 L/Cpl. Miller, S.G., a soldier of the Canadian Army Overseas, on strength of No. 3 CACRU., having been duly sworn states:-

Sir, I am L/Cpl. Miller, S.G. At 1430 hrs., 23 Jun 43., I was on duty in the Unit Guard Room when Tpr. Smith, R.V.M., was brought in by No. 6 Canadian Provost Company. I received the certificate of his arrest from the Provost who brought him in. I now present this certificate as Exhibit "D". I immediately took the accused into custody.

The accused declines to cross-examine this witness.

W/Capt Miller S.G.
M-65040 L/Cpl. Miller, S.G.

FIFTH WITNESS
For the
Prosecution

Capt. W. Fern, D.A.P.M., London Area., Canadian Army Overseas.

Certificate purporting to be a signed statement of the evidence of Capt. W. Fern, D.A.P.M., London Area., was read over to the accused, marked Exhibit "D", signed by me and attached hereto.

"I certify that in my opinion, owing to the exigencies of the service, including the time and expense involved, the attendance of this witness at the taking of the Summary of Evidence cannot be readily procured.

R.C.P. Maclellan
(R.C.P. Maclellan) Lieut.

SIXTH WITNESS
For the
Prosecution

P-3431 S.S.M. Davidson, R.A., a soldier of the Canadian Army Overseas, on strength of No. 3 CACRU., having been duly sworn, states:-

I am S.S.M. of "D" Squadron, No. 2 Training Wing, No. 3 CACRU. On the morning of 19 Jun 43., Sgt. Adams reported A-55524 Tpr. Smith, R.V.M., as being absent from 2359 hrs., 18 Jun 43. I ascertained from Sgt. Adams that the matter had been reported to the proper authorities. Tpr. Smith was still absent on the 20th,

SIXTH WITNESS For the Prosecution (Cont'd)

21st and 22nd Jun 43., when it was reported to me by the Provost that Tpr. Smith had been apprehended at 1515 hrs., 22 Jun 43 and that he was being held in close arrest.

The accused declines to cross-examine this witness.

R.S. Davidson Lieut.
P-3431 R.S.M. Davidson, R.A.

SEVENTH WITNESS For the Prosecution

A/Capt. L.S. Payne, an Officer of the Canadian Army Overseas, 2 C.A.R. (LdSH), on strength of No. 3 CACRU., having been duly sworn, states:-

I am A/Capt. L.S. Payne of "D" Squadron, No. 3 CACRU. At approximately 1300 hrs., 19 Jun 43., I received a telegram from Tpr. Smith, R.V.M., asking for a 48 hour extension of leave. The leave had already expired at 2359 hrs., 18 Jun 43. I sent a return wire to the address which the accused had given in his telegram ordering him to return to camp immediately.

The accused declines to cross-examine this witness.

L.S. Payne
(L.S. Payne) A/Capt.

The accused was cautioned as follows:

Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to give any evidence.

The accused desires to call one witness for the defence.

Robert V. Smith
A-55524 Tpr. Smith, R.V.M.

I certify that the foregoing Summary of Evidence consisting of three pages was taken down by me in the presence of the accused and that rules of procedure 4 (c), (d), (e), (f) and (g) have been complied with.

K.B.B. Macmillan
(K.B.B. Macmillan) Lieut., on strength of No. 3 CACRU., Officer detailed to take this Summary of Evidence.

In the Field
29 Jun 43.

No. A55524 Name: Robert Van Meter SMITH | Sqn., Battery, or Company | Corps: CAC | Date of enlistment: 8-7-41 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.H. 121) 40/P & S.136 (2637)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Brockville	20 Jan 42	Cadet		Absent without leave from 0630 hrs 20 Jan 42 until 2200 hrs 25 Jan 42.	Lieut.Egan Lieut.Carroll	Severe Reprimand	27 Jan 42	Col. R.G. Whitelaw Commandant	Forf.6 days pay under F.R.&I.
	25 Jan 42	Cadet	1	Absent 5 days, 15 hrs, 30 mins. Drunkenness	Lieut.D.H.Thompson Capt. Leslie				
Borden	8-3-42			A.W.L. 1 day 59 mins.	L/C.Clark H75	4 days C.B.	11-3-42	E.G.Vance Lieut.	Forf.2 days pay
Borden	26-3-42	Tpr.		A.W.L. from 0600 hrs.26-3-42 to 0445 hrs.31-3-42 (Absent 4 days 22 hrs. 45 mins.) Sec.15(1)AA A.W.L.		12 days Detention	1-4-42	J.A.McCamus Lt.col.	Forf.5 days pay&allowance
Camp Borden	21-6-42	"		Sec.15(1)AA AWL					
C/Borden	Granted furlough T/W 306712 & ration all. 50% per diem from 30-11-42 to 13-12-42 Incl.							D.O.#229	D/28-11-42

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Borden	20-4-42	Tpr.		A.W.L. from 0600 hrs. 20-4-42 to 0200 hrs 24-5-42 (Absent 33 days 20 hrs.)	Cpl. Strawford	18 days Detention	26-5-42	J.A.McCamus Lt.Col.	
C/Borden	21-6-42	Tpr.		AWL from 0600 hrs 21-6-42 till apprehended by M.P. 1820 hrs 12-7-42 (Absent 21 days 12 hrs 20 mins.)	L/C.Harrylock Documentary evidence of apprehension	18 days Detention	14-7-42	J.A.McCamus Lt.Col	
C/Borden	10-8-42	Tpr.		SEC 15(1)AA A.W.L. from 0730 hrs 10-8-42 till apprehended at 1110 hrs 4-9-42.	RQMS James	21 days Detention	17-9-42	J.A. McCamus Lt.Col.	Auto forf 26 days pay.
do	4-11-42	Tpr.		Sec 15(1) AA AWL from 0630 hrs 4-11-42 till 0110 hrs 7-11-42. (Absent 2 days 17 hrs. 40 mins.)	Documentary	14 days C.B.	9-11-42	K.Ramsey Capt.	Auto forf 3 days pay
C/Borden	28-12-42	Tpr.		Sec.15(1)AA AWL from 1830 hrs 28-12-42 till 0830 hrs 2-1-42 (Absent 4 dys 14 hrs. 20 mins.)	Cpl. Bradbury	28 days Detention	5-11-43	J.W.Graham Major	Forf 5 days pay FR&I

CERTIFIED TRUE COPY

R.B. MacMillan Lieut. Arthur A. Pattyson, Major

M.F.B. 355
22M—5-41 (572-8)
H.Q. 1772-39-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
A-55524	Trooper	SMITH Robert Van Mater	No. 3 C.A.C.R.U.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery and General Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, Air Force Act and of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	Section 15 (1) A.A.	3 times	Section 15 (1) A.A.	8 times
For		times	Drunkenness Section 19 A.A.	7 times
For		times		times
For		times		times

Number of instances of gallantry or distinguished conduct

or

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act and dispensations with trial under A.F.A. 75 are set out in the schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or

The accused at the present time is under sentence of beginning on the day of

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 13 days in military custody, making a total of 13 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his attestation paper is 37 years 28 days

6. The date of his attestation specified in his attestation paper is 7 Aug. 41

7. The service which the accused is allowed to reckon towards discharge is 1 year 339 days

8. The accused is entitled to reckon 339 days service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no military decoration, or military reward for acts possessed of or entitled to. State any military decoration or reward.

10. If the accused is a warrant officer. The accused before he was made a warrant officer last held the rank of

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

..... dated ....., and in his regiment (or corps), the rank of

..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial [illegible] awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank .....

Unit

Name ..... of ..... Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 1 Jul day of June 1943 [illegible]

[illegible] No. 3 Advanced Corps Holding Depot C.A. (A.F.)

The above statement with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

[illegible] Maj.

00-74
TPR SMITH R.W.

B37019 Tpr Roy William SMITH
HQ Sqn (7/XI H) 5 Cdn Armd Bde

00 74

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this twenty-seventh day of August, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 5 Cdn Armd Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to delay the trial for reference to a superior qualified officer~~.

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*~~I am unable to appoint~~

*(1) ~~Field Officers to form the Court~~.

*(2) ~~A Field Officer as President~~.

~~for the following reason, namely~~:

*Omit if not applicable.

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the rank, name, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Maj	J L TYRER	9 Armd Regt (SCD)

Members.

Rank.	Name.	Regiment.
Capt	R E STUBBS	9 Armd Regt (SCD)
Capt	B J FIRESTONE	HQ 5 Cdn Armd Bde
Waiting Member Lt	L A HALES	HQ 5 Cdn Armd Bde
Judge Advocate	Capt G M MORRISON, ADJA HQ 5 Cdn Armd Div	

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (G R Bradbrooke) Brig
Commanding Comd 5 Cdn Armd Bde
Convening Officer.

2

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B37019 Tpr Roy William SMITH, HQ Sqn (7/XI H) 5 Cdn Armd Bde	First Charge Sec 15 (1) AA	Guilty	Guilty	Confirmed
	Second Charge Sec 24 (2) AA	Not Guilty	Not Guilty	Not Confirmed
	See Charge Sheet Attached.		To undergo detention for 60 days Lt-Col Maj Pres.	Confirmed 30 Aug/43 COMD. 5 CDN. ARMD. BDE.

*Question to be asked of accused, if he pleads not guilty (R. of F. 29 (A)) :—

"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"

Answer (to be recorded on separate sheet if necessary) :—

(Signed) [signature] Maj (Signed) [signature] Maj

Commanding COMD. 5 CDN. ARMD. BDE.

Convening Officer (a) [signature] Capt. Judge Advocate President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

3

B.

I certify that the above Court assembled on the 30th day of August 43, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

Certificate of President as to proceedings.

I also certify that :—

1. The members of the Court and Judge Advocate
2. ~~The witnesses~~
*(3. ~~The Interpreter~~)
*(4. The officers under instruction)

*Omit if not applicable.

were duly sworn.

Signed this 30th day of Aug. 1943

[signature] Capt. Judge advocate

[signature] Lt-Col Pres. Maj
President of the Court Martial.

C.

*I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

*See footnote (b) on page 782 M.M.L., 1929.

Certificate in case of death sentences.

Signed this day of 19

President of the Court Martial.

D.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

Signed this 4th day of September 1943

[signature] Lt-Col Maj
Confirming Officer.

COMD. 5 CDN. ARMD. BDE.

Promulgated and extracts taken in the case of B-37019 Tpr. Smith, R.W.

(a) (Dated) 6 Sep 43 (Signed) [signature] Maj

Promulgated and extracts taken in the case of O.C. H.Q. SQN. 5th CDN. ARMD. BDE. C.A.

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(23573) W1-45178-550 10,000 5-43 A.A. & W. Ltd. Gp.698

3

CHARGE SHEET

The accused B-37019 Tpr. Roy William SMITH Headquarters Squadron (7/XI Hussars) 5th Canadian Armoured Brigade, a soldier of the Canadian Army Overseas, is charged with :-

First Charge
Sec. 15 (1) Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the field on 3 Aug 43 absented himself without leave from his Unit, Headquarters Squadron (7/XI Hussars) 5th Canadian Armoured Brigade from 0600 hrs on the said 3 Aug 43 until he returned voluntarily at 1830 hrs on the 25 Aug 43. (Absent 22 days, 12 hrs and 30 mins).

Second Charge
Sec. 24 (2) Army Act

LOSING BY NEGLECT HIS EQUIPMENTS CLOTHING AND REGIMENTAL NECESSARIES

in that he

in the field on or about the 26 Aug 43 was deficient of the following articles of kit

	Quantity	Value £. s. d.
Boots lumberman rubber	1	2 4
Gloves knitted drab	1	1 4
Socks woolen prs.	2	1 8
Brasses button brush	1	4
Brushes shaving	1	8
Boots ankle	1	10 9
Forks W.S. table	1	2½
Knife table	1	5
Spoons W.S.	1	2
Bags ration	1	1
Belts waist web	1	2 10
Bottles water	1	1 6
Carriers water	1	1 7
Covers mess tin	1	2
Capes anti gas	1	11 9
Sheets ground		5 4½
		£ 2. 1 .2

In the Field
27 Aug 43

(J.M. Grant) Major
Commanding
HQ Sqn (7/XI H)
5th Cdn Armd Bde

To be tried by F.G.C.M.

COMD. 5 CDN. ARMD. BDE.

AUG 2 8 1943

Lt Col Esther Knaj
Pres.

30 Aug 43.

5

I certify that No 37019 Tpr Smith R.W. of H.Q. Adm
5th Cdn Armd Bde is fit to undergo trial by
Court-Martial

S. Vaisnub, Capt. R.C.A.M.C.

Record of Proceedings of a Field General Court Martial

Held in the Field in England on 30th August, 1943, to try

B37019 Tpr Roy William SMITH, HQ Sqn (T/XI H), 5 Cdn Armd Bde, 5 Cdn Armd Div.

PRESIDENT
Major J.D. Tyrer — 9 Cdn Armd Regt (BCD)

MEMBERS
Captain W.J. Finestone — HQ 5 Cdn Armd Bde
Captain R.E. Stubbs — 9 Cdn Armd Regt (BCD)

JUDGE ADVOCATE
Captain G.N. Morrison — ADJA 5 Cdn Armd Div

PROSECUTING (JUDGE ADVOCATE) OFFICER
Lieut. D.G. Bagby — 8 Cdn Armd Regt (LASH)
Lieut. C.R. Gillies — 8 Cdn Armd Regt (LASH)

PROSECUTING OFFICER
Lieut. J.W. Black — HQ Sqn 5 Cdn Armd Bde

DEFENDING OFFICER
Captain E.N. Stoddart — HQ 5 Cdn Armd Bde

The President produces the Convening Order, Charge Sheet and Summary of Evidence.

The President, in closed court, reads the Convening Order and the Charge Sheet to the Members, and the Court satisfy themselves that it is properly convened and constituted, that the accused is amenable to Military law, and that each charge discloses an offence.

The accused is brought before the Court and at 1300 hours, the trial commences.

The Prosecuting Officer produces a Medical certificate under K.R. (Can) 550 that the accused has this day been examined and is fit to undergo trial by Court Martial. The certificate is signed by the President and attached to the proceedings.

The Convening Order is read in the hearing of the accused.

The names of the President and Members of the Court are read to the accused and they severally answer to their names.

President to accused

Q. 1 Do you object to be tried by me as President or by any of the officers whose names you have heard read over?

A. 1 No, sir.

The President, Members, Judge Advocate and Officers under Instruction are duly sworn.

The Prosecuting Officer informs the Court that the accused has not elected trial by Court Martial.

Each charge is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty. He pleads as follows:

First Charge - Guilty

Second Charge - Not Guilty

The President complies with K.R. 35(b) in respect of the "Guilty" plea by ascertaining that the accused understands the nature of the charge and his plea thereto, explaining the difference in

procedure by the plea and advising him to withdraw his plea if he thinks the accused ought to plead 'Not Guilty' thereto.

President to accused

Q. 2 Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

A. 2 No, sir.

The Prosecuting officer announces that he is not offering any evidence on the second charge and the Court announce that they will enter a finding of Not Guilty on the second charge.

The findings of the Court are recorded on page 2 of APA 3.

The charge to which the accused pleaded "Guilty" is read to him.

The finding of the Court is recorded on page 2 of APA 3.

President to accused

Q. 3 Do you desire to make any statement of the circumstances in reference to the charge to which you have pleaded guilty?

A. 3 No, sir.

The Summary of Evidence is read aloud, in the presence of the accused, signed by the President and attached to the proceedings.

President to accused

Q. 4 Do you wish to make any statement in mitigation of punishment?

A. 4 No, sir.

Q. 5 Do you wish to give evidence yourself or to call any witnesses as to character?

A. 5 No, sir.

Statement of Character and Service, and Field Conduct Sheet, signed in the manner required by A.A. 1918(1)(h) and purporting to refer to the accused by his number, rank, name and Corps, are produced to the Court, read, signed by the President and attached to the proceedings.

President to Accused

Q. 6 Do you wish to address the Court on your Statements of Character, Service and Conduct in further mitigation of punishment?

A. 6 Yes, sir.

Statement by the Defending officer in mitigation of punishment is recorded on separate sheet, initialled by the President and attached hereto.

The President announces

"The Court is closed for consideration of the sentence. The sentence to be awarded by the Court, when subject to confirmation will not be announced but will be promulgated later and the proceedings in Open Court are accordingly terminated."

The Court is closed to consider the sentence.

The sentence is recorded, dated and signed by the President on page 2 of AFA 5.

CERTIFIED A TRUE RECORD OF THIS TRIAL, this 30th day of August, 1943.

E. Harrison Captain
Judge Advocate

11

PLEA FOR MITIGATION IN THE CASE OF B97019 Tpr SMITH [redacted]

Tpr Smith pleaded guilty to the first charge because he was in fact absent and did not in fact have a pass but there are reasons which, to a certain extent, extenuate this offence. The basic reason is, as usual, a young lady. For the past six months Tpr Smith has been trying to get married and has so far been unsuccessful in obtaining permission. Immediately prior to this offence Smith received a letter from this girl saying that she wanted to see him immediately as she was fed up with being continually put off whether this was due to any neglect on Smith's part or to delay in Army technicalities. Accordingly Smith decided to go and see her as her leave coincided. On arriving at her home he found that her leave had been postponed and he was unable to see her until the day before his return. It is submitted that there was some justification in going AWL but to remain absent so long was sheer stupidity.

It will be noted from Tpr Smith's Conduct Sheet that in four years of service he has been guilty of only one other offence and that of improper enlistment at the age of sixteen by misrepresenting his age and it is suggested that this offence is one that might well be commended.

In view of the temptation to leave and in particular the excellent previous record, may as lenient a view as possible be taken of this first offence of this very young man.

(D H Stodart) Capt

Summary of evidence in the case of B-37019 Tpr. Roy William SMITH, Headquarters Squadron (7/XI Hussars) 5 Canadian Armoured Brigade, Canadian Army Overseas, charged with :

Absence without leave from 3 Aug 43 to 25 Aug 43.

Losing by neglect his equipment clothing and regimental necessaries.

The Commanding Officer directs that the evidence be taken on oath.

First Witness

A-34877, Cpl. Pearse, F.G., H.Q. Sqn (7/XI Hussars) 5 Cdn Armd Bde, having been duly sworn, states:

On the 3 Aug 43 I was acting Orderly Sergeant of H.Q. Sqn (7/XI Hussars) 5 Cdn Armd Bde. There were only a few men left in the Unit lines on that date as most of the Squadron were away on a scheme. B-37019 Tpr. Smith, R.W., whom I recognize as the accused in this case, was one of those men left behind and was employed as a fireman in the kitchen. At 0600 hrs of that day I called the roll and checked to see that each man was on his job as all the personnel left behind were employed on various duties. I found that B-37019 Tpr. Smith, R.W., was missing and after searching through all the huts and unit lines was unable to find him. I then put his name on the absentee report in the Orderly Room. He was still absent on the reveille roll call on the 4 Aug 43. I did not see the accused again until the 26 Aug 43 when he was being paraded before his Commanding Officer.

The accused declines to cross examine this witness.

F.G. Pearse
(A-34877 Cpl. Pearse, F.G.)

Second Witness

B-74565, Sgt. Waters, J.M., H.Q. Sqn (7/XI Hussars) 5 Cdn Armd Bde, having been duly sworn, states:

I was and still am the sergeant of the troop in H.Q. Sqn (7/XI Hussars) 5 Cdn Armd Bde in which B-37190 Tpr. Smith, R.W., whom I recognize as the accused in this case, was a member. On the evening of the 4 Aug 43 I returned to the Unit lines with my troop from scheme. B-37019 Tpr. Smith, R.W. had not accompanied the troop on this scheme and had been left behind in camp as one of the fatigue men. At 0600 hrs 5 Aug 43 I called the roll and the accused did not answer his name. I checked in the Orderly Room and found he had been absent without leave since 0600 hrs, 3 Aug 43. I continued to call the roll on all subsequent parades of my troop and the accused did not appear on any of them or answer his name.

On the 25 Aug 43 I was acting as Orderly Sergeant for H.Q. Squadron (7/XI Hussars) 5 Cdn Armd Bde. About 1830 hrs of that day B-37019 Tpr. Smith, R.W., surrendered himself to me in the Unit lines. He was at the time sober and properly dressed. I placed him under close arrest and had him placed in the Camp Guard Room.

The accused declines to cross examine this witness.

J M Waters
(B-74565 Sgt. Waters, J.M.)

Third Witness

G-53450, L/Cpl. Daley, S.A., H.Q. Sqn (7/XI Hussars) 5 Cdn Armd Bde, having been duly sworn, states:

I am storeman in the Q.M. Stores of H.Q. Sqn (7/XI Hussars) 5 Cdn Armd Bde. On the 26 Aug 43 I checked the kit of B-37019 Tpr. Smith, R.W., whom I recognize as the accused in this case, against Part III of his Militia Book M1 (Clothing and Equipment Statement) and found it to be deficient of the following articles:

	Quantity	Value £. s. d.
Boots lumberman rubber	1	2 4
Gloves knitted drab	1	1 4
Socks woolen pr.	2	1 8
Brasses button brush	1	4
Brushes shaving	1	8
Boots ankle	1	10 9
Forks W.S. table	1	2½
Knife table	1	5
Spoons W.S.	1	2
Bags ration	1	1
Belts waist web	1	2 10
Bottles water	1	1 6
Carriers water bottle	1	1 7
Covers mess tin	1	2
Capes anti gas	1	11 9
Sheets ground		5 4½
		£ 2. 1. 2

The above values are given at 50% of the full vocabulary price.

The accused declines to cross examine this witness.

S.A. Daley L/Cpl
(G-53450 L/Cpl. Daley, S.A.)

The accused was warned as follows:

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The Accused: I have nothing to say at this time.

The accused declined to call witnesses in his behalf.

I certify that Rules of Procedure 4 C. D. E. and F. have been complied with.

Taken by me in the field in the presence and hearing of the accused this 27 day of August 1943.

Jas J. Black Lieut
(J.J. Black) Lieut.

STATEMENT OF ACCUSED

I desire the Convening Officer to detail an officer to represent me at my forthcoming trial by Field General Court Martial.

(B-37019 Tpr. Smith, R.W.)

List of Witnesses in the case of

B-37019 Tpr. SMITH, R.W.

For the Prosecution

1.	A-34877	Cpl. Pearse, F.G.	H.Q. Sqn (7/XI H) 5th Cdn Armd Bde
2.	B-74565	Sgt. Waters, J.M.	H.Q. Sqn (7/XI H) 5th Cdn Armd Bde
3.	G-53450	L/Cpl. Daley, S.A.	H.Q. Sqn (7/XI H) 5th Cdn Armd Bde

For the Defence

Nil

No. B37019 Name Smith, R.W. | Sqn., Battery, or Company | Corps | Date of enlistment 29/9/39 | G.C. Badges | Service or Proficiency Pay Sat Lifesr Navy Pass.

M.F.M. 6 (A.F.B. 122) 175M—7-41 (1215-20) H.Q. 1772-39-1652

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				CERTIFIED TRUE COPY OF SUPPLIMENTARY SHEET ISSUED 11 JULY 43. 28 Aug 43 (J.E. Grant) Major OC HQ 3rd, 5 Edn Armd Bde					

(P.T.O.)

M.F.B. 355
22M—5-41 (572-3)
H.Q. 1772-99-620
A.F.B. 200

15

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B-32019	Tpr	Smith, Roy William	H.Q. Sqn (7/XI Hussars) 5th Cdn Armd Bde

1. The following is a fair and true summary of the entries in the Service and General / Regimental and Squadron, Battery / Conduct sheets / or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, Air Force Act / of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	times	times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct

or,

There are no entries in the conduct sheets of the accused.

2. The accused has not been previously convicted

by

3. The accused is not under sentence at the present time.

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 5 days in military custody, making a total of 5 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his attestation paper is 19 yrs, 9 months.

6. The date of his attestation specified in his attestation paper is 19.9.39

7. The service which the accused is allowed to reckon towards discharge is 3 years, 11 months.

8. The accused is entitled to reckon service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no military decoration, or military

10.

11. (In the case of an officer.) The accused holds (a) the Royal Canadian Air Force rank of Permanent Force/unit

dated , and is the registered (or gazetted) Air rank of

dated .

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

Note.—If any of the above paragraphs cannot be stated from the Regimental Books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under section 47 of the Army Act, not of cases in which trial has been dispensed with at present. Rank Unit

Name Regiment

Note.—A certification extract from the regimental books stating these convictions and dispensations with trial by accused.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 30th day of Aug 43 Jos J Blanchard Lt for OC

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked 5 Can Armd Div signed by the president, and annexed to the proceedings.

S.A.-2

Gen. Smith. R.H.

RECORDED AT CMHQ IN AB 160, Pt 2

CPA86 (In lieu of AFA21) 40/P & S/1698 (6)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Lt Col J. Fairlister Comd 4 Cdn Armd Bde dated 15 May 45

RECEIVED 9 JUL 1945 JAG BRANCH C.M.H.Q.

ACCUSED.

(Names of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B 58523 C/		Robert Wellington	Smith	4 Cdn Armd Bde Wksp RCEME

PROCEEDINGS REVIEWED 9 Jul 45 Judge Advocate

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) Germany on (date(s)) 18 May 45

RECORD FORM A--OPENING PROCEEDINGS AND ARRAIGNMENT. 32189.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MAML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number hereto. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which items are hereafter called "Particulars". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1730 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~ Cnd.

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to M55257 Cpl Rauch J.A as interpreter? Ans N.O

~~as shorthand writer?~~ Ans

The Interpreter is sworn.(1) ~~Do you object to~~ ~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans N.O (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 72, MAML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major G.V. Murray Lan. Sup. Regt (Mot.)
Member	Capt. E.R. Watkins 21 Cdn Armd Regt
Member	Lieut. W.R. Cooper 22 Cdn Armd Regt
Judge-Advocate	Major E.L. Wasson DJA HQ 4 Cdn Armd Div.
Prosecutor	Capt. A. Gusen 4 Cdn Armd Bde Wksp RCEME
Defending Offr	Capt. L.M. Hanway M.C. 21 Cdn Armd Regt.

Questions by President: Is the Prosecutor a lawyer? Ans N.O Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 49 (b) and fn 2 were not followed. See DI p 2.)

A8. The accused ~~(see)~~ before arraignment make(s) (no) ~~(no)~~ plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 135, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A86 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form 2

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

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INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* [redacted] *see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E.3 of Record Form E.*
5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part 1 of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete words or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part 1 of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No (1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not~~ establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The ~~Court~~ is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. Delete remainder of this para. if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. Accused will give evidence. Do you intend to call witnesses on your behalf? Ans. N. O. Are they witnesses as to character only? Ans. N. O.

(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released therewith and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)~~

(1. AA 54(2) (6), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans. No thank

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. X and Ex. Y respectively.(3)

(1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. No sir thank Defending Officer.(2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to submit on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see insets on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : .....

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st Aq H/o.	not guilty	guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in lieu of kit see RP 44 fn 6.)

At present under sentence for 28 days F.P. beginning on (date) 19 Apr 45 (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 29 days, of which 26 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

to undergo detention for a period of one hundred and twenty (120) days)

(Sgd) [illegible] Judge-Advocate, if any. Date awarded. 18 May 45 (Sgd) [illegible] Presiding. (RP 43, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 572. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

confirmed

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~ (1) GLP

(1. AA 57A. Delete if not used.)

(Sgd) H St Allister Lt Col

Date 21 May 45 Commanding CREME 4 Cdn Armd Div

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B58578 Gnr Robert Wellington Smith	21 May 45	[illegible]

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

Certificat Fitness to undergo Trial by court-martial

Cfn Peter Watlington Smith

This is to certify that I have this morning examined B58523 Cfn Smith R W

4 Cdn Armd Bde/Wksp RCEME And have found him FIT TO UNDERGO trial

by court-martial.

DATE 18 Ma 45

Sgn R B Rawes Capt
M.O. 5 Cdn FDS RCAMC

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B 58523	Cfn		Robert Wellington	SMITH	4 Cdn Armd Bde Wkshp RCEME

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 15 May 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	G.H. MURRAY	Lake Sup R (M)

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	E.R. WATKINS	21 Cdn Armd Regt
Lieut	W.R. COOPER	22 Cdn Armd Regt

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt	A GUSEN	4 Cdn Armd Bde Wkshp RCEME

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Major	E.E. WASSON	HQ 4 Cdn Armd Div

On Active Service in the Fd

in Germany (Country.)

Date 15 May 45

G Pallister — Lieut Col (Rank.)

(Signed personally. RP 105 fn 2.)

(E.G. Pallister)

Commanding RCEME 4 Cdn Armd Div

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

CHARGE SHEET

The accused No B-58523 Cfn Robert Wellington Smith 4 Cdn Armd Bde Wksp RCEME, 4 Cdn Armd Div, a soldier of the Cdn Army when on Active Service, is charged with:-

FIRST CHARGE
Army Act Sec 40

XXX CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

In that he

In the Field in Germany on the 19 April 1945 did Frarernize with German Civilians, inhabitants of Germany, viz - Mrs Hermann Korves - not in the course of duty by entering her home at Meppen, Germany and sleeping there.

(R E LANE) MAJOR
4 CDN ARMD BDE WKSP RCEME
OFFICER COMMANDING

In the Field
7 May 45

To be tried by Field General Court Martial

(E.G. Pallister) Lieut Col
CREME 4 Cdn Armd Div

In the Field
15 May 45

First Witness for the Prosecution
Mrs. Wilhelmina Kooves, Lingenstrasse 12,
Meppen, Germany, having been duly sworn
states:
I am a German civilian and am in habit and
at Germany.
Yes I recall the 14th April 45 at 0545 hrs a
soldier came to my door. I heard the soldier
asking my neighbour who answered the door,
where his billets were. I saw that he was tired
and I took him in the bed-room I
understood that he had to be at work at
8 o'clock. I left him in the bed-room
sitting on the bed. I woke him at 7.45.
The soldier drank a cup of tea and ate
a piece of cake on the bed which I took up to
the military Police.
The accused is the soldier in question.
He did not harm - he looked tired.
X-examination.
I am positive this is the man.
(RP 83 B complied with)

Second Witness for the Prosecution
B 8544 A/Sgt Clarke B.E. 4 Coy Borneo Bde HQ SP
RCEME having been duly sworn states;
14 April 45 the accused whom I know was
on strength my unit and was not on
Parade at 0800 hrs. and was reported absent.
He was not in immediate vicinity. If
was his duty to be present.
(RP 83 B complied with)

Third Witness for the Prosecution
Lieut. B. C. Clements, Can. Armd Bde Wksps.
R.C.E.M.E. having been duly sworn
states:-

I produce unit O.T.I. orders no 28 dated
10 Apr 45 and no 30 dated 16 Apr 45 which were
posted in all sections (marked by Pros.
Exhibits A to B in turn)
The non-fraternising order orders were
communicated verbally to all ranks in
our unit. (R.P. 83 B complied with)

Defence.

B 585 23 Cfn Smith R.W. 4 Can Armd Bde Wksp.
R.C.E.M.E. having been duly sworn states:-

I do not deny that I went to this German
woman's house.
I thought it was my duty to get to camp
as soon as possible. There were no
Warrians in the street. I was hopelessly lost.
A boy approx. 16 yrs old answered the door.
I asked him if he knew where the railway
was where we were billeted.
The woman who came outside came to
the door and I asked her the same question
through an interpreter. I then asked her
if she knew where any soldiers slept.
She motioned me in. I asked her husband
the same question.
I sat down on the chair as I felt tired.
The woman beckoned me into another
room - it was a bed-room. I asked
her to cook me a meal at 7.45 as I thought
there would then be someone on street
I could get directions from.
I know of non-fraternising orders under

I knew I should not go into human
house. I thought it was my duty to get
back to camp. I was sick and tired
and drunk (from my way.

(RP833 complied with)

Prosecution's address

I think the evidence is quite clear. There was a case of fraternization on the part of the accused. I doubt if he can be criticized for trying to find his way back to camp but knowing the order he should not have remained in the German civilian house.

Defending Officer's address.

A full defence was not intent to commit a crime. The accused was trying to carry out his duty of getting back to camp.

Plea in mitigation.

Crime sheet is not serious.
He is undergoing 28 days F.P. for being absent at time of fraternization.
He is not married but is sending home money for ~~his~~ towards support of his parents.

Exhibit A

PART I ORDERS 4 CDN ARMD DIV WKSP RCEME This Order No 28
Issued by Offr Comd MAJOR R E LANE Dated 10 Apr 45.

Last Order No 27
Dated 9 Apr 45.

91. PRIVILEGE LEAVE ON THE CONTINENT

1. Privilege Leave on the Continent is authorized wef 1 Apr 45 subject to the conditions set out in this instruction.

2. Offrs and ORs who elect to take their leave on the Continent will take such leave instead of the UK Leave.

3. Eligibility will be the same as for leave to UK.

4. Period of leave will be seven clear days exel travelling time. No offr or OR will be absent from the unit for a period of more than eleven days.

5. Personnel travelling to destinations other than official leave establishments will carry with them rations for the full period of leave including travelling time unless they are proceeding to PARIS and its suburbs or BRUSSELLS and its suburbs when rations may be drawn in kind on application of Brit Army Staff PARIS and BRUSSELLS Garrisons respectively.

6. All ranks will be paid before departure. The amount of currency that a soldier can exchange will be marked on the leave pass.

7. Arms and capt will NOT be carried.

8. Battle dress with web belt will be worn by RRs. Anklets web are optional.

9. Purchases of food stuffs is forbidden.

92. EIGHTH VICTORY LOAN

1. Tuesday 10 Apr 45 will mark the beginning of the new Victory loan drive in this unit. The drive will be continued until Saturday 21 Apr 45 in order that personnel now on leave will have the opportunity of purchasing Victory Bonds.

2. We now have every reason to believe that this will be the last such drive with Victory so close at hand. It should be sufficient to say "Canada needs the money, Boys" and this is no time to slow down and relax on the financial front, any more than it is on the fighting front.

3. In addition to this however, every man who can possibly afford the purchase of a bond, and passes up the opportunity is doing an injustice to himself. We say this, because, at the present time, there is no better cold blooded business proposition available to any of us, than to get that surplus money out of our paybooks and bank accounts and put it to work for us, along with any future pay that we can get along without. The return on the investment in itself should be sufficient incentive for us to purchase bonds right up to our limit. But in addition to that we are buying extra financial security for ourselves and our families, and doing it in such a way that our money which we have invested is still always available to us, as Victory Bonds, are Cash and can be turned back into Dollars and Cents at a moments notice should an emergency make this necessary.

4. So, lets go, and get our orders in early, get the unit "Over the Top" and each do ourselves a good turn at the same time.

The following message from THE GENERAL OFFICER COMMANDING-IN-CHIEF First Canadian Army is herewith republished:-

"Last October, on the inauguration of Canada's Seventh Victory Loan, I remarked to you that "The Allied Forces are now gathering on the threshold of complete military success". Well, we gathered

92. EIGHT VICTORY LOAN(CONTD)

We drove our way across that threshold and without any doubt, we are now proceeding to finish off the business. As Canadians, it is our intention to lose no time or opportunity in doing so.

On 12 Apr the Eight Victory Loan will be launched throughout the Canadian Army Overseas. I believe that this Loan will be , in fact, the Victory Loan. In any event, there could not be a financial investment which better merits our complete support or a better time to give it.

In former loans, the large amounts subscribed by all ranks of the Canadian Army have provided Canadians at home with a challenge and an inspiration. Let us make this occasion, marked by the thrust of Canadian troops across the Rhine and into Hitler's Germany an outstanding example."

Signed H D G CRERAR GENERAL
GOC-in-C
First Canadian Army

93. NON-FRATERNIZATION

1. Cdn Army Routine Order (21 A Gp) 1111 is hereby republished for the infm of all ranks and will be read to all ranks on parade.

2. Non-Fraternization means having nothing whatever to do with the German people except the minimum contact required for the execution of military duty.

3. All acts of fraternization is absolutely forbidden. The following are examples of fraternization:-

(a) Shaking hands with Germans
(b) Permitting children to climb into motor vehicles or to congregate in areas around military premises.
(c) Associating on familiar terms with women.
(d) Visiting German Houses.
(e) Drinking with Germans.
(f) Playing games or sports with them.
(g) Making or accepting gifts of any sort (even to or from children)
(h) Attending German dances, entertainments or other social events.
(i) Accompanying Germans on the streets, in theatres, taverns, hotels or elsewhere, except on official business.
(j) Communicating with Germans on any subject except official business.

4. The above examples are not exhaustive.

5. Disciplinary action will be taken in all cases of fraternization.

6. Fraternization offences may be minor or serious in character.

Examples of minor offences
Speaking to women or girls(except in cases of absolute necessity); shaking hands with germans; small gifts to germans(incl children); permitting children to climb on vehs or germans to congregate about mil premises.

Examples of Serious Cases
Associating with women or girls; visiting german homes; drinking with germans; playing games or sports with them; giving or accepting gifts(except of the most trivial nature provided above) attending german dances or other social even

93. NON-FRATERNIZATION (CONT'D)

Accompanying Germans on the street, in theatres, taverns, hotels or elsewhere (except on official business; discussions and arguements with germans especially on politics or on the future of Germany.

94. SUPREME COMMANDER'S MESSAGE

The following Order of the day, addressed to every member of the AEF, was issued by the Supreme Commander on 3 Apr 45.

"The encirclement of the RUHR by a wide pincer movement has cut off the whole of Army Group B and parts of Army Groups H and G thus forming a large pocket of enemy tps whose fate is sealed and who are ripe for annihilation. The most vital industrial area is denied to the German War potential. This magnificient feat of arms will bring the war more rapidly to a close. It will long be remembered in history as an outstanding battle - - THE BATTLE OF THE RUHR."

Signed DWIGHT D EISENHOWER
SUPREME COMMANDER
AEF.

95. SERVICE CHEVRONS

The u/m personnel having completed another full year of Active Service are entitled to wear an additional Red Service Chevron.

K- 74510	S/Sgt	Mason D	M- 62420	Sgt	Crum N W
D-117260	L/Cpl	Hamilton J M	A- 56617	L/C	Snell E L C
H- 77936	Cfn	Coulter G	M- 95721	L/C	Doan T C
D- 96315	Pte	Everitt F J	B- 84604	Pte	Fountain M T
B- 58615	Pte	Gardner G A	C-100001	Cfn	Hodgins G L
H- 84632	Pte	Hussey V H	D-117251	Cfn	Knox D M
F- 65225	Cfn	Lawlor R J	G- 53787	Pte	Melanson G C
D-117222	Cfn	Menzie C	F- 97491	Pte	McDonald C A
E- 20570	Pte	Cronbach L I	H- 57009	L/C	Panter H M
D- 96240	Cpl	Voisey G W	C- 5474	Pte	Sopha J S
G- 50409	Cfn	Burnett R R			

96. ROTATION LEAVE TO CANADA.

IN THE PAST vacancies for this leave were made on a theatre basis as between Cdn Tps in the AAI and AEF. Commencing for the quota in May vacancies for this leave will be combined, and all selections for this and future leave will be made by Cdn Sec 2 Ech HQ 21 A Gp.

As in the past personnel with the highest total of points will be despatched first. Records from CMHQ disclose that personnel with 5 years Overseas Service (without taking into account double credits for service in a theatre of Ops) are more numerous in the AAI than in the AEF.

It is realized that this situation may cause some disappointment to personnel of the AEF who have had reason to believe that their point totals would be sufficiently high to ensure selection for an early quota, yet it would be manifestly unfair to despatch personnel with low point totals at the expence of others with longer service.

certified true copy
DC Adjutant Sixth
Hdqrs Ann Bde HQ.

J R Crow Capt
(A R E LANE) MAJ OC
4 CDN ARMD BDE WKS P

Exhibit B

4 CANADIAN ARMOURED FABRICATE WORKSHOP
ROYCE

Last Order Issued No 29 Dated 13 Apr 45 | PART I ORDERS | This Order No 30 Dated 16 Apr45

Issued By

MAJOR R M LANE
OPWR CCMD

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100. GENERAL DUTY ROSTER

Monday	16 Apr 45	-	Lieut J J Mather
Tuesday	17 Apr 45	-	Lieut R C Clements
Wednesday	18 Apr 45	-	AQMS Armstrong L W
Thursday	19 Apr 45	-	Lieut P A Beckworth
Friday	20 Apr 45	-	AQMS Mayor L T
Saturday	21 Apr 45	-	Capt J W Cram
Sunday	22 Apr 45	-	Capt R G Chapman
Monday	23 Apr 45	-	Lieut J J Mather

101. NCOS' DUTY ROSTER

Part 1 Order No 27 dated 9 Apr 45 is hereby cancelled insofar as it refers to the n/n roster.

Monday	16 Apr 45	-	C/Sgt Holdsworth H J
Tuesday	17 Apr 45	-	S/Sgt Morrison D R
Wednesday	18 Apr 45	-	S/Sgt Mann F G
Thursday	19 Apr 45	-	S/Sgt McCrimmon A F
Friday	20 Apr 45	-	S/Sgt Plane M E
Saturday	21 Apr 45	-	S/Sgt Stephens J W
Sunday	22 Apr 45	-	S/Sgt Thorstenson J S

102. PIQUETS

Piquets will, until further orders, take into wear white tab eqpt, including pistol and holster. This eqpt will be drawn from the QM Stores immediately before piquets go on shift. Attention is again drawn to the fact that the conduct of piquets is a direct reflection to the public on the general smartness of the unit as a whole. Therefore, piquets must make every effort to be as smart as possible both in dress, bearing and conduct.

103. FRATERNIZATION

Further instructions have now been received regarding fraternization. Every member of this unit is again warned, therefore, that any cases of fraternization will receive the maximum penalty allowed by Military Law, even for a first offence, and even the most minor cases of fraternization will result in such disciplinary action being taken.

104. CUSTOMS DUTIES.

Cases have recently occurred where MD tpt has been used to smuggle goods such as wines and spirits, the property of civs, over international borders.

This constitutes a gross misuse of MD tpt and strict disciplinary action will be taken against offenders.

105. RECORDS

Troops will NOT enter Public Places ie Town Halls, Navi HQ unless forced to do so because they are being held by the enemy. These places contain valuable records of assistance to Counter Int and in several instances these records have been destroyed.

P T O

106. CURRENCY IN GERMANY

1. Subject to the exceptions set out in para 3 hereof, no person subject to military law may have in his possession in Germany any currencies other than marks; this applies to public, PRI/regimental, as well as private funds.

2.(a) Except where prevented by operational or administrative reasons, exchanges of currency (Other than in advance account balances) on entering Germany will be carried out as bulk transactions before crossing the frontier. Exchanges of currency on leaving Germany will be carried out after crossing the frontier.

(b). Persons subject to military law who make short visits to Germany (eg staff offrs, convoy dvrs, personnel of units sanctioned near the frontier), may take with them currencies other than marks to the value of four days' pay or, in the case of voluntary workers, the equivalent of three pounds. Such currencies will be exchanged in the normal way if any such visit exceeds ten days.

3. Advance account balances will not be exchanged but will be paid into Field Cashiers.

4. Currencies other than marks will NOT either be paid out to troops or tendered in payment for goods or services or labour in Germany or exchange for marks except through official channels.

107. PARADES & INSPECTIONS

1. All ranks will attend the first parade and roll call at 0800 hrs daily with weapons.

2. Section offrs are responsible for inspecting their secs ensuring that they are:
(a) Properly dressed which is denim or coveralls for work.
(b) Clean shaven.
(c) Properly maintaining their weapons.

3. CSM Bye will command HQ .

108. All Priv Leave for Month of April now cancelled for two days.

(R E LANE) MAJ OC
4 Cdn Armd Bde Wksp
RCEME

Certified true copy
Bde Headquarters
4 Can Armd Bde

SUMMARY OF EVIDENCE

In the Case of B-58523 Cfn Smith, Robert Wellington of 4 Cdn Armd Bde Wksp RCEME 4 Cdn Armd Div, charged with:-

(1) When in a place not within his Majesty's Dominions Committing a Civil Offence, that is to say, Burgulary and Larceny, contrary to Secs 13 and 25(1) of the Larceny Act of 1916 . AA Sec 41.

(2) When in a place not within His Majesty's Dominions committing a civil offence, that is to say, receiving stolen goods contrary to Sec 33(1) of the Larceny Act of 1916 AA Sec 41.

(3) Conduct to the Prejudice of Good Order and Military Discipline AA Sec 40.
(4) Conduct to the Prejudice of Good Order and Military Discipline AA Sec 40.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS

H-17026 Sjt Reekie W M, No 13 Cdn Pro Coy, having been duly sworn:-

At approx 1030 hrs 19 Apr 45 I received instructions from RSM Giles 13 Cdn Pro Coy to investigate a complaint laid by a civilian German known as Bernhardt Strahl 37 Lingenstrasse Meppen. I proceeded with the civilian to his house, I was also accompanied by A-3727 L/Cpl Palmer G E and an interpreter from 821 Det Mil. Government. The civilian Strahl produced a black beret with an Ordnance Badge. The badge was defaced.
(The black beret is produced here and marked Exhibit "A")
I proceeded to Kliene's house, a German Civilian policeman, but he was not in. I thoroughly searched Strahl's bedroom finding one empty .45 automatic casing. I also took two empty automatic casings and a live round from Strahl and have them here.
(Three fired .45 cal Rimless casings and one live round of .45 cal rimless ammunition are produced here and marked exhibit "B")
With an interpreter, I proceeded to 12 Lingenstrasse Meppen and questioned a woman of the house. I then proceeded to 4 Cdn Armd Bde Wksp RCEME 4 Cdn Armd Div, on my arrival there I checked with the guard if anybody had come in after 0800 hrs. I asked to see Cfn Smith and asked for permission to go through his kit, which I did. Nothing was found. I then asked Cfn Smith for his beret. He said he had lost it the night before. I then produced a black beret which had been found at Strahl's house and I said "Is this your beret, Smith?" he siad, "Yes, it is mine". I asked him where he had lost it. He said " I Dont know." I then asked Cfn Smith whom he was out with the night before, He replied, "McKay". I asked to see McKay's bed and found under it seven articles of clothing, six of which I later handed to Strahl. I then left instructions that Cfn McKay be placed under arrest on his return. At approx 1330 hrs I returned to see Cfn Smith and McKay. After being cautioned, Cfn Smith gave me a statement. I then cautioned Cfn McKay but he declined to give a xxx statement.
(A copy of Cfn Smith's statement to Sjt Reekie is attached here to as Exhibit "C")

Cross-examined by accused.

Q. By which door exactly, was the black beret found?
A. Immediately in front of the door of 37 Lingenstrasse opening onto the sidewalk of that street.

H-17026 Sjt Reekie W M
13 Cdn Pro Coy.

SECOND WITNESS (Obtained through an interpreter)
Bernhardt Strahl, German Civilian, resident Lingenstrasse 37 Meppen having been duly sworn states:-

On about 18th or 19th of April, I and my wife were in bed. There was some noise at the front door and two soldiers came into the house and went into the bedroom. Both had pistols. They were both drunk. I asked what they wanted and they said something which I did not understand. I was under the impression that they wanted to sleep for the night. My wife was in bed at the time. The taller of the two soldiers fired a shot from the pistol. I became afraid, not knowing what it was about. The smaller soldier tried to get the taller out of the house. The taller of the two then put his pistol inside his jacket. Then he drew the pistol again and fired once more. The taller soldier sat on the edge of my wife's bed and started to take some clothes off so my wife got out of bed. The soldier who sat on the bed only appeared to be drunk and sat down to steady himself. He did not touch my wife. My wife and I left the room. We came back about 0600 hrs and found several articles of clothing missing. The pockets of some of the clothing had been emptied and there were personal papers strewn over the floor. I reported the matter to the military police here(13 Pro Coy) Later on in the day a military policeman brought to the house articles of clothing which I identified as mine, and which had been taken by the soldiers. One of the soldiers vomited and his beret fell off his head and I picked it up at the front door of my house. I also found two empty cartridges in the house, and two outside. I gave the beret and the cartridge cases to the military policeman. (The beret marked Exhibit "A" was produced and the witness recognized it as the one he had found that morning in front of his door.

My daughter came into the room after the second shot was fired; the smaller of the two soldiers gave her a push by the shoulders but did not do anything else to her. The left the house with my wife and I. We went to a neighbor's house.

One soldier was dark, the other fair. I cannot identify the two soldiers here(the accused Smith and McKay) for certain. There was no light in the room. The taller of the two soldiers had a flashlight.

The accused declines to cross-examine the witness.

Bernhardt Strahl.

THIRD WITNESS (obtained through an interpreter)
Mrs Hermann Korves, 12 Lingenstrasse, Meppen, German civilian having been duly sworn states:-

At about 0545 hrs a soldier knocked on the door. My nephew answered the door. The soldier asked if he could sleep in the house. My nephew said thay had no beds empty. My husband got up and let the soldier take his bed. He slept there for two hours until 0800hrs when he had asked to be wakened. He then left. The soldier gave me some cigarettes which I later turned over to the Military Police. The witness was asked whether she could identify either of the soldiers in the room as the one who had slept in her house. She positively identified Smith as the man. He did no harm. (the cigarettes are here produced and marked Exhibit "B")

Cross-examined by accused

Q. How many cigarettes did the soldier give you?
A. He gave me a handful, which I gave to the police.

Mrs Hermann Korves

FOURTH WITNESS (Obtained through an interpreter)
Anni Strahl, 37 Lingenstrasse Meppen German Civilian having been duly sworn states:-

On the night of 18-19 Apr 45 I heard shouting from my mother's bedroom and shots. I got up and went into my mother and father's bedroom. The smaller of the soldiers caught me by the nightdress but did not hurt me; then he let go. Then I ran away outside. There were two soldiers. Only one grabbed me, then let go. I then went to a neighbors house, where my mother and father had gone.

The witness stated that by his general outline she thought Cfn Smith, who was in the room with Cfn McKay while this evidence was being taken, was the one who had grabbed her, but she could not be certain.

The accused declines to cross-examine the witness.

(Anni Strahl)

FIFTH WITNESS B-8549 S/Sjt Clarke, B L - 4 Cdn Armd Bde Wksp RCEME having been duly sworn states:-

On the morning of the 19 Apr 45 when I took morning roll call at 0800 hrs, the accused Cfn Smith R W did not answer his name, and I could not see him either on parade or in the vicinity of the Small Arms Section of the Workshop. I then reported the matter to the Orderly Room. While I was at the Orderly Room he came to the Small Arms Section and I saw him on my return from the Orderly Room at 0835 hrs. I then warned him to prepare himself for office, and had a charge of AWL laid against him.

The accused declines to cross-examine the witness.

(B8549 S/Sjt Clarke B L)

The accused was cautioned as follows:-

"Do you wish to make any statement or to give evidence on oath? you are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make any statement or to give evidence on oath.

The accused declined to call any witnesses.

"I certify that the foregoing Summary of Evidence consisting of four(4) pages, was taken down by me in the presence of the accused, and that RP 4(c)(d)(e)(f) and (g) have been complied with."

In the Field
3 May 1945

A. Gusen Capt.
(A Gusen)Capt
4 Cdn Armd Bde Wksp RCEME

LIST OF WITNESSES.

For the Prosecusion

(1)	H-17026 Sjt Reekie M W	No 13 Cdn Pro Coy	Cdn Provost Corps
(2)	Bernhardt Strahl	37 Lingenstrasse	Meppen
(3)	Hermann Kliene	45 Lingenstrasse	Meppen
(4)	Anni Strahl	37 Lingenstrasse	Meppen
(5)	K- 62076 Cfn Thomas AR	4 Cdn Armd Bde Wksp RCEME	

For the Defence

N I L

LIST OF EXHIBITS

Exhibit	"A"	Black Beret
Exhibit	"B"	Three fired .45 cal rimless casings and one live round .45 cal rimless cartridge.
Exhibit	"C"	Statement of B- 58523 Cfn Smith R W
Exhibit	"D"	Cigarettes and cigarette carton
Exhibit	"E"	.45 cal Automatic pistol

Exhibit X

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B 58523	Cfn	Smith R W	5 Cdn Armd Bde Wksp RCEME

1. The following is a fair and true summary of the entries in the regimental and squadron, battery or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet.
The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940

* The numbers herein stated should correspond with the number of entries in the conduct sheets, synonymous being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For AWL AA Sec 15(1) -	2 times	3 times
For offence under AA Sec 40 -	nil times	3 times
For offence under AA Sec 10(3) -	Nil times	1 times
For	times	times
For	times	times

~~XXXX

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. B58523 Rank Gfn Name Smith R W of 4 CAB Wksp Regiment (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or status of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or under of the dispensing authority	Punishment remitted.
NIL	NIL	NI L	NIL	NIL

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 2nd day of May 1945

(R E LANE) MAJOR
OFFICER COMMANDING

13) [illegible]

In the rank of ..... years

In the rank of ..... years

In the rank of ..... years

(Insert note—If any matter in any of the above paragraphs carried be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph(s) concerned amended accordingly.)

No. B58523 Name SMITH, R W | Sqn., Battery, or Company | Corps | Date of enlistment 9 Feb 42 | R.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.B. 122) 100M—11-40 (3/21) H.Q. 1773-44-18

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
	Sheet destroyed 9 Aug 42 Last xxxx entry Nil Cases of Drunkeness-					Nil			
Field	20Oct 43	Pte		(1) AASec 15(1) WOAS AWL enroute from 11 CIB WS to 1 CORU from 2359 hrs 20 Oct 43 until apprehended by the CPC in London at 2030 hrs 9 Nov 43 (Absent 20 days 20 hrs 31 mins)	Documentary				
Field	9 Nov 43	Pte		(2) AA Sec 40 Conduct to the prejudice of good order and military discipline in that he WOAS did make a false statement to a member of the CPC	Documentary				
Field	9 Nov	Pte		(3. AA Sec 40 Conduct to the prejudice of good order and military	Documentary				

PTO

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Conduct in that he WOAS at 2030 hrs when Appr hended by the CPC was found to be in possession of a false pass					
Field	9 Nov 43	Pte		(4) AA Sec 40 Conduct to the prejudice of good order and military conduct in that he WOAS did attempt to excape military custoday at 2100 hrs 9 Nov 43 at HQ No 6 CPC	Documentary	Awarded 28 days detention with forf of pay FR&I 149(2)	13.Nov. 43	Major S E Lewis	Forfs 21 days pay under FR&I 149 (1)(a) Forfs 28 days pay under FR&I 149(2) Total forf 49 days pay.

B58523 SMITH R W

No. Name | Sqn., Battery, or Company | Corps | Date of enlistment 9 Feb 42 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.B. 122) 100M—11-40 (3025) H.Q. 1773-45-18

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	8 Jan 44	Pte		(1) AA Sec 15(3) WOAS was out of bounds without a pass in that he was apprehended in London Eng at 2215 hrs 8 Jan 44 (2) AA Sec 10(3) Resisting an escort whose duty it was to have him in charge in the he WOAs at London at 2215 hrs 8.1.44 after being placed under arrest started to make a break and whilst struggling kicked Police Constable Holmes on the leg	Documentary Documentary PTO	Awarded 14 days FP wit forf of Pay FR&I 149(1)b	14.1.43	Major S B Lewis.	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	22.1.44	Pte		Sec 15(1)AA WOAS AWL whilst undergoing Fd Pun from 1800 hrs 22.1.44 until 2315 hrs 11.Feb 44. (Absent 20 dys 5 hrs 15 mins	Documentary	28 dys FD Pun (Close Arrest 28 dys Frt pay 21 autb forft pay	14.2.44	F M Hearn Lt-col	
Field	30.9.44	L/C		AWL from 0800 hrs 30.9.44 to 1505 hrs 30 sep 44 AA 15(1) Absent 7 hrs 5 mins)	Sgt Worne N L CPorticous	Reverts to permanent rk of Pte	1.10.44	Maj LL Morell	1 dys auto forf of pay FR&I 149(1)(a)
Field	7.11.44	Cfn		AA 15(1) AWL from 1330 7.11.44 to 1630 hrs 9.11.44 (absent 2 dys 3 hrs)	Documentary GSMBrodwin GE	Forfs 2 dys Pay	10.11.44	Maj L L Morell	Auto forf of 3 days pay.

EXHIBIT Y

CERTIFIED TRUE COPY

(R E LANE) MAJ OC
4 CDN ARMD BDE WKSP
RCEME

X-151

PTE SMITH R.W.

L-1661 Pte. Smith, R.W.
17 Cdn Gen Hosp

X-151

Correspondence to be PINNED here.

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 9th day of January, 1943

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN REINFORCEMENT UNITS, CDN ARMY OVERSEAS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer,]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

*[I am unable to appoint—

*(1. Three Officers to form the Court.]

*(2. A Field Officer as President.)

*[for the following reasons, namely:—]

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	A. Webster (RCE)	No. 1 Cdn Eng Reinf Unit

Members.

Rank.	Name.	Regiment.
A Major	from	No. 17 Cdn Gen Hosp
A Captain	from	No. 17 Cdn Gen Hosp
A Captain	from Waiting Member	No. 17 Cdn Gen Hosp

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Officer Commanding Cdn Reinforcement Units, Convening Officer.

2

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
L-1661 PTE. SMITH, R. W. No. 17 Cdn General Hospital.	First Charge A.A. sec 15(1)	Guilty	Guilty 60 days detention 12 Jan 43	Confirmed [illegible] Brig
	See charge sheet attached.			

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer to be recorded on separate sheet if necessary) :—

(*Signed*) [illegible] Brigadier (*Signed*) [illegible]
Commanding Cdn Reinforcement Units, *Major* RCS
Convening Officer (*c*) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

3

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 12th day of January 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*~~(3. The interpreter)~~
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 12 day of January 1943.

[illegible] Major RCS
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have ~~been~~ complied with.

Signed this 12 day of January 1943.

[illegible] Major RCS
President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 13 day of Jan 1943

[illegible] Brig
Confirming Officer.

Promulgated and extracts taken in the case of NO. 17 CANADIAN GENERAL HOSPITAL R.C.A.M.C. (C.A.)

(*a*) (Dated) 15 Jan 43 (Signed) [illegible] Capt

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

No. 47767/1937 20 M. 5/41 K.J.L./1937 Gp. 998.3

Whereas by order dated 9th January 1943 the undersigned, an officer in command of Canadian Reinforcement Units, Canadian Army Overseas convened a Field General Court Martial to try L-1661 Pte. Smith, R.W., Saskatoon Light Infantry while a patient at No. 17 Canadian General Hospital, R.C.A.M.C. to consist of the officers appointed or detailed hereunder, namely

	Major A. Webster		
	A Major		
Waiting Member	A Captain	from	No. 1 Cdn Eng Reinf Unit
	A Captain	from	No. 17 Cdn Gen Hosp
		from	No. 17 Cdn Gen Hosp
			No. 17 Cdn Gen Hosp

And whereas it appears to me that a Captain from No. 17 Cdn Gen Hosp is not available to act as a member of the said Field General Court Martial.

Now therefore I do order that a Major from No. 17 Cdn Gen Hospital be detailed to act as a member of the said Field General Court Martial in the place and stead of the said Captain from No. 17 Cdn Gen Hospital.

Farnborough, Hants.
12 January, 1943

.....Brigadier
Commanding Cdn Reinforcement Units.

CHARGE SHEET

The accused, L-1661 Pte. Smith, R.W., Saskatoon Light Infantry, a soldier of the Canadian Army Overseas, while a patient in No. 17 Canadian General Hospital, R.C.A.M.C., is charged with

First Charge
Sec. 15 (1)
Army Act

BEING ABSENT WITHOUT LEAVE

in that he

at Pinewood, Berks., on the 24 Dec 42, at 2100 hours, did absent himself without leave until 1750 hours, 5 Jan 43. (absent 11 days, 20 hours, 50 minutes)

(C.P. Gaboury) Colonel, R.C.A.M.C.
O.C., No. 17 Canadian General Hospital.

Pinewood, Berks.,
6th Jan., 1943.

To be tried by Field General Court Martial

[illegible]
Commanding Can Reinforcement Units
Convening Officer

Farnborough, Hants.
This 9th day of Jan 43.

No. 17 CANADIAN GENERAL HOSPITAL
R.C.A.M.C. (C.A.)

12 Jan 43.

This is to certify that L-1661 Pte. Smith, R.W., Saskatoon Light Infantry, is fit to undergo trial by Field General Court Martial.

A.Y. Brown Major
Medical Officer

PROCEEDINGS
HELD AT 17 Con
ON THE 12 DA

The accused 6.1661. Pte. Smith. R.W. COURT-MARTIAL

The order convening the Court and charge sheet were received on 19 43
the Court who satisfied themselves as provided by Aldershot Light Infantry

The accused is brought before the Court
The Medical Certificate is laid before the Court, signed before
President and attached to the proceedings.
The order convening the Court is read by the President and the
accused having no objection to the President or any member of the
Court, the Court is duly sworn.

The following constitute the Court:

President ..Major. A. Webster.....Unit ..No 1. C.E.R.U.

Members ..Major. J.C. Rathwell.....Unit 17th Bn. Hon. R.C.A.M.C.

..Major..E. Morin.....Unit 17th Bn. Hon. R.C.A.M.C.

The officers are under instruction are duly sworn.

Prosecutor ....Major. H.S. Talbot.....Unit 17th Bn. Hon. R.C.A.M.C.

~~An Defending Officer~~ .....~~Unit~~ .....

The charge sheet is signed by the President and the accused is
arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is
complied with.
The accused does not desire to make a statement in reference
to the charge(s).
The Summary of Evidence is read, signed by the President and
attached to the Proceedings.
The Prosecutor is sworn and addresses ~~the~~ Arts 296 and 297 K.R.
The Court complies with R.P. 46(3).

Pursuant to R.P.37 the accused

(a) makes a statement in extenuation of punishment
(b) ~~calls witnesses~~ ~~as to character or~~
(c) ~~calls witnesses in extenuation of punishment~~
(d) addresses the Court ~~by his Defending Officer~~
(e) ~~or~~ in person.

The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE AND ADDRESS
OF ACCUSED OR HIS DEFENDING OFFICER

I was up in No. 7 Can. Gen. Hosp. in Birmingham & I
applied to the nursing Sister in charge of the ward in
regard to leave - she told me that she could ask the
M.O. in charge of the ward. Later she told me that I
would quite probably be getting my leave. At that
time I wrote to my wife telling her I was coming home

(To be signed by the President and attached to A.F.A.) (over)

PROCEEDINGS OF A FIELD GENERAL COURT-MARTIAL
HELD AT 17th Can. Gen Hospital
ON THE 12th DAY OF January 1943

The accused L.16611 Pte. Smith. R.W. ..... Unit Saskatoon Light Infantry

The order convening the Court and charge sheet are laid before the Court who satisfied themselves as provided by Rs.P. 22 & 23.

The accused is brought before the Court
The Medical Certificate is laid before the Court, signed by the President and attached to the proceedings.
The order convening the Court is read by the President and the accused having no objection to the President or any member of the Court, the Court is duly sworn.

The following constitute the Court:

President ..Major. A. Webster ..... Unit No. 1. C.A.R.U.

Members ..Major. J.S. Rothwell ..... Unit 17th Can Gen Hosp R.C.A.M.C.

..Major. E. Morin ..... Unit 17th Can Gen Hosp R.C.A.M.C.

The officers under instruction are duly sworn.

Prosecutor .... Major. H.A. Talbot ..... Unit 17th Can Gen Hosp. R.C.A.M.C.

~~An Defending Officer ..... Units .....~~

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s).
The Summary of Evidence is read, signed by the President and attached to the Proceedings.
The Prosecutor is sworn and produces AFB 296 and NIL 6.
The Court complies with R.P. 46(B)

Pursuant to R.P.37 THE ACCUSED

(a) makes a statement in mitigation of punishment
~~(b) calls witnesses as to character or~~
(c) calls witnesses in mitigation of punishment
~~(d) addresses the Court or his Defending Officer~~
~~(e) or~~ in person.

The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE AND ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER

I was up in No. 7 Can. Gen. Hosp. in Birmingham & I applied to the Nursing Sister in charge of the ward in regard to leave - she told me that she would ask the M.O. in charge of the ward. Later she told me that I would quite probably be getting my leave. At that time I wrote to my wife telling her I was coming home

(To be signed by the President and attached to A.F.A.) (over)

for leave the previous Christmas I had been on duty. Owing to circumstances that I knew nothing about I was transferred from No. 7 General to No. 17 General Hospital, directly I got here I applied for leave again & was told that the O.C. Hospital here could not give me leave it would have to come from London. Later I was told that I couldn't have leave & so I went absent without leave as I felt badly about not getting leave at Christmas.

[illegible]
Major R.C.

SUMMARY OF EVIDENCE

in the case of

No. L/1661 Pte. SMITH, R.W., Saskatoon Light Infantry, a soldier of the Canadian Army Overseas.

Charge: Absence without leave.

THE C.O. HAS DIRECTED THAT THE EVIDENCE BE TAKEN ON OATH.

No. D-98675 S/Sgt. Chevrier, W.E., No. 17 Canadian General Hospital, RCAMC, is duly sworn as shorthand writer.

1st Witness:

No. D-61421 Sgt. (A/S/Sgt.) Pineault, R., No. 17 Canadian General Hospital, RCAMC, having been duly sworn, states:

"On the 24 Dec 42, I was night wardmaster, and at 2100 hours, as usual, I went around the wards to check the patients. I found that Pte. Smith, the accused, having a pass expiring at 2100 hours that night, was not back. I reported that he was absent without leave, and submitted my report to the day wardmaster the following morning. During the following nights, I noted that he was not present, and I reported accordingly. I was on night duty until the 30 Dec 42. He was still absent when I was on duty during the following days."

R. Pineault A/Sgt
(R. Pineault) A/S/Sgt.

THE ACCUSED DECLINES TO CROSS EXAMINE THE WITNESS.

2nd Witness:

No. D-133089 Pte. (A/Sgt.) Levert, R., No. 17 Canadian General Hospital, RCAMC, having been duly sworn, states:

"On the 24 Dec 42, I was on night duty with S/Sgt. Pineault. At 2100 hours when we checked our patients, we discovered that Pte. Smith, the accused, was absent. During all the time that he was absent without leave, we checked to see if he had returned, but he had not. Yesterday, on the 5 Jan 43, at 1750 hours, I received a call from the Admission and Discharge room to the effect that Pte. Smith had reported there. I went to his ward and found that Pte. Smith had returned. He was sober and properly dressed. I reported this to the Senior Wardmaster.

R. Levert
(R. Levert) A/Sgt.

THE ACCUSED DECLINES TO CROSS EXAMINE THE WITNESS.

3rd Witness:

No. D-133080 Pte. Ayotte, C., No. 17 Canadian General Hospital, RCAMC, having been duly sworn, states:

"At 1750 hours on the 5 Jan 43, I was on day duty in Ward 6. Pte. Smith, the accused, arrived at that time and inquired if I was the orderly on duty in the Ward. He gave me his pass and told me that he had been absent without leave for twelve days. I asked him if he was in the right ward, as I was not on duty at the time of the departure of Pte. Smith. Sgt. Levert entered the ward and placed Pte. Smith under open arrest. Pte. Smith was sober and properly dressed on his return".

Ayotte, C.
(C. Ayotte) Pte.

The testimony of this witness was given in French. E-20628 S/Sgt. (A/QMS) Mignault, E.L., No. 17 Canadian General Hospital, RCAMC, having been duly sworn, acted as interpreter. The translation is verified by the Officer taking down the summary.

THE ACCUSED DECLINES TO CROSS EXAMINE THE WITNESS.

QUESTION TO THE ACCUSED - DO YOU WISH TO MAKE ANY STATEMENT OR GIVE EVIDENCE ON OATH? YOU ARE NOT OBLIGED TO SAY ANYTHING OR GIVE EVIDENCE UNLESS YOU WISH TO DO SO, BUT WHATEVER YOU SAY OR ANY EVIDENCE YOU GIVE WILL BE TAKEN DOWN IN WRITING AND MAY BE GIVEN IN EVIDENCE.

ANSWER BY ACCUSED - I HAVE NOTHING TO SAY.

R.W. Smith Pte
(R.W. Smith) Pte.

The Accused does not wish to call any witnesses.

I CERTIFY THAT THE FOREGOING SUMMARY OF EVIDENCE CONSISTING OF TWO PAGES WAS TAKEN DOWN BY ME IN THE PRESENCE OF THE ACCUSED AT PINEWOOD, BERKS., THIS 6TH DAY OF JANUARY, 1943, AND THAT RULES OF PROCEDURE 4 (C), (D), AND (E) WERE COMPLIED WITH.

H.S. Talbot Major RCAMC
(H.S. Talbot) Major, RCAMC
No. 17 Cdn. General Hospital.

Pinewood, Berks.,
6th January, 1943.

H. Talbot
Major RCAMC

No. L 1661 Name SMITH, R.W. Sqn., Battery, or Company "C" Corps SLI(MG). Date of enlistment 13-10-39 G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 172) 175M.-7-41 (7259-20) H.Q. 1772-39-1683

Date of last entry in Company Conduct Sheet 2-1-40 No. and date of last drunk (1) 22-12-39 Period not reckoning towards freedom from extra fine Sheet No. II Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Previous sheet destroyed on completion of 6 months service.									
Bulford	5-5-40	Pte		Sec 9(A) Disobedience & obscene language.	Cpl Hetherington	7 days C.B.	6-5-40	Lt. Marr.	
Chipstead	15-7-40	"		Sec 15(1) AA Absent from Church Parade.	Sgt Brown.	1 days extra picquet	15-7-40	Major Reynolds.	
Ockley	1-10-40	"		Sec 9. Insubordination & disobeying his superior.	Sgt Pollock.	5 days detention.	4-10-40	E. Scott-Dudley, Major.	
Coulsdon	14-3-41	"		Sec 24 AA Making away with by eating, his own rations.	Sgt Ray	Reprimanded.	19-3-41.	Lt.-Col. McLennan.	Forf: 1 days pay.
In the Fd.	18-12-41	Pte		AA Sec 15(1) AWL from 1330 hrs 12 Dec 41 to 1310 hrs 13 Dec 41.	CSM Squires.	Fined 4 days pay: 4 days CB.	17-12-41	Major T.A.Clift.	
Field	1-3-42	Pte		Sec 15 AA. WOAS was AWL from 2230 hrs 1 Mar 42 to 0630 hrs 2 Mar 42 (8 hours).	Cpl Osmond.	2 days forf: pay 5 days C.B.	2 Mar 42	Capt. Thompson	1 days aut: forf: pay.

(P T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	2-4-42	Pte		Sec 40 AA. Pulling onion from garden of Rustington Cove Home.	Sgt Osmond.	5 days C.B. 2 hrs extra.	2 Apr 42	Capt. Thompson.	
Field	16-4-42.	"		Sec 15(1) AA WOAS absent 8 hrs 30 mins.	Sgt Harvey	7days CB	18 Apr 42	Capt Thompson.	
Field	8-5-42	"		Sec 15(3) did walk out beyond bounds fixed by C.O.	Cpl Lention.	7 days C.B.	11 May 42	Capt. Thompson.	
Field	5-8-42	"		WOAS AWL 9 hrs 15 mins.	Sgt Morley	5 days C.B.	6 Aug 42.	Capt Thompson.	
Wadhurst	28-8-42	"		Sec 15(1) AA WOAS AWL 0615 to 1000 hrs 28-8-42. (3 hrs 45 mins).	Sgt Haney.	7 days C.B.	28 Aug 42	Capt. Thompson;	
Field	2749-42	"		Sec 15(1) AA WOAS AWL 7 hrs 31 mins	Sgt Rupert	7 days CB, 5 extra parades	28-9-42	Capt Harry.	1 days forf; pay.
Field	12-10-42	"		AA Sec 40 -WOAS Conduct to the prejudice etc, While on duty at his post he was reading.	Lieut. Robinson.	120 hours detention.	14 Oct 42.	E. Scott-Dudley, Lt.-Col.	

Certified True Copy:-

Captain Adjutant
1 Can. M.G. Rein. Unit C.A.(O)

M.F.B. 355
40/P & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
L 1661	Pte.	SMITH, R.W.	1 C.M.G.R.U. att 17 C.G.H.

1. The following is a fair and true summary of the entries in the Conduct sheets Regimental of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

Within last 12 months		Since enlistment	
For A.A. Sec. 15(1) - 5 times		A.A. Sec. 9 - 2	
For A.A. Sec. 15(3) - 1 times		A.A. Sec. 15(1) - 7	
For A.A. Sec. 40 - 2 times		A.A. Sec. 15(3) - 1 times	
For times		A.A. Sec. 24 - 1 times	
times		A.A. Sec. 40 - 2 times	

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

3. The accused is not under sentence at the present time.

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and nil days in military custody, making a total of nil days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his attestation paper is 24 years.

6. The date of his attestation specified in his attestation paper is 13 Oct 1939.

[illegible] Canadian Forces [illegible] rank of [illegible]

Forces

[illegible] rank [illegible] [illegible] rank of [illegible]

rank x

[illegible] [illegible] Canadian Forces [illegible] rank of [illegible]

Date of promotion

[illegible] years

[illegible] years

[illegible] years

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number [illegible] Rank Pte.

Name SMITH, R.W. of 1 C.M.G.R.U. (att'd 17 CGH) Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
NIL	NIL	NIL	NIL	NIL

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 12 day of Jan [illegible] Captain Adjutant

1 Can. M.G. Rein. Unit C.A.(O

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked [illegible] signed by the president, and annexed to the proceedings.

I, L-1661, Pte. Smith, R.W., Saskatoon Light Infantry, do not desire to have an officer assigned to represent me at my trial by Court Martial.

R W Smith Pte.
(L-1661 Pte. Smith, R.W.)

9 Jan 43.

229 - (Apl.) Smithsonian (6733 74)
USNM Negative

10 - 5 - 426

Correspondence to be PINNED here.

229

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court

On Active Service, this [illegible] day of November, 1940.

Whereas it appears to me, the undersigned, an officer in Command of

[redacted], on active service, that the [redacted] Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*[I am unable to appoint :—

*(1. Three Officers to form the Court.)

*(2. A Field Officer as President.)

*(3. Three Officers having more than one year's service.)

for the following reasons, namely :—]

President.

Rank.	Name.	Regiment.
Major	H.L.Meuser	1 Fd Coy R.C.E.

Members.

Rank.	Name.	Regiment.
Lieut	J.R.O.Counsell,	48 Highrs.
Lieut	H.E.C.Price,	R.C.R.
Lieut	G.M.Davison,	Hast & P.E.R.

(Waiting)

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed [illegible]

Commanding 1 Cdn Div M.G.

Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
B.73374 Corporal SMITH,S. R.C.O.C. att. 48 Highrs.	1 Charge,(A.A.Sec.40) While on Active Service conduct to the prejudice of good order and military discipline,in that he at KINGSWOOD,Surrey, on the 16th day of Oct 40, did conduct himself in a manner unbecoming to an N.C.O.in the presence of private soldiers by starting an argument with B73357 Cpl. Groves,A.E.48 Highrs. with the intention pf starting a fight or disturbance, Not Guilty Not Guilty AHS			
	2 Charge,(A.A.Sec.40) While on Active Service conduct to the prejudice of good order and military discipline, in that he at KINGSWOOD, Surrey,on the 16th day of Oct 40,did use language unbecoming to an N.C.O.in the presence of private soldiers, in that he said to B73357 Cpl Groves,A.E. 48 Highrs."You are a Yellow Prick and have no guts." Not Guilty Not Guilty AHS			

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):— No

(Signed) ..... (Signed) A.H.Mercer Major

Commanding ..... *President.*
Convening Officer (*e*)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 18 day of November 1940, and duly tried the person named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~ Short Hand- Writer
*(4. The officers under instruction)

* Omit if not applicable.

were duly sworn.

Signed this 18 day of November 1940

A.H.Mercer Major
President of the Court Martial.

C. Certificate in case of death sentence.

* See footnote (*b*) on page 769 M.M.I. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison until further orders.)

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this day of 19

Confirming Officer.

Promulgated and extracts taken in the case of

(*a*) (Dated) 4 Dec 1940 (Signed) T. Lawson Capt

Promulgated and extracts taken in the case of

(Dated) ..... (Signed) .....

Promulgated and extracts taken in the case of

(Dated) ..... (Signed) .....

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The Accused, No.B73374 Cpl. SMITH, S., Royal Canadian Ordnance Corps, a soldier of the regular forces, is charged with:

1st Charge

AA.40

"While on Active Service, conduct to the prejudice of good order and military discipline,

In that he, at KINGSWOOD, Surrey, on the 16th day of October, 1940, did conduct himself in a manner unbecoming to an N.C.O. in the presence of private soldiers by starting an argument with B73367 Cpl. Groves, A.E., 48th Highlanders of Canada, C.A.S.F. with the intention of starting a fight or disturbance."

2nd Charge

AA.40

"While on Active Service, conduct to the prejudice of good order and military discipline,

In that he, at KINGSWOOD, Surrey, on the 16th day of October, 1940, did use language unbecoming to an N.C.O. in the presence of private soldiers, in that he said to B.73367 Cpl. Groves, A.E., 48th Highlanders of Canada, C.A.S.F., "You are a yellow prick and have no guts."

W. W. Southam

Lieut.-Col.Cmdg.
48th Highlanders of Canada.

A. Bruce Magee

B.73374 Cpl. SMITH, S.

1st Witness for the Prosecution, B.73357 Cpl. GROVES, A.E., after having been duly sworn states:

Prosecution:

1.Q. Will you tell the Court what happened on the day 16 Oct 40, leading up to the charges as read?
A. On that date about 1430 hrs we had just returned from a coal convoy from ISLEWORTH. We had trouble on the convoy and had been delayed and were late in coming in. On returning we went to Headquarters Company kitchen to get something to eat. While in the kitchen Cpl. Smith came over to me and said, "What is matter with you are you looking for another stripe?" I replied "What do you mean?". The answer he gave was "You know what I mean", and I presumed he was referring to the incident in the morning when I had put Pte. Prue, who had left his vehicle, under open arrest. This started the argument and harsh words were passed from one to the other and I think it would have come to blows, if someone had not stepped between us.

2.Q.Why do you think Cpl. Smith referred to that incident of the morning?
A.Well he told me that Cpl. Smith gave him permission to go and leave his truck to get lunch.

3.Q.What did Smith say to you in the kitchen?
A.What is the matter with you are ~~x~~ you looking for another stripe?

4.Q.You assumed that it was the incident of Pte. Prue that Cpl. Smith was referring to?
A.Yes sir.

5.Q.Did you know that Cpl. Smith had given permission to Pte.Prue to leave?
A. No sir.

6.Q.Did you know that when Cpl. Smith came to you in the kitchen?
A. Yes sir.

7.Q.What happened next?
A.He ~~xix~~ said you know what I mean. Then we argued back and forth for some time, and during the course of the argument he called me ~~an~~ yellow prick and said that I had no guts.

8.Q.Did the argument get rather heated both back and forward?
A.Yes sir.

9.Q.Who were all there in the kitchen?
A.Pte. O'Brien and L/Cpl.Pennycook and most of the men of the convoy.

10.Q.Were they all within earshot?
A. I don't know sir.

Defence:

1.Q.Who do you think were within earshot when those remarks were passed?
A.I don't really know, but I think Pte. O'Brien and Pennycook could have heard.

2.Q.Did you lay the charge against Cpl. Smith?
A.Yes sir.

A Mercier Major

B.73374 Cpl. SMITH, S.

Prosecution:

1.Q.Were you in command of the coal fatigue?
A.I was ~~xxx~~ in charge of the transport section of the coal fatigue, and I believe Cpl. Smith was responsible for seeing that the right weights were put on each truck and for the distribution of the coal.

2.Q.Therefore he did not have any authority over your men?
A.Not of the Transport men.

2nd Witness for the Prosecution, B.73430 L/Cpl. Pennycook, R. having been duly sworn states:

Prosecution:

1.Q.What happened in regard to these charges on 16 Oct 40?
A.We had been on a coal convoy to ISLEWORTH and after we came backall the drivers including myself went to the kitchen for something to eat. We had had some trouble on the convoy in that some of the men had got hold of some drink. I approached Cpl. Smith and said kiddingly "You are a fine one to be in charge of the coal fatigue". He replied," I wasn't in charge of the fatigue, merely there to check the weights. I left him and Cpl. Smith left the kitchen. The next thing I noticed was the sound of voices and arguing for outside, and when I went outside to see what it was all about I saw Cpl Smith and Cpl. Groves arguing. The argument got kind of hot so I stepped in between them to stop a fight.

Court:

1.Q.How much of the argument did you hear?
A.I heard Cpl. Smith call Cpl. Groves a yellow prick, this was all I really heard of the argument as I heard the voices, but did not pay any attention to them until I recognized that it was a hot argument.

Defence:

1.Q.You say that there is no question of drink involved in this case, and that you went up to Smith first and said "You are a fine one to be in charge of a coal fatigue", then there was some sort of explanation by Cpl. Smith, then I am correct in understanding that Cpl. Groves and Cpl Smith went outside the kitchen?
A.I cannot recall that Cpl. Groves was in the kitchen when I was talking to Cpl. Smith.

2.Q.Then the rest of convoy personnel were in the kitchen?
A.Yes sir Pte. O'Brien was next to Cpl. Smith.

3.Q.You heard words from outside?
A.Yes sir.

4.Q.Did something make you think that they were in an argument?
A.The voices were louder than used in usual conversation, so I went outside.

5.Q.The two men were arguming?
A.Yes sir.

6.Q.Did you hear Cpl. Smith call Cpl. Groves a yellow prick and say that he did not have any guts?
A.Yes sir.

7.Q.Had Cpl. Groves call Cpl. Smith anything back?
A.I don't remember anything else.

8.Q.Why do you not remember anything else when you remember that little incident?
A.Because I stepped in at that time.

W.Means Major

B.73374 Cpl. SMITH, S:

9. Q.Who else was near them?
A.Pte. O'Brien was the only one within earshot.

10. Q.Was there any one else in the kitchen?
A.There were some other soldiers in the kitchen about 15 or 20 feet away, but they were not as near as O'Brien.

11. Q.Do you know who started the argument?
A.I cannot say as I was in the kitchen.

3rd Witness for the Prosecution, B.73551 Pte. O'Brien, G. having been duly sworn states:

Prosecution:
1.Q.What do you know about 16 Oct 40 in regard to the charges read?.
A.We had just come back from a coal convoy and were getting something to eat and I was talking to either Cpl. Smith or Cpl Groves, I don't remember exactly which one but do know that it was either of them, when the other one of them joined us and Cpl Smith said to Cpl. Groves "What's the matter are you looking for another stripe?" Cpl. Groves answered, "What do you mean?", and they started to argue and talk loud and swear at each other. It was the same language you hear around the fellows all the time so I did not pay any attention to it as swearing is quite common among the men.

Defence:
1. Q.Pte. O'Brien, I gather from your statement that you did not think there was going to be a fight?
A.That is right sir.

2. Q.Did it not occur to you that these were two N.C.O's that were arguing and that it was improper for them to be talking like that?
A.No sir, to me it was just two men arguing, you see it every day in the lines, and don't pay any attention to it.

3. Q.You heard Cpl. Smith asked Cpl Groves if he was looking for another stripe, did that not strike you that it was none of Smith's business?

Defence: I Object

Court: Objection sustained.

1st Witness for the Defence, Character Witness, B.73302 Sgt. Stowell, S., having been duly sworn states:

Defence:
1.Q. What can you tell the Court as to the character of the Accused? General ability, etc.?
A.I have known the Accused in a personal waysince November 1939 and in my opinion he is a good soldier. I have seen him doing fatigue work as he has been employed for some time and general duty and have always known him to be a good soldier.

2.Q. Did you have a chance to see him considerably?

H.H. Mercer Maj

B.73374 Cpl. SMITH, S.

A. Quite considerably sir.

3. Q. You belong to transport and he was the Shoemaker?
A. Yes sir, but he is no longer employed as Shoemaker and is employed on fatigues around Headquarters Company.

4. Q. Is he of a quarrelsome nature?
a. No sir, properly handled he is a good soldier.

B.73374 Cpl. SMITH, S. having been duly sworn, appears as a Witness on his own behalf as 2nd witness for Defence:

Defence:

1. Q. Cpl. Smith, on the 16 Oct 40 you came back from the coal convoy, is that right?
A. Yes sir.

2. Q. What happened first when you were in having your meal?
A. I was in talking to L/Cpl Pennycook when he referred to me as being a poor one to be in charge of thecoal fatigue. I explained to him that I had not been in charge of the coal fatigue, but had been along to check the weights and look after the distribution of the coal. I then left the kitchen to find Cpl. Groves and find out why he had placed Pte. Prue under open arrest, when I had given Prue permission to leave his truck. The only explanation I could find myself is that he (Cpl. Groves) wanted to show me that he had all the authority on the convoy.

3. Q. Did you have any other reason for looking up Cpl.Groves?
A. No sir, I merely wanted to have an explanation why he had placed Prue under open arrest, when Prue had got permission off me, seeing as I was the only N.C.O. handy to give him permission.

4. Q. Who was around when the argument commenced?
A. Just the witnesses, L/Cpl Pennycook and Pte. O'Brien.

5. Q. As far as you know, no one else was within hearing?
A. Yes sir that is right.

6. Q. What is this all about about you taking off your respirator and steel hat and saying "If you are looking for trouble this is the place to get it?"
A. I had my respirator with steel hat around it on my shoulder, and just took it off as it was heavy and I was eating.

7. Q. This was during the argument?
A. Yes sir.

8. Q. The argument was getting rather heated?
A. Yes sir.

9. Q. It would have led to a fight?
A. If Cpl. Groves had taken offence at the words called at him, as I have not any doubt but he would, it would have led to a fight.

J.P. Brown Major

B.73374 Cpl. SMITH, S.

10. Q. Did Cpl. Groves swear at you?
A. He swore at me as much as I swore at him.

Prosecution:

1. Q. Who detailed this fatigue to go away?
A. The Company Orderly Sergeant sir.

2. Q. You were in charge of the proper loading of the trucks?
A. Yes sir.

3. Q. Did you normally have any authority over our men on these jobs?
A. I really don't have a clear idea as to what is my job, but I was put in charge of the coal and wood supply for the building for the winter, pending my transfer back to Ordnance, and I naturally thought I was in charge of the Coal Fatigue as Major Armstrong had made me responsible for the fuel supply.

4. Q. What was Cpl. Groves doing?
A. He was in charge of the transport men, as transport corporal.

5. Q. In Pte. O'Brien's evidence he brought out the matter of your remark to Groves regarding another stripe, did you make that remark?
A. Yes sir.

6. Q. Was that of any particular interest to you?
A. It is a remark passed everyday between N.C.O's and N.C.O's and men to men and is meant more or less as a rib.

7. Q. In your evidence you did not say anything about the second charge against you? Did you say these words?
A. Yes sir.

Address by the Prosecution:

In the course of the evidence brought out by Cpl Groves, L/Cpl Pennycook, and Pte. O'Brien it appears that there had been some discussion and dissension in the morning prior to the time the charge was laid, between the two corporals, due to Groves action in putting a man under open arrest. The accused does not seem to be sure who was incharge of the convoy, but in my opinion Cpl. Groves was in charge of the convoy. While the Accused admits to making a jibe about a stripe, he said it was a comment place remark, but it strikes me he was making an out of place remark as the promotion of 48th Highlander N.C.O.'s has nothing to do with attached personnel.

B.73376 Cpl. SMITH, S.

Whwn I asked the accused if he had used the language as laid out in the second charge, he admitted that he had, yet he pleaded not guilety to that charge.

Rebuttal by the Defence:

I shall deal with the comments on the second charge first. The fact that the Accused admitted saying these words is only a little part of the charge and does not mean that he is guilty of the charge. I might also comment that Cpl. Smith is completely innocent of all the charges laid against him and I order that ~~him~~ the Court so find him. I continue by saying that practically nothing set out in the charges has been proven. The evidence brought out that the Statement to another N.C.O. "What is the matter with you, are you looking for another stripe?", which led to words back and forth, and it might have been either one that was charged, and that the remark that this statement is used both in jest and jibe by other ranks quite commonly, while I don't agree with thist statement completely I do know that such a remark is passed among the men on occasion. The last part of the charge was started on the convoy when Cpl. Groves put Pte. Prue under Open arrest for being absent from his vehicle, while Cpl. Smith had given this man permission to be absent. I think that Cpl. Smith did have a right to be a little peeved in that it is obvious that the other N.C.O was 'throwing his weight around'.

2nd Charge - On this charge it states that the unbecoming language to an N.C.O. was used in front of private soldiers, might I refer the Court to Page 458 of the M.M.L. the first note under section 40. The evidence has brought out that there was only one private soldier present and that he

B.73374 Cpl. SMITH, S.

remembers these words rather poorly and therefore the remarks and actions are not prejudicial to good order or military discipline and further that the private soldier did not pay any attention to these remarks.
To close I would say that I contend that there has been no evidence brought out that the action can be classed under that section or that the accused could be found guilty of either charge.

48TH HIGHLANDERS OF CANADA

18 Nov 40.

B.73374 Cpl. SMITH, S.

I hereby certify that the above-mentioned N.C.O. is FIT to undergo trial by Court Martial.

Major, R.C.A.M.C.
Medical Officer 48th Highrs' of Canada.

Summary of EVIDENCE in the case of

B.73374 Cpl. SMITH, S.(RCOC)
Att. 48th Highlanders of Canada

In accordance with the direction of the Commanding Officer the Summary of Evidence is taken on oath.

1st Witness for the Prosecution

B.73430 L/Cpl. Pennycook, R. Having been duly sworn states:

"On 16 Oct 40 about 1430hours we had just returned from a coal convoy from ISLEWORTH. We had trouble on the convoy and we were delayed. Some of our men on the convoy had found spirits and had been drinking. On returning we went to Headquarters Company kitchen at Kingswood Court and I said to the Accused "You're a fine one to be in charge of the coal fatigue." The Accused replied, "I am not in charge, but am only here to see that the trucks are not overloaded." The Accused then left the kitchen and I heard an argument. I went outside then and found that the argument was between Corporal Groves and the Accused. I heard the Accused say to Cpl. Groves "You are a yellow prick and have no guts." As a fist fight x looked almost certain to start, I stepped in between the two to stop it."

.....L/Cpl.
(B73430 L/Cpl R.Pennycook)

The Accused declines to cross-examine the witness.

2nd Witness for the Prosecution

B.73357 Cpl. Groves, A.E., having been duly sworn states:

"On 16 Oct 40 at approximately 1300 hrs., while in the kitchen of Kingswood Court, Corporal Smith came over to me and said, "What is the matter with you, are you looking for another stripe?" I replied, "What do you mean?" the answerx was "You know what I mean". I presumed it was referring to Pte. Prue whom I had placed under open arrest for disobeying an order and being found in a Public House improperly dressed, earlier in the day. The argument led on to heated words, the Accused swore at me and accused me of not having any guts and being a yellow prick, and used names and words and language unbecoming a soldier. It almost came to blows, but was stopped by some of the men of the company who had been there before the argument started. During the argument the Accused took off his respirator and tin hat and said, "If you are looking for trouble this is the place to come for it."

Cross-examined by the Accused:

Major

Summary of Evidence - B.73374 Cpl. Smith, S.

Q. Did you swear at me at all?
A. No I did not.

Albert E. Groves Cpl.
(B73357 Cpl.Albert E. Groves)

3rd Witness for
the Prosecution

B.73551 Pte. O'Brien,G., having been duly sworn states:

"On 16 Oct 40 we were in Headquarters Company kitchen at Kingswood Court. I was talking to either the Accused or Corparal Groves at the time, I don't remember which one, as at that time I did not pay much attention to it. We were merely talking about the coal convoy. The Accused said to Cpl Groves "What is the matter with you are you looking for another stripe?" Cpl. Groves replied, "No, why?". The Accused said"The way you are acting you are looking for another stripe." The argument started and words and names were being used by both the Accused and Cpl.Groves. The argument lasted for about 5 minutes or so and got hotter, but there were not blows struck."

Cross-examined by the Accused:

Q. Do you remember if Groves swore at me or not?
A. Yes he did, you were both swearing back and forth. You hear it all the time, and don't pay any particular attention to it.

G. O'Brien Pte.
(B.73551 Pte. G.O'Brien)

The Accused, having been duly cautioned in accordance with the Rules of Procedure, 4(e), has nothing to state.

S. Smith Cpl.
(B.73374 Cpl. S.Smith)

Taken down by me in the presence and hearing of the Accused this thirty-first day of October, 1940, in the field, Rules of Procedure 4 (c) (d) (e) and (f) having been complied with.

T. Warren Capt.
(T.Warren) Captain)

W. Reuse Major

mit 73 F. Gm. P. 4541
10-8-231

10-8-231

A 1K Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for ~~General and~~ District Courts-Martial.

Proceedings of a District Court-Martial held at Bordon on the 12th. day of September 19 40 by order of Major-General F.J.Montague,C.B.E.,D.S.O.,M.C.,V.D. Commanding Canadian Military Headquarters, London, dated the 9 day of September 19 40

President.

Lt.Col. L.Keene

Members.

Major, G.H. Walker, 1 Cdn. General Holding Unit

Major, W.S. Davidson, 1 Cdn. M.G. Holding Unit

Trial of* , Judge Advocate.

F.4541 Gnr. Seldon Francis Smith.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Convening Officer is not present.~~ ~~He is not present.~~

~~, being senior to the present member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lieut. F.J. Cross 1 C.A.H.U. C.A.S.F.

Counsel‡ or defending officer† Major S.F. Gemmill 1CAMU CASF

At 1040 o'clock the Trial commences.

The order convening the Court is read, and is marked signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No Sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q4276 Wt.W3453/P.78. 25,000 pads. 6/40. E. & E., Ltd. G462/211. Forms A 9/28.

The President, members and judge-advocate are duly sworn.

The following officers under instruction are duly sworn.

Charge-Sheet.

Instruction.
If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read ? *Question to the accused.*

Guilty Sir. *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read ? *Question.*

Guilty Sir. *Answer.*

~~Are you guilty or not guilty of the third charge against you, which you have heard read~~ *Question.*

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read~~ *Question.*

Answer.

The accused having pleaded Guilty to all charges, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

B2

CHARGE SHEET.

The accused, No. P 4541 Gnr. Smith, F.S.
No.1 Artillery Holding Unit, C.A.S.F., a soldier of the Canadian Active Service Force, is charged with;

FIRST CHARGE
SEC. 15 (1)
ARMY ACT.

Absenting Himself without leave, in that he at Halifax, Nova Scotia, on 25 August, 1940, at 0200 hours, absented himself from R.C.A. District Establishment until he surrendered to No. 3 Provost Company on board H.M.T.S. " Georgic" at 1030 hours, on 28 August, 1940.

SECOND CHARGE
SEC. 40.
ARMY ACT.

Conduct to the prejudice of good order and military discipline, in that he did at Halifax, Nova Scotia, Canada, at 1530 hours, on 24 August, 1940, board H.M.T.S. "Georgic" without permission.

(J.Roberts) Lt. Col.
Commanding
No.1 Cdn. Artillery Holding Unit, C.A.S.F.

Bordon,
7 September, 1940

B2

C

Proceedings on Plea of Not Guilty.

*Instruction. (See R. P. 39 (A))

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer.

The prosecutor makes an opening address [hands in a written address which is read, marked , signed by the President, and attached to the proceedings.]

The prosecutor proceeds to call witnesses.

First witness for prosecution.

being duly sworn, is examined by the prosecutor.

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer.

Question. Do you intend to call any other witness in your defence?

Answer.

Question. Is he a witness as to character only? *Answer.*

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says†

[hands in a written address which is read, marked , signed by the President and attached to the proceedings.]

Instruction.

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court above.)

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*The Court having been reopened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again:

The accused P.4541 Pnr. Seldon Francis SMITH is found guilty of 1.Absence without Leave A.A. Sec. 12 para.1a
2.Conduct to the Prejudice of good Order and Military Discipline A.A. Sec. 40

†The summary (or abstract) of evidence is read, marked signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment ?

Answer. The accused in mitigation of punishment says :—

I am twenty years old sir; I have had no Militia Service but joined the permanent force in August 1938. I was stationed in South Barracks, Halifax; I attended the Instructional Depot there and took a Course in Gunnery and also practical work in Gunnery. After the courses I did guards and fatigues which were quite frequent and tedious.

I absented myself because I wanted to see action, and this did not seem possible as my Unit was not going overseas. My transfer to a Unit proceeding overseas was evidently refused so I went on my own accord.

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

Do you wish to give evidence yourself or to call any witnesses as to character ?

Question to the accused.

There is no evidence available.

Answer.

Evidence as to character.

12 Sept.40.

I certify that I have examined P.4541 - GNR. SMITH, S.F.

on this date and he is fit to undergo Trial by Court-Martial.

A.A.Overholt

(A.A.Overholt) Captain, M.C.
No.1 C.A.H.U., C.A.S.F.

Louis Deane Hon

SUMMARY of EVIDENCE

in the case of

P 4641 GUNNER SMITH, S.P.

No.1 Canadian Artillery Holding Unit. C.A.S.F.

C.C.1

SUMMARY of EVIDENCE in the case of :-
No. P 4541 Gunner SMITH, SELDON FRANCIS. No.1 Cdn. Artillery Holding Unit.C.A.S.F.

FIRST WITNESS FOR THE PROSECUTION.

Major JAMES BARTY MORISON, of THE CAMERONS of CANADA, C.A.S.F., having been duly sworn, states:

" I was on board His Majesty's Troop Ship 'Georgic' from the 22 day of August 1940 until 5 September 1940. I was proceeding to Canadian Military Hedaquarters, London, to report as Conducting Officer to conduct casualties to Canada. I had no duties on on board H.M.T.S. 'Georgic'. The 'Georgic' was one of His Majesty's transport ships for the purpose of carrying troops from Canada to England."

Signed: J. B. Morison Major

The Accused declines to cross-examine this witness.

STATEMENT OF THE ACCUSED.

The Accused, having been duly cautioned, makes the following voluntary statement:-

"I am a gunner of R.C.A.DistrictEstablishment, M.D. 6 at Halifax, Nova Scotia.

I left barracks at approximately 1500 hours Saturday 24 August 1940, and went down to the docks at Halifax and went aboard ship at approximately 1530 hours. I mingled with the rest ofnthe troops on the ship and continued to do so until 1030 hours on 28 August1940 when I surrendered myself to a member of the Privost Company on board ship. I was taken before the O.C. Ship. I was placed under close arrest with escort and I worked in the galley at various jobs until Wednesday September 4th when I was taken ashore. I was turned over to a Staff Officer in Scotland who turned us over to Major Morison and I was placed under escort and brought by train to Bordon. I did not know the name of the ship which I boarded until about three hours after I boarded it when I discovered it was the 'Georgic' but I did know it was a troop ship and I had no permission to board it. I had a pass from my unit until 0200 hours on Sunday August 25th."

Signed: S. F. Smith

Certified that R.P.4 (C)(D) & (E) have been complied with.

Taken down at Bordon, Hants, in the presence and hearing of the Accused this 7th day of September 1940.

(P.J.Cross) Lieut.
No.1 Cdn. Artillery Holding Unit. C.A.S.F.

Lieut Reese 1461

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial	Date and place of Trial or summary award or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this eighth day of September, 1940.

No Records available.

(A.M.Parker) Lieut.
Officer i/c Records
No.1 Cdn. Arty. Holding Unit, C.A.S.F.

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

P 4541 GNR. SMITH, S.F. of the No.1 Cdn. Artillery Holding Unit, C.A.S.F.

Note.—The Regimental Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be annexed to the proceedings.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

15th Para. 664, K.R. 1941.

*The numbers herein stated should correspond with the number of figures in the Conduct sheets, punishment being given in the exact serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

	*Within last 12 months.	*Since Enlistment.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

Instructions.—If the charge is for drunkenness the entries for drunkenness must be stated separately and fully.

Number of instances of gallantry or distinguished conduct.

or,

There are no entries in the Conduct sheets of the accused.

2. The accused has not been previously convicted.

or,

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

12

3. The accused is not under sentence at the present time,

or,

The accused at the present time is under sentence for ..... beginning on the ..... day of .....

4. The accused has been in confinement, awaiting trial on the present charges

for ..... days in Civil Custody,

and ..... days in Military Custody.

Total ..... days.

Of which ..... days were spent in hospital.

5. The present age of the accused according to his $\frac{\text{record of service}}{\text{attestation paper}}$ is .....

6. The date of his $\frac{\text{commission}}{\text{attestation}}$ specified in his $\frac{\text{record of service}}{\text{attestation paper}}$ is .....

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is .....

8. The accused is entitled to deferred pay or gratuity in respect of ..... years' service.

9. The accused is entitled to reckon ..... years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward [*or* is in possession of *or* entitled to .....]

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of .....

12. (*In the case of an officer.*) The accused holds in the army the rank of ....., dated ....., and in his regiment (*or* corps *or* department) the rank of ..... dated .....

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

		Date of Promotion
In the rank of	years,	.....
In the rank of	years,	.....
In the rank of	years,	.....

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ....., signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section ..... of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name .....

NOTE.—*A verbatim extract from the regimental books, stating these convictions and dispensations with, must be inserted.*

Description of Court by which tried, or status of officer disposing of the charge or dispensing with Trial	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with	Finding or Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority	Punishment remitted

(*Continued overleaf.*)

No. P4641 Name SMITH, P.S. Sqn., Battery, or Company 1 CAMU. Corps Date of enlistment G.C. Badges Service or Proficiency Pay

M.F.M. 6
A.F.B. 122
(Revised—K.R. (1940))
H.Q. 1772-45-18

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

P.T.O.

E

Finding.*

"To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused

Proceedings on Conviction *before Sentence.*

**When the Court is already open this sentence will be struck out.*

Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.*

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked , signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.*

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.*

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.*

Cross-examined by the accused.

[Instruction.—If by reason of the report of the service of the accused in a disadvantageous light, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor should call the attention of the Court to the fact, and the Court should enquire into the nature and amount of that additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.*

The Court is closed for the consideration of the sentence.

F

Sentence.

Sentence.

The Court sentence the accused

P.4541 Gnr. Smith, Seldon Francis - No.1 Arty.Holding Unit to undergo detention for a period of thirty-five (35) days.

Lord Keefe
D 162
Guillemont Barracks
Cove, Hants Eng
12 Sept 1940

I confirm the above finding and Sentence but remit 14 days of the detention awarded

P J Montague

(P. J. Montague) Major-General
Senior Officer
Canadian Military Headquarters.
19 SEP 1940

PROMULGATION

Promulgated and extracts taken at Bordon, Hants.,
this 20 day of September, 1940.

(A.M.Parker) Lieut.,
Officer i/c Records,
No.1 Cdn. Arty. Holding Unit, CASF.

Army Form A 47

A1

COURTS-MARTIAL

Form of Order for the assembly of a ~~General or~~ District Court Martial.

C.M.H.Q. ORDERS BY Major-General P.J.Montague,C.M.G.,D.S.O.,M.C.,V.D.,
Commanding the Canadian Military Headquarters, London,
(Place and Date) 9 September 1940.

The detail of officers as mentioned below will assemble at St.Lucia Bks., Bordon on the 12th day of September 1940 at 1030 hrs for the purpose of trying by a District court-martial the accused ~~xxxxx~~ [persons] named in the margin [and such other person or persons as may be brought before them].*

P.4541 Gnr.Smith,S.F.
P.4640 Gnr.Mahoney,G.J.
P.4605 Gnr.Wilkinson,S.R.
A.32106 Gnr.Read,P.J.
P.4631 Gnr.Davis,R.B.
P.6654 Pte.Gordon,W.T.

PRESIDENT.

Lt.Col. L. Keene is appointed president.†

MEMBERS.

A Major from 1 Cdn.General Holding Unit

A Major from 1 Cdn.M.G. Holding Unit

Note.—The president must be named. The members and the waiting members may be mentioned by rank, or the number and ranks and the unit to which they belong may alone be named.

WAITING MEMBERS.

A Captain from 1 Cdn.Inf.Holding Unit

~~xxxxxxxxxxxx~~

~~xxxxxxxxxxx

List of Witnesses.

TRIAL OF

P.4541 Gnr.Smith, S.F.

Witness for the Prosecution:-

Major James Barty Morrison
Camerons of Canada, C.A.S.F.

Witness for the Defence;-
P.4541 Gnr.Smith, S.F.

P.4640 Gnr. Mahoney, G.J.

Witness for the Prosecution:-
Major James Barty Morrison

Witness for the Defence:-
P.4640 Gnr.Mahoney, G.J.

P.4605 Gnr. Wilkinson, S.R.

Witness for the Prosecution:-
Major James Barty Morrison

Witness for the Defence:-
P.4605 Gnr.Wilkinson,S.R.

A.32106 Gnr. Seed, P.J.

Witness for the Prosecution:-
Major James Barty Morrison

Witness for the Defence:-
A.32106 Gnr. Seed, P.J.

P.4631 Gnr. Davis, R.B.

Witness for the Prosecution:-
Major James Barty Morrison

Witness for the Defence:-
P.4631 Gnr.Davis,R.B.

P.6654 Pte.Gordon,W.T.

Witness for the Defence:-
P.6654 Pte.Gordon,W.T.

PART 11 ORDERS

No. 1 Cdn. Artillery Holding Unit.
R.C.A. C.A.S.F.

No. 98
Bordon, Hants.
21 Sept 40.

Last Part 11 Orders issued No. 97 dated 20 Sept 40.

1. STRENGTH INCREASE.

F 14192 Gnr Gillis, J.A.

(a) T.O.S. from 1st Cdn. Med. Regt. upon conviction and sentence to detention for a period of more than 28 days, by District Court-Martial. Eff: 11 August 40.

(b) T.O.S. from Regiments shown on the effective dates listed beside their names.

P 8366	S/Sjt	Nicholson,	R.	1st. Fd.Rgt.	11 Sept 40
C 10349	L/Bdr	Brown,	R.E.	1st. A.T.R.	17 Sept 40
P 9436	Gnr	Blackler,	E.	1st. Fd.Rgt.	11 Sept 40
B 10093	"	Mongeau,	M.	2nd. Fd.Rgt.	11 Sept 40

2. STRENGTH DECREASE.

B 6131 Gnr Diamond, S.

S.O.S. on transfer to "I" Wing, G.B.D. Eff: 22 Sept 40

3. ATTACHMENT.

(a) Lieut. H.W. Hare
Is attached to 12th. Field Training Regt. for Rations, Quarters and Duty. Effective: 18 Sept 40.

(b) The undermentioned personnel of the O.C.T.U. are attached to this unit for all purposes except duty on the effective dates shown:

P 17114	PSM	Goode, A.M.	(RCR)	18 Sept 40.
P 48722	PSM	LeFond, C.E.	(R22ER)	18 Sept 40.
P 22177	PSM	Lambert, W.P.	(PPCLI)	18 Sept 40.
D 76106	Cpl	Parsons, E.J.	(RMR)	19 Sept 40.

(c) C 41971 Cadet Lloyd, W.G. (O.C.T.U)
Ceases to be attached to this unit(for all purposes except duty) on transfer to R.C.M.P. Badajos Barracks, Aldershot. Effective: 19 Sept 40.

4. HOSPITAL.

(a) The undermentioned C/R's were admitted to No. 15 Gen Hospital on the effective dates shown:

C 10349	A/L/Bdr	Brown,	R.E.	16 Sept 40.	(Sick)
E 10176	Gnr	Trudel,	A.	19 Sept 40.	(Sick)
H 4184	"	Sand,	A.L.	19 Sept 40.	(Sick)
C 10436	"	Pyke,	J.D.	19 Sept 40.	(Sick)
D 10662	Gnr	Duggan,	S.E.	3 July 40.	(Sick)

(b) Admitted to No. 5 General Hospital on the effective dates shown:

P 8366	S/Sjt	Nicholson,	R.	10 Sept 40.	Sick
P 9436	Gnr	Blackler,	E.	10 Sept 40.	Sick
B 10093	"	Mongeau,	M.	10 Sept 40.	Injured

(c) C 10349 A/L/BDR BROWN, R.E.
Is Placed on the SERIOUS LIST. Effective: 17 Sept 40

(continued on next page)

4. HOSPITAL. (continued)

(d) The undermentioned O/R's were discharged from Hospitals shown and posted to batteries on the effective dates listed beside their names:

P 9984	Sjt	Morris, A.J.	No. 15Gen	20-9-40	B. Bty.
B 12010	"	Hope, C.H.	No. 15 Gen	17-9-40	A. Wing.
B 10073	Gnr	Warren, R.	No.5 Gen.	19-9-40	B. Bty
D 11549	"	Saxtree, A.	No. 1 C.D.	20-9-40	B. "
L 18059	"	Burgess,	No.5 Gen.	19-9-40	B. "
E 101	"	Kissick, M.	No. 5 Gen	19-9-40	B. "
K 19021	"	Foster, J.	No.5 Gen.	19-9-40	B. "
M 2115	"	Scott, R.E.	" " "	19-9-40	B. "
K 5008	"	Robinson, R.W.	No. 1 C.D.	20-9-40	B. "
H 29084	"	Riley, R.	No.15 Gen	21-9-40	B. "
G 4173	"	Thornton, M.C.	No.5 Gen.	20-9-40	AT. "
B 82954	"	Tanner, P.	C.M.C.	20-9-40	AT. "
D 7135	"	Jerome, V.	No.1 C.D.	20-9-40	AT. "
G 4242	"	Tool, E.E.	C.M.C.	21-9-40	AT. "
F 9386	"	Kelmin, J.A.	No.1 C.D.	20-9-40	B. "
F 9024	"	Salmon, J.	No.5 Gen	21-9-40	B. "
E 0120	"	Miller, D.G.	No.15 Gen.	20-9-40	B. "
M 4008	"	Steeves, W.W.	No.1 C.D.	20-9-40	B. "
B 21143	"	Plummer, R.E.	No.1 C.D.	20-9-40	B. "
A 28028	"	LaFitte, J.	No.5 Gen.	20-9-40	B. "
B 6131	"	Diamond, S.	C.M.C.	20-9-40	A. Wing.

5. AMENDMENT.

(a) D.O. Pt. 11 No.62 Para. 5 (1) G 4109 Gnr Lowes, M.H. Amend to read: "Admitted to No. 15 Gen. Hospital".

(b) D.O. Pt. 11 No. 94 Para. 3(c)"C 10424 Gnr Proulx, H. "Discharged from Hospital 17 Sept 40".

(c) D.O. Pt. 11 No. 95 Para 10 (f) Amend to read:"B 10080 Gnr Gill, R. Discharged from Hospital 13 Sept 40".

(d) D.O. Pt. 11 No. 41 Para. 1 (a) D 10662 Gnr Duggan, E. Amend to read : " T.O.S. eff: 27 June 40 on admission to C.M.C.".

(e) D.O. Pt. 11 No. 49 Para. 1(k) B 10055 Gnr Murray, J.T. Amend to read: "T.O.S. from 8th. A.F.R. (on admission to 4th C.C.S.) Effective: 23 July 40".

6. HOSPITAL STOPPAGES OF PAY.

(a) B 12010 Sjt Hope, C.H.

Is placed under Hospital Stoppages of Pay of 75 cents per diem while in hospital from 7 Sept 40 to 17 Sept 40. Total: 11 days. Authority: P.R.&.I. Art. 222 (1) B (ii)

(b) K 19052 Gnr Kissick, M.

Is placed under Hospital Stoppages of Pay of 75 cents per diem while in hospital from 9 Sept 40 to 19 Sept 40. Total: 11 days. Authority: as in sub-para (a)

(c) E 0155 Gnr Perrel, T.

Is placed under Hospital Stoppages of Pay of 75 cents per diem while in hospital from 3 Sept 40 to 9 Sept 40. Total: 7 days. Authority: as in sub-para (a)

(d) C 163 Gnr Floor, A.

Is placed under Hospital Stoppages of Pay of 75 cents per diem while in hospital from 1 August 40 to 7 Aug 40. Total: 7 days. Auth: P.R.&.I. 222 (1) B (ii)

(continued on next page)

7. QUALIFICATIONS. The undermentioned O/R's have passed their tests and have qualified as Gun Layers:

(a)

L 167	L/Bdr	Thompson,	G.J.
B 88505	Gnr	Tanner,	J.
M 99	"	Gesinghous,	R.
E 4149	"	Roy,	E.
U 1536	"	Parker,	K.D.
C 131	"	Todd,	L.H.
B 88487	"	Garland,	A.J.
D 9086	"	Kelso,	J.L.

(b) The undermentionedd O/R's have passed their tests and have qualified as Drivers I.C. (Wheeled Vehicles):

K 9079	L/Bdr	Brookbank,	F.K.
D 7066	Gnr	Gravel,	R.

(c) The undermentioned Officers have passed their tests and have qualified as Motor Cycle Drivers:

Lieut. F.W. Krause.
" C.B. Charlewood.
" E.H. Leather.
" H.W. Hare.
" H.P. Smith.
" K.F. Smibert.

8. COURSE. Major S.O.P. Gemmill

Proceeded on Course C.M.H.Q. Course No. 2 A/T Gun Serial 126 Larkhill, from 23 Sept 40 to 28 Sept 40 and is attached for all purposes. Effective: 1400 hours, 22 Sept 40.

10. PROMOTIONS. The undermentioned O/R's are promoted to rank shown without pay. Effective: 21 Sept 40.

(a)

B 88461	L/Bdr	Saunders,	R.H.	to be BDR
G 10189	Gnr	McElwaine,	W.H.	to be L/BDR
C 238	"	Payne,	W.H.	to be L/BDR
B 88386	"	Hollett,	E.C.	to be L/BDR
G 10105	"	Magee,	W.I.	to be L/BDR

(b) D 76106 Cpl Parsons, H.J. (O.C.T.U)
Promoted to rank of A/SJT with pay. Effective: 20 Sept 40

(c) P 9227 L/Bdr Fletcher, R.J.
Promoted to rank of Bombardier with pay. Eff: 23 Sept 40

(d) F 15293 Gnr McLeod, J.L.
Promoted to rank of A/L/BDR with pay. Eff: 23 Sept 40.

11. BIRTH.

D 9219 Gnr Abbott, G.P.
A daughter: Beatrice Abbott,
Date : 12 August 40.
Place : Montreal, Quebec, Canada.

12. PUNISHMENT.

E 21854 Gnr Egan, G.R.
Awarded 7 days C.B. for:
"W.C.A.S. Failing to appear at the place of parade appointed by his Commanding Officer at 0845 Hours, 19 Sept 40". A.A.Sec. 15 (1)

(continued on next page)

13. DISTRICT COURT MARTIAL.

P 4640 GNR MAHONEY, G.J.

On the Twelfth day of September, 1940, before a District Court Martila at Bordon, Hants, No. P 4640 Gnr Gordon, James, MAHONEY, No. 1 Cdn. Artillery Holding Unit, R.C.A., C.A.S.F., was arraigned and charged as follows:

CHARGE.

1. Under Section 15(1) of The Army Act:- Absenting himself without leave, in that he, at Halifax, Nova Scotia, Canada, on 23 August 40, at 1200 hours, absented himself from R.C.A. District Establishment until he surrendered to No. 3 Provost Company on board H.M.T.S. "Georgic" at 1030 hours, on 28 August 40.

2. Under Section 40 of The Army Act:- Conduct to the prejudice of good order and military discipline, in that he did, at Halifax, Nova Scotia, Canada, at 1230 hours, on 23 August 40 board H.M.T.S. "Georgic" without permission.

FINDINGS OF THE COURT.

Guilty of the first charge.
Guilty of the second charge.

SENTENCE.

First charge) To undergo Detention for a period
Second charge) of Thirty-Five (35) days.

CONFIRMATION.

The finding and sentence of the Court was confirmed, but 14 days of the Detention awarded was remitted, by the Senior Officer, Canadian Military Headquarters, under and by virtue of the powers given him under order of the Governor-General in Council of 4 July 40., P.C. 2932

14. DISTRICT COURT MARTIAL.

P 6854 GNR GORDON, W.T.

On the Twelfth day of September, 1940 before a District Court Martial at Bordon, Hants, No. P 6854 Gunner W.T. Gordon, No. 1 Cdn. Artillery Holding Unit, R.C.A., C.A.S.F. was arraigned and charged as follows:

CHARGE.

1. Under Section 15(1) of the Army Act:- Absenting himself without leave, in that he at Camp Bordon, Ontario, on 22 August 40, at 1800 hours, absented himself from No.2 Provost Company (Reinforcements) until he surrendered to No. 1 Provost Company on board H.M.T.S. "Oronsay" at 1620 hours, on 3 September 40.

2. Under Section 40 of the Army Act:- Conduct to the prejudice of good order and military discipline, in that he did at Halifax, Nova Scotia, Canada, at 1430 hours on 24 August 40 board H.M.T.S. "Oronsay" without permission.

FINDINGS OF THE COURT.

Guilty of the first charge.
Guilty of the second charge.

SENTENCE.

First charge) To undergo Detention for a period
Second charge) of Thirty-Five (35) days.

CONFIRMATION.

The finding and sentence of the Court was confirmed, but 14 days of the Detention awarded was remitted, by the Senior Officer, Canadian Military Headquarters, under and by virtue of the powers given him under order of the Governor-General in Council of 4 July 40, P.C. 2932.

(continued on next page)

15. DISTRICT COURT MARTIAL.

P 4605 GNR WILKINSON, S.R.

On the Twelfth day of September, 1940, before a District Court Martial at Bordon, Hants, No. P 4605 Gnr S.R. Wilkinson, No. 1 Cdn. Artillery Holding Unit, R.C.A., C.A.S.F. was arraigned and charged as follows:

CHARGE.

1. Under Section 15 (1) of the Army Act:- Absenting himself without leave, in that he, at Halifax, Nova Scotia, Canada, on 24 August 40, at 0800 hours, absented himself from R.C.A. District Estsblishment until he surrendered to No. 3 Provost Company on board H.M.T.S. "Georgic" at 1030 hours, on 28 August 40.

2. Under Section 40 of the Army Act:- Conduct to the prejudice of good order and military discipline, in that he, did at Halifax, Nova Scotia, Canada, at 1230 hours, on 23 August 40., board H.M.T.S. "Georgic" without permission.

FINDINGS OF THE COURT.

Guilty of the first charge.
Guilty of the second charge.

SENTENCE.

First charge) To undergo Detention for a period
Second charge) of Thirty-Five(35) days.

CONFIRMATION.

The finding and sentence of the Court was confirmed, but 14 days of the detentionsawarded was remitted, by the Senior Officer, Canadian Military Headquarters, under and by virtue of the powers given him under order of the Governor-General in Council of 4 July 40. P.C. 2932.

16. DISTRICT COURT MARTIAL.

P 4541 GNR SMITH, S.F.

On the twelfth day of September, 1940, before a District Court Martial at Bordon, Hants, No. P 4541 Gnr Seldon, Francis, SMITH, No. 1 Cdn. Artillery Holding Unit, R.C.A., C.A.S.F. was arraigned and charged as follows:

CHARGE.

1. Under Section 15 (1) of the Army Act:- Absenting himself without leave, in that he, at Halifax, Nova Scotia Canada, on 25 August 40, at 0200 hours, absented himself from R.C.A. District Establishment until he surrendered to No. 3 Provost Company on board H.M.T.S. "Georgic" at 1030 hours, on 28 August 40.

2. Under Section 40 of the Army Act:- Conduct to the prejudice of good order and military discipline, in that he did, at Halifax, Nova Scotia, Canada, at 1530 hours, on 24 August 40. board H.M.T.S. "Georgic" without permission.

FINDINGS OF THE COURT.

Guilty of the first charge.
Guilty of the second charge.

SENTENCE. First charge:) To undergo Detention for a period
Second charge) of Thirty-Five (35) days.

CONFIRMATION.

The finding and sentence of the Court was confirmed, but 14 days of the detention awarded was remitted, by the Senior Officer, Canadian Military Headquarters, under and by virtue of the powers given him under order of the Governor-General in Council of 4 July 40. P.C. 2932.

(continued on nex t page)

17. DISTRICT COURT MARTIAL.

A 32106 GNR SEED, P.J.

On the Twelfth day of September, 1940 before a District Court Martial at Bordon, Hants., No. A 32106 Gnr Phillip, James, SEED, No. 1 Cdn. Artillery Holding Unit, R.C.A., C.A.S.F. was arraigned and charged as follows:

CHARGE. 1. Under Section 15(1) of the Army Act:- Absenting himself without leave, in that he, at Halifax, Nova Scotia, Canada, on 26 August 40, at 0630 hours, absented himself from R.C.A. District Establishment until he surrendered to No. 3 Provost Company on board H.M.T.S. "Georgic" at 1030 hours, on 28 August 40.

2. Under Section 40 of the Army Act:- Conduct to the prejudice of good order and military discipline, in that he did, at Halifax, Nova Scotia, Canada, at 1500 hours, on 24 August 40, board H.M.T.S. "Georgic" without permission.

FINDINGS OF THE COURT. Guilty of the first charge.
Guilty of the second charge.

SENTENCE. First charge } To undergo detention for a period
Second charge } of Thirty-Five days (35)

CONFIRMATION. The finding and sentence of the Court was confirmed, but 14 days of the Detention awarded was remitted, by the Senior Officer, Canadian Military Headquarters, under order of the Governor-General in Council of 4 July 40., P.C. 2932.

18. DISTRICT COURT MARTIAL.

P 4631 GNR DAVIS, R.B.

On the Twelfth day of September, 1940 before a District Court Martial at Bordon, Hants, No. P 4631 Gnr R.B. Davis, No. 1 Cdn. Artillery Holding Unit, R.C.A., C.A.S.F. was arraigned and charged as follows: -

CHARGE. 1. Under Section 15(1) of the Army Act:- Absenting himself without leave, in that he, at Halifax, Nova Scotia, Canada, on 25 August 40, at 0200 hours, absented himself without from R.C.A. District Establishment until he surrendered to No. 3 Provost Company on board H.M.T.S. "Georgic" at 1030 hours, 28 August 1940.

2. Under Section 40 of the Army Act:- Conduct to the prejudice of good order and military discipline, in that he did, at Halifax, Nova Scotia, Canada, at 1500 hours, on 24 August 40, board, H.M.T.S. "Georgic" without permission.

FINDINGS OF THE COURT. Guilty of the first charge.
Guilty of the second charge.

SENTENCE: First charge } To undergo Detention for a period
Second charge } of Thirty-Five (35) days.

CONFIRMATION. The finding and sentence of the Court was confirmed, but 14 days of the detention awarded was remitted, by the Senior Officer, Canadian Military Headquarters, under and by virtue of the powers given him under order of the Governor-General in Council of 4 July 40, P.C. 2932.

(continued on next page)

19. DISTRICT COURT MARTIAL. (Extracted from 1st. Cdn. Med. Regt. D.O. Pt. 11 No. 25)

"F 14192 GNR GILLIS, J.A.

Tried by District Court Martial on 3 August 1940.

CHARGES.

1. When on Active Service, conduct to the prejudice of good order and military discipline, in that he, at approximately 0030 hours, 16 July 40, improperly obtained a vehicle, to wit, Ford 15-cwt. No. CZ/4204582 and petrol, the property of the Government of the Dominion of Canada, and did improperly retain and use the said truck until approximately 1830 hours 17 July 40, and did thereby deprive 1 Cdn. Med. Regt., R.C.A., C.A.S.F., of a vehicle, then required for training purposes, and did consume petrol to the value of approximately £1.13.10.

2. When on active Service, absenting himself without leave from 0030 hours, 16 July 40 to 1830 hours 17 July 40.

FINDING. The accused was found guilty on both charges.

SENTENCE. The accused was sentenced to undergo detention of sixty days, and to be put under stoppages of pay until he has made good the sum of £1.13.10, in respect of petrol, the property of the Government of the Dominion of Canada, effective: 3 Aug 40.

CONFIRMATION. Proceedings confirmed by G.O.C. 7 Corps.

PROMULGATION. Sentence promulgated 6 August 40."

"ADDITIONAL PUNISHMENT. Concurrent with District Court Martial award of 60 days detention on 3 Aug 40. "Awarded 14 days detention, 6 Aug 40, for: While being in arrest, escaped, in that when on active service, and being in close arrest, he escaped from custody in the vicinity of 1100 hours, 4 August 40, returning voluntarily at 0640 hours, 6 August 40."

20. DETENTION. F 14192 GNR GILLIS, J.A.
Admitted to Detention 1400 hours, 10 August 40.

21. FORFEITURE OF PAY. F 14192 GNR GILLIS, J.A.

(a) Ref: Para. 19 above.
Absent 1 day, 18 hours.
Forfeits 2 days pay, F.R.&.I. 149(1) (a).
Detention 60 days - forfeits 60 days pay F.R.I.149(1)(b).
In close arrest from 1830 hours, 17 July 40 to 1015 hours 3 August 40.
Forfeits 16 days pay. F.R.&.I. 149(1) (c).
Total Forfeiture: 78 days pay.

F 4640 GNR MAHONEY, G.J.

(b) Ref: Para. 13 of this order.
Absent: 4 days, 22 hours, 30 minutes.
Forfeits 5 days pay under F.R.&.I. 149 (1)(a).
Detention: 35 days, less 14 days remission - 21 days.
Forfeits 21 days pay under F.R.&.I. 149 (1) (b).
In close arrest from 1030 hours, 28 August 40 to 1400 hours, 12 Sept 40.
Forfeits: 16 days pay under F.R.&.I. 149 (1) (c).
Total forfeiture: 42 days pay.

(continued on next page)

21. FORFEITURE OF PAY.(continued)

(c) P 6654 GNR GORDON, W.T.

Ref: Para. 14 above.

Absent: 11 days, 22 hours, 20 minutes.
Forfeits 12 days pay under F.R.&.I. 149 (1) (a).
Detention: 35 days less 14 days remission - 21 days.
Forfeits 21 days pay under F.R.&.I. 149 (1) (b).
In close arrest from 1620 hours, 3 Sept 40 to 1400 hours 12 Sept 40.
Forfeits 9 days pay under F.R.&.I. 149 (1) (c).
Total forfeiture: 41 days pay.

(d) P 4605 GNR WILKINSON, S.R.

Ref: Para. 15 of this order.

Absent: 4 days, 2 hours, 30 minutes.
Forfeits 5 days pay under F.R.&.I. 149 (1) (a).
Detention: 35 days less 14 days remission - 21 days.
Forfeits 21 days pay. F.R.&.I. 149 (1) (b).
In close arrest from 1030 hours, 28 August 40 to 1400 hours, 12 Sept 40.
Forfeits 16 days pay under F.R.&.I. 149 (1) (c).
Total forfeiture: 42 days pay.

(e) P 4541 GNR SMITH, S.F.

Ref: Para. 16 of this order.

Absent: 3 days, 8 hours, 30 minutes.
Forfeits 4 days pay under F.R.&.I. 149 (1) (a).
Detention: 35 days, less 14 days remission - 21 days.
Forfeits 21 days pay. F.R.&.I. 149 (1) (b).
In close arrest from 1030 hours, 28 August 40 to 1400 hours, 12 September 40.
Forfeits 16 days pay under F.R.&.I. 149 (1) (c).
Total forfeiture: 41 days pay.

(f) P 4631 GNR DAVIS, R.B.

Ref: Para. 18 of this order.

Absent: 3 days, 8 hours, 30 minutes.
Forfeits 4 days pay under F.R.&.I. 149 (1) (a).
Detention: 35 days less 14 days remission - 21 days.
Forfeits 21 days pay under F.R.&.I. 149 (1) (b).
In close arrest from 1030 hours, 28 August 40 to 1400 hours, 12 September 40.
Forfeits 16 days pay under F.R.&.I. 149 (1) (c).
Total forfeiture: 41 days pay.

(g) A 32106 GNR SEED, P.J.

Ref: Para. 17 of this order.

Absent: 2 days, 4 hours.
Forfeits 3 days pay under F.R.&.I. 149 (1) (a).
Detention: 35 Days less 14 days.
Forfeits 21 days pay under F.R.&.I. 149 (1) (b).
In close arrest from 1030 hours, 28 August 40 to 1400 hours, 12 Sept 40.
Forfeits 16 days pay under F.R.&.I. 149 (1) (c).

R A Ramsay

(R.D. Ramsay) Lieut. & Adj.
for C.O. No. 1 Cdn. Artillery Holding Unit.
R.C.A. C.A.S.F.

QQQ-54
SPR SMITH S J

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C.4763 Spr. Stephen James Smith 2 Bde Rd. Const Coy.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 40	guilty	guilty	
2nd alternative AA 40	The prosecutor states that he has the convening officers permission to withdraw the alternative charge on the finding of guilty on the first charge his request was granted by the court and the charge was withdrawn accordingly		
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 64 fn 6.)

~~At present under sentence for~~ ~~Beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 5 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 odmitted in evidence under E2.)

Sentence Awarded by the Court: To suffer field punishment for 28 days, to forfeit all ordinary pdy for a period of 28 dys and to be put under stoppages of pay until he has made good the sum of £5-0-0 in respect of the damages to Cdn Govt Vehicle EZ 420476

(Sgd) [illegible] Capt (Sgd) [illegible] Major

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

(Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirm the finding + sentence

~~I direct that the accused be not committed to prison or detention barracks without further order.~~(1)

(1. AA 57A. Delete if not used.)

(Sgd) [illegible] Officer i/c Conducting Troops G.H.Q. 1 Echn.

Date Commanding Confirming Officer.

27 Sept 44

PART IV. PROMULGATED AND EXTRACTS TAKEN. (AP 53, KR Con 576, 577.)

Attested. Date. Signature of Offr.

Spr Smith, S.J. 27/9/44 [illegible]

C.4763 Maj

OC 2 Cdn Rd Const Coy RCE

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AD 160 [illegible]

CPA96 (To Replace AFA3) 45/P & S-1000 (2004)

RECEIVED 5 JUL 1944 PROVOST C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

Convened by Order of Lt Col A.W. Smith Comd 3rd Bn. RCE dated 25 Jun 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/apprnt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C4763	Spr.	Stephen James	Smith	2 Bde Rd Const Coy RCE

PROCEEDINGS REVIEWED 5 July 44

[illegible] Lieut

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED Date 30 JUN 44 GHQ 2 Echn. Army Gp

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) U.K. on (date(s)) 26 Jun 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 8/117

A1. The President, Members, waiting Member, JA, ~~if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1445 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO (1).~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to ... as interpreter? Ans: ...~~

~~The Interpreter is sworn (1). Do you object to ... as shorthand writer? Ans: ...~~

~~The shorthand writer is sworn(1).~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, ~~if any~~, and Offrs under instr, ~~if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJ.	M.A. ELSON	2 BN. R.C.E.
Member	CAPT.	J.M. MICHAUD	3 BN R.C.E.
Member	L.T.	W.I. FISHER	2 BN R.C.E.
Judge-Advocate	CAPT.	B.W. HOWARD	Rd. Sm. Sec. 1 Rcd - 2 Rec.
Prosecutor	CAPT.	E.S. DARBY	2 Cdn. Rd Const Coy RCE
Defending Offr	L.T.	J.D. HARNETT	2 Cdn Rd Const Coy RCE

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and 90 2 were not followed. See Dr p 2.)

A8. The accused ... before arraignment makes(s) (no) ~~(a)~~ plea.(1)

(1. If a special plea is made for separate trial on one or more charges (AP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoF cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. Where more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(*a*) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(*b*) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M.M.L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No. (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3. MML p 54 para 47. 4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

~~B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) changes(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. "B", initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded Guilty are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pls here keep sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath should carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(*1. RP 155. 2. RP 40(A), see 80(C). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 80(C). Note the further opportunity in para E3 of Record Form E. Record any Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 46(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (b), RP 45, 120(A). 2. AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. I wish to call character evidence
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. "C" and Ex. "D" respectively.(3)
(*1. MFB 355 or AFB 2196. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes through my defending officer see para 2 above (2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 358, 330, 563-566, Overseas RO 309, 2323, As to sentences see AA 44(1B), 68(2), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see index on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

R.A.F.

CHARGE SHEET

The accused, G.4763 Spr. Stephen James SMITH, 2 Canadian Road Construction Company, Royal Canadian Engineers, a soldier of the Canadian Army Overseas, is charged with:-

First Charge
A.A. Sec 40

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

did at a certain time in the field between 2030 hrs and 2230 hrs 20 Jun44 without authority drive Government vehicle CZ.4204476 causing damage to the said vehicle to the extent of £15-5-0

Second Charge
A.A. Sec 40

Alternative

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

in the field between 2030 hrs and 2230 hrs 20 Jun 44 was concerned in the unauthorized use of Government vehicle CZ.4204476 where by said vehicle was damaged to the extent of £ 15-5-0.

In the Field
24 Jun 44

(G.M. CLARK) Major, R.C.E.,
Officer Commanding,
2 Cdn Road Constr Coy. R.C.E.

To be tried by FGCM

I to be tried by F.G.C.M.
[illegible]
OC 2 Cdn R C E

25 JUN 44

K. A-G.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA2)
40/PAM/1697 (2002)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 162, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
G.4763	Sapper		Stephen James	SMITH	2 Cdn Road Const Coy. R.C.E.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 25 Jun 44 endorsed by me, (or by an offr of my staff for me), "To be tried by Field General Court-Martial",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ~~, and that it is not practicable to delay the trial for the reasons mentioned below:~~

2(a) and whereas owing to the exigencies of the service, no officer of the rank of Brigadier or upwards is available to convene a court to try the said offences

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto:~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	H.A. Olson	2 Bn. R.C.E.

MEMBERS.

Capt or Lt to be detailed by C.O. 2 Bn R.C.E.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt or Lt	to be detailed by C.O. 3 Bn R.C.E.	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lt	to be detailed by C.O. 3 Bn R.C.E.	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	
Capt.	B.W. Howard	1st Echelon 21 ~~GHQ~~ Gp.

On Active Service in the Fd

in England (Country.)

Grove Smith (Signed personally. RP 105 fn 2.) Lt. Col. (Rank.)

Date 25 Jun 44

Commanding 3rd Battalion, R.C.E.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

K.R.(CAN) PARA 557

I certify that I have this morning examined No. G.4763, Sgr. Smith, S.J. of the 2 Cdn Road Const Coy, R.C.E. and in my opinion he is fit to undergo trial by Court Martial.

Station:- In the Field

Date:- 26 Jun 44

Medical Officer

O.C.C.S.

2 CDN. ROAD CONST. COY. R.C.E. 26 JUN 1944 ORDERLY ROOM

The J.A. advised the court that the summary should be completed by evidence as to damage. The prosecutor stated that such a witness would be called and the defending officer advised that he had received no notice thereof & did not object.

H 13007 A/QMS. Seymour J.C. of 1 Cdn. Gen T/ps Wtsp. R.C.E.M.E. sworn states I am familiar with 15 cwt CZ 4204476 on charge to 2 Cdn. Rd. Const. Coy. R.C.E. I inspected it myself. The vehicle was smashed left front end both cab & body, the windshield will have to be replaced - that is about the only replacement - some lumber will be required to fix the cab & the body. $15-6-0 will be cost to bring back to its condition before the accident. The labour would be 60 hrs. at 3/0 per hour.

Accused declines to cross examine.
R.P. 83(B) complied with.

1st character witness

B 29053 CSM. - Herron W.A.M - 2 Cdn Rd. Const. sworn states. Known accused 6 mos. - found him trustworthy & obedient. His reports as to M T & drivers are good. I have used him as my own driver & found that he carries out duties as M T. He is inconvenienced by being a bit short. He is an obliging lad makes up for it in willingness I would like to have him around when the going got tough. RP. 83(A) complied with

2nd character witness.

B 29454 Sgt. Hayes. D.F. 2 Cdn Rd Const Coy sworn Known accused 5 mos. - I am M T Sgt. Came to unit as driver. Passed A1. always carried out his job efficiently & does his duties correctly. One of my best drivers & his character has been excellent.

R.P. 83(B) always complied with.

The wanting member Lieut A. Content 3 Bn. R.C.E. being not required as such was sworn as an officer under instruction. Sworn J.A.

"E"

SUMMARY OF EVIDENCE

FOR THE DEFENSE

G.4763 Spr. Smith, S.J.

Sirs,

I beleive that the accused has learnad a hard lesson in this case. He has already suffered more than any court in this Country could award. I know that he did not become involved in any crime to avoid the possibility of proceeding overseas with his unit. His record both in civilian life and in the Army are good, this being the first crime or charge against him. He is an excellent driver, having driven in Canada on Army vehicles for 2 months, and since with this unit for approximately 5 months. He has never been envolved in any accident. I knew him in Canada, and have been with him in England, and can safely say he is a good soldier and an asset to the Canadian Army. He has two brothers serving overseas, as well as, 3 sisters also in the Service. I am sure that it is the desire of the Smith family to carry out our common cause. In view of the above facts, I would ask the Officers of this court to be lenient in the mitigation of punishment.

Exhibit "B" L. A. Elson Major

Summary of evidence in the case of G.4763, Spr. SMITH, Stephen James, on strength of No.2 Cdn Road Construction Coy. R.C.E.

By direction of the Commanding Officer the Summary of Evidence is taken on oath.

First Witness for the prosecution — Major CLARK, George MacKay of No.2 Cdn Road Construction Coy. R.C.E. having been duly sworn, states:-

In accordance with Overseas R.O. 4543, as Officer Commanding a Coy, I have the authority to sign recreational transport work tickets. On the evening of the 20 Jun 44 I signed no such form for vehicle No.CZ 4204476 nor did I authorize any recreational trip for said vehicle in any manner

The accused declines to cross-examine the witness.

Signature of Witness

Second Witness for the prosecution — Lt.(A/Capt) KYLE, Garnet Lorne of No.2 Cdn Road Construction Coy. R.C.E. having been duly sworn states:-

Each vehicle has it's own Work Ticket. I identify Exhibit "A" as certified true copy of the work ticket of vehicle CZ.4204476 and on 20 Jun 44 I signed work ticket authorizing trip from HQ to Aldershot and return. No further authorization for any other trip appears on the ticket.

The accused declines to cross-examine the witness.

Signature of Witness Capt

Third Witness for the prosecution — Cpl.(A/L/Sgt) CRUMMEY, John Gilbert of No.2 Cdn Road Construction Coy. R.C.E. having been duly sworn states:-

From 1900 hrs to 2200 hrs 20 Jun 44 I was in the M.T. lines checking vehicles for waterproofing and oiling the road at the entrance to the billet, I was also duty N.C.O. There was no picquet on duty at the time as Sgt Hayes and myself were right there and could see anyone coming in or going out.

Q. Between 2030 hrs and 2200 hrs did you see Spr. Smith return to the vehicle park with his vehicle?

A. No, Sir.

Q. Would it have been possible for him to drive into the vehicle park without you seeing him?
A. No, Sir.

Q. Did you see Spr. McLaughlin around the billet at any time?
A. No, Sir.

Q. You were there the entire time?
A. Yes, that is right Sir.

Cross examined by accused:

Third Witness for the Prosecution (Continued):-

Q. Are you absolutely sure that you saw no vehicle come into the park between 2030 hrs and 2200 hrs?
A. No, I never saw any vehicle come in, except an 8 cwt that brought in the show.

Signature of Witness

Fourth Witness for the Prosecution B.29221 Spr. McINTAGGART, Edward Alexander of No.2 Cdn Road Construction Coy. R.C.E. having been duly sworn, states:-

On the night of 20 Jun 44 I was in the Parrot Inn at Forrest Green. At closing time, that is 2200 hrs, I was told that there was a ride home. I got into the back of the 15 cwt which then proceeded to take myself, Cpl. Saunders, J.E.W., L/Cpl. Wickholm, Pte Hannah and Spr. Tucker, R.V. back towards our billets. We were proceeding normally at about 30 m.p.hs. The first impression I had that things were not proceeding normally was when the side of the truck was brushed by leaves and we went over several bumps, then came the crash. I was quite dazed and was helped out of the back of the truck.

Q. Did you see Spr. Smith in the Parrot Inn?
A. Yes, Sir.

Q. Did he have a drink in the public house?
A. Yes, I saw him have one glass of beer.

Q. At what time?
A. About 2140 hrs.

Q. Did Spr. Smith drink after 2140 hrs?
A. I don't know, he had left the public house.

Q. Did you see Spr. Smith drive the vehicle?
A. No.

Q. Did you see Spr. Smith from the time you saw him in the Parrot Inn until the time of the accident?
A. No, Sir.

The accused declines to cross-examine the witness.

Signature of Witness

Fifth Witness for the Prosecution L.19331 Cpl(A/L/Sgt) KRUGER, Frederick Thomas of No.2 Cdn Road Construction Coy. R.C.E. having been duly sworn states:-

At about 1730 hrs 20 Jun 44 I phoned Capt Kyle from Aldershot requesting transport to bring me back to HQ. The vehicle arrived at 1935 hrs and I proceeded to Cranleigh, which is en route, where I decided to get something to eat; it was now about 2030 hrs. I told the driver, Spr.Smith to carry on and I would come home on the bus which I did, travelling on the 2115 hrs bus back to Ewhurst. The distance from Aldershot to Cranleigh is approx 20 miles and from Cranleigh to Ewhurst about 4 miles

The accused declines to cross-examine the witness.

/-3

Fifth Witness for the Prosecution (Continued) :-

F. T. Sturges.
Signature of Witness

Sixth Witness for the Prosecution

B.29015 Sgt. CUSSON, Marcel Raymond of No.2 Cdn Road Construction Coy. R.C.E. having been duly sworn states:-

About 2215 hrs 20 Jun 44 I was riding a motorcycle from Forest Green toward Ewhurst. I had just turned off Ockley Rd and was going down Beach Lane toward Ewhurst Green. I had travelled about 100 yds down the lane when I heard a crash behind me. I turned around and went back to find out what had happened.

I found an army vehicle in the bushes by the side of the road. I looked in the back of the vehicle and found some men there, they appeared to be all right except they were dazed.

I forced my way through the hedge at the roadside, and went around to the near side front, that is to say, the left front. A man was leaning out of the cab on the left hand side, whom I recognized as Spr. McLaughlin, R.E.

Q. Did you see Spr.Smith at the scene of the accident?
A. Yes, I saw him behind the truck.

Q. Did you see Spr.Smith prior to the accident?
A. Yes I did.

Q. Where did you see Him?
A. At the Parrot Inn.

Q. At what time?
A. At approximately 2140 hrs.

Q. Did you see him drink anything?
A. No, I did not.

Q. Did you see Spr.Smith drive away?
A. No, I did not, I left before the vehicle left.

Q. Have you ever seen unit transport pick up personnel from the Parrot Inn prior to 20 Jun 44?
A. I've seen vehicles around there but I don't know whether they were picking up men or whether the drivers were in the YMCA, as there is a YMCA right behind the public house.

The accused declines to cross-examine the witness.

M. D. Cusson Sgt.
Signature of Witness.

Seventh Witness for the Prosecution

B.29247 Spr. TUCKER, Howard Vincent of No.2 Cdn Road Construction Coy. R.C.E. having been duly sworn states:-

We left the Public house about 2200 hrs and got into a truck which somebody said was going back to Camp. We started off and I guessed the speed at about 30 mphs. We went into the ditch on the right hand side of the road, felt some bumps and then a crash. It was still daylight.

Q. When was the first time you saw Spr. Smith?
A. At the accident.

/ - 4

Seventh Witness for the Prosecution (Continued) :-

Q. Was he hurt in any way?.
A. He was staggering and his head was bleeding.

Q. Did you actually see him get out of the truck?
A. No, I didn't.

Q. Had you seen him at the public house?
A. No, I didn't see him at the public house.

The accused declines to cross-examine the witness.

A.V. Tucker
Signature of witness

The accused was cautioned as follows in accordance with Rules of Procedure 4(E):-

"Do you wish to make any statement or give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence"

The accused declines to make a statement or give evidence on oath.

The accused reserves his defence.

" I certify that the foregoing summary of evidence consisting of four(4) pages was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4(C),(D) (E) and (F) have been complied with

E.S. Darby Capt.

In the Field
24 Jun 44

(E.S. DARBY) Capt., R.C.E.
2 Cdn Road Constr Coy, R.C.E.
Officer detailed to take the summary.

APG 3518 (Revised 1943)
GP/P&S/400(4623)

EXHIBIT 'A'

TRANSPORT WORK TICKET

No. H.6

MAKE OF VEHICLE: Ford | CLASS: 15 cwt G.S. | UNIT: 2 CDN. ROAD CONST. COY. ROYAL CDN. ENGINEERS | SECTION: Plant | DRIVER'S NAME: Spr Smith L.J. | W/D No.: CZ-420447G | MONTH & YEAR: June 44

DATE (1)	FOR WHOM JOURNEY IS PERFORMED (2)	DETAILS OF LOAD (3)	ROUTE From (4)	ROUTE To (5)	ROUTE Via (6)	SIGNATURE OF PERSON AUTHORIZING JOURNEY (7)	LUBRICATING OILS Type (8)	LUBRICATING OILS Pints (9)	FUEL GALLONS At Starts (10)	FUEL GALLONS Drawn (11)	FUEL GALLONS At End (12)	FUEL GALLONS Used (13)	TIME Out (14)	TIME In (15)	SPEEDOMETER In (16)	SPEEDOMETER Run (17)	SPEEDOMETER Day (18)
	A	Brought forward from Work Ticket No.					—						—	—			
30 Jun	Down Unit	Personnel	HQ	HQ	Aldershot	Mckyle Capt											
	C																
	D																
	E																
	F																
	G	CERTIFIED A TRUE AND CORRECT COPY:				Lt Col Commdg.											
	H					2 CDN. ROAD CONST. COY R.C.E.												
	J																
	K																
	L																
	M												—	—			

MPG for week _____ or totals carried over _____

DATE (1)	FOR WHOM JOURNEY IS PERFORMED (2)	DETAILS OF LOAD (3)	ROUTE From (4)	ROUTE To (5)	ROUTE Via (6)	SIGNATURE OF PERSON AUTHORIZING JOURNEY (7)	LUBRICATING OILS Type (8)	LUBRICATING OILS Pints (9)	FUEL GALLONS At Start (10)	FUEL GALLONS Drawn (11)	FUEL GALLONS At End (12)	FUEL GALLONS Used (13)	TIME Out (14)	TIME In (15)	SPEEDOMETER In (16)	SPEEDOMETER Run (17)	SPEEDOMETER Day (18)
			Brought forward from Reverse														
N																	
O																	
P																	
Q																	
R																	
S																	
T																	
U																	
V																	
W																	
X																	
Y																	

Y MPG for week ____ or totals carried to Work Ticket No. ____

LINE	SPECIAL INSTRUCTIONS TO DRIVER	DATE	DRIVER'S REPORT OF BREAKDOWNS, ACCIDENTS AND DEFECTS	SIGNATURE OF DRIVER	COUNTERSIGNATURE
					Rank

EXHIBIT B

6 - 0
1 Cdn Gen Troops Wksp.
25 Jun 44

STATEMENT BY CAPT. A.G. EDWARD

I, Capt. A.G. Edward of 1 Cdn Gen Tps Wksp., R.C.E.M.E., having been duly sworn do make the following statement:

"I examined veh. No. CZ-4204476 on charge to 2 Cdn Road Construction Coy., R.C.E., after it had been in an accident and find that estimate cost of repairs to said vehicle is £15/5/-

Statement of damages:

Repairs necessary to
1. Front end
2. Radiator grill
3. Radiator
4. Windshield
5. Steering gear
6. Body of cab

This was prepared by me for my own observations.

A.G. Edward Capt. EME

(A.G. Edward) Capt.
1 Cdn Gen Troops Wksp.
R.C.E.M.E.

LIST OF EXHIBITS

Exhibit "A" - Certified copy of Transport Work Ticket.

Exhibit "B" - Statement by Capt. A.G. Edward, 1 Cdn Gen Tpt Wksp, R.C.E.M.E. re cost of damage to vehicle C2.4204476

Exhibit "C" - Statement from Dr. Forshaw (Civilian Doctor)

a/m submitted by Prosecution on behalf

LIST OF WITNESSES

For the Prosecution

Major G .M. Clark - O.C. 2 Cdn Road Construction Coy.RCE
A/Capt. G.L. Kyle - 2 Cdn Road Construction Coy. RCE
B.29125 A/L/Sgt. Ormerod, J.G. - 2 Cdn Road Construction Coy. RCE.
B.29221 Spr. McIntaggart, E.A. - 2 Cdn Road Constr Coy. R.C.E.
L.19381 A/L/Sgt. Kreuger, F.T. - 2 Cdn Road Constr Coy. R.C.E.
B.29015 Sgt. Cusson, M.R. - 2 Cdn Road Constr Coy. R.C.E.
B.29247 Spr. Tucker, H.V. - 2 Cdn Road Constr Coy. R.C.E.

For the Defence

N I L

26 Jun 44

Witness for Defence.

B29454 Sgt Hayes, D.E.

B29053 CSM Hearne, W.A.M.

I desire the Convening Officer to detail an officer to represent me at my forthcoming trial by Field General Court Martial.

I desire the services of Lt. J.D. Harnett, 2 Cdn Road Construction Coy. R.C.E. if he is available.

Signed. A.J. Smith

No G.4763 Name Smith, S.J. Sqn. Battery or Company | Corps R.C.E. | Date of enlistment 15 Mar 43 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/136 (3438)

Company Conduct Sheet Date of last entry in | Nil | No and date of last drunk | Nil | Period not reckoning towards freedom from extra fine | Nil | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet one destroyed after 6 months service. Date - 15 Sep 43. 141 entries - 100 cases of Drunkenness.					

Exhibit "D"
Lt. A. Rhodes
Major

Certified a True and Correct Copy of the Original F.M.6

(G.M. CLARK) Major, R.C.E.,
Officer Commanding,
2 Cdn Road Constr Coy, R.C.E.

(FTO)

Exhibit "C"
W. A. Elson
Major

M.F.B. 355
22M—5-41 (573-3)
H.Q. 1773-30-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
G.7463	Spr.	Smith, S.J.	2 Can Road Constr Coy. RCE

1. The following is a fair and true summary of the entries in the Service and General Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, Air Force Act of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For	times	times
For	times	times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct

or,

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under A.A. 79 Air Force Act Section 47 of the Army Act and dispensations with trial under A.A. 79 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or

The accused at the present time is under sentence for [illegible] beginning on the [illegible] day of [illegible]

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in Air Force civil custody, and Six days in military custody, making a total of Six days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is 23 years 11 months attestation paper is

6. The date of his ~~enrolment~~ attestation specified in his record of service is 15 Mar 1943 attestation paper

7. The service which the accused is allowed to reckon towards discharge is

8. The accused is entitled to reckon [illegible] service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration or air force reward (or [illegible] military military

possession of or entitled to. Statement of air force decorations or reward. military

10. If the accused is a warrant officer:—The accused before he was made a warrant officer was held Air Force the substantive rank of:

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of ..... Permanent Force dated ....., and in his regiment (or corps), the rank of ..... unit dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

In the rank of ..... Date of promotion.
In the rank of ..... years.
In the rank of ..... years.
In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused. Number ..... Rank .....
Name ..... of ..... Unit
NOTE.—A verbatim extract from the regimental books stating those convictions and dispensations with ..... Regiment
trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ..... day of ..... 19....

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) was read, marked ..... signed by the president, and annexed to the proceedings.

4K58.
E. Smith T.H.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : B135212 Pte Thomas Heirrieff SMITH - CIC - 2 CITR

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	GUILTY	GUILTY	
2nd AA Sec 40	GUILTY	GUILTY	
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn a.)

At present ~~under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 23 days, of which 16 days were spent in hospital.(2)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo Detention for a period of ninety (90) days and to be put into a Wyvern of not under the age under 20 years

(Sgd) Judge-Advocate, if any. Date awarded. (Sgd) President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 572. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1. AA 57A. Delete if not used.)

(Sgd) K G Blackader

Date 20 DEC 44

(K G Blackader) Brig

Commanding 13 Cdn Inf Trg Bde

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused Date Signature of Offr.

B135212 Pte Smith TH 26 DEC 1944 K G Blackader Brig

ENTERED UNDER No 49 DATED 28 Dec 44

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 4K-58

RECEIVED 5 JAN 1945 AHQ BRANCH C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CFAGS (in lieu of AFAS1 40/F & S/1698 (6144)) 4/38B

Convened by Brigadier K G Blackader DSO, MC, ED Comd 13 CITB dated 16 Dec 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A./Apptmt.	Full Christian Names.	Surname.	Unit.
B135212	Pte		Thomas Heirrieff	SMITH	CIC 2 CITR

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date) 19 Dec 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant finn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 52, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1215 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

~~A5. President to accused : Do you object to ... as interpreter ? Ans ...~~

~~The Interpreter is sworn.(1)~~ Do you object to E 28126 SJT SINCLAIR AH as shorthand writer ? Ans No

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No, Sir (2)

(1. RP 110. 2. If no objection, waiting member returns. RP 66(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any~~, and ~~Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Lt-Col	D.L.	REDMAN	HQ CRU
Member	Capt	A.S.	THOMPSON	2 CITR
Member	Lt	A.	INTERNOSCIA	4 CITR
~~Judge Advocate~~				
Prosecutor	Lt	P.	SAPERIA	2 CITR
Defending Offr	Capt	HJ	BOAKE	2 CITR

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (3) and fn 2 were not followed. See D1 p 3.)

A8. The accused before arraignment make(s) (no) ~~...~~ plea (3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form "B".

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*E*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or ~~JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. N O - I D O (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 3 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his ~~(their) plea(s)~~ of Guilty to Not Guilty on ..... charge(s). ~~The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s).~~ ~~Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. ..... .(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. ..... Do you intend to call witnesses on your behalf ?
Ans. ..... Are they witnesses as to character only ? Ans. .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(6).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6). RP 45, 120(A).* 2. *AA 54(3). RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO, SIR.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 143(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB 255 or AFB 296.* 2. *MEM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. YES. I WISH TO MAKE A STATEMENT IN MITIGATION.
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment.* *RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court is re-opened, and the President announces the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments which the Court awards in all the charges sheets on which accused found guilty. Limit down to AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46, 47 as to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2313, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 4(1)(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 504.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B.135212, Pte. Thomas Heinrieff SMITH, CIC, on strength of 2 Cdn. Infantry Training Regt., a soldier of the Cdn. Army Overseas, is charged with:-

FIRST CHARGE

Sec. 15(1) Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, at 2200 hrs. 15 Sep 44 illegally absented himself without leave until he was apprehended by the C.M.P. at 1055 hrs. 26 Nov 44, thereby incurring costs of apprehension and return to his unit in the amount of $0/14/9.

(Total Absent: 71 days, 12 hrs. 55 min.)

SECOND CHARGE

Sec. 40 Army Act.

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

At Oxford at 1055 hrs. 26 Nov 44 was improperly wearing Corporals' Chevrons, to which badges of rank he was not entitled.

Laurentide Camp,
14 Dec 44.

(J A Wilson) Col
Comdr
2 CITR

To be tried by Field General Court Martial.

In the Field
16 Dec 44

(K G Blackader) Brig
Comd
13 Cdn Inf Trg Bde

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B135212	Pte		Thomas Heirrieff	SMITH	CIC 2 CITR

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 15 Dec 44 endorsed by me, (~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~) "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for obtaining the report required by~~ ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~)

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~I am unable to appoint (a) the Offrs for the Court, (b) a Fd Offr as President for the reason stated herein~~

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

~~I have appointed as Judge Advocate the said Offr named herein~~

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
LT-COL	D L REDMAN, VD		HQ CRU

MEMBERS.

Captain	to be detailed by Commanding Officer	2 CITR
Lieutenant (Rank.)	to be detailed by Commanding Officer (Named or detailed. RP 106.)	4 CITR (Unit.)

WAITING MEMBER.

Captain (Rank.)	to be detailed by Commanding Officer (Named or detailed, if any. RP 106.)	4 CITR (Unit.)
~~XXXXXXXXXXXX~~ (Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 16 Dec 44

K G Blackader (Signed personally. RP 105 fn 2.)

(K G Blackader)

Brigadier (Rank.)

Commanding 13 Cdn Inf Trg Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFAES (To Secs of AFAS) 60-7 & 8-1497 (6601)

(See overleaf for oaths and notes for use on trial.)

(8)

MED OFFRS CERTIFICATE 2 CITR/11

K.R.Can Para 557

I certify that I have this morning examined No. B.135212
Pte. Thomas Heirrieff SMITH, and in my opinion he
is ~~UNFIT~~ FIT to undergo trial by Court-Martial.

Station: Laurentide Camp. (S.A. Smo) Capt
Date: 19 Dec 44 (RCAMC) Attached to 2 CITR

Plea of Mitigation

With the court permission I should like to make a plea of Mitigation & sentence on behalf of the accused pte Smith T. H. B135212

Pte Smith T. H. B135212 joined the army at the age of 18 in Nov 42. He took his trng in Infantry then on mar 43 transfered to Intelligence Corps and arrived in U.K. in Nov 43. On mar 44 he transfered back to Infantry and applied for permission to join the paratroops but was refused. He was then posted as Lot line reinf. to D.C.L.I. and on [redacted] D + 1 was sent to R.W.R.R as a reinforcement. Pte Smith fought with the R.W.R. until he was wounded on 13 Jul 44. While in action his record was good and he was informed by his Sgt on appn 3 Jul that he was now an Unpl on charge of action in which capacity he served until he was wounded on 13 Jul 44 [illegible] showing no promotion was put [illegible]

In view of the fact that this soldier volunteered voluntarily in the army as soon as his age would warrant it, and showed his willingness to put in a more dangerous arm of the service by applying for a transfer to the paratroops which was refused, he then went into action with the Infantry and did such a good job that he was promoted to an N.C.O. in the field, I beg the court to take these matters into consideration before passing sentence.

SUMMARY OF EVIDENCE

In the case of B.135212, Pte. Thomas Heirrieff SMITH, CIC, on strength of 2 Cdn. Infantry Training Regiment, a soldier of the Cdn. Army Overseas.

By direction of the Commanding Officer, this Summary of Evidence is taken on oath.

First Witness Prosecution. Capt. H.B. Winn, Trng. Bn., 2 CITR, having been duly sworn, states as follows:-

"I am Capt. H. B. Winn, Trng. Bn., 2 CITR, and I produce the following exhibits for the prosecution:

Exhibit "A": Record of Decl of Court of Inquiry held at Laurentide Camp on 17 Oct 44, and which shows that B.135212, Pte. SMITH, T.H. illegally absented himself without leave from 2200 hrs. 15 Sep 44, and that on the date of the Court he was still so absent.

Exhibit "B": Certif. True Copy of MFM 4 (Part I) of B.135212, Pte. Thomas Heirrieff SMITH and which does not show a promotion to be A/Cpl. or Cpl. and which shows that he was SOS to X-3 (RWR) 13 Jul 44.

Exhibit "C": Expense Voucher showing costs of apprehension and return of B.135212, Rfmn. SMITH, T.H. to London from Oxford in the amount of £0-14-9.

WHICH ABOVE EXHIBITS PERTAIN TO THE ACCUSED HEREIN.

.....Capt.
(H. B. Winn)

Second Witness Prosecution. 7691079, L/Cpl. Galloway, G., 159 H.Q. Provost Coy., S.M.D., Oxford.

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this Summary of Evidence and marked Appendix "A".

Having regard to the expense and loss of time involved, attendance of this witness cannot in my opinion be readily procured, and the accused does not demand the attendance of this witness for cross-examination.

.....Lieut.
(P. Saperia)
Officer detailed to take Summary of Evidence.

Third Witness Prosecution. 7683966, Cpl. Chapman, A., 159 H.Q. Provost Coy. S.M.D. Oxford.

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this Summary of Evidence and marked Appendix "A".

Having regard to the expense and loss of tim involved, attendance of this witness cannot in my opinion be readily procured, and the accused does not demand the attendance of this witness for cross-examination.

.....Lieut.
(P. Saperia)
Officer detailed to take Summary of Evidence.

SUMMARY OF EVIDENCE (2CITR/15)

In the case of B.135212, Pte. Thomas Henrrieff SMITH, CIC, on strength of 2 Cdn. Infantry Training Regiment, a soldier of the Cdn. Army Overseas.

(Continued)

The accused was cautioned as follows:-

"Do you wish to make any statement or to give any evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

THE ACCUSED DECLINES TO MAKE A STATEMENT AND RESERVES HIS DEFENCE.

I certify that the foregoing Summary of Evidence consisting of pages was taken down by me in the presence and hearing of the Accused and that Rules of Procedure 4 (C) (D) (E) (F) & (G) have been complied with.

Laurentide Camp.

13 Dec 44.

Saperia Lt.

(P. Saperia)
Officer detailed to take the Summary of Evidence.

EXA

Exhibit A

RECORD of the Declaration of a Court of Inquiry assembled at **Laurentide Camp** on the **17 th** day of **October** 19**44**, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. **B 135212 Pte Smith T.H. (RWR)**

DECLARATION

The Court declare that No. **B 135212 Pte Smith T.H. (RWR)**

of **"A" Company 2 C I R U:**

illegally absented himself without leave **from Laurentide Camp**

at **2200 hrs** on the **15th** day of **September 44**

that he is still so absent, and that on the **16 Sep 44** he was deficient, and

that he is still deficient of the following articles :—

ARTICLES	VALUE	ARTICLES	VALUE
SEE REVERSE SIDE			

G. E. Hovey Capt President

F.B. Sargent Lt Member

Member

Signed at **Laurentide Camp**

this **18th** day of **Oct** 19**44**

Signature of Commanding Officer

Certified true copy

Signature of Officer having custody of original record

A/Adjutant 2 C.I.R.U.

3/608 MFB 375-AFB 115 40/P&S/392 (6610)

PART II ORDER No.

ARTICLE	QUANTITY	COST PRICE £	s	d	COST PRICE LESS 25% £	s	d
Anklets web, prs	1		4	5		3	4
Blouse, Battle Dress	1	1	3	6		17	7½
Boots Ankle, prs	2	2	8	10	1	16	8
Cap, F.S.	1		2	6		1	10½
Drawers cellular, prs	2		3	10		2	10½
Gloves knitted, prs	1		2	1		1	7
Greatcoat, drab	1	2	11	8	1	16	9
Jacket, sweater	1		8	0		6	0
Overall, blouse denim	1		11	10		8	10½
Overall, trousers denim	1		11	3		8	5½
Shirts angola drab	2		18	2		13	7½
Socks, prs	4		6	8		5	0
Trousers Battle Dress, prs	1	1	14	1½		18	1½
Badges, cap	1			4½			3½
Braces	1		1	4		1	0
Brush, hair	1		1	6		1	1½
Brush, shaving	1		1	8		1	3
Brush, shoe polishing	1		1	3			11½
Brush, tooth	1			6			4½
Cap, comforter	1		1	6		1	1½
Combs, hair	1		1	2			1½
Dressing Field	1		1	1			10
Fork NS table	1			4			3
Holdall	1			10			7½
Housewife	1			9			7
Knife, clasp	1		3	10	2	10	9
Knife, table	1			8			6
Razor safety	1			3			2½
Towels, hand	1		1	5			8½
Belts, waist	1		3	4		2	6
Bottles, water	1		3	8		2	9
Braces WE Right	1		1	4		1	0
Braces WE Left	1		1	4		1	0
Carriers, water bottle	1		1	8		1	3
Frog, web bayonet	1			10			7½
Haversack	1		8	0		6	0
Helmets, steel	1		10	6½		8	0
Net camouflage helmet	1			8			6
Packs	1		8	3		6	2½
Pouches, basic	2		10	8		8	0
Slings, rifle web	1		1	1			7½
Straps shoulder, L	1		1	5		1	1
Straps shoulder, R	1		1	2		1	1
Straps web supporting	2		1	7			10½
Tins mess	1		1	4		1	1½
Capes, AG	1		12	2		9	5
Respirator AG, container	1		4	5		3	1½
Respirator AG, facepiece	1		10	4		7	10
Respirator AG, haversack	1		6	4		4	9
Ointment AG	2		1	4		1	0
Eyeshields PK of 6	1		2	0		1	6
Overboots individual prs	2			6			4½
Blanket	1		13	9		10	4
Mug, drinking	1			7			5½
Boots, ground	1		13	2		9	10½
Rifle	1	10	3	6	10	3	6
Bayonet	1		11	0		8	3
Bottles, oil	1			3			2½
		£29	0	9½	£23	18	8½

certify that the prices of the above articles
e correct as per O.R.O. as amended from time to time.

.....Captain
Quartermaster 2 C.I.H.U.

CERTIFIED True Copy

Capt
Records Offr Dep Bn
2 Cdn Inf Trg Regt

Exhibit B

MFM 4 (Part I)
AFB 103 (Part I)
40-FAL/118 (4/54)

SERVICE AND CASUALTY FORM

PART 1 (For all ranks)

Unit 2 Dist Depot Infantry Wing Regimental Number B135212

1. Surname SMITH, THOMAS HERBERT
2. Christian Names
3. •Substantive Rank and Appointment
   •Acting Temporary or Local Rank giving date Pte
   •To be entered in pencil to facilitate alteration
4. Place of birth HAMILTON, ONT. CANADA
5. Date of birth as declared on attestation 11 AUG 1924
   (A)
6. Date of enlistment 2 NOV 1942.
7. Place of enlistment HAMILTON, ONT. CANADA
8. Residence at time of enlistment BARRIE, ONT. CANADA
9. (B) Special conditions (if any) of enlistment or rate of pay
10. (C) Any subsequent variations of conditions of service
11. Religion R.C.
12. If married, state date SINGLE
13. Trade on enlistment CLERK
14. Corps, trade and grade
15. (D) Qualifications
16. (E) Miscellaneous entries

(17) Regiment or Corps — Unit (Battn, etc): QOR of C.

(18) Medical

Category	Date	Authority
"A"	2 Nov 42	Medical Board

(19) Next of kin (entries to be made in pencil) (father)
Mr. Robert Smith
169 Bayfield St.
Barrie, Ontario
Canada

(20) E.
(21) E.
(22) E.

NOTES—
(A) Here enter particulars of any subsequent claim as to actual age after verification of birth certificate.
(B) Whether for home service only, enlisted at special rates of pay, etc.
(C) If to be retained in home service, period if specified to be stated; also authority and on what grounds; see (A) above.
(D) Signaller, Farrier, etc.
(E) Instructions regarding allotment of these sub-heads will be made as may be necessary after mobilization.

(a) Report		(b)	(c) Record of all casualties regarding promotions (acting, temporary, local or substantive), appointments, transfers, postings, attachments, &c., forfeiture of pay, wounds, accidents, admission to and discharge from Hospital, Casualty Clearing Station, &c. Date of disembarkation and embarkation from a theatre of war (including furlough, &c.) in accordance with para 2 of Note to Table 1 of Appendix III of Field Service Regulations, Volume 1.	(d) Place of Casualty	(e) Date of Casualty	(f) Army rank as at (e)	(g) Army Form or other authority for entry to be shown.
1	From whom received	Unit				
		SFSS	To be Lieut	Canada	1-6-43	Lieut	19/15 Jun 43.
		"	Increase Rate of pay of 6/- p.d.	Canada	1-6-43	"	26/23 Jun 43
		"	Appointment to be Acting Capt	Canada	23-6-43	"	36/10 Aug 43.
		"	Reverted to Rte & resumes 3 days pay	Canada	23-8-43	Pte	40/23 Aug 43
		"	Struck off strength	Canada	22-10-43	"	264/5 Nov 43
		"	Left Canada	U.K.	24-10-43	"	
			Arr Clapham Barracks	U.K.	30-10-43	"	
			Disembarked in the U.K.	U.K.	30-10-43	Pte	302/20 Nov 43
		1 C.R.D.	Left from Canada	U.K.	31/10/43	"	
		"	Ptd with 3 C.I.R.				
		"	Att Sec 15 W.S. (Rail Thurso 6 mins	U.K.	17-1-44	Pte	18/22 Jan 44
			Awarded Total Rail 1 days Pay	U.K.	10-3-44	Pte	60/11 Mar 44
		16 R.W.	Left 6 & C.I.R.U.	U.K.	11-3-44	Pte	74/14 Mar 44
		4 C.I.R.U.	Left from 16 R.W.	U.K.	13-3-44	Pte	76/16 Mar 44
		"	To the 3 C.I.R.U.	U.K.	16-3-44	Pte	67/18 Mar 44
		3 C.I.R.U.	Left from 4 C.I.R.U.	U.K.	26-3-44	Pte	74/27 Mar 44
		"	Added Pay to 1 C.S.R.U.	U.K.	3-4-44	Pte	81/7 Apr 44
		"	C.F.G.M. to 1 C.S.R.U. + Left 6 & 4 Lust (C.I.R.)	U.K.	4-4-44	Pte	12/20 Mar 44
	X-4 Lust	R.A.R. of C.	Left from 3 C.I.R.U.				
	X-4 Lust	R.A.R. of C.	Att Sec 15 W.S. (Rail 4 hrs 21 mins) Forfeit 1 days	U.K.	2-5-44	Pte	16/10 May 44
			Forfeit (Rail) Forfeit 2 of 3 days	U.K.	7-6-44	Pte	22/5 Jun 44
			Left for Field Service	Field	8-6-44	Pte	23/5 Jun 44
10 R.W.	X-4 Lust	R.A.R. of C.	Left to R.W.R.	"	12-7-44	Pte	30/5 Jul 44
	"	R.W.R.	Left from R.A. (R.A.R. C.)	"	13-7-44	Pte	31/6 Jul 44
	"	"	Left to R.S. (R.A.R.)	"	14-7-44	Pte	32/ 44
	"	"	Left from R.S. Lust R.A.R.	Field	30-7-44	Pte	43/1 Sep 44
	"	"	Left to 2 C.I.R.U.	U.K.	30-7-44	Pte	43/1 Sep 44
	X.3	R.A.R.	Left from X.3 Lust (R.A.R.) to Aldershot 24 C.B.H.	U.K.	29-8-44	Pte	43/1 Sep 44
	X.3	2 C.I.R.U.	Left from 24 C.B.H. to 1 C.H.C.	U.K.	5-9-44	Pte	43/1 Sep 44
	X.3	"	Leave from 1 C.H.C.	U.K.	6-9-44	Pte	224/12 Sep 44
	X.3	"	Left to 2 C.I.R.U. on Recall 1 C.H.C.	U.K.	15-9-44	Pte	236/19 Sep 44
		2 C.I.R.U.	Left from X.3 (2 C.I.R.U.) to Recall 1 C.H.C.	U.K.	15-9-44	Pte	236/25 Sept 44
		2 C.I.R.U.	Rail more than 24 hrs from 2200 hrs	U.K.	15-9-44	Pte	244/10 Oct 44
		2 C.I.R.U.	Rail " " 8 days " 2200 hrs	U.K.	15-9-44	Pte	
		2 C.I.R.U.	Rail " " 21 days " 2200 hrs				
		2 C.I.R.U.	Rail				
		2 C.I.R.U.	Left as a Deserter declared illegally				
			absent from 2200 hrs 17 Sep 44 to 1 Oct	U.K.	17-10-44	Pte	262-1/31-10-44
			to the amount of £ 22-18-6 d.				
		2 C.I.R.U.	Left from Aberdeen on being apprehended by R.T.C. in Oxford at 1130 hrs.	U.K.	25 Nov 44	Pte	27/2 Dec 44

Exhibit C

Expense Voucher No—: Ref: K.R. & O. (Can) 539

Reg. No B135412 Rank Rfmn Name Smith, T.H. Unit 2 C I T R

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London from Oxford

Date	Particulars		Amount		
27/9/44	Escorts return fare from LONDON To	Oxford		9	10
	Prisoners single fare to LONDON From	Oxford		4	11
	Prisoners fare from	To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares				
		Total £		14	9

I certify that the above statement of ~~Expenses~~ is Correct, and that the amounts are fair and just.

CAPT. Capt.

Officer Issuing Railway Warrant and Expense Voucher
No. 6 Area Provost Company, Canadian Provost Corps, London.

BIRCH
ADMIN. OFFICER
D.P.M's BR.
C.M.H.Q.

C.M.H.Q. 100/55
40(P & S/48)(3257)

STATEMENT OF EVIDENCE IN THE CASE OF:-

Appendix A

B. 13?212. PTE. SMITH. T.H.
No. 2. C.I.T.R.
The ROYAL WINNIPEG RIFLES.
CANADIAN ARMY.
E N G L A N D.

Sir,

At OXFORD on the 26th NOVEMBER, 1944 at 10.?? hours I was on duty at the MILITARY POLICE HEADQUARTERS accompanied by CPL. CHAPMAN C.M.POLICE where I saw the above named soldier. I asked him if he was on PASS and he replied 'No I have just come out of Hospital' I then asked why he was not wearing his Cap and he replied 'I lost it last night at the RED CROSS CLUB'. Not being satisfied with his statement I conducted him to the Company Office, where he stated that he was a patient of the No. 24 Canadian Military Hospital at HORLEY. This Hospital was contacted by telephone and it was then ascertained that no 949 of this name was a Patient there. The Canadian Provost at LONDON was then contacted by telephone and his particulars given. At 11.30 hours the Canadian Provost informed this Unit that the above named soldier was an Deserter from the 15th SEPTEMBER, 1944 and that he was not a CORPORAL but a PRIVATE soldier.

I then arrested him and he was detained pedning the arrival of an escort.

Later on visiting the Guard Room, I observed that the Chevrons had been removed from the Tunic and when asked for an explanation the a/n stated that he had disposed of them down the Lavatory.

OXFORD.
26/11/44.

7091079. H. Gilham L/CPL.
15? H.Q. PROVOST COY., S.M.D.

Sir,

I have read over and corroborate the above statement.

OXFORD.
26/11/44.

7083966. A. Chapman CPL.
15? H.Q. PROVOST COY., S.M.D.

M.F.B. 355
22M—5-41 (372-3)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B.135212,	Pte.	Thomas Henrieff SMITH,	2 CITR.

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental and Squadron, Battery ~~Conduct sheets~~ or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For Sec. 15(1)	4 times	Sec. 15(1) 6. times
For	times	times
For	times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct~~

~~or~~

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~or~~

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act~~ A.F.A. 73 Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

~~or~~

~~The accused at the present time is under sentence for beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for 0 days in civil custody, and 23 ~~Air Force~~ days in military custody, making a total of 23 days in custody, of which 0 days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 20 yrs. 4 months

6. The date of his ~~enrolment~~ attestation specified in his ~~record of service~~ attestation paper 2-11-42.

~~7. The service which the accused is allowed to reckon towards discharge is~~

~~8. The accused is entitled to reckon service for the purpose of determining his pension, etc.~~

9. The accused is in possession of ~~or~~ entitled to no ~~air force~~ military decoration, or ~~air force~~ military reward ~~or is in possession of or entitled to~~. State any ~~air force~~ military decoration or reward.

N/A

~~10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of~~

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated , and in his regiment (or corps), the rank of dated .

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Air Force

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number Rank Unit

Name of Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 19 day of Dec 44

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

No. B135212 Name SMITH T.H. Sqn, Battery, or Company | Corps CIC | Date of enlistment 2-11-42 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 10/PAS/136 (3418)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Debert N.S.	20-4-43	Rfn	/	AWL from 0900 hrs 20 Apr 43 till 2125 hrs 21 Apr 43.	Cpl Trompe	Forf 2 days pay	22 Apr 43		
Debert N.S.	23Aug43	L/Cpl	/	AWL from 2301 hrs 19 Aug 43 till 2210 hrs 22 Aug 43.	CSM Steiger L/Cpl Frank	Forf 3 days pay - reduced to permanent rank of pte.	24Aug43	Capt H. Brookhouse	
Field	16Jan44	Rfn	/	AWL from 2359 hrs 16 Jan 44 to 0905 hrs 17 Jan 44. Absent 9 hrs 6 min. AA Sec 15 (1)	Documentary CSM Donk	3 days C.H.	17Jan44	Maj. R.L. Raymont	1 days auto forf of pay
Field	5-5-44	Rfn	/	AA Sec 15 (1)		Forf 6 days pay			
Field	15-8-44	Rfn	/	AA Sec 15(1) AWL from 12 Aug 44 till 14 Aug 44.		7 days C.H. 2 days pay.			

(PTO)

2 CITR/13

LIST OF WITNESSES

In the case of B.135212, Pte. Thomas Henrrieff SMITH,
(No.) (Rank) (Surname & Initials)
CIC, on strength of 2 Cdn. Infantry Training Regiment, a soldier of the Cdn. Army Overseas.

(For the Prosecution)

1. Capt. H. B. Winn,	2 C I T R
2. 7691079, L/Cpl. Galloway, G.	159 H.Q., Provost Coy., SMD, Oxford.
3. 7683966, Cpl. Chapman, A.	(Same address as above)

(For the Defence)

NIL

LIST OF EXHIBITS

In the case of B.135212, Pte. Thomas Henrrieff SMITH,
(No.) (Rank) (Surname & Initials)
CIC, on strength of 2 Cdn. Infantry Training Regt., a soldier of the Cdn. Army Overseas.

(For the Prosecution)

Exhibit "A":	-	Record of Decl. of C. of I. held 17 Oct 44, showing accused AWL from 2200 hrs. 15 Sept.44.
Exhibit "B"	-	Certif True Copy of MFM 4 (Pt.I) ~~showing accused~~ which does not show accused entitled to wear Corporals' Chevrons.
Exhibit "C"	-	Expense Voucher showing costs of appreh. & return of accused to his unit in amt of £0-14-9.

(For the Defence)

NIL.

REQUEST FOR DEFENDING OFFICER

I, B.135212, Pte. Thomas Henrrieff SMITH,
hereby request that the Convening Officer appoint Capt. H.J. Brake, to represent me at my forthcoming trial by Court-Martial, should he be available.

Laurentide Camp,
14 ~~12~~ Dec 44. T.H. Smith, Pte.
(T.H. Smith).

RECEIPT FOR DOCUMENTS.

I, B.135212, Pte. Thomas Henrrieff SMITH,
hereby acknowledge that I have received a true copy of the Summary of Evidence taken in England preliminary to my Court-Martial, and I further acknowledge receipt of a true copy of the Charge Sheet under which I am being brought to Court-Martial.

Laurentide Camp.
14 Dec 44. T.H. Smith, Pte.
(T.H. Smith)

No. B135212 Name SMITH T.H. Sqn, Battery, or Company Corps CIC Date of enlistment 2-11-42 GC Badges Service or Proficiency Pay 3/17 MFM 6 (AFB 122) 40/PAM/136 (5413)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Debert N.S.	20-4-43	Rfn	/	AWL from 0900 hrs 20 Apr 43 till 2125 hrs 21 Apr 43.	Cpl Trompe	Forf 2 days pay	22 Apr 43		
Debert N.S.	23Aug43	L/Cpl	/	AWL from 2301 hrs 19 Aug 43 till 2210 hrs 22 Aug 43.	CSM Steiner L/Cpl Frank	Forf 3 days pay - reduced to permanent rank of pte.	24Aug43	Capt H. Brookhouse	
Field	16Jan44	Rfn	/	AWL from 2359 hrs 16 Jan 44 to 0905 hrs 17 Jan 44. Absent 9 hrs 6 min. AA Sec 15 (1)	Documentary	3 days C.B.	17Jan44	Maj. R.B. Raymont	1 days auto forf of pay
Field	5-5-44	Rfn	/	AA Sec 15 (1)		Forf 6 days pay			
Field	15-V-44	Rfn	/	AA Sec 15(1) AWL from 12 Aug 44 till 14 Aug 44.		7 days C.B. 2 days pay.			

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Fiela	15Sep44	Rfm		/ AA Sec 15(1) AWL 15 Sep 44. Still AWL on 8th day.					

CERTIFIED TRUE COPY CONSISTING OF...1...PAGES

DATE..1st Dec 44.....

D.R. Byrne Lt
.....

Officer having custody of Regimental Books

2 CITR/13

LIST OF WITNESSES

In the case of B.135212, Pte. Thomas Henrrieff SMITH,
(No.) (Rank) (Surname & Initials)

CIC, on strength of 2 Cdn. Infantry Training Regiment, a soldier of the Cdn. Army Overseas.

(For the Prosecution)

1. Capt. H. B. Winn,	2 C I T R
2. 7691079, L/Cpl. Galloway, G.	159 H.Q., Provost Coy., SMD, Oxford.
3. 7683966, Cpl. Chapman, A.	(Same address as above)

(For the Defence)

NIL

LIST OF EXHIBITS

In the case of B.135212, Pte. Thomas Henrrieff SMITH,
(No.) (Rank) (Surname & Initials)

CIC, on strength of 2 Cdn. Infantry Training Regt., a soldier of the Cdn. Army Overseas.

(For the Prosecution)

Exhibit "A": - Record of Decl. of C. of I. held 17 Oct 44, showing accused AWL from 2200 hrs. 15 Sept.44.

Exhibit "B" - Certif True Copy of MFM 4 (Pt.I) ~~showing accused~~ which does not show accused entitled to wear Corporals' Chevrons.

Exhibit "C" - Expense Voucher showing costs of appreh. & return of accused to his unit in amt of £0-14-9.

(For the Defence)

NIL.

REQUEST FOR DEFENDING OFFICER

I, B.135212, Pte. Thomas Henrrieff SMITH,

hereby request that the Convening Officer appoint Capt. H.J. Brake, to represent me at my forthcoming trial by Court-Martial, should he be available.

Laurentide Camp,
14 ~~12~~ Dec 44.

H.J. Smith. Pte.
(T.H. Smith).

RECEIPT FOR DOCUMENTS.

I, B.135212, Pte. Thomas Henrrieff SMITH,
hereby acknowledge that I have received a true copy of the Summary of Evidence taken in England preliminary to my Court-Martial, and I further acknowledge receipt of a true copy of the Charge Sheet under which I am being brought to Court-Martial.

Laurentide Camp.
14 Dec 44.

H.J. Smith. Pte.
(T.H. Smith)

228 A Pte. Smith. P. R. 10/1/1901
48th Highlanders

RECEIVED
17 MAR 1941
H.Q.
1 Cdn. Inf. Bde.

151

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this 18th day of February, 1941.

Whereas it appears to me, the undersigned, an officer in Command of 1st Canadian Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

* Omit if not applicable.

~~The undersigned is appointed~~
~~[or other Officer empowered]~~
~~[or Field Officer]~~
~~[or Officers (not more than one) of~~
~~[or Officers]~~
~~[or Officer]~~

* *President.*

Rank.	Name.	Regiment.
Major	J.S.F. Armstrong	48 Highlanders

Members.

Rank.	Name.	Regiment.
Capt.	Exley	East & P.E.R.
Lieut.	G. Proctor	48 Highlanders
Lieut.	O.C. Beckingham	1 Cdn Recce Bn
Waiting		

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed G.R. Pearkes
(G.R. Pearkes) Major General
Commanding 1st Canadian Division
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B.72875 Pte. Smith, T.R. 1 Cdn Div Recce Bn	Army Act Sec. 40 (see charge sheet attached)	not guilty	Guilty 28 days F.P.	Confirmed. G.R. Pearkes Maj Gen

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*): "No"

(Signed) G.R. Pearkes (G.R. Pearkes) Major General
Commanding 1st Cdn Div
Convening Officer (e)

(Signed) J.S. Armstrong Major
48th Highrs of Canada.
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 6th day of March, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~)
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 6 day of March 1941.

J.S. Armstrong Major
President of the Court Martial

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this 6 day of March 1941.

J.S. Armstrong Major
President of the Court Martial

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*I direct that the soldier named in the margin be not committed to prison until further orders.~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 20th day of March 1941

G.R. Pearkes Maj Gen
Confirming Officer
G.O.C. 1 Cn Div

Promulgated and extracts taken in the case of

(a) (Dated) 22 Mar 41 (Signed) Wm Hawey Capt & Adjt.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

Elected to be tried by Court Martial

C H A R G E S H E E T

The accused, No. B.72875 Pte. Smith, T.R., 1 Canadian Division Recce Battalion, a soldier of the Canadian Army is charged with, while on active service,

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

1st charge A.A. Sec 40

in that he at Walton-on-the-Hill on 5 Jan 41 was improperly in possession of a motor car number CMH 853 belonging to Capt. W.H. Hovey, 1 Canadian Division Recce Battalion.

Pleads. Not Guilty.

(H.W. Foster) Lieut. Col.
Commanding 1 Cdn Div Recce Bn

F.G.C.M. for B-72875 Pte. Smith, T.R.

RECOMMENDATION TO MERCY

The Court is unanimous in making a recommendation to mercy on the following grounds:-

1. That the Accused was only "technically" guilty of the charge of being in "Improper Possession".

2. That the Accused was not a party to the original theft and at no time had he intentions of stealing the vehicle.

3. That when apprehended, the Accused was in the midst of returning the vehicle to his Officer's Mess.

4. That the Accused should not pay any penalty when his intention was to protect his Officer's property.

5. That the Accused has already spent 30 days under close arrest and 30 days under open arrest.

Respectfully submitted.

. . . . . Major and President
(J.S.P.Armstrong) F.G.C.M.
48th Highrs of Canada

. . . . . Captain (Member)
(Exley) Asst. A.P.M.

. . . . . Lieut. (Member)
(Proctor, G.)
48th Highrs of Canada.

Proceedings of a Field General Court Martial held at "Kingswood Court", KINGSWOOD, Surrey, on the sixth day of March 1941, by order of Major-General G.R. Pearkes, Commanding 1 Canadian Division, Canadian Army (Overseas), composed as under:-

PRESIDENT

Major J. S. F. Armstrong, 48th Highrs of Canada.

MEMBERS

Captain Exley, Hastings & P.E.R.

Lieut. G. Proctor, 48th Highrs of Canada

OFFICER UNDER INSTRUCTION

Lieut. J.M. Bowman, 48th Highrs of Canada

The Court is satisfied that Rules of Procedure 22 and 23 (MML) have been correctly conformed with.

The accused is brought before the Court.

PROSECUTOR: Lieut. K. L. Campbell, 1 Cdn Recce Bn

DEFENDING OFFICER: Lieut. W. J. Leadbeater, 48th Highrs of Canada

The trial commenced at 0950 hrs.

The order convening the Court is read to the accused, by the President of the Court.

The names of the President and the members of the Court are read over in the hearing of the accused and no objection was made by the accused to be tried by this Court.

The President, members of the Court and Officer Under Instruction and Shorthand Writer are duly sworn in.

The accused is arraigned on the following charge:

Court: Are you Pte. T.R. Smith, B-72875, of the 1 Canadian Recce Squadron?

Accused: I am Sir.

Court: You are charged with the following, under A.A. Sec 40: "Whilst On Active Service, conduct to the prejudice of good order and military discipline, in that he, at Walton

-on-the-Hill, on 5 Jan 41, was improperly in possession of a motor car, numbered CMH 853, belonging to Captain W.N. Hovey, 1st Canadian Recce Squadron.

Court: Are you guilty or not guilty of the charge against you, which you have just heard read?
Acc'd: Not Guilty Sir.

Court: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?
Acc'd: No Sir.

OPENING ADDRESS BY PROSECUTION

President and members of the Court. It is my intention to prove that the accused, Pte. T. R. Smith, is guiltyoof, "Conduct to the prejudice of good order and military discipline in that he was improperly in possession of a vehicle belonging to Captain Hovey, of the 1st Canadian Recce Battalion. The fact that he was in the vehicle without the permission of Captain Hovey establishes, in my opinion, being improperly in possession and I am going to produce witnesses to prove that not only this was the case, but that the accused had intentions of using the car for his own personal use, or that he was in a plot with some others to use it. Withethe permission of the Court, I would like to read a written statement made by Captain Hovey when he found out the car had been stolen. Is this permissible Sir? (Court is cleared at this juncture).
Court: It is the ruling of the Court Mr. Prosecutor that this is not evidence - just heresay evidence. You may proceed.

In that case, I would like to call on my 1st Witness, police constable George A. Cooper, P.C. 336, of the Surrey Constabulary.

1st. Witness for the Prosecution, P.C. Cooper, George, A., having been duly sworn, is examined by the Court.

Court: You are P.C. Cooper, George, A.?
A: Yes Sir.

Q: Do you recognize the accused?
A: Yes Sir.

The charge is read out to the witness.

Q: P.C.Cooper, will you tell the Court in your own words what you know about this incident which took place on the night of 5 Jan 41?

A: At 7.00 p.m. on the 5th Jan 41, I was passing the, "Islands" Heath Drive, Walton-on-the-Hill, when I saw a motor car parked on the footpath ahead of me. Suddenly the doors were slammed and some soldiers ran away. I shouted and gave chase. They ran on to Walton Heath in different directions. I searched but couldn't find them. Returned to the car. Noted the number. Found that the doors were unlocked so I removed the Rota Arm. Went to "Pintmere" and phoned for assistance. On returning to Heath Drive, I saw the car being towed by an Army Lorry in the direction of the Dorking Road. I gave chase. It stopped. On catching up with it, I saw the accused, Pte. Smith, sitting in the driver's seat of the car. Upon questioning, he said,

"It's my officers car and I'm in charge of it, but we're unlucky - we can't get it going". He produced a Pass and his Pay Book in the name of Trevor R. Smith, number B-72875, of the 1st Canadian Recce Squadron. I asked about the lorry, and Smith replied, producing a work ticket, "This is easy. Its been out all day and by not returning the ticket, it still covers it being used". Pte. Brain, who was driving the lorry produced correspondence to verify his identity and said, "I don't know anything about this only we couldn't get it going so I fetched this lorry to tow it". P.W.R. Foster then arrived, as I produced the Rota Arm saying possibly this is why it refused to go. Smith then immediately replied, "No, we couldn't get it going before you removed that; besides I guess your the guy who shouted out at us just now". I replied, "Yes". Smith said, "We bolted because we thought you were Captain Hovey chasing us, he having discovered the car was missing". He then asked the time and I said, "7.20 p.m.". He replied, "We had a date at 7.15 p.m. with some girls down in Brighton, but I guess its too late now, besides, we can't get the car going so we best take it back from where we took it." I asked him to produce his Driving License and Certificate of Insurance and he replied, "I haven't got either, but I guess Captain Hovey has". I pointed out their offences and they replied, "We know we are in the wrong but we wouldn't mind so much if you caught us after a good time out as you see, we've only got so far and most of that by pushing it". I told them the facts would be reported and they pleaded with me to forget all about it, saying, "There's only us four here and our other pals, who know of this and it will mean the Glass House. If we take it back to its original place no one will be any the wiser. Let's forget about it." I directed them to return it and saw they did. Having satisfied myself as to the identity of these privates, and considering the siren had sounded, aircraft was active overhead, roads were ice-bound and if I had of arrested them there, they would have had to be conveyed to Leatherhead Police Station, I decided in the interests of all it was best to deal with them in this way. That is my evidence Sir."

1st Witness is cross-examined by the Prosecution.

Q. Constable Cooper, how long would you say it was between when you first started to chase the lorry to when you were back after phoning for assistance and finding the accused there?
A. The period would be a matter of approximately ten minutes to fifteen minutes - no more.

Q. How long was the period from when you took the Rota Arm out of the car until you were back again at the car?
A. It only took a matter of seconds Sir.

Q. Are you familiar with the sound of a combination motorcycle machine?
A. Yes Sir - fairly.

Q. At this time, did you hear a machine in the vicinity at all?
A. I have no recollection of hearing one Sir.

Q. You did not see or hear any vehicle at all around there?
A. No I didn't. I heard the sound of the Army Lorry as I was coming from the house after making my phone call for assistance but that was all I heard.

Q. That was the lorry towing the car was it not?
A. Yes sir, that was the only noise I heard.

Q. Did Private Smith, when you questioned him, seem quite familiar

1st Witness Cross-Examination (Cont'd):

Q. with what was going on. Did he seem to know the events that had happened before?
A. Yes he had. He seemed quite familiar with facts, which he would not have been familiar with had he not been in the vicinity.

Prosecutor to the Court: That is all Sir.

1st Witness Cross-Examined by the defence:

Q. How can you verify your statement in which you said that it was ten to fifteen minutes from the time you started to chase the lorry after making your phone call? Until you caught up with them?
A. It couldn't have been any more. I questioned them for some time when I caught up with them. When I left the car to phone, P.C. Foster checked the time when I called him, as the usual procedure is such in the Force. It was then 7.00 p.m. The siren also sounded at the same time. After making the call I came out of the house, which was right opposite the place where the car was parked.

Defending Officer to the Court: That is all the questioning I wish to make Sir.

1st Witness questioned by the Court:

Q. How many men would you say were in the car originally when you saw them open the door and run?
A. I saw three of them. There might have been more as my distance was about 25 to 50 yards away from the car and it was rather dark. They apparently saw me.

Q. How far away were you?
A. About 25 to 40 yards - no more.

Q. Was it dark at 7.00 o'clock?
A. Yes - pretty dark. There was an obscured moon.

Q. How did you approach the car, from the rear or front?
A. I was approaching from the rear.

Q. If you were that distance at the rear and it was dark, how do you account for them having seen you approaching?
A. They didn't as a matter of fact. The car being there without any lights caused me to investigate and when I saw the soldiers running away from the vehicle, I shouted at them.

Q. If that distance is what you say, how do you account for seeing the accused in the drivers seat?
A. I wasn't that far away from him on that occasion. This distance I speak of was when I first came upon the car on the pathway. I was speaking to the accused on the 2nd occasion.

Q. Can you recognize this man Smith in this room?
A. Yes Sir.

Q. Where?
A. Between the two escorts.

Questioned by the Prosecution

Q. Was the car being towed towards or away from the Mess?
A. Away from the Mess. There is ample room to turn around.

1st Witness questioned by the Court:

Q. Did they give you the impression, when you came upon these men on the 2nd occasion, that they were trying to get the car started or that they were trying to take it back to its quarters?
A. At no time were they intending to take it back, in fact, I got the impression that they were going for a joy-ride.

2nd Witness for the Prosecution was called to give evidence.

Having been duly sworn, is questioned by the Court.

Q. You are P.C. Foster, E. (281) of the Surrey Constabulary?
A. Yes sir.

Q. Do you recognize the accused?
A. Yes I do.

The charge is read out to the witness in the hearing of the Court.

Questioned by the Prosecution.

Q. Will you tell the Court, in your own words, what you know of the events taking place in connection with this trial on the 5 Jan 41?
A. "In consequence of a telephone call from P.C. Cooper at 7.05 p.m., on the 5th Jan 41, I proceeded to Heath Drive, where I saw P.C. Cooper with two soldiers, a car and a lorry. They were speaking about a Rota Arm. I stayed in the vicinity. One of the soldiers asked P.C. Cooper the time, to which he replied, "It's 7.20". One of the soldiers then said he had a date with some girls down at Brighton at 7.15; as we can't get it going we might as well take it back. I held the torch then while P.C. Cooper took down some numbers. I then walked around the vehicles and on my return I heard them pleading with P.C. Cooper saying, "Forget about this; there's only four of us here and our pals that know anything about this." Then P.C. Cooper instructed them to take the vehicles back.

Q. Which way did you come after receiving the phone call from P.C. Cooper?
A. I came by "Checkers Lane", proceeding to Heath Drive where P.C. Cooper was.

Q. Did you walk?
A. No - cycled.

Q. Did you, on your way over, pass any vehicles, especially a combination motorcycle?
A. Don't recall seeing anything.

Q. Are you familiar with the sound of a combination motorcycle machine?
A. Yes Sir.

Q. Did you hear one in the vicinity?
A. No Sir.

Questioned by the Defending Officer.

Q. When you arrived on the scene when P.C. Cooper was conversing with the soldiers, did you hear him, at any time, point out the wrong they were doing?
A. No Sir.

Questions by the Defence (cont'd):

Q. Did you hear one of the soldiers say to P.C. Cooper, "Its too late now, so its best we take it back"?
A. Yes Sir, I heard that.

Questioned by the Court.

Q. Could you identify any of the soldiers that you saw?
A. No sir.

Q. Did you see any soldiers sitting in the vehicle?
A. No. There were 3 of them when I met P.C. Cooper.

P.C. Cooper, 1st Witness is recalled by the Defence and questioned.

Q. Did P.C. Foster hear the whole of the conversation between you and the accused upon his arrival?
A. He did not hear the whole conversation. I was the officer involved in the case and it was my interests to take evidence of all the facts. He was looking around the vehicles.

Q. The accused did suggest at 7.20 that he wanted to take the car back? Did P.C. Foster hear the accused say that?
A. I think there has been a misinterpretation of evidence here. It was impossible for him to hear all that passed between Smith and myself, as he was walking about the vehicles and we did not shout it out.

At this point, the two constables are released there being no further evidence required from them, with permission of the Court. This was to enable them to carry on with their civil occupation.

The prosecutor declined to cross-examine P.C. Cooper.

Court: Have you any other witnesses for the Prosecution?
Pros: That is complete Sir.

The Court questions the Accused.

Q. Do you wish to give evidence yourself as a witness?
A. Yes Sir.

Q. Do you intend to call any other witnesses on your behalf?
A. Yes Sir.

Q. Are your witnesses as to character only?
A. No Sir.

Rules of Procedure 15 is carried out by the President of the Court. Accused wishes to give evidence under oath.

1st. Witness, Pte. Smith, the accused, having been duly sworn in states:

"At that time I was Orderly Room Clerk in the 1 Canadian Recce Squadron. I went to my billets between 5.00 and 5.30 p.m. on the 5th Jan 41. While there I overheard plans of some men in the Troop to take Captain Hovey's car that night and go to Brighton. At that time I was holding a position of trust and good faith in the Orderly Room by Captain Hovey and Major Darling, and that was the reason I refused to take part in any of their plans of taking the car. I stayed in my billets and remained there until approximately 7.00 p.m. At that time one of the persons involved returned to Damory Cottage and told me what had happened. I more or less told them to take the car back and not leave it where it would be recognized by the police. I felt sorry for Captain Hovey. He told me they could not take it.

Statement by Accused (cont'd)

back as they might be picked up by the Police. Shortly after, Pte. Oliphant, who is batman at the Officer's Mess, came and asked Pte. Brain if he would drive him over to the Mess to take his equipment over there. He said that he had permission to be taken to the Officers' Mess, in the truck. I asked if I might accompany them in the truck. I left the billets with Pte. Brain and Pte. Oliphant in the W.D. Vehicle to the Officers' Mess where Oliphant got out. We started along the road to our billets, taking another route back as it saved us turning around. I was on the lookout for for car and when we came upon it, I recognized it. I knew approximately where it would be. I asked Brain to stop the truck and I got out. I looked around to see if any of the other boys had returned to the car in the meantime but nobody was around. I suggested to Brain to return the car to the Officers Mess. He had a tow chain in his truck and we put the chain on and started towards the Dorking Road, with the intention of turning around at the first opportunity. We couldn't turn around at this spot. When we got under way the car, being very small, started to swing from side to side, so I honked the horn and Brain stopped the truck. I didn't hear any shout or make any noise for us to stop up to that time. While we were at a standstill, a police officer came up and shone a flashlight in my face. At that time, it seemed to me that the most sensible and most practicle thing to do was to try and convince the police that I was responsible for the car and to try and hoodle them into leaving us alone. For this purpose I told them I was in charge of the car. The constable then questioned me and I gave him answers which I thought would convince them that I was responsible for the car. We told the policeman that it was our intention to take the car back to the Officers' Mess, and for those who were originally in the whole idea, they not being able to get the car back, we did not want to implicate anybody in attempting to return the car and so I repeatedly asked the policeman to say nothing of the matter and let us return the car to where it originally belonged and so no trouble would be caused. The car was returned to the Officers Mess. I returned to my billets and discussed the case very thoroughly with the other men, who, by that time had returned to "Damory Cottage". That is all Sir."

Questioned by the XXXXXXXXXX Defence.

Q. Were you in or near Captain Hovey's quarters?
A. No Sir.

Q. Where were you?
A. In my billets - Damory Cottage.

Q. You told the constable that you had a date and that you had permission to take the car? Was that statement true?
A. No Sir.

Q. How far was the car at this time, away from the place where Pte. Brain kept his truck?
A. I think it would be about half a mile.

Q. How far was the car away from the Officers' Mess?
A. A matter of 400 to 500 yards.

To the Court: "That is all Sir".

Questioned by the Prosecution. (The accused).

Q. Who was the person you say you saw coming up on a combination motorcycle?
A. I have no intention of implicating any other person in this trial.

Prosecutor addresses the Court:

"Sir, would you not consider this as "contempt of Court" on the part of the accused in he not answering my question?"

Court is cleared and a ruling is made by the Court and addressed to the Prosecution as follows, by the President:

"It is a ruling of the Court that the accused taking the attitude that he will not answer without implication, is not contempt of court. You may proceed."

Prosecutor continues to examine the witness, the accused.

Q. You stated in your evidence that at that time you were holding a position of trust with Captain Hovey and Major Darling. Did you appear before in Orderly Room?

This question was over-ruled by the Court.

Q. How long would you say it took to take the car from where it was stopped from your billets?
A. Three minutes.

Q. To do that in three minutes you would have to drive pretty fast all the way?
A. Yes - all the way.

Q. How long was it from the time you were told of this incident until you left your billets in the truck?
A. Another three or four minutes.

Q. How long would it take you to get from your billets to the Officers Mess?
A. Another three minutes.

Q. How long did you stop at the mess?
A. Time enough to let Cliphant out of the truck - about two or three seconds.

Q. You were in the back of thestruck?
A. Yes.

Q. How long did it take you to get from the Officers Mess to the place where the car was stopped?
A. No more than twenty or thirty seconds.

Q. How long had you been ~~travelling~~ before you came upon the car stopped?
A. Two or three minutes.

Q. How far is it, in your opinion, is it from your billets to the Mess?
A. Half a mile Sir - probably a little more.

Q. And you stated before that it was about 200 or 300 yards from the mess to where the car was found?
A. Yes Sir.

Q. You stated that it took 3 minutes to drive the car where you stopped half a mile away and half a minute in what you stated quarter of a mile. Do you not think that you might have had a wrong opinion as to how far it was from the Officers' Mess to your billet?
A. I can't say Sir.

Prosecutor examining the Accused (cont'd).

Q. Why would you say that it takes only a half a minute to travel 400 yards and three minutes to travel only half a mile.
A. There were trucks parked on one side of the road and I was looking for the car.

Prosecutor: "I think this is farther than half a mile from the Officers' Mess to the Billets of the accused and I think it would take longer than 3 minutes to do it. I don't think that the accused is a very good judge of distance."

A. (by the Accused): "I admit that. I can't make any judgement as to the length of time. I was not driving the vehicle."

Court: "This evidence is irrevalent to the charge laid".

Questioned by the Prosecutor (cont'd).

Q. You state in your evidence that you tried to convince the police man that you were responsible for the car?
A. I did.

Q. In so doing, did you realize that this evidence might be brought up against you?
A. No sir. Had I realized that, I would have said nothing to them.

Q. Do you not think that if you had of approached Captain Hovey with your story, that he would have taken your story as facts?
A. I was rather undecided as to whether to Captain Hovey or not, the next day. At the time I was a little frightened. I was over to my duties the next day and Major Darling and Captain Hovey came in once during the day but went right out again. I wanted to see the Captain but didn't get the chance to speak to him. I did not see him again until I was placed under close arrest. At 11.00 a.m. Sgt. Gibb came over to me and said, "What about Captain Hovey" I was still undecided then as to what to do. It was my intention of explaining to Captain Hovey, the whole thing, but not to mention any names."

Q. You were in the Orderly Room with Captain Hovey that morning?
A. Yes, but he just came in and went out again.

Q. You said that it was your intention to give Captain Hovey the full facts of the case, and yet later you now refuse to give the full facts of the case. Why?
A. I do not want to expose the names.

Accused to the Court: "Pte. Brain ~~Shipley~~ was asked to discuss the persons involved and if he told them, he would have a re-trial. He got 14 days Field Punishment and I elected to be tried by Court Martial".

Court questions the Accused.

Q. Did you say Pte. Brain has already been tried and punished for this offence?
A. Yes Sir. I was placed under close arrest on 5 Jan 41 and remained under close arrest until the time of the scheme we had. I went A.W.L. from close arrest after having been refused permission to be paraded.

Q. Have you driven Captain Hovey's car before?
A. No Sir.

Q. Have you driven any other car similar to that one?
A. No Sir.

Q. How did it get out of control?
A. It being a small car started to swing from side to side.

Court questions Accused (cont'd).

Q. You stopped the car yourself?
A. Yes I did.

Q. Pte. Brain was driving the 15-cwt. truck?
A. Yes Sir.

Q. Did he have permission to have the truck?
A. Yes Sir.

Q. Was Brain a regular driver?
A. Yes Sir.

Q. Did you know Captain Hovey was in his quarters after supper?
A. No Sir.

Q. Why didn't you speak to Captain Hovey in the Orderly Room?
A. I wanted to speak to him alone.

President of the Court to the Accused.

Q. You are thoroughly familiar with the seriousness of this case?
A. Yes Sir.

Q. And how it will affect you in view of you persisting to take the attitude of not divulging to the Court the parties involved. You say that at the time you were in a position of trust as Orderly Room Clerk ~~and~~ I believe that such position, ~~subsequently~~ it would be your first intentions to see that the culprits were brought to time.

Prosecution and Defence decline to question the accused any further.

2nd. Witness
for the Defence: B-73278 Pte. Brain, W.D. 1st Canadian Recce Sqn.

Witness is questioned by the Court.

Q. Are you Pte. Brain, W.D., B-73278?
A. Yes Sir.

Q. Pte. Smith is charged with (charge is read out). Do you recognize the accused?
A. Yes sir.

After having been duly sworn, Pte. Brain is questioned by the Prosecution.

Q. Pte. Brain, will you tell the Court in your own words what happened on the night of 5th Jan 41 in connection with this case?
A. "I was up in my room about 7.00 p.m. on the night of 5th Jan 41. I was asked to take Pte. Oliphant over to the Mess with his kit. I was asked by Pte. Smith if he could come along. I said it was alright with me if he got permission. After checking out with the Corporal of the Guard I took Pte. Oliphant and Pte. Smith over to the Officers Mess. Pte. Oliphant got out at the Officers Mess and Pte. Smith and I proceeded on home. We just rounded the corner at the Officers Mess when we came upon Captain Hovey's car. I did not know why it was there but Smith explained to me that some of the men in our Troop had been planning on taking it that night. We decided there that it would be the best plan to

Brain's Statement (Cont'd):

"see if we could get it back to the Mess; so we proceeded to try it and we were stopped by the police. We decided that if we told the police that we were taking the car back to the Mess, that they would forget it and thus we would be able to proced back to the Mess. No one would be any the wiser. After we were finished with the police, I took the car back to the Mess and we continued back to billets.".

Questioned by the Defence:

Q. How far would you say the car was where it was found from the billets?
A. Roughly over a mile.

Q. How far is it from these billets to the Mess?
A. I would say approximately a mile.

Prosecution declines to question this witness.

Court questions the witness.

Q. You say that you were driving along in the truck with Pte. Smith and you were told about this plan by Smith and so you and Smith decided (Was there only two of you? A. Yes) to remove the vehicle and it was your intentions of taking it back to the Officers' Mess. You started off, you in your truck and the accused in the car, towing it, when you were stopped by the police. (A. We stopped on our own accord). The police constable came up. You and Smith then decided to take the blame and not implicate any other persons in front of the police? You were separated? (A. Yes Sir). How did you find time to decide?
A. My only purpose was to keep the other fellows out of trouble.

Q. What was the charge laid against you when you were tried by your commander?
A. Improper possession of a car, A.A. 40.

Q. You were in that car?
A. No sir.

Q. You were towing it?
A. Yes Sir.

Q. Were you found guilty?
A. I was ~~not~~ found guilty. I was given 14 days Field Punishment Camp.

Q. There was just two of you? No more?
A. Yes Sir - just two of us.

Q. You drove Pte. Oliphant and Pte. Smith to the Officers Mess, then you stated that you left the Mess and on the way back you came upon Captain Hovey's car. You returned by a different route because it saves turning around. Did Smith say anything to you before you came upon this car about this situation?
A. No Sir.

Q. Did you discuss with Smith about covering up your friends while you were putting the tow chain on the car?
A. Yes Sir.

Court questions the Witness (cont'd):

Q. When you came upon Captain Hovey's car, who suggested stopping?
A. We recognized the car, at least Smith did, and we just stopped by it?

3rd Witness
for the Defence: B-72708 L/Cpl. Smale, J.A. of the 1st Cdn Recce Sqn.

L/Cpl. Smale, having been duly sworn states to the Court:

"On the night in question, I was duty corporal and Pte. Brain came to me and told me he was going over to the Officers' Mess, which was one of his duties. He was given permission to take Pte. Oliphant over there with his complete kit. I checked them both out. A few minutes after 7.00 p.m. - 10 minutes after I would say. Pte. Oliphant and Smith both went.

Questioned by the Court:

Q. Where was he coming from? (Smith)?
A. He was attached to 2nd H.Q. in the Orderly Room. He had called over at the billets to see some of the boys. I checked Brain out and made note in our log book we keep.

Q. Did you see Smith personally?
A. Yes Sir - he was on the back of the truck when it left.

Q. What dress was Smith wearing?
A. Walking out dress Sir - just as he is now.

Both the Defence and Prosecutor decline to examine the witness.

4th Witness
for the Defence: B-72737 Pte. Oliphant, A.J., of the 1st Cdn Recce.

The charge against the accused is read to the witness and after having been duly sworn, is questioned by the Court.

Q. Pte. Oliphant - what do you know about this case?
A. I came in this night and asked if I could have a truck to take my equipment over to the Officers' Mess where I was going to stay. There were no drivers around so I asked Smith if he would be good enough to drive me over to the Mess. It was around 7.00 p.m. before I was there.

Q. Who drove the truck? A. Pte. Brain Sir.

Q. Did you personally see Smith? A. Yes Sir.

Q. Where was he? A. Standing beside the house when I called at the door.

Q. Did you ask him why he was going over to the Officers Mess with you?
A. No Sir.

Q. How far is it away from your place to the Officers Mess?
A. About a mile Sir.

Defending Officer questions the witness:

Q. Who arranged for the truck you or Pte. Smith?
A. I made arrangements for the truck Sir.

Q. Smith was not the driver, Brain drove it, is that right?
A. Yes Sir.

Prosecution questions the Witness:

Q. Was Smith with you at the time Cpl. Smale checked you out?
A. Yes Sir.

Q. Did you see Smith in the house around that time?
A. I met him outside Sir.

Q. How was he dressed?
A. Same as he is now - walking out dress.

No further questioning of this witness.

5th Witness for the Defence: B-72941 Pte. Shipley, C.B., 1st Cdn Recce Sqn.

After having been duly sworn, is questioned by the Court.

Q. At what time of the evening was the accused in his quarters and how can you verify your statement?
A. Approximately between 6 and 7 p.m. at night. I knew the time by a programme that comes over the radio at that time.

Questioned by the Prosecution.

Q. Pte. Shipley, could you be sure, whether 10 minutes one way or the other, that it was 1900 hrs. when you last seen Pte. Smith?
A. No Sir. At the time I was getting dressed to go out and I left my room and was checked out at 7.00 p.m. He was in the room when I left my quarters.

Defence declines to examine the witness.

6th Witness for the Defence: B-88123 Pte. Gow, T.N., 1 Cdn Recce Sqn.

After having been duly sworn, is questioned by the Court.

Q. On the evening of the 5th Jan 41, at what time did you know Pte. Smith was in billets?
A. He was there from after supper until about 7.15 p.m.

Q. How are so sure he was there at 7.15 p.m.
A. A program comes on the radio at that time and I was in and around the house all the time.

Questioned by Prosecution:

Q. You stated that the last time you saw Smith was approximately 7.15? Have you any means of knowing that was the exact time?
A. Only by the radio program from Canada and I left the room just as it came on.

Q. What time does that program come on?
A. 7.15 p.m. Sir.

Defence declines to examine the witness.

Prosecution re-examines 3rd witness for the Defence, L/Cpl. Smale.

Q. You were Orderly Corporal that night?
A. Yes Sir.

Q. Did you check out Pte. Shipley?
A. I believe I did Sir.

Q. Can you remember what time he was checked out?
A. I don't remember.

SUMMARY OF PROSECUTION

"President and Members of the Court. I feel that the point of the prosecution has been proven; the point being that the accused was improperly in possession of a car belonging to Captain Hovey of the 1st Canadian Recce Squadron. He was in the car and had no permission from the Owner of same. The fact that he was making himself responsible in trying to bluff his way past the police proves that his intentions were other than taking the car back to its original place. There has been some evidence on the question of the accused being mixed up in a plot or plan involving this car, which I believe has no bearing on the case and charge laid. The fact that he told the police that he was in charge of the car indicates that the accused knew the position he was in and what was going to happen."

SUMMARY OF DEFENCE

"President and Members of the Court. I feel that this is a case of a man taking a rap for his own friends. The charge, in that he was improperly in possession of a car, has been proven. He did not know Captain Hovey was in at the time and I feel that had he known this, the matter would have been discussed on his arrival back to billets. He also stated that his friends were afraid to go back in case they would get into trouble and the accused, took it on himself in seeing what he could do. I feel that if he had been responsible, he would have taken his punishment in the Orderly Room and not have elected to be tried by Court Martial. Another point. He was dressed as he is now - no greatcoat. I'm sure he would have had his greatcoat with him if he had any intentions of going to Brighton that evening. It is not so warm at that time of year. He could not have been one of the soldiers in the car in the first instance as he was in billets at 7.00 p.m. and the police officers were not on the job until after 7.00 p.m. In trying to return the car to its original position, I think he took it on himself and so never thought of the legal position he was getting himself into."

At this point the Court is Cleared.

The Accused, Pte. Smith, T.R. is brought before the Court and questioned by the President:-

Q. Pte. Smith, do you wish to address the Court?
A. No Sir.

Q. Do you wish to call any evidence as to character?
A. No Sir.

Q. Do you wish to make any statement in mitigation of sentence?
A. No Sir.

The Court is closed at 1310 hrs. 6th March 1941.

J.B. Cumming Capt.
Summary
Gunto Unit

SUMMARY OF EVIDENCE in the case of

D72825 Pte. Smith, T.R.

a soldier of the 1ST CANADIAN RECONNAISANCE SQN.

Haveing been duly sworn, the witness states:

1st Witness Captain W.H. Hovey, 1 Cdn Recce Sqn.

At Walton-on-the-Hill, on 5 Jan 41 I was in my quarters from 1500 hrs., until following morning 6th Jan 41. I was in my quarters and did not leave them during that period. On the 6 Jan 41 approximately 1700 hrs., when on returning to my quarters I heard a rumour that my car No. CM 503 had been tampered with the previous evening, presumably by some member of 3 Troop of this Squadron. I phoned the Troop Sergeant who told me that Pte. Smith and Pte. Brain had been apprehended by the Local Police, on phoneing the Police Constable at Walton-on-the-Hill, I was told that this was the case and a report would be sent in to the Superintendant at Leatherhead Police Station and it would rest with him whether those implicated would be tried by a Civilian Court or released to the custody of this unit for necessary action. I phoned the Superintendant at Leatherhead Police Station and on condition that the punishment given to the fore-mentioned soldiers be reported to them for their records, they would be released for a trial by Military Authorities

Question No. 1

.....Captain.

Q. Sir, you yourself did not miss the car?
A. No.

Question No. 2

Q. Could you enlarge on the word rumour? Who told you about it?
A. Lieut Lough.

2nd Witness

Pte. Brain, W.D. D73879. Haveing been duly sworn the witness, states,:

At approximately 1910 hrs on 5 Jan 41., Pte. Oliphant asked me to drive him to the Officers' Mess as he had permission to take the truck, I checked out with L/Cpl. Smale, and Pte. Smith (the accused) asked if he might come along and we agreed, we went to the Officers' Mess and left Pte. Oliphant there, and on our way home after turning right at Heath Drive we came across Capt. Hovey's car parked somewhat out from the curb without lights, thinking that something was wrong, we honked the horn, but no one was around. Pte. Smith then told me of the plot to take the car, and we agreed if we could tow the car back into the mess, that everything would be all right. We started to tow the car when the police appeared on the scene and asked me for identification and whether I had permission to be driveing the truck, we said that by saying anything we would not want to implicate anybody, we figured that by takeing the ~~truck~~ back ourselves that the whole matter would be forgotten at that time. After convincing the police that we were just on our way to the mess, they allowed us to continue

Question No. 1

.....Private.

Q. Would it not be better to say that I requested returning the car?

A. Yes.

Question No. 2.

Q. You agree that it was a mutual agreement to implicate ourselves at the time?

A. Yes.

Cont'd.....2

3rd Witness. B72706 L/Cpl. Smale, JA. having been duly sworn states Evening 5 Jan 41

At a few minutes after 1900 hrs Pte. Oliphant and Pte. Brain were checked out by me. Pte. Smith at that time was attached to Sqn H.Q. The only one being checked in and out was the S.C.S.M. he was on a Combination M/C.

J.A. Smale ....L/Cpl.

Accused does not wish to question, the above.

4th Witness B72737 Pte. Oliphant, A.J. Evening 5 Jan 41 having been duly sworn states

Being attached to the Officers' Mess I went back to A Troop to get someone to take my kit back. I asked Pte. Brain to come back, we were both checked out by L/Cpl. Smale.

A.J. Oliphant ....Pte.

Accused does not wish to question, the above.

5th Witness B72941 Pte. Shipley, C.B. having been duly sworn Evening 5 Jan 41 was

I was in a room in my billets at Damory Cottage and Pte. Smith/there approximately between 1800 hrs., and 1900 hrs.

C.B. Shipley ....Pte.

Accused does not wish to question, the above.

6th Witness B86183 L/Cpl. Cow, T.H. having been duly sworn states Evening 5 Jan 41

On the evening of 5 Dec 40 I was in my billets at Damory Cottage and Pte. Smith was there from 1800 hrs., until 1900 hrs, approximately.

T.H. Cow

Accused does not wish to question, the above.

7th Witness B73523 Pte. Kerr, G.

Same as above.

8th Witness B73502 L/Cpl. Howes, A.

Same as above.

9th Witness George A. Cooper, P.C. 336., SURREY CONSTABULARY having been duly sworn states

At 7 P.M. on 5th January, 1941, I was passing the "Islands" Heath" Drive, Walton-on-the-Hill, when I saw a M/car drawn partly on the footpath ahead of me. Suddenly the doors were slammed and some soldiers ran away. I shouted and gave chase, they ran on to Walton Heath in different directions. I searched, but could not find them, so returned to the car noted the number, found it was unlocked and removed the Rota Arm went to "Pintmere and phoned for assistance. On returning to Heath Drive I saw the car being towed by an Army Lorry in the direction of Dorking Road, I gave chase and it stopped. On catching up with it I saw Pte. Smith in the driving seat of the car. He stated "It's my Officers car and I'm in charge of it, but we're unlucky we can't get it going" He then produced a Pass and Pay Book bearing the name Pte. Trevor Roy Smith, No. 72675. 1 Cdn Recce Sqn. I then asked about the lorry No. C24204922, and Smith produced a Work Ticket saying "that's easy this lorry has been out today and by not handing the ticket in on return, it still covers it being used". Pte. W.D. Brain who was driving the lorry produced correspondence to verify his name and U it and stated "I don't know anything about this only we couldn't get it going, so I went and fetched this lorry to tow it". P.W.R. Foster then arrived, as I produced the Rota Arm saying possibly this is why it refuses to go. Smith immediately replied "No, we couldn't get it going before you removed that, besides I guess y ur the guy who shouted out at us just now". I replied "Yes" and he said "We bolted because we thought you were Capt. Hovey chasing us, having, discovered the car was missing. He then enquired the time and I replied "7.20", and he replied "We had a date at 7.15 with some girls in Brighton, but it's too late now, besides we can't get it going. so we'd best take it back from where we took it". I asked Smith

Cont'd .....3.

SUMMARY OF EVIDENCE CONT'D

9th Witness Cont'd
for his driving licence and Certificate of Insurance and he replied "I haven't got either, but I guess Capt. Hovey has". I pointed out the offences and they repeatedly said, "We know we're in the wrong, but we wouldn't mind so much if you caught us after a good time out as you see we've only got so far and most of that by pushing it". I told them the facts would be reported and they pleaded with me to forget all about it saying "There's only us four here and our other pals, who know of this and it will mean the Glass House. If we take it back to its original place no one will be any the wiser. Please forget about it". I directed them to return it and saw they did so. On the 6th., inst., I interviewed Capt. Hovey and obtained attached statement, and also interviewed the O.C. and he is desirous of dealing with them himself. At the present time they are C.B. and under close arrest.

I would add that having satisfied myself as to the identity of both privates and considering the following factors: Siren had sounded, air-craft overhead, Ivy Roads and if I had arrested them they would have to be conveyed to Leatherhead Police Station. I decided in the interest of all it was best to deal with them in the above manner. If necessary P.C.S. Foster can give corroborative evidence on some of the above replies.

Signed George A Cooper
George A. Cooper, P.C.336

10th Witness P.C.281 E.Foster, SURREY CONSTABULARY having been duly sworn states

"In consequence of a telephone call from P.C.Cooper at 7.5 P.M., on the 5th January, 1941. I proceeded to Heath Drive, where I saw P.C. Cooper with two soldiers a car and a lorry. He was speaking about a Note and I remained in the vicinity.
I heard a soldier ask the time and P.C. Cooper replied, "Its 7.20". This soldier replied "We had a date at 7.15 with some girls in Brighton, its too late now, as we couldn't get it going, so we had best take it back." I held the torch while P.C.Cooper made some notes, then walked round the vehicles. I returned and heard them pleading with P.C. Cooper to forget all about it saying "There's only us four here and our pals who know about this."
P.C.Cooper instructed them to return them"

Signed E Foster
E.Foster, P.C.281

Accused does not wish to question the above.

Question 1. to Witness No.9 P.C.Cooper

When you first came up you had a small book in which you took down certain facts. Was our conversation taken down at that time?
No, not in statement form, but I made note at time.

Question 2.

Then the evidence was not at that time, but some hours later?

No, it was made as soon as I got home, approximately 30 mins., later

Question 3.

You did not recognise any of the people who ran from the car the f time?
No.

Cont'd 4

SUMMARY OF EVIDENCE CONTINUED

B72875 Pte. Smith, T.H. (The accused)

Do you wish to make any statement, or give evidence upon oath? You are not obliged to say anything, or give evidence unless you wish to do so, but whatever you say, or any evidence you give will be taken down in writing and may be given in evidence.

Accused On the evening 5 Dec 40 I returned from my duties as orderly room clerk, to my billets at Damory Cottage, while there I overheard plans of some men in the Troop to take Capt. Hovey's car that night. I did not leave my billets between 1800 and 1900 hrs., approximately. Shortly before 1900 hrs one of the persons involved came back and told me that the Tadworth police might have recognised some of the people concerned, therefore none of these people could return to take the car back to the Officers' Mess. When I learned that a truck was going to take Pte. Oliphant to the Officers' Mess I asked to be allowed to accompany the truck in order to see what might be done. When we came upon the car and found it deserted I decided to try and take it back without anyone knowing it had been taken away. While attempting this we were caught by the local police. Mutually Pte. Brain and I agreed to try to convince the police that we were responsible for the car being away from its proper place. We thought that by so doing we might still be able to take the car back without causing trouble. We took the car back to the Officers' Mess and returned to our billets.

T. H. Smith Private.

Certified that the Rules of Procedure 4 (C) (D) (E) and (F) have been complied with.

Taken down in the presence and hearing of the accused, this 15 day of January, 1941, at Langham Park Manor, Oxted, Surrey.

Lieut.
Officer Taking Summary.

No. B72675 Name Smith, T.R. Squ., Batty., or Company | Corps 48th Highlanders | Date of enlistment | Sheet No. Original sheet destroyed in France June 1940.

Date of last entry in Company Conduct Sheet | No. and date of last drunk | G.C. Badges | Long Service and G.C. Pay | Signature (O.C. Company, etc.)

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field	30 Nov 40	Pte.		A.A.Sec 15(1) W.O.A.S.--A.W.L. from 2230 hrs. 30 Nov 40 to 1800 hrs. 2 Dec 40	Sgt. Gibb.	8 days detention	3 Dec 40		Forfeiture 10 days pay.
Field	3 Jan 41	Pte.		A.A.Sec 15(2) W.O.A.S.failing to appear at place of parade appointed by his commanding officer	Sgt.Humphries.	5 days C.B.	4 Jan 41		

Army Form B.122

Certified true copy
[illegible]
(W.W.C. Darling) Major.
O.C. 1 Cdn Recce Sqn.

P.T.O.

Y-116
PTE SMITH V.D.

L-12847 Pte. Vernon Duncan SMITH
S.Sask.R. 2 C.I.R.U.

Y-116

Correspondence to be PINNED here.

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

On Active Service, this 16th day of FEBRUARY, 1943.

Order convening the Court.

Whereas it appears to me, the undersigned, an officer in Command of "A" GROUP CANADIAN REINFORCEMENT UNITS, C.A.(O). , on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; [illegible]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable.

*[illegible]

*(1. [illegible]

*(2. [illegible]

[illegible]

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

President.

Rank.	Name.	Regiment.
MAJOR	R.B.L. THOMPSON (Sask.L.I.)	2 C.I.R.U.

Members.

Rank.	Name.	Regiment.
Captain	A. Grothe (Fus.M.R.)	6 C.I.R.U.
Lieutenant	W.A. Crowe (Regina Rif.)	2 C.I.R.U.
Waiting Member Lieutenant	J.W. Benham (R.Wpg.Rif.)	2 C.I.R.U.

*Signed [illegible] Brigadier,

Commanding "A" Group Cdn Rft Units,
Convening Officer

K.B.L.T.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
L-12847 Pte. Vernon Duncan SMITH S.Sask.R. 2 C.I.R.U.	First Charge A.A. Sec. 15(1) SEE CHARGE SHEET ATTACHED.	K.B.L.T. GUILTY	GUILTY K.B.L.T. 90 DYS. DETENTION 11 FEB 43 K.B.L.T.	Finding + sentence confirmed but commuted to 45 days forfeiture of pay J. Stuart Tough Brigadier

*I have satisfied myself that none of the Officers detailed as members of this Court have previously served upon any Court of Inquiry respecting the matters forming the subject of the charge (charges) before this Court Martial."

K.B.L. Thompson Capt
President of the Court.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on appropriate sheet if necessary*) :—

(Signed) J. Stuart Tough (Signed) K.B.L. Thompson Capt
Brigadier, President.
Commanding "A" Gp Cdn Rft Units,
Convening Officer. 2 C.I.R.U.

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

K.B.L.T.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 17th day of FEB. 43, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(~~3. The interpreter~~) K.B.L.T.
*(4. The officers under instruction)

* Omit if not applicable.

were duly sworn.

Signed this 17th day of FEB. 19 43.

K.B.L. Thompson Capt
President of the Court Martial.

* See footnote (*b*) on page 762 M.M.L. 1929.

C. Certificate in case of death sentence.

I certify that the terms of ~~*A.C.I. 570 of 1918~~ have been complied with. K.B.L.T.

Signed this ~~day of~~ 19 . K.B.L.T.

~~*President of the Court Martial.*~~ K.B.L.T.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences. I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~

Signed this 18th day of February 19 43.

J. Stuart Tough Brigadier
Confirming Officer.

PART II ORDER No. 16 of 20 Feb 43

Promulgated and extracts taken in the case of L-12847 Pte V.D. Smith, S. Sask R

(*a*) (Dated) 18th Feb 1943 (Signed) A.J. McLean Capt. A/o Holding Wing 2 CIRU.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

W.L. 4790/1937 (E.R. 3/41) K.H.&S.(5000)2 Gp. 698.3

R.B.L.T.

CHARGE SHEET

The accused No. L-12847 Pte. VERNON DUNCAN SMITH, South Saskatchewan Regiment, on strength of 2nd Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas is charged with, while on Active Service,

ABSENTING HIMSELF WITHOUT LEAVE

ARMY ACT SEC 15(1)

in that he

whilst attached to Canadian Base Post Office Overseas No 1, Manchester Lancashire, did absent himself without leave from 1715 hours on the 26th day of December 1942 until surrendering himself to the Corps of Military Police, Manchester Lancashire at 2148 hours on the 9th day of February 1943.

Absent 45 days 4 hours 33 minutes.

(H.T. Kempton) Lt.-Col.,
Officer Commanding,
Holding Wing 2 C.I.R.U.

Laurentide Camp,
16 February 1943.

To be tried by Field General Court Martial.

(J.R. Stewart Lough) Brigadier,
Commanding,
"A" Group Cdn. Reinf. Units,
C.A.(O).
Convening Officer.

Witley, Surrey,
16 Feb. 43

R.A.F.

MEDICAL OFFICERS CERTIFICATE

I, certify that I have this day examined

No. L12847 Pte. V. D. Smith of 2 C.I.R.U.

and find him fit to undergo trial by Court Martial.

Laurentide Camp,
17 Feb. 1943.

Capt.
(RCAMC) 2 CIRU.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD
AT ON THE DAY OF 42

TRIAL OF:-No. L12647 Pte. SMITH. V.D. Unit S. SASK. R.

The order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:- LIEUT. (Name) C. T. BOULTON (Unit) R.WINN. RIF. 2 C.I.D.

Defending Officer:- (Name) LIEUT. H.R.BERWICK (Unit) S. SASK. R. & C.I.R.C.

At 0930 hrs the trial commences.

The order convening the Court is read, signed by the President and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1 Do you object to be tried by me as President or by any of the officers whose names you have heard read over? A1 - NO, SIR.

The President, members and judge advocate (if any) are duly sworn.

The following constitute the Court:

President MAJOR R.B.L. THOMPSON (Unit) SASK. L.I. 2 C.I.R.C.

Members CAPT. A. BROWN (Unit) SASK. M.R. 6 C.I.R.C.

LIEUT. L.W. BENHAM (Unit) R.WINN.R.I.R. 2 C.I.R.C.

The officers under instruction are duly sworn.

Q2 ~~Do you object to.....acting as shorthand writer?~~ A2 - R.A.L.I.

~~The shorthand writer is duly sworn.~~ R.C.L.I.

The accused pleading Guilty to the charges in the above mentioned charge sheet, R.P.35(B) is duly complied with.

The summary of evidence is read, signed by the President, and attached to the proceedings.

Court is closed to consider its finding. Court is re-opened.

Name LIEUT. C. T. BOULTON (Unit) R.WINN.RIF. sworn, produces AFB 296 and MFM 6 and upon being questioned by the Court states that the accused is the person named in these documents which have been compared by him with Regt'l records and are true extracts of the same. No cross-examination. Above documents read, signed by President and attached to the proceedings.

Q3 (To accused) - Do you wish to make any statement in mitigation of punishment? A3 - YES.

Q4 Do you wish to give evidence yourself or to call any witnesses as to character? A4 - YES.

R.B.L. Thompson Maj

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER GIVEN BEFORE THE COURT IS CLOSED FOR THE CONSIDERATION OF THE SENTENCE

STATEMENT OF ACCUSED

L12847 Pte. Smith Vernon Duncan S. Sask, Regt. 2 C.I.R.U.

I was employed with No 1 Cdn. Base P.O. I came overseas 25th Dec. 1940. I joined the Canadian Army 11 April 1940, with D Coy. S.S.R. I enjoyed being with the Regt. and was A Category. I am now B2 category. My category was changed in April 1942 because of a bunion on my left foot. The regt. was on a scheme in 1941 around the end of May. A mortar box fell on my foot off the truck. I never reported sick and a bunion formed on my foot. I took a three week Regt'l Battle Drill Course around March 1942. I did not finish the course as I had to go to hospital with my arm, which was weak from a previous injury. At this time as my foot was bothering me I had the M.O. look at it. The M.O. would not operate, but I was reboarded by a medical board at the hospital as B2 category.

I was then sentto 2 C.I.R.U. I was employed as a Coy runner looking after mail. I did not like the job as I was indoors most of the time. I wanted to return to the Regt.

I asked Sgt. Reynolds, the Orderly Room Sgt. whether or not I could take a Drivers course and thus get back to the regiment. Sgt. Reynolds said I could not do this as they wished to keep me in the Reinforcement Unit.

I got my last priviledge leave on 10th Oct, 1942 for 9 days. Since that time I have not had any leave but one 36 hour weekend.

I have been very unhappy about affairs back in my home in Canada. I have not received any mail from home since Nov. 1942. I assign $20 per month to my Mother.

I went to No. 1 C.B.P.O. on 17th Nov. 1942. I wanted to go in order to get out of the Reinf. Unit. I was employed with the Air Force section until 26th Dec. 1942. I worked from 0830 hrs. to 1230 hrs. and from 1400 hrs. to 1715 hrs. and for night shifts from 1715 hrs. to 0030 hrs. I worked seven days a week. I never received any leave whilst employed in No.1 C.B.P.O.

About a week before Xmas I did not report for night shift as I was sick. On the following morning I went on Sick Parade. The M.O. gave me medicine and told me he thought I would be ready to work that night. So I went to work this night and was informed I was to be up on orders for not reporting to work on the previous night. I went up for orders and lost four days pay. I was also told that if I came up before Capt. A.W. Markey, again I should be sent back to the Reinf. Unit.

On the day before Xmas I was given 48 hrs. excused duty by the M.O. I was to report back on sick parade on Boxing Day. I was paid on this day.

The whole time I was on this job I received only 2 letters and one parcel. The letter from home upset me because it referred to the unhappy situation at home. This situation is with regard to my stepfather who has left my Mother in the city with nothing and gone back to his farm.

On Boxing Day after being paid I met some of the boys downtown. I started drinking in a Pub. I then went to a Club and forgot about returning to work that night. I decided to stay away as I should be returned to the Reinf. Unit.

I gave myself up in uniform.

L. B. [illegible]

STATEMENT OF CHARACTER WITNESS.

Lieut. A.P.W. Watkinson 2i-c S.S.R. Coy. 2C.I.R.U. having been duly sworn states:-

I have known the accused very well since last April, when I came up from the field. At that time he was Coy. Orderly runner, and later Wing Orderly runner. He impressed me as being a steady reliable soldier, and willing to perform any duties that he was detailed to do. He is very reticent and retiring and was somewhat bored as a result of returning from a field Unit as a category man. For a man of his age he appeared to me to be rather serious minded. And as if he worried too much. I would not consider him as a moody temperment.

In my opinion on account of his reliability and steadiness the accused is a good soldier.

The defence counsel questions the witness.

Q. Was the accused happy in an inside job?

A. No, I would not say he was.

Q. Do you know anything about his personnal life?

A. No.

Q. Did he ever ask you how he could bet back to the Unit, by a course or anything?

A. No.

Q. At anytime did he ask for a different type of employment?

A. Yes. And I considered that he could be more usefully employed elsewhere.

Q. Was anything ever done to try and rectify the condition that caused his lower category, was anything done to help him at all?

A. I can't say.

K.B.L. Taylor
Major

PLEA FOR MITIGATION

The accused has already told you the hours he had to work and the days he had to work and the amount of leave he got while employed at the Base P.O. which was none. He stuck it out alright and we have him going sick before Xmas due to which he is charged and gets his punishment and takes his punishment and has the O.C. B.P.O. gently remind him that if this happens again he will go back to 2 C.D.I.R.U. the one place he has no desire to go back to. He spends the day before Xmas and Xmas day on excused duty due to illness and getting paid on the 26th Dec. he naturally goes out and does a little Xmas celebrating, gets a bit too full and when he realizes whats going on again thoroughly, he finds its too late to go back to duty. He knows that if he goes back he will be sent back to 2 C.D. I.R.U. so he simply goes loose.

That gentlemen is the reason behind this thing, he is an outside man and he gets shoved into an inside job, he likes the regt. and he gets sent to the Holding Unit through no fault of his own. He tries to help himself and gets nowhere and no one else at the Holding Unit is sufficiently interested to try and help him. He is sort of a square peg in a round hole he gets pushed about by anybody and in the end is bloody browned off, especially with the Holding Unit. On top of all this he knows things at home are in bad shape. He does not know how bad. He is trying his best to help the situation over there with his allowance and that disturbance in home life back in Canada is causing a disturbance in his army life over here. No matter how he tries to forget it that unhappy situation is always in the back of his mind. He is disappointed, uncertain, and frustrated.

The court can give this man a long stretch. What I ask gentlemen is :- is it best not this man a good soldier? And if you think he is what is the point in putting him away where he is no use to the Army for a long time. Now I think we have all at sometime or another perhaps when we were younger, got into a jam and ran away, now that is all the accused has done.

He did not want to stay out of the army, he was just frightened, faced with what he thought was a catastrophe. His home was not happy, his army life was not happy, he spent a miserable Xmas, so when he got a few drinks and got away from it all, and later realizing what he had done, and knowing what would happen to him if he went back, he simply ran away.

He thought he could buck the army, he found out after awhile that you just cannot do that, when realized that, he came back and gave himself up.

For 12 monthe previous he had a clean crime sheet, he is not a habitual trouble maker, he is a good soldier. But a combination of events beyond his control has brought about his being here this morning. He is quite willing to take his punishment, he has done wrong, he admits it. I ask you gentlemen, considering, behind the scenes of this straight forward A.W.L. charge can you blame him.

I ask for as light a sentence as this court, considering the evidence before you can possibly give.

K. B. L. Thompson
Major

A.B.C.7.

SUMMARY OF EVIDENCE

In the case of No. L-12847 Pte. VERNON DUNCAN SMITH, South Saskatchewn Regiment, on strength of 2 C.I.R.U. 2 Canadian Infantry Reinforcement Unit

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By direction of the Commanding Officer this Summary of Evidence is taken on Oath.

First Witness Prosecution — Lieut. J.V. Graydon, Learner Records Officer, 2 C.I.R.U. having been duly sworn states,

I am Lieut. J.V. Graydon, Learner Records Officer 2 C.I.R.U., and I produce, record of the

(A) A certified copy of the Declaration of a Court of Inquiry Concerning the absence of the accused dated 18th January 1943.

(B) A certificate of Surrender under section 163 (1) (j) A.A of the accused to Corps of Military Police at Manchester Lancashire dated 10 February 1943.

As Exhibits A and B for the prosecution, pertaining to the accused whom I now recognize and duly initialled by me for the purpose of identification.

J.V. Graydon Lieut.

(J.V. Graydon) Lieut.

The accused declines to cross-examine the witness.

The accused having been duly cautioned in accordance with R.P. 4(e)
Reserves his Defence.

Certified that all provisions of R.P. 4 (c) (d) (e) (f) and (g) have been duly complied with in connection with the foregoing Summary of Evidence.
Taken down by me in the presence and hearing of the accused this 15th day of February 1943 at Laurentide Camp.

A.J. McLean Capt.

(A.J. McLean) Capt.,
Officer detailed to take
Summary of Evidence.

RECORD of the Declaration of a Court of Inquiry assembled at Manchester, Lancs. on the 18th day of January 1943, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. L.12847 Pte. Smith, V.D.

DECLARATION

The Court declare that No. L.12847 Pte. Smith, V.D. No. 2 C.D.I.R.U. attached to the Cdn. Base Post Office o/s #1 C.P.C.

illegally absented himself without leave or other sufficient cause at 1715 hours. on the 26th. day of December 1942.

that he is still so absent, and that on the 17th day of January 43 he was deficient, and that he is still deficient of the following articles:—

ARTICLES	No.	Vocab Values $ ¢	Estimate VALUE $ ¢	ARTICLES	No.	Vocab Values $ ¢	Estimate VALUE $ ¢
Covers Messtin	1	06	06				
Haversacks	1	2.34	1 76	Knife, table	1	18	14
Nets, camouflage	1	15	11	Razors	1	42	32
Badges, cap	1	11	07	Socks, prs.	2	74	56
Badges, Canada	2	20	15	Spoon, table	1	08	06
Jackets, Sweater	1	1.71	1 14	Towels, hand	2	42	32
Brasses, button	1	4	3	Drawers, cell.	2	92	69
Brushes, boot-black'g	1	15	11	Shirts, Cell.	2		
" boot polishing	1	17	13	Boots Ankle w/laces pairs	2	9.62	7 22
" button	1	15	11	Greatcoats	1	17.22	12 92
" cloth	1	24	18	Caps, F.S.	1	82	62
" tooth	1	8	6	Anklets, prs	1	77	58
" hair	1	24	18	Bluses, B.D.serge	1	6.18	4 64
Combs, hair	1	4	3	Trousers B.D.serge	1	6.24	4 68
Dressings field	1	24	18	Vests, Gym	2	68	51
Forks, table	1	9	7	Wallets, A/G.	1	33	25
Gloves woollen prs.	1	59	44	Protectors, ear	4		
Holdalls	1	17	13	Ointment, A/G.	2	20	15
Housewife	1	50	38	Shirts, Flannel	2	2.05	1 54
Knife, clasp	1	1.16	87	Discs, Identity prs.	2		
						55.32	41 39

C.M. Marsh Capt. President

Signed at Manchester, Lancs. J. G. Lawless Member

this 18th day of January 1943 F.J. Pollard Lieut Member

Signature of Commanding Officer

Certified true copy

Signature of Officer having custody of original record

M.F.B. 272
A.F.B. 122
3AM—8-41 (7262)
H.Q. 1172-13-237

LIST OF EXHIBITS

In the case of L-12847 Pte. V.D.Smith, S. Sask. R.

(For the Prosecution)

1. A certified copy of the Record of the Declaration of a Court of Inquiry concerning the absence of the accused dated 18th January 1943
2. A certificate of surrender showing the accused to have surrendered himself to the Corps of Military Police at Manchester Lancashire, dated 10th February 1943.

(For the Defence)

NIL

LIST OF WITNESSES

In the case of L-12847 Pte. V.D.Smith, S. Sask. R.

(For the Prosecution)

1. Lieut. J.V.Graydon. Records Learner. 2 C.I.R.U.

(For the Defence)

NIL

B

CERTIFICATE OF SURRENDER UNDER SECTION 153 (1) (j) A.A.

I, E C C Garfit - Certify that No. L 12947 Rank Pte Name Smith V.D.
Coy, Bn, South Saskatchewan, Att/ Canadian Postal Corps Regiment,
Surrendered himself to No. 7589943 Rank Col Name Jarrow A.
Corps of Military Police, at George & Deacon Road Manchester, at 21.40 hours
on the 9th day of February 1943, as a deserter (or absentee without
leave.)

E.C.C.Garfit.
Staff Lieutenant,
Corps of Military Police,
Headquarters Provost Company,
East Lancashire District, Manchester.

Date 10th February 1943

K.B.K.T.

I hereby acknowledge that I have received a true copy of the Summary of Evidence taken at Laurentide Camp preliminary to my Court Martial and I further acknowledge receipt of a copy of the Charge Sheet under which I am being brought to Court Martial.

Laurentide Camp
15 February 1943

V D Smith

I request that the Convening Officer appoint _____

AN OFFICER [redacted] to represent me at my Trial.

V D Smith

Laurentide Camp
15 February 1943

R.B.H.

No. 112847 Name Smith V.D. Sqn., Battery, or Company CERTIFIED TRUE COPY

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Corps S.SASK.R. | Period not reckoning towards freedom from extra fine | Date of enlistment 11-4-40 | Sheet No. 1 | G.C. | Badges | Signature O.C. Company, etc. | Service or Proficiency Pay | Character J.C.McTavish (Major)

M.F.M. 6 (A.F.B. 122) 10674—6-39—(1931) H.Q. 1771-40-13

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Morval Bks	1-5-41	Pte		New sheet substituted on completion of 6 months service AWL from 0530 hrs 1-5-41 to 0730 hrs 6-5-41 Absent 5 dys 2 hrs A.A.Sec 15(1)	Cpl Dey F C Cpl Linton E W	10 dys det.	6-5-41	J E Wright Lt.Col.	5 dys pay
Ladies College	5-7-41	Pte		AWL 2230 hrs 5-7-41 to 0115 hrs 6-7-41 Absent 3 hrs 45 mins A.A.Sec 15 (1)	L/C Junor H	7 days C.B.	7-7-41	J C McTevish(Major)	
Ladies Coll.	31-7-41	Pte		Failing to appear on parade AWL 3 hrs 30 mins A.A.Sec 15(1)	Cpl Dey F C	144 Hrs Det.	1-8-41	J E Wright LT.Col.	6 dys pay

R.O.C.

CERTIFIED TRUE COPY

No. L12847 Name Smith V.D. Sqn., Battery, or Company Corps S.SASK.R. Date of enlistment 11-4-40 G.C. Badges Service or Proficiency Pay

MFM 6 (A.F.B. 122) 5000M—8.39 (1763) H.Q. 1777-45-18

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. J.C.McTavish (Major) | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				New sheet substituted on completion of 6 months service					
Morval Bks	1-5-41	Pte		AWL from 0530 hrs 1-5-41 to 0730 hrs 6-5-41 Absent 5 dys 2 hrs A.A.Sec 15(1)	Cpl Dey F C Cpl Linton R W	18 dys det.	6-5-41	J E Wright Lt.Col.	5 dys pay
Ladies College	5-7-41	Pte		AWL 2230 hrs 5-7-41 to 0115 hrs 6-7-41 Absent 3 hrs 45 mins A.A.Sec 15 (1)	L/C Junor H	7 days C.B.	7-7-41	J C McTavish(Major)	
Ladies Coll.	31-7-41	Pte		Failing to appear on parade AWL 3 hrs 30 mins A.A.Sec 15(1)	Cpl Dey F C	144 Hrs Det.	1-8-41	J E Wright LT.Col.	6 dys pay

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				CERTIFIED TRUE COPY of original document in S.SASK.R. R.COY. Office A.R.Berwick Lieut. (A.R.Berwick Lieut) A/O.C. S.SASK.R. R.COY. 2 C.I.R.U.					

M.F.B. 354
40/P & S/675

R.B.K.T.

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
L-12847	Pte.	V.D.Smith.	S.Sask. R. 2 CIRU.

1. The following is a fair and true summary of the entries in the ~~Service and General~~ a/c ~~Regimental and Squadron, Battery~~ a/c a/c ~~Conduct sheets~~ a/c or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~Air Force Act~~ of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
For	times	A.W.L. 3 times
For	times	times
For	times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct~~ a/c

or,

~~There are no entries in the conduct sheets of the accused~~ a/c

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

a/c ~~The accused~~ has not been previously convicted

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act A.F.A. 73 Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement. a/c

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for ..... beginning on the ..... day of .....

4. The accused has been in confinement awaiting trial on the present charges for Nil days in civil custody, and 8 days in military custody, making a total of 8 days in custody, of which 0 days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ a/c attestation paper is 22 yrs. 7 mos.

6. The date of his ~~commission~~ a/c specified in his ~~record of service~~ a/c attestation paper is 4 April 1940

7. The service which the accused is allowed to reckon towards discharge is 2 yrs 10 mos.

8. The accused is entitled to reckon 2yrs.10mos service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force ~~reward~~ a/c military military in possession of or entitled to). State any air force decoration or reward. military

10. (If the accused is a ~~warrant officer~~.) The accused before he was made a warrant officer last held the regimental rank of .....

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated, and in his regiment (or corps), the rank of dated.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Act, and of cases in which trial has been dispensed with of accused, Number Rank Army

Name of Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this day of

A/S/Ldr Pers Capt
A/O Holding Wing
2 O.T.U.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

PP. 1[illegible] (case #2)
PTE SMITH V.D.
See K 116 for 1st case

L12847 Pte. Vernon Duncan SMITH

2 C.I.R.U. (S.S.R.)

PP-139

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this twelfth day of September, 1943.

Whereas it appears to me, the undersigned, an officer in Command of "A" Group, Cdn Rft Units, Cdn Army Overseas, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; [illegible]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

[illegible]

*Strike out if not applicable.

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Maj.	N.M. Swaffield (Regina Rif.)	2 CIRU

Members.

Rank.	Name.	Regiment.
Capt.	N.W. Long (S.L.I.)	2 CIRU
Lt.	J. Mitchell (R. Wpg. R.)	2 CIRU
Lt.	R.B. Porter (Regina Rif.)	2 CIRU

Waiting Member

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (J.A. Calder) A/Col., Commanding "A" Gp, Cdn Rft Units, C.A.(O).
Convening Officer.

N.M. Swaffield Major

PART II ORDER No. 173

Corresp

L12847 Pte. Vernon Duncan SMITH
2 C.I.R.U. (S.S.R.)
PP-139

Army Form A.3.

...n for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening this Court.

On Active Service, this twelfth day of September, 1943.

Whereas it appears to me, the undersigned, an officer in Command of "A" Group, Cdn Rft Units, Cdn Army Overseas, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial;

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

...unit on the same day the Officer

(Signed) (J.A. Calder) A/Co... C.A.(O).

Commanding ... Co...

*Question to be asked ... "Do you wish to ap... before trial have not had ... that you have not had ... Answer (to be recorded on ...

L12847 Pte. Vernon Duncan SMITH

2 C.I.R.U. (S.S.R.)

PP-139

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this twelfth day of September, 1943.

Whereas it appears to me, the undersigned, an officer in Command of "A" Group, Cdn Rft Units, Cdn Army Overseas, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; [redacted]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

[redacted]

*Cancel if not applicable.

Accordingly

20/8/43

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Maj.	N.M. Swaffield (Regina Rif.)	2 CIRU

Members.

Rank.	Name.	Regiment.
Capt.	N.W. Long (S.L.I.)	2 CIRU
Lt.	J. Mitchell (R. Wpg. R.)	2 CIRU
Lt.	R.B. Porter (Regina Rif.)	2 CIRU

Waiting Member

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (J.A. Calder) A/Col., Commanding "A" Gp, Cdn Rft Units, C.A.(O).
Convening Officer.

N.M. Swaffield Major

PART II ORDER No. 193

SCHEDULE

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
L12847 Pte. Vernon Duncan SMITH 2 CIRU (S.S.R.)	First Charge A.A. Sec 15(1)	Guilty	Guilty	Confirmed [illegible]
	Second Charge A.A. Sec. 40	Guilty	Guilty. Sentenced to undergo detention for a period of One Hundred and Eighty days, and to be placed under stoppages of pay until he has made good the sum of £1-16-8 in respect of the cost of apprehension and return to his unit. W.W. Swaffield Major 1st Regina Rifles 13 Sep 43	
	See Charge Sheet Attached			

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) —

(Signed) J.E. Calder (J.E. Calder) A/Col., *Commanding* "A" Gp, C.R.U. C.A.(O). *Convening Officer (e)*

(Signed) W.W. Swaffield Major 1st Regina Rifles *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 13th day of September 1943 and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

*Omit if not applicable.

1. The members of the Court
2. The witnesses
~~*(3. The Interpreter)~~
*(4. The officers under instruction)

were duly sworn.

Signed this 13th day of Sept. 1943.

W.W. Swaffield Major
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (*b*) on page 702 M.M.L., 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

Signed this ~~day of~~ 19 ,

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~

Signed this 13 day of Sept 1943

J.E. Calder A/Col.
Confirming Officer.

PART II ORDER No. 193 dated 15 Sept 43 [illegible] A.D. 558. (A.C.I.O.)

Promulgated and extracts taken in the case of L12847 Pte. V.D. Smith 1st Regina Rifles

(*a*) (Dated) 14 Sep. 43. (Signed) [illegible] Major

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused No. L-12847 Private Vernon Duncan SMITH, South Saskatchewan Regiment, 2 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with,

First Charge WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

Sect 15 (1) Army Act.

in that he

at Laurentide Camp, Witley, whilst undergoing Field Punishment, absented himself without leave from 1200 hours, 14 August 1943 until apprehended by the Canadian Provost Corps, in Oldham Street, at Manchester at 2200 hours, 8 September 1943 thereby incurring expenses in the amount of £1 - 16 - 8, cost of apprehension and return to his Unit.
Total absence - 25 days, 10 hours.

Second Charge WHEN ON ACTIVE SERVICE, AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

Sect 40 Army Act.

in that he

at Manchester, on 8 September 1943, at 2000 hours, was in possession of a document purporting to be a genuine leave pass, knowing it not to be genuine.

Laurentide Camp.
11 September 1943

.....Lt.-Col.
(H. T. Kempton) Lt.-Col.
Officer Commanding,
Administrative Wing,
2 Canadian Infantry Reinforcement Unit

To be tried by Field General Court Martial

12 Sep 43

(J.A. Calder) A/Col.,
Comd.
"A" Gp, Cdn Rft Units, C.A.(O).

M.I.R. 2 C.I.R.U.

This is to certify that I have examined L 12847 Pte. SMITH, V.D.

on 13 Sept. 1943 and I find him medically fit to stand

Trial by Court Martial.

J. Chamberlain Capt.

Medical Officer
2 C.I.R.U.

Mansfield Major

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL
HELD AT Canadian Corps Reinforcement Unit
ON THE 13 DAY OF September 1943

The accused L12847 Pte. Vernon Duncan SMITH of 2 CIRU (S.S.R.)

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.P.22 and 23.

The accused is brough before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked, stated that he had no objection to the president or any member of the Court.

The following constitute the Court:-

President Capt. R.M. Swaffield Unit (Regina Rif.) 2 C.I.R.U

Members Capt. H.W. Long..... Unit (S.S.R.)..... 2 C.I.R.U.

Lt. R.B. Porter..... Unit (Regina Rif.) 2 C.I.R.U

The officers under instruction are duly sworn:-

Lt. D.M. Carter..... Unit (S.S.R.) 2 C.I.R.U

..... Unit .....

Prosecutor Lt. C.E. Bradden... Unit (R.W.R.) 2 C.I.R.U

Defending Officer Lt. J.J. Moffat... Unit (R.W.R.) 2 C.I.R.U

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P.35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P 37(B).
The Summary of Evidence is read.
The Prosecutor produces MFB 3&5, ~~MFB 4~~ and MFM 6.
The Court complies with R.P.46(B).

Pursuant to R.P.37 THE ACCUSED:-

Does (a) Makes a statement in mitigation of punishment. Attached.
Does not ~~(b) Calls witnesses as to character~~. Attached.
Does not (c) Calls witnesses in mitigation of punishment. Attached.
Does not (d) Addresses the Court by his Defending Officer. Attached.

Oversees R.O. 3262 complied with.
The Court is closed to consider the sentence.

SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE and ADDRESS OF ACCUSED OR HIS DEFENDING OFFICER.

R.M. Swaffield Major

First witness for the defence. The following statement was made by the accused under oath

STATEMENT BY THE ACCUSED.

I am my mother's only son by her first marriage, which ended in a divorce in 1933. For several years before the divorce and up until the time of her second marriage the responsibility of looking after my mother was mine. In the year previous to my joining up the second marriage also failed and again I was my mother's only source of comfort. According to letters which I have received from home things have been going from bad to worse for her, while I have been overseas. When I received the letter from my mother dated June 28 and which arrived approximately one month later and which is produced as evidence, I felt it my duty to raise the necessary funds for her. I have been drawing only £1-0-0 per month since last February, due to a previous crime and consequently had no money of my own to send her. I knew that a soldier on furlough could get work to do. I came into possession of a blank pass from a soldier whom I met in a pub. I had hoped that with the aid of this pass to get work for a short time and thereby raise the necessary funds. I went to Manchester where I had been billeted previously and there I secured employment immediately in the George and Dragon Hotel, which lasted for five days. After that I did odd jobs in the Market which is in close proximity to the George and Dragon Hotel until I was apprehended by the provost on the 8 September.

I knew that I was wrong in doing this and that I would be punished for it, but my mother was and is my first concern.

V. D Smith

First character witness.

H45978 Pte Parks L.W of L.S.R on strength of the Canadian Army Overseas having been duly sworn states,

"I am H45978 Pte Parks L.W On 14 Aug 43 I was in Manchester at the 'George and Dragon' pub where I recognized the accused. The time was about 2000 hrs. He was working in the pub ~~depot~~ at the time I saw him."

Defending officer declines to cross examine this witness.

W.W. Campbell
Maj
[illegible]

Address by defending officer.

13 Sep 43.

Mr. President
Members of the Court

In making an appeal for leniency I would ask the court to consider carefully, the statement made by the accused, showing how, when faced with a problem such as his, he made a normal man's decision, that his mother should be his first consideration. The men in our army are continually impressed with the fact, that they have the right to bring their troubles to their Superior Officers, who will give them help and guidance in their problems. In the past, the accused followed this procedure and received no satisfaction from them. In his opinion, his Superior Officers failed in their duty to him and he had no reason to expect that he would receive any more help this time. He therefore, took matters in his own hands and took the only course which he could see open to him at the time. I suggest that the responsibility for these crimes do not lie entirely with the man, if he had been made to feel as he should have been, that he would get real help instead of promises from his Superior Officers, he would have sought another solution to his problem. I would remind the court that we do not recruit men for our Army only to put them in a guard house where they become a nuisance rather than an asset. This man is a well trained soldier with three years army training, fifteen or more months of which have been field experience. I suggest that before long we will need every trained soldier we can get and that it will be in the best interests of the Army for this man to be given the chance to "Soldier" once again with a field unit, rather than to deteriorate in detention.

1st Lieut. O.R.C.
Defending Officer.
W. M. Scrafield Major
Counsel

EXHIBIT "A"

RECORD of the Declaration of a Court of Inquiry assen

on the 6th day of September 1943, for tl

and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. [illegible] [illegible] te. Smith W.D. (SRD) attached R.C.I.N.U. C.A.(O)

DECLARATION

The Court declare that No. [illegible] te. Smith W.D. (SRD) attached R.C.I.N.U. C.A.(O)

illegally absented himself without leave Bournebide Camp, Bisley, Surrey

at 1900 hrs on the 14th day of August 1943,

that he is still so absent, and that on the 6th of September 1943 he was deficient, and

that he is still deficient of the following articles:—

ARTICLES		VALUE £ s. d.	ARTICLES	VALUE £ s. d.
Badge Cap	(1)	6		
Badge Canada	(2)	3		
S/D Blouse	(1)	1 7 8		1 0 9
S/D Trousers	(1)	1 7 11		1 0 11
Boots Ankle Pairs	(1)	1 1 6		0 16 4
Braces Trousers	(1)	1 3		0 1 0
Brush Clothing	(1)	2		0
Brush Pot Shoe	(1)	2		0
Brush Button	(1)	2		0
Brush Shaving	(1)	4		0
Cream Tooth	(1)	3		0
Comb Hair	(1)	2		0
Holdall	(1)	3		0
Knife Table	(1)	3		0
Trousers Denim	(1)	12 6		0 9 7
Razor	(1)	1 14		0 1 4
Socks Pairs	(1)	5 0		0 3 9
Shorts Gym Pairs	(1)	1 11		0 1 5
Belt Waist	(1)	4		0 3 4
Helmet Steel	(1)	19		0 14 3
Respirator Haversack	(1)	5		0 4 3
TOTAL		£ 6 7 4		£ 4 19 6

President

Member

Member

Signed at R.C.I.N.U. C.A.(O)

this 6th day of Sept. 1943

Signature of Commanding Officer

Certified true copy

Signature of Officer having custody of original record

M.F.B. 375
A.F.B. 111
11M-12-43 (3000-4)
H.Q. 1775-39-207

Certified that the prices hereon are in accordance with those published in Routine Orders for the C.A.(O) and amended from time to time.

Certified Correct.

CERTIFICATE IN ACCORDANCE WITH P.C. 3797 of

EXHIBIT "B."

I CERTIFY that No. J-12847 . Rank Pte. . . Name Smith,

Unit No. 2 C.I.R.U. . . . . was arrested at Manches

at 2200 hrs. (hour) on 8-Sept-43 . (date) and that a

his arrest he was wearing (Military Uniform) or (C

Signature of Provost-Marshall, Assistant Provost-M or

officer or the Commanding Officer of the portion of His Majesty's

Forces or the officer, warrant-officer, or non-commissioned officer

in charge of the detachment of the Canadian Provost Corps, Canadian

Army into whose custody the above named person was taken on arrest.

(Strike out part inapplicable).

London

9 Sept. 43.

L. L. Grayson, Lieut.

(W. Form) D. . P. M. . . . Capt.

London Area

mmb.

EXHIBIT "D"

...out of the ...h Army
...must return immediately to his unit without waiting for instructions.

...81... Regiment 2 C I R U

...35

No. 12847 (Rank) Pte (Name) Smith V N

...his petition to be absent from his quarters/duty, from

0800 hrs 7/9/43 0800 hrs 16/9/43

for the purpose of proceeding to * Manchester

(Station) 2a Fwd 2 C I R U

(Date) 6/9/43

Commanding Officer

"C" Coy

† Delete whichever is not practicable.

* Destination not required unless absence is to extend 24 hours, unless continuation is desirable owing to local conditions or is necessary to enable purchase of a rail ticket at reduced fare.

CROWN COPYRIGHT RESERVED

M M.P.

Expense Voucher Re—: Ref. K.R. & O. (Can) 539

Reg. No. 12847 Rank Pte Name Smith, V.N. Unit 2 C I R U

The following expenses were incurred in apprehending and returning the M.N Soldier to his Unit From London from Manchester

Date	Particulars (Ex portion)	Amount		
10 Sept 43	Escorts return fare from LONDON To Manchester		18	10
	Prisoners single fare to LONDON From Manchester		14	1
	Prisoners fare from To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares (Ex portion		3	9
	Total £	1	16	8

I certify that the above statement of Expenses is Correct and that the amounts are fair and just.

L. L. Grayson Capt.

Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London.

C.M.F. 40(P)

M.M.P.

EXHIBIT "C"

EXHIBIT "D"

...out of the ...le Army
...must return immediately to his unit without waiting for instructions.

No. 781 Regiment C Coy 2 C.I.R.U.

PASS

Army Form Blue (To pass at rail)

No. 12847 (Rank) Pte (Name) Smith V.H.

has permission to be absent from his †quarters/duty, from 0800 hrs 7/9/43 to 0800 hrs 16/9/43

for the purpose of proceeding to * Manchester

(Station) to rejoin 2 C.I.R.U.

(Date) 6/9/43 Commanding Officer Nelson Major

"C" Coy

† Delete whichever is not applicable.
* Destination not required unless change is to consist of more than one journey. In the case of a return ticket the word "return" should be inserted after the destination.

CROWN COPYRIGHT RESERVED

M.M.P.

Expense Voucher Re—: Ref. K.R. & O. (Can) 339

Reg. No. 12847 Rank Pte Name Smith, V.H. Unit 2 C.I.R.U.

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit from London from Manchester

Date	Particulars (Escorts)	Amount £	s	d
Sept 6	Escorts return fare from LONDON To Manchester	1	8	
	Prisoners single fare to LONDON From Manchester	1	4	
	Prisoners fare from To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares (Escorts)		3	9
	Total £	1	16	8

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

L.S. Simpson Capt.
Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London.

M.M.P.

EXHIBIT "C"

SUMMARY OF EVIDENCE

In the case of No. L-12847 Private Vernon Duncan SMITH, South Saskatchewan Regiment, 2 Canadian Infantry Reinforcement Unit.

By direction of the Commanding Officer, the Summary of Evidence is taken on Oath.

First Witness for the Prosecution:- Lieut J. Cartside, South Saskatchewan Regiment, 2 Canadian Infantry Reinforcement Unit, having been duly sworn states:

I am Lieut J. Cartside, South Saskatchewan Regiment, 2 Canadian Infantry Reinforcement Unit. I am Assistant Records Officer, 2 Canadian Infantry Reinforcement Unit. I present,

1. A certified true copy of a Declaration of a Court of Enquiry held on 6 September 1943, which shows L-12847 Private Smith, V.D. as being absent from 1200 hours, 14 August 1943 and being still absnet on 6 September 1943.

2. A Certificate in accordance with P.C. 2797 of 10 April 42 showing the apprehension of L-12847 Private Smith, V.D. at 2200 hours, 8 September 1943.

3. Expense Voucher showing the cost of apprehension and return of Private Smith, V.D. to his Unit. Total £ 1-16-8.

4. Pass purported to be signed by Captain J.A. Wilson. At the date of the pass, 6 September 1943 there was no such officer on the strength of this Unit.

The accused declines to cross-examine the Witness.

J Cartside, Lieut
Lieut J. Cartside.

Second Witness for the Prosecution:- Captain A.G. MacDonald, Royal Hamiltos Light Infantry, 2 Canadian Infantry Reinforcement Unit, having been duly sworn states:

I am Captain A.G. MacDonald and am the Transport Officer of "I" Wing, 2 C.I.R.U. I wish to state that the pass made out in the name of L-12847 Private Smith, V.D. and stamped with Instructional Wing Stamp was never issued to Pte Smith by this Wing and further at the date of the pass we had no Captain J.A. Wilson on our strength.

The accused declines to cross-examine the Witness.

A.G. MacDonald
Captain A.G. MacDonald.

The accused was cautioned as follows, "Do you wish to make any statement, or to give evidence on Oath. You are not obliged to say anything or give evidence unless you wish to do so,. But whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence, consisting of 1 page, was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4(c)(d)(E) and (f) have been duly complied with.

Witley, Surrey.
11 September 1943.

Robt P. Scott
(Robt P. Scott) Major.
Officer detailed to take Summary of Evidence.

I hereby acknowledge that I have received a true copy of the Summary of Evidence taken at Laurentide Camp preliminary to my Court Martial and I further acknowledge receipt of a copy of the CHARGE SHEET under which I am being brought to Court Martial.

Laurentide Camp.
11 September 1943. V D Smith

I request that the Convening Officer appoint an Officer to represent me at my trial.

Laurentide Camp.
11 September 1943. V D Smith

M.M.A

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
LAURENTIDE CAMP	7TH AUG 1943.	PTE		W.O.A.S. A.W.L. ABSENT WITHOUT LEAVE, IN THAT HE, AT LAURENTIDE CAMP, WILEY, WAS ABSENT WITHOUT LEAVE FROM 0800 HRS 7 AUG 43, UNTIL APPREHENDED BY THE MILITARY POLICE AT MANCHESTER AT 0145 HRS 11 AUG 43. COST OF APPREHENSION AND RETURN TO HIS UNIT, $1.11.8. TOTAL ABSENCE 3 DAYS 17 HRS, 45 MINUTES. SEC 15 A.A.	CPL. STONER. N. DOCUMENTARY.	FORF 14 DAYS PAY PLACED UNDER STOPPAGES $1.11.8.	14TH AUG 1943.	COL. M. K. GREENE.	FORFEITS 14 DAYS PAY UNDER F.R.1.
Laurentide Camp.	17 Feb 1943.	Pte.		W.O.A.S. A.W.L. from 1715 hrs 26 Dec. 42 until Surrendered himself to A.P.M. at Manchester at 2148 hrs. 9 Feb. 43. Total Absence 45 days 15 hrs 33 mins.	F.G.C.M.	To undergo a Detention for period 90 days commuted to 45 days pay by "D" Coy Canada.	17 Feb 43.	F.G.C.M. AH	45 days pay F.R.1. 1948(b) 45 days pay F.R.1. 1949(a) 45 days pay F.R.1. 1948(b)

No. L 4847. Name SMITH. V.D. Sqn., Battery, or Company D. Corps S.S.R. Date of enlistment 11-W-40. G.C. Badges. Service or Proficiency Pay. M.F.M. 6 (A.F.B. 122) 500M—6.39 (1702) H.Q. 1772-40-18

Date of last entry in Company Conduct Sheet. No. and date of last drunk. Period not reckoning towards freedom from extra fine. Sheet No. 1. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				NEW SHEET SUBSTITUTED ON COMPLETION 6 MONTHS SERVICE.					
ROYAL OAKS	1-5-41.	PTE.		A.W.L. 0530 HRS 1-5-41 TO 0730 HRS 6-5-41.	CPL. DAY. F.C.	18 DAYS. DEFEN.	6-MAY-41.	LT-COL.	5 DAYS PAY.
				ABSENT 5 DAYS - 2 HRS A.A. SEC 15 (1)	CPL LENYON, W.			J.E. WRIGHT.	
LADIES	5-7-41	PTE.		A.W.L. 2230 HRS 5-JUL-41 TO 0115 HRS 6-JUL-41.	L/CPL	7 DAYS. C.B.	7-JULY-41.	S.C.	
COLLEGE.				ABSENT 3 HRS - 45 MINS. A.A. SEC 15 (1).	SUNOR. H.			MACTAVISH.	
LADIES	31-7-41	PTE.		FAILING TO APPEAR ON PARADE.	CPL.	144 HRS. DEFEN.	1-AUG-41.	LT-COL.	6 DAYS PAY.
COLLEGE.				A.W.L. 3 HRS 30 MINS. A.A. SEC 15 (1).	DAY. F.C.			J.E. WRIGHT.	
LAURENTIDE	3-7-43.	A/L/CPL		W.O.A.S. A.W.L. ABSENT WITHOUT LEAVE, IN THAT HE	CPL.	REDUCED TO	12TH	LT-COL.	
CAMP.				AT LAURENTIDE CAMP, WITLEY, OVERSTAYED HIS	STONER, N.	PERMANANT RANK	JULY	H.T.	
				LEAVE PASS FROM 0860 HRS 3 JULY-43, UNTIL		OF PRIVATE.	1943.	KEMPSON	
				1000 HRS, 11 JULY-43, TOTAL ABSENCE 8 DAYS		9 DAYS PAY.			
				2 HRS. SEC 15 (1) A.A.		FRAT. 149 (1) (a)			
				CERTIFIED TRUE COPY OF M.F.M. 6 HELD IN MY CUSTODY.				MAJOR.	

Officer Making Out Charge, Original or Extract.

M.F.H. 355
40/P & S/675

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
L-12847	Private	Vernon Duncan SMITH (S.S.R.)	2 C.I.R.U.

1. The following is a fair and true summary of the entries in the [illegible] a/f/r
[illegible] a/f/r or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, [illegible] a/f/r of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
For A.W.L.	3 times	6 times
For	times	times
For	times	times
For	times	times

[illegible] a/f/r

or,

[illegible] a/f/r

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. [illegible] a/f/r

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under [illegible] a/f/r Section 47 of the Army Act and dispensations with trial under [illegible] a/f/r A.A. 73 are set out in the Schedule annexed to this statement.

3. [illegible] a/f/r

or,

The accused at the present time is under sentence for 14 days FP beginning on the 14th day of August 1943.

4. The accused has been in confinement awaiting trial on the present charges, for — days in civil custody, and 4 days in military custody, making a total of 4 days in custody, of which — days were spent in hospital.

5. The present age of the accused according to his [illegible] a/f/r attestation paper is 23 yrs 1 mth 3 days

6. The date of his [illegible] a/f/r attestation specified in his [illegible] a/f/r attestation paper is 11 Apr 40

7. The service which the accused is allowed to reckon towards discharge is 3 yrs 5 mths

8. The accused is entitled to reckon 3 yrs 5 mths service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward ~~or is in possession of or entitled to~~. State any air force decoration or reward. a/f/r military military

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer had held a/f/r the ~~regimental~~ rank of

W.W. Swaffield Major.
Signature

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated, and in his regiment (or corps), the rank of dated.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number C12847 Rank Private Air Force

Name J.D. SMITH of (O.S.R.) 2 C.I.R.C. Regiment

NOTE—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	17 Feb 43.	A.W.L 45 days, 4 hrs 33 minutes.	To undergo Detention for a period of 90 days.	Commuted to 45 days forfeiture of pay.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 13th day of Sept 1943.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

H. M. Dwyer Maj.

GGG-58

PTE SMITH V.D

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: L.12847 Pte Vernon, Duncan SMITH - S Sask R - 1 CIRU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	Guilty	Guilty	A.E.T.P. A.E.T.P.
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn 6.)

At present under sentence for ~~beginning on (date)~~ 53 - E.T.P. (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 11 days, of which 0114 days were spent in hospital. (1) A.E.T.P.
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo detention for (90) Ninety days, and To forfeit be paid under stoppages of pay until he has made good the sum of $0.16.16.- cost of Gaol, on account for escort & accused from Manchester to London.

(Sgd) ..... 27 MAR 44 (Sgd) A. E.T. Paquet Maj for
Judge-Advocate, if any. Date awarded. President. (AA 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (1)
(1. AA 57A. Delete if not used.)

(Sgd) H. Stewart Lough Brig
Date 28 Mar 44 Commanding Comd "D" Gp, CRU
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Can 574, 577.)

Accused.	Date.	Signature of Offr.
L-12847 Pte. Smith, V.D. S.S.R., 1 CIRU	28 Mar 44	H. Sharp
Promulgated in Pt II DO 71 d/29 Mar 44		(H. Sharp) Commander, 1 Cdn Inf Reinf Unit

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

ENTERED IN RECORDS OF C.M. 666-58

FIELD GENERAL COURT-MARTIAL (CFAAB (In lieu of AFAB) 401 (P.A.) R (1958) (2664))

Convened by Order of Brig J.R. Stewart Lough DSO, MC, VD Comd "D" Gp, CRU dated 26 Mar 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
L.12847	Pte	Vernon, Duncan	SMITH	S Sas R 1 CIRU

PROCEEDINGS REVIEWED
W. O. Dent Lieut
5 Apr. 44 Regt
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 27 MAR 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waitin~~, ~~Members, JA, if any, and Offrs under instr~~ if any, assemble, and the Court is closed. A.E.T.P.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fnns RGs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of explanation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A93, for oaths and instrs on how to record admissions, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) A.E.T.P. The Court is satisfied that it is properly convened and constituted(2), accused is ~~are~~ amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~are~~ brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ (1) A.E.T.P.
(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to an interpreter? Ans~~ A.E.T.P.
~~The Interpreter is sworn.(1) Do you object to a shorthand writer? Ans~~ A.E.T.P.
~~The shorthand writer is sworn.(1)~~ A.E.T.P.
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans Nil (1)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 23, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr~~, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	A.E.T. Paquet PPCLI	1 C I R V
Member	Capt.	L.L. Salter Calg Highrs	1 C I R V
Member	Lieut	R.G. Jones C.I.C.	1 C I R V
Judge-Advocate	/	/	A.E.T.P.
Prosecutor	Capt.	R Dawson PPCLI	1 C I R V
Defending Offr	Lieut	W.A. ~~Dawson~~ Simonds 3 S.R.	1 C I R V

Questions by President: Is the Prosecutor a lawyer? Ans Nil Is the Defending Offr a lawyer? Ans Nil (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See JA p 2.)

A8. The accused ~~Nil~~ before arraignment makes(s) (not) the plea A.E.T.P. (1)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 120, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in A6 rank and name of the accused making the plea.)

A9. The accused ~~is~~ (are) arraigned (separately) on all charges in the charge sheet.(1) The accused ~~does~~ (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 21, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A93 to record proceedings. 2. RP 22, RP 32. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS. A.E.T.P.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 105 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ~~NO~~ .....(5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3. MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) (changes) (change) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. ~~On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)~~
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "B", initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans ..... Do you intend to call witnesses on your behalf ? Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans ~~NO~~
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 143(l) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex "C" respectively.(3)
(*1. MFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s) and in mitigation of punishment ?(1) Ans ~~NO~~ .....(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(*1. When several accused tried separately see RP 120. One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 116, 119(A), KR Can 308, 330, 363-366. Overseas AO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

28 Mar 44

Personel Reallocation
Board

L-12847 Pte Smith V.D. 1 C.I.R.U.

1. The m/n man was tried by F.G.C.M. on the 27 Mar 44. During his trial a PULHEMS profile was produced, showing stability "3". In view of this fact, the court feel that a recommendation for employment in a branch of the army where he would be more suitable than Infantry is strongly warranted for the advantage of all concerned

A.E.T. Paquet

(A.E.T. Paquet) Major P.P.C.L.I.
President

28 Mar 44

CHARGE SHEET

The accused L-12847 Private Vernon Duncan SMITH of the South Saskatchewan Regiment, on the strength of No. 1 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE
SEC 15(1)
ARMY ACT

When on Active Service, Absenting himself without leave,

in that he,

at No. 2 Canadian Infantry Reinforcement Unit, absented himself without leave from 1200 hours on the 18th day of February 1944, until apprehended at 1500 hours on the 15th day of March 1944, and incurring expense to the public in the amount of £0-16-1, costs of return to Unit.

Total Absence: 26 days 3 hours.

.....Colonel
(H. Sharp) Commander,
1 Cdn. Inf. Reinf. Unit.

Barrosa Barracks,
Aldershot, Hants.

23rd day of March 1944.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

(J.R. Stewart Lough) Brigadier
Commander
"D" Group, Cdn. Hft. Units
Convening Officer

IN THE FIELD
26 Mar 44.

A.C.T. Paquet Major for
27 MARCH

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA2)
40/PAS/1697 (2658)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
L.12847	Pte		Vernon, Duncan	SMITH	S Sask R 1 CIRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 26 Mar 44 endorsed by me, (~~by whom they are so~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~as the case may be~~)

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~The evidence of witnesses may be taken on commission~~

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. ~~The Judge Advocate may appoint~~

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)		(Unit.)
Major	A.E.T. Paquet (*Must be named. RP 106.*)	PPCLI-1 CIRU

MEMBERS.

(Rank.)		(Unit.)
A Captain	to be detailed by C.O.	1 CIRU
A Lieutenant	to be detailed by C.O. (*Named or detailed. RP 106.*)	1 CIRU

WAITING MEMBER.

(Rank.)		(Unit.)
	(*Named or detailed, if any. RP 106.*)	

JUDGE-ADVOCATE.

(Rank.)		(Unit.)
	(*Must be named, if any. RP 106.*)	

On Active Service ~~and~~

in England
(Country.)

Date 26 Mar 44

R. Stewart Lough Brigadier
(*Signed personally. RP 106(2).*) (Rank.)
(J.R. Stewart Lough)
(Commanding "D" Group, Cdn. Sft. Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(*See overleaf for oaths and notes for use on trial.*)

A.C.T.P.

Medical Officers Certificate
K.R. Can. Para 557

I certify that I have this morning examined No. L-12847

Pte. Smith, V.D. and in my opinion he is fit to undergo trial by Court Martial.

Station: Barrosa Barracks

Date: 27th. March 1944.

(Medical Officer)

A.E.T.D.

Pte. Smith is a farm boy who joined the South Sask. Regt. in 1940 and came to England with his battalion. He was a pretty good soldier with practically no crime when he had an accident which caused his category to be lowered and then he was sent to a holding unit.

This must be had to make new friends and forget his old friends. While here he was again taken before a medical board and given a Pulhems profile L 3 and S 3

I ask the court to consider this S 3 and submit a plea that this man be posted to some unit such as a Pioneer Co. where he can be used in some useful way and again have a definite unit.

W/[illegible] Lieut.

R.E.T. Regtl Instr.

1 CANADIAN INFANTRY REINFORCEMENT UNIT

27 Mar 44

TO WHOM IT MAY CONCERN

This is to certify that information obtained from documents in my possession the u/m soldier was Medically Reboarded on 26 Jan 44 and given a PULHEMS profile as follows: L-12847 Pte. Smith, V.D., 1 CIRU:

YOB	P	U	L	H	E	M	S
26	1	1	3	1	1	1	3

R.E.T.D.

.....Capt.,
(H.F. Atkinson) Records Officer,
1 Cdn Inf Reinf Unit

Exhibit 'A' Bloshan

RECORD of the Declaration of a Court of Inquiry assembled at **Laurentide Camp** on the **13** day of **MAR** 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. **L 12847 Pte Smith V.D. (SSR)**

DECLARATION

The Court declare that No. **L 12847 Pte Smith V.D. (SSR)** of **"A" Wing on the strength of 2 Canadian Infantry Reinforcement Unit** illegally absented himself without leave **from Laurentide Camp** at **1200 hrs.** on the **18** day of **FEB 1944**, that he is still so absent, and that on the ~~20 FEB 44~~ 13 MAR 44 he was deficient, and that he is still deficient of the following articles:—

ARTICLES	VALUE	ARTICLES	VALUE
	Voc.Prices	75% Voc.Prices	
1 Pr Anklet Web	£ 0- 4- 5	£ 0- 3- 3¾	
2 Blouses B/D	2- 7- 0	1-15- 3	
1 Cap F/S	0- 2- 6	0- 1-10½	
2 Prs Boots Ankles	2- 8-10	1-16- 7½	
2 Prs Drawers Cellular	0- 3-10	0- 2-10½	
4 Prs Socks (Shorts	0- 6- 8	0- 5- 0	
1 Pr Drawers Woollen	0- 5- 4½	0- 4- 0½	
1 Greatcoat Drab	2-11- 8	1-18- 9	
1 Jersey Pullover	0- 8- 0	0- 6- 0	
1 Overall Combination	0-12- 2	0- 9- 1½	
2 Shirts Angola Drab	0-18- 0	0-13- 6	
2 Trousers B/D	2- 8- 3	1-16-2 ¼	
2 Shirts Cotton Gym	0- 3- 2	0- 2- 4½	
1 Badge Cap	0- 0- 4½	0- 0- 3½	
1 Bags Kit Universal	0- 4- 7	0- 3- 5¼	
1 Brass Cleaning	0- 0- 2	0- 0- 1½	
1 Housewife Complete	0- 0- 9	0- 0- 6¾	
2 Towels Hand	0- 2-10	0- 2- 1½	
		£ 10- 1- 5¾	

I Certify that the prices of the above articles are correct as per O.R.O. as amended from time to time.

Signed at **Laurentide Camp**

this **13** day of **MAR** 19**44**

D.C.M. Elliott President
Lieut. D.C.M. Elliott (Camerons of C)
2 C.I.R.U., C.A.O.

Jean Bertrand Lieut Member
Lieut. Jean Bertrand (CIC)
2 C.I.R.U., C.A.O.

Member

Signature of Commanding Officer D. T. Bingham Lt. Col.

Certified true copy

Adjutant 2 C.I.R.U.

Signature of Officer having custody of original record

R.F.B. 173
A.F.B. 132
RHQ-4-41 (750)
H.Q. 1771-13-207

RETD

PART II ORDER No. 6 of 15 Dec 44

CERTIFICATE IN ACCORDANCE WITH P.6.2797 of 10 Apr.42.

I Certify that No. 1/14747 Rank Pte. Name Smith, V.D.

Unit No.2.C.I.R.U. was arrested at Manchester (Place)

at 1500 (hour) on 15 March 44 (date) and that at the time of his arrest he was wearing (Military Uniform) ~~xxx(Civilian Clothes)~~.x

Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable).

[signature]

.....Capt.,

(~~Provost-Marshall~~), D.A.P.M.,

London Area.

A.E.P.

Exhibit "B"

Exhibit "C" B.K.M.

Expense Voucher Re—: Ref. K.R. & O. (Can) 539

Reg. No. 612647 Rank Pte. Name Smith, V.D. Unit 2 C.I.R.U.

1. The following expenses were incurred in apprehending and returning the M/N/Soldier to ~~his Unit From~~ London from Manchester

Date	Particulars (3 Portion)	Amount £	s.	d.
16 Mar. 44	Escorts return fare from LONDON To Manchester		14	1
	Prisoners single fare to LONDON From Manchester		own ticket	
	Prisoners fare from To			
	Escorts & Prisoners expenses for ~~Bed~~, Meals, Bus fares (3 Portion)		2	0
	Total £		16	1

B.E.T.

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

F. B. Stinson CAPTAIN

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

F. B. STINSON
ACTG. OFFICER - D.P.M's BR.
C.M.H.Q.

C.M.H.Q. 1000-55
40/P & S/482

(1) I hereby acknowledge that I have been served with a true copy of the Summary of Evidence taken at Barrosa Barracks, Aldershot, HANTS, preliminary to my court-Martial. I further acknowledge that I have been served with a true copy of the charge under which I am being brought to Court-Martial.

Dated at Aldershot, HANTS,
this 24 day of
Mar 1944

...V.D. Smith.....

(2) I hereby request that the Convening Officer appoint an Officer to represent me at my trial.

I desire the services of ~~Lieut Hooper~~ DAA&QMG ~~_____~~ A.C.S.
if he is available.

SUMMARY OF EVIDENCE

In the case of L12847 Pte. Smith V.D., South Saskatchewan Regiment, on the strength of No. 1 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, this Summary of Evidence is taken on Oath.

FIRST WITNESS FOR THE PROSECUTION

Major B M. McLean, Canadian Infantry Corps, on the strength of No. 1 Canadian Infantry Reinforcement Unit, an officer of the Canadian Army Overseas, having been duly sworn states:

I am Major B.M. McLean. I produce the record of the declaration of a Court of Inquiry held at Laurentide Camp on the 13th. March 1944 for the purpose of investigating and recording the absence without leave of L 12847 Pte Smith V.D. of the South Saskatchewan Regiment purporting to be signed by Lt. Col. W.J. Bingham MC, acting commander No. 2 Canadian Infantry Reinforcement Unit. This document is marked Exhibit "A" and is duly initialled by me for purposes of identification. I also produce a certificate prepared in accordance with P.C. 2797 10 Apr. 42, a certificate of arrest relating to the accused purporting to be signed by L.B. Grayson, Capt. D.A.P.M. London area. This document is marked Exhibit "B" and is duly initialled by me for purposes of identification. I also produce C.M.H.Q. 1000:55 an expense voucher relating to the accused, purporting to be signed by R.J. Stinson, Lieut. Officer issuing railway warrants and expense monies, No. 6 Provost Company, C.P.C. London. This document is marked Exhibit "C" and is duly initialled by me for purposes of identification.

The accused declines to cross-examine this witness.

.....Major
(B.M. McLean)

The accused was cautioned as follows. "Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence, unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence and hearing of the accused, and that the Rules of Procedure 4(c),(d),(e),(f) and (g) have been complied with.

.....Lieut
(J.C. Benmore) Officer detailed to take the Summary of Evidence.

Barrosa Barracks,
Aldershot, Hants.

22nd. day of March, 1944.

No. L12847 Name Smith V.D. | Sqn. Battery or Company: D | Corps: CIC | Date of enlistment: 11 Apr 41 | QC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAB/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc: J.C. MacTavish Major | Character: E.A.C.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				New sheet substituted on completion 6 mos. Service					
Mowal Bks	1May41	Pte		AWL 0530 hrs. 1 May 41 to 0730 hrs 6 May 41. Absent 5 days 2 hrs A.A. Sec 15(1)	Cpl Dey F.C. Cpl Linton W.W.V.	18 days Det	6 May 41	J.E. Wright Lt. Col.	5 days pay
Ladies College	5July 41.	Pte.		A.W.L. 2230 Hrs. 5th July 41. to 0115 Hrs 6th July 41 absent 3 Hrs 45 mins. A.A. Sec 15 (I)	L/cpl Juner H.	7days C.B.	7th Jul. 41	JC Mac Tavish Lt. Co l	
Ladies College	31 Jul 41.	Pte.		Failing to appear on Parade AWL 3Hrs 30 mins. A.A. Sec. 15 (I)	Cpl Dey F.C.	144 Hrs Det.	1st Aug 41	JC Wright Lt. Col.	6 days pay.
Field	8 July 43.	A/L/Cpl		W.O.A.S. A.W.L. absent without leave in that he, at Laurentide camp, wilfully overstayed his leave					

(SEE OVER)

A.C.S.

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				pass from 0800 hrs 3 July 43. until 1000 hrs 11th July 43. Total absence 8 days 2 hrs. Sec. 15 (1) A.A.	Cpl. Stoner	N. Reduced to the Permanent rank of Private.	12 July 43.	H.T. Kempton Lt. Col.	Forf. 9 days pay.
Field.	7 Aug 43.	Pte.		W.O.A.S. Absent without leave, in that he , at Laurentide Camp Witely, was absent without leave from 0800 hrs 7.Aug. 43. untill apprehended at Manchester by the Military Police.at 0145 hrs 11 Aug. 43. Cost of apprehension and return to his unit A.I.I.S Total absence 3 days 17 hrs 45 mins. Sec. 15 A.A.	Cpl Stoner N. Documentary	14 days F.P. Forf. 14 days pay. Placed under stoppages, A.I.I.S.	14 Aug 43.	M.K. Green Lt. Col.	Forf. 4 days pay under F.R.I

No. L12847 Name Smith V.D. | Sqn. Battery or Company | Corps Infantry | Date of enlistment 11 Apr. 40 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/P&S/136 (3438)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field.	I4th Aug. 43.	Pte.		Charge (I) Sec. I5 A.A. (I) AWL from 1200 hrs I4th Aug 43. Until apprehended by C.P.C. in Manchester at 2200 8th Sept. 43. absent 25 days I0 hrs. Charge (2) A.A. Sec. 40. in possession of a document purporting to be a genuine leave pass, knowing it was not genuine.	F.G.C.M.	To undergo Detention for I80 days and placed under a stoppage of pay to the amount of £I.I6. 8. cost of apprehension close custody from 2200 hrs 8. Sept. 43. to I2. Sept. 43. 4 days 2 hrs.	I3. Sept. 43.	Findings and sentence confirmed by Col. J.A. Calder Commander H.Q. "A" Group C.R.U. on I3. Sept 43.	Forf. 26 days pay F.R.I.I49 (I)(a) I80 days pay F.R.I. I49 (I) (b) 4 days pay F.R.I.I49(I) (c) Total Forf. 2I0 days pay and £I. I6. 8. Cost of Apprehension

Date of award 13 Sept. 43.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	18 Jan 44	Pte		A.A. 15(1) AWL 15 hrs 50 min	Sgt. Pollard	3 days F P. & forf 3 days pay	19 Jan 44	Lt. Col. W.J Bingham	1 day auto forf

23 Mar 44
Compared with the original and certified to be a true copy.

.....Major
(B.K. McLean) 2 i/c "A" Wing
1 Cdn. Inf. Reinf. Unit.

E & "B"

M.F.B. 355
22M—5-41 (572-D)
H.Q. 1772-39-620
A.F.B. 266

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
L 12847	Private	Vernon Duncan Smith	South Saskatchewan Regiment, No. 1 Canadian Infantry Reinforcement Unit

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental ~~and Squadron, Battery~~ B.H.L. ~~Conduct sheets~~ ~~Other Company Conduct sheets~~ of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For A.A. Sec. 15(1)	3 times	A.A. Sec. 15(1) 6 times
For	times	times
For	times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct~~ B.H.L.

or,

~~There are no entries in the conduct sheets of the accused~~ B.H.L.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted~~ B.H.L.

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under ~~Air Force Act~~ B.H.L. ~~A.F.A. 73~~ B.H.L. Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence for~~ ~~beginning on the~~ ~~day of~~ B.H.L.

4. The accused has been in confinement awaiting trial on the present charges, for ~~Air Force~~ NIL days in civil custody, and 11 days in military custody, making a total of 11 days in custody, of which NIL days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is B.H.L. 23 yrs. 8 mos.

6. The date of his ~~enlistment~~ attestation specified in his ~~record Book~~ attestation paper is 11 Apr 40

7. The service which the accused is allowed to reckon towards discharge is 3 yrs 82 days

8. The accused is entitled to reckon above service for the purpose of determining his pension, etc.

9. The accused is in ~~possession of or entitled to~~ ~~Air Force~~ military ~~Air Force record has been~~ B.H.L. possession of or entitled to). State any ~~air force~~ military decoration or reward.

Canadian Volunteer Service Medal and Clasp

10. ~~If the accused is a warrant officer:~~ ~~The accused before he was made a warrant officer was held~~ ~~Air Force~~ ~~the rank of~~

A.E.D.

11. (~~In the case of an officer:~~) ~~The accused holds in the Royal Canadian Air Force the rank of~~ Permanent Force unit

..... dated ....., and in his regiment (or corps), the rank of

..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:— Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the ~~Air Force~~ Army Act, and of cases in which trial has been dispensed with of accused, Number L 12647 Rank Private Unit

Name Vernon Duncan Smith of South Saskatchewan Regiment, 1 Canadian Infantry Reinforcement Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	13 Sep 43 2 C.I.R.U.	(1) A.A. Sec. 15(1) (2) A.A. Sec. 40	180 days detention	

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 27th day of Sept 43 (E.M. McLean) Major, O.C. 2 C.I.R.U.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

JJJ-15 (Case #2)

GNR SMITH W.

See LL-30 for 1st case

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: K-5082 Gnr SMITH, W. - 1 CARU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	Guilty	Guilty	
~~2nd~~			
~~3rd~~			
~~4th~~			
~~5th~~			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ~~present~~ beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 6 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

20 months Detention per a period of six (6) months

(Sgd) Judge-Advocate, if any. 17 April 44 Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)

(1. AA 57A. Delete if not used.)

(Sgd)

Date 19 Apr 44 A/Commanding C Group C.R.U. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
K5082 Gnr Smith, W.	19 Apr 44	MAJOR ADM OFFR 1 CARU

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160. 7557-15

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA3) 40-P-S-1608 (2864)

Convened by Order of Col B.R. KER, ED A/Comd "C" Gp, CRU dated 16 Apr 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
K-5082	Gnr	William	SMITH	1 CARU

~~PROCEEDINGS REVIEWED~~

R. Deacon-Hill Capt 2 Aug 44 REVIEWING OFFICER, JAG BRANCH CMHQ

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date) 17 Apr 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any,~~ and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (~~not~~) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~not~~) brought before the Court. At 1150 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~not~~) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO (Pty).~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ~~the interpreter~~ Lieut. Justice ~~duties~~? Ans No.

~~The interpreter is sworn.~~(1) Do you object to the shorthand writer? Ans

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No. No. No.

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any~~, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court etc:

President	Lt Col	D.L.	REDMAN	HQ. CARU
Member	Capt.	R.F.H.	HUNT	2 COCARU
Member	Lieut.	J.I.	MACDONALD	1 COCARU
~~Judge Advocate~~				
Prosecutor	Capt.	H.A.	FARTHING	1 CARU
Defending Offr	Capt.	F.H.	KELLY	1 CARU

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No. (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused before arraignment make(s) (~~no~~) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or be one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~not~~) arraigned (~~severally~~) on all charges in the charge sheet.(1) The accused does (~~not~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is closed and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form. B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 fn 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No. (5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 33(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex *A*, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if charged to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charge on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence as read in relation to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive of Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Fix here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 29(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. .....

Do you intend to call witnesses on your behalf ? Ans. .....

Are they witnesses as to character only ? Ans. .....
(1. *RP* 155. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 101(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed by ....
(1. *AA* 54(3) *(a), RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable where there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. NO-SIR
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (extract) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. B and Ex. C respectively.(3)
(1. *AFB* 355 *or AFB* 294. 2. *MFM* 6. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. By Def. Offr NOTE - H19
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to answer on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(5), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(1. *When several accused tried separately see RP* 240. *Give sentence only, comprised of the punishments or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Con* 308, 330, 563-566. *Overseas RO* 309, 2323, *MML p* 66, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(3), 98(1), *KR Con* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, No K.5082 Gunner William SMITH, R.C.A., on strength of No.1 Canadian Artillery Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:-

First Charge
AA Sec 15(1)

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he,

in the field, did absent himself without leave from 1315 hrs, 8 Feb 44 until 0045 hrs, 11 Apr 44.

(Absent: 62 days, 11 hours, 30 mins)

William E. Fleury

(W.E. FLEURY) Lt-COLONEL,
A/Commanding Officer,
No.1 Canadian Artillery Reinforcement Unit.
R.C.A. Canadian Army Overseas.

Dated at Bordon, Hants.,
this 14th day of
April, 1944.

To be tried by Field General Court Martial,

R. [illegible] Colonel,
A/Commander, 4th Group, Cdn Rft Units.
(Convening Officer)

Bordon, Hants.
16 April 1944.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA3)
40/PAM/1697 (2068)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
K-5082	Gnr		William	SMITH	1 CARU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(X) named above as the accused, being subject to military law, has (~~XXX~~) committed the offence(s) set forth in the Charge Sheet(X) attached and on (date) 16 Apr 44 endorsed by me, ~~XXXXXXXXXXXXXXXX~~ " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (~~XXXXXXXXXXXXXXX

Medical Officers' Certificate
K.R. (Can) Para 557

I certify that I have this morning examined No K5082 Sto Smith W
(Rank) (name)
of H.M.C.S. Nabob and in my opinion he is ~~unfit~~ fit to undergo
trial by Court Martial.

Station Field

Date 17-4-44

Sgd. W. A. Shea Surg. Lieut.
(Medical Officer)

PLEA IN MITIGATION E-3

In the case of

K.3082	Gnr	SMITH	W	1 CARU

The accused is 25 yrs of age and enlisted in Sep 39 and served with a fd regt until Nov of last year. As qualified as a Driver IC and later took a course at 3 CACRU and qualified as a SP Driver. Subsequent to that he was sent out of the regt, the reason for which he did not know, and was sent to 1 CARU, & felt that he had not been fairly treated and I take it that he went a little bit off his rocker and decided to go AWL. As far as his personal life is concerned, he is single, as no family ties, but had and still has an assignment of $15 a month to his sister. He seems to be trying to do the decent thing and really has no particular excuse to offer for this particular AWL, and hopes the Court will take everything into consideration when awarding sentence and give him as light a sentence as possible.

APPENDIX "A"

Army Form B 252
(See King's Regulations)

No. 1 C.A.R.U. Regiment
Battery
Squadron
Troop or
Company

CHARGE against No. K.5082 Rank Gnr.

Name Smith, W.

Place London Date of Offence 11 Apr. 44

OFFENCE W.O.A.S. was A.W.L.

F. J. Stinson LIEUT.
R. J. STINSON
ADMN. OFFICER - D.P.M's BR.
C.M.H.Q.

Names of Witnesses :—

L/C. Ahlstrom, J. Cdn. Provost Corps 6 Coy.

L/C. St. Cyr, P. Cdn. Provost Corps 6 Coy.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

R L de Domain Adjutant.

P.T.O.

W1.W21024/19el 2/000,000 10/42. K. & H., Ltd. G.67/47.

Statement of **EVIDENCE** in the case of:
K.5082 Gnr. Smith, W.
No. 1 C.A.R.U.

Sir,

At London at about 0045 hrs, 11 Apr. 44, I was on duty at the Church Army Hostel, Marylebone in company with L/Cpl. St. Cyr, when I saw the a/m soldier.

I requested to see his pass and he could not produced one he was A.W.L.

I placed him under arrest and he was conducted to No. 6 (Area) Provost Coy., Cdn. Provost Corps Detention Office and handed over to the N.C.O. i/c of Cells, to be detained.

London
11 Apr. 44. .....L/Cpl
(M.60958 J.C. Ahlstrom)

Sir,

I have read over and corroborate the above statement.

London
11 Apr. 44. .....L/Cpl
(H.16418 P.R. St. Cyr)

REMARKS

14 Apr 44

This is to certify that I have today received a copy of Charge Sheet and Summary of Evidence for my trial by Court Martial.

W Smith

K.5082 Gnr. Smith, W.

LIST OF WITNESSES

PROSECUTION

D.6088 L/Sjt Brown, H.A.	No.1 Cdn Artillery Reinforcement Unit.
Capt. J.H. Fraser	No.1 Cdn Artillery Reinforcement Unit.

LIST OF APPENDICES

Appendix "A" - Certificate in accordance with AA 163(1)(j) which states that K.5082 Gnr. Smith, W. was apprehended at 0045 hrs 11 Apr 44.

STATEMENT OF ACCUSED IN ACCORDANCE WITH R.P. 14(B)

I, K.5082 Gunner Smith, W., of No.1 Canadian Artillery Reinforcement Unit, desire to have Capt. F.H. Kelley to represent me at my trial by Court Martial.

W. Smith

K.5082 Gnr. Smith, W.

SUMMARY OF EVIDENCE in the case of No K.5082 Gunner William SMITH, R.C.A., on strength of No.1 Canadian Artillery Reinforcement Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer the evidence is taken on oath.

FIRST WITNESS for the prosecution

D.6088 L/Sjt. Brown, H.A., on strength of No. 1 Canadian Artillery Reinforcement Unit, having been duly sworn states:-

At No.1 C.A.R.U. on 6 Feb 44 at 1315 hrs on noon parade, I called the roll and found K.5082 Gnr. Smith, W. was absent. I was troop Serjeant on that day and reported to the Battery Office that K.5082 Gnr. Smith, W. was absent.

The accused declines to cross-examine this witness.

H. A. Brown Sgt

.....
D.6088 L/Sjt. Brown, H.A.

SECOND WITNESS for the prosecution

M.60958 L/Cpl. AHLSTROM, J.C. Cdn. Provost Corps (6 Coy)

Owing to the exigencies of the service the attendance of this witness cannot, in my opinion, be readily procured. A written statement of the evidence of this witness, purporting to be signed by him, is attached hereto and marked Appendix "A"

The accused does not demand the presence of this witness for cross-examination.

J. H. Fraser Capt.

.....
(J.H. Fraser) Capt. R.C.A.
Officer detailed to take the Summary of Evidence.

The accused was cautioned as follows: Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement or give evidence on oath and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4(c) (d) (e) (f) and (g) have been complied with.

J. H. Fraser Capt.

.....
(J.H. FRASER) Capt. R.C.A.
Officer detailed to take the Summary of Evidence.

Bordon, Hants.
13 April 1944.

EXA

Name SMITH, W. | Sqn, Battery, or Company | Corps RCA | Date of enlistment 15Sep39 | GC Badges | Service or Proficiency Pay N/A | MFM 6 (APB 122) (or PAS/136 (3488))

Date of last entry in Company Conduct Sheet: N/A | No and date of last drunk: N/A | Period not reckoning towards freedom from extra fine: N/A | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field		Gnr		AA Sec 15(1) WOAS AWL (Absent 14 hrs 30 mins)		5 days C.B.	14May40	Lt. R.O. S. Lefroy	Forf 1dys pay FR&I 149(1)(a
Field		Gnr		AA Sec 15(1) WOAS AWL			24Aug40		Forf 5dys pay FR&I 149
Field		Gnr		AA Sec 15(1) WOAS ALW (Absent 6 days 8 hours).		14 days Detn	23Aug41		Forf 7dys pay FR&I 149(1)(a Forf 14dys pa FR&I 149(1)(b Total Forf 21 days pay.

(PTO)

No K5082 Name SMITH, W. | Sqn, Battery, or Company | Corps RCA | Date of enlistment 15Sep39 | GC Badges | Service or Proficiency Pay N/A | MFM 6 (AFB 122) 60/PAS/138 (3458)

Date of last entry in Company Conduct Sheet N/A | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field		Gnr		AA Sec 15(1) WOAS AWL (Absent 14 hrs 30 mins)		5 days C.B.	14May40	Lt. R.O. S. Lefroy	Forf 1dys pay FR&I 149(1)(a
Field		Gnr		AA Sec 15(1) WOAS AWL			24Aug40		Forf 5dys pay FR&I 149
Field		Gnr		AA Sec 15(1) WOAS ALW (Absent 6 days 8 hours).		14 days Detn	23Aug41		Forf 7dys pay FR&I 149(1)(a Forf 14dys pa FR&I 149(1)(b Total Forf 21 days pay.

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field		Gnr		AA Sec 15(1) WOAS ALW (Absent 7 days 19 hours 1 min)		14 days F.P.	9Apr42	Major R.M.Jones	Forf 8 days pay FR&I 149(1)(a) Forf 14days pay FR&I 149(1)(b)
Field		Gnr		AA Sec 15(1) WOAS AWL (Absent 14 days 23 hrs 10 mins) Close arrest 24 hours 20 mins.	—	7 days F.P.	18Jul42	Lt/Col L.M.Jones	Forf 7 days pay FR&I 149(1)(b) Forf 1 days pay FR&I 149(1)(c) Forf 15days pay FR&I 149(1)(a) Total forf 23 days pay
Field		Gnr		AA Sec 15(1) WOAS AWL (Absent 7 days 33 mins).			20Mar43		Forf 46 days pay Stopp 16s 1d

No K5082 Name SMITH, W. | Sqn, Battery, or Company | Corps RCA | Date of enlistment 15Sep39 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/136 (2486)

Date of last entry in Company Conduct Sheet N/A | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 2 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field		Gnr		AA Sec 15(1) WOAS AWL (Absent 18 days 20 mins) Close arrest 1 day 21 hrs 30 mins.		28 days F.P.	12Apr43		Forf 28 days pay FR&I 149(1)(b) Forf 19 days pay FR&I 149(1)(a) Forf 2 days pay FR&I 149(1)(c)
Field		Gnr		(1) AA Sec 8 (Found guilty) (2) AA Sec 6(3) (Not guilty) (3) AA Sec 40 (Found guilty) (4) AA Sec 40 (Not Guilty) (5) AA Sec 40 (Found guilty) CONFIRMED BY COMD RCA 5CDN ARMD DIV 31 JUL 43.		30 days Detn	2Feb44	FGCM	Forf 30 days pay FR&I 149(1)(b) Forf 9 days pay FR&I 149(1)(c) Total Forf 39 days pay.

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field		Gnr		AA Sec 15(1) WOAS AWL (Absent 23 hrs 30 mins)			2Feb44		Forf 1 days pay FR&I 149(1)(a) Forf 7 days pay FR&I 149(1)(b)

ORIGINAL NOT AVAILABLE, CERTIFIED TRUE COPY MADE FROM ORIGINAL MFM 4 IN MY POSSESSION: R.G. MacKinnon Capt.
14 April 44.
(R.G. MacKinnon) Capt., R.C.A.
Officer IC Records, No.1 CARU.

FT
M3 C

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
K.5082	Gunner	SMITH, William	No.1 C.A.R.U.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For AA Sec 15(1) ..... 8 times.
For ..... times.
For ..... times.
For ..... times.

Date of first entry in Field Conduct Sheet 14 May 40

Date of last entry in Field Conduct Sheet 2 Feb 44

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

xxxx

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
F.G.C.M.	Field 2Feb44 ~~Dept No 3~~ 27 Jan 43	(1) AA Sec 6 (2) AA Sec 40 (3) AA Sec 40	30 days Detn	

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 17 day of Apr 44

R MacKinnon Capt

(R.G. MacKinnon) Capt. R.C.A.
Officer IC Records, No.1 CAFU.

LL-30
GNR SMITH W.

LL-30 1

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this twenty-first day of July, 1943.

Whereas it appears to me, the undersigned, an officer in Command of Royal Canadian Artillery, 5 Canadian Armoured Division, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to obtain the attendance of any qualified officer.] LL-34

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named. or detailed

* Omit if not applicable.

*[I am unable to appoint

*(1. Three Officers to form the Court.)

*(2. A Field Officer as President.) LL-34

*(3. Three Officers having more than one year's seniority.)

for the following reasons, namely:—]

Skillen Brigade, Capt
12 Sept 43

President.

Rank.	Name.	Regiment.
Major	J.T. Lambert	4 Cdn A Tk Regt

Members.

Rank.	Name.	Regiment.
Capt	to be detailed by 17 Cdn Fd Regt	
~~Lieut~~	~~to be detailed by 8 Cdn Army Fd Regt~~	
	Waiting Member	
Lieut	to be detailed by 8 Cdn Army Fd Regt	
	Judge Advocate	
Capt	C.J. Morrison	HQ 5 Cdn Armd Div

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed R.O.S Morton
(R.O.S. Morton) Brig
Commanding RCA 5 Cdn Armd Div
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
K-5082 Gnr William SMITH 6 Cdn Army Fd Regt	First Charge Sec 6 (1) AA as per att charge sheet.	Not Guilty	Guilty	Confirmed RDGM
	Second Charge Sec 6 (111) (c) AA as per att charge sheet.	Not Guilty	not guilty	Noted RDGM
	Third, Fourth and Fifth charge AS per att charge sheet.	3rd - Not Guilty 4th - not guilty 5th - Not Guilty	Guilty not guilty Guilty	Confirmed RDGM noted RDGM Confirmed RDGM
			To undergo 30 days Detention 27 Jul 43 J.L.	Confirmed. RDGM

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) R.O.G. Morton (R.O.G. Morton) Brig
Commanding RCA 5 Cdn Armd Div
Convening Officer (*c*)

(Signed) J.T. Lambert (J.T. Lambert) Major
4 Cdn A Tk Regt
President.
Gnr Morrison Capt. Judge Advocate

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 27th day of Jul 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court + Judge Advocate
2. The witnesses
*~~(3. The interpreter)~~ Shorthand writer
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 27th day of Jul 1943

Gnr Morrison Capt. judge advocate

J.T. Lambert major
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of JL 19

President of the Court Martial.

D. Confirmation

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~I direct that the soldier named in the margin be not committed to prison until further orders.)~~

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 31 ~~July~~ day of July 1943

R.O.G. Morton Brig
Confirming Officer.
CRA 5 CDN ARMD DIV

Promulgated and extracts taken in the case of K5082 Gnr Smith William

(*a*) (Dated) 6 Aug 43 (Signed) J.T. Lambert Major
Comdg 4 Cdn A Tk Regt RCA.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

J.T. Lambert Major President

CHARGE SHEET

The accused, K-5082 Gunner William SMITH, 61 Fd Bty, 8 Cdn A Fd Regt., R.C.A., a soldier of the Cdn Army (Overseas) is chargedwith:-

1st Charge Sec 8 (1) A.A.

WHEN ON ACTIVE SERVICE OFFERING VIOLENCE TO HIS SUPERIOR OFFICER

in that he,

in the Field, at approx 2230 hrs 16 Jul 43 did take hold of and shake H-55532 Cpl Wilson, A. E. of # 5 Coy Cdn Pro Corps who was attempting to quell a disorder.

2nd Charge Sec 6 (111) (c) A.A.

WHEN ON ACTIVE SERVICE IMPEDING AN N.C.O. LEGALLY EXERCISING AUTHORITY UNDER THE ASSISTANT PROVOST MARTIAL

in that he,

in the Field, at approx 2230 hrs 16 Jul 43, when Cpl Wilson, A. E. of the Cdn Pro Coy, non-Commissioned offr legally exercising authority under the Assistant Pro Marshallwas endeavouring to take the particulars of a soldier, did impede the said Cpl by taking hold of him and shaking him.

3rd Charge Sec 40 A.A.

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he,

in the Field, at approx 2230 hrs 16 Jul 43 was participating in a disturbance in the town of WYMONDHAM, thereby bringing discredit to the Cdn Army Overseas and members thereof.

4th Charge Sec 40 A.A.

WHEN ON ACTIVE SERVICE CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he,

in the Field, at approximately 2230 hrs 16 Jul 43 when addressing Cpl Wilson, A. E. of the Cdn Pro Corps referred to him as "you fucking Provost" or words to that effect.

5th Charge Sec 40 A.A.

WHEN ON ACTIVE SERVICE CONDUCT TO TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

IN that he,

in the field, at approx 2230 hrs 16 Jul 43 was improperly dressed wearing no head-dress and having three buttons of his tunic undone, while in the village of WYMONDHAM.

Dated In the Field
20 Jul 43.

(L. M. Jones) Lieut-Col. RCA.
Cmdg., 8 Cdn A Fd Regiment, R.C.A.

To be tried by Field General Court Martial.

In the Field
21 Jul 43.

R.C.G. Morton
(R.C.G. Morton) Brig RCA
5 Cdn Armd Div

8th Cdn Army Field Regt RCA

5

This is to certify that I have to-day examined K-5082 Gnr SMITH, W. of the 8th Cdn Army Fd Regt R.C.A., and find him fit to undergo trial by Court Martial.

Dated In the Field

27 July 1943.

J Lambert Major
President

for [illegible] Capt RCAMC
Med Offr 8th Cdn A Field Regt R.C.A.

Record of Proceedings of a Field General Court Martial

Held in the Field in England on 27th July, 1943, to try

K5082 Gnr William SMITH, 8 Cdn Army Fd Regt RCA, 5 Cdn Armd Div.

PRESIDENT		
	Major J.T. Lambert	4 Cdn A Tk Regt RCA
MEMBERS		
	Capt G.W. Taylor	17 Cdn Fd Regt RCA
	Lieut. P. Morrison	8 Cdn Army Fd Regt RCA
JUDGE ADVOCATE		
	Captain G.M. Morrison	ADJA 5 Cdn Armd Div
OFFICER UNDER INSTRUCTION		
	Lieut. J.R. Wellington	8 Cdn Army Fd Regt RCA
PROSECUTING OFFICER		
	Lieut. F.W. Leacock	8 Cdn Army Fd Regt RCA
DEFENDING OFFICER		
	Captain J.G. Davidson	8 Cdn Army Fd Regt RCA

The President produces the Convening Order, Charge Sheet and Summary of Evidence.

The President, in closed court, reads the Convening Order and the Charge Sheet to the Members, and the Court satisfy themselves that it is properly convened and constituted, that the accused is amenable to Military Law, and that each charge discloses an offence.

The accused is brought before the Court, and at 1300 hours, the trial commences.

The Prosecuting Officer produces a Medical Certificate under K.R.(Can) 557 that the accused has this day been examined and is fit to undergo trial by Court Martial. The certificate is signed by the President and attached to the proceedings.

President to accused

Q. 1 Do you object to A57385 Cpl B.W. Henheffer, CMSC, HQ 5 Cdn Armd Div, acting as shorthand writer?
A. 1 No, sir.

The shorthand writer is duly sworn.

The Convening Order is read in the hearing of the accused.

The names of the President and Members of the Court are read to the accused and they severally answer to their names.

President to accused

Q. 2 Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?
A. 2 No, sir.

The President, Members, Judge Advocate and Officer under Instruction are duly sworn.

The Charge Sheet is signed by the President.

The Prosecuting Officer informs the Court that the accused has not elected trial by Court Martial.

Each charge is read to the accused and he is asked as each charge is read whether he pleads guilty or not guilty. He pleads as follows:

First Charge - Not Guilty

Second Charge - Not Guilty

Third Charge - Not Guilty

Fourth Charge - Not Guilty

Fifth Charge - Not Guilty

President to accused

Q. 3 Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you had not had sufficient opportunity for preparing your defence?

A. 3 No, sir.

P R O S E C U T I O N

The Prosecuting Officer declines to make an opening address.

1st Witness, K5118 TBSM W.J. Wilson, 8 Cdn Army Fd Regt RCA having been duly sworn is examined by the Prosecuting Officer:

Q. 4 How long has the accused been in this regiment?
A. 4 Ever since it was formed in 1940.

Q. 5 What are the summer dress regulations?
A. 5 Battle dress, web belt and top button of tunic undone.

Q. 6 Has that order been published?
A. 6 Yes, sir.

No Cross Examination.

By the Judge Advocate

Q. 7 That one button is the top button of the tunic?
A. 7 Yes, sir.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P. 83(B).

2nd Witness, M55532 Cpl Wilson, A.E., 5 Pro Coy, Cdn Provost Corps, having been duly sworn is examined by the Prosecuting Officer:

Q. 8 What were your duties on the night of 16 July?
A. 8 I was NCO in charge of Wymondham patrol.

Q. 9 Did anything occur or happen during that patrol?
A. 9 Up until 2235 hours there was nothing unusual. At approximately 2230 hours, I observed what I thought to be a crap game in progress in the centre of the street of Wymondham. Accompanied by L/Cpl Kane of the Provost Corps, we approached the group which were participating in this crap game, in an attempt to disperse it and break it up. When we approached the group, they got up from their knees and I observed one soldier who did not have his cap on. I asked him for his MBM Part I. During the time I was talking to this soldier, taking his particulars, I observed the accused approaching. He jostled his way through the group and grasped my tunic front and began to shake me. I ordered him to take his hands off and warned him of the seriousness of the offence

A. 9 he was committing. He also demanded that I produce my AB 466 and give him the page on which I had written the particulars of the soldier I had checked previously. I refused to do this and an argument ensued. By this time I imagine about 20 soldiers had gathered in the group and it looked as though there was going to be some difficulty. I managed to work my way to the edge of the group and a civilian beckoned me to come over to where he was standing. This group continued to be a bit out of hand for another 20 minutes and it looked as though there was going to be a lot of trouble. After about 45 minutes the group had dispersed.

Q. 10 Were you in uniform at the time?
A. 10 Yes, sir, I was.

Q. 11 Did you have your badges of rank and Provost badges showing?
A. 11 Yes, sir, I did.

Q. 12 Did you arrest the accused at the time?
A. 12 No, I did not, sir.

Q. 13 Why not?
A. 13 In my estimation it was a physical impossibility to arrest the accused at that time.

Q. 14 Why?
A. 14 Because there was quite a group of soldiers around there who seemed to be sympathizing with the accused. It was my duty to disperse the group and get away from having a scene in a public place.

Q. 15 Did you touch the accused at any time?
A. 15 Other than to break away from his grasp, I did not.

Q. 16 Did the accused touch you?
A. 16 Yes, sir, he did.

Q. 17 In what manner did the accused speak to you?
A. 17 He was speaking in a very threatening way and made several threats. He used very obsene language and referred to the Provost as being "fucking provost".

Q. 18 Was the accused properly dressed?
A. 18 No, he was not. Three buttons of his tunic were undone and he was not wearing any head dress.

Cross Examination by the Defending Officer:

Q. 19 You say you saw the accused approach you in the crowd. Could you see him before he came up to you?
A. 19 I saw him when he was approximately 6 feet from me.

Q. 20 Did the accused just burst through the crowd and grab hold of you?
A. 20 The first I saw the accused was when he grasped me without saying a word.

Q. 21 You did not make any gestures towards him?
A. 21 No, sir, I did not.

Q. 22 What is an AB 466?
A. 22 It is a notebook containing the particulars of anyone we have occasion to stop and check.

Q. 23 Did the accused take this on you?
A. 23 No, sir.

Q. 24 Did he make any attempt to do so?
A. 24 He made an attempt to but I refused to give it to him.

Q. 25 You say you had a little argument and worked your way to the edge of the group?
A. 25 Yes, sir. I swung around sharply sidewise and broke the accused's grasp.

Q. 26 And about 25 minutes after you got out of the group, it dispersed and went away?
A. 26 Yes, approximately 25 minutes. I do not know the exact amount of time.

Q. 27 That would make it about 11 o'clock?
A. 27 That's right, sir.

Q. 28 When the accused said something to you, was he referring to you or to the provost Corps in general?
A. 28 He used the expression several times. I do not know exactly how often. As near as I could remember he referred to the Provost as a whole and our manner of police work.

Q. 29 Was anyone else around there making similar remarks?
A. 29 Yes, sir.

Q. 30 Was anyone else using profane language?
A. 30 Yes, sir.

Q. 31 There was quite a lot of noise and shouting around there?
A. 31 Not much shouting but there was quite a lot of pushing around.

Q. 32 All together how long would you say that you and the accused had this argument?
A. 32 It was on two different occasions. He approached me first when I was talking to two other soldiers of the regiment and then again approached me about 10 or 15 minutes later.

Re-examination by the Prosecuting Officer

Q. 33 When you spoke to the accused might you have confused his answers with anyone else?
A. 33 No, sir.

By the Judge Advocate

Q. 34 Was the accused drunk?
A. 34 In my estimation, no.

Q. 35 Had he been drinking?
A. 35 I do not know, he did not carry himself as though he had been drinking.

Q. 36 Do you recognize the accused here in the Court?
A. 36 Yes, sir, I do.

Q. 37 This affair arose over the fact that you asked a particular member of the unit for his pay book?
A. 37 Yes, sir, that was the first contact I had with any of them.

Q. 38 What actually happened when you asked this soldier for his pay book?
A. 38 He produced his pay book and we managed to get his number and some of the other fellows crowded around and we were unable to get all of his particulars and then the accused came on the scene. He was not with the original group.

Q. 39 Not with the group who were playing crap?
A. 39 No, sir.

Q. 40 What actually happened when the accused first approached you?

A. 40 When the accused first approached me, I saw him about 6 feet away. He jostled his way through the crowd and marched straight up and grasped the front of my jacket and began shaking me. He had a very threatening attitude and invited me to the edge of the crowd inferring we were to go and fight.

Q. 41 Then you got clear of him?
A. 41 Yes, sir.

Q. 42 What happened then?
A. 42 As I broke away from him, I was still in the centre of a large group, several other members of that group started arguing with me. This continued for 10 or 15 minutes. We argued back and forth for some time and then I managed to get to the edge of the group.

Q. 43 When did the accused approach you the second time?
A. 43 This civilian called the accused and they went away together. The accused then came back to me and said "If you call off your men, I will take the rest of mine home".

Q. 44 On the second occasion he did not offer violence?
A. 44 He did threaten me. He said "The very next time I see you, I am going to knock your head off".

Q. 45 That was his parting remarks?
A. 45 Yes, sir.

By the Court

Q. 46 Were there any civilian police present?
A. 46 Yes, sir, there were two.

Q. 47 Could you recognize them?
A. 47 I could recognize one of them at least.

Q. 48 They did not take part in the brawl?
A. 48 Only to warn some of them about the language they were using.

Q. 49 There was at least one standing there all through the affair?
A. 49 There were two of them but I only first noticed them when this affair had been going on for about 10 or 15 minutes. When I got to the edge of the group I spoke to them.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P. 83(B).

The witness withdraws.

3rd Witness, A6055 L/Cpl Kane, R.J., 5 Cdn Pro Coy, Cdn Provost Corps, having been duly sworn is examined by the Prosecuting Officer:

Q. 50 What were your duties on the night of 16 July?
A. 50 I was detailed by the Orderly Sgt to patrol Wymondham accompanied by Cpl Wilson.

Q. 51 Did anything unusual happen during that patrol?
A. 51 At approximately 2230 hours, on the main street of Wymondham, we saw a crap game in progress near the Static Water Tank in the Market Square. Cpl Wilson and I immediately went over to break up the game and we saw a soldier with his hat off and immediately checked him for being improperly dressed when the soldiers who were about 20 in number belonging to the 8 Cdn Army Fd Regt started to argue with us as to whether we had the authority to check up on one of their members.

Q. 52 Were you wearing your provost badges?
A. 52 Yes, sir, and we also had our MP bands on and our stripes showing.

Q. 53 Did the mob offer any violence?
A. 53 Yes, sir, the accused rushed past me and grabbed hold of Cpl Wilson. I immediately went to Cpl Wilson's assistance but at the same time three or four grabbed me from behind and dragged me back about 10 feet.

Q. 54 Was the accused properly dressed?
A. 54 No, sir, he was improperly dressed in that he had his field service cap off.

Q. 55 Did you hear him use any threatening language, threatening tone or obscene language to Cpl Wilson?
A. 55 No, sir, there was too much noise going on at the time.

Cross Examination by the Defending Officer

Q. 56 Were you facing the accused when he took hold of Cpl Wilson?
A. 56 Yes, sir. I was standing just behind Cpl Wilson.

Q. 57 If he had got hold of Cpl Wilson would you not be able to see much?
A. 57 I was a little to the left of Cpl Wilson and could see the accused rush past me.

Q. 58 When you were carried away by these three or four soldiers, did you remain on your feet or did they throw you down?
A. 58 I was more or less on my feet.

No re-examination

By the Judge Advocate

Q. 59 In what manner was the accused improperly dressed?
A. 59 In that he was not wearing his field service cap and later I noticed he had three buttons of his blouse undone.

Q. 60 You saw the accused grab hold of Cpl Wilson?
A. 60 Yes, sir.

Q. 61 And when did you see the accused after that?
A. 61 I had no means of telling the exact amount of time but it was about 20 minutes later.

Q. 62 What did he do then?
A. 62 He came back and was gathering up the soldiers around there.

Q. 63 Did he appear to be the leader of the group?
A. 63 Yes, sir.

Q. 64 What was he saying?
A. 64 I am not quite sure of what he said.

Q. 65 Did he say anything to you?
A. 65 He said "You are the Henrietta kid." I used to be in No 6 Provost Coy in London.

Q. 66 What else took place between you and the accused?
A. 66 That was all.

Q. 67 Did you hear him say anything to Cpl Wilson?
A. 67 No, sir, I did not.

By the Court

Q. 68 Do you recognize the accused as Gnr Smith?
A. 68 Yes, sir.

Q. 69 When did you actually notice the accused first?
A. 69 When he lunged past me and grabbed a hold of Cpl Wilson.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P. 83(B).

The witness withdraws.

4th Witness, C37206 L/Cpl A.L. Brady, No. 5 Pro Coy, Cdn Provost Corps, having been duly sworn is examined by the Prosecuting Officer:

Q. 70 Were you on duty with L/Cpl Kane on the night of 16 July?
A. 70 No, sir, I was not on duty with L/Cpl Kane but I was on duty with Pte Aasen.

Q. 71 What was the nature of the duty?
A. 71 Street patrol, sir.

Q. 72 Did you see a disturbance in Wymondham that night?
A. 72 Yes, sir, in front of the Static Water Tank.

Q. 73 Did you see the accused among the crowd present?
A. 73 Yes, sir.

Q. 74 Was the accused properly dressed?
A. 74 No, sir, he was improperly dressed.

Q. 75 In what respect?
A. 75 He was without his field service cap and his tunic was undone.

Q. 76 Did you hear him talking to L/Cpl Kane?
A. 76 No, sir, I heard him talking to Cpl Wilson.

Q. 77 What did he say?
A. 77 There was too much noise, I could not be certain of what he said.

Cross Examination by the Defending Officer

Q. 78 Did you go to the scene of the disturbance independently or were you called?
A. 78 We went there independently. We were across the street and when we saw the disturbance we went across.

Q. 79 You and Pte Aasen?
A. 79 Yes, sir.

No re-examination.

By the Judge Advocate

Q. 80 What did you see the accused doing if anything?
A. 80 When I got there I saw the accused arguing with Cpl Wilson. I noticed him grasp Cpl Wilson by the collar. I did not see anymore because I was engaged otherwise.

Q. 81 What do you mean by that?
A. 81 I was being held by some other soldiers.

Q. 82 You were attacked?
A. 82 No, sir, there was no violence. They were just holding me.

Q. 83 Is it not permissible for soldiers to walk around with their tunics undone?
A. 83 No, sir, just the two hooks and one button undone.

Q. 84 What is the authority for that?
A. 84 Army Orders and Routine Orders.

Q.85 Is that all the accused had undone?
A. 85 I am not quite sure. I was not looking for that.

Q. 86 You are sure he had no head dress on?
A. 86 Yes, sir.

Q. 87 Did you see the accused later on?
A. 87 He left soon after that. In fact they all left a few minutes later. I saw them leaving.

Q. 88 He just walked away?
A. 88 Yes, sir.

Q. 89 Did you hear him say anything to Cpl Wilson when he was leaving?
A. 89 No, sir, I did not.

By the Court

Q. 90 When you first saw the accused, did he have his cap off then?
A. 90 Yes, sir.

Q. 91 What was he doing?
A. 91 He was grasping Cpl Wilson by the collar. That was my first view of the accused.

Q. 92 Did he have his cap on when he was leaving?
A. 92 He had it off.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P. 83(B).

The witness withdraws.

5th Witness, H59102 Pte O.F. Aasen, 5 Pro Coy, Cdn Provost Corps, having been duly sworn is examined by the Prosecuting Officer:

Q. 93 Were you on duty in Wymondham on the night of 16 July?
A. 93 Yes, sir, I was.

Q. 94 Was there a disturbance in the town that night?
A. 94 At approximately 2230 hours, there was.

Q. 95 Did you see the accused that night?
A. 95 Yes, sir.

Q. 96 What directed your attention to him?
A. 96 He had a hold of Cpl Wilson.

Q. 97 How did he have a hold of Cpl Wilson?
A. 97 He had his hand on Cpl Wilson's collar.

Q. 98 Did you hear the conversation between the accused and Cpl Wilson?
A. 98 I did at the end but not early in the disturbance.

Q. 99 What did you hear him say?
A. 99 I heard him say something about taking his men away and something about knocking his block off if he ever saw him again.

Q. 100 Who said this?
A. 100 The accused.

Q. 101 Was the accused properly dressed at the time?
A. 101 No, sir.

Q. 102 In what respect?
A. 102 When he was speaking to Cpl Wilson he had his tunic undone and his cap off.

Cross Examination by the Defending Officer

Q. 103 Were you pretty busy during this time?
A. 103 I was being held by some men.

Q. 104 Did you manage to break loose?
A. 104 Yes, sir.

Q. 105 And then Cpl Wilson broke loose from the accused
A. 105 I broke loose, hollered an order and they broke loose.

Q. 106 What happened?
A. 106 The accused let go of Cpl Wilson and then they kept on talking.

Q. 107 You did not hear what they said?
A. 107 No, sir.

Q. 108 How long after that did you see the accused again?
A. 108 It was towards the end of the affair.

Q. 109 How long after this?
A. 109 About 20 minutes.

Q. 110 What were you doing at that time?
A. 110 I was doing nothing. Just talking to some of the lads around there.

Q. 111 Can you remember the exact words which the accused said to Cpl Wilson as he was leaving?
A. 111 I could about what he said about knocking his block off but other than that I could not say.

No re-examination.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P. 83(B).

The witness withdraws.

The Prosecution is closed.

The accused is informed that he may, if he wishes, give evidence but if he does so he will be liable to cross examination, or that he may if he wishes, make an unsworn statement upon which he cannot be cross examined.

President to accused

Q. 112 Do you apply to give evidence yourself as a witness?
A. 112 Yes, sir.

Q. 113 Do you intend to call any other witness in your defence?
A. 113 Yes, sir.

Q. 114 Is he a witness as to character only?
A. 114 No, sir.

D E F E N C E

The Defending Officer declines to make an opening address.

1st Witness, K5082 Gnr William SMITH, 8 Cdn Army Fd Regt RCA, having been duly sworn is examined by the Defending Officer:

Q. 115 Would you tell the Court what happened on the night in question?
A. 115 I was walking around the street on the night of Friday 16 July and as I came up to the town Market Square I noticed quite a few American and Cdn soldiers who looked as though they were going to fight. I took my hat off and stuck it in my blouse which was done up to the top button. I saw Cpl Wilson and com-

A. 115 fronted him and asked him what all the trouble w[illegible] and he pointed a finger at me in a threatening attitude and I grabbed hold of him. I grabbed hold of him at the shoulder. We had a bit of an argument and I let go of him. A civilian beckoned to me to come over to where he was standing. We went around to the back of the Hotel to the lavatory and he told me "If I were you, Smitty, I would get out of there and go home." I took his advice and went back to the gathering and got one of my friends and went home. I was home in time for the tattoo roll call which was at 2300 hours.

Q. 116 When you first saw this crowd were there American soldiers about?
A. 116 Yes, sir, there were American soldiers and MPs.

Q. 117 What did you think was taking place?
A. 117 I thought it was a free-for-all between the Americans and Canadians.

Q. 118 When you first broke in the centre of the crowd and saw Cpl Wilson raise his finger at you, did you realize he was pointing his finger at you?
A. 118 Yes, sir, I did.

Q. 119 This civilian, had you ever seen him before?
A. 119 I have been in his company and had a few glasses of beer with him.

Q. 120 Does he know your name?
A. 120 He called me Smitty.

Q. 121 Did this civilian give you any reason for warning you?
A. 121 Yes, sir, he said he belonged to the CID and that the provost had phoned for help and that they were expecting a riot.

Q. 122 How far is it from here to Wymondham?
A. 122 We have a short cut across the field and it is about 1½ miles.

Q. 123 Was there any liberty trucks that night?
A. 123 No, sir.

Cross Examination by the Prosecuting Officer

Q. 124 Did you realize that Cpl Wilson belonged to the Provost Corps?
A. 124 Yes, sir, I did after I walked over there.

Re-examination by the Defending Officer

Q. 125 As you broke through the crowd, did you know that Cpl Wilson was from the provost Corps or was it only after you grabbed hold of him that you noticed this?
A. 125 It was after I grabbed hold of him.

By the Judge Advocate

Q. 126 And why did you go up to Cpl Wilson?
A. 126 He seemed to be the main one, the centre of all the attraction.

Q. 127 You had never seen Cpl Wilson before?
A. 127 No, sir.

Q. 128 What did you first say to him?
A. 128 I just asked him what the trouble was.

Q. 129 And what did he say?
A. 129 I do not know what he said. He just started pointing and told me to scram. When he started pointing at me, I grabbed hold of his shoulder.

Q. 130 Did you ask him for his notebook?
A. 130 No, sir, I did not.

Q. 131 Had you been taking part in the crap game?
A. 131 No, sir, I was not there.

Q. 132 What was your intention coming towards that crowd?
A. 132 I thought it was a fight between the Americans and the Canadians. There were some of my pals in that group, I was going to stand by them.

Q. 133 Whether they were right or wrong?
A. 133 Yes, sir.

By the Court

Q. 134 Did you ask Cpl Wilson for a page from his note book?
A. 134 No, sir.

Q. 135 If anyone points at you, do you consider this a threatening attitude?
A. 135 No, sir.

Q. 136 Can you enlarge on why you thought he was threatening you?
A. 136 The 5 Pro Coy said they were out to get the gnrs of the 8 Army Fd Regt and would pick them up at any chance they got.

Q. 137 What happened after you spoke to the civilian?
A. 137 I walked over to where Cpl Wilson was and realized there was going to be trouble. I said if you call your men from here, we'll all go home.

Q. 138 Did you say anything else to him?
A. 138 No, sir.

Q. 139 When did you hear this story about the ill-feeling between the 8 Army Fd Regt and the 5 Pro Coy?
A. 139 Quite a while ago.

Q. 140 Since coming to this area?
A. 140 Yes, sir.

Q. 141 Did you actually say to Cpl Wilson that you would knock his block off the next time you saw him?
A. 141 I do not remember that sir.

Q. 142 Did you refer to them as "fucking provosts"?
A. 142 Not to my knowledge sir.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P. 83(B).

The witness withdraws.

2nd Witness, M2130 Gnr Swinton, H.A., 8 Cdn Army Fd Regt RCA, having been duly sworn is examined by the Defending Officer:

Q. 143 Did you or did you not see the accused a week ago Friday night?
A. 143 Yes, sir.

Q. 144 Around tattoo time?
A. 144 Yes, sir.

Q. 145 Was it before or after tattoo?
A. 145 Just a few minutes after 11 o'clock.

Q. 146 Where did you see him?
A. 146 In front of my tent in our lines.

Q. 147 You are certain you saw him there?
A. 147 Yes, sir.

Cross Examination by the Prosecuting Officer

Q. 148 Were you in Wymondham on the evening of 16 July?
A. 148 Yes, sir.

Q. 149 Were you with the accused?
A. 149 No, sir, I was not.

Q. 150 What time did you return?
A. 150 About quarter to eleven.

Q. 151 Did you see this disturbance?
A. 151 No, sir.

No re-examination.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P. 83(B).

The witness withdraws.

The Defence is closed.

The closing address of the Defending Officer is recorded on a separate sheet, marked "X" and attached hereto.

The closing address of the Prosecuting Officer is recorded on a separate sheet, marked "Y" and attached hereto.

In the opinion of the Court and the Judge Advocate it is not necessary for the Judge Advocate to sum up.

The Court is closed to consider the finding.

The findings of the Court are recorded on page 2 of AFA 3.

The Court being re-opened, the accused is again brought before it.

The findings of 'Not Guilty' are announced and the President states that the findings on the 1st, 3rd and 5th charges, being subject to confirmation, will be promulgated later.

Statement of Character and Service and Field Conduct Sheet, signed in the manner required by A.A. 163(1)(h) and purporting to refer to the accused by his number, rank, name and Corps, are produced to the Court, read, signed by the President and attached to the proceedings.

President to accused

Q. 152 Do you wish to address the Court on your Statements of Character, Service and Conduct in further mitigation of punishment?
A. 152 I would like to call one character witness.

M2C08 A/RSM W.M. Cuthbertson, 8 Cdn Army Fd Regt RCA, having been duly sworn is examined by the Defending Officer:

Q. 153 How long have you known the accused?
A. 153 Over three years. I have been his Troop SM for three years.

Q. 154 He has served under you?
A. 154 Yes, sir.

Q. 155 Have you ever known him to commit any violent acts against anyone?
A. 155 No, sir.

Q. 156 Have you any information as to his soldiering?
A. 156 I think he is a very good man. I would not be afraid to take him into action.

No Cross Examination.

In the opinion of the Court and the Judge Advocate it is not necessary to comply with R.P. 83(B).

The witness withdraws.

The Defending Officer makes the following plea in mitigation of punishment:

"It is unfortunate that the Court came to this decision for I think that the accused is a very good man. He is in my Bty and I would be proud to have him serve under me. I would appreciate if the Court would take into serious consideration, the accused's conduct sheet. He has never been in a mix-up like this before. It is unfortunate that there were so many charges involved on the one offence for he had only the interests of his pals at heart. I think you should take these points into consideration when arriving at a sentence."

The President announces:

"the Court is closed for consideration of the sentence. The sentence to be awarded being subject to confirmation, will not be announced but will be promulgated later and the proceedings in Open Court are accordingly terminated."

The Court is closed to consider the sentence.

The sentence is recorded, dated and signed by the President on page 2 of AFA 3.

CERTIFIED A TRUE RECORD OF THIS TRIAL, this 27th day of July, 1943.

Captain
Judge Advocate

"X"

ADDRESS BY THE DEFENDING OFFICER

First of all on the first charge--offering violence to his superior officer, the accused's original intention was not to participate in this disorder but to stick by his pals. We know that this is one quality we permit and encourage in the Army to get teamwork in all we do. I do not think we could blame him for doing this. It is very unfortunate he found Cpl Wilson there who was on duty at the time doing his best to do his duty and see that no disturbance started. I think that Cpl Wilson did a lot more than merely point his finger at the accused. I think the accused grasped Cpl Wilson to deter him from doing him any violence. Outside of grabbing this Cpl Wilson, the accused did not try to stop the provost from carrying out his duties and as one has testified he did release Cpl Wilson as soon as he realized there was more trouble there than he had a right to be in. He released Cpl Wilson and left.

As for participating in a disturbance, we have already gone over why he was in it but as to the 4th charge I do not think it is a charge which should be brought before a Court Martial. That adjective is a favourite adjective and is used regularly by the men in the Army as well as by officers. I do not see any point in bringing that up before a Court Martial.

On the fifth charge, the only reason he pleaded 'Not Guilty' was that he just took off his cap when he went into the crowd so he would not lose it. When a civilian warned him, he went back, got as many of his pals as he could and left there immediately. I think it is to his credit that he did this. It is my firm conviction that this charge or charges could be dealt with by other sections of the Army Act and under a much less serious section.

There may have been a lot of confusion around the scene of the disturbance and most of them have not a clear idea of what was going on. It is a very hard thing to pin down that fourth charge especially and would ask for its dismissal.

ADDRESS BY THE PROSECUTING OFFICER

I have endeavoured through my witnesses to bring out the evidence which will prove the accused guilty on all five charges. Each witness gave much the same evidence and that evidence I believe covers all five charges.

The first charge of striking is under Sec 8 (1) of the Army Act says that every person, subject to Military Law who commits an offence under this section, that is to say strikes or offers violence to a superior officer in the execution of his duty, is guilty of an offence under this section. Cpl Wilson was on street patrol in Wymondham and was doing his duty as provost cpl. The accused admits shaking Cpl Wilson and being in an argument with him. Cpl Wilson had his badges of rank and his provost name badges on. He was wearing them at the time and he was in uniform.

The third charge under Sec 40, the accused is charged with participating in a disturbance in the town of Wymondham thereby bringing discredit on the Canadian Army Overseas and members thereof. There was a disturbance in Wymondham and the accused did make the remark that he would get his fellows home if the provost would take his men away. He was in the disturbance and in view of that statement, did have a certain power or authority over the other men even if not through rank held in the Army but I think that he has admitted taking part in this affair with Cpl Wilson.

The fourth charge is also under Sec 40 of the Army Act, that is using obscene language to a superior officer and thereby conduct to the prejudice of good order and military discipline. There was an argument, tempers arose and Cpl Wilson has said that the accused had spoken to him in a threatening tone and did use obscene language.

The fifth charge is also under Sec 40. The accused was improperly dressed which is against regulations thereby to the prejudice of good order and military discipline. The accused has admitted that he had his cap off, and the statements by witnesses for the prosecution are to the effect that his tunic was undone to the amount of three buttons. BSM Wilson, the first witness, said that orders regarding summer dress have been published in the regimental orders and that is that only the hooks and one button are to be undone.

I am not trying to prove how long the disturbance lasted, merely that there was a disturbance, that the accused was present and that he is guilty of all charges as on the charge sheet with possibly the exception of the second charge.

J. Lambert Major President

SUMMARY OF EVIDENCE

in the case of K-5082 Gnr William SMITH,
61 Fd Bty, 8 Cdn Army Fd Regt., R.C.A.
Cdn Army Overseas.

By direction of the Commanding Officer the Summary of Evidence is taken on oath.

1st Witness for the Prosecution

K-5118 B.S.M. Wilson, W. J., "A" Tp, 61 Fd Bty, 8 Cdn Army Fd Regt., R.C.A. having been duly sworn states:-

" I was on 16 May 43 and still am, the B.S.M. of "A" Tp 61 Fd Bty, 8 Cdn A Fd Regt., RCA. I am acquainted with A-5082, Gnr Smith, W., whom I recognize here as the accused and who has been in the Regt, with the exception of about three months when he was in the Reinforcement Unit, since the regt was formed in May 1940."

The accused declines to cross-examine the witness.

W. J. Wilson
(W. J. Wilson)

2nd Witness for the Prosecution

M-55532 Cpl Wilson, A. E. No. 5 Coy, Cdn Pro Corps having been duly sworn states:-

" I was on 16 Jul 43 and still am, a Cpl in # 5 Coy Cdn Pro Corps. On the 16 Jul 43 I was detailed N.C.O. i/c of WYMONDHAM patrol accompanied by A-6055 L/Cpl Kane, R.J., C-37206 L/Cpl Brady, A. L. and H-59102 Pte Aesen, C.F.

I divided my patrol into two patrols; L/Cpl Brady and Pte Aesen in one and L/Cpl Kane and myself in the other.

At approx 2230 hrs I observed what I thought to be a crap game being played alongside the static water tank in the main street of WYMONDHAM. L/Cpl Kane and I approached to investigate and as we came near, the participants got up from their knees and I saw that they were members of the 8 Cdn Army Fd Regt., R.C.A.

I saw one soldier who did not have his cap on. I ordered this soldier to correct his dress and asked to see his A.F.B. 122 while checking the particulars of this soldier, several soldiers interfered and an argument ensued. I ordered these soldiers not to interfere. At this time I saw Gnr Smith, the accused, whom I recognize here as the accused, approach. He jostled his way through the group and grasped my tunic front and began to shake me and offer violence. L/Cpl Kane came to my assistance and I managed to break away.

Gnr Smith continued to offer violence and an argument ensued. At this time a civilian beckoned to me to come to where he was standing. He said to me " I am an old soldier and fought with the Canadians duri g the last war. I know they are a tough lot and if you don't leave you will probably get injured". I told him that it was our duty as Military Policemen to see that this group of soldiers was dispersed. He said, " Maybe I can help you by speaking to Gnr Smith". I said, I would appreciate it very much if you could make him see his wrong". He then went over to where Gnr Smith was standing and he and Gnr Smith left the group.

Approximately 5 minutes later, Gnr Smith approached me and said:- "If you will call your men to the side, I will take my men and go home". He then said, "The very next time I see you I will knock your block off". During our previous conversation he used obscene language and he referred to the Provosts as being "Fucking Provosts". He was told by a civilian policeman who was standing near-by to cease that kind of talk.

.....page 2

2nd Witness for the Prosecution (continued)

Gnr Smith was not properly dressed while I saw him. His cap was not on his head and three buttons of his battle dress were undone.

The group dispersed at approximately 2310 hrs."

Question Did you see me playing crap in WYMONDHAM by the static water tank ?

Answer No, I did not.

Question At approximately what time was this crap game being played ?

Answer At approximately 2230 hrs.

Question Did I at any time during the time that I had a hold of you strike you ?

Answer You actually did not strike me with your closed fist but you did grasp hold of me and shake me which I beleive constitutes striking.

Question Approx how many men out of the 8th A Fd Regt were there ?

Answer In my opinion there were about twenty soldiers from the 8 Army Fd Regt.

Question There was, I presume, a lot of shouting and confusion going on at that time and was there a lot of obscene language used ?

Answer There was quite a lot of loud talk and obscene language was being used.

Question At what time did this civilian mention to you that he would talk to me ?

Answer I would say at approx 2300 hrs. I have no means of knowing the exact time.

Question At any other time, did any other soldier from the 8th Army Fd Regt grab hold of you ?

Answer There may have been during the scuffle but I do not particularly remember it.

Question Could you identify that man ?

Answere What man was that ?

Question At what time was I seen to walk away from this fracas ?

Answer I have no means of knowing the exact time, but I would judge it to be approx 2310 hrs.

Question At that approx time of 2310 hrs did all the members of the 8th Army Fd Regt leave the scene of the disturbance ?

Answer I have no knowledge of knowing that, as I was walking to the Police Station to phone for help.

A. E. Wilson

(A. E. Wilson)

3rd Witness for the Prosecution

A-6055 L/Cpl Kane, R. J., # 5 Coy, Cdn Pro Corps having been duly sworn states:-

" I was on 16 Jul 43, and still am, a L/Cpl in # 5 Coy, Cdn Pro Corps. Cpl Wilson's evidence has been read to me and I hereby corroborate it up to the point where I came to his assistance after Gnr Smith, the accused, whom I recognize here as the accused, had grasped the front of Cpl Wilson's tunic. At this time I was grabbed from behind by three or four soldiers and carried off approximately ten feet from the spot where Cpl Wilson and Gnr Smith were arguing.

...../page 3.

3rd Witness for the Prosecution (continued)

From then on I had very little opportunity to observe either Cpl Wilson or Gnr Smith. However, I did notice that Gnr Smith was improperly dressed in that he was not wearing his F.S. cap and also that he had three buttons of his battle dress tunic undone.

I saw Gnr Smith towards the end and I heard him say something to the effect that he would take his men away. I did not hear all of his remarks due to the noise made by the other soldiers around us.

Question At the time you were being carried away by those other three or four soldiers, you did definitely notice that my tunic was open and that I was not wearing a F.S. cap, did you ?

Answer As you rushed past me I did notice that you were without a F.S. cap however, I couldn't see the front of your tunic at that time. But at the end of the argument that ensued you spoke to me; it was then I noticed that your tunic was undone to the extent of three buttons.

R. J. Kane

(R. J. Kane)

4th Witness for the Prosecution C-37206 L/Cpl Brady, A. L., # 5 Coy, Cdn Pro Corps having been duly sworn states:-

" I was on 16 Jul 43 and still am, a L/Cpl in # 5 Coy Cdn Pro Corps.

On the evening of 16 Jul 43, H-59102 Pte Aasen, O. F. and I were on patrol in the town of WYMONDHAM, Norfolk. At about 2230 hrs Pte Aasen and I were called by Cpl Wilson to the static water tank where there seemed to be a disturbance. We arrived there in time to see Gnr Smith, the accused whom I recognize here as the accused and Cpl Wilson arguing with about ten soldiers aroudn them. I also noticed that Gnr Smith grabbed Cpl Wilson by the collar.

I was unable to get over to Cpl Wilson as some soldiers were holding me at the time. Everybody seemed to be swearing and making a racket but I couldn't distinguish any one in particular doing this. Gnr Smith did not have a F.S. cap on when I saw him. During the rumpus I was busy attempting to quell the fracas a few feet away from Cpl Wilson.

The accused declines to cross-examine the witness.

A. L. Brady

(A. L. Brady)

5th Witness for the Prosecution H-59102 Pte Aasen, O.F. # 5 Coy, Cdn Pro Corps, having been duly sworn states:-

" I was on 16 Jul 43 and still am, a Pte in # 5 Coy, Cdn Pro Corps. L/Cpl Brady's evidence has been read to me and I hereby corroborate it up until L/Cpl Brady and I went over to the distrubance at the static water tank. During the scuffle between Cpl Wilson and Gnr Smith, the accused, whom I recognize here as the accused, I was pulled away by some soldiers and while I was held there I saw that Gnr Smith had no F.S. cap on and that he appeared to be fighting with Cpl Wilson. Then I borke loose from these soldiers and I went over to Cpl Wilson and Gnr Smith and hollered an order to stop the rumpus and then Cpl Wilson and Gnr Smith broke loose.

.....#4.

5th Witness for the Prosecution (continued)

They still carried on talking but I did not hear what they were saying. After this, I was occupied in talking to some soldiers and I did not see Gnr Smith until a civilian started to talk to him. Just after this I broke loose from the group of soldiers I was with and it was then that I noticed that Gnr Smith had three buttons of his tunic battle dress undone.

I went over to Cpl Wilson and I heard Gnr Smith say to Cpl Wilson something to the effect that he would call his men off and then I heard Gnr Smith say " The very next time I see you I'll knock your block off". Then Cpl Wilson called us to go to the Police Station

Question Did you say that you saw me after the Civilian spoke to me ?

Answer Yes.

Question Approximately what time was that ?

Answer Approx 2310 hrs.

O F Aasen

(O. F. Aasen)

Certified that Rule of Procedure 4 (C) (D) (E) (F) and (G) have been complied with.

The accused having been duly cautioned in accordance with Rule of Procedure 4 (e) reserves his defence.

Taken down by me in the presence and hearing of the accused this 12 day of Jul 1943, in the Field.

G. E. Ward

(G. E. Ward) Major RCA.
61 Fd Bty, 8 Cdn A Fd Regt.,
Officer ordered to take
Summary of Evidence.

No. K-5083 Name SMITH W. | Sqn., Battery, or Company | Corps RCA | Date of enlistment 15-9-39 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.B. 122) 11336—7-41 (1219-26) H.Q. 1772-39-1802

Date of last entry in Company Conduct Sheet: N.A. | No. and date of last drunk: N.A. | Period not reckoning towards freedom from extra fine: N.A. | Sheet No. | Signature O.C. Company, etc.: ???????? | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE (a)	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	18 May 40	Gnr.		AWL -- A.A. Sec 15 (1)		Forfeits 1 days pay FRI 149		O.C.	
"	30 Apr 42	Gnr.		AWL from 2359 hrs 30 Mar 42 to 4 Apr 42.(7 days 19 hrs 1 min) AA Sec 15(1)		14 days F.P.		O.C.	Forf 22 days pay
"	12 Sep 42	Gnr.		AWL 14 days 23 hrs 10 min AA Sec 15 (1)		7 days C.B. Stopp £0-7-0		O.C.	Forf 23 days pay
"	25 Mar 43	Gnr.		AWL 7 days 33 min AA Sec 15 (1)		Forf 46 days pay Stopp £0-16-1.		O.C.	
#1 ASCRU				AWL 18 days 20 min AA Sec 15 (1) from 2200 hrs 22 Mar 43 to 2220 hrs 9 Apr 43. Close arrest from 2200 hrs 9 Apr 43 - 1830 hrs 12 Apr 43. Forfeits 28 days pay. (Forfeits 19 days pay FR&I 149 (1)(a)		28 days F.P. Forf 28 days pay			

P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Forfeits 2 days pay FRI 149 (1)(c)(2). Total forfeiture 49 days pay. Forfeits 5 days pay 20 Mar 43, to run concurrent D.O. 73 d/25 Mar 43.					

CERTIFIED TRUE COPY 19 Jul 43.

R.R. Johnston

(R.R. Johnston) Capt RCA
Adjt., 8th Cdn Army Field Regt RCA

76

J. T. Lambert major 27
President

M.F.H. 566
40/P & S/878

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
K-5082	Gunner	William SMITH	61 Fd Bty 8 Can A Fd Regt RCA.

1. The following is a fair and true summary of the entries in the ~~[illegible]~~ Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~[illegible]~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
For A.W.L.	3 times	5 times
For	times	times
For	times	times
For	times	times

~~[illegible]~~

or,

~~[illegible]~~

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

~~[illegible]~~ Air Force Act A.F.A. 73 ~~[illegible]~~ annexed to this statement.

3. The accused is not under sentence at the present time.

~~[illegible]~~

The accused at the present time is under sentence for N.A. beginning on the day of ~~[illegible]~~

4. The accused has been in confinement awaiting trial on the present charges, for ~~[illegible]~~ days in civil custody, and 8 days in military custody, making a total of 8 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his record of service is 23
~~attestation~~ paper is

6. The date of his ~~commission~~ specified in his record of service is 16 Sep 39
attestation ~~attestation paper~~

7. The service which the accused is allowed to reckon towards discharge is N.A.

8. The accused is entitled to reckon Nil service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no ~~[illegible]~~ military decoration, or ~~[illegible]~~ military reward (or is in possession of or entitled to). State any ~~[illegible]~~ military decoration or reward.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of N.A.

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

N.A. dated N.A., and in his regiment (or corps), the rank of

N.A. dated N.A.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

N.A. Date of promotion.

In the rank of N.A. years.

In the rank of N.A. years.

In the rank of N.A. years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number Rank

Name of Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
N.A.	N.A.	N.A.	N.A.	N.A.

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this ~~nineteenth~~ 27th day of July 43 R. R. Johnston, F/L, R.C.A.F.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked Capt & Adjt Army HQ signed by the president, and annexed to the proceedings.

LIST OF WITNESSES FOR THE PROSECUTION

in the case of K-5082 Gnr William SMITH,
61 Fd Bty, 8 Cdn A Fd Regt., R.C.A.
Cdn Army Overseas.

First witness for the PROSECUTION	K5118 BSM Wilson W.J., "A" Troop, 61 Fd Bty., 8 Cdn Army Field Regt. R.C.A. Cdn Army Overseas.
2nd witness for the Prosecution	M55532 Cpl.Wilson A.E., No.5 Coy., Cdn Provost Corps. Cdn Army Overseas.
3rd witness for the PROSECUTION	A6055 L/Cpl. Kane R.J., No.5 Coy., Cdn Provost Corps. Cdn Army Overseas.
4th witness for the PROSECUTION	C37206 L/Cpl. Brady A.L., No.5 Coy., Cdn Provost Corps. Cdn Army Overseas.
5th witness for the PROSECUTION	H59102 Pte.Aasen O.F., No.5 Coy., Cdn Provost Corps. Cdn Army Overseas.

LIST OF EXHIBITS

NIL

REQUEST FOR DEFENDING OFFICER

I desire the Convening Officer to detail an officer to represent me at my forthcoming trial by Field General Court-Martial.

I desire the services of Capt. W.W.Hood, 8 Cdn Army Field Regt. R.C.A. if he is available.

W. Smith.

(W.Smith)
K-5082

50 -110.

Mt. Smith, N.H.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B 84828 Pte Walter Albert SMITH (RCASC)att 1 Cdn Discipline Centre

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 24 15(c)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~

(I. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B.355 or AF B.296.)

Time in confinement awaiting present trial—a total of 61 days, of which 23 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B.355 or AF B.296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a Period of 30 days

(Sgd) ..... Judge-Advocate, if any. 18 June 45 Date awarded. (Sgd) ..... President. (RP 45-50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 739-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 33, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

~~I direct that the accused be not committed to prison (or detention barracks) until further orders.~~ (1)

(1. AA 57A. Delete if not used.)

(Sgd) .....

Date 21 JUN 45 Commanding (J S H Lind) Brigadier 3 Cdn Base Rft Gp Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B 84828 PTE WALTER ALBERT SMITH	23 JUNE	W Richmond Lt-Col Cmd. 1 Cdn Discipline Cen.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT C.M.H.Q. IN AB 160 [illegible] 6-2-110

CPA109 (To END OF AFA31) 40/P & R/1868 (40000) 4/388

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig J S H LIND Comd 3 CBRG dated 15 JUN 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmts, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B 84828	Pte		Walter Albert	SMITH	(RCASC)att 1 Cdn Discipline Centre

PROCEEDINGS REVIEWED
J.M. Reedy Capt.
6 July 45
REVIEWING OFFICER'S BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED
J. A. Eagle Capt.
21 Aug 45
Judge Advocate Gen. Sec.

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) BELGIUM on (*date(s)*) 15 JUN 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 34/58.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~ assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A93, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1100 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ (2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused ~~Do~~ you object to ..... as interpreter? Ans ~~Yes~~

~~The interpreter is sworn.~~(1) Do you object to ..... as shorthand writer? Ans ~~Yes~~

~~The shorthand writer is SWORN.~~ (2)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	G G MacKENZIE MBE	FGH	Cdn C M Centre
Member	Capt	P J POULIN	RCA	Cdn C M Centre
Member	Capt	G K BISSETT	CH of C	Cdn C M Centre
Judge-Advocate				
Prosecutor	CAPT	K.A.MACKENZIE.	c/c	cdn c m centre
Defending Offr	CAPT	R.J THOMPSON	c/c	cdn c m centre

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D1 p 2.)

A8. The accused B 84828 Pte SMITH W A before arraignment make(s) (no) (~~no~~) plea. .....(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 106), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (separately) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & C

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

2 CBRG Vol VII p 146 pcs

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charges, call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO .(5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his plea(s) (their plea(s)) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3.* RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. ..... Do you intend to call witnesses on your behalf ? Ans. ..... Are they witnesses as to character only ? Ans. .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF AP5. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(7) (a), RP 45, 120(A).* 2. *AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1) Ans. NO
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 27(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. B and Ex. C respectively.(3)
(1. *MFB 255 or AFB 294.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. Yes 6 3 .(2)
(1. *RP 27(C), 46(D).* 2. *Address, if one recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 27(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(8), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 1323, MML p 60, 732-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B-84828 Pte Walter Albert SMITH, RCASC, attached to 1 Cdn Discipline Centre, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, absented himself without leave from 2359 hrs 20 Mar 45 until surrendering himself in GHENT, Belgium at 2300 hrs 17 Apr 45.

(Total absence: 27 days 23 hrs 1 minute)

In the Field
10 Jun 45

(J M Sharp) Major
A/Comd
1 Cdn Discipline Centre

To be tried by Field General Court-Martial

In the Field
15 Jun 45

(J S H LIND) Brigadier
Commanding
3 Cdn Base Rft Gp

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
B 84828	Pte.		Walter Albert	SMITH	(RCASC)att 1 Cdn Discipline Centre

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 15 JUN 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	G G MacKENZIE MBE	FGH	Cdn C M Centre

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	P J POULIN	RCA	Cdn C M Centre
Capt	G K BISSETT	CH of O	Cdn C M Centre

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in BELGIUM (*Country.*)

Date 15 Jun 45

(*Signed personally. RP 105 fn 2.*) Brigadier (*Rank.*)

(J S H LIND)

Commanding 3 Cdn Base Rft Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (*For Army (Up Into) of AFA1: 80-P-S-51097 (4651)*)

(See overleaf for oaths and notes for use on trial.)

MFB 246

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 55)
(CMHQ CL 173)

I certify that I have this day examined B 84828 (No.)

Pte (Rank) Smith W.A. (Name) and in my opinion he is

fit to undergo trial by Court-Martial.

Capt. (Sgd)
(Medical Officer)

Station Field

Unit I Cdn. Disc. Centre

Date 18-6-45

Case of B 84828 Pte Smith WA. 483.

Mitigation Plea

The accused enlisted in Feb 41 and came overseas in Jun 41. He came to France in July 44 and has served on the continent ever since. Having had service with regimental police he made three different attempts to get a transfer to the Provost Corps in England, but each time was told he did not have enough education.

Then S/Sgt Chester of the S.P.S. over here asked him to transfer to the Provosts, and so he put in another application in February or March of this year. Capt Jorgenson, camp commandant at 1 Echelon recommended him and the D.A.P.M. at Brussels Garrison told him his application was approved. However on 19 Mar he was sent to 20 Special Employment Coy on X-9 list for return to England or Canada. He did not want to go, but wanted to go to the Far East.

He was taken to Rheims and left there being unable to find 20 Spec Emp Coy. He reported to the Provosts, who told him they would take him to the unit at 2200 hrs. He had had a farewell party in Brussels, and in the meantime started drinking again in Rheims and as a result did not turn up at 2200 hrs. He did not come up for 3 days, and then was scared to report, although he had had no intention of going A.W.X. originally. Hence he stayed in Ghent until his money ran out, then surrendered to the Provosts.

He has volunteered for Far East service and still wants a transfer to the Provost Corps. He has had no leave since February 1943. His last offence is dated March 1944, and that absence was also due to drinking. Since then until this occasion he kept away from drinking and so has a clear record. There is no question of evading service here, and in view of the fact that the accused has already been in custody two months I would request that he be given a very light sentence.

A J Thompson Capt.
Adjutant Officer.

E & A.

Summary of Evidence in the case of B-84828 Pte SMITH W A, RCASC, attached to 1 Cdn Discipline Centre, a soldier of the Canadian Army Overseas.

Charge - Absence without leave

By directions of the CO the evidence is taken on oath.

The following documents are read over to the accused, marked as Exhibits and are attached to the proceedings.

Exhibit "A" - Certified true copy of Extract from Pt II Order No 53 dated 6 Jun 45

Exhibit "B" - Certificate of surrender dated 17 Apr 45

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I have nothing to say.

The accused does not call any witness.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that RP 4 (C) (D) (E) (F) and (G) have been complied with.

M. Rousseau Capt

(Maurice Rousseau) Capt

Officer detailed to take Summary of Evidence

Dated in the Field
16 Jun 45

Thos.

Summary of Evidence in the case of R-84826 Pte SMITH W A, RCASC, attached to 1 Cdn Discipline Centre, a soldier of the Canadian Army Overseas.

Charge - Absence without leave

By directions of the CO the evidence is taken on oath.

The following documents are read over to the accused, marked as Exhibits and are attached to the proceedings.

Exhibit "A" - Certified true copy of Extract from Pt II Order No 73 dated 6 Jun 45

Exhibit "B" - Certificate of surrender dated 17 Apr 45

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I have nothing to say.

The accused does not call any witness.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that RP 4 (C) (D) (E) (F) and (G) have been complied with.

M Rousseau Capt

(Maurice Rousseau) Capt

Officer detailed to take Summary of Evidence

Dated in the Field

10 Jun 45

CHARGE SHEET

The accused, B-34828 Pte Walter Albert SMITH, RCASC, attached to 1 Cdn Discipline Centre, a soldier of the Canadian Army Overseas, is charged with-

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, absented himself without leave from 2359 hrs 20 Mar 45 until surrendering himself in GHENT, Belgium at 2300 hrs 17 Apr 45.

(Total absence: 27 days 23 hrs 1 minute)

In the Field
/0 Jun 45

(J W Shurp) Major
A/Comd
1 Cdn Discipline Centre

To be tried by Field General Court-Martial

PART II ORDER EXTRACT FORM

TO: DISCIPLINE & PAY

99/20

4 Jun 45

EXTRACTS FROM: UNIT X9 List

Part II Orde r No 53 dated 6 Jun 45

ABSENT WITHOUT LEAVE

AWL from 2359 hrs 20 Mar 45 Returned from AWL 2300 hrs 17 Apr 45

B84828 PTE SMITH W A RCASC

Certified to be a true extract from the regimental books and documents in my custody

"M H LAUGHLIN" Capt
Officer IC Records X
Cdn Sec 2 Ech HQ 21 A Gp

Certified true copy of Exhibit "A"

M. Rousseau Capt

CERTIFICATE UNDER ARMY ACT SECTION 163 (1) (1)

Certified that No B 84828 Rank Pte Name SMITH W A
of the 20 Special Employment Coy Regt surrendered to No C 53094
Rank Cpl Name Levallee A L of the 8 Sec 2 Cdn L of C Pro Coy
Ghent Detachment at Ghent at 2300 hrs on the 17th
day of April 1945 as an absentee without leave.
He was wearing Military Uniform at the time of his Surrender

Place Ghent
Date 17 April 45

"C WOOD" Capt
D A P M 2 CBRG HQ
Canadian Provost Corps

Certified true copy of Exhibit "B"
M. Rousseau Capt

Exhibit A1
to
M Rousseau Capt

PART II ORDER EXTRACT FORM

TO: DISCIPLINE & PAY

99/20/

4 Jun 45 19

EXTRACTS FROM: UNIT X9 List WRL

Part II Order No. 53 dated 6 Jun 45

ABSENT WITHOUT LEAVE
AWL from 2359 hrs 20 Mar 45 Returned from AWL 2300 hrs 17 Apr 45

B84828 PTE SMITH WA RCASC

The following documents are { attached. Please acknowledge receipt on attached duplicate. / required. Please forward same.

Certified to be a true extract from the regimental books and documents in my custody.

Officer IC Records
Con. Sec. 2 Echn. HQ. 21 A Gp

Originating Clerk's Initials JAC

for
Officer in Charge
Canadian Section, GHQ, 2nd Echelon

1/70

CERTIFICATE UNDER ARMY ACT, SECTION 163 (1) (1) Exhibit B

Certified that No. B.84824 Rank Pte. Name SMITH W.A. in Rousseau Capt

of the 20 Special Employment Coy. Regt, surrendered to No. C.53024

Rank Cpl. Name Levallee A.L. of the 3 Wing 2 Can. Lorr Pro Coy

Ghent Detachment at Ghent at 2300 hrs, on the 17th

day of April 1945 as an absentee without leave.

He was wearing Military Uniform at the time of his surrender.

Place Ghent

Date 17 April 45

2 [illegible] CAPT.
(A/MAJOR) DAPM 2 C.B.H.Q. Hq.
Canadian Provost Corps.

LIST OF WITNESSES

N I L

LIST OF EXHIBITS

Certified true copy of Extract from Pt II Order No 53 dated 6 Jun 45 "A"

Certificate of surrender dated 17 Apr 45 "B"

I, the undersigned, hereby acknowledge receipt of one copy of Charge Sheet and one copy of Summary of Evidence free of charge on 10 Jun 1945.

B-84828 Pte SMITH W A

I, the undersigned desire to have an officer assigned to represent ~~me at~~ my trial by Field General Court-Martial.

I desire the services of any officer appointed ~~to defend me.~~

DATE: 10 June 45

(Signature of Accused)
B-84828 Pte SMITH W A

No. S-54828 Name SMITH WA | Sqn, Battery, or Company | Corps RCASC | Date of enlistment 14/2/41 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB.122) 60/PAS/120(6418)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Sheet destroyed 14/8/41 on completion of 6 months service					
Field	5-11-41	Pte		15(1) AWL 17 days 30 mins	Sgt Emery Documentary	28 dys detn	27-11-41	Lt col J Sparling	18 dys pay 149(1)(a) 28 dys py 149(1)(b) 3 dys py 149(1)(c)
Field	29-8-42	Pte		15(1) AWL from PT Pde	Sgt C Dorritty	4 days CB	29-8-42	Lt LV Hanway	
Field	19-10-42	Pte		15(1) AWL 16 hrs	Cpl Palmer	7 days CB	21-10-42	Campt Bell	1 dy py 149(1a)
Field	11-3-44	Pte		9(2) Disobey. a lawful comd refused to scrub bed space	Doc.	7 days pay 149(2)	14Mar44	Maj AL Morris	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	6-3-44	Pte		(1) 15(1) AWL from 0900 hrs 6Mar44 to 0445 hrs 9 Mar44 (2) In possession of doc. purport to be genuine know. it to be false, give false name to civil police	Documentary	14 days FP	21Mar44	Lt col Fletcher	3 days pay 149(1a) 14 days py 149(1b)
				Certified true copy of original AFM 6 in my custody				(M A Cooke) Lt Officer i/c Regtl Books 1 Cdn Discipline Centre	

Army Form B 296 (War)

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martials only)

Number	Rank	Name	Regiment (or as the case may be)
B-84826	Pte	SMITH WA	RCASC

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court-martial or a civil court:-

For 15(1) ____ 4 times

For 9(2) ____ 1 times

For 40 ____ 1 times

For ____ ____ times

Date of first entry in Field Conduct Sheet 27 Nov 41

Date of last entry in Field Conduct Sheet 21 Mar 44

~~2. Previous convictions of the accused by a Court-Martial or a civil court are set out in the Schedule overleaf.~~ NIL

3. The accused at the present time is under sentence for NIL

beginning on the N/A day of N/A.

4. The accused has been awaiting trial on the present charges for ____ days in civil custody and for 61 days in military custody, i.e. ____ days in Open Arrest 61 days in Close Arrest, of which 33 days were spent in hospital.

5. The present age of the accused is 23 years 11 months old.

6. The date of his Attestation is 14-2-41.

7. The service which the accused is allowed to reckon ____.

8. The accused is in possession of C.V.S.M with Clasp.

9. (If the accused is a warrant Officer or NCO). The accused has served continuously without reduction, to the present date:-

	Date of Promotion
In the substansive rank of ////	
In the War substansive rank of ////	
In the acting rank of ////	

SCHEDULE OF CONVICTIONS BY A COURT MARTIAL OR CIVIL COURT OF SUMMARY AWARD UNDER SEC 47AA AND OF CASES IN WHICH TRIAL HAS BEEN DISPENSED WITH OF ACCUSED

Description of Court by which tried	Date & Place of trial	Charges upon which tried	Sentence of court	Punishment remitted or sentence suspended

NO RECORD OF CONVICTION BY COURT MARTIAL OR CIVIL COURT ON MFM 6

I hereby certify that the foregoing particulars which have been extracted from the regimental books in my custody are correct to the best of my knowledge and belief.

Signed this 18 day of Jun 45

(M A Cooke) Lt
Officer ic Regtl Books
1 Cdn Discipline Centre

Def.

Summary of Evidence in the case of B-84828 Pte SMITH W A RCASC, attached to 1 Cdn Discipline Centre, a soldier of the Canadian Army Overseas.

Charge - Absence without leave

By directions of the CO the evidence is taken on oath.

The following documents are read over to the accused, marked as Exhibits and are attached to the proceedings.

Exhibit "A" - Certified true copy of Extract from Pt II Order No 53 dated 6 Jun 45

Exhibit "B" - Certificate of surrender dated 17 Apr 45

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I have nothing to say.

The accused does not call any witness.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that RP 4 (C) (D) (E) (F) and (G) have been complied with.

M Rousseau Capt

(Maurice Rousseau) Capt
Officer detailed to take Summary of Evidence

Dated in the Field
10 Jun 45

Def.

Summary of Evidence in the case of B-84828 Pte SMITH W A, RCASC, attached to 1 Cdn Discipline Centre, a soldier of the Canadian Army Overseas.

Charge - Absence without leave

By directions of the CO the evidence is taken on oath.

The following documents are read over to the accused, marked as Exhibits and are attached to the proceedings.

Exhibit "A" - Certified true copy of Extract from Pt II Order No 53 dated 6 Jun 45

Exhibit "B" - Certificate of surrender dated 17 Apr 45

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I have nothing to say.

The accused does not call any witness.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that RP 4 (C) (D) (E) (F) and (G) have been complied with.

M Rousseau Capt

(Maurice Rousseau) Capt

Officer detailed to take Summary of Evidence

Dated in the Field

10 Jun 45

W.R.

CHARGE SHEET

The accused, B-84828 Pte Walter Albert SMITH, REME, attached to 1 Cdn Discipline Centre, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, absented himself without leave from 2359 hrs 20 Mar 45 until surrendering himself in GHENT, Belgium at 2300 hrs 17 Apr 45.

(Total absence: 27 days 23 hrs 1 minute)

(J W Sharp) Major
A/Comd
1 Cdn Discipline Centre

In the Field
/0 Jun 45

To be tried by Field General Court-Martial

PART II ORDER EXTRACT FORM

TO:
DISCIPLINE & PAY

99/20

4 Jun 45

EXTRACTS FROM: UNIT X9 List

Part II Orde r No 53 dated 6 Jun 45

ABSENT WITHOUT LEAVE

AWL from 2359 hrs 20 Mar 45 Returned from AWL 2300 hrs 17 Apr 45

B84828 PTE SMITH W A RCASC

Certified to be a true extract from the regimental books and documents in my custody

"M H LAUGHLIN" Capt
Officer IC Records X
Cdn Sec 2 Neh HQ 21 A Gp

Certified true copy of Exhibit "A"

M Rousseau Capt

CERTIFICATE UNDER ARMY ACT SECTION 163 (1) (i)

Certified that No B 84828 Rank Pte Name SMITH W A
of the 20 Special Employment Coy Regt surrendered to No C 53094
Rank Cpl Name Levallee A L of the 8 Sec 2 Cdn L of C Pro Coy
Ghent Detachment at Ghent at 2300 hrs on the 17th
day of April 1945 as an absentee without leave.
He was warring Military Uniform at the time of his Surrender
Place Ghent
Date 17 April 45

"C WOOD" Capt
D A P M 2 CBHC HQ
Canadian Provost Corps

Certified true copy of Exhibit "B"

M Rousseau Capt

No. B-84528 Name SMITH WA | Sqn, Battery, or Company | Corps RCASC | Date of enlistment 14/2/41 | GC Badges | Service or Proficiency Pay | 3/17 MFM'6 (AFB 122) 40/P&S/136 (5432)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature OC Company, etc | Character

Place	Date of offence	Rank	Unit	Crime	Punishment awarded		Date of award or of order dispensing with trial	By whom awarded	Remarks
Sheet destroyed 14/8/41 on completion of 6 months service									
Field	5-11-41	Pte		15(1) AWL 17 days 30 mins	Sgt Emery Documentary	28 dys detn	27-11-41	Lt col J Sparling	18 dys ps 149(1)(a) 28 dys py 149(1)(b) 3 dys py 149(1)(c)
Field	29-8-42	Pte		15(1) AWL from Pt Pde	Sgt G Dorritty	4 days CB	29-8-42	Lt LV Hanway	
Field	19-10-42	Pte		15(1) AWL 16 hrs	Cpl Palmer	7 days CB	21-10-42	Campt Bell	1 dy py 149(1a)
Field	11-3-44	Pte		9(2) Disobey. a lawful comd Refused to scrub bed space	Doc.	7 days pay 149(2)	14Mar44	Maj AL Morris	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	6-3-44	Pte		(1) 15(1) AWL from 0900 hrs 6Mar44 to 0445 hrs 9 Mar44 (2) In possession of doc. purport to be genuine know. it to be false, give false name to civil police	Documentary	14 days FP	21Mar44	Lt col Fletcher	3 days pay 149(1a) 14 days py 149(1b)
				Certified true copy of original NFM 6 in my custody				(N A Cooke) Lt Officer ic Regtl Books 1 Cdn Discipline Centre	

Army Form B 296 (War)

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martials only)

Number	Rank	Name	Regiment (or as the case may be)
B-84628	Pte	SMITH WA	RCASC

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court-martial or a civil court:-

For 15(1) ____ 4 ____ times

For 9(2) ____ 1 ____ times

For 40 ____ 1 ____ times

For ____ ____ times

Date of first entry in Field Conduct Sheet 27 Nov 41

Date of last entry in Field Conduct Sheet 21 Mar 44

2. Previous convictions of the Accused by a Cour-Martial or a civil court are set out in the Schedule overleaf.

3. The accused at the present time is under sentence for NIL

beginning on the N/A day of N/A.

4. The accused has been awaiting trial on the present charges for Nil days in civil custody and for Nil days in military custody, i.e. Nil days in Open Arrest Nil days in Close Arrest, of which 23 days were spent in hospital.

5. The present age of the accused is 23 years 11 months as.

6. The date of his Attestation is 14-2-41.

7. The service which the accused is allowed to reckon ____.

8. The accused is in possession of G.V.S.M with Clasp.

9. (If the accused is a Warrant Officer or NCO). The accused has served continuously without reduction, to the present date:-

	Date of Promotion
In the substansive rank of ////	
In the War substansive rank of ////	
In the acting rank of ////	

SCHEDULE OF CONVICTIONS BY A COURT MARTIAL OR CIVIL COURT OF SUBSEQUENT AWARD UNDER SEC 47AA AND OF CASES IN WHICH HAS BEEN DISPENSED WITH OR ACQUITTED

Description of Court by which tried	Date & Place of trial	Charges upon which tried	Sentence of court	Punishment omitted sentence suspended

NO RECORD OF CONVICTION BY COURT MARTIAL OR CIVIL COURT ON NFN 6

I hereby certify that the foregoing particulars which have been extracted from the regimental books in my custody are correct to the best of my knowledge and belief.

Signed this day of Jun 45

(M A Cooke) Lt
Officer ic Regtl Books
1 Cdn Discipline Centre

(1)

Extra copy.

Summary of Evidence in the case of B-84826 Pte SMITH W A, RCASC, attached to 1 Cdn Discipline Centre, a soldier of the Canadian Army Overseas.

Charge - Absence without leave

By directions of the CO the evidence is taken on oath.

The following documents are read over to the accused, marked as Exhibits and are attached to the proceedings.

Exhibit "A" - Certified true copy of Extract from Pt II Order No 93 dated 6 Jun 45

Exhibit "B" - Certificate of surrender dated 17 Apr 45

Q. Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

A. I have nothing to say.

The accused does not call any witness.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence of the accused and that RP 4 (C) (D) (E) (F) and (G) have been complied with.

M Rousseau Capt

(Maurice Rousseau) Capt.
Officer detailed to take Summary of Evidence

Dated in the Field
10 Jun 45

CHARGE SHEET

The accused, B-84828 Pte Walter Albert SMITH, RCASC, attached to 1 Cdn Discipline Centre, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, absented himself without leave from 2359 hrs 20 Mar 45 until surrendering himself in GHENT, Belgium at 2300 hrs 17 Apr 45.

(Total absence: 27 days 23 hrs 1 minute)

In the Field
10 Jun 45

(J W Sharp) Major
A/Comd
1 Cdn Discipline Centre

To be tried by Field General Court-Martial

CHARGE SHEET

The accused, H-84326 Pte Walter Albert SMITH, RCASC, attached to 1 Cdn Discipline Centre, a soldier of the Canadian Army Overseas, is charged with-

FIRST CHARGE
Sec 15 (1)
Army Act

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, absented himself without leave from 2359 hrs 20 Mar 45 until surrendering himself in GHENT, Belgium at 2300 hrs 17 Apr 45.

(Total absence: 27 days 23 hrs 1 minute)

In the Field
10 Jun 45

(J W Dashwood) Major
A/Comd
1 Cdn Discipline Centre

To be tried by Field General Court-Martial

PART II ORDER EXTRACT FORM

TO:
DISCIPLINE & PAY

99/20

4 Jun 45

EXTRACTS FROM: UNIT X9 Idst

Part II Orde r No 53 dated 6 Jun 45

ABSENT WITHOUT LEAVE

AWL from 2359 hrs 20 Mar 45 Returned from AWL 2300 hrs 17 Apr 45

B84828 PTE SMITH W A RCASC

Certified to be a true extract from the regimental books and documents in my custody

"M H LAUGHLIN" Capt
Officer IC Records X
Cdn Sec 2 Ech HQ 21 A Gp

Certified true copy of Exhibit "A"

M Laughlin Capt

CERTIFICATE UNDER ARMY ACT SECTION 163 (1) (i)

Certified that No B 84828 Rank Pte Name SMITH W A
of the 20 Special Employment Coy Regt surrendered to No C 53094
Rank Cpl Name Levallee A L of the 8 Sec 2 Cdn L of C Pro Coy
Ghent Detachment at Ghent at 2300 hrs on the 17th
day of April 1945 as an absentee without leave.
He was wearing Military Uniform at the time of his Surrender
Place Ghent
Date 17 April 45

"C WOOD" Capt
D A P M 2 CMHG HQ
Canadian Provost Corps

Certified true copy of Exhibit "B"

M Levallee Capt

No. B-84826 Name SMITH WA | Sqn, Battery, or Company | Corps RCASC | Date of enlistment 14/2/41 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/PAS/136 (5413)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc | Character

Sheet destroyed 14/8/41 on completion of 6 months service

Place	Date of offence		Cases of [illegible]	Offence	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	5-11-41	Pte		15(1) AWL 17 days 30 mins	Sgt Emery Documentary	28 dys detn	27-11-41	Lt Col J Sperling	15 dys pay 149(1)(a) 28 dys pay 149(1)(b) 3 dys pay 149(1)(c)
Field	29-8-42	Pte		15(1) AWL from PT Pde	Sgt C Dorritty	4 days CB	29-8-42	Lt LW Hanway	
Field	19-10-42	Pte		15(1) AWL 16 hrs	Cpl Palmer	7 days CB	21-10-42	Cmpt Bell	1 dy pay 149(1a)
Field	11-3-44	Pte		9(2) Disobey. a lawful comd Refused to scrub bed space	Doc.	7 days pay 149(2)	14Mar44	Maj AL Morris	

(PTO)

Place	Date of offence	Rank	Cases of previous convictions	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Vield	6-3-44	Pte		(1) 15(1) AWL from 0900 hrs 6Mar44 to 0445 hrs 9 Mar44 (2) In possession of doc. purport to be genuine know. it to be false, give false name to civil police	Documentary	14 days FP	21Mar44	Lt col Fletcher	3 days pay 149(1a) 14 days py 149(1b)

Certified true copy of original NFM 6 in my custody

(H A Cooke) Lt
Officer ic Regtl Books
1 Cdn Discipline Centre

Army Form B 296 (War)

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

(For Use at Trials by Field General Courts-Martials only)

Number	Rank	Name	Regiment (or as the case may be)
B-84628	Pte	SMITH WA	RCASC

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court-martial or a civil court:-

For 15(1) ____ 4 times

For 9(2) ____ 1 times

For 40 ____ 1 times

For ____ ____ times

Date of first entry in Field Conduct Sheet 27 Nov 41

Date of last entry in Field Conduct Sheet 21 Mar 44

2. Previous convictions of the Accused by a Cour-Martial or a civil court are set out in the Schedule overleaf.

3. The accused at the present time is under sentence for NIL

beginning on the N/A day of N/A.

4. The accused has been awaiting trial on the present charges for N/A days in civil custody and for ____ days in military custody, i.e. N/A days in Open Arrest ____ days in Close Arrest, of which 28 days were spent in Hospital.

5. The present age of the accused is 23 years 11 months old.

6. The date of his Attestation is 14-2-41.

7. The service which the accused is allowed to reckon ____.

8. The accused is in possession of C.V.S.M with Clasp.

9. (If the accused is a warrant Officer or NCO). The accused has served continuously without reduction, to the present date:-

	Date of Promotion
In the substansive rank of ////	
In the War substansive rank of ////	
In the acting rank of ////	

SCHEDULE OF CONVICTIONS BY A COURT MARTIAL OR CIVIL COURT OF SUMMARY AWARD UNDER SEC 47AA AND OF CASES IN WHICH HAS BEEN DISPENSED WITH OF ACCUSED

Description of Court by which tried	Date & Place of trial	Charges upon which tried	Sentence of court	Punishment omitted sentence suspended

NO RECORD OF CONVICTION BY COURT MARTIAL OR CIVIL COURT ON MFM 6

I hereby certify that the foregoing particulars which have been extracted from the regimental books in my custody are correct to the best of my knowledge and belief.

Signed this day of Jun 45

M A Cooke Capt.

(M A Cooke) Lt
Officer ic Regtl Books
1 Cdn Discipline Centre

COUNTER NUMBER 587458

HOUR 1930

OPERATOR'S INITIALS NMB

RELIEVING OPERATOR

BB-47

TPR SMITH W.E.

BB-47

Correspondence to be PINNED here.

Army Form A.8.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 19th day of MARCH, 1943,

Whereas it appears to me, the undersigned, an officer in Command of FIRST CANADIAN CORPS ARTILLERY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

*[I am unable to appoint :—

*[1. Three Officers to form the Court.]

*[2. A Field Officer as President.]

for the following reasons, namely :—*]

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	J. H. McBride	32 Cdn Recce Regt

Members.

Rank.	Name.	Regiment.
Lieut	A. H. Clarke	32 Cdn Recce Regt
Lieut	I. M. SEGERT	1st Hamr Cdn Regt

*Signed (E. C. Plow) Brigadier

Commanding C.C.R.A., 1 Cdn Corps

Concerning Officer

* Must be signed personally by the Officer actually in command at the time, and all alterations or the suppression of the Court to be initialled by him.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
P-1649 Trooper WALTER EDWARD SMITH 1 Cdn Armd Car Regt (RCD)	First Charge A.A. Sec 15 (1)	Guilty	~~Guilty~~ Thirty 30 Days ~~Field Punishment~~ Detention. 20 MAR 43 J.H.M. Leslie Maj President.	Confirmed 31 Plow Brig RCMP 1 Cdn Corps

* Question to be asked of accused, if he pleads not guilty (R. of P. 89 (A)) :— N.A.
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(*Signed*) 31 Plow (*Signed*) J.H.M. Leslie Maj
(E. C. Plow) Brigadier
C.C.R.A. *Commanding* 1 Cdn Corps — 32 Edm Recce Regt (AMR)
Convening Officer (*c*) — *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(*c*) Recommendation to mercy, if any, to be inserted in this column.

(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 20th day of MARCH 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) N.A.
*(4. ~~The officers under instruction~~) N.A.

were duly sworn.

* Omit if not applicable.

Signed this 20th day of MARCH 1943.

J.H.M. Leslie Maj
President of the Court Martial. 32 Edm Recce Regt (AMR)

C. Certificate in case of death sentences.

* See footnote (*b*) on page 762 M.M.I. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmatory.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~) 31P

Signed this 29 day of March 1943.

31 Plow
Confirming Officer (*d*)
RCMP 1 Cdn Corps

Promulgated and extracts taken in the case of P 1649 Tpr SMITH W.E.

(*a*) (Dated) 30 March 1943. (Signed) for (E. C. Plow) Brigadier C.C.R.A. a/Comd 1 Armd C Regt (RCD) Major RCD

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

O.C. 47782/0387 30 M. 1/43 K.H.,G.26/52 Gp. 698/3

B2

CHARGE-SHEET: WALTER EDWARD

The accused, P 1649, Tpr SMITH, 1 Armd C Regt (RCD), a soldier of the Canadian Army Overseas, is charged with:-

First Charge
Sec. 15(1), A.A.

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

In that he

in the field on 15 Feb 43, absented himself without leave from his regiment, 1 Armd C Regt (RCD), from 0600 hrs 15 Feb 43 until 0900 hrs 28 Feb 43. (13 days 3 hrs).

Jas C Roberts, major
(J. Dingman) Lt Col
Commanding
1 Armd C Regt (RCD)

In the Field
17 March 1943.

To be tried by Field General Court Martial

(E. C. Plow) Brigadier
C.C.R.A., 1 Cdn Corps

A3.

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) Para 557

I certify that I have this morning examined No P1649 1 Pr

Smith W.E. of 1 Armd C Regt (RCO) and in my opinion is

fit

~~unfit~~ to undergo trial by court martial.

Station In the field

Date 20 Mar / 43

R.T. Myers Capt

Medical Officer

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a ~~Field General~~ Court-Martial held ~~at~~ in the field

on the 20th day of March 1943 by order of

Brigadier E.C. Plow

Commanding 1 Cdn Corps Artillery

dated the 19th day of March 1943

President.

Major G.H. McBride 32 Cdn Recce Regt (RHR)

Members.

Lieut A.H. Clarke 32 Cdn Recce Regt (RHR)
Lieut G.M. Gilbert 1 Armd C. Regt (RCD)

~~, Judge Advocate~~

Trial of* P 1649 Gnr. Walter Edward Smith
1 Armd C Regt (RCD)

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that~~ ~~is not available~~

~~, waiting member takes his place as a member of the Court~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lieut V.M. Simpson 1 Armd C Regt (RCD)

Counsel‡ or defending officer† None

At 1000 o'clock the Trial commences.

The order convening the Court is read, and is marked A 2. , signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

96276. 300,000 (1624/3). 25,000 sets. 6/43. W. & H., Ltd. (46211). Forms A 9/20.

B

The President, and members ~~and judge-advocate~~ are duly sworn.

~~The following officers under instruction are duly sworn.~~

Charge-Sheet.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

Instruction. *If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.*

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read?

Question to the accused.

Guilty.

Answer.

~~Are you guilty or not guilty of the second charge against you, which you have heard read?~~

Question.

Answer.

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~

Question.

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~

Question.

Answer.

The accused having pleaded Guilty to the first charge, the provisions of Rule of Procedure 35 (B) are here complied with.

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*~~[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]~~

The accused is found guilty of the first charge.

†The summary ~~or abstract~~ of evidence is read, marked F2, signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. No

~~The accused in mitigation of punishment says~~

~~[or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]~~

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

~~The Court is closed for the consideration of the finding.~~

~~The Court find that the accused~~

Proceedings on Conviction before Sentence.

*When the Court is already open this sentence will be struck out. Evidence of character, &c.

*The Court being re-opened, the accused is again brought before it.

Lieut V.H. Singer is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* I produce a certified true copy of the accused's MFM1 and MFB 255

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked B3+C2, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes

(Instruction.—If in cases of the records of the service of the accused in a disciplinary unit, or otherwise, the finding of the Court ranges from liable to any exceptional punishment to as above to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.)

Cross-examined by the accused. None.

Question to the accused.

Do you wish to address the Court? *Answer.* No

The Court is closed for the consideration of the sentence.

President

SUMMARY OF EVIDENCE

in the case of

P 1649 Tpr Smith W E, 1 Armd C Regt (RCD), 1 Cdn Corps.

The Commanding Officer directs that the evidence be taken on oath.

FIRST WITNESS for the Prosecution

B 2 L/Cpl Dockray G, 1 Armd C Regt (RCD), having been duly sworn, states:

"I am B 2 L/Cpl Dockray G, HQ Sqn, 1 Armd C Regt (RCD). On 15 Feb 43 I was employed as N C O in charge of rooms in which HQ Sqn Transport Tp was billetted. That morning at approximately 0600 hrs I went around to see if all the personnel of the troop were in the rooms and I found the accused, Tpr Smith W E, was absent. I reported this to the sqn orderly Cpl."

The accused declines to cross-examine the witness.

G. Dockray
Signature - First Witness
Prosecution

SECOND WITNESS for the Prosecution

P 1704 Cpl Maitland J, 1 Armd C Regt (RCD), having been duly sworn, states:

"I am P 1704 Cpl Maitland J, HQ Sqn, 1 Armd C Regt (RCD). On 15 Feb 43 I was employed as sqn orderly Cpl. At approximately 0615 hrs on that day L/Cpl Dockray reported to me that Tpr Smith W E, the accused, was absent."

The accused declines to cross-examine the witness.

Signature - Second Witness
Prosecution

THIRD WITNESS for the Prosecution

D 1561 L/Sgt Joiner L A, 1 Armd C Regt (RCD), having been duly sworn, states:

"I am D 1561 L/Sgt Joiner L A, B Sqn, 1 Armd C Regt (RCD). On 28 Feb 43 I was employed as N C O in charge of rear party of 1 Armd C Regt (RCD). At approximately 0900 hrs on that day Tpr Smith W E, the accused, reported to me, sober and properly dressed, and said that he was reporting in after being absent without leave for thirteen days. I immediately placed him in close arrest."

The accused declines to cross-examine the witness.

L A Joiner.
Signature - Third Witness
Prosecution

The accused was cautioned as follows:

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

After the above caution the accused declines to give evidence.

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of Evidence consisting of two (2) pages was taken down by me in the presence of the accused and that Rules of Procedure 4 (C), (D), (E) and (F) have been complied with.

Ramon M. Fenger Lieut

Officer detailed to take Summary

In the Field
16 March 1945.

First sheet destroyed on completion of six months service 21-8-40

No. P1649 Name Smith, N.E. Sqn., Battery, or Company 1 AGR (RCD) Corps Cdn Armd Corps Date of enlistment 21-9-39 G.C. Badges Service or Proficiency Pay N/A

M.F.M. 6 A.F.B. XVI. 175M—7-41 (1219-20) H.Q. 1771-35-1652

Date of last entry in Company Conduct Sheet Nil No. and date of last drunk Nil Period not reckoning towards freedom from extra line N/A Sheet No. 1 Signature O.C. Company, etc. (illegible) Character Good

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	28 Dec 42	Tpr		1st Charge AR 40 Sec 15 (1) in that from 1800 hrs 27 Dec 42 to 1800 hrs 28 Dec 42 he was absent from his unit without leave (6 hrs 30 mins)	Capt J F Lauzon, RSM Russell F, Cpl Ezzett, F	Forfeits 1 days pay FR(A) 149(10)	30 Dec 42	J A Roberts Major	
				2nd Charge AR 40 Sec 19 (1) in that he was found in charge of a motor vehicle whilst under the influence of drink	" "	Admonished	30 Dec 42	J A Roberts Major	
				3rd Charge AR 40 Sec 40 An act to the prejudice of good order and mil discipline in that he without lawful authority or reasonable excuse drove a motor vehicle for his own private purpose contrary to regulations	b b	Forfeits FR(A) 149(9)(b) 4 days pay in addition to the above mentioned minor punishment 15 October 1942.			

CERTIFIED TRUE COPY

J F Lauzon, Captain,

Adjutant I Armd. C. Regt. (R.C.D.)

OFFS I/C RECTL AND BOOKS RECORDS

M.F.B. 355
H.Q. 1772-39-620
10M-8-40 (M19)

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
P 1649	Tpr	SMITH W E	1 Armd C Regt (RCD)

1. The following is a fair and true summary of the entries in the ~~Conduct sheets or Company Conduct sheets~~ Regimental ~~and Squadron, Battery~~ Service and General of the accused, exclusive of convictions by a Court-Martial ~~or a Civil Court~~ Air Force Act, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
For A A Sec 15(1)	one times	times
For A A Sec 19	one times	times
For A A Sec 40	one times	times
For	times	times

~~Number of instances of gallantry or distinguished conduct~~

or,

~~There are no entries in the conduct sheets of the accused.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act, and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.~~ Air Force Act A.F.A. 76

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is under sentence of~~ beginning on the day of

4. The accused has been in confinement awaiting trial on the present charges, for 225 days in civil custody, and six days in military custody, making a total of six days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 25 years 256 days

6. The date of his ~~commission specified in his record of service~~ attestation paper is 1 Sep 1939 (5 years 197 days)

7. The service which the accused is allowed to reckon towards discharge is 5 years 197 days

8. The accused is entitled to reckon 5 years 197 days service for the purpose of determining his pension, etc.

9. ~~The accused is in possession of or entitled to no air force decoration, or air force reward for is in possession of or entitled to).~~ State any ~~air force decoration or reward~~ military military

10. ~~(If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of~~

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated, and in his regiment (or corps), the rank of dated.

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused, Number Rank Name of Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 18th day of March/43

[redacted]

(J F Gautier) Capt
Adjt 1 Armd C Regt (RCD)

I do not desire the convening officer to detail an Officer to represent me at my forthcoming Field General Court Martial.

W E Smith
Signature of Accused

129-U

Pte SMITH, W.G.

Correspondence to be PINNED here.

178 C

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

"A."
Order convening the Court

On Active Service, this Twenty ninth day of DECEMBER, 1942.

Whereas it appears to me, the undersigned, an officer in Command of FOURTH CANADIAN INFANTRY BRIGADE Canadian Army Active, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~and that it is not practicable to delay the trial by reference to a superior qualified officer.~~

* Omit where Convening Officer is a Commander Officer or is of Field Rank

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable

*~~I am unable to appoint~~

*~~(a) Three Officers to form the Court.~~

*~~(a) A Field Officer as President.~~

*~~(b) Three Officers having more than one year's service.~~

~~for the following reasons, namely~~

In my opinion, due to military exigencies, namely the dispersion of units, and difficulties of communication, and other difficulties, render it inexpedient to observe the provisions of those rules inconsistent with Appendix "A" to D.R.O. 772 on the trial of the person named in the annexed schedule.

99

President.

Rank.	Name.	Regiment.
Major	Gilmour, F.J.	HQ 2 Cdn Div RCA

Members.

Rank.	Name.	Regiment.
One Major to be detailed by OC R Regt C		R Regt C
One Capt or Lieut to be detailed by OC RHLI		RHLI
WAITING MEMBER One Capt or Lieut to be detailed by OC RHLI		RHLI

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed (J.A. HURLEY) Lieut-Colonel,
~~Commanding~~ Acting Commander 4 CDN INF BDE
Convening Officer.

Proceedings Reviewed

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
No.B38420 Private William George SMITH, Royal Hamilton Light Infantry, a soldier of the Canadian Army (Active)	FIRST CHARGE A.A. Sec.9(2) Disobeying a lawful command given by his superior officer. (SEE CHARGE SHEET ATTACHED)	Not guilty 31 Dec 1942 J Gilmour Maj a.	Not guilty	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—
No Sir

(Signed) J.J. Hurley (Signed) J Gilmour Maj a.
(J.J. HURLEY) Lt-Colonel,
A/ *Commanding* 4 CDN INF BDE.
Convening Officer (*e*) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 31st day of December '42, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that:—
1. The members of the Court
2. The witnesses
*(3. The interpreter)
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 31st day of December 1942.

President of the Court Martial.

C. Certificate in case of death sentences.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

* See footnote (*b*) on page 762 M.M.L. 1929.

Signed this 7th day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I direct that the soldier named in the margin be not committed to prison until further orders.)

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this day of 19 .

Confirming Officer.

Promulgated and extracts taken in the case of

(*a*) (Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

No: 13...38420..... Name: Smith...W.G. Rank: Pte....Unit: R.H.L.I..

Date: ...31...Dec...42.....

The a/m soldier has been examined by me and in my opinion is, (~~not~~) fit to ~~proceed on~~ / or undergo) .....

...D.L.Fletcher..... Capt.
R.C.A.M.C./M.O/R.H.L.I.

.....

15 LIECTS TRIAL BY F.G.C.M.

CHARGE SHEET

The accused B38420 Private William George SMITH, 1st Bn Royal Hamilton Light Infantry, a soldier of the Canadian Army (Active) is charges with:

FIRST CHARGE
Section 9 (2)
Army Act.

WHEN ON ACTIVE SERVICE DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER,

in that he,

in the Field at approximately 1815 hrs on 20 Dec 42 when detailed for guard duty by B37217 Cpl. Whitehead, J.S. his superior officer, said, "I am not going on guard", or words to that effect, and did not appear for guard duty thereby causing B38227 Pte. Morris, W.H. to be detailed for the duty in his place.

In the Field
29 Dec 42

Lt.-Col.
Commanding 1st Bn R.H.L.I.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

A1

Commanding, 4 Cdn Inf Bde.

B2.

A Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Fd. Gen'l Court-Martial held at In the Field
on the 31st day of December 1942 by order of
Lt. Col. J. J. Hurley
Commanding 4 Cdn Inf. Bde.
dated the 29 day of December 1942

President.

Major F. J. Gilmour RCA. H.Q. 2 Cdn Div

Members.

Lt. W. H. Burton R.H.L.I.

Lt. J. P. Howard R H L I

Trial of* B. 38420 - Pte Wm George SMITH
1st Bn. Royal Hamilton Light Infantry

, ~~Judge Advocate~~.

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that One Major to be detailed by O.C. Richard C is not available to serve owing to absence + Lt G.P. Howard RHLI, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lt. R. L. Sharp. RHLI

Counsel‡ or defending officer† Lt J. A. Finch R.H.L.I.

At 1410 o'clock the Trial commences.

The order convening the Court is read, and is marked "A", signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No Sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q4274. W.L.W.(M2478/78). 25,000 pds. 5/43. E. & H., Ltd. (A6277/1). Forms A 9/22.

F. J. Gilmour
Major
Pres

B

The President, members and ~~judge-advo~~cate are duly sworn.

~~The following officers under instruction are duly sworn.~~

Charge-Sheet.

Instruction. *If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.*

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read ? *Question to the accused.*

Not guilty. *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read ? *Question.*

✓ *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read ? *Question.*

✓ *Answer.*

Are you guilty or not guilty of the fourth charge against you, which you have heard read ? *Question.*

✓ *Answer.*

The accused having pleaded Guilty to ✓ charge , the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

C

*Instruction. (See R. P. 39 (A)) Question.

Proceedings on Plea of Not Guilty.

*Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No Sir.

The ~~prosecutor makes an opening address~~ [hands in a written address which is read, marked , signed by the President, and attached to the proceedings.]

The prosecutor proceeds to call witnesses.

First witness for prosecution. B37217 Cpl. Joseph Spencer Whitehead, R H & I.

being duly sworn, is examined by the prosecutor.

I was 9d. Cmdr on 20 Dec 42. I was given a list of men detailed for Guard. the accused was on the list. We had moved that day to Godwood Race track. There was only one Pl. for the night we were in the N.C.O.'s Mess when we got the list detailed for Guard. I warned all persons including the accused this was about 6.30 P.M. The accused said he would not go on Guard - that he had done quite a few duties lately. We were attending a lecture & I warned accused during a break. I later went out to look for Pte Smith as the Sgt wanted to see him on account of his refusal but could not find him. After the lecture parade at 8 o'clock pm Sgt Davies & I placed accused in Open arrest & detailed Pte Morris to take the accused's place. Pte Morris did the guarding of the detailed while Pte Smith stayed home duty.

Cross Examined

I said Smith you are warned for gd to-night - we're drawing for a bar to see who takes the shifts." I gave Smith no definite time for guard duty. When he said he would not do guard Smith left the N.A.A.F.I. I saw him go out. When I went to him next it was just to place him under open arrest & not to warn him for guard. I ~~did~~ warned Morris for guard before I placed Smith under arrest - that is I warned Morris to do the gd which shows he before I placed Smith under arrest R.P. 83(A) complies with

2nd Pros Witness — B 37403 Pte. Roy. E. Wilkinson duly sworn

On Dec 20/42 Cpl Whitehead warned me for guard. I heard him later warn Pte Smith the accused for Gd. Pte Smith said words to the effect that he refused to do Guard duties than. Cpl Whitehead did not mention what shift I was on. I knew I would fall in for guard duty this morning but I did not know what hour. R.P. 83(A) complies with

3rd Pros Witness — B 38227 Pte. Wm R. Morris R.H.L.I. duly sworn

I heard Pte Smith the accused tell the Cpl when warned for guard that he would not do guard because of having so many duties of Guard to do before. About 1½ hr later I was warned by Cpl Whitehead to take over a guard that one of the boys refused to do & I am this Guard. I was not originally on the list detailed.

Cross Examined. I went on gd from 2.30 pm morning until 4.30 AM. R.P. 83(B) complies with

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer.

Question. Do you intend to call any other witness in your defence?

Answer.

Question. Is he a witness as to character only? *Answer.*

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says†.

[hands in a written address which is read, marked signed by the President and attached to the proceedings.]

The Defending Officer makes a submission under Note 1 R.P. 40 + reads in support of his submission Chap III, para 11 of MML. Points out that Pte Morris was ordered to do the duty before Smith was given any order as to when he was to go on Emergs + before Smith was arrested.

see Q 4.

Instruction. † In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court above.)

ZCS

D 2

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

The Court is closed
to consider the submission.

The Court concludes that
this case is on all fours with
what is stated in Chap. III
Para 11 of MML. & therefore
allow the submission.
The Court is re-opened.
& the decision announced
& the accused released.

J. J. Gilmour
Maj
PRO

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused is found guilty of

†The summary (or abstract) of evidence is read, marked signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. The accused in mitigation of punishment says:—

[*or* hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

Answer.

Evidence as to character

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

is duly sworn.

Evidence of character, &c.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.*

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.*

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.*

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.*

[Instruction.—If in regard to the record of the service of the accused in a disciplinary unit or otherwise, the finding of the Court appears to be liable to any exceptional punishment on account of which it may be essential for the Court the prosecutor must call the attention of the Court to the fact, and the Court must enquire into the nature and amount of the additional punishment.]

Cross-examined by the accused.

Question to the accused.

Do you wish to address the Court? *Answer.*

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused

Sentence.

ABSTRACT OF EVIDENCE

In the case of No.B38420 Private WILLIAM GEORGE SMITH, of the 1st Battalion, ROYAL HAMILTON LIGHT INFANTRY, Canadian Army (Active).

FIRST WITNESS — B37217 Cpl. Whitehead, J.S. states:

20 Dec 42 I was guard commander at Fourth Canadian Infantry Brigade Battle School. At approximately 1815 hrs I received from Sgt. Dukes of No. 5 Pl. a list of men to be warned for guard duty. The accused's name was on the list. I went up to the accused and warned him for duty. He said: "I am not going on guard, I have been on too many duties lately." I informed him he was under open arrest.

SECOND WITNESS — B37403 Pte. Wilkinson, N.E.

On 20 Dec 42 I was sitting in the W.A.A.F.I. canteen at Fourth Canadian Infantry Brigade Battle School. Cpl. Whitehead warned me for guard duty. I then heard him tell the accused that he was detailed for guard duty. I heard the accused say: "I am not going on guard."

THIRD WITNESS — B30227 Pte. Morris, W.R.

On 20 Dec 42 I was sitting in the W.A.A.F.I. canteen at Fourth Canadian Infantry Brigade Battle School. I heard the accused say to Cpl. Whitehead "I am not going on guard." A little while later I was warned to do guard duty in the place of the accused.

Abstract of evidence taken by me in the field on the 27 Dec 42.

[redacted] Lieut.

(W.R. Broadhall) Lieut.

1 Bn. R.H.L.I. 4th A. (S)

REVIEW SHEET

F.G.C.M. - Trial of No.: B38420 Pte Smith, W. G., RHLI

Date of Trial: 31 Dec 42

President of Court: Major F. J. Gilmour, R C A, attd H Q 2 Cdn Div

---

1. For the information of the Officers asked to sign below the following irregularities are noted:

(i) The Medical Certificate is not in accordance with K R (Can) 557.

(ii) The fact that the accused elected trial should be endorsed on the Convening Order, as well as the charge sheet

(iii) The Order for trial on the charge sheet should be dated by the convening authority.

---

2. May these remarks and the authorities quoted be read by the following Officers, signed and returned to this H.Q., please

O.C. _____

Adjutant _____

President _____

Staff Officer for Convening Officer _____

Staff Officer for Confirming Officer _____

W.M.Shaw

(W.M.W. Shaw), Capt.,
A.D.J.A. 2 Cdn Div

~~Rear~~/DRLS
Encls.

✓ Rear H Q 1 Cdn Corps. (Legal)

4 Cdn Inf Bde: Please circulate, and return

6 Jan 43

RECEIVED
7 JAN 1943
Legal Branch
Cdn. Corps.

L. C. M. 13 - 85.

Lieut. Smith, H. J.

RECORDED AT CMHQ IN A5 160. GenB-85 1

A Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

RECEIVED 22 Mar 45 JAG BRANCH C.M.H.Q.

Proceedings of a General Court-Martial held at 1 CITR

on the 16th day of March 19 45 by order of

Brigadier K.G. Blackader DSO MC ED 20 MAR 45

Commanding Canadian Reinforcement Units

dated the 14th day of March 19 45

President.

Colonel J.A. Wilson 2 CITR

Members.

Major W.E.Dunbar	3 CACRU
Major C.M. Lewis	3 CACRU
Major A.L. Saunders	1 CGRU
Capt J.I. Johnston	3 CACRU

PROCEEDINGS REVIEWED
Rutherford Capt.
11 April 45
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

Capt J. de Billy MC CRU Barrister-at-law Judge Advocate.

Trial of*

Lieut William Jones SMITH
OIC - 1 Can Inf Trg Regt

Medical Certificate

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

The Court satisfy themselves that Capt F.A.Itter is not available to serve owing to illness, and Capt J.I. Johnston 3 CACRU, waiting member takes his place as a member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lieut G.K. Drynan 1 CITR, Barrister-at-law

Friend of Accused Lieut H.W.Purcell 1 CITR

Counsel, or defending officer (See document marked "G")

At 1000 o'clock the Trial commences.

The order convening the Court is read, and is marked "X" signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* No Sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any)
‡ Qualification to be stated.

So illegalities or irregularities such as would warrant withholding confirmation.
(J.W.H.T. Forster) Lt.Col. CMHQ
MAR 24 1945
A/JAG

2.

B

Do you object to W3275 Pte Boorman acting as shorthand writer?
W.3275 Pte Boorman M.E. is duly sworn. Answer No Sir.

The President, members and judge-advocate are duly sworn.

B 2. The following officers under instruction are duly sworn.

Charge-Sheet.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

B. Are you guilty or not guilty of the [first] charge against you which you have heard read? *Question to the accused.*

GUILTY SIR.

B. Sir, there is one point in the Charge that I would like to mention, that is the fact I did not surrender, I was apprehended at Brussels. The certificate of Major Harvey shows that I surrendered, that was not so - I was apprehended at Brussels.

Answer.

B. Are you guilty or not guilty of the third charge against you which you have heard read? *Question.*

Answer.

B. Are you guilty or not guilty of the fourth charge against you which you have heard read? *Question.*

Answer.

The accused having pleaded Guilty to the charge, the provisions of Rule of Procedure 35 (B) are here complied with.

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

B.

3

CHARGE SHEET

The accused, Lieutenant William James Smith, Canadian Infantry Corps, on the strength of 1 Canadian Infantry Training Regiment, an officer of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
SECTION 15(1)
ARMY ACT

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

in the Field in the United Kingdom, absented himself without leave from 0900 hours on the fifteenth day of February 1945 until surrendering himself to Major J.T. Harvey, in the Field, in Belgium, at 1730 hours on the twentieth day of February, 1945.

TOTAL ABSENCE: 5 days 8 hours 30 minutes.

J.D. Forin Lt-col.
(J.D. Forin) A/Comd
1 Cdn Inf Trg Regt.

In the Field.
12th day of March 1945.

To be tried by General Court Martial.

K.B. Blackader
(K.B. Blackader) Brigadier
T/Comd
Cdn Rft Units

Farnborough, Hants
14 March 1945

B-2
Taunton Lg.
16 Mar 45

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 557

Jamieson Col 16/11/44

I certify that I have this morning examined

No. Lieut. W. J. SMITH

of 6 C.I.T.B. and in my opinion he

is ~~unfit~~ fit to undergo Trial by Court Martial.

Station Aldershot Hants A. Kalen Capt

Date 16 Nov 44 Medical Officer

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been recorded and not withdrawn.

[The Court having been reopened, the accused is again brought before it, and the charge to which he has pleaded Guilty" was stated again.]

The accused Lieut William James SMITH CIC - 1 CITR is found guilty of the Charge

†The summary (or abstract) of evidence is read, marked "I" signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. The accused in mitigation of punishment says:—

[He hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]

I want to base my Plea in Mitigation upon the fact I left this Unit, 1 CITR in order to rejoin my Unit, The Calgary Highlanders, and I would like to say why.

I joined my Regiment on approximately 14 Nov and remained with them until 15 Dec. This was not a period of great activity and we were confined to petrol work. I did a great number of these petrols for my Regiment, and in doing these petrols I proved to myself that I had calm nerves, steady nerves, good night vision, and a constitution which would stand up to the rigid life. In fact in my month in the field all I did accomplish was to get my feet on the ground. I had just arrived at that point where I began to feel I was not a green horn, but able to become a real officer.

At that time I was wounded and brought back to England and when I became fit for duty I hoped, and was very anxious,

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

DD

to return to my Regiment, I might say that in fact no other idea had entered my mind. However, when I reported to No. 1 CITR I was informed that it would be necessary for me to do a three month tour of duty. I felt that I had not gained experience, I had not the appropriate knowledge to pass on to recruits being trained at that time. Besides, I was not tired, I was not suffering from battle exhaustion, and I had not been very seriously wounded, and I felt that I could better serve the Army with my own Regiment. Despite my attempts to point this out to the Officers in this Regiment who interviewed me it was made clear that I would do my three months period. When this was made sufficiently clear to me I returned to my quarters, wrote a note to a friend of mine in my Regiment informing him of what I was about to do, went to the Mess, signed out of the book, and caught an airplane to the Continent. At Brussels upon leaving the Aircraft I was stopped by the RAF Security Police because I lacked appropriate personal identification. I went to say again, and impress the Court, that I did not surrender, that I was apprehended and was escorted to Major Harvey of the 1st Echn. As soon as it was established that I was there without permission I was returned to this Country.

When I left 1 CITR I was aware I was breaking regulations, and I was aware the Army would sooner or later catch up with me and I would be dealt punishment, but I hoped I could rejoin my Regiment and get in a few more licks before I became a casualty or before I was withdrawn from the Regiment.

That is all I have to say.

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

Answer

No Sir.

Evidence as to character

J. de B.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is cleared for the consideration of the finding.

The Court finds that the accused

Proceedings on Conviction *before Sentence.*

*When the Court is already open this sentence will be struck out.

The Court being re-opened, the accused is again brought before it

Evidence of character.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the* Witness: Prosecutor,

I produce MTB 395 and MFM 6

The above statements with the schedule of convictions and of cases in which trial has been dispensed with is read, marked Y & Z, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have just read? *Answer by the Witness.*

Question.

Have you compared the contents of the above statements with the regimental books?

Question.

Are they true extracts from the regimental books and is the statement of entries in the conduct sheets a true and true summary of those entries?

Answer.

Cross-examined by the accused.

Question.—If, by reason of the nature of the service of the accused or a departmental order or custom, the finding of the Court renders him liable to any additional punishment or disability in addition to that to be awarded by the Court, the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.* Yes sir

(See document marked "M"

The Court is closed for the consideration of the sentence.

The sentence to be awarded by the Court, being subject to confirmation, will not be announced but will be promulgated later, and the proceedings in open Court are accordingly terminated.

10

F

Sentence.

The Court sentence the accused Lieut William James SMITH Sentence.
CIC - 1 Cdn Inf Trg Regt
to be Dismissed from His Majesty's Service. DISMISSAL

Joseph de B. Kelly, Captain ..... Jamieson, Colonel
Judge Advocate President

In the Field
19 March 45

I reserve the finding and sentence for confirmation.

W Blackader
(W.G.Blackader) Brig.,
T/Comd,
Canadian Reinforcement Units.

20 Mar 45.

I confirm the finding but
I commute the sentence to read
"to be severely reprimanded"
And I confirm the sentence as so
Commuted

P Montague

(P.J.Montague) Lieut-General
Chief of Staff
Canadian Military Headquarters
27 MAR 1945

Promulgated and extracts taken at 1 C.I.T.R. this 3rd day of April 1945.
Published in Confidential Part II Order No.78/3Apr45.

C.B. Ware Colonel
(C.B. Ware) Commander,
1 C.I.T.R.

J.A.B.

"G" 11

I, Lieutenant William James Smith, CIC, 1 CIR, charged under A.A. Sec 15(1) with "Absenting Himself without Leave" declare that I do not wish or require the services of a Defending Officer or counsel on my forthcoming trial by Court Martial.

Witnessed

Signed

14 March 45
Date

J. de B.

"H"

STATEMENT BY ACCUSED:

I would like to point out one thing, and that is I have been Canadian Infantry Corps since the time of my commission 21 Sep 44, and previously I had been in the Artillery, but I voluntarily became Infantry and went through CCTU because I desired Infantry.

That is all sir.

Jamaica Ltd

COURTS - MARTIAL ARMY FORM A 47

FORM OR ORDER FOR THE ASSEMBLY OF A GENERAL OR DISTRICT COURT MARTIAL

.....ORDERS BY ..Brigadier K.G. Blackader DSO MC ED.....

T/Commanding the Canadian Reinforcement Units

Lt William James SMITH
CIC - 1 Cdn Inf Trg Regt (Place & Date) Farnborough, Hants. - 14 March 1945

The detail of officers as mentioned below will assemble at 1 Cdn Inf Trg Regt ..... on the 16th (1000 hrs) day of March 1945 for the purpose of trying by a General Court-Martial the accused person (~~Persons~~) named in the margin (and such other person or persons as may be brought before them)

PRESIDENT

Colonel J.A.Wilson 2 CITR is appointed president

MEMBERS

Major W.E. Dunber 3 CACRU
Major C.M. Lewis 3 CACRU
Major A.L. Saunders 1 CGRU
Capt F.A. Itter 1 CGRU Not available

WAITING MEMBERS

Capt J.I. Johnston 3 CACRU - Takes place of
Capt C.R. Barrett ED 1 CGRU

JUDGE- ADVOCATE

Capt J. de Billy
Barrister-at-Law HQ CRU ~~has been (or where the convening officer has the appointment of a judge-advocate, is hereby)~~ appointed judge-advocate.

The accused will be warned and all witnesses duly required to attend.

The proceedings will be forwarded to Col i/c Adm, HQ CRU

Signed this 14th day of March ~~1944~~ 1945

K.G. Blackader.
(~~J.H. Roberts~~) Brig-Gen
T/ Comd
Cdn Rft Units

17

SUMMARY OF EVIDENCE

In the case of Lieutenant William James Smith, Canadian Infantry Corps, on the strength of 1 Canadian Infantry Training Regiment, an officer of the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on oath.

FIRST WITNESS FOR THE PROSECUTION — Lt-col J.F. Law having been duly sworn, states:

"I am Lt-col J.F. Law, R Regt C, Officer Commanding 1 Cdn Inf Trg Bn, 1 CITR. At approx 0900 hrs 15 Feb 45, I interviewed Lt W.J.Smith, whom I now recognize as the accused, and told him to report to "C" Coy, of this bn. Later on that day, as a result of an enquiry, I found that he had not reported to "C" Coy. I instructed my adjutant to investigate and as a result of this investigation, Lt Smith was reported as absent without leave."

The accused declines to cross-examine this witness.

J F Law Lt-col.
(J.F. Law)

SECOND WITNESS FOR THE PROSECUTION — Lt D.C. Mumby having been duly sworn, states:

"I am Lt D.C. Mumby, Adjutant of 1 Cdn InfTrg Bn, 1 CITR. On the morning of 16 Feb 45 as a result of a report made to me, I checked Lt W.J. Smith's quarters in Albuhera Mess and found that he was not there. I also checked 1 Cdn Inf Dep Bn HQ and Reception and Despatch Wing, 1 CITR, and found he was not there. I carried out the same investigation on the morning of 17 Feb 45 and at approx 1300 hrs on that date reported to Lt Bell, Asst Adm Offr 1 CITR, that Lt Smith was absent without leave. I know Lt W.J. Smith and recognize him as the accused. I did not see the accused until approx 1030 hrs 5 Mar 45."

The accused elects to cross-examine this witness:

Q.1. Which room in Albuhera did you check to see whether or not I was there?
A.1. Room 2.

D C Mumby Lt.
(D.C. Mumby)

THIRD WITNESS FOR THE PROSECUTION — Capt V.R. Schjelderup, MC, having been duly sworn, states:

"I am Capt V.R. Schelderup, MC, 1 C Scot R, and am OC of "C" Coy 1 Cdn Inf Trg Bn 1 CITR. On 15 Feb 45 I was expecting Lt W.J. Smith to report to me or Capt G.D.Turner for duty. He did not report to me for duty on that or any other date. I know Lt Smith and now recognize him as the accused."

The accused declines to cross-examine this witness.

V Schjelderup Capt.
(V.R. Schjelderup)

"I"

continued

20B

19

SUMMARY OF EVIDENCE

In the case of Lieutenant William James Smith, Canadian Infantry Corps, on the strength of 1 Canadian Infantry Training Regiment, an officer of the Canadian Army Overseas.

By direction of the Commanding Officer this summa ry of evidence is taken on oath.

FOURTH WITNESS FOR THE PROSECUTION — Capt G.D.Turner having been duly sworn, states:

"I am Capt G.D. Turner, Calgary Highrs, ZIC of C Coy, 1 Cdn Inf Trg Bn, 1 CITR. On 15 Feb 45 I was expecting Lt W.J. Smith, whom I now recognize as the accused, to report to "C" Coy for duty. He should have reported on the morning of that date. To my knowledge Lt Smith did not report. Lt Smith should have been on the company parade at 0825 hrs on 16 Feb 45 but was not there. He was never on a parade with C Coy after that date."

The accused declines to cross-examine this witness.

G.D. Turner Capt.
(G.D. Turner)

FIFTH WITNESS FOR THE PROSECUTION — Capt E.W.E. Plant having been duly sworn, states:

"I am Capt E.W.E. Plant, Adjutant of 1 Cdn Inf Dep Bn, 1 CITR. I produce certificate in accordance with P.C. 2727 of 10 Apr 42 purporting to be signed by Maj J.T. Harvey, DAAG (Dis) Cdn Sec 1 Echn HQ 21 Army Gp. Pursuant to Overseas RO 5352, this document, which relates to the accused, has been read over and shown to the accused. It is now marked Exhibit A and initialled by me for purposes of identification and attached to this summary of evidence as Exhibit A."

The accused declines to cross-examine this witness.

E.W.E. Plant Capt.
(E.W.E. Plant)

The accused was cautioned as follows: "Do you wish to make any statement or to give evidence on oath? You are not obliged to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence consisting of two (2) pages was taken down by me in the presence and hearing of the accused, and that Rules of Procedure 4(c), (d), (e), (f) and (g) have been complied with.

R.B. Allan Lt.
(R.B. Allan) Officer detailed to take the Summary of Evidence.

In the Field.
7th day of March 1945.

21

6

Certificate Under Army Act Section 163 (1) (1)

I, Major James Teetzel Harvey, DAAG (Dis) Cdn Sec 1 Ech Hq 21 A Gp, certify that Lt. W.J. Smith, Calg Highrs, surrendered himself to me in the field in Belgium at 1730 hrs on 20 Feb 45 as an absentee without leave.

At the time of his surrender he was wearing military uniform.

J. T. Harvey

(J. T. Harvey) Major,
DAAG (Dis)
Cdn Sec 1 Ech Hq 21 A Gp.

In the Field in Belgium.
27 Feb 45.

Exhibit A

100B.

M.F.B. 355
22M—5-41 (372-3)
H.Q. 1772-39-520
A.F.B. 366

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
	Lieutenant	William James SMITH	1 CITR

1. The following is a fair and true summary of the entries in the ~~Service and General~~ Regimental ~~and Squadron, Battery~~ Conduct sheets ~~or Company Conduct~~ sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the ~~Air Force Act~~ Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For ~~military or distinguished conduct~~	times	times
For	times	times
For	times	times
For	times	times

~~Number of instances of military or distinguished conduct~~

~~or~~

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~or~~

~~Previous conviction of the accused by a Court-Martial or a civil court, of summary awards under Air Force Act A.A.A. 74 Section 47 of the Army Act and dispensation with trial under A.A. 43 are set out in the schedule annexed to his statement.~~

3. The accused is not under sentence at the present time.

~~or~~

~~The accused at the present time is under sentence for beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for nil days in ~~Air force~~ civil custody, and 17 days in military custody, making a total of 17 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his record of service is 23 yrs 8 mos. ~~attestation paper is~~

6. The date of his commission specified in his record of service is 4 Dec 41. ~~attestation~~ ~~attestation paper~~ 2 Sept 41

7. The service which the accused is allowed to reckon towards discharge is 3 yrs ~~00~~ days.

8. The accused is entitled to reckon above service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force decoration, or air force reward (or is in military military possession of or entitled to). State any ~~air force~~ decoration or reward. Cdn Vol Service Medal & Clasp.

~~10. (If the accused is a warrant officer.) The accused before he was made a warrant officer (not held Air Force the regimental rank of~~

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11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

..... dated ....., and in his regiment (or corps), the rank of

..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

~~Air Force~~

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank Lt. ~~Unit~~

Name William James SMITH of 1 Canadian Infantry Training Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Capt.

Signed this 16th day of March 1945. (J.H.Galloway) Record Offr 1 CITR

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

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Rank Pte. Name SMITH, William James | Sqn, Battery, or Company | Corps Cdn Inf | Date of enlistment 4 Dec 41 | GC Badges | Service or Proficiency Pay | 3/17 MFM 6 (A.F.W. 122) 40[illegible]/186/15413

Date of last entry in Company Conduct Sheet: Nil | No. and date of last drunk: Nil | Period not reckoning towards freedom from extra fine: N/A | Sheet No One. | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				CERTIFIED NO ENTRIES ON MFM 4.					
				J.H.Galloway Capt. (J.H.Galloway) Offr having custody of regtl documents and books. 8 March 46.					

(PTO) 1 B 3

1 CANADIAN INFANTRY TRAINING REGIMENT
PART II ORDERS
ISSUED BY
COLONEL C.B. WARE, D.S.O., COM'ANDING

LAST ORDER NO. 77 3 APR 45

THIS ORDER NO. 78 3 APR 45

C O N F I D E N T I A L

SECTION "A" OFFICERS

1. PUNISHMENTS

On 16 Mar 45 tried by G.C.M.
CHARGES: (1) AA Sec 15(1) A.W.L. from 0900 hrs 15 Feb 45, to 1730 hrs 20 Feb 45.
FINDING: Guilty
SENTENCE: To be dismissed from His MaJesty's Service.
CONFIRMATION: The finding of the court was confirmed by Chief of Staff, CMHQ, on 27 Mar 45, who commuted the sentence to read "to be Severely Reprimanded" and confirmed the sentence as so commuted.
Lieut William James SMITH

Lieut,
for (C.B. Ware) Colonel,
Commander,
1 CANADIAN INFANTRY TRAINING REGIMENT

/GJR

SECTION "A"(Cont'd)

5. APPOINTMENTS, PROMOTIONS AND RETIREMENTS(Concl'd)

(e) To be graded for pay Cl 11: 30 Jan 45.

Lieut. J.C.Donigon — C.I.C.(A-Dis)

(f) To continue to be graded for pay Cl 7: 1 Feb 45.

Capt(A/Major) M.M.McFarlane — Gen List(MS)

(g) To be graded for pay Cl 9: 10 Feb 45.

Capt R.S.Clark — Gen List(Claims Sec)

(h) Vacates the appt of Consultant in Medicine, 25 Jan 45, and continues to draw extra-rost'l pay to 12 Feb 45.

Col. L.C.Montgomery, C.B.E., M.C., V.D. RCAMC(DMS)

(i) To be Advisor in Psychiatry and to be A/Lt-Col and draw extra-rost'l pay whilst so employed: 6 Feb 45.

Major G.S.Burton — R.C.A.M.C.(DMS)

(j) Vacates the appt of DADMS: 11 Feb 45.

Major D.C.Ferguson — R.C.E.M.E.(Q-AE)

(k) To be Capt and to have seniority in the RCOC from 30 Nov 45.

Lieut(A/Capt) H.M.Epstein — R.C.O.C.(Q-AE)

(l) Ceases to draw extra-rost'l pay on ceasing to be employed at CMHQ(QMG Br): 19 Sep 44.

Lieut(A/Capt) A.C.Mortimer — R.C.E.M.E.

6. SUBSISTENCE ALLOWANCE:

(a) Authorized to draw sub allce as prescribed by Art 794(2)(b) PR&I(O/S) with effect dates indicated:

Lt-Col A.N.Childs	R.C.A.M.C.	12 Feb 45
Col. W.G.Abel	C.A.M.C.	9 Feb 45
Capt Alistair Duncan Cameron	R.C.A.M.C.	15 Feb 45
Major W.J.Smith	C.I.C.	10 Feb 45
Capt. M.R.Carvillo	R.C.O.C.	15 Feb 45

(b) Cease to draw sub allce as prescribed by Art 794(2)(b)PR&I (O/S) with effect dates indicated:

Col L.C.Montgomery, C.B.E., M.C., V.D.	RCAMC	12 Feb 45
Major R.C.M.Smythe	Gen List	19 Dec 44
Major W.F.Carr	R.C.A.	8 Feb 45
Major J.A.Bolford	Gen List	18 Feb 45
Major D.C.MacMillan	R.C.E.	15 Feb 45

Corrigendum: Reference DO 18 d/5 Feb 45 See "A" para 5(b) thereof inasfar as it effects the a/m is hereby cancelled.(Auth MS 6a)

(Major T.S.Perrett)

HR-112

Agmr Smith W. J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B31057 SGMN WILLIAM JOSEPH SMITH 1 CDN DIV SIGS

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 2nd Def(1)	Guilty	Guilty	
2nd AA 3rd Def(1)	Guilty	Guilty	
3rd AA 4th Def	Guilty	Guilty	
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for ..... beginning on (date) ..... (1).~~
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 74 days, ~~of which ..... days were spent in hospital (1).~~
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To remain in confinement for one year.

(Sgd) ..... Judge-Advocate, if any. 25 Jan 1945 Date awarded. (Sgd) [signature] President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 740.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further orders (1).~~
(1. AA 57A. Delete if not used.)

(Sgd) A.D. Mellenie Lt Col

Date 27 Jan 45 Commanding C.R.C.M.S. 1 Cdn Div Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B31057 Sgmn William Joseph Smith 1 Cdn Inf Div Signals	29 Jan 45	F. Harrison Capt Admin Offr 1 Cdn Div Signals

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 4R-112

FIELD GENERAL COURT-MARTIAL

4/38B

Convened by Order of HQ 1 Cdn Inf Div dated 23 Jan 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number. (a) Prmnt R. (b) Appmt, A/R or A/Appmt. Full Christian Names. Surname. Unit.

B31057 Signmn William Joseph Smith 1 Cdn Sig Regt

PROCEEDINGS REVIEWED

PROCEEDINGS OF TRIAL.

Held in the Field (Country) on (date(s)) 25 Jan 1945

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) ~~(is)~~ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (~~are~~) brought before the Court. At 0930 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (~~are~~) fit to undergo trial by court-martial ~~instead of being tried with summarily by the CO~~.(1)
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being tried with~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ..... as interpreter? Ans .....~~
~~The Interpreter is sworn(1).~~ Do you object to ..... as shorthand writer? Ans .....
~~The shorthand writer is sworn(1).~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	R.L. McInerney	3 C.I.B. RCASC
Member	Capt	C.O. Beatty	SASK L.I.
Member	Lieut	A.I. Curliss	1 Cdn Div Sigs
Judge-Advocate	N/A		
Prosecutor	Lieut	E.S. Latta	1 Cdn Div Sigs
Defending Offr	Capt	F.M. Reardon	1 Cdn Div Sigs

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans No.(2)

(1. RP 28, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (3) and fn 2 were not followed. See G1 p 3.)

A8. The accused B31057 Sgmn William Joseph Smith before arraignment make(s) (no) (~~an~~) plea.

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (~~are~~) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~not~~) object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records that ~~no~~ pleas in Part I of the Schedule.

(1. RP 30, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

C.86 A5/98

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans Yes, sir. (5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 3 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ~~record~~ charge(s). The accused is (are) so informed, and he (they) ~~change~~ change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty ~~is (are)~~ A, B & C not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin Row Upon Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *Ftn, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See M M L p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes at Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*d*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans No, sir.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 6, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB* 253 *or AFB* 294. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans No, sir.
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(*c*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566. *Overseas RD* 309, 1323, *MML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1*B*), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused B31057 Sigmn. William Joseph SMITH, 1 Canadian Infantry Divisional Signals, a soldier of the Canadian Army Overseas, Central Mediterranean Forces, when on Active Service, is charged with:-

First Charge
AA Sec 15(1)

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE

in that he,

in the Field, absented himself without leave from 2200 hours 10 Dec 44 until apprehended by 43 Coy CMP (TC) 1015 hours 24 Dec 44. (Absent 13 days, 12 hours, 15 minutes)

Second Charge
AA Sec 15(1)

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE

in that he,

in the Field, absented himself without leave from 2130 hours 24 Dec 44 until 0900 hours 13 Jan 45 (Absent 19 days 11 hours, 30 minutes).

Third Charge
AA Sec 40

WHEN ON ACTIVE SERVICE
CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he,

in the Field, on 24 Dec 44 at approximately 1010 hours was improperly in possession of a WD vehicle Dodge 15 cwt No.4977795 on charge to No.102176 Captain T.NOWAK, 344 Polish Advance Depot of Medical Stores.

Dated in the Field
this 21 day of January
1945.

(B.W. Grover) Lt.-Col.,
Officer Commanding,
1 Cdn Inf Divisional Signals.

To be tried by Field General Court-Martial

In the Fd
21 Jan 45

Lt-col
CMMK 1 Cdn Div

A Cdn.

CFA95 (In lieu of AFA3)
40/FA3/1697 (2968)

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B.31057	Sigmn	William Joseph	SMITH	1 Cdn Div Sigs

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 23 Jun 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

DWW

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	B L Montgomery		A/CGS Coy BGASC

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
	A Captain to be detailed by CC Bank LY	
	A Lieutenant to be detailed by CO 1 Cdn Div Sigs	

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)
	A Capt or Lt to be detailed by CRASC 1 Cdn Div	

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy (Country.)

Date 23 Jun 45

(Signed personally. RP 105 fn 2.)

(Rank.)

~~Commanding~~ A Brigadier

Convening Officer.

CRASC 1 Cdn Div

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use at trial.)

R Copy

MEDICAL OFFICER'S CERTIFICATE
(AR (Can) Para 557)

I certify that I have this morning examed No. B.31057
Sigmn William Joseph SMITH, 1 Can Div Sigs, and in my
opinion he is fit/~~unfit~~ to undergo trial by Court-Martial.

Medical Officer

In the Fd
25 Jan 45

Unit: 9 L F A

Ex "A"

SUMMARY OF EVIDENCE IN THE CASE OF

B 31057 Sigmn. Smith, William Joseph, 1 Canadian Infantry Divisional Signals, R. C. Signals.

The Commanding Officer directs that the evidence be taken on oath.

1st Witness for prosecution D116129 Cpl. Romney, J.H., 1 Canadian Divisional Signals, RC Signals, having been duly sworn, states:-

At 2200 hours, 10 Dec 44, I went on my regular tour of duty and I found that B31057 Sigmn. Smith, W.J. was absent I reported the matter to C.Q.M.S. Farr.

On the 13 Jan 45, after breakfast I was told that Sigmn. Smith had been seen in one of the billets occupied by "Q" Section personnel. I went to the billets at 0900 hours and found Sigmn. Smith. I noted that he was properly dressed and not under the influence of drink. I immediately placed him under close arrest and then reported the matter to the Company Sergeant Major.

The accused declines to cross-examine the witness.

J. William J. Romney

2nd Witness for prosecution 5627094 Sgt. O. Johnson, 43 Company, Corps of Military Police(Traffic Control)

I certify that, in my opinion, the attendance of this witness is, due to the exigencies of the Service, not readily procurable, and a written statement of his evidence, purported to be signed by him, has been read to the accused and is attached hereto as Exhibit "A"

E.S. Farr Lt

3rd Witness for prosecution No.102176 Captain Nowak, T., 344 Polish Advance Depot of Medical Stores

I certify that, in my opinion, the attendance of this witness is, due to the exigencies of the Service, not readily procurable, and a copy of his evidence, purported to be signed by him, has been read to the accused and is attached hereto as Exhibit "B"

E.S. Farr Lt.

4th Witness for prosecution 2653452 C.S.M., E.J. Adams, 43 Company, Corps of Military Police(Traffic Control)

I certify that, in my opinion the attendance of this witness is, due to the exigencies of the Service, not readily procurable, and a copy of his evidence purported to be signed by him, has been read to the accused and is attached hereto as Exhibit "C"

E.S. Farr Lt.

The voluntary statement made by the accused and mentioned in Exhibit "C" has been read to the accused and is attached as Exhibit "D"

Certificate of apprehension of accused has been read to the accused and is attached hereto as Exhibit "E".

E Stanna Lt.

I do not require the attendance of the 2nd, 3rd, or 4th witnesses for the purpose of cross-examination.

H J Smith

5th Witness for prosecution

B127541 Sigmn. Gordon, G.S. 1 Canadian Divisional Signals having been duly sworn, states:-

When I was leaving 4 Bn., 1 CBRGrp on draft to 1 Cdn Div Signals at approximately 1630 hours 24 Dec 44, the C.S.M. of "E" Coy handed over to me B31057 Sigmn. Smith, W.J. to go along with me on draft. His papers were handed to Lieut. Armstrong. On the outskirts of RIMINI Sigmn. Smith jumped out of the truck when the truck was travelling about 15 m.p.h. This happened at about 2015 hours 24 Dec 44. Our draft arrived at 1 Cdn Corps Reception Camp in CESENATICA at approximately 2130 hours 24 Dec 44, at which time I immediately reported to the Officer i/c incoming drafts that Sigmn. Smith had jumped out of the vehicle. I didn't see Lieut. Armstrong that evening but reported the above facts to him first thing the following morning 25 Dec 44. Lieut. Armstrong said that he would report these facts re the illegal absence of Sigmn. Smith when he turned in the draft papers.

The accused declines to cross-examine the witness.

G. I. Gordon

6th Witness for prosecution

A2147 CQMS McHardy, R.J., 1 Canadian Divisional Signals.

I certify that, in my opinion, the attendance of this witness is, due to illness, not readily procurable, and a written statement of his evidence, signed by him has been read to the accused and is attached hereto as Exhibit "F".

E Stanna Lt.

I do not require the attendance of the 6th Witness for the purpose of cross-examination.

H J Smith

The accused was cautioned as follows:-

Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but, whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

After the above caution, the accused elected to make a statement which is attached hereto as Exhibit "G".

The accused does not call any witnesses for the defence.

I certify that the foregoing Summary of Evidence consisting of three pages was taken down by me in the presence of the accused this 16 Jan 45, and that the Rules of Procedure 4 (c) (d) (e) (f) have been complied with.

In the Field
16 Jan 45

E. L. Lowe Lt.

(EXHIBIT "A")

Statement of No.5627094 Sgt. C. JOBSON, 43 Coy, CMP (TC),

States:-

I am a Sgt in the above unit. At about 1015 hrs. SUNDAY 24th DECEMBER 1944, I was visiting duties in PESARO.I was proceeding along the VIALE DELLA VITTORIA, ROUTE 16 in a NORTHERLY direction. Upon reaching the junction of VIALE DELLA VITTORIA with VIA FIUME, I was stopped by a Polish Officer, CAPT. NOWOK of the 344 Polish Advanced Depot Medical Stores, who requested me to detain a Canadian soldier who had attempted to steal his vehicle, a Dodge 15 cwt WD No. Z4977795, which was parked by the roadside. At this sta 29, I observed a Canadian soldier running in a NORTHERLY direction along the VIA FIUME, I therefore pursued him in my vehicle and detained him. He was identified by the Polish Officer as the soldier who had drove his vehicle away. Upon interrogating the soldier, he admitted his intentions of stealing the vehicle for the purpose of returning to his unit, and offered, as an explanation, the fact that he had been drinking.His breath smelt strongly of intoxicating liquer, but he was only able to produce his AB. 64 Part II, Identity Documents, he was only able to produce his AB. 64 Part I. His particulars are No.B31057 Sigmn. SMITH, W.J., 1st DIVISION CANADIAN SIGNALS, RCCS. I then apprehended him and conveyed him to my Company HQ, and reported the occurrence to CSM. ADAMS, C.M. POLICE and was later interrogated by him.

(Signed) C. JOBSON. Sgt.

Original Statement and Signature in my AB. 466.
Statement given to No. 2654452 CSM. E. Adams,43 Coy,CMP(TC) at 1445 hrs., SUNDAY 24th DECEMBER 1944.

CERTIFIED TRUE COPY

Jan 45

(E.S. Latta) Lieut.,
Officer detailed to Take
Summary of Evidence,
1 Cdn Inf Div Signals.

(EXHIBIT "B")

STATEMENT

Statement of No. 102176 CAPT. NOWOK, T, 344 POLISH ADVANCE DEPOT OF MEDICAL STORES.

States:-

On the 24th DEC 44 at about 1015 hrs, I was proceeding to Church, and was standing at the door of my billet, when I saw, in the MAIN STREET, PESARO, my truck No. 4977795 DODGE 15 cwt being driven from the Unit Car Park, which is situated on the opposite side of the road to my billet, by an unkown soldier. I immediately ran to stop him, and was about 15 YARDS away from it, when it came to a standstill, owing to the fact that it was partially immobilised. On reaching the vehicle the soldier who had been driving it, was standing by the offside door. I asked him what he was doing with my vehicle. He replied "I just wanted to go for a short journey". I then ordered him to get back into the truck and told him that I would hand him over to the Military Police and report him for stealing my vehicle. He replied "I do not want to go", and refused to get into the truck. He then ran away, but was caught by a Sgt of the Military Police, who was passing at the time.

(Signed) T. NOWOK, Capt.
No. 102176

I have read over the above Statement and what I say is true.

(Signed) T. NOWOK. Capt.

Statement taken by No. 5627094 Sgt. C. Jobson, 43 Coy, CMP(TC) at about 1300 hrs, SUNDAY 24th DECEMBER 1944.

CERTIFIED TRUE COPY

16 Jan 45

(E.S. Latta) Lieut.,
Officer detailed to take
Summary of Evidence,
1 Cdn Inf Div Signals.

(EXHIBIT " C")

REPORT

SUBJECT:- No. B31057 SIGMN SMITH, W.J., 1st CANADIAN DIV SIGNALS.

To - Officer Commanding,
43 Company, CMP(TC).

Sir,

I have to report that at about 1115 hrs SUNDAY 24 DEC 44 I was on duty at Company HQ, when No. 5627094 SGT JOBSON,C.,C.M.POLICE(TC) reported to me that he had in his custody a Canadian Soldier B31057 SIGMN SMITH,W.J., 1st CANADIAN DIVISION SIGNALS,R.C.C.S., whom it was alleged that he had attempted to steal a WD DODGE 15 cwt vehicle No.Z4977795 from VIALE DELLA VOTTORIA, PESARO, at about 1010 hrs this date by a CAPT NOWOK,T., 344 POLISH ADVANCE DEPOT O F MEDICAL STORES.

Upon my interrogating the soldier in question, and asking him what he had to say, he replied "I have been drinking Sgt Major and don't feal capable of offering any explanation; could you see me later". At this stage I formed the opinion that he had been drinking. His breath smelt strongly of intoxicating liquor and his speech was slightly incoherent and was not in my opinion in a fit state for interviewing. He was not however, drunk.

At 1315 hrs I again saw the prisoner. The effects of the alcohol had worn off and he appeared to be quite normal. I spoke to him and asked him what he knew about the allegations in respect to the attempted theft of a WD vehicle. He replied "I don't know why I did it because I could easily have go t a lift". At this stage I administered the usual caution "You are not obliged to say anything unless you wish to do so, but what you do say will be taken down in writing and may be used in evidence". He then elected to give a voluntary statement which I took down in writing in my AB 466 and which he signed after having read it over to him, a copy of which is attached hereto.

On being cautioned and charged with the offence, he replied "I had been drinking and was full of devilment".

He also admitted being an absentee from his unit(see attached voluntary statement) and having stayed with friends at RICCIONE and FANO. He is now detained awaiting to be handed over to the Canadian authorities.

Statements from complainant CAPT T.NOWAK and SGT JOBSON are attached hereto.

Field
24 Dec 44. (Signed) 2653452 E.J.Adams C.S.M., C.M.Police.
43 Company T.C.

CERTIFIED TRUE COPY

16 Jan 45

(E.S. Latta) Lieut.,
Officer detailed to take
Summary of Evidence,
1 Cdn Inf Div Signals.

(EXHIBIT "D")

Statement of No. B.31057 PTE. SMITH W.J., 1st CANADIAN DIVISION SIGNALS, R.C.C. Signals.

States:-

I am a Pte soldier in the above unit and I fully understand the caution administered to me by No. 2653452 CSM. E.F. ADAMS, C.M.POLICE, in that I am not obliged to say anything unless I wish to do so, but what I do say will be taken down in writing and may be used in evidence. I make this statement quite voluntary.

(Signed) W.J. SMITH.

My unit is stationed at VILLANOVA DI RAVENNA, about 20 Kilometres SOUTH-WEST of RAVENNA. Sometime during the morning of FRIDAY 15th DECEMBER 1944, I proceeded to RICCIONE to see a pal of mine, a Canadian soldier. I did not actually receive permission, but I knew I was covered for the day. Well, we had a party and lots of drink, one thing led to another and eventually I got a little under the influence and finished up by staying the night at RICCIONE. The following morning, SATURDAY 16th DEC, when I awoke, I had every intention of returning to my unit. However, my friend and a bunch of other Canadian boys eventually persuaded me to stop for another couple of hours. We had some more drinks and I got drunk again and stopped the night, the next day and night, and left for FANO MONDAY morning 18th DEC 1944, after being more or less, drinking most of the time. I obtained a lift to FANO, and upon my arrival there I proceeded to a Civilian house, where I stopped with an Italian family whom I know very well, until SATURDAY morning 23rd DEC, when I obtained a lift and came back to PESARO. I spent the day and night in PESARO, with a pal out of the RASC. I dont know the name of the unit, or the correct name of my pal, except that I call him 'Taffy'. We went to a dance in the evening in the CPLS MESS and we had quite a lot to drink. This morning SUNDAY 24th DECEMBER, I awoke still feeling the worse for wear, and we had some more to drink. I had a bottle of beer and a full Litre bottle of Spumanti Wine. By the time I had drunk this, I was beginning to feel a little under the weather again, so I decided to leave PESARO and return to my unit as I thought I had been away long enough. I therefore wished my friend goodbye and proceeded on my way. I walked along the VIALE DELLA VITTORIA in a NORTHERLY direction until I reached the junction with VIA FIUME where I saw a stationery 15 cwt DODGE WD Vehicle parked by the road-side, on its wrong side of the road, facing SOUTH. There was no one there looking after it. I don't know what really happened or why it happened but I got into the vehicle and decided to borrow same and proceed back to my unit in it. The engine started up quite easily and I drove away. I had hardly gone 20 YARDS before it stopped. At this stage, a POLISH Officer came up to me and asked me if it was my truck. I got out of same and told him it wasn't mine. The Officer then tried to detain me, but I didn't want any trouble, so I walked away in a NORTHERLY direction. I was just about to get a lift when I was detained by a Military Police Sgt. I don't know why I wanted to take a vehicle, because I could have quite easily got a lift. It was a very foolish thing to do. I would never have done a thing like that if I had been sober.

(Signed) W.J. SMITH.

I have read over this Statement and what I say is quite true.

(Signed) W.J. SMITH.

Original Statements and Signatures in my AB. 466.
Statements taken by No. 2653452 CSM. E. Adams, 43 Coy, CMP(TC) in the presence of No. 1455262 Sgt. F. Hill, CMP (TC), at 1315 hrs, Sunday 23rd December 1944.

CERTIFIED TRUE COPY

16 Jan 45

(E.S. Latta) Lieut.
Officer detailed to take
Summary of Evidence
1 Cdn Inf Div Signals.

Exhibit E 6th

Certificate in accordance with the Army Act Sec. 163 (1) (ii)

I certify that

No B31057 Rank SIGMN Name SMITH, W.J.

of the 1st CANADIAN DIVISION SIGNALS

was arrested at PESARO at 1015 Hrs.,

on the twenty-fourth day of December 1944

Signature of P.M., A.P.M., or other Officer into whose custody the above named person was taken on arrest. } Rank Capt.

Appointment (if any) O.C.

Commanding 43 Company, CMP(TC).

Date 24 Dec 44

PSS2 (W) AM 7-44

(EXHIBIT "F")

13 Jan 45 Rcm.

O.C. HQ Coy
1 Cdn Inf Div Signals

Sir:

On the evening of 13 Jan 45 I checked the kit of B.31057 Sigmn. Smith, W.J. and found him to be deficient the following items of Clothing and Necessaries:-

1 Brush shoe polishing	@	1 1	1 1
1 Combs hair	@	- 2	- 2
1 Dressing first field	@	1 1	1 1
1 Housewife	@	2 3	2 3
1 Knife Clasp	@	3 2	3 2
1 Knife Table	@	- 9½	- 9½
1 Lanyard	@	- 1½	- 1½
1 Spoon N.S. dessert	@	- 4½	- 4½
1 Bags ration	@	- 2½	- 2½
1 Helmet steel	@	10 ½	10 ½
1 Tins mess rect	@	3 1	3 1
Total			£ 1-2-4½
Less 25%			5-7
Total			16-9

(Signed) (R.J.McHardy)C.Q.M.S. A.2147
"Q" Sec, 1 Cdn Inf Div Signals

CERTIFIED TRUE COPY

16 Jan 45

(E.S. Latta) Lieut.,
Officer detailed to take
Summary of Evidence
1 Cdn Inf Div Signals.

EXHIBIT G.

STATEMENT MADE BY B-31057 SIGMN. SMITH, W.J. 12 Can

While I was in 15 General Hospital I was examined by a Major for a nervous condition and was told to report to the Medical Officer the next morning. In the meantime I was sent out on draft and was told that my papers would be forwarded. I am a very nervous person and in moments of stress lose some control over my actions.

(Signed) W.J. Smith W.J. Smith

~~CERTIFIED TRUE COPY~~

16 Jan 45

E.S. Latta
(E.S. Latta) Lieut.,
Officer detailed to take
Summary of Evidence.
1 Cdn Div Signals

Ex "B" 1 (2)

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B31057	Sigmn	William Joseph, SMITH	- 1 Cdn Inf Div Signals

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A.A. Sec. 15(1) 6 times.

For A.A. Sec. 19 (Drunkeness) 15 MAR 44 1 times.

For A.A. Sec. 40 1 times.

For A.A. Sec 24(2) Losing by neglect 1 times.

Date of first entry in Field Conduct Sheet 2 Oct 40

Date of last entry in Field Conduct Sheet 13 Jan 45.

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. ~~The~~ accused at the present time is under sentence for

beginning on the day of

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for B 12 days in military custody, *i.e.*, Nil days in open arrest, B 12 days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 23 years

6. The date of his ~~calling up for military service~~ attestation is 9 Sep 39

7. The service which the accused is allowed to reckon is 5 years 3 months 1 day.

State the military decorations (if any) held by accused.

8. The accused is in possession of 1 C.V.S.M.&C. and 1939-43 Star.

9. *(If the accused is a warrant officer or N.C.O.)* The accused has served continuously, without reduction, to the present date—

Date of Promotion.

In the substantive rank of

In the war substantive rank of

In the acting rank of

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(E1154) W1-26770-668 100,000 4/42 A.& E.W.Ltd. Gp.A/69
(35429) W1 22024-1572 80,000 9/42 " " Forms/B.296(War)/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 18th day of January 1945

(B.H. Grover) Lt.-Col.,
Officer Commanding,
1 Cdn Inf Div Signals.

Ex-C

FIELD CONDUCT SHEET.

Date of Enlistment 9 Sep 39 — Army Form B122 Sheet No. 1

*No. B31057 Name Smith, W.J. — Sq., Battery, or Company — Corps RCOS

Date of last entry in Company Conduct Sheet — No. and date of last drunk — G.C. Badges: Nil — Long Service and G.C. Pay — Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded and Remarks
Field	2.10.40	Sgn		AA 15(1) AWL from 2230 hrs 2 Oct 40 to 2230 hrs 3 Oct 40(absent 2days		7 days pay	7 Oct 40	2 days pay FR&I 149(1)(a)
Field	27 Dec40	Sgn		AA 15 (1) AWL		4 days F.P.& forf 4 days pay	27 Dec 40	1 days pay FR&I 149(1)(a)
Field	3 Jan42	Sgn		AA 15(1) AWL 11 hrs 30 mins		Nil	3 Jan 42	1 days pay FR&I 149(1)(a)
Field	27 Apr42	Sgn		AA 15(1) AWL 1 day 6 hrs		10 days F.P.& forf 14 days pay	28Apr42	2 days pay FR&I 149(1)(a)
Field.	28Sep43	Sgn		AA 15(1) AWL 1 day 23 hrs		forf 6 days pay	29Sep43	2 days pay FR&I 149(1)(a)
				CERTIFIED TRUE EXTRACT FROM MFM.4. (Signed) (W.H. Laughlin) Lieut:				

*Serial Number in case of enemy prisoner of war

P.T.O.

(22403) Wt 31378—1589 200M 10/42 D.L. G. 31

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded and Remarks
Field	13Mar44	Sigmn.	(1)	WOAS drunkeness, having been previously warned for duty .A.A.Sec 19(1st offence)	Lieut.Kerwin Sgmn.Fernie L/Cpl.Ferrier Cpl. Follows.	Admonished & awarded 7 days C.B.	15Mar44	Major Hanna 2 i/c 2 Fd.
Field	9Jun44	Sigmn.		Was on 26 Sep 44 awarded for two offence (1) under AA15(1) AWL and (1) under AASec 40(Absent 20 days 4 hrs 15 mins)		28 days FP Forf.14 9(1)(a) (1) 88 dye pay.	26Sep44	Forf 21 dye pay FRAI 149(1) (a) Forf.28 dye pay FRAI 149(2) Forf.88 dye pay FRAI 149(1)(a)(1)
							Total Forf.of 137 days pay.	
Field	13Jan45	Sigmn.		AASec24(2) WOAS losing by neglect, clothing, equip. and regimental necessaries.	Documentary	Placed under stoppages of pay 16/9. FRAI 158(2)	20Jan45.	Lt.-Col., B.W. Grover.

CERTIFIED TRUE COPY

21 Jan 45

(H.J. Mawson) Captain,
Officer in Custody of Original Documents.

CCC-88 (Case #3)

TPR SMITH W.J.W.

See II-75 for 1st case

" RR-60 - 2nd -

CCC-88

FIELD GENERAL COURT-MARTIAL

CFA86 (In lieu of AFA33) A.C.I.P. No. S.1808 (3804)

Convened by Order of Brig T. J. Rutherford Comd "E" Gp, CRU dated 11 Feb 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 14, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
A-22141	Tpr	William John Wallace	SMITH	1 CACRU

PROCEEDINGS REVIEWED

Robertson Capt
for D.J.A.

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 11 Feb 44.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED IF NOT USED OR APPLICABLE AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant Fms RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1130 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 44(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused~~: Do you object to ~~an interpreter~~ ? Ans ~~_____~~

~~The Interpreter is sworn.~~(1) Do you object to ~~a shorthand writer~~ ? Ans ~~_____~~

~~The shorthand writer is sworn.~~(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court ? Ans No Sir.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt. Col	D.L. Rehman, V.D.	HQ C.R.U.
Member	Capt.	L.W. Bovaird	2 CACRU
Member	Capt.	C.R. Gryde	3 CACRU
~~Judge Advocate~~			
Prosecutor	Lieut.	R.B. Allan	1 CACRU
Defending Offr	Capt.	A.A. Hassett	1 CACRU

Questions by President: Is the Prosecutor a lawyer ? Ans. No Is the Defending Offr a lawyer ? Ans. No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See GI p 33.)

A8. The accused ~~_____~~ before arraignment make(s) (no) ~~_____~~ plea (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or on bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 136, RP 37), or by one of several accused charged jointly to be tried separately (RP 18, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does ~~not~~ object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 63; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is cleared and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A-22141 Tpr William John Wallace SMITH 1 CACRU

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15(1)	Guilty	Guilty	
2nd				
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ 1 ~~_____~~ beginning on (date) ~~_____~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 10 days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To undergo A detention per a period of One Hundred and Twenty (120) days and to be put under stoppages of pay until he has made good £ 1-6-4 the expenses of his arrest and return

(Sgd) ~~_____~~ Judge Advocate, if any. 11 Feb 44 Date awarded. (Sgd) [signature] President. (See AA 49, RP 105)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ~~_____~~ (Sgd) ~~_____~~ Commanding ~~_____~~

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 56, 57, RP 37(D) fn 6, 40(A), 54-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Finding and sentence confirmed.

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~(1) JJR

(1. AA 57A. Delete if not used.)

Date 12 Feb 44 (Sgd) J.K. Rutherford Brig

Commanding E Gp C.R.U.

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
A-22141 Tpr W.J.W. SMITH	15 Feb 44	[signature] 1 CA R/Adj

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *securing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA~~, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. NO SIR (5)
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charge on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D6.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. ..... Do you intend to call witnesses on your behalf? Ans. ..... Are they witnesses as to character only? Ans. .....
(*1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A93. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(3) (d), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. NO - I'll
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 27(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier's having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(*1. MFB 255 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 559. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Only by my H of Officer NOT ATT
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on with anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) 7/10/69
(*1. When several accused tried separately see RP 94(E). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, (1)B, (1)E, RP 46-50, 69, 118, 119(A), KR Can 306, 330, 343-346. Overseas RO 309, 2323, MML p 66, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(2), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)B, 66(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

C H A R G E S H E E T

The accused, No. A-22141 Tpr William John Wallace SMITH on the strength of No. 1 Canadian Armoured Corps, Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with,

1st Charge
Section 15(1)
Army Act

"WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE"

in that he,

in the Field on the 25th December 1943, did absent himself without leave from 2200 hours until he surrendered himself to the Civilian Police, Coventry, in Military Uniform, at 0825 hours the 2nd February 1944, thereby incurring costs in the amount of One Pound, Six Shillings and Four Pence (£1.6.4), the cost of returning him to his Unit.

Total Time absent:- 38 days, 10 hours and 25 minutes.

A. T. Paterson

A. T. PATERSON, Lt.-col
Commanding Officer,
No. 1 Cdn Armd Corps,
Reinforcement Unit.

In the Field,
8th February, 1944.

To be tried by F.G.C.M.

In the Field
10 Feb 44

(T.J. Rutherford) Brigadier
Comd "E" Gp CRU

FIELD GENERAL COURT-MARTIAL

CFA98 (In lieu of AFA8)
40 P&S 6507 (2668)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 103(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A-22141	Tpr		William John Wallace	SMITH	1 CACRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 11 Feb 44 endorsed by me, "~~as disclosing an offence triable by a Field General Court-Martial~~". To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~and that it is not practicable to delay the trial for reasons of a military character~~.
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed above or detailed hereunder.

4. ~~Pursuant to para 49 of the Army Act I hereby appoint the following officer to be the Judge-Advocate at the trial of the said accused person.~~
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. ~~I also appoint as Judge-Advocate thereat the Offr whose name is thereunder.~~
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt.-Col	D.L. Redman, VD	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	to be detailed by OC 3 CACRU	3 CACRU
Capt	to be detailed by OC 2 CACRU	2 CACRU

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England
(*Country.*)

Date 11 FEB 44

(*Signed personally, RP 105 fn 2.*)
(T. J. RUTHERFORD) Brig
Commanding "B" Gp, CRU
(*Rank.*)
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(*See overleaf for oaths and notes for use on trial.*)

MEDICAL OFFICER'S CERTIFICATE
K.R. (Can.) Para. 557

I certify that I have this morning examined No. A-221411

Name Pte. SMITH W.W. of R.C.A.S.C. and in my opinion he is

fit/~~unfit~~ to undergo trial by Court-Martial.

Station in the field.

Date 1 Feb - 1944

M.C. Yates Capt
Medical officer R.C.A.M.C.

TM

11 Feb 44

Plea of Mitigation NOTE E-3 MM

Case of A 22141 Tpr Smith W J. W. on trial by F.S.C.M. at 1 CACRU on 11 Feb 44, charged with absenting himself without leave.

Tpr Smith ~~enlisted~~ volunteered for active service on 11 april 1940 stating his age to be 19 whereas he was in reality 17 years old. Despite his extreme youth he ~~was~~ served as a soldier in a creditable manner until 2 Oct 42 when he was allegedly ~~advised~~ directed by his unit padre to marry one Florence Gallop of Hastings. Florence Gallop, according to reputation among the other ranks of 3rd Cdn Recce Regt, had become pregnant during a session of promiscuous living and endeavoured to single out Tpr Smith as the father of her expected child. From that day onward Tpr Smiths military character completely reversed. At the age of 21 he had been saddled for life with a social stigma, a financial burden, and a constant state of disharmony through being married to a woman he could neither respect nor live with comfortably.

On the 4 Oct 43 I was called to Border, Hants to appear as character witness for Tpr Smith at his second court martial. He had gone AWL as a result of finding his wife spending a weekend in London with an American soldier. On that occasion I placed before the court a detailed account of the circumstances sketchily outlined above and made a strong recommendation that this case be thoroughly investigated. Smith went to detention and paid his debt to the canadian army, but what has been done by the Canadian army to investigate or rectify the damage done to Smith? So far as Smith or I know there has been nothing done to date.

Having served his time in detention Tpr Smith was T.O.S. no 1 CACRU. where I ~~was~~ arranged a job for him as a motorcycle instructor. This job he performed

well, with his customary enthusiasm and ability until the end of 1 November 1943. About 5 Dec 43 he was granted 14 days Privilege Leave. ~~He~~ ~~stated~~ Before leaving camp Tpr Smith told me he was going to Hastings to try and ~~get~~ arrange some decent basis for the upbringing of the child he had come to regard as his own. On the evening of the second day of his leave Smith returned home to find the door locked. His wife put her head out a window and told him to leave, that ~~she~~ they were through living together and she never wanted to see him again. Smith went away; and stayed away thirty eight days too long with the result he is again faced with a court martial for absenting himself without leave.

In summing up the facts are these, Tpr Smith served under me for several ~~years~~ months in the 8 Cdn Recce Regt. I have never known his equal as a troop despatch rider nor a more popular member of a troop, prior to October 1942. Now he is a soldier with a very extensive crime record attributable directly to military officials attempting to dictate the terms of his private and social status without proper consideration of the circumstances.

R. H. Hassett Capt.
1 C.A.C.R.U.

I, produce herewith Exhibit "A"Certfied True Copy of the Record of Declaration of A Court of Inquiry, showing that A-22141 Tpr. Smith, W.J.W. absented himself without leave at 2200 hours the 25th Dec 43.

K.B. Allan, Lt

R.B. Allan, Lieut.,
Officer detailed to take
Summary of Evidence.

RECORD of the Declaration of a Court of Inquiry assembled at The Field on the 27th day of January 1944, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No.

DECLARATION.

The Court declare, that A-22141 Tpr. Smith, W.V.W. of No.1. C.A.C.R.U. illegally absented himself without leave at the Field at 2200 hours the 25th Dec 43 and that he is still so absent, and that on the 16th Jan 44 he was deficient and that he is still so deficient the following articles:-

	Voc. Price	Unex. W.
Badges, cap, 1	₹0.09	₹0.09
B.D. Trousers, 1	5.25	3.94
Boots, ankle, 1	5.46	4.11
B.D. Blouse, 1	5.39	4.02
Brushes, polish, 1	.28	.21
Drawers, wool, 2	2.40	1.80
Fork, table, 1	.07	.07
Knife, table, 1	.15	.15
Spoon, table, 1	.07	.07
Knife, calsp, 1	.86	.86
Shirts, flannel, 1	2.03	1.52
Vests, woolen, 2	2.40	1.80
Socks, pairs, 2	.74	.56
Shorts, gym, 1	.43	.33
Sheets, ground, 1	2.94	2.11
~~Respirators, A.R.P.~~		
Haversack, A.F., 1	1.42	1.09
Face Piece, 1	2.33	1.75
Container, 1	.93	.70
	₹ 33.24	₹ 25.18

Names of President and Members: Capt. D.P. Stewart, President No.1.C.A.C.R.U.
Lieut. R.B. Allan, Member No.1. C.A.C.R.U.
Lieut. W.D. McDonald, Member No.1. C.A.C.R.U.

"CERTIFIED TRUE COPY OF ORIGINAL DOCUMENT UNDER MY POSSESSION"

C.A. DAVIS, Capt & Adj.
No.1. C.A.C.R.U.

Signature of Commanding Officer A.T. Paterson, Lt.Col.

41-7224. Wt. 16132. 2,500 Bks. 1/45. D.F.W.

RECORD of the Declaration of a Court of Inquiry assembled at on the day of 19 , for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No.

DECLARATION.

The Court declare,

Names of President and Members :

Signature of Commanding Officer

W1-7054. Wt. 10120. 3,000 Bks. 1/40. D.F.W.

I CERTIFY that the man whose personal description is given below surrendered himself to* Sergt 124 BOLLEN at Coventry at (hour) 8.20 AM on the 2nd day of Feb. 1944 as being No A 22141 (Rank and Name) Gr. Wm John Wallace SMITH a deserter (or absentee without leave) from Canadian Armoured Corps and it appears to me from his confession that he is a deserter or absentee without leave.

* After the word "to" to be inserted the name and rank of the police officer concerned.

Age 22 Height 5 Feet 11 Inches

Complexion Fresh Hair Lt Brown Eyes

Marks Tattoo Left arm SMITH Right arm Honey

In uniform or plain clothes Uniform

Probable Date and Place of Attestation	11th April 1940. Windsor Canada
Probable Date of Desertion or beginning of absence, and from what place	1-2-1944 Woking

CITY POLICE OFFICE 2 FEB 1944 COVENTRY

Signature of Officer of Police in charge of R.A. Kay Sergt. Coventry Station.

2nd Feb. 1944 Date of Signature.

Army Form O.1617
R.A.F. Form 1617

PART 2.

This portion of the Form should be completed and forwarded to the Officer Commanding the man's unit to whom Part 1 of this Form is sent, as soon as all expenses have been ascertained.

(It should not be detached from Part 1 unless delay in completion is unavoidable.)

Statement of Expenses chargeable to Army or Air Force Funds incurred by the ..... Police in the case of

No. .....

who surrendered to the Police at ..... on .....

Payable to .....

CERTIFIED that this statement of expenses is correct.

..... Superintendent or Officer in charge of Police Station at .....

..... Date of Signature.

I produce herewith Exhibit "C" CMHQ Form 1000:55 Expense Voucher, showing expenses incurred by A-22141 Tpr. Smith, W.J.W. in returning him and escort from Coventry to London.

R.B. Allan, Lt

R.B. Allan, Lieut.,
Officer detailed to take
Summary of Evidence.

Ref: K.R. & O. (Can) 539

Expense Voucher Re—:

Reg. No. A22141 Rank T/W Name Smith, W. Unit 1 C A P C U

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his~~ ~~Unit From~~ London from Coventry

Date	Particulars	Amount £	s	d
	Escorts return fare from LONDON To Coventry	1	4	5
	Prisoners single fare to LONDON From Coventry To		7	3
3 Feb 44			4	8
	Prisoners fare from			
	Escorts & Prisoners expenses for ~~Incl~~ Meals, Bus fares		1	6
	Total £			4

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

M. T. Thompson Capt.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000-33
40/P & S/483

SUMMARY OF EVIDENCE

Summary of Evidence in the case of A-22141 Tpr. William, John Wallace, SMITH, on the strength of No.1. Canadian Armd. Corps, Reinforcement Unit, a soldier of the Canadian Army Overseas.

THE COMMANDING OFFICER DIRECTS THAT EVIDENCE BE TAKEN ON OATH.

1st Witness for the Prosecution

Capt. C.H. Davis, Adjutant, an Officer of the Cdn. Army C/S, on the strength of No.1. C.A.C.R.U., having been duly sworn, states,

"I am Capt. C.H. Davis, and I am employed as Adjutant of No.1. C.A.C.R.U. As such I am the keeper of all Regimental Books and Documents. I produce Certified True Copy of a Record of Declaration of a Court of Inquiry showing that A-22141 Tpr. Smith, W.J.W. absented himself without leave at 2300 hours 25th Dec 43. The accused whom I now recognize is the person referred to therein. I further produce Army Form C-1617 Certificate of Surrender to the Civil Police of a Deserter or Absentee without leave, showing that A-22141 Tpr. William, John Wallace Smith surrendered himself to Sgt. Bollen at Coventry Police Station at 0825 hours the 2nd Feb 44. The accused is the person referred to therein. I further produce CMHQ Form 1000:55 Expense Voucher, showing expenses incurred by A-22141 Tpr. Smith, W.J.W. in returning him and escort from Coventry to London. The accused is the person referred to therein."

The accused declines to cross-examine this witness.

C.H. Davis, Capt & Adj.,
No.1. C.A.C.R.U.

The Record of Declaration of Court of Inquiry, the certificate of Surrender to the Civil Police, Army Form C-1617 and form CMHQ 1000:55 Expense Voucher, marked Exhibits "A" "B" "C" respectively, and attached to this Summary.
All the foregoing documents have been produced and read over to the accused.

R.B. Allan, Lt
R.B. Allan, Lieut.,
Officer detailed to take summary of evidence.

The accused was cautioned as follows:-
Do you wish to make any statement or to give evidence on Oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

After the above caution the accused declines to make a statement or call any witnesses for the defence.

I certify that the foregoing Summary of Evidence consisting of one page was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4(c),(d),(e) (f) and (g) have been complied with.

R.B. Allan, Lt
R.B. Allan, Lieut.
Officer detailed to take Summary of Evidence.

In the Field,
8th February 44.

EXA

M.F.M. 6
A.F.B. 122
(11M—7-41 (3219-20))
H.Q. 1772-39-1652

No. A22141 Name SMITH, W.J.W. | Sqn., Battery, or Company | Corps C.A.C. | Date of enlistment 11 Apr 40 | O.C. Badges | Service or Proficiency Pay | Rank Gnr

Date of last entry in Company Conduct Sheet: Nil | No. and date of last drunk: Nil | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. D.B.Francis, Major

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Mandora	20 Feb 41	Tpr.		AA Sec 40 did not obey order promptly	Sgt. Vincen	3 days F.P.	20 Feb 42	Capt. Stevenson	
In the Field	26 Jun 42	Tpr.		WOAS AWL from 2359 hrs 28 Jun 42 to 1130 hrs 29 Jun 42.(Total time absent: 11 hrs 30 mins)AA SEC 15(1)	L/Sgt Elliott, F	4 days C.B.	30 Jun 42	Capt. Forteous	Forf 1 Day Pay FAR 149 (1)
In the Field	27 Sep 42	Tpr		WOAS AWL from 2359 hrs 27 Sep 42 till 1600 hrs 28 Sep 42.(Total time absent 16 hrs, 1 min)AA Sec 15(1)	Sgt. Chadwick	7 days C.B. 7 days pay	29 Sep 42	Lt.-Col. F.A. Vokes	Forf 1 day Pay FAR 149(1)
In the Field	26 Nov 42	Tpr.		WOAS Drunkeness. AA Sec 19	L/Cpl's Busby & Milner	7 Days C.B.	26 Nov 42	Major BM Alway	
In the Field	26 Dec 42	Tpr.		WOAS AWL from 1500 hrs 26 Dec 42 to 1820 hrs 26 Dec 42(Total time absent 3 hrs, 20 mins)AA SEC 15(1)	L/Sgt Hill, G.H.	Admonished	28 Dec 42	Lt.Col. F.A. Vokes	Forf 1 day Pay FAR 149 (1)m

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field 14 Jan 43		Tpr.		AA Sec 15(1) AWL from 0800 hrs to 1830 hrs (Total time absent 1 day 10 hrs 30 min)	Sgt. Murray L/Sgt. Green	7 Days C.B.	17 Jan 43	Lieut. AF Buchan	Forf 2 days pay FRI 149 (1)a
Field 16 Jan 43		Tpr.		WOAS AWL from 1400 hrs 16 Jan 43 to 2330 hrs 17 Jan 43. (Total absent 1 day 9 hrs 30 min) AA Sec 15(1)	Sgt. Chadwick	14 Days F.P.	18 Jan 43	Maj C.R. Forteous	Forf 2 day pay FR & I 149(1)a
Field 28 Mar 43		Tpr.		WOAS AWL from 2.59 hrs 28 Mar 43 until apprehended by C&P at 1530 1530 9 Apr 43. (Total time absent 11days 15 hrs 30 mins)AA Sec 15(1)	Doc'y	28 Days F.P.	16 Apr 43	Lt-Col. FA Vokes	Forf 12 days pay 29 days pay -2-10-11 FRI 17&(8)
Field 10 Jun 43		Tpr.		WOAS AWL from 0530 hrs 10 Jun 43 until surrendered to Mil Police at 1420 hrs 19 Jun 43(Absent 9 days 8 hrs 50 mins)AA Sec 15(1) A.W. Hamilton)Capt. CERTIFIED TRUE COPY 2 i/c 2 Squadron.	Doc'y	56 days detn Stoppages of pay the amount of £1-11-0 cost of apprehension	5 Jul 43	FOOK Conf by Comd 2 Cdn Div	Cost of apprehen. 56 days pay FR & 1149(1)(b) F. 10 days pay FR& I 149 1(a) FI 13 days pay FR&I 149 1(c)(ii)

No. A-2214 Name Smith, W.J.H. Sqn., Battery, or Company — Corps G.A.C. — Date of enlistment 11 Apr 40 — G.C. Badges — Service or Proficiency Pay

Date of last entry in Company Conduct Sheet: 1 — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. 2 — Signature O.C. Company, etc. — Character D.R. [illegible]

M.F.M. 6 (A.F.B. 122) 17BM—7-41 (1215-37) H.Q. 1773-35-1852

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	13/10/43	Tpr.		WOAS NEG TO R & J ETC, turned in boots for repair that was unrepairable A.A. Sec. 40	L/Cpl. Lozan, C.	Admonished	14/10/43	Capt. F.E. Bowler	Stopp. of 1.1.6
Field	16 Sep 43	Tpr.		A.A. Sec. 15(1) A.L. 0800 hrs 16 Sep 43 to 0015 hrs 27 Sep 43 (10 days 15 hrs. [illegible]	Cpl. Bigley, Cpl. Summers, B.R. & Cpl. Oliver, R.D. Sgt. Hall, F. & Cpl. Potter, G.	60 days Detn & costs of appre.	4 Oct 43	FGCM	Forf 7 days Pa (Arrest) Forf 11 days P. (Arr.) Pay 22.2.10 (costs of appr
Field	24 Dec 43	Tpr.		A.A. Sec 15(1) A.L. 0800 hrs 22 Dec 43 to 1500 hrs 22 Dec 43 (7 hrs)	Cpl. Gilmore	7 days D.B.	24 Dec 43	Lt.-Col. A.T. Paterson	
					Cpl. Duncan, J.H.	1 days Pay			

PTO

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
				"CERTIFIED TRUE COPY OF ORGINAL DOCUMENT NOW IN MY POSSESSION"					
				B.H. Kinsted Lt RA/1944					
				C.H. Davis, Captain					
				Adjutant					
				104th S.A.A.Bde					

M.F.B. 355
72M—5-41 (573-3)
H.Q. 1772-30-620
A.F.B. 200

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
A-22141	Tpr.	SMITH, W.J.W.	No.1. C.A.C.R.U.

1. The following is a fair and true summary of the entries in the General Service and General ~~Regimental and Company~~ Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For A.A. Sec. 15(1)	9	times	A.A. Sec. 15(1) 9	times
For		times		times
For		times		times
For		times		times

~~Nature of offences for which punished~~

~~There are no entries on the [illegible] sheets.~~

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. ~~The accused has not been previously convicted~~

Previous convictions of the accused by a court-martial or a civil court, or summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 75 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

~~The accused is at present under sentence for~~

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 10 days in military custody, making a total of 10 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his attestation paper is 23 yrs. 1 month 25 days

6. The date of his attestation specified in his attestation paper 11 April 1940

7. The service which the accused is allowed to reckon towards discharge is 3 yrs. 9 months 28dys

8. The accused is entitled to reckon 3yrs 9 months 28 days service for the purpose of determining his pension, etc.

9. The accused is in possession of ~~or entitled to~~ military decoration or reward (state whether he is in possession of or entitled to). State any military decoration or reward. G.V.S.M. & Clasp

10. ~~If the accused is a re-engaged soldier, the period which he has yet to serve to complete the~~

EXB

11. (In the case of an officer). The accused holds the Royal Canadian Air Force (the rank of Pilot Officer) (~~Flying Officer~~) (~~Flight Lieutenant~~), and in his regiment (or corps) the rank of: (~~Flying Officer~~) (~~Flight Lieutenant~~).

12. The accused has served as a non-commissioned officer continuously without reduction to the present rank since (~~Date of promotion~~).

(~~In the case of~~) (~~Flying Officer~~)
(~~Flying Officer~~) (~~Flight Lieutenant~~)
(~~Flight Lieutenant~~) (~~Squadron Leader~~)

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

(~~Airman~~)

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number R-22141 Rank Tpr. Unit

Name SMITH, W.J.H. of No.1 C.A.C.R.U. Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	In the Field 4 Oct 43	A.A. Sec. 15(1) A.B.L. 10 days 16 hrs. 45 mins.	60 days detention to pay cost of arrest	
F.G.C.M.	IN THE FIELD 10 3 Feb 44	A.A. SEC. 15(1) AWL 9 DAYS 8 HOURS 15 MINS	56 DAYS DETENTION To Pay Cost of Arrest & Escort.	

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this (~~10th~~) 11th day of Feb 44.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

Capt A.A.G.
No.1 C.A.C.R.U.

II-75

TPR SMITH W.J.W.

Correspondence to be PINNED here.

I.F. 75

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A. Order convening the Court.

On Active Service, this 1st day of July, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 2 Canadian Division Canadian Army Overseas, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to delay the trial for reference to a superior qualified officer.]

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable

*[I am unable to appoint—

*(1.) Three Officers to form the Court.

*(2.) A Field Officer as President]

[for the following reasons, namely ———]

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Maj	T W Bigelow	6 Cdn Inf Bde Coy

Members.

Rank.	Name.	Regiment.
Capt	W H HORNER To be detailed by 8 Cdn Recce Regt(14H)	
Capt	R.C. LONG 11 Cdn Fd Amb, RCAMC To be detailed by ADMS 2 Cdn Div	

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed (E L M Burns) Maj-Gen

Commanding 2 Cdn Div

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
A-22141 Tpr William John Wallace SMITH 8 Can Recce Regt (14H)	FIRST CHARGE Sec 15(1) Army Act (see att charge sheet)	Guilty	Guilty. To undergo 56 days detention and awarded stoppages of $1-11-0 (cost of apprehension) E Lee Bigelow Major 3 Jul 43.	Confirmed E L M Burns Maj-Gen Comd 2 Can Div 6 JUL 1943

* Question to be asked of accused, if he pleads not guilty (R. of P. 89 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary) :—

(Signed) E L M Burns (E L M Burns) Maj-Gen
Commanding 2 Can Div *Convening Officer (e)*

(Signed) E Lee Bigelow (E W Bigelow) Maj
6 Can Inf Bde Coy RCASC *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 3rd day of July 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*~~(3. The interpreter)~~ ~~Nil.~~
*~~(4. The officers under instruction)~~ ~~Nil.~~

* Omit if not applicable.

were duly sworn.

Signed this 3rd day of July 1943.

E Lee Bigelow, Major.
President of the Court Martial.

C. Certificate in case of death sentences.

* See footnote (b) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this ~~day of~~ 19

~~*President of the Court Martial.*~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~(I direct that the soldiers named in the margin be sent committed to prison or detention barrack until further order.)~~

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

Signed this 6th day of July 1943.

E L M Burns
Maj-Gen
Confirming Officer. Comd 2 Can Div
6 JUL 1943

Promulgated and extracts taken in the case of A-22141 Tpr SMITH, W.J.W.

(a) (Dated) 6 Jul 43 (Signed) H Hobson Lt

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

S.L. 47292/1942 (H.Q.) 5/41 K.D.(S.D.S.O.) Gp. 698.3

EXHIBIT 'B'

CHARGE SHEET

The accused A 23141 Trooper William John Wallace Smith, 8 Cdn Recce Regt (14CH), a soldier of the Canadian Army (A.P.), is charged with:

FIRST CHARGE
A.A. Sec. 15 (1)

ABSENTING HIMSELF WITHOUT LEAVE

in that he, in the field, absented himself without leave from 0530 hrs 10 Jun 43 until surrendering to the Military Police in Bournemouth at 1420 hrs on 19 Jun 43.
(Cost of return to Unit; One Pound, eleven shillings. £1:11:0)

(F.A. Vokes)Lt-col.,
Comd 8 Cdn Recce Regt (14CH)

Signed: In the Field
Jun 43

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the field
1 Jul 43

(E L M Burns)Maj-Gen
Comd 2 Cdn Div

COURT MARTIAL MEDICAL CERTIFICATE Exhibit C

I certify that I have on this date examined ~~Captain~~ Major

A.22141 Pte. Smith W.J.W.

and he is fit/~~unfit~~ to undergo trial by Court Martial.

Date 3rd July 1943

W.L. Meacham Capt
R.C.A.M.C.

T.W. Bigelow Major

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a G. C. Court-Martial held at Field

on the 3 day of July 1943 by order of

Major-General E. L. M. Burns

Commanding 2 Cdn Div

dated the 1 day of July 1943

President.

Major T. W. Bigelow, R.C.A.S.C.

Members

Capt. W. H. Horner, 8 Cdn Recce Regt (14th H)

Capt. R. C. Long, 11 Cdn Fd. Amb.

Judge Advocate.

Trial of*

A 22141 Spr. William John Dallas Smith

The order convening the Court, the charge-sheet and the summary (~~of abstract~~) of evidence are laid before the Court

~~The Court satisfy themselves that~~

to ~~serve owing~~ to ~~is not available~~

~~Waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Lieut. D. S. Bell, 8 Cdn Recce Regt (14th H)

Counsel‡ or defending officer† Lieut. D.C. Bythell, 8 Cdn Recce Regt (14th H)

At 1100 o'clock the Trial commences.

The order convening the Court is read, and is marked X signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused. Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer* No

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).

† Here state Rank and Name, and Regiment (if any).

‡ Qualification to be stated.

B

The President, members ~~and judge-advocate~~ are duly sworn.

The following officers under instruction are duly sworn.

nil

Charge-Sheet.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you which you have heard read?

Question to the accused.

Guilty

Answer.

~~Are you guilty or not guilty of the second charge against you, which you have heard read?~~

Question.

nil

Answer.

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~

Question.

nil

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~

Question.

nil

Answer.

The accused having pleaded Guilty to the first charge, the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

Instruction.

CC Lieut. Bigelow, Wagon.

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[~~The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.~~] J.A.B.

The accused A 22141 Spr. William John Wallace Smith

is found guilty of The first charge

†The summary (or abstract) of evidence is read, marked "C" signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. The accused in mitigation of punishment says:—

[or hands in a written statement, which is read, marked "H", signed by the President, and attached to the proceedings.]

The defending officer Lieut D. C. Bythell reads and submits a ~~statement~~ "H", in mitigation of punishment.

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

Do you wish to give evidence yourself or to call any witnesses as to character? No, Sir.

Question to the accused.

Answer

Evidence as to character

DD

Do you wish to give evidence yourself or to call any witnesses as to character? No, Sir

Question to the accused.

Answer.

Evidence as to character.

E

Lieutenant Colonel
Major.

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

~~Finding.~~*

~~The Court is closed for the consideration of the finding.~~

~~The Court find that the accused~~

*When the Court is already open this sentence will be struck out. Evidence of character, &c.

Proceedings on Conviction *before Sentence.*

*~~The Court being re-opened, the accused is again brought before the~~

Lieut. D. G. Bell is duly sworn.

Question by the President. Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.*

Yes, by F by 6 and AFD 276 and behind

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked "I", "J" signed by the President, and annexed to the proceedings.

Question by the President. Is the accused the person named in the statement which you have heard read? *Answer by the Witness.*

Question. Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question. Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes

Cross-examined by the accused.

No

(Instruction.—If by reason of the nature of the service of the accused in a non-commissioned rank, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court, the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.)

Question to the accused. Do you wish to address the Court? *Answer.* No.

The Court is closed for the consideration of the sentence.

(5). Lieutenant Colonel
Major.

CERTIFICATE OF SURRENDER UNDER SECTION 183 (i) (J) A.A.

MAJOR C.E.J. WOODMAN. A.P.M. 16th A.D.D. ...Certify that No. A/2214[illegible] .....

Rank. TROOPER .....Name. SMITH. J.W. ....Coy. 4th Hussars R.E.C.M. Bn. 24 C.H. ....

surrendered himself to No. 7685722 ...Rank. L/C.P. .....Name. DAVIS. P. .....

Corps of Military Police on the ...19th .....Day of ..June 1943

as a ~~deserter~~ (or Absentee without leave)

Signature C.E.J. Woodman Major.
Assistant Provost Marshal.
Hants & Dorset District.

Place. BOURNEMOUTH. ....

Date. 20th June. 1943. ...

EXHIBIT 'D'
Jo Bigland
Maj.

EXHIBIT E'

Expense Voucher Re—: Ref. K.R. & O. (Can) 539

Reg. No A22141 Rank Tpr Name Smith W.J.W. Unit 8 Recd Bn 14 Hussrs

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his~~ Unit From London (from Bournemouth)

Date	Particulars (Exhibit)	Amount		
21 June 43	Escorts return fare from LONDON To Bournemouth		8	3
	Prisoners single fare to LONDON From Bournemouth		8	3
	Prisoners fare from To			
	Escorts & Prisoners expenses for ~~Bed~~, Meals, Bus fares (Exhibit)		3	0
	Total £		19	6

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

CA[illegible]
W. FERN D.A.P.M.
LONDON AREA
Capt.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000/55
40/P & S/483

EXHIBIT F

Expense Voucher Re—: Ref: K.R. & O. (Can) 533

Reg. No. A22141 Rank Spr Name Smith W.J.M. Unit 8 Recce Regt

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London

Date	Particulars	Amount		
23 June 41	Escorts return fare from LONDON To Peterborough		7	8
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Peterborough		3	10
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £		11	6

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

W Bruce Capt.

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000-58
46/P & S/483

EXHIBIT 'H'

Plea in mitigation of Punishment in the case of A[illegible]141 Tpr William John Wallace SMITH, 8 Cdn Recce Regt (14 CH)

D.C.C.M. - 3 Jul 43.

Gentlemen of the court, I am wondering if this case has established itself in your minds as it has in the past several days established itself in mine. When I first learned I was to be Defending Officer I hardly knew where to begin - the accused has done wrong in this instance - and his record shows that it is not the first time he has been A.W.L.; we will agree, and he is the first to second the point, - he is before you with very little of a concrete nature to plead in his favour.

However, if you will again allow me to elaborate on a few of the other details, I think it will give us all a clearer picture of certain deeper issues which are in this instance at stake.

This boy is a stranger to you; I have know him a matter of months only. In that time, however, I have learned a good deal about him - enough to convince me that he is not a bad lad. His recurring crime has been A.W.L.; and to me, there must be something behind that - some reason or reasons why he has persisted in that habit.

Wallace Smith is now 20 years old. He was brought up in Windsor, the Border Cities, Ontario. His father was a working man providing a good home for a normal life - a good mother. But this lad's whole life is one story of restlessness and change - at an early age he wandered about Detroit on Saturday afternoons - he lived in England here for a year or so, receiving a spasmodic schooling. In Windsor he had a year-and-a-half at Technical School, which he left to be a grocer's clerk. Three months later he left this, his first job, to join the Essex Scottish Regiment - he was 17 then - his father was in the Essex too - and together in that year they came overseas ~~together~~ - the father handy to look after his son. In Sept '40 young Smith transferred to the Recce as he liked Motor Bikes, but he still saw a lot of his Father. In Oct '41 the father returned to Canada as unfit for overseas service - the son was left.

Present

~~Lt. H~~ Smith

Lt. Bigelow
Lawyer.

The prosecution has presented the Medical Officers' analysis of Smith. He describes him "a psychopathic personality — his future course of doubtful quality unless he changes his attitude."

I have pointed out the nature of Smith's background — & his record — he is evidently an accumulation of flaws not readily fit into the Army. But Smith is young & he is determined that he is to go right — his attitude has changed

- II -

Now I would not give you the impression that Smith here is a father-be-apron-strings boy - far from it; in his few years he has probably seen and done a few things strange to most of us. But I would stress that parental influence here must have been strong - and that was suddenly taken away. Add to that, then, the inactivity of the whole Canadian Army in Britain, together with certain in his own unit and Smith's conduct sheet soon showed a few entries in A.W.Ls. - this soldier was not a happy soldier, whatever the cause may have been.

And then the case demands that I would mention an unfortunate marriage. He never was in love with his wife; in his heart he feels she is mother of another man's child. And yet he married her, ready to go through with a bargain he thought he'd got himself into, and now sees little hope of any success with it. That is a bit of a knock even for a man of very mature years and stable background.

There is one other side of this story that bears mention. From his background, upbringing and general nature, he is, let me call it, an 'individualist' for want of a better word. He does not easily conform to rigorous military discipline; I am told he was a good D.R., whereas he tells me he was a very poor gunner, and still knows very little of weapons - and did not like ordinary Troop work as we have it in the Recce.

INSERT

I shall not go further. Smith readily admits his guilt in this case and knows that his past course is not one that will benefit him in the long run. In my talks with him he readily agrees that he is ready now to take his punishment too. But, gentlemen, in awarding that punishment I would urge you to consider the background of this particular case - these reasons built into his life from childhood, and fostered by the uncertainties of a soldier's life in England; his age; the influences to which he has been exposed; the unhappy marriage; his undoubted ability and mental alertness - and especially his ability and new keenness to make a new start again. Given a fair break in the end, I will make good.

Might I add one further point. This boy has not been happy in his present unit and his return to it only presents the old

old environment, connections and resentments - would it be in the province of the Court to recommend this man for change in employment to some other part of the Army?

(D.C. Sythell) Lieutenant,
8 Cdn Recce Regt (14 CH)
Defending Officer.

Exhibit "K"
Lieut. Colonel Major.

29th July, 1943

To: C.O. 8 Cdn Recce Regt (U.C.H.)

Sir,

Specialists Report on: A-22161 Tpr. Smith W J W

(1). Psychopathic Personality.
(2). Fit to stand trial and serve detention.
(3). Capable of further service, though this will be of doubtful quality, unless his attitude alters in the future.

For your information please.

(Signed) H. L. Meddlam Capt.
per B. M. E. Allan. Capt
#1 Neurological Hospital

25 Jun 43

Certified that D-61154 Cpl. Massicotte, R. is at present away from the Unit on exercise and that due to the distance, time and petrol involved it is inexpedient to require his attendance for signature.

J.A. Dixon, Lieut.

EXHIBIT "C"

Jas Bigelow Major

SUMMARY OF EVIDENCE

Summary of Evidence in the case of:
A-22141 Trooper William John Wallace Smith
8 Cdn. Reconnaissance Regiment (14CH)
Prepared at the direction of Lt.Col. F.A. Vokes, Comd. 8 Cdn. Reconnaissance Regiment (14CH) by Lieut. J.A. Dixon, 8 Cdn. Reconnaissance Regiment (14CH).

The accused is informed of his rights.

The accused does not demand and the C.O. does not direct that the evidence be taken on oath.

FIRST WITNESS
D-61154 Cpl. Massicotte, R.

" I am D-61154 Cpl. Massicotte, R., 8 Cdn. Reconnaissance Regiment (14CH). On the 10th June, 1943 I was Troop Orderly Corporal of 5 Troop. At 0530 hours on the 10th June, 1943, at Reveille check, I found that the accused, whom I here recognize, was absent. I sleep in thr same tent as he does. I reported this to the Orderly Sergeant of "B" Squadron. I did not see the accused at any time until the 24th June, 1943."

The accused declined to cross-examine the witness.

R. Massicotte, Cpl.

SECOND WITNESS
Capt. G.M. Wood

" I am Capt. G.M. Wood, Adjutant, 8 Cdn. Reconnaissance Regiment (14CH). I here present documentary evidence relating to the accused.

(1) Certificate of surrender purporting to be signed by Major C.E.T. Woodman, Assistant Provost Marshal, Hants and Dorset District, showing that the accused surrendered himself to 7685222 L/Cpl. Davis, A., in Bournemouth on the 19th June, 1943.

~~(2) Statement purporting to be signed by 7685222 L/Cpl. Davis,A. giving the details of the surrender of the accused.~~

(3) CMHQ 1000:55 (Expense Voucher) purporting to be signed by Capt. W. Fern, D.A.P.M., London Area, showing costs of return to Unit of the accused to be:

(1) Escorts and accused's fare and expenses Bournemouth to London	£ - :19:6
(2) Escorts and accused's fare London to Pulborough	- :11:6
Total	£ 1 :11:0

G.M. Wood, Capt.

The accused declined to cross-examine the witness or to insist on the presence of any witnesses for cross-examination in connection with the foregoing documentary evidence.

The accused declined to call any witnesses in his own defence.

Having been duly cautioned in accordance with RP 4 (E) the accused said, "I don't want to make any statement.

Taken by me, In the Field, this 24th day of June, 1943. Certified that RP 4 has been complied with.

G.K. Dixon, Lieut.
8 Cdn. Reconnaissance Regiment
(14CH)
Officer detailed to take Summary.

The accused when asked if he wished to have an officer represent him at his trial requested Lieut. D.C. Wyrhall, 8 Cdn. Reconnaissance Regiment (14CH).

EXHIBIT I

No. A22141 Name Smith, W.J.W. Sqn., Battery or Company "B" Corps C.A.C. Date of enlistment 11 Apr 40 O.C. Badges Rate of Proficiency Pay

Date of last entry in Company Conduct Sheet: Nil | No. and date of last drunk: Nil | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc. | Character

M.F.M. 6 (A.F.B. 122) 100M—8.19 (1793) H.Q. 1771-45-14

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Mandora	20 Feb 41	Tpr		AA Sec 40 did not obey order promptly	Sgt Vincent Tpr Hayes	5 Days C.B.	20 Feb 41	Capt Stevenson.	
In the Field	28 Jun 42	Tpr		WOAS AWL from 2359 hrs 28 Jun 42 to 1130 hrs 29 Jun 42.(Total Time Absent; 11 hrs 30 min). AA Sec 15 (1).	L/Sgt Elliott P	4 days C.B.	30 Jun 42	Capt Forteous	Forf. 1 Day pay FRI 149 (1)
In the Field	27 Sep 42	Tpr		WOAS AWL from 2359 hrs 27 Sep 42 till 1600 hrs 28 Sep 42.(Total Time Absent 16 hrs 1 mn) AA Sec 15 (1)	Sgt Chadwick	7 days C.B. 7 days Pay.	29 Sep 42	Lt.-col F.A. Vokes	Forf 1 day pay FR&I 149 (1)
In the Field.	23 Nov 42	Tpr		WOAS- Drunkeness. AA Sec 19	L/Cpl's Bushey & Kilner	7 days C.B.	26 Nov 42	Major BM Alway.	
In the Field	26 Dec 42	Tpr		WOAS AWL from 1500 hrs 26 Dec 42 to 1820 hrs 26 Dec 42(Total Time Absent 5 hrs 20 Min) AA Sec 15 (1).	L/Sgt Hill, G.W.	Admonished	28 Dec 42	Lt.-col F A Vokes	Forf 1 day pay FR&I 149 (1)A

(P.T.O.)

Place	Date of offence	Rank	Corps or Regiment	OFFENCE	Name of witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Held 14	Jan 43	Tpr		AA Sec 15 (1) AWL from 0800 hrs to 1630 hrs. (Total time absent 1 day 10 hrs 30 min)	Sgt Murray L/Sgt Green	7 days C.B.	17 Jan 43	Lieut A F. Buchan	Forf 2 days pay FRI 149 (1)a
Held 16	Jan 43	Tpr		WOAs AWL from 1400 hrs 16 Jan 43 to 2330 hrs 17 Jan 43. (Total Absent 1 day 9 hrs 30 mn) AA S"c 15 (1)	Sgt Chadwick	14 days F.P.	18 Jan 43	Maj. C.R. Porteous	H. Forf 2 day pay F.R.&I. 149 (1) a
Held 28	Mar 43	Tpr		WOAS AWL from 2359 hrs 28 Mar 43 until apprehended by CMP at 1530 1530 9 Apr 43. (Total time absent 11 days 15 hrs 30 min) AA Sec 15 (1).	Doc'y	28 days F.P.	16 Apr 43	Lt.-col FA Vokes	Forf 12 days pay. 28 days pay. £2-10-11 FRI 172 (8) Cost or Apprehention.

CERTIFIED TRUE COPY.

(C.H.R. Porteous) Major
"B" Squadron.

EXHIBIT J.

(substitute for A.F.B. (245 or I.F.B.355)

STATEMENT OF CHARACTER AND PARTICULARS OF SERVICE OF THE ACCUSED

No A-22141 NAME SMITH, W.J.M. UNIT 8 Cdn. Reconnaissance Regiment (14

AGE 20 MARRIED or SINGLE Married No OF DEPENDENTS 2

DATE OF ATTESTATION 11 Apr 40

NO OF DAYS SPENT IN CLINK AUGUST (TO DAT OF TRIAL)

CIVIL ____ MILITARY 13 HOSPITAL ____ TOTAL 13

DATES OF PROMOTION, RECONFIRMENTS AND COMPLICATIONS OF RANK IF ANY

NIL

A CERTIFIED TRUE COPY OF P.D.I. AND ACCOMPANY THIS FORM.

(Officer i/c Records)
G.M. Wood, Capt. & Adj.
8 Cdn. Reconnaissance Regiment (14CH)

Dated at In the Field
This 3 day of June, 1943
(to be dated and signed as of date of trial)

RR-60 (can #2)

TPR SMITH W.J.W

See II-76 for 1st can

A-22141 Tpr William John Wallace SMITH,
8 Rocce Regt - Adm Wing, C.T.S.

RR-60

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this THIRD day of OCTOBER, 19 FORTY-THREE

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN REINFORCEMENT UNITS, CANADIAN ARMY OVERSEAS, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~[and that it is not practicable to delay the trial for access to a superior qualified officer]~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

*~~I am unable to appoint~~
~~(1) Three Officers to be the Court~~
~~*(2) A third Officer as President~~
~~for the following reasons, namely:~~

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
MAJOR	A.S. PETTAPIECE	H.Q. C.R.U.

Members.

Rank.	Name.	Regiment.
A CAPTAIN	FROM	3 C.A.R.U.
A LIEUT.	FROM	1 C.A.R.U.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed J.H. Roberts (J.H. Roberts) Maj-Gen.,
Commanding Cdn Rft Units.
Convening Officer.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
A-22141 Tpr William John Wallace Smith, 8 Recce Regt. Adm Wing, C.T.S.	FIRST CHARGE Sec 15(1) A.A.	Guilty	Guilty	
	SECOND CHARGE Sec 40 A.A.	Not Guilty	Not Guilty Sentenced to undergo detention for a period of sixty (60) days and to forfeit and stoppage of pay until he has made good the sum of $2-2-10 in respect of the cost of his apprehension 4 Oct 43	Confirmed. J.A.R.

See Charge Sheet Attached.

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):— No.

(Signed) J.A. Roberts (J.H. Roberts) Maj-Gen., Commanding Cdn Rft Units. — *Convening Officer (e)*

(Signed) Arthur L. Pettapiece Maj'r — *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 4th day of October 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. ~~The witnesses~~
*(3. ~~The Interpreter~~)
*(4. The officers under instruction)

*Omit if not applicable.

were duly sworn.

Signed this 4th day of October 1943.

Arthur L. Pettapiece, Major
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 762 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 570 of 1918 have been complied with.~~

~~Signed this day of 19 .~~

~~*President of the Court Martial.*~~

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(I direct that the soldier named in the margin be ~~not committed to prison or detention~~ barrack until further orders.)

Signed this 6 day of Oct 1943.

J.A. Roberts
Confirming Officer.
J. H. ROBERTS, Maj.-Gen.
Comdg. Cdn. Rft. Units

Promulgated and extracts taken in the case of

(a) (Dated) OCT 8 1943 (Signed) Frank Barker
COMMANDANT, CANADIAN TRAINING SCHOOL

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The Accused No A.22141, Tpr SMITH, William John Wallace, 8 Canadian Recce Regiment posted to Administrative Wing, Canadian Training School, a soldier of the Canadian Army Overseas is charged with:-

FIRST CHARGE
Sec 15 (1)
Army Act.

When on Active Service, absenting himself without leave

in that he

at Havannah Barracks, Bordon Hants, absented himself from 0800 hrs 16 Sep 43 until apprehended in the Salvation Army Hostel, Cumberland Street, Sheffield, at approximately 0015 hrs 27 Sep 43, thereby incurring expenses as follows:-

Escorts fare - London to Sheffield and return one pound 4 shillings and five pence (£1.4.5.); Accused's fare Sheffield to London, twelve shillings and three pence (12/3); meals and bus fares, six shillings and two pence (6/2). Total cost of apprehension two pounds, two shillings and ten pence (£2.2.10.)

Total absence 10 days 16 hrs 15 mins.

SECOND CHARGE
Sec 40
Army Act

When on Active Service conduct to the prejudice of good order and military discipline

in that he

at the Salvation Army Hostel, Cumberland Street, Sheffield, at approximately 0015 hrs 27 Sep 43, was in possession of a pass falsely purporting to grant him leave from 1700 hrs 18 Sep 43 to 0800 hrs 28 Sep 43, well knowing such leave had not been granted him by a competent military authority.

E C Peckham Major
O.C. Administrative Wing,
Canadian Training School.

Havannah Ba rracks,
Bordon, Hants.
1 Oct 43.

To be tried by Field General Court-Martial.

J.H. Roberts
(J.H. Roberts) Maj-Gen.,
Comd
Cdn Rft Units.

In the Field,
[illegible] Oct 43.

Arthur J. Pettypiece
Major
President

CTS/180

MEDICAL OFFICER'S CERTIFICATE

I certify that I have this morning examined No A.22141 Regiment,

Tpr SMITH W.J.W. of S Recce Regt/CTS
Rank Name

posted/~~attached~~ to No Adm Wing, Cdn Trg School, and in my opinion

he is fit/~~unfit~~ to undergo trial by Field General Court Martial.

Station Bordon Hants

Date ~~1~~ 4 Oct 43.

4 Oct 43 Kellythorpe Capt (Signed) W R J McMullen

Capt R C A M C

Medical Officer, No Adm Wing

Canadian Training Centre

PROCEEDINGS OF A FIELD GENERAL COURT-MARTIAL
HELD AT Cube Barracks, Bordon, Hants.
ON THE 4th DAY OF October 1943

The accused A22141 Tpr Smith, G.J. Unit C.T.S.

The order convening the Court and charge sheet are laid before the Court, who satisfied themselves as provided by Rs.F. 22 and 23.

The accused is brought before the Court.
The Medical Certificate is laid before the Court.
The order convening the Court is read by the President, and the accused having been asked stated that he had no objection to the President or any Member of the Court.
The Court is duly sworn.

The following constitute the Court:-

President Maj. A.A. Rattigan ..... Unit H.Q. 21 A.G.
Members Capt. C.P. Wynne ..... Unit 3 CAR RH
Lt. A.S. Page ..... Unit 1 CAR RH

The officers under instruction are duly sworn:-

(see attached list) ..... Unit .....
..... Unit .....

Prosecutor Lt. J.H. Lamb ..... Unit C.T.S.
Defending Officer Lt. W.H. Hayes ..... Unit C.T.S.

The charge sheet is signed by the President and the accused is arraigned.
The accused pleads guilty to the charge(s) and R.P. 35(B) is complied with.
The accused does not desire to make a statement in reference to the charge(s). R.P. 37(B)
The Summary of Evidence is read, ~~(see Not below)~~
The Prosecutor produces MFB 355, ~~AFB 296~~ and MFM 6.
The Court complies with R.P. 36(B).

Pursuant to R.P. 37 THE ACCUSED:-

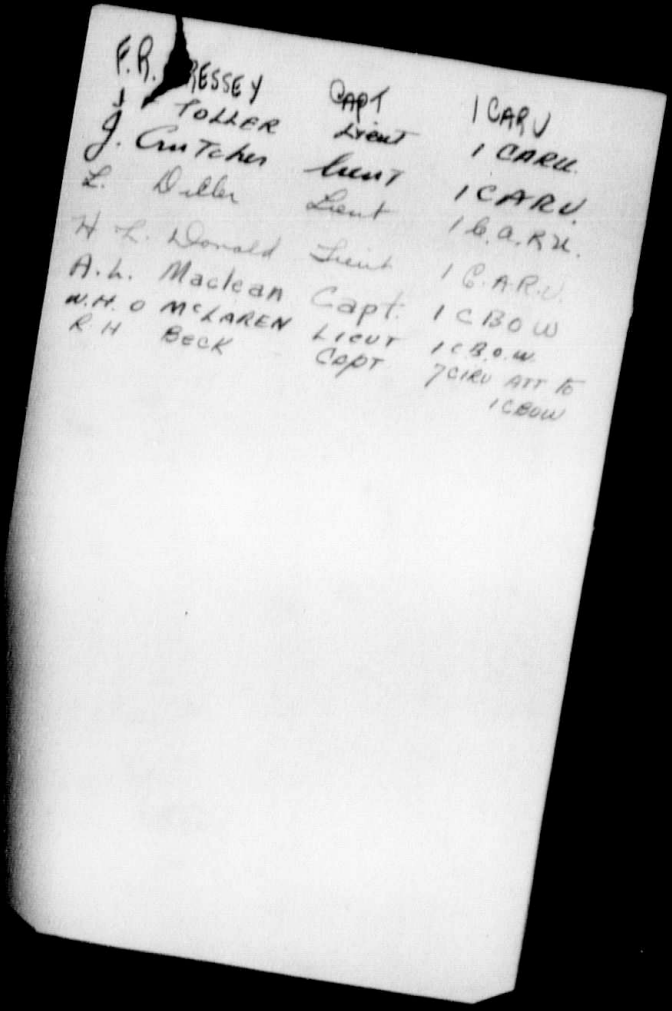
~~(a) Makes a statement in mitigation of punishment.~~
~~(b) Calls witnesses as to character.~~
~~(c) Calls witnesses in mitigation of punishment.~~
(d) Addresses the Court by his Defending Officer.

Oversees R.O. 3262 complied with.
The Court is closed to consider the sentence.

~~SUMMARY OF STATEMENT IN MITIGATION, CHARACTER EVIDENCE and ADDRESS OF ACCUSED OR~~ HIS DEFENDING OFFICER. attached hereto.

Note. It appearing from the Summary that there was insufficient evidence to support a plea of "Guilty" to the second charge, the plea of the accused was altered to one of "Not Guilty" pursuant to R.P. 37 and the trial proceeded accordingly. R.P. 39(A) was complied with and upon the Prosecutor being asked if evidence to be called that he had no witnesses to call.
Whereupon, the Court declared that the Prisoner had not made out a prima facie case under R.P. 40 and announced that the accused had been found not guilty of the charge.

Arthur A. Rattigan Maj


F.R. [illegible]ESSEY Capt 1 CARV
J. TOLLER Lieut 1 CARV
J. Crutcher Lieut 1 CARV
L. Duller Lieut 1 C.A.R.V.
H L. Donald Lieut 1 C.A.R.V.
A.L. Maclean Capt. 1 C.B.O.W
W.H. O McLAREN Lieut 1 C.B.O.W
R H BECK Capt 7 C.I.R.U. ATT TO 1 C.B.O.W

CANADIAN ARMY Y.M.C.A.

ON ACTIVE SERVICE 4/10/43

Plea of Mitigation
in bar of A 22141 Tpr Smith W.m
John Wallace

This soldier left School at the age of 17 and joined the Canadian Army on 11 April 1940. He came overseas in August 1940.

After leaving his holding unit he joined the 8th Recce Regt. He has been a D.R. since coming overseas.

In the years of M/C driving he has only had one minor accident.

From the time of joining the army until he was met a tragedy in his personal life his conduct was, with the exception of two or three minor charges of A.W.O.L., practically clean. At the end of 1942 he was practically forced into an unwanted marriage with a girl who claimed him as the father of her child. From then on his conduct graph has shown a decided upward curve.

PLEASE WRITE ON BOTH SIDES

CANADIAN YMCA

ON ACTIVE SERVICE

His Army life and Domestic life has for the last year been very unhappy. The difficulties he had had with her in Ottawa have been reflected in his Army life since coming to the Isolation Hospital he has been trying to retain the last year of his Army life, but on the night of 15th 1943 while on an overnight pass to London he saw his wife with an American Soldier on Piccadilly. The effect this had on Smith was that he started drinking and doesn't recall anything more until coming up in Edinburgh about six days later. Realizing he was AWOL (due to having been drunk) he immediately started back to camp. Arriving in Sheffield he was took lodging accomodation in the Salvation Army where the Provost arrested him in possession of a false pass. Smith has no explanation

PLEASE WRITE ON BOTH SIDES

CANADIAN YMCA

ON ACTIVE SERVICE

of altering his face.

I submit Sir that this particular crime is a direct result of his domestic situation. It is a Hellish shaving position for a young man, still a minor, to be forced into marriage against his will. Mr. Regtl Padre told him he had to marry the girl as there was a court order that would make him. It was not pointed out to Smith that all he had to do was make an assignment to support the child.

Previous to his unhappy marriage Smith was assigning twenty dollars per month home to his Mother in order to help put his sister through business college and to buy war bonds with.

Because of his ability in compass and map reading, he was elected to be attached to the Home Guard at Weston for two weeks as an instructor.

In Sept 1940 he took a M/C course at Gordon Workshop and passed with 90% marks. On returning to

PLEASE WRITE ON BOTH SIDES

CANADIAN YMCA

ON ACTIVE SERVICE

his rank, ~~the 4th Platoon~~, he was put on as instructor on M/C.O.

This man has never had any crimes in civilian life nor has he had any civil convictions since joining the army.

On August 1938 he was instrumental in saving the lives of two brothers who got themselves in difficulties while swimming at the beach in Windsor, Ont. On Oct 1942 he helped in rescue work when the Petworth School was destroyed by a bomb.

This sir is my plea on behalf of the accused Trooper W. J. W. Smith.

Respectfully Submitted
Lt. Allan Singer, R. & G.
Attached to
Canadian Trg. School

PLEASE WRITE ON BOTH SIDES

To/
President of F.G.C.M.

Held on 4 Oct 1943 at Bordon, Hants for the purpose of trying A.22141 Tpr Smith, W.J.W. on trial for being absent without leave.

This will certify that A.22141 Tpr Smith, W.J.W. served as troop D.R. for me in the 8 Cdn Recce Regt from Dec 1941 till Sep 1942. During this period he performed his duties with deligence, reliability & enthusiasm; always displaying great initiative. In addition to being generally a good soldier he was very popular member of the troop, with only two minor entries on his MFM 6.

During the month Aug 1942 Tpr Smith came to me to advise that he had been ordered by the padre, through the Commanding Officer, to marry a girl in Hastings, Sussex, who was alleged to be pregnant. Tpr Smith confessed he had been in company with the said girl on various occasions but that she was seeing several other soldiers on the same basis and he felt this obligation was not ~~his~~, nor did he have any desire to marry the girl. Tpr Smith stated that the padre had informed him if he did not voluntarily marry the girl a Court Order would be brought against him forcing him to do so and in view of this he had signed the application for marriage.

I was transferred shortly after this and did not see Smith again until he was released from detention in August 1943. He told me of a long series of family troubles since his marraige, that his wife was not being faithful to him and that, as an escape from this, he had taken to drinking heavily with a resulting series of charges for being AWL.

It is not my wish to minimize the seriousness of this mans conduct in going AWL but would beg ~~leave~~ request a full investigation into Smiths family problems with a view to effecting some permanent settlement. By so doing it is my honest opinion that Tpr Smith could be reinstated as a valuable soldier in His Majesty's Service and return to Canada after the war as a respectable citizen. At present Smith is only twenty years of age, having come overseas at seventeen, and is fast slipping into the category of an irresponsible man and a future burden on society.

(A.J. Hassett) Capt.
1 C.A.C.R.U.

This officer is intended to be a character witness and is to be given evidence. However, I am attaching this to the proceedings for the personal attention of the Confirming Officer if he cares to consider it.

ABSENTEE REPORT.

Admin (Squadron, Battery, Troop, Company) (In sheets of 7)

Army No.	Rank and Name	When Absent	Hour of Return	In what state	Remarks
A722141	Spr. Smith W J W	0800 hrs 16 Sept. 43			

Date 16 Sept 43 Bdr. Torrance G J Orderly Sergeant.

ABSENTEE REPORT.

Admin (Battery, Troop, Company) (In sheets of 7)

Army No.	Rank and Name	When Absent	Hour of Return	In what state	Remarks
A722141	Spr. Smith W J W	0800 hrs. 16 Sept 43			

Date 17 Sept 43 Bdr. Torrance G J Orderly Sergeant.

Army Form B 252

EXHIBIT "C"

CHARGE

Canadian Training School, The Canadian Army. (Battery / Squadron / Troop or Company)

CHARGE against No. A 324/4 Rank Tpr.

Name Smith W. J.

Place ??? Date of Offence ???

OFFENCE W. O. A. B.

Absent from ??? until apprehended by the Military Police at the Salvation Army Hostel, Cumberland Street, Sheffield on the 27th Sept/43 about 02-15 hours.

Names of Witnesses:—

Sgt. P. Hall. C. M. Police.

L/Cpl. C. Potter. C. M. Police.

Signature of O.C. Battery, Squadron, Troop or Company)

Punishment Awarded)

By whom Awarded)

Adjutant.

P.T.O.

EXHIBIT "A"

Army No. A 32141

Rank Spr.

Name Smith. W. J. W.

Date from 17-9-43

to 16-9-43

London

Commanding

Sheffield.

Date SEP 17 43

Statement of **EVIDENCE** in the case of :-

No A 22141 Tpr. W. J. Smith,
Canadian Training School,
The Canadian Army,
Bordon Camp, Aldershot.

Sir,

At Sheffield on the 27th Sept/43 about 00-15 hrs I visited the Salvation Army Hostel, Cumberland Street where I saw the above named soldier asleep in bed. I woke him and asked him for his pass, this he produced, not being satisfied with the pass, I conveyed him to Queens Barracks to make further enquiries.

I got in touch with the Canadian Provost, London, who informed me that he was an absentee from his unit. I then arrested him and conveyed him to the Guard Room where I handed him over to the N. C. O. i/c to be detained pending the arrival of a Military escort.

7688176 J Hall Sgt.
151 H. Q. Provost Company,
Corps of Military Police.

Sheffield,
27th Sept/43.

Sir,

I have read over and corroborate the above statement.

REMARKS

5570814 L/Cpl.
151 H. Q. Provost Company,
Corps of Military Police.

Sheffield,
27th Sept/43.

EXHIBIT "D"

Certificate in accordance with Army Act Section 163 (1) (c) (ii).

I certify that No.A.22141..... Rank..Pte..... Name.....Smith, W. J.....

Unit Canadian Training School, The Canadian Army, Bordon Camp, Aldershot.....

was arrested at .Sheffield..... On the...27th Sept/43.....at about .09-15hrs.....

and at the time of arrest was wearing ...Uniform.....

Signature of Provost Marshall, A.P.M. or other officer into whose custody the above named person was taken on arrest.

Soame Barracks,
Sheffield. 10.
27th Sept/43.

.....Captain.
Garrison Adjutant.

Subject:- Discipline.

To:- Officer Commanding,

No.A.22141.Pte.Smith, W. J.....

Herewith A.F.B. 252 in respect of the above named soldier, under your command passed to you for your information and appropriate action.

Soame Barracks,
Sheffield. 10.
27th Sept/43.

.....Captain.
Garrison Adjutant.

Note: When this charge has been dealt with, the A.F.B. 252 should be returned through your usual military channels to the 'A' Branch or to the formation by whom you are administered (i.e. Division, District, Brigade or Area).
Authority. Kings Regulations 1940 para 562 also see Northern Command 1912 of 1942.

Expense Voucher Re—:

Ref: K.R. & O. (Can) 539

EXHIBIT F

Reg. No. A 22141 Rank Tpr. Name Smith, W. J. Unit C. T. S. & Recce

The following expenses were incurred in apprehending and returning the M/N Soldier to his ~~Unit From~~ London from Sheffield

Date	Particulars	Amount		
27 Sept. 40	Escorts return fare from LONDON To Sheffield	1	4	5
	Prisoners single fare to LONDON From Sheffield		12	3
	Prisoners fare from To			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares		6	2
	Total £	2	2	10

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

Officer Issuing Railway Warrant and Expense monies Capt.
No. 6 Area Provost Company, Canadian Provost Corps, London.

M.H.Q. 1000/55
(P & R/485/3287)

EXHIBIT

...er Commanding,
...raining School
...A.22141 Tpr. Smith, W.J.

File No. 22/115

Forwarded for your information and necessary action, please,
...sposal under C.A.R.O. No. 368 dated 29 Oct. 40.

(...rn) D. A. P. M., Capt.
London Area.

EXHIBIT "G"

If a calling-out of the whole Army Reserve is on pass must return immediately to unit

"CANADIAN TRAINING SCHOOL"

No. 3 PASS

Army Form Blank (In pads of 100)

No. A 23147 (Rank) TPR (Name) Smith. W.J.W.

has permission to be absent from his †quarters/duty, from

1700 - 18-9-43 to 0800 - 25-9-43

for the purpose of proceeding to* London & Edinburgh

(Station) Field

(Date) SEP 15 1943

Allan Singer, Lt.
for O.C. ADM. COY.
CDN. TRG. SCHOOL
I.P.T.O.

† Delete whichever is not practicable.

* Destination not required unless cheque is to exceed 24 hours, when authorization desirable owing to local conditions or is necessary to enable purchase of a/p tickets at reduced fare.

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SUMMARY OF EVIDENCE

in the case of No A.82141, Tpr SMITH, William John Wallace, B Cdn Recce Regt, posted to Administrative Wing, Canadian Training School, a soldier of the Canadian Army Overseas.

By the direction of the Commandant the evidence is taken on oath.

FIRST WITNESS
For the Prosecution

B.37645, Pte Digley, H.J., RHLI, posted to Canadian Training School, being duly sworn in evidence states :-

"I am the Orderly Room Clerk of the Administrative Wing, CTS. On 15 Sep 43, I made out a pass for the Accused, Tpr Smith, whom I now recognize, which entitled him to be absent with leave from Havannah Barracks from 1700 hrs 15 Sep 43 to 0800 hrs 16 Sep 43. I submit stub of pass as Exhibit "A".

J H Digley
B.37645, Pte Digley, H.J.

The Accused declines to question this witness.

SECOND WITNESS
For the Prosecution

M.15570, A/CSM Summers, D.R., L Edmn R, posted to Canadian Training School, being duly sworn in evidence states:-

"I am CSM of Administrative Wing, CTS. On 15 Sep 43 a pass was issued to the Accused, Tpr Smith, whom I now recognize, granting permission for him to be absent from Havannah Barracks until 0800 hrs 16 Sep 43. On first parade at 0815 hrs 16 Sep 43 Tpr Smith was absent. His name was entered on the Absentee Report which I submit as Exhibit "B". Tpr Smith continued to be absent until he returned to barracks under escort at 1600 hrs 28 Sep 43."

D R Summers
M.15570, A/CSM Summers, D.R.

The Accused declines to question this witness.

THIRD WITNESS
For the Prosecution

B.37675, Cpl Oliver, R.D., RHLI, posted to Canadian Training School, being duly sworn in evidence states:-

"I was a/NCO IC Regt Police CTS on Thursday 28 Sep 43, when the Accused, Tpr Smith, whom I now recognize, was brought in sober and properly dressed, by a Cpl of the Cdn Provost Corps. He handed me the following papers: AFB 252 (Exhibit "C"); Statement of A/M Somme Bks (Exhibit "D"); DAM London Area (Exhibit "E"); CMHQ 1000;55 (Exhibit "F") and AFB 296 (Exhibit "G"), all of which pertain to the accused."

R D Oliver
B.37675, Cpl Oliver, R.D.

The Accused declines to question this witness.

SUMMARY OF EVIDENCE

in the case of No A.22141, Tpr SMITH, William John Wallace, 8 Cdn Recce Regt, posted to Administrative Wing, Canadian Training School, a soldier of the Canadian Army Overseas.

By the direction of the Commandant the evidence is taken on oath.

FOURTH WITNESS For the Prosecution — 7688136, Sgt Hall, F. 151 HQ Provost Coy CMP Sheffield.

"I certify that in my opinion the attendance of this witness is, owing to the expense and loss of time involved, not readily procurable, and a statement of his evidence, signed by him, has been read to the Accused and is attached hereto (Exhibit "C")."

Officer detailed to take Summary.

I do not require the attendance of this witness for purposes of cross-examination.

(Accused)

FIFTH WITNESS For the Prosecution — 557084, L/Cpl Potter, G. 151 HQ Provost Coy CMP Sheffield.

"I certify that in my opinion the attendance of this witness is, owing to the expense and loss of time involved, not readily procurable, and a statement of his evidence, signed by him, has been read to the Accused and is attached hereto (Exhibit "D")."

Officer detailed to take Summary.

I do not require the attendance of this witness for purposes of cross-examination.

(Accused)

The Accused declines to make a statement, or to give evidence on oath.

The Accused does not call any witness for the defence.

I certify that the foregoing Summary of Evidence, consisting of two pages was taken down by me in the presence of the Accused and that Rules of Procedure 4 (c), (d), (e), (f) & (g) have been complied with.

Adm Officer, No 3 (Weapons) Wing, Canadian Training School.

M.F.M. 6
(A.F. B.122)
40/P & /5136 (2065)

No. A22141 Name Smith, W.J.W. Sqn., Battery, or Company "B" Corps C.A.C Date of enlistment 11 Apr 40 G.C. Badges Service or Proficiency Pay

Date of last entry in Company Conduct Sheet Nil No. and date of last drunk Nil Period not reckoning towards freedom from extra fine Sheet No 3 Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
									FRAI 149(1)(c) F. 13 days pay FRAI 149(1)(c) (11)

RELEASED from the DETENTION BARRACK Field
Aug 3 1943 SENTENCE HAVING EXPIRED Remission
earned under Rules for Detention Barracks and
Military Prisons
18 days

Commandant Initials: J.A. H.

Certified true copy
The Original being in my possession

(D.A.Mackay) Capt, Adjt, Cdn. Tfg. Schoo

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	25 Nov 42	Tpr		WOAS - DRUNKENESS A.A. Sec 19	L/Cpl's Bushey & Kilner	7 days C.B.	26 Nov 42	Major BM Alway	
In the Field	26 Dec 42	Tpr		WOAS AWL from 1300 hrs 26 Dec 42 to 1820 hrs 28 Dec 42 (total time absent 5 hrs 20 min) AA Sec 15 (1)	L/Sgt Hill, G.M.	Admonished	28 Dec 42	Lt-col F A Vokes	Forf 1 day pay FR&I 149 (1) A
Field 16	Jan 43	Tpr		WOAS AWL from 1400 hrs 16 Jan 43 to 2330 hrs 17 Jan 43 (total time absent 1 day 9 hrs 30 mn) AA Sec 15(1)	Sgt Chadwick	14 days F.P.	18 Jan 43	Maj C.R.H. Forteous	Forf 2 day pay FR&I 149(1)a
Field	28 Mar 43	Tpr		WOAS AWL from 2359 hrs 28 Mar43 until apprehended by CMP at 1530 9 Apr 43 (total time absent 11 days 15 hrs 30 min) A.A. Sec 15(1)	Doc'y	28 days F.P.	16 Apr 43	Lt-col FA Vokes	Forf 12 days pay 28 days pay £2-10-11 FR&I 172(8)
Field	10 Jun 43	Tpr		WOAS AWL from 0630 hrs 10 Jun 43 until surrendered to Mil Police at 1420 hrs 19 Jun 43 (absent 9 days 8 hrs 50 min) AA Sec 15 (1)	Doc'y	56 days det Stoppage of pay the amount of £1-11-0 cost of Apprehention	3 Jul 43	FGCM Conf by Comd 2 Cdn Div	Cost on apprehention F. 36 days pay FR&I 149(1)(b) F. 10 days pay

M.F.M. 6
(A.F. B.122)
40/P & /8136 (2965)

No. A22141 Name Smith, W.J.W. Sqn., Battery, or Company "B" Corps C.A.C. Date of enlistment 11 Apr 40 G.C. Badges Service or Proficiency Pay Character

Date of last entry in Company Conduct Sheet Nil No. and date of last drunk Nil Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc.

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Mandora	20 Feb 41	Tpr		A.A. Sec 40 did not obey order promptly	Sgt Vincen Tpr Hayes	3 days C.B.	20 Feb 41	Capt Stevenson	
Field	14 Jan 41	Tpr		AA SEC 15(1) AWL from 0800 hrs to 1830 hrs (total time absent 1 day 10 hrs 30 Min)	Sgt Murray L/Sgt Green	7 days C.B.	17 Jan 41	Lieut. A.F. Buchan	Forf 2 days pay PRI 149(1) A
In the Field	28 Jun 42	Tpr		WAAS AWL from 2359 hrs 28 Jun 42 to 1130 hrs 29 Jun 42 (total time absent 11 hrs 30 min) A.A. Sec 15(1)	L/Sgt Elliott, P.	4 days C.B.	30 Jun 42	Capt Porteous	Forf 1 day pay PRI 149 (1)
In the Field	27 Sep 42	Tpr		WOAS AWL from 2359 hrs 27 Sep 42 till 1600 hrs 28 Sep 42 (Total time absent 16 hrs 1 mn) A.A. Sec 15(1)	Sgt Chadwick	7 days C.B. 7 days pay	29 Sep 42	Lt-col F.A. Yokes	Forf 1 day pay PR&I 149(1)

(P.T.O.)

M.F.B. 355
2274—5-41 (572-3)
H.Q. 1772-39-620
A.F.B. 266

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
A 2241	Tpr	Smith, W.J.W.	8 Recce/Posted CTS

1. The following is a fair and true summary of the entries in the Regimental Conduct sheets, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment or appointment
For A.A. 15 (1)	3 times	7 times
For A.A. 40	0 times	1 times
For A.A. 19	0 times	1 times
For	times	times

Number of instances of gallantry or distinguished conduct Nil

2. The accused has not been previously convicted

or.

Previous convictions of the accused by a court-martial are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 27 days in military custody, making a total of 27 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his attestation paper is 22 yrs 9 mos.

6. The date of his attestation paper 11 Apr 40

7.

8.

9. The accused is in possession of or entitled to no military decoration, or military reward

10.

11. ~~(In the case of an officer).~~ The accused holds in the Royal Canadian Air Force the rank of Permanent Force, unit

~~XXXXXXXXXXXXXXXXX~~ (date) ~~XXXXXXXXXXXXXXXXXXXXX~~ and in the ~~XXXXXXXXXX~~ (or corps), the rank of ~~XXXXXXXXXXXXXXXXX~~ (date) ~~XXXXXXXXXXXXXXXXXXX~~

12. ~~The accused has served as a non-commissioned officer continuously, without reduction, in the following ranks:—~~

~~XXXXXXXXXXXXXXXXXXXXXXXXX~~ Date of promotion.

~~In the rank of XXXXXXXXXXXXXXXXXXXXXXXX~~

~~In the rank of XXXXXXXXXXXXXXXXXXXXXXXX~~

~~In the rank of XXXXXXXXXXXXXXXXXXXXXXXX~~

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial ~~or civil court, of summary awards under section [illegible] of the Army~~ Air Force Act, and of cases in which trial has been dispensed with of accused, Number A [illegible] Rank Tpr

Name Smith, W.J.H. of 8 Cdn Recce/Posted C.F.S. Regiment Unit

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	2 nd Cdn Div 8 July 1943	AWL. from 0830 hrs.,10 June 1943 until surrendered to Military Police at 1420 hrs 19 July 1943 (Absent 9 days 6 hrs 50 min) A.A. 15 (1)	90 Days detention Stoppage of pay amount of $1-11-0 cost of apprehension	15 Days

I hereby certify that the foregoing schedule of convictions and dispensations with trial is [illegible] extract from the regimental books in my custody.

Signed this 4 day of ~~September~~ October 1943

[illegible] Capt
Adjutant
Canadian Armoured Fighting Corps

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked [illegible] signed by the president, and annexed to the proceedings.

LIST OF WITNESSES

M 15570	A/CSM	Summers, B.R.	Admin Wing C.T.S. Cdn Training School L. Edmonton Regt
B.37875	Cpl	Oliver, R.D.	Provost Cpl/C.TS. R.H.L.I.
557084	L/Cpl	Potter, G	151 H.Q. Provost Coy CMP Sheffield
7688136	Sgt	Hall, F	151 H.Q. Provost Coy CMP Sheffield

~~The last two above witnesses are not considered to be necessary to attend due to the expense and loss of time involved.~~

LIST OF EXHIBITS

Exhibit "A" Pass Stub

Exhibit "B" Absentee Report

Exhibit "C" A.F.B. 252

Exhibit "D" Statement of A.P.M. Somme Barracks

Exhibit "E" Certificate by D.A.P.M. London Area.

Exhibit "F" Expense Voucher for Prisoner & Escort Sheffield to London (CMHQ 1000:55).

Exhibit "G" Pass of the accused.

WW-12

SPR SMITH W.L.

JAG BRANCH - REVIEW RECORD

Accused

B- 25749 Lpr Smith W.L.
3/Tpr Coy RCE

Remarks	Date
Trial in (Country) England	24 Nov
Charges 15 (c)	
Sentence 180 days Mil. Pris. £2.0.7	24 Nov
Rec'd from CR at JAG Branch	8 Dec
To Rev 7 for (pre)(post) rev	9 Dec
Recommendations by Rev 1	
(1) Pass and record.	
(2) ~~Ltr on Irregularities.~~	
(3) Quash charge(s).	
(4)	
Ret'd to JAG Rev 1 by Rev H	10 Dec
Passed to	
Passed to	
To AG 5 for review & return pls	10 Dec
Ret'd from AG 5 to JAG Rev 1	
Instrs by JAG Rev 1 on disposal	
Instrs completed by	

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-25749 Spr. Wilfrid Laurier Smith 31 Fd Coy RCE

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	GUILTY	GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~(1) present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 7 days, of which 0 days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for 180 days and to be put under stoppages of pay untill he has made good the sums of $2.0.7 in respect of the cost of returning to his unit

(Sgd) Gordon H. Jennings
Judge-Advocate, if any.

24 Nov 43
Date awarded.

(Sgd) W.A. Lucas Lt Col
President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd)
Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

~~I direct that the accused be not committed to prison or detention barracks until further orders~~ (1) (1. AA 57A. Delete if not used.)

Date 26 Nov 43 (Sgd) W.A. Lucas Lt Col

Commanding HQ ACE 2 Can Corps Tps
Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
5794 Spr Smith W.L.	27 Nov 43	D.H.M. Cathro

Commanding 31 Can Fd Coy R.C.E.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

WW-12

FIELD GENERAL COURT-MARTIAL

CFA86 (In lieu of AFA3) 40/P & C/1698 (2004)

Convened by Order of Lt-Col D.K. Black Comd 2 Edm Corps Tps RCE dated 23 Nov 43

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt. Proceedings Reviewed	Full Christian Names.	Surname.	Unit.
B-25749	Spr	Wilfrid Laurier	Smith	31 Fd Coy RCE

D.C. Black Lieut
pp DAA & QMG
Reviewing Officer (J.A.G.) C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 24 Nov 43

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting~~ Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn AOs. For guidance as procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF AF5, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2); accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1015 hours trial commences.

A4. ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~ (1) The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to~~ ~~as interpreter? Ans~~
~~The Interpreter is sworn.(1) Do you object to~~ ~~as shorthand writer? Ans~~
~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO SIR.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 56(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj/Gen	W.A. Lucas	HQ Comd 2 Edm Corps Tpt Colm RCASC
Member	Capt	W.J.R. May	2 Edm Corps Signals
Member	Lieut	J.D. Harmon	42 Edm Gurd Tpt Coy RCASC
Judge-Advocate	Capt	G.H. Jennings	HQ 2 Edm Corps
Prosecutor	Lt	L.K. Kingston	31 Fd Coy RCE
Defending Offr	Lt	P.M. Bobbitt	31 Fd Coy RCE

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused ~~stands mute~~ before arraignment makes(s) (no) objection(s). (3) ~~pleads~~ plea(s).

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 136, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF AB6 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. No(5) (3)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 15(*B*) *fn* 1 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change~~ his ~~(their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) changes~~ ~~his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 15(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A , initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to that Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Fill in the Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans.....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the.....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans.....
Do you intend to call witnesses on your behalf ?
Ans.....
Are they witnesses as to character only ? Ans.....
(1. *RP* 155. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the.....charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans I want to call Sgt. Lawson
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(1) as to Character and Particulars of Service(2), and certified true copy (~~extract~~) of Conduct Sheet(3), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(4) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(5)
(1. *MFB* 255 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(1) and Conduct Sheet(2) and in mitigation of punishment ?(3) Ans *Defending Officer reads and hands in a statement re sporting prizes.* (4)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) N
(1. *When several accused tried separately see RP* 18(*D*). *One sentence only, comprised of the punishments or punishments laid down in AA* 4), 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 129(*A*), *KR Con* 308, 330, 563-566. *Overseas AO* 309, 1323, *MML p* 60, 737-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(18), 68(1), *KR Con* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Con* 567. *As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

THE ACCUSED B-25749 SAPPER WILFRID LAURIER SMITH OF THE 31 FIELD COMPANY R.C.E., A SOLDIER OF THE CANADIAN ARMY OVERSEAS, IS CHARGED WITH

FIRST CHARGE
AA Section 15(1)

ABSENTING HIMSELF WITHOUT LEAVE

in that he

in the Field, absented himself from 2359 hrs 27 Aug 43 until apprehended by Military authorities at Manchester at 2030 hrs 17 Nov. 43, thereby incurring cost of apprehension and return to his Unit of £ 2 - 0 - 7. (Absent 81 days, 20 hrs and 31 minutes.)

D H McCallum

In the Field
22 Nov 43.

(D.H.McCallum)Major, RCE
Commanding, 31 Cdn. Fd. Coy.

To be tried by Field General Court Martial.

D K Black

In the Field
23 NOV 43

(D.K. Black) Lt-Col
CRE 2 Cdn Corps Tps

W. A. Lovell Maj
Pro

Medical officer's Certificate.
K.R. (Can) Para 557

No. 2/4

I certify that I have this morning examined No. B7.5749 (Rank) Gnr. (Name) Smith W.L.

of 3rd Can Field Coy R.C.E. and in my opinion he is fit / unfit to undergo

trial by Court Martial.

Station Field

Date 24 Nov 43

Sgd. [signature] (Medical Officer)

CFA95 (In lieu of AFA3)
40/P&S/1697 (2003)

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B25749	Sapper	Wilfred Laurier	SMITH	31 Cdn Fd Coy

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 23 NOV 43 endorsed hereto, (if by an offr of any unit other than mine) To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reasons not connected with the service)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I authorize or appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reason stated~~ as required.

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	W.A. Lucas	Coln RCASC Hq Comd 2 Cdn Corps Tpt

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	W.J.A. May	2 Cdn Corps Sigs
Lt	J.O. Shannon	42 Cdn Gen Tpt Coy RCASC

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Capt	G.H. Jermyn	HQ 2 Cdn Corps

On Active Service in the Fd

in England (Country.)

Date 23 NOV 43

(Signed personally. RP 105 fn 2)

(D.K. Black)

Commanding CRE 2 Cdn Corps Tps

Lt-Col (Rank.)

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

Character Evidence

E-1 B-23092 - A/Sgt. Carson, H.A. sworn

I first became acquainted with accused in Dec 1941. We were working at the B.O.W. in Camp Bordon. He went to hospital in March 1942. The next time I saw him was at Basingstoke where he rejoined the unit in the latter part of August 42. While we were there I got to know him very well. He is a steam fitter by trade and we have worked on various jobs. He has always done his work very well. I have never had any trouble with Spr Smith while he has been in my platoon. He has been reliable. He was posted for a good conduct stripe. I have found him a very good soldier.

No cross examination.

RP 93.(6) complied with.

E 3. Defending Officer reads and hands in a statement in mitigation.

PLEA FOR MITIGATION

Plea for Mitigation, Submitted in the Defence for the accused.

B-25749 Sapper Smith, Wilfrid Laurier.
Age: 35
Married: (wife in Canada)
Enlisted: 18 April 41.
Landed in United Kingdom 26 Sep 41.

The accused enlisted with the 4 Battalion, Royal Canadian Engineers and came overseas in the Fall of 1941 with that Battalion. He remained with that Battalion until they were disbanded to for Field Companys, at that time he was T.O.S. of the 31 Canadian Field Company.

The accused has proved himself to be a good soldier, in the past, having qualified for a Good Conduct Badge. His M.F.M. 6 is clean to date, and his value to the army as a tradesman has been vouched for by the witness of his character.

The accused whilst on leave made that common human error of allowing his moral to be lowered by the influence of alchol and the unsatisfied desire to see the action for which he enlisted. His weakness was offset by a desire to return to his unit, but a reluctance to give himself up or return voluntarily was tempered by some natural fear of consequences. His only desire is to now return to active service, his greatest worry is to protect his wife from any financial stress which might be caused through his misconduct.

I, and all who know this soldier, are convinced that he has learned "his lesson" and that the loss of pay which he must suffer will make a lasting impression, and most certainly improve his future discipline.

Signed: Lieut. P.M.Ackley, RCE
Officer for the Defence.

Exhibit E

Ref: K.R. & O. (Can) 539

Expense Voucher Re—:

Reg. No. B 25749 Rank Spr. Name Smith, W. L. Unit 31 Fld Coy. RCE

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London from Manchester

Date	Particulars	Amount £	s	d
18 Nov. 15	Escorts return fare from LONDON To Manchester	1	8	2
				Group Ticket
	Prisoners single fare to LONDON From Manchester			
	To			
	Prisoners fare from		7	6
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Total £	1	15	8

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

F. Brayson Capt.

Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London.

C.M.H.Q. 1000-5-15
W.P. & S. 4-8-15 (3577)

CERTIFICATE IN ACCORDANCE WITH P.C.2797 of 10 Apr.42.

I Certify that No B-25749 Rank Spr. Name Smith, W.L.

Unit Sigl. Fld. Coy. R.C.E. was arrested at Manchester, Lancashire

at 2030 hrs. (hour) on 17-Nov-43. (date) and that at the time of his arrest he was wearing (Military Uniform) ~~(Civilian Clothing)~~.
Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, warrant-officer, non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest. (Strike out part inapplicable).

J. S. Grayson

Capt.,
(L.S. Grayson), D.A.P.M.,
London Area.

Exhibit D

Last Order
No. 16

31 CDN FD COY., R.C.E.
Part II Orders issued by
CANADIAN SECTION G.H.Q. 2nd ECHELON

Exhibit A

No. 17
10 Sep. 43

---

7. ABSENT WITHOUT LEAVE

(a) AWL from 2359 hrs 27 Aug. 43. Still absent 2359 Hrs 4 Sep. 43 (8th Day)

B-25749 Spr. Smith, W.L.

(Sgd) W.J. Blore
(W.J. Blore) Lieutenant
For Officer I/C
Canadian Section G.H.Q. 2nd Echelon

I certify that this is a true extract from the origional Order in my possession.

(L.H. Kingston) Lieut. RCE
31 Cdn Fd Coy.
Officer i/c Records.

Exhibit B.

Last Order No. 19 24 Sep. 43

31 CDN FD COY., R.C.E.
Part II Orders issued by
CANADIAN SECTION G.H.Q. 2nd ECHELON

No. 20 1 Oct. 43

---

4. ABSENT WITHOUT LEAVE

(a) A.W.L. from 2359 hrs 27 Aug. 43 Still absant at 2359 Hrs 18 Sep. 43. (22 days)
B-25749 Spr. Smith, W.L.

(Sgd) C.B. Ferguson Capt.
For (W.J. Blore) Lieutenant
for Officer i/c
Canadian Section G.H.Q. 2nd Echelon

I certify that this is a true extract from the original Order in my possesion.

(L.H. Kingston) Lieut. RCE
O. i/c Records, 31 Cdn Fd Coy

RECORD of the Declaration of a Court of Inquiry assembled in the field on the 30th day of September 1943, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries or Clothing of No.

Exhibit C

DECLARATION

The Court declare that No. B-25749 Spr. Smith W.L.

ROYAL CANADIAN ENGINEERS

illegally absented himself without leave in the field

at 2359 hrs. on the 27th day of August 43;
that he is still so absent
and that on the 30th Sept.43 he was deficient, and that he is still deficient of the following articles:—

ARTICLES	VALUE 'VOCAB	VALUE 'UNEX'	ARTICLES	VALUE 'VOCAB	VALUE 'UNEX'
1 Blouse battle dress	1-7-8	1-0-9	1 Respirators A/G Containers type E MK. VI	0-7-2	0-5-4½
1 Trousers	1-7-11	1-0-11½			
1 Badge Cap	0-0-5	0-0-3½	1 Respirator facepiece MK. V	0-11-9½	0-8-8½
1 Brush Cleaning	0-0-2	0-0-1½			
1 Brush shoe blacking	0-0-8	0-0-6	1 Respirator haversack MK. VII	0-5-8	0-4-3
1 Brush clothes	0-1-1	0-0-9½			
1 Brush button brass	0-0-8	0-0-6	1 Outfit anti-dim MK. V	0-0-1½	0-0-1⅛
1 Brush Shaving	0-1-4	0-1-0	1 Ointment A/G No.5	0-1-2	0-0-10½
1 Comb hair	0-0-2	0-0-1½	1 Eyeshields A/G (set of 6) MK.II	0-4-8	0-3-6
1 Holdall	0-0-9	0-0-6¾			
1 House wife	0-2-3	0-1-8¾	1 Detector individual MK.I prs.	0-1-3	0-0-11¼
1 Razor Safety c/ blade	0-1-10	0-1-4½			
1 Haversack W.E. patt.37	0-9-7	0-7-2¾	1 Cloth disinfecting face pieces	0-0-1½	0-0-1⅛
1 Strap shoulder haversack W.E. patt. 37 left	0-2-0	0-1-6	Total Vocab Price £	5-10-3½	
1 Strap shoulder haversack W.E. patt. 37 right	0-2-0	0-1-6	75% Value	£	4-2-11

D.H. Finlayson Capt. President

C.G. Hadley Lieut. Member

Signed at 1645 hrs in the field

C.G. Murray Lieut. Member

this 30th day of Sept 1943

Signature of Commanding Officer D.H. McCallum Major RCE

Mil. Bk. 68
5500 Bks.—6-41 (940)
H.Q. 1772-61-48

Certified true copy
Lt. Col.
31 Oct 43
Officer i/c Records

Last Order
No.17.
10 Sep 43.

31 CDN FIELD COY. RCE
PART II ORDERS ISSUED BY
CANADIAN SECTION G.H.Q. 2nd ECHELON

No.18
17 Sep 43.

13 (a) Honours & Awards

Awarded one Good Conduct Badge w.e.f. dates as shown.
(Auth:- 99/20, 31 Fd. Coy., RCE/1/A5g d/25 Aug 43) (Verified)

B-25749 Spr. Smith, W.L. 15 Apr. 43.

Certified that this is a true extract of the original document in my possession.

(L.R.Kingston)Lieut. RCE
31 Cdn. Fd. Coy.

LIST OF EXHIBITS

List of exhibits in the case of B-25749 Sapper W.L. Smith, 31 Canadian Field Company.

EXHIBIT A: A Certified true extract from Part II Orders 31 Canadian Field Company RCE, No.17 dated 10 Sep 43 showing B-25749 Sapper W.L. Smith, absent 8 days as of 2359 hours 4 Sep 43.

EXHIBIT B: A Certified true extract from Part II Orders 31 Canadian Field Company RCE, No.20 dated 1 Oct 43 showing B-25749 Sapper W.L. Smith absent 22 days as of 2359 hours 18 Sep 43.

EXHIBIT C: A Certified true copy from the regimental book of the declaration of the Court of Inquiry.

EXHIBIT D: A Certificate in accordance with P.C. 2797 of 10 April 42 certifying that B-25749 Sapper W.L. Smith of 31 Canadian Field Company was arrested at Manchester at 2030 hours 17 Nov 43.

EXHIBIT E: Cost of apprehension and return of B-25749 Sapper W.L. Smith from Manchester to London.

EXHIBIT F: Cost of return from London to 31 Canadian Field Company RCE of B-25749 Sapper W.L. Smith.

LIST OF WITNESSES

FOR PROSECUTION: 1 Documentary.

FOR DEFENCE: Nil.

REQUEST BY ACCUSED

I, B-25749 Sapper W.L. Smith desire to have an Officer assigned to represent me at my trial by Field General Court Martial.

I desire the services of Lieut. P.M. Ackley if he is available.

22 Nov 43.

W L Smith

B-25749 Sapper W.L. Smith.

Exhibit "A"

SUMMARY OF EVIDENCE

Summary of evidence in the case of B-25749 Sapper W.L. Smith, Royal Canadian Engineers on the strength of the 31 Canadian Field Company, a soldier of the Canadian Army Overseas is charged with.

1. Absenting himself without leave.

The Commanding Officer directs that the evidence be taken under oath.

FIRST WITNESS: Lieut. L.R.Kingston on strength of the 31 Canadian Field Company RCE, having been duly sworn states I, Lieut. L.R.Kingston on strength of the 31 Canadian Field Company produce the following as evidence.

EXHIBIT A: A Certified true extract from Part II Orders 31 Canadian Field Company RCE, No.17 dated 10 Sep 43 showing B-25749 Sapper W.L. Smith, absent 8 days as of 2359 hrs 4 Sep 43.

EXHIBIT B: A Certified true extract from Part II Orders 31 Canadian Field Company RCE No.20 dated 1 Oct 43 showing B-25749 Sapper W.L. Smith absent 22 days as of 2359 hrs 18 Sep 43.

EXHIBIT C: A Certified true copy from the regimental book of the declaration of the Court of Inquiry.

EXHIBIT D: A certificate in accordance with P.C. 2797 of 10 April 42 certifying that B-25749 Sapper W.L. Smith of 31 Canadian Field Company was arrested at Manchester at 2030 hours on 17 Nov, 43

EXHIBIT E: Cost of apprehension and return of B-25749 Sapper W.L. Smith from Manchester to London.

EXHIBIT F: Cost of return from London to 31 Canadian Field Company RCE of B-25749 Sapper W.L. Smith.

This concludes my evidence.

The accused declined to cross-examine the witness.

L.R. Kingston Lieut
(L.R.Kingston) Lieut, RCE
31 Cdn Fd Coy.

The accused having been duly warned in accordance with Rules of Proceedure (4) (e) declined to make a statement or give evidence on oath.

I certify that the foregoing summary of evidence was taken down by me in the presence and hearing of the accused and that Rules of Proceedure 4 (c) (d) (e) (f) having been complied with.

Oxted - Surrey
the 20th day of Nov 43.

G.A. Allen Lt
(G.A.Allen) Lieut. RCE
31 Cdn Fd Coy.

Previous sheet destroyed. Reviewed in accordance with CARO 2084 of 13 JAN 43 G.White, Capt. CM. 6

No B-25749 Name SMITH. W.L. Sqn., Battery, or Company — Corps R.C.E. — Date of enlistment 15 APR 41 — Service Pay — Proficiency Pay — Badges — Signature O.C. Company, etc. G.White Capt. — Character

(A.F. B.192) 40/P & /8136 (2965)

Date of last entry in Company Conduct Sheet 20 Aug 42 — Sp. and date of last drunk Nil — Period not reckoning towards freedom from extra fine — Sheet No. 1

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				Awarded one Good Conduct Badge D.O. #18 d/17 Sep 43		W.F. 15 Oct 43		Exhibit 'C' to A.F.P.	

"CERTIFIED TRUE COPY" of the original in my possession

L.R. Kingston Lieut
(L.R.Kingston) Lieut.
31 Cdn. Fd. Coy.

(P.T.O.)

Exhibit B

W.M.

M.F.B. 155
22M—5-41 (272-3)
H.Q. 1772-39-620
A.F.B. 206

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B-25749	Sapper	W.L. Smith	31 Cdn. Fd. Coy.

1. The following is a fair and true summary of the entries in the [redacted] Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	NIL	times	NIL	times
For		times		times
For		times		times
For		times		times

[redacted]

or,

There are no entries in the conduct sheets of the accused.

[redacted]

2. The accused has not been previously convicted

by a court-martial or a civil court, [redacted] Army Act and [redacted]

3. The accused is not under sentence at the present time.

or,

[redacted]

4. The accused has been in confinement awaiting trial on the present charges, for NIL days in civil custody, and 7 days in military custody, making a total of 7 days in custody, of which NIL days were spent in hospital.

5. The present age of the accused according to his record of service is 35 yrs 6 mos.

6. The date of his attestation specified in his record of service is 15 April 41.

7. [redacted]

8. [redacted]

9. [redacted]

10. [redacted]

~~11. (In the case of an officer.)~~ ~~The accused holds in the Royal Canadian Air Force the rank of~~ Permanent Force

dated , and in his regiment (or corps), the rank of unit

dated .

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

In the rank of Date of promotion.

In the rank of years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the ~~Army~~ Air Force Act, and of cases in which trial has been dispensed with of accused, Number Rank Unit of Regiment

Name

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 24th day of November 43

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

(L.H. Kingston)Lieut.
31 Cdn. Fd. Spy.
Officer i/c Records

4D 36

PTE SMITH W.L.

RECEIVED 29 MAY 1944 JAG BRANCH

RECORDED AT CMHQ IN AB 160, p. 4D536

CF Case to Hon'ble APAM 21 Army Gp. 40, p. 4388

FIELD GENERAL COURT-MARTIAL

Convened by Officer ... Comd ... Sec 27 Armd Bde dated ... 19

Number.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or ... rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fm, KR Can 326, 328, 330.)

(a) Prmnt R. (b) Appmt, A/R or A/Appmt. Full Christian Names. Surname.

PROCEEDINGS REVIEWED

Held in the ... (locality) on (date(s)) 22 Aug 44

PROCEEDINGS OF TRIAL.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Cautions do NOT include all relevant fms RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding entry, which entry is hereafter called "Notes". See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence etc, which notes are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 122.)

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)

(1. KR Can 537. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 56(c). Delete, if not applicable.)

A5. President to accused: Do you object to ... as interpreter? Ans

The Interpreter is sworn.(1) The shorthand writer is sworn.(2)

(1. RP 72. Delete, if none employed.) ... as shorthand writer? Ans

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 21, RP 23, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Maj	W. Th Rieser EDIS RE&C (Chairman)
Member	Maj	J.A. Gray ED RE&C (2IC)
Member	Capt	J.A. Ballantyne CE&R (Gen Duties)
Judge-Advocate		
Prosecutor	Lt. Col	Lewis Thompson MMED HQ 2 Can Corps
Defending Offr	Capt	Lewis Hungerford RE&C 21 Army Gp

(1. AA 57A. Delete if not used.)

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned ... proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 85 (8) and fn 2 were not followed. See D1 p 3.)

A8. The accused ... before arraignment make(s) (has) (no) (at) plea.

(1. If a special plea is made for separate trial on one or more charges (RP 62(F), 108), or as to the jurisdiction of the Court (RP 34, 35(4), 118), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 14, 71), such pleas, the addresses made in support or against, the evidence, if any, and findings are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A9 ... and names of the accused making the pleas.)

A9. The accused is (are) arraigned (separately) on all charged in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records that pleas in Part I of the Schedule.

(1. RP 31, 112. See paras 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 456 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is ...) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form ... B ...

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

A 115

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Charge.	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
Accused: B.40914 Pte William Lloyd Smith Rus + Willard			
	Guilty	Guilty	

(Delete where not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

... MML p 483 fn 4 para 2, RP 44 :

... (1)

... beginning on (date) ...

... time in confinement awaiting present trial—a total of Nil days, of which ... days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with hard labour for two (2) years with recommendation to mercy.

22 Aug 44 (Sgd) John Meed President. (RP 45, 50.)

Date awarded. Major

(Sgd) ... Judge-Advocate, if any.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

... Commanding

Date ... (Sgd) ...

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 739-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: Confirmed

(Sgd) ...

Date ... Commanding ... 27 Oct 1944

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Can 574, ...)

Accused.	Date.	Signature of Offr.
B.40914 Pte Smith Lloyd W ...	27 Oct 44	... Maj. No 2 Can ...

ALL DELETIONS AND ALTERATIONS WILL BE INITIALL...

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B 40914 Pte William Lloyd Smith Lincs + Welld

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A A 15(2) dismissal	Guilty	Guilty	Prosecution
2nd A A 40	Withdrawn by		
3rd			
4th			
5th			
6th			

... MML p 40.3 fn 4 para 2, RP 44 ;

... being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B.355 or AF B.296.)

beginning on (date) ..... (1)

... in confinement awaiting present trial—a total of Nil days, of which ..... days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B.335 or AF B.296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with hard labour for Two (2) years with recommendation to Mercy.

(Sgd) ..... Judge-Advocate, if any. 22 Sept 44 Date awarded. (Sgd) [illegible] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 72e0.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6.46(8), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(C). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 572. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be ... further detention barracks ... further orders.(1)

(1. AA 57A. Delete if not used.)

(Sgd) [illegible] Lt-Gen

Date ..... Commanding ..... 21 Army Gp.

27 Sep 1944 Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
B 40914 Pte Smith Lloyd Wm	27.9.44	[illegible] Capt for DAAG No 21 Army Gp

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

I certify that these proceedings have been duly reviewed in accordance with the instructions contained in Army Council Instruction No. 1776 dated 31st December 1942, and that the sentence promulgated in this case is not excessive.

[illegible] Lt-Col
DJAG, Can Sec GHQ
21 Army Gp.

RECEIVED 4 NOV 1944 FIELD

RECORDED AT CMHQ IN AB 160 4 WD 236

CFA66 (To Heu of AFA5) 40/1 Pads (6000) 4/44 4398

FIELD GENERAL COURT-MARTIAL

Convened by Order of Lt-Gen H.D.G. Crerar CB DSO CMG Comd 1 Can Corps dated 19 Sept 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.
B 40914	Pte		William Lloyd	Smith

PROCEEDINGS REVIEWED

JAG 12 Nov 44

PROCEEDINGS REVIEWED 4 NOV 1944 DJAG, Can Sec GHQ 21 Army Gp.

PROCEEDINGS OF TRIAL.

Held in the [illegible] (country) by the CONVENING OFFICER, 1 CDN CORPS on (date(s)) 22 Sept 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 12/64

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc. which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (a/c) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (a/c) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused: Do you object to ..... as interpreter? Ans .....

The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....

The shorthand writer is sworn.(2)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No Sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	E. Th. Thurber EDIRC	RCAC (Can Sec GHQ 21 Army Gp)
Member	Maj	N. R. Gray ED	QOR(R) (FMC)
Member	Capt	J.A. Bourassa	Gen List (Asst 21 A Gp)
Judge-Advocate			
Prosecutor	Lt-Col	J.G. Thompson MMED	HQ 2 Cdn Corps
Defending Offr	Capt	W.S. Hungerford	RCASC attd 1 Fd Bde

Questions by President: Is the Prosecutor a lawyer? Ans Yes (1) Is the Defending Offr a lawyer? Ans Yes (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment, which RP 89 (B) and fn 2 were not followed. See D1 p 3.)

A8. The accused ..... before arraignment make(s) (no) (a/) plea ..... (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or for one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (~~separately~~ on ~~all~~ charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B 1 C

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

A.115

RECORDED AT CMHQ IN AB 160, p 40236

CPA96 (To Hist of APA31)

FIELD GENERAL COURT-MARTIAL

Convened by Officer Commanding Commd, 21 Army Gp dated 19

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Appmt.	Full Christian Names.	Surname.

PROCEEDINGS REVIEWED & NOTED Date

Con. Sec. G.H.Q. 21 Army Gp.

PROCEEDINGS REVIEWED

Date

PROCEEDINGS OF TRIAL.

Held in the [illegible] (country) on (date(s)) 22 Sept 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 12/44

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any,~~ assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(a) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1000 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(6), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.

A5. President to accused: Do you object to as interpreter? Ans

The Interpreter is sworn.(1) Do you object to as shorthand writer? Ans

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 66(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	E. A. Thurber ED RCAC	(Con Sec GHQ 21 Army Gp)
Member	Major	T. R. Gray ED	Adjt
Member	Capt	J. A. Ballantyne	Gen Lnr
~~Judge-Advocate~~ Prosecutor	Lt. Col.	Wm. Thompson MMED	HQ 2 Cdn Corps
Defending Offr	Capt	Wm. A. Hungerford	RCASC attd 1 Cdn Corps

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment, whether RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused before arraignment make(s) (no) (a) plea(s).(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 118), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to AsP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the plea in Part 1 of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. 2. RP 32, RP 33. If otherwise, deletes and makes appropriate record per Notes.) (3. Where more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A64 to record proceedings.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

A.115.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : B.40914 Pte William Reginald Smith Lincs Welland
Can R of H

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A A 18(2)	Guilty	Guilty	
2nd Alternative A A 40	Withdrawn by Prosecution		
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 733, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of N/A days, of which ..... days were spent in hospital.(2)
(2. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To be imprisoned with hard labour for Two (2) years with recommendation to Mercy.

(Sgd) ..... Judge-Advocate, if any. 22 Sept 44 Date awarded. (Sgd) [illegible] President. (RP 45, 50.)
Major
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, 57AA, 57B, 58A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Confirmed

~~I direct that the accused be not committed to prison/or detention before/pending further orders~~ (1)
(1. AA 57A. Delete if not used.)

(Sgd) [illegible]
[illegible] Canadian Section
A.A.G. 1 Lue
21 Army Group.

Date ..... Commanding .....

27 Sep 44

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
B.40914 Pte Smith Lincs Welland	27 Oct 44	[illegible] Capt RCASC A Adjt, No 2 Con Sec Hqs [illegible]

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

DJAG Can Sec No 1 Ltr 21 Jan 44 (1) Amended to justify with this proposed modification of these proposals

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans: ..... (5)

(1. *RP 37(B).* 2. *RP 37(D) fn 4.* 3. *RP 35(B) fn 5 para 2, MML p 54 para 47.* 4. *See para E3 of Record Form E.*
5. *Statement, if any, recorded per Instrs.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be allowed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records findings of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans.....(1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans ..... Do you intend to call witnesses on your behalf? Ans ..... Are they witnesses as to character only? Ans .....

(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. AA 54(2) (c), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans Defg Offr states he has explained the R. to accused who wishes to give evidence himself & call

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces ~~Statement(s) as to Character and Particulars of Service(1), and~~ certified true copy ~~(copies)~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that the documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ~~F3~~ and Ex ..... respectively.(3)

(1. MFB 355 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court ~~on the Statement(s) and~~ Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Defg Offr .....(2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(2), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him, ~~and the JA~~, if any.(2)

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 309, 330, 563-566, Overseas RD 309, 1323, MML p 60, 727-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

22 Sept 44

Confirming Officer.

FGCM
PB 409 14. Pte Smith WL

1. Proceedings herewith.

2. The Court recommend that the accused be returned to duty with his Unit. Fine & Weeks. or suspended sentence.

[signature]
Major
Pres.

CHARGE SHEET

The accused B 40914 Pte William Lloyd SMITH, Lincoln & Welland Regiment attached No 7 Canadian General Hospital, a soldier of the Canadian Army Overseas, is charged with :-

First Charge
Army Act
Sec 18(2)

WHEN ON ACTIVE SERVICE WILFULLY INJURING HIMSELF WITH INTENT THEREBY TO RENDER HIMSELF UNFIT FOR SERVICE

IN THAT HE

In the Field on 13 Aug 44 by discharging his Sten gun wilfully injured himself by shooting himself through the left foot in the region of the great toe with intent thereby to render himself unfit for service.

Second Charge
(Alternative)
Army Act
Sec 40

WHEN ON ACTIVE SERVICE NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

In the Field on 13 Aug 44 while with his regiment in the line so negligently handled his Sten gun as to shoot himself through the left foot in the region of the great toe thereby rendering himself unfit for service.

J.B. Rader Col
OC No 7 Cdn Gen Hospital

In the Field
19 Sep 44

To be tried by Field General Court Martial

A W Beament Brigadier
OIC
Cdn Sec GHQ 1 Echn 21 A Gp

In the Field
19 Sep 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B 40914	Pte		Lloyd WILLIAM	SMITH	Lino & Weld att No 7 Cdn Gen Hosp

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, [illegible] subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on [illegible] 19 Sep 44 endorsed by me, ~~an officer duly authorized for that~~ " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; (and ~~that it is not practicable or unduly to the trial for reference to a superior qualified offr~~)
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~And I am unable to appoint (a) three Offrs as form the Court; (b) a Fd Offr as President, for the reason(s) [illegible]~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~And I appoint as Judge Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	B M Miller ED KC (Must be named. RP 106.)	RCOC	) att Cdn Sec (Unit.)

MEMBERS.

Major	M L Troy	Alg Regt	) GHQ 1 Ech
Capt (Rank.)	F A Baillargeon (Named or detailed. RP 106.)	Gen List	) 21 A Gp (Unit.)
	~~WAITING MEMBER~~		
(Rank.)	(Named or detailed, if any. RP 106.)		(Unit.)
	~~JUDGE ADVOCATE~~		
(Rank.)	(Must be named, if any. RP 106.)		(Unit.)

On Active Service in the Fd

in FRANCE (Country.)

Dat 19 Sep 44

W W Bennett
(Signed personally. RP 105 fn 2.)
Brigadier (Rank.)
(A W Beament)
Commanding Cdn Sec GHQ 1 Ech 21 A Gp
Convening Officer.

Approved CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS
(See overleaf for oaths and notes for use on trial.)

[illegible] (Issued on the 1st of AFA 2) 49/2 & 3/1097 (8148)
[illegible] GHQ 1 Ech
[illegible] 21 A Gp
19 SEP 1944

F1 D40914 Pte William Lloyd Smith sworn states;

Born at Catherines, Ontario 2 Dec 23. Went to 1 yr high and left at 15 yrs. Worked in factory and on farms and enlisted 7 mos after I left school. Joined Linc & Welland and trained with the unit and arrived in UK with them on 22 Jul 43. Remained for a while then 2" mortar detach Comdr and came to France as such on 15 Jul 44. Joined with Regt constantly until this incident 18 Aug 44. I had 5 days rest although was shelling got me down quite a bit. I couldn't take it up after any longer. I think that I could take it now. I was married in Eng. with permission Apr 44. I was worried about my wife who is expecting a baby and she is in Liverpool where all the fly bombs were falling. She is expecting the end of Dec or first Jan. One brother is in service in Italy and my father who was in the last war is in the ordnance at London Eng. in civilian life he was an electrician now he is a guard in R.A.F. I have not been examined by a psychiatrist at any time

Cross Exam by Prosecutor

Q. You arrived in France 15 Jul 44 and this happened 18 Aug 44 about 1 mo later.
A. Yes, Sir
Q. You have had two letters from your wife.
A. I received them just after I arrived in France written before I left Eng.
Q. She does not know your address since your injury.
A. She still has my unit address.

By the Court

Q. You have had no letters written by her since you came to France?
A. No Sir
Q. Have you written to her family?
A. She lives with her parents and I write to

MEDICAL CERTIFICATE

I certify that I have this morning examined No. 5407614 RANK. Pte.....

NAME.....SMITH, W. t. w. [illegible] Walter R. and he is fit to undergo trial

by court martial.

22 Sep 44

Medical Officer

:Private W.h. Cont'd.

them at the same time.

Re Exam by Def't

Q. Where does your wife live?

A. Rotherfield, near Tunbridge Wells.

Q. Your category is A?

A. Yes Sir.

Q. What is nationality of your Parents?

A. They were both born in Canada.

By the Court

Q. Were you in the fly bomb area in Engl.

A. Our unit was at Crowborough when a fly bomb landed in the area and a number of men were killed and wounded just before we left for France.

Read over (R P 83B)

:B. 40914 Pte Smith W.L.
Lincoln & Welland Regt

Plea in mitigation by defending Officer

"This accused was barely finished even a primary or early secondary school education when he found himself in the army at the age of 16. although he gave his age as 18 in order to qualify. This fact is deserving of consideration - At the time this happened he was thinking of his wife who was in Rosthern hospital assisting Mrs Bridges wells is sick I.e. You are aware gentlemen, that this was the exact area of Robot bomb activities - I put it to you that this is a very definite factor in this case - This youth has admitted that he has made a bad mistake. He wants to redeem himself - Having regard to his extreme youth his education and the other factors

I have mentioned I consider he deserves a second chance.

I would ask that careful consideration be given to the possibility previously suspended sentence herein.

22.9.44

W.D. Thurgur Lt Col
OC 1Fd

Statement of B 40914 Pte. Smith W. L. taken on 12 Sept. 44 at Apprx. 1500 hours at No. 7 Cdn. Gen. Hospital in the presence of Cpl. Norton J. H. after the soldier had been properly cautioned. This statement is voluntary and reads as follows.

I am William Lloyd Smith and was born 2 dec. 23 in St. Catherines, Ontario. I enlisted in the Lincoln and Welland Regiment 29 June 40 at the age of 16. I gave my army age as 19 when I enlisted. I arrived in England 22 July 43 I left England to come to France 18 July 44. with the Lincoln and Welland Regiment. We had made several moves and finally stopped at Bourguebus. We were there for several days and were relieved by the Argiles so we could make an attack on Tilly. The attack wasn't a success and we moved back to a place called Bras and stayed there several days until relieved by the 5th Highland Division. We moved back to Cam for the night and moved forward when we broke out of the hinge at Cam. We were dug in east of Cintheaux and told that we were staying there for the night. I was sitting on the side of my slit trench, and I picked up my sten gun, laid it on my lap and fired a shot into my left foot. I called my platoon Sgt. and he took me to R. A. P. I was then sent to No. 7 Cdn. General Hospital. I have realized now that I have made a mistake. My foot is better and I am ready to redeem myself and return to the lines.

I have given this statement voluntary without promise, threat or inducement. I have read the above statement and had it read to me. It is the truth.

Signed William L. Smith

Witnessed By — J. H. Norton Cpl #4 Cdn. C.P.C.

Statement taken By — George L. Bindness 13 Cdn Provost Coy

This is Exhibit "A" referred to in the summary of evidence in the case of Pte SMITH W taken before me this 11 day of Sep 44.

Officer taking Summary

Statement of B -40914 Pte. Smith W.L. taken on Sept 12 -44 at approx.1500hrs at No 7 Cdn.Gen.Hosp. in the presence of Cpl Norton T.H. after the soldier had been properly cautioned.

This statement is voluntary and reads as follows:

I am William Lloyd Smith and was born 2nd Dec.23 in St Catherines,Ont. I enlisted in the Lincoln and Welland Regt. 29 June 40 at the age of 16. I gave my Army age as 19 when I enlisted. I arrived in Eng.22July 43. I left Eng. to come to France 15 July 44 with the Lincoln and Welland Regt. We had made several moves and finally stopped at Bougirbois. We were there for several days and were relieved by the Argiles so we could make an attack on Tilly. The attack wasn't a success and we moved back to a place called Bras and stayed there several days until relieved by the 51 Highland Div. We moved back to Caen for the night and moved forward when we broke out of the hinge at Caen. We were dug in east of Cintheaux and told that we were staying there for the night. I was sitting on the side of my slit trench and I picked up my Sten gun, laid it on my lap, and fired a shot into my left foot. I called my platoon Sgt.and he took me to R.A.P. I was then sent to No7 Cdn. Gen.Hosp. I have realized now that I have made a mistake. My foot is better and I am ready to redeem myself and return to the line s.

I have given this statement voluntary without promise, threat, or inducement. I have read the above statement and have had it read to me. It is the truth.

Signed: William L.Smith.

Witnessed by: T.H.Norton Cpl.
4 Coy.C.P.C.

Statement taken by: George L. Bindner. L/Cpl
(George L Bindner)
13 Cdn.Prov. Coy.

SUMMARY OF EVIDENCE

Summary of evidence in the case of B 40914 Pte William Lloyd SMITH, Lincoln & Welland Regiment attached No 7 Canadian General Hospital, charged with, when on active service wilfully injuring himself with intent thereby to render himself unfit for service (AA Sec 18(2)), alternative, when on active service neglect to the prejudice of good order and military discipline (AA Sec 40)

By direction of the Commanding Officer the evidence is taken on oath.

First Witness

A 3316 L/Cpl Bindner GL, 13 Cdn Pro Coy, Cdn Pro Corps, sworn states :-

I am A 3316 L/Cpl Bindner GL, 13 Cdn Pro Coy, Cdn Pro Corps. On the 12 Sep 44 at approximately 1500 hrs I interviewed the accused, B40914 Pte SMITH WL of the Lincoln & Welland Regiment, whom I recognize, at No 7 Cdn Gen Hosp. I was in company with Cpl Norton TH. I informed the accused that I was a member of the Pro Corps and that I was investigating the circumstances surrounding his injury. I introduced him to Cpl Norton also as a member of the Cdn Pro Corps. I cautioned him in the following manner : "you are not obliged to say anything unless you wish to do so, but whatever you do say will be taken down in writing and may be used in evidence". He understood this caution and signed same. He then volunteered to make a statement which I took down in writing. After the statement was reduced to writing I read it over to the accused and he in turn read it over himself, and then he signed it. I recognize the accused's signature on the statement. I produce the statement as evidence. There were no threats, promises of reward or inducements held out to the accused to obtain this statement. He was not under arrest at this time.

George L. Bindner
Witness

The accused declines to cross examine this witness.

The statement referred to in the evidence of the above witness is attached hereto as Exhibit "A".

Second Witness

Capt WE Armour, RCAMC, No 7 Cdn Gen Hosp, sworn states :-

I am Capt WE Armour, medical officer at No 7 Cdn Gen Hosp. Pte Smith was admitted to my ward on the 8 Sep 44 suffering from a wound of the left foot incurred on the 13 Aug 44 according to medical records accompanying him. The wound perforated the base of the terminal phalanx of the great toe in a vertical direction. Clinically there is no fracture of any importance. The wound is now practically healed and he should be fit to return to full duty within four weeks without change of category due to the wound. In my opinion the wound could have been caused by a small arms projectile fired from a weapon held by the man himself. There is nothing to show at what distance from the wound the weapon might have been fired.

W. Edward Armour Capt
Witness

The accused declines to cross examine this witness.

The accused is cautioned as follows :-

Do you wish to make a statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

There is nothing I have to say now.

The accused does not wish to call any witnesses.

I certify that the foregoing summary of evidence consisting of two pages was taken down before me in the presence of the accused and that RP 4 (C) (D) (E) (F) and (G) have been complied with.

Officer detailed to take the summary of evidence.

In the Field
Sep 44.

No. B40914 Name SMITH W.L. | Sqn, Battery, or Company | Corps L&W Regt | Date of enlistment 24 6 40 | GC 1 8 42 | Service or Badges BC 162 | Proficiency Pay $1.50 3/17 MFM 6 (AFB 122) 40(F&S)126(5418)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 3 | Signature OC Company, etc "RF Wilson" Capt | Character Good.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with this	By whom awarded	Remarks
				SHEETS #1 and #2 destroyed. No previous entries 24 11 42.					
Field	10 1 44	Pte		Guilty of felony - feloniously stealing 4 live chickens, together value of £9-0-0		Fined £2-0-0 Assessed £2-5-0 compensation	26 1 44	Petty Sessional Div Frant Mark Cross England.	
Field	4 5 44	Pte		AWL 2230 4-5-44 to -7-- 5-5-44 - Absent 8 hrs 30 mins AA 15 (1)	Sgt D Sowray	2 days F.P. 2 days pay	6 5 44	"R.F.Wilson"	1 day auto forf pay

CERTIFIED TO BE A TRUE EXTRACT FROM THE REGIMENTAL BOOKS AND DOCUMENTS IN MY CUSTODY.

(G. Stewart-Patterson) Lieut,
Officer IC Rec "X"
Cdn Sec GHQ 2 Ech - 21 A Gp.

PMNJG-J

(PTO)

I ...W. Wilson Capt AGD...desire to have an officer assigned to represent me at my trial by court martial. I desire the services of ...Capt. Lyle Kenyon...

if he is available.

18 Sep 44

W T Smith
Signature of accused

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-40914 Pte William Lloyd SMITH Line & Weld R att 7 C O H

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA 18(3)	Guilty	Guilty	
2nd	(Alternative) AA 40	Withdrawn by prosecutor.		
3rd				
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for -- beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of nil days, of which -- days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To be imprisoned with hard labour for two(2)years with recommendation to mercy.

(Sgd) ..... Judge Advocate, if any. 22Sep 44 Date awarded. (Sgd) R W Miller Major President. (RP 45, 50.)

(See Back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

(Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be attested before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

[illegible] (1. AA 57A. Delete if not used.)

(Sgd) "A W Beaumt" (A W Beaumont) Brig Offr i/c Gdn Sec GHQ 1 Ech 21 Army Gp Confirming Officer.

Date 27 Sep 44. Commanding

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
B-40914 Pte Smith: W L	27 Oct 44	F H Playfd r Capt RCAMC A/RegO No. 21C G H .

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

No illegalities or irregularities such as would warrant withholding confirmation.

RECORDED AT CMHQ IN AB 160. 40-36

FIELD GENERAL COURT-MARTIAL

CFA96 (In lieu of AFA3) K.C. P.A.B. 1898 (2864)

Convened by Order of Brig A W Beaumt Comd 1 Can Fld Gp dated 19 Sep 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
B-40914	Pte	Lloyd William	Smith	Line & Weld R att 7 C O H

CERTIFIED TRUE COPY

[signature] A/Maj

PROCEEDINGS REVIEWED AT Cdn. Sec G.H.Q. 2 Ech. 21 Army Gp. Date 4 Nov 44

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) France on (date(s)) 22Sep 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED. IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fins ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) [illegible] (1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. [illegible] Do you object to as interpreter? Ans

[illegible] as shorthand writer? Ans

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) The President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(E). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	R W Miller MD RE	RCOC	Att Gdn Sec GHQ 1 Ech 21 Army Gp
Member	Major	H L Tracy ED	Adjt 7	
Member	Capt	P A De Blaquon	Can Fld.	
Judge-Advocate				
Prosecutor	Lt-Col	J F G Thompson MBE	HQ 2 Cdn Corp	
Defending Offr	Capt	W G D Hungerford	RCASC att 1 Can	

Questions by President: Is the Prosecutor a lawyer? Ans Yes. Is the Defending Offr a lawyer? Ans Yes.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 99 (B) and fn 2 were not followed. See Div p 2.)

A8. The accused Gunn before arraignment make(s) (no plea) plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposit, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused [illegible] arraigned on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, deletes and make appropriate record per Notes.)

A10. The Court [illegible] considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B & E

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Confirming Officer.

FGCM.
3.40914 Pte Smith W.L.

1 Proceedings herewith.

2. The Court recommend t
to duty with his unit.
sentence.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(C). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(A). *As to plea when sentence may be death see RP* 35(D).

2. *The proceedings on each charge sheet* (RP 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. *If pleas to all charges are GUILTY, use Record Form B below.*

II. *If pleas to all charges are NOT GUILTY, use Record Form D on p* 3.

III. *If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,*

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (RP 37(A).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (A) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(C); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(A) (B); *duty and privileges of accused and Defending Offr see RP* 80, 87(C), 92(B), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(E) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or ~~JA, if any~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. Yes Sir. (5)
(1. *RP* 37(B). 2. *RP* 37(D) *fn* 6. 3. *RP* 35(B) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (~~their~~) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (~~they~~) change(s) his (~~their~~) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(~~s~~) to which the plea(~~s~~) of Guilty is (~~are~~) not changed the President records finding(~~s~~) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(B). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(B). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(A) (C).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by using paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof as a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

• File here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. ..... (1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: *If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance.* (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?
Ans. ..... Do you intend to call witnesses on your behalf?
Ans. ..... Are they witnesses as to character only? Ans. .....
(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF 495. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(6).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith.
and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

(1) The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. *Defence States that he desires to call witnesses as to character, delete this para.* *RP 37(C) fn 4, 46 fn 1.*
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para.* *RP 37(C) fn 4, 46 fn 1.*
Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces ~~Statement(s)~~ as to Character and Particulars of Service(1), and certified true copy ~~extract~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that the documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex D and Ex ——— respectively.(2)
(1. *MFB 355 or MFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1)
Ans. *By Defy D Offr.*
(1. *RP* 37(C), 46(D). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(F) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and ~~the JA, if any~~.
(1. *When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 338, 330, 563-566, Overseas RO 309, 2203, 2204, MOWL p 60, 717-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(15), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] *3.*

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or ~~JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. Yes Sir. (5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 3 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (was) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by using with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Fix here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. ..... (1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. ..... Do you intend to call witnesses on your behalf ? Ans. ..... Are they witnesses as to character only ? Ans. .....

(1. *RP 155.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, B6(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1) Ans. Defence Counsel has explained that accused will give evidence on oath. (2)

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1.* 2. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces ~~statement(s) as to Charges and Particulars of Service(1), and~~ certified true ~~copy (copies)~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that the ~~said~~ document(s) refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) the~~y~~ purports to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex ..... respectively.(3)

(1. *MFB 255 or MFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. By Defence Counsel. (2)

(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and ~~the JA, if any.~~(2)

(1. *When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 2323, MML p 66, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564.* 2. *RP 50. As to remove from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Confirming Officer. 22Sep 44

FGCM.
B.40914 Pte Smith W L

1 Proceedirgs herewith.

2. The Court recommend that the accused be returned to duty with his unit. Linc & Welld Regt on suspended. sentence.

"E M Miller"
Major
Pres.

CHARGE SHEET

The accused B 40914 Pte William Lloyd SMITH, Lincoln & Welland Regiment attached No 7 Canadian General Hospital, a soldier of the Canadian Army Overseas, is charged with :-

First Charge
Army Act
Sec 18(2)

WHEN ON ACTIVE SERVICE WILFULLY INJURING HIMSELF WITH INTENT THEREBY TO RENDER HIMSELF UNFIT FOR SERVICE

IN THAT HE

In the Field on 13 Aug 44 by discharging his Sten gun wilfully injured himself by shooting himself through the left foot in the region of the great toe with intent thereby to render himself unfit for service.

Second Charge
(Alternative)
Army Act
Sec 40

WHEN ON ACTIVE SERVICE NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

In the Field on 13 Aug 44 while with his regiment in the line so negligently handled his Sten gun as to shoot himself through the left foot in the region of the great toe thereby rendering himself unfit for service.

OC No 7 Cdn Gen Hospital

In the Field
Sep 44

To be tried by Field General Court Martial

(A W Bemment) Brigadier
OIC
Cdn Sec GHQ 1 Echn 21 A Gp

In the Field
Sep 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
B-40914	Pte		Lloyd WILLIAM SMITH	Line & Weld R. att No. 7 Cdn Gen Hosp.	

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, who is subject to military law, has committed the offence(s) set forth in the Charge Sheet(s) attached and on 19 Sep44 endorsed by me, [illegible], to be tried by Field General Court-Martial ";

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; [illegible]

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [illegible]

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [illegible]

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	E W Miller ED EC	FCOC	att Cdn Sec

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Major	W L Troy	Alq Regt.	GHQ 1 Kch
Capt	F A Baillargeon	Gen List.	21 Army Gp
(Rank.)	[illegible]	(Named or detailed, if any. RP 106.)	(Unit.)
(Rank.)	[illegible]	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in FRANCE (Country.)

Dtd 19 Sep 44

A W Beament Brigadier. (Rank.)

(Signed personally. RP 105 fn 2.)

(A W Beament)

Commanding Cdn Sec GHQ1 Kch 21 A Gp

Convening Officer.

Approved

E W Howard Capt.

ADJA

4/38A CFAR (in lieu of AFAS)

Cdn Sec GHQ 1 Kch 21 A Gp

19 Sep 44

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL CERTIFICATE.

I certify that I have this morning examined No. B-40914 Rank Pte Name Smith WL Linc & Welld and he is fit to undergo trial by court-martial.

21 Sep 44.

W Edward Armour Capt
Medical Officer.

B-40914 Pte William Lloyd Smith sworn states:

Born at St Catherines Ontario 2 Dec 23. Went to 1 yr high and left at 15 yrs. Worked in a factory and on farms and enlisted 7 mos after I left school Joined Linc & Welld and trained with the unit and arrived inUK with them on 22 Jul 43. Rfmn for a while then 2" mortar detach comdr and came to France as such on 15 Jul 44. Served with Bgt constantly until this incident 13 Aug 44 I had 5 days rest although under shell fire. The shelling got me down quite a bit. I couldn't take it up there any longer. I think that I could take it now. I was married in Eng with permission Apr 44 I was worried about my wife who is expecting a baby and she is in Sussex where all the fly bombs were falling. She is expecting the end of Dec or first Jan. One brother as Bdr in services in Italy and my father who was in the last war is in theOrdnance at Bordon Eng. In civilian life he was an electrician now he is a guard in R.A.F I have not been examined by a psychiatrist at any time.

Cross Exam by Prosecutor.

Q. You arrived in France, 15 Jul 44 and this happened 13 Aug 44 about 1 mo later.
A. Yes. Sir

Q. You have had two letters from your wife.

A. I received them just after I arrived in France written before I left Eng.
Q. She does not know your address since your injury.
A. She still has my unit address.

By the Court Q. You have had no letters written by her since you came to France?
A. No Sir.
Q. Have you written to her family,
A. She lives with her parents and Iwrite to them at the same time.
Q. Where does your wife live?
A. Rutherfield near Tunbridge Wells.
Q. Your category i s A.
A. Yes sir.
Q. What is nationality of your Parents,
A. They were both born in Canada.

By the Court.
Q. Were you in the fly bomb area in Eng.
A. Our unit was at Crowborough when a fly bomb landed in the area and a number of men were killed and wounded just before we left for France.

Read over. (R.P. 33(b).

B-40914 Pte Smith W L Linc & Welld Regt.
Plea in Mitigation by Defending Officer.
"This accused was barely finished even primary or early secondary school education when he found himself in the army at the age of 16. Although he gave his age as 19 in order to qualify. This fact is deserving of consideration. At the time this happened he was thinking of his wife who was in Rotherfield Sussex NrTunbridge Wells in Kent Eng. You are aware Gentlemen that this was the exact area of ROBOT Bomb activities. I put it to you that this is a very definite factor in this case. This youth has admitted that he has made a bad mistake He wants to redeem himself. Having regard to his extreme youth his education and the other factors I mentioned I consider he deserves a second chance. I would ask that careful consideration be given to the possibiltiy of recommending suspended sentence herein".
22-9-44.

(W D Hungerford Capt.
Def Offr.

SUMMARY OF EVIDENCE

Summary of evidence in the case of B 40914 Pte William Lloyd SMITH, Lincoln & Welland Regiment attached No 7 Canadian General Hospital, charged with, when on active service wilfully injuring himself with intent thereby to render himself unfit for service (AA Sec 18(2)), alternative, when on active service neglect to the prejudice of good order and military discipline (AA Sec 40)

By direction of the Commanding Officer the evidence is taken on oath.

First Witness

A 3316 L/Cpl Bindner GL, 13 Cdn Pro Coy, Cdn Pro Corps, sworn states :-

I am A 3316 L/Cpl Bindner GL, 13 Cdn Pro Coy, Cdn Pro Corps. On the 12 Sep 44 at approximately 1500 hrs I interviewed the accused, B40914 Pte SMITH WL of the Lincoln & Welland Regiment, whom I recognize, at No 7 Cdn Gen Hosp. I was in company with Cpl Norton TH. I informed the accused that I was a member of the Pro Corps and that I was investigating the circumstances surrounding his injury. I introduced him to Cpl Norton also as a member of the Cdn Pro Corps. I cautioned him in the following manner : "you are not obliged to say anything unless you wish to do so, but whatever you do say will be taken down in writing and may be used in evidence". He understood this caution and signed same. He then volunteered to make a statement which I took down in writing. After the statement was reduced to writing I read it over to the accused and he in turn read it over himself, and then he signed it. I recognize the accused's signature on the statement. I produce the statement as evidence. There were no threats, promises of reward or inducements held out to the accused to obtain this statement. He was not under arrest at this time.

Witness

The accused declines to cross examine this witness.

The statement referred to in the evidence of the above witness is attached hereto as Exhibit "A".

Second Witness

Capt WE Armour, RCAMC, No 7 Cdn Gen Hosp, sworn states :-

I am Capt WE Armour, medical officer at No 7 Cdn Gen Hosp. Pte Smith was admitted to my ward on the 8 Sep 44 suffering from a wound of the left foot incurred on the 13 Aug 44 according to medical records accompanying him. The wound perforates the base of the terminal phalanx of the great toe in a vertical direction. Clinically there is no fracture of any importance. The wound is now practically healed and he should be fit to return to full duty within four weeks without change of category due to the wound. In my opinion the wound could have been caused by a small arms projectile fired from a weapon held by the man himself. There is nothing to show at what distance from the wound the weapon might have been fired.

Witness

The accused declines to cross examine this witness.

The accused is cautioned as follows :-

Do you wish to make a statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

There is nothing I have to say now.

The accused does not wish to call any witnesses.

I certify that the foregoing summary of evidence consisting of two pages was taken down before me in the presence of the accused and that RP 4 (C) (D) (E) (F) and (G) have been complied with.

Officer detailed to take the summary of evidence.

In the Field
Sep 44.

Ex 6
Emm

Statement of B -40914 Pte. Smith W.L. taken on Sept 12 -44 at approx. 1500hrs at No 7 Cdn. Gen. Hosp. in the presence of Cpl Norton T.H. after the soldier had been properly cautioned.

This statement is voluntary and reads as follows:

I am William Lloyd Smith and was born 2nd Dec. 23 in St Catherines, Ont. I enlisted in the Lincoln and Welland Regt. 29 June 40 at the age of 16. I gave my Army age as 19 when I enlisted. I arrived in Eng. 22July 43. I left Eng. to come to France 15 July 44 with the Lincoln and Welland Regt. We had made several moves and finally stopped at Bougirbois. We were there for several days and were relieved by the Argiles so we could make an attack on Tilly. The attack wasn't a success and we moved back to a place called Bras and stayed there several days until relieved by the 51 Highland Div. We moved back to Caen for the night and moved forward when we broke out of the hinge at Caen. We were dug in east-of Cintheaux and told that we were staying there for the night. I was sitting on the side of my slit trench and I picked up my Sten gun, laid it on my lap, and fired a shot into my left foot. I called my platoon Sgt. and he took me to R.A.P. I was then sent to No7 Cdn, Gen. Hosp. I have realized now that I have made a mistake. My foot is better and I am ready to redeem myself and return to the line s.

I have given this statement voluntary without promise, threat, or inducement. I have read the above statement and have had it read to me. It is the truth.

Signed: William L. Smith.

Witnessed by: T.H. Norton Cpl.
4 Coy. C.P.C.

Statement taken by: George L. Bindner. L/Cpl
(George L Bindner)
13 Cdn. Prov. Coy.

This is exhibit "A" referred to in the Summary of evidence in the case of Pte Smith W Taken before me this 18 day of Sep 44.

J W G Thompson LT-Col.
Officer taking Summary.

I-Pte William Lloyd Smith desire to have an officer assigned to represent me at my trial by court-martial. I desire the services of Capt W G D Hungerford if he is available.

18 Sep 44.

W L Smith.
Signature of accused.

No 340914 Name SMITH W.L. Sqn, Battery, or Company — Corps L & W Regt. Date of enlistment 24 6 40 GC Badges 1 8 42 30 162 Service or Proficiency Pay 150 MFM 6 (AFB 122) 40/PAS/150 (3488)

Date of last entry in Company Conduct Sheet — No and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No 3 — Signature OC Company, etc "RF Wilson" Capt — Character Good.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				SHEETS #1 and #2 destroyed. No previous entries 24 1 42.					
Field	10-1-44	Pte		Guilty of felony -feloniously stealing 4 live chickens, together value of £9-0-0.		Fined £2-0-0 Assed £2-5-0 c mpensation 2 days F.P.	26 1 44	Petty Sessional Div Brant Vark Cross Eng.	
Field	4 5 44	Pte		AWL 2230 4-5-44 to 7- 5-5-44 absent 8 hrs 30 _ins Ac 15(1)	Sgt D Cooray	2 days pay	6 5 44	"R F Wilson" Capt	1 day s.to rerf pay

CERTIFIED TO BE A TRUE EXTRACT FROM THE REGIMENTAL BOOKS AND DOCUMENTS IN MY CUSTODY

"D Stewart Patterson"
(D Stewart-Patterson) Lieut.
Officer i/c Rec "X"

RMJJ-J. for Rec Offr Sch 21 A Gp.

(PTO)

56 - 55'

Mr. Smith. W.L.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A3691 Pte Norman Leonard SMITH PERTH

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 463 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1) WWS

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 36 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To be imprisoned without hard labour for one year.

(Sgd) " W.W. Shaw " Capt — Judge-Advocate, if any.
13 Mar 45 — Date awarded.
(Sgd) " S. McKinnon " Major — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding.

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(2). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding and sentence of the court.

~~I direct that the Accused be not committed to prison or detention barracks until further orders.~~(1) ISJ

(1. AA 57A. Delete if not used.)

(Sgd) " I S Johnston " Brig

Date 14 Mar 45 — Commanding 11 Cdn Inf Bde — Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
A3691 Pte Norman Leonard SMITH	16 Mar 45	" ???????????????? " Lieut (D. L. Thompson) Lieut

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

5C-55

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of APA) 40/P & S/1698 (1942) 4/38B

Convened by Order of Brig I S Johnston Comd 11 Cdn Inf Bde dated 12 Mar 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A3691	Pte	Norman Leonard	SMITH	PERTH

CERTIFIED TRUE COPY
V K Kidd Lieut
Pdn Sec G HQ 1 Ecd
21 Army Group 4 Apr 44

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 13 MAR 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, ~~if any, and Offrs under instr, if any,~~ assemble, and the Court is closed. WWS

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1330 hours trial commences. WWS

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2) WWS

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to~~ ~~or interpreter?~~ Ans WWS
~~the Interpreter is sworn.(1) Do you object to~~ ~~as shorthand writer?~~ Ans WWS
~~The shorthand writer is sworn.(1)~~ WWS

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 31, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	S. McKinnon	CDN
Member	Capt	R. J. Lancaster	IRC
Member	Lieut	C. A. Gallagher	PERTH
Judge-Advocate	Capt	C. W. W. Shaw	HQ 5 Cdn Armd Div
Prosecutor	Capt	D. A. Cooke	PERTH
Defending Offr	Lieut	R. W. Storey	PERTH

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See GC p 3.)

A8. The accused before arraignment make(s) (no) ~~(a)~~ plea(s) WWS (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(F), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ ~~separately~~ arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. WWS

(1. RP 31, 112. See para 1 of Instrs p 2. Where more than one Charge Sheet see RP 62; where several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~(is cleared and)~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B WWS

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)
(*1. RP 37(B). 2. RP 37(D) fn a. 3. RP 35(B) fn 5 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.~~(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ~~charge(s).~~ The accused is (are) so informed, and he (they) ~~change(s) his (their)~~ (plead) on ~~charge(s).~~ Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not charged the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the .....charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the .....charge(s), and allowed on the .....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)*
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the .....charge(s), being subject to confirmation, will be promulgated later.(1)
Or The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(2) (c), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans .....
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy ~~extract~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(*1. MFB 355 or AFB 296. 2. MDM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans .....(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 128, 182, RP 46-50, 68, 118, 119(A), KR Can 308, 330, 563-566, Overseas RD 3DP, 1223, MML p 60, 737-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A)*.) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without oath(s) from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(B)*.) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38*.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to pleas when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. *If pleas to all charges are GUILTY, use Record Form B below.*

II. *If pleas to all charges are NOT GUILTY, see Record Form D on p 3.*

III. *If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,*

(a) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as below.* (*RP 37(A)*.)

(b) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C on p 3.*

to discretion of Court, (c) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (c) to record the pleas as the findings of Court. After deciding between (c) and (c), Court will proceed under foregoing issues as may be appropriate to result of its decision. See M M L p 744 Indre (2).

Prosecutor see RP 66(A), (B). As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of and withdrawal of witnesses from Court see RP 81, 82; questioning of accused and Defending Offr see RP 80, 87(C), 87(C), 91, 92; swearing of witnesses by Court, etc, see RP 75-79, 80, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pros to record proceedings see RP 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(*f*), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), all witnesses as to character and make an address in mitigation of punishment.(*f*)

1. *If plea to all charges not GUILTY, use Record Form D on p 3.*
2. *MAML p 54 para 47.*

B2. President to accused: If it appears from your statement that there are circumstances which indicate that you do not understand the charge(s).(*f*) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(*f*), or which show provocation or extenuation in respect of which in your interest you should be examined(*f*), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affords only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony if you so desire.(*f*)

1. *See para E3 of Record Form E.*
2. *RP 35(B) fn 5 para 3, MAML p 54 para 47.*

Ans. (*f. RP 35(B) fn 4*.)

B3. ~~The Court considers the accused's statement.~~ (*f*). ~~The Court decides (not) to advise accused to change his plea(s).~~ The accused is (are) so advised. ~~and he (they) does (do) not change(s) his (their) plea(s).~~ The Court decides (not) to advise accused to change his plea(s). The accused is (are) so advised, and he (they) does (do) not change(s) his (their) plea(s). ~~Court may be closed to consider the statement.~~ Delete where or part not used.

B4. Or, the charge(s) to which the plea(s) of Guilty is (are) changed, *see Record form C or D as appropriate.*) The Summary of Evidence is marked Ex *A*, initialled and read aloud by the President.(*f*) Guilty to Part I of the Schedule.(*f*) *If any plea(s) is (are) changed, see RP 37(D).*

B5. (*f. RP 35(B)*. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea* ~~standing on Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) de novo as if~~ *evidence of Record Form D on p 3. RP 37(D).*) *it had been pleaded Not Guilty.*

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

C1. The accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 above.(*f*)

C2. The accused pleaded GUILTY ~~and was~~ to ~~him~~ (them) again, and the trial is continued ~~by~~ *having been found Guilty on one or more of the charges, the proceedings are concluded by using* Record Form E on p 3.

RECORD FOR PLEAS OF NOT GUILT

D1. President ... relating to procedur ... the ground that you ... *If yes*

D2. The Prosecut ... (*f. RP 39(B), Ma...*

D3. The evidence for the ... (*f. RP 39(C), 114, KR Con ...*

D4. The Prosecution is closed.(*f*) ... for an adjournment on th... with, and that you hav... *If yes, is recorded per*

... establish a prima facie case against the accused, accordingly, the trial will proceed on their ... to RP 95(C)
... is disallowed on the ... charges(s), and that, accordingly, the trial will proceed on the ... evidence for the ... charge(s)
... the latter charge(s).(*f*) ... ment announce that the ... d is (are) found Not Guilty on
(*f. Delete remainder of this para, if submission not made.* 1. *See MML p 72 paras 12-14 and p 81 para 42.* 2. *As to* ... *and reply are recorded* ... *If accused elected*
per Notes. RP 40 fn 1. ... *to make his defence.* ... *to swap his defence*
on all charges. one second alternative in para D6.)
NB: If trial proceeds, accused must be allowed great latitude in
irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence. You may give evidence yourself on oath as to the facts or your character for both, in which case you will be subject to cross-examination; you may, however, make a statement not on oath, being sworn, and you will not be subject to cross-examination; but a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony. You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?

Ans. ...

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(*f*)
(*f. RP 114.* 2. *RP 40(A), see 80(C).* 3. *RP 40 fn 10.* 4. *RP 40 fn 2, 9.*)

D7. The Court is closed to consider the finding(s), if any, of Not Guilty, and states to the accused (that the finding(s) of the Schedule.(*f*) The Court is re-opened. *See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused (that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(*f*)
(*f. RP 42, 117(A).* *See Notes in Part I of Schedule.* 2. *AA 54(3), RP 45, 117.* *This alternative pronouncement is not applicable when there are pleas of Guilty summarising end dealt with under Record Form B or C.*)

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(*f*)

Ans. ...

D2. The Prosecutor produces Statement(s)(*f*), and certified true copy of Conduct Sheet(s)(*f*), purporting to refer to the Court for submission in evidence. The Court admits(*f*) the same in evidence. The Court directs that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 148(3) (a) (b); and (iii) they purport to refer to (a) soldier(s) having the same number, rank, name and surname as the accused. (*f. MML 255 or MFB 256.* 2. *RP 46, KR Con 358.* *If witness documents not produced, see RP 46 fn 1.*)
marked Ex ... and Ex ... respectively.(*f*)

D3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment.(*f*)
(*f. RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused to do so even if not previously stated which would affect the amount of punishment.* *RP 37(F) fn 1.*)

D4. The President states that the Court is closed to consider the sentence.(*f*) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(*f*) One sentence only, comprised of the punishment or punishments by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(*f*)
(*f. AA 54(3), RP 45, 117(A), RP 120(A).*)

D5. The Court considers the sentence.(*f*) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(*f*)
(*f. AA 54(3), RP 45, 117(A).* 2. *Address, if any, recorded per Notes. Court should permit accused to do so even if not previously stated which would affect the amount of punishment.* *RP 37(F) fn 1.*)

D6. The Court is closed to consider the finding(s), if any, of Not Guilty, and states to the accused (that the finding(s) of the Court on the charge(s), being subject to confirmation, will be promulgated later.(*f*)
(*f. RP 42, 117(A).* *See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D7. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith.
Or, The President announces that the accused is (are) found Not Guilty on charge(s), being subject to confirmation, and states that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(*f*)
(*f. AA 54(3), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117.* *This alternative pronouncement is not applicable when there are pleas of Guilty summarising end dealt with under Record Form B or C.*)

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(*f*)

Ans. ...

E2. The Prosecutor produces Statement(s)(*f*), and certified true copy of Conduct Sheet(s)(*f*), and in examination, and them to the Court for submission in evidence. The Court admits(*f*) the same in evidence. to the accused, because (i) they purport to refer to (a) soldier(s) having the same number, rank, name and surname as the accused; and (ii) they purport to refer to (a) soldier(s) and Ex ... marked Ex ... (*f. MFB 255 or MFB 256.* 2. *RP 46, KR Con 358.* *If witness documents not produced, see RP 46 fn 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment.(*f*)
(*f. RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused to do so even if not previously stated which would affect the amount of punishment.* *RP 37(F) fn 1.*)

E4. The President states that the Court is closed to consider the sentence.(*f*) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(*f*) One sentence only, comprised of the punishment or punishments by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(*f*)
(*f. AA 54(3), RP 120(A).*)

E5. The Court considers the sentence.(*f*) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(*f*)
(*f. AA 54(3), RP 45, 117(A).* 2. *Address, if any, recorded per Notes. Court should permit accused to do so even if not previously stated which would affect the amount of punishment.* *RP 37(F) fn 1.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(C). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) ~~change(s) his (their)~~ plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charge, dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(3) (*c*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans .....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true ~~copies~~ copy of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. *MFB* 355 *or AFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans ..... (2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 64 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 64, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566, *Overseas RO* 309, 2323, *MML p* 66, 727-759. *As to sentences assigned for civil offences by the law of England see AA* 41(3), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, A3691 Pte Norman Leonard SMITH, The Perth Regiment, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE WHILE ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE
Sec 15 (1)
Army Act

in that he

In the Field on 30 Dec 44 absented himself without leave from "C" Coy, The Perth Regt, CA (CMF) from 2130 hrs 30 Dec 44 until apprehended at POLIGNO by CMP at 2200 hrs 1 Jan 1945.

Total absence: 2 days, 30 minutes.

SECOND CHARGE WHILE ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE
Sec 15(1)
Army Act

in that he

In the Field on 10 Jan 45 absented himself without leave from "C" Coy, The Perth Regt, CA (CMF) from 1500 hrs 10 Jan 45 until he returned at 2025 hrs 14 Feb 45.

Total absence: 35 days 5 hours, 25 minutes.

In the Field
8th March 1945

" H A Snelgrove " Maj
(H A Snelgrove) Major
A/Comd The Perth Regt CAO

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field
12 Mar 45.

" Ian S Johnston "
(I S Johnston) Brig.
Comd 11 Cdn Inf Bde.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 306, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
A3691	Pte		Norman Leonard	SMITH	PERTH R

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 12 Mar 45 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ". ISJ

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~ ISJ

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder. ISJ

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ ISJ

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	S. McKinnon (Must be named. RP 106.)	CHH (Unit.)

MEMBERS.

Capt (Rank.)	R. J. Lancaster (Named or detailed. RP 106.)	IRC (Unit.)
Lieut (Rank.)	G. A. Gallagher (Named or detailed. RP 106.)	PERTH (Unit.)

WAITING MEMBER.

Capt (Rank.)	G. W. Murphy (Named or detailed, if any. RP 106.)	PLF (Unit.)

JUDGE-ADVOCATE.

Lt (Rank.)	W. M. W. SHAW (Must be named, if any. RP 106.)	HQ 5 Cdn Armd Div (Unit.)

Active Service in the Fd

~~XXXXXX~~45X BELGIUM (Country.)

" I S Johnston " (Signed personally. RP 105 fn 2.)

12 Mar 45 Brig (Rank.)

Commanding 11 Cdn Inf Bde

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

I certify that I have this day examined
A3691 Pte SMITH N. L. of The Perth Regt
and found him fit for trial by Field
General Court Martiall.

XXX
Mar 13th, 1945.

" ????????????? " Capt

SUMMARY OF EVIDENCE

R P 4 F
The Perth Regt CAO
8 Mar 45

Summary of Evidence in the case of A3691 Pte Norman Leonard SMITH, The Perth Regt, a soldier of the Canadian Army Overseas, charged with:

1. While on Active Service absenting himself without leave, AA Sec 15(1)

2. While on Active Service absenting himself without leave, AA Sec 15(1)

RP4F The commanding officer directs that all evidence be taken on oath.

FIRST WITNESS A11328 Sgt McKay W.D. "C" Coy. The Perth Regt, CAO having been duly sworn, states:

I am A11328 Sgt McKay W.D. of "C" Coy The Perth Regt CAO. On 30 Dec 44 at approx 2130 hrs I called the roll of 14 Platoon "C" Coy The Perth Regt, and found Pte Smith N.L. was absent. I searched the quarters but could not find him. He has not returned to the platoon since that date.

The accused declines to cross examine this witness.

" W. D. McKay "
(A11328 Sgt McKay W.D.)

SECOND WITNESS Lieut D L Thompson, Acting Adjt., The Perth Regt, CAO having been duly sworn states:

I am Lieut D L Thompson, Acting Adjutant of The Perth Regiment CAO. I produce herewith a document purporting to be a certificate in accordance with the Army Act Sec 163 (1) (jj) signed by the D.A.P.M. of 71 Sub Area, and attached as Exhibit "A".

The Certificate in accordance with the Army Act Sec 163 (1) (jj) referred to by the witness, produced by me, was read over to the accused, is marked Exhibit "A" signed by me and attached hereto.

The accused declines to cross examine this witness.

" D L Thompson "
(D L Thompson) Lt
A/Adjt, The Perth Regt CAO

THIRD WITNESS B75123 Sgt Landriault O.E. Orderly Room Sgt of Ther Perth Regt., CAO having been duly sworn states:

I am B75123 Sgt Landriault O.E. Orderly Room Sgt of The Perth Regt CAO. At approx 1500 hrs 10 Jan 45 a re-inforcement draft arrived at "A" Echelon of the Perth Regt at RAVENNA. I received documents to the affect that Pte Smith N.L. had been despatched under escort with this re-inforcement draft. I called the roll of the draft and checked all the personnel and Pte Smith N.L. was absent and could not be found.

" O Landriault "
(O E Landriault Sgt B71523)

FOURTH WITNESS A11588 Sgt Minzen C.W. Provost Sgt, of the Perth Regt CAO having been duly sworn.

I am A11588 Sgt Minzen C.W. Provost Sgt of the Perth Regt CAO. At approx 2025 hrs 14 Feb 45 Pte SMITH N L reported in to me at the Regtl Guard Room and knowing he was absent without leave I placed him under close arrest.

The accused declines to cross examine this witness.

" C W Minzen "

" C W Minzen "
A11588

Question by Officer taking Summary of Evidence

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or to give evidence but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement or to call witnesses on his behalf.

" N L Smith "

(N L Smith) A3691 Pte.

Rules of Procedure 4 have been complied with.

Taken before me in the presence and hearing of the accused this 8th day of March 1945.

" D A Cook "

(D A Cook) Capt
Officer detailed to take the Summary of Evidence

I do not desire the convening officer to detail an officer to represent me at my forthcoming trial by Field General Court Martial.

In the Field
8th March 1945

" N L Smith "

(A3691 Pte Smith N. L.)

CERTIFICATE IN ACCORDANCE WITH ARMY ACT SECTION 163 (i) (ii)

I certify that A3691 Pte Smith N. L. of the PERTH REGIMENT was arrested at FOLIGNO at 2200 hrs on the 1 day of January 1945.

Signature of PM, APM, or other officer into whose custody the above named person was taken on arrest. " C Patter "
Captain
D.A.P.M. 71 Sub Area

Jan 2nd 1945.

STATEMENT OF CHARACTER & PARTICULARS OF SERVICE OF ACCUSED

A3691 Rank Pte Name SMITH N.L. Unit PERTH REGT

Age 26 Married or Single Single No of Dependents Nil

Date of Attestation 29 Jan 40

Number of days in close arrest awaiting trial 35

Civil Nil Military 35 Hospital Nil Total 35

Dates of appointments promotions etc (if any) NIL

Decorations CVSM AND CLASP

In the Field
12 Mar 45

" D L Thompson " Lieut
Officer i/c Regtl Books
The Perth Regiment C.A.

Character witness - D71548 Cpl Parnell R.M. - Perth R - duly sworn state

Recognzie accd, Pte Smith, under my comd 5 or 6 mos - been in two or three actions - accd when in action on 2 cases Cenrano & Rubican broke down - asked to have him taken off duty - would say nerves shot - was crying - Was there with us on final objective each time.

Cross - Examination Nil

" W M W Shaw " Capt

R.P. 83 (b) complied with.

PLEA IN MITIGATION

Accd enlisted Jan 40 spent long period in England and came into action with Perth Jan 44. Served continuously through several battles until nerves cracked as proven by cpl. Parnell - MO accused accd from front in Dec due to nervous condition - later because of acute reinforcement situation accd again sent into line - realized he could not stand up under strain so had no other way out, - one more case of victim of circumstance of insufficient reinforcements.

" W M W Shaw " Capt

MFM 6
(AFB 122)
40/PAS/136 (3438)

SHEET DESTROYED No 1 - 29 Jan 42.

No A3691 Name SMITH N.L. | Sqn, Battery or Company | Corps | Date of enlistment 29-1-40 | GC Badges | Service or Proficiency Pay | Character

Company Conduct Sheet | Date of last entry in 22-5-43 | No and date of last drum 4-10-41 | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc J M Greig Maj

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	29-12-40	Pte		AA 15(2) Failing to appear at place of parade at 0700 hrs.	Sgt Robbins	f 3 d.P.	30-12-40	Lt-C Slack	f 1. d. p.
Field	1-5-41	Pte		AA 40 Jostling Civilians, obscene language, improperly dressed	Documentary	21 dys detn	19-5-41	Lt-C Slack	
Field	27-5-41	Pte		AA 9(2) Disobeying lawful comd	Sgt Rowan	120 hrs detn	28-5-41	Lt-C Slack	
Field	6-9-41	Pte		AA 15(1) AWL 2359 hrs 2-9-41 to 2130 hrs 5-9-41 (2 d, 21 h, 31 m)	Pte Meyers	168 hrs detn	6-9-41	Lt-C Slack	
Field	6-12-41	Pte		AA Sec 15(1) AWL 2359 hrs 6-12-41 to 6-12-41 to 0100 hrs 7-12-41 (1 hr 1 min)	C Paladyceuk	Documentary 168 hrs detn & c of app 13/9	10-12-41	Lt-C Slack	
Field	13-5-42	Pte		AA Sec 10(4) Breaking out of Camp L/S McDonald 14 days C.B. AA Sec 15(1) AWL 1700 hrs 13-5-42 to 1920 hrs 13-5-42 (2 hr 20 mins.)	L/C Middleton	Obey & stop 9/4	16-5-42	Major Taschereau	

0710

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	22-5-42	Pte		AA15(1) AWL 0300 hrs 22-5-42 to 1830 hrs 30-5-42 (8 d 15 h 20 m)	CSM Tugwood Cpl Hewer	7 days pay	4-6-42	Capt Nelson	forf 9 d.p.
Field	17-5-43	Pte		AA15(1) AWL 1300 hrs 17-5-43 to 1620 hrs 17-5-43 (3 hrs, 20 min)	Sgt Hunt Sowery W.W.	3 days forf p	18-5-43	Lt Col JG Charlebois	
Field	8-8-44	Pte		AA15(1) AWL 1730 hrs 8-8-44 to 1750 hrs 8-8-44 (20 mins.) (2) Secld (4) Breaking barr when under OA	Sgt Handley	28 days FP 28 days F.O.D.			FCHP 31 d.p. forf 59 d.p.
Feidl	2-10-44	Pte		(3)15(1) AWL 1800 hrs 8-8-44 to 2200 hrs 7-9-44(30 days 4 hrs) AA 9(2) WOAS Disobeying a lawful command given by sup offr ly ref using to go on Patrol when ordered.	L/C Ferguson Pte Martin	28 days FP 28 days fop	4-10-44	Lt Col Reid	

I certify that this is a true copy of the original document in my possession as custodian of the Regimental documents.

" D I Thompson " Lt
(D. L. Thompson) Lieut
A/Adjt.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : A3691 Pte Norman Leonard SMITH PERTH

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd	Guilty	Guilty	
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~imprisonment~~ ~~detention~~ beginning on (date) (1) WMWS

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 36 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court : To be imprisoned without hard labour for one year.

(Sgd) " WMW Shaw " Capt — Judge-Advocate, if any.
13 Mar 45 — Date awarded.
(Sgd) " S. McKinnon " Major — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(2). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

I confirm the finding and sentence of the court.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1) ISJ

(1. AA 57A. Delete if not used.)

(Sgd) " I S Johnston " Brig

Date 14 Mar 45 — Commanding 11 Cdn Inf Bde — Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
A3691 Pte Norman Leonard SMITH	16 Mar 45	" ?????????????????? " Lieut (D. L. Thompson) Lieut

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

5C-55

FIELD GENERAL COURT-MARTIAL

CPA88 (In lieu of AFA8) 40/P&S/1898 (4/50) 4/38B

Convened by Order of Brig I S Johnston Comd 11 Cdn Inf Bde dated 12 Mar 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
A3691	Pte	Norman Leonard	SMITH	PERTH

CERTIFIED TRUE COPY
P B Budd Lieut
Adjt See 4 HQ 21 Army Group 4 Apr 44

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) BELGIUM on (date(s)) 13 MAR 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, ~~if any, and Offrs under instr, if any,~~ assemble, and the Court is closed. WMWS

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1330 hours trial commences. WMWS

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~ WMWS

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused :~~ Do you object to ~~an interpreter ? Ans~~ WMWS

~~The Interpreter is sworn.(1) Do you object to an shorthand writer ? Ans~~ WMWS

~~The shorthand writer is sworn.(1)~~ WMWS

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans No sir (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	Major	S. McKinnon	CBH
Member	Capt	R. J. Lancaster	IRC
Member	Lieut	G. A. Gallagher	PERTH
Judge-Advocate	Capt	W. M. W. Shaw	HQ 5 Cdn Armd Div
Prosecutor	Capt	D. A. Cooke	PERTH
Defending Offr	Lieut	R. M. Storey	PERTH

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused before arraignment make(s) (no) ~~(or)~~ plea WMWS (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 106), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 name and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned ~~separately~~ on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. WMWS

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B WMWS

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs* (2).

3. *As to responsibility of President to accused see RP 59, 60(C) ; powers and duties of JA see RP 103 ; duty of Prosecutor see RP 60(A) (B) ; duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92 ; swearing and withdrawal of witnesses from Court see RP 81, 82 ; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85 ; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116 ; use of Summary of Evidence at Trial see RP 17(E) fn 6 ; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans ..... (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) ~~change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~~~
(1. *Court may be closed to consider the statement. Delete whole or parts not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ..... (1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans .....
Do you intend to call witnesses on your behalf ?
Ans .....
Are they witnesses as to character only ? Ans .....
(1. *RP 115.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(2) (a), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans .....
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy [~~extract~~] of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans .....
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its provisos, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas AO 309, 2323, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, A3691 Pte Norman Leonard SMITH, The Perth Regiment, a soldier of the Canadian Army Overseas, is charged with:

FIRST CHARGE WHILE ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE
Sec 15 (1)
Army Act in that he

In the Field on 30 Dec 44 absented himself without leave from "C" Coy, The Perth Regt., CA (CMF) from 2130 hrs 30 Dec 44 until apprehended at FOLIGNO by CMP at 2200 hrs 1 Jan 1945.

Total absence: 2 days, 30 minutes.

SECOND CHARGE WHILE ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE
Sec 15(1)
Army Act in that he

In the Field on 10 Jan 45 absented himself without leave from "C" Coy, The Perth Regt, CA (CMF) from 1500 hrs 10 Jan 45 until he returned at 2025 hrs 14 Feb 45.

Total absence: 35 days 5 hours, 25 minutes.

In the Field
8th March 1945

" H A Snelgrove " Maj

(H A Snelgrove) Major
A/Comd The Perth Regt CAO

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field
12 Mar 45.

" Ian S Johnston "

(I S Johnston) Brig.
Comd 11 Cdn Inf Bde.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(8).
There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.
As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
A3691	Pte		Norman Leonard	SMITH	PERTH R

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 12 Mar 45 endorsed by me, (~~or by an offr of my staff for me~~)," To be tried by Field General Court-Martial". ISJ

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~) ISJ
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder. ISJ

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ ISJ
(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)		(Unit.)
Major	S. McKinnon	CRE

(*Must be named. RP 106.*)

MEMBERS.

(Rank.)		(Unit.)
Capt	R. J. Lancaster	IRC
Lieut	G. A. Gallagher	PERTH

(*Named or detailed. RP 106.*)

WAITING MEMBER.

(Rank.)		(Unit.)
Capt	G. W. Murphy	PLF

(*Named or detailed, if any. RP 106.*)

JUDGE-ADVOCATE.

(Rank.)		(Unit.)
Capt	W. M. N. SHAW	HQ 5 Cdn Armd Div

(*Must be named, if any. RP 106.*)

On Active Service in the Fd

in ~~IX~~ ~~XXX~~ BELGIUM "I S Johnston" Brig
(Country.) (*Signed personally. RP 105 fn 2.*) (Rank.)

Date 12 Mar 45 Commanding 11 Cdn Inf Bde
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (*See overleaf for oaths and notes for use on trial.*)

I certify that I have this day examined
A3691 Pte SMITH N. L. of The Perth Regt
and found him fit for trial by Field
General Court Martiall.

" ?????????????? " Capt

XXX
Mar 13th, 1945.

SUMMARY OF EVIDENCE

R P 4 F
The Perth Regt CAO
8 Mar 45

Summary of Evidence in the case of A3691 Pte Norman Leonard SMITH, The Perth Regt, a soldier of the Canadian Army Overseas, charged with:

1. While on Active Service absenting himself without leave, AA Sec 15(1)

2. While on Active Service absenting himself without leave, AA Sec 15(1)

RP4F The commanding officer directs that all evidence be taken on oath.

FIRST WITNESS A11328 Sgt McKay W.D. "C" Coy. The Perth Regt, CAO having been duly sworn, states:

I am A11328 Sgt McKay W.D. of "C" Coy The Perth Regt CAO. On 30 Dec 44 at approx 2130 hrs I called the roll of 14 Platoon "C" Coy The Perth Regt, and found Pte Smith N.L. was absent. I searched the quarters but could not find him. He has not returned to the platoon since that date.

The accused declines to cross examine this witness.

" W. D. McKay "
(A11328 Sgt McKay W.D.)

SECOND WITNESS Lieut D L Thompson, Acting Adjt., The Perth Regt, CAO having been duly sworn states:

I am Lieut D L Thompson, Acting Adjutant of The Perth Regiment CAO. I produce herewith a document purporting to be a certificate in accordance with the Army Act Sec 163 (1) (jj) signed by the D.A.P.M. of 71 Sub Area, and attached as Exhibit "A".

The Certificate in accordance with the Army Act Sec 163 (1) (jj) referred to by the witness, produced by me, was read over to the accused, is marked Exhibit "A" signed by me and attached hereto.

The accused declines to cross examine this witness.

" D L Thompson "
(D L Thompson) Lt
A/Adjt, The Perth Regt CAO

THIRD WITNESS B75123 Sgt Landriault O.E. Orderly Room Sgt of The Perth Regt., CAO having been duly sworn states:

I am B75123 Sgt Landriault O.E. Orderly Room Sgt of The Perth Regt CAO. At approx 1500 hrs 10 Jan 45 a re-inforcement draft arrived at "A" Echelon of the Perth Regt at RAVENNA. I received documents to the affect that Pte Smith N.L. had been despatched under escort with this re-inforcement draft. I called the roll of the draft and checked all the personnel and Pte Smith N.L. was absent and could not be found.

" O Landriault "
(O E Landriault Sgt B71523)

FOURTH WITNESS A11588 Sgt Minzen C.W. Provost Sgt, of the Perth Regt CAO having been duly sworn.

I am A11588 Sgt Minzen C.W. Provost Sgt of the Perth Regt CAO. At approx 2025 hrs 14 Feb 45 Pte SMITH N L reported in to me at the Regtl Guard Room and knowing he was absent without leave I placed him under close arrest.

The accused declines to cross examine this witness.

" C W Minzen "
" C W Minzen "
A11588

Question by Officer taking Summary of Evidence

Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or to give evidence but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make a statement or to call witnesses on his behalf.

" N L Smith "

(N L Smith) A3691 Pte.

Rules of Procedure 4 have been complied with.

Taken before me in the presence and hearing of the accused this 8th day of March 1945.

" D A Cook "

(D A Cook) Capt
Officer detailed to take the Summary of Evidence

I do not desire the convening officer to detail an officer to represent me at my forthcoming trial by Field General Court Martial.

In the Field
8th March 1945

" N L Smith "

(A3691 Pte Smith N. L.)

A WHMS

CERTIFICATE IN ACCORDANCE WITH ARMY ACT SECTION 163 (1) (ii)

I certify that A3691 Pte Smith N. L. of the PERTH REGIMENT was arrested

at FOLIGNO at 2200 hrs on the 1 day of January 1945.

Signature of PM, APM, or other officer into whose custody the above named person was taken on arrest. (" C Patter "
(----------
(Captain
D.A.P.M. 71 Sub Area

Jan 2nd 1945.

STATEMENT OF CHARACTER & PARTICULARS OF SERVICE OF ACCUSED

A3691 Rank Pte Name SMITH N.L. Unit PERTH REGT

Age 26 Married or Single Single No of Dependents Nil

Date of Attestation 29 Jan 40

Number of days in close arrest awaiting trial 35

Civil Nil Military 35 Hospital Nil Total 35

Dates of appointments promotions etc (if any) NIL

Decorations CVSM AND CLASP

In the Field
12 Mar 45

" D L Thompson " Lieut

Officer i/c Regtl Books
The Perth Regiment C.A.

Character witness - D71548 Cpl Parnell R.M. - Perth R - duly sworn states

Recognzie accd, Pte Smith, under my comd 5 or 6 mos - been in two or three actions - accd when in action on 2 cases Ceprano & Rubican broke down - asked to have him taken off duty - would say nerves shot - was crying - was there with us on final objective each time.

Cross - Examination Nil

" W M W Shaw " Capt

R.P. 83 (b) complied with.

PLEA IN MITIGATION

Accd enlisted Jan 40 spent long period in England and came into action with Perth Jan 44. Served continuously through several battles until nerves cracked as proven by cpl. Parnell - MO excused accd from front in Dec due to nervous condition - later because of acute reinforcement situation accd again sent into line - realized he could not stand up under strain so had no other way out, - one more case of victim of circumstance of insufficient reinforcements.

" W M W Shaw " Capt

MFM 6
(AFB 122)
40/P&S/136 (3438)

SHEET DESTROYED No 1 - 29 Jan 42.

No A3691 Name SMITH N.L. | Sqn. Battery or Company | Corps | Date of enlistment 29-1-40 | GC Badges | Service or Proficiency Pay | Character

Company Conduct Sheet Date of last entry in 22-5-43 | No and date of last drunk 4-10-41 | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc J M Gregg Maj

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	29-12-40	Pte		AA 15(2) Failing to appear at place of parade at 0700 hrs.	Sgt Robbins	f 3 d.p.	30-12-40	Lt-C Slack	f 1. d. p.
Field	1-5-41	Pte		AA 40 Jostling Civilians, obscene language, improperly dressed	Documentary	21 dys detn	19-5-41	Lt-C Slack	
Field	27-5-41	Pte		AA 9(2) Disobeying lawful comd	Sgt Rowan	120 hrs detn	28-5-41	Lt-C Slack	
Field	6-9-41	Pte		AA 15(1) AWL 2359 hrs 2-9-41 to 2130 hrs 5-9-41 (2 d, 21 h, 31 m)	Pte Meyers	168 hrs detn	6-9-41	Lt-C Slack	
Field	6-12-41	Pte		AA Sec 15(1) AWL 2359 hrs 6-12-41 to 6-12-41 to 0100 hrs 7-12-41 (1 hr 1 min)	C Paladyceuk	Documentary 168 hrs detn & c of app 13/9	10-12-41	Lt- C Slack	
Field	13-5-42	Pte		AA Sec 10(4)Breaking out of Camp AA Sec 15(1) AWL 1700 hrs 13-5-42 to 1920 hrs 13-5-42 (2 hr 20 mins.)	L/S McDonald L/C Middleton	14 days C.B. & stop 9/4	16-5-42	Major Taschereau	

(PTO

Place	Date of offence	Rank	Unit or dmn. pers	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	22-5-42	Pte		AA15(1) AWL 0300 hrs 22-5-42 to 1830 hrs 30-5-42 (8 d 15 h 20 m)	CSM Tugwood Cpl Hewer	7 days pay	4-6-42	Capt Nelson	forf 9 d.p.
Field	17-5-43	Pte		AA15(1) AWL 1300 hrs 17-5-43 to 1620 hrs 17-5-43 (3 hrs. 20 min)	Sgt Hunt Sowery W.W.	3 days forf p	18-5-43	Lt Col JG Charlebois	
Field	8-8-44	Pte		AA15(1) AWL 1730 hrs 8-8-44 to 1750 hrs 8-8-44 (20 mins.) (2) Sec10 (4) Breaking barr when under OA	Sgt Handley	28 days FP 28 days F.O.P.			FORF 31 d.p. forf 59 d.p.
Feidl	2-10-44	Pte		(3)15(1) AWL 1800 hrs 8-8-44 to 2200 hrs 7-9-44(30 days 4 hrs) AA 9(2) WOAS Disobeying a lawful command given by sup offr by ref using to go on patrol when ordered.	L/C Ferguson Pte Martin	28 days FP 28 days fop	4-10-44	Lt Col Reid	

I certify that this is a true copy of the original document in my possession as custodian of the Regimental documents.

" D L Thompson " Lt
(D L Thompson) Lieut
A/Adjt.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: A3691 Pte Norman Leonard SMITH, Rifle

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	guilty	guilty	
2nd	guilty	guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~No award under sentence for~~ beginning on (date) (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 36 days, of which nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: To be imprisoned without hard labour for one year

(Sgd) WMW Shaw Capt — Judge-Advocate, if any. 13 Mar 45 — Date awarded. (Sgd) J McKinnon Maj — President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the finding and sentence of the Court.

I direct that the accused be not committed to prison or detention barracks until further orders (1).

(1. AA 57A. Delete if not used.)

(Sgd) Jas Johnston Brig

Date 14 Mar 45. Commanding 11 Cdn Inf Bde. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
A 3691 Pte NORMAN LEONARD SMITH	16 MAR 45	[illegible] Capt. Lieut

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160A 750-56

CPA86 (In lieu of AF A3) Ac/P A B/1008 (2664)

FIELD GENERAL COURT-MARTIAL

Convened by Order of Brig I S JOHNSTON Comd 11 Cdn Inf Bde dated 12 Mar 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.
A3691	Pte	Norman Leonard	SMITH

PROCEEDINGS REVIEWED Jacques de Bellefeuille Capt 13 Apr 45

PROCEEDINGS OF TRIAL.

REVIEWING OFFICER JAG BRANCH CMHQ

Held in the [illegible] Country at Belgium on (date(s)) 13 Mar 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, ~~if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn KOs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs as how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1330 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to an interpreter? Ans~~

~~The Interpreter is sworn.(1) Do you object to a shorthand writer? Ans~~

~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans No Sir.(2)

(1. RP 110. 2. If no objection, waiting member ~~(if any)~~ is ~~not~~ sworn. If objection, see procedure AA 51, RP 25, 71, 187, MML p 742.)

A7. The President, Members, JA, ~~& waiting and Offrs under instr if any~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J McKinnon	CBH
Member	Capt	RJ Lancaster	2RC
Member	Lt	GA Gallagher	Perth
Judge-Advocate	Capt	WMW Shaw	HQ 5 Cdn Armd Div
Prosecutor	Capt	DA Cooke	Perth
Defending Offr	Lt	RM Storey	Perth

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr. 2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See GS p 3.)

A8. The accused ~~.....~~ before arraignment make(s) (no) ~~.....~~ plea.

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RsP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (~~severally~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is adjourned~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet* (*RP 62*) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p [redacted] *3.*

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. No, Sir .....(5)

(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B2. The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (not) so informed, and he (they) ..... his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(1. Court may be closed to consider the statement. Delete whole or part not used.)

B3. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B4. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)

(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B5. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. .....(1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 124 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. WMLS

Do you intend to call witnesses on your behalf? Ans. ..... Are they witnesses as to character only? Ans. .....

(1. RP 155. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, B6(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(E).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. AA 54(3) (d), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans. Yes, Sir

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 27(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 165(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)

(1. MFB 353 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes thru def offr .....(2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 27(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(1. When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas RO 309, 1223, MML p 60, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 136. When accused already under sentence of imprisonment or detention see AA 44(18), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see Instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, A 3691 Private Norman Leonard SMITH, The Perth Regiment, a soldier of the Canadian Army Overseas, is charged with:

1st Charge
Sec 15(1)
Army Act

WHILE ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, on 30 Dec 44 absented himself without leave from "C" Coy., The Perth Regt., CA (CMF), from 2130 hrs, 30 Dec 44 until apprehended at FOLIGNO by C.M.P. at 2200 hrs, 1 Jan 45.

Total absence: 2 days, 30 minutes.

2nd Charge
Sec 15(1)
Army Act

WHILE ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE

in that he

In the Field, on 10 Jan 45 absented himself without leave from "C" Coy., The Perth Regt., CA (CMF), from 1500 hrs, 10 Jan 45 until he returned at 2025 hrs, 14 Feb 45.

Total absence: 35 days, 5 hours, 25 minutes.

In the Field
8th March 1945.

(H.A. Smilgrowe) Major
A/Comd The Perth Regt CAO.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

IN THE FIELD
12 Mar 45.

(I.S. Johnston) Brig.
Comd 11 Cdn Inf Bde.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
A3691	Private		Norman Leonard	SMITH	Perth R

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(X) named above as the accused, being subject to military law, has ~~XXXX~~ committed the offence(s) set forth in the Charge Sheet(X) attached and on (*date*) 12 Mar 45. endorsed by me, (~~or my authority~~) "~~a true~~ [illegible] " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(X), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have stated briefly~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	S. MCKINNON,		CSH

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	R.J. LANCASTER		IRC
Lieut	G.A. GALLAGHER		PERTH

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Capt	G.P. MURPHY		PLF

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
Capt	W.M.W. SHAW		HQ 5 Cdn Armd Div

On Active Service in the Fd

in BELGIUM (Country.)

(Signed personally. RP 105 fn 2.) Brig (Rank.)

Date 12 Mar 45. Commanding 11 Cdn Inf Bde.

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (Pass (In lieu of AFA2) W.F.A. & A/1867 1400).

(See overleaf for oaths and notes for use on trial.)

I certify that I have this day examined No...A7491....."ank..Pte.....

Name.....South....NL.....of The Perth Regt and found him

fit/unfit for Trial by FIELD GENERAL COURT-MARTIAL.

Date.March..13..:19.45

WMWS

....Lieut. Adjt. Capt.

Character Witness - D71548 Cpl Parnell, R.M.

Perch R. duly sworn states:

"recognize accd, Pte Smith - under my comd 5 or 6 mos - been in two or three actions - and when in action on 2 occas Leprano + Rubecca broke down - asked to have him taken off duty - would say nerves shot - was crying - was there with us on final objective each time.

Cross-Exam - Nil

R. P. 83(B) - complied with

W.M. Shaw Capt.

Plea in Mitigation

Accd enlisted Jan 40 - spent long period in England & came into action with Regt Jan 44 - served continuously through several battles until nerves cracked as proven by Gpl Barnell - MO excused accd from front in Dec due to nervous condition - Later because of acute rft situation accd again sent into line - realized he could not stand up under strain as had so other way out. - one ~~of~~ more case of victim of circumstance of insufficient reinforcements

Wm M Shaw
Capt

SUMMARY OF EVIDENCE

R P 4 F
The Perth Regt CAO
8 Mar 45

Summary of Evidence in the Case of A 3691 Private Norman Leonard SMITH, The Perth Regt., a soldier of the Canadian Army Overseas, charged with:

1. While on Active Service, absenting himself without leave.

   A.A. Sec 15(1).

2. While on Active Service, absenting himself without leave.

   A.A. Sec 15(1).

R P 4 F — The Commanding Officer directs that all evidence be taken on oath.

First Witness — A 11328 Sgt McKay, W.D. "C" Coy., The Perth Regt., CAO., having been duly sworn states:

" I am A 11328 Sgt McKay, W.D. of "C" Coy., The Perth Regt., CAO. On 30 Dec 44 at approx 2130 hrs, I called the roll of 14 Platoon, "C" Coy., The Perth Regt., and found Pte Smith, N.L. was absent. I searched the quarters but could not find him. He has not returned to the platoon since that date."

The accused declines to cross examine this witness.

W D McKay
.....
(A 11328 Sgt McKay, W D)

A
COMCOS

Second Witness — Lieut D L Thompson, Acting Adjt., The Perth Regt., CAO, having been duly sworn states:

" I am Lieut D L Thompson, Acting Adjutant of The Perth Regt., CAO. I produce herewith a document purporting to be a certificate in accordance with the Army Act Sec., 163 (i)(jj) signed by the D.A.P.M. of 71 Sub Area, and attached as Exhibit "A".

The Certificate in accordance with the Army Act Sec., 163 (i)(jj), referred to by the witness, produced by me, was read over to the accused, is marked Exhibit "A", signed by me and attached hereto.

The accused declines to cross examine this witness.

D L Thompson

(D L Thompson) Lieut
A/Adjt The Perth Regt CAO

Third Witness — B 75123 Sgt Landriault, C.E. Orderly Room Sgt., of The Perth Regt., CAO., having been duly sworn states:

"I am B 75123 Sgt Landriault, C.E., Orderly Room Sgt., of The Perth Regt., CAO. At approx 1500 hrs, 10 Jan 45 a re-inforcement draft arrived at "A" Echelon of The Perth Regt., at RAVENNA. I received documents to the affect that Pte Smith, N.L. had been despatched under escort with this re-inforcement draft. I called the roll of the draft and checked all the personnel and Pte Smith, N.L. was absent and could not be found.

O. Landriault

(B 71525 Sgt Landriault, C.E)

Fourth Witness — A 11588 Sgt Minzen, C.W., Provost Sgt., of The Perth Regt CAO., having been duly sworn:

"I am A 11588 Sgt Minzen, C.W., Provost Sgt., of The Perth Regt CAO. At approx 2025 hrs, 14 Feb 45 Pte Smith, N.L. reported in to me at the Regt'l Guard Room and knowing he was absent without leave, I placed him under close arrest."

The accused declines to cross examine this witness.

A Witness

C.W. Minzen

(A 11588 Sgt Minzen, C W)

Question by Officer taking the Summary of Evidence.

"Do you wish to make any statement or to give evidence upon oath? You are not obliged to say anything or to give evidence but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

The accused declines to make a statement or to call witnesses on his benalf.

N.L. Smith
(A 3691 Pte Smith, N.L)

Rules of Procedure 4 have been complied with.

Taken before me in the presence and hearing of the accused this 8th day of March 1945.

(D A Cook) Capt
Officer detailed to take the Summary of Evidence

I ~~am~~/do not desire the Convening Officer to detail an officer to represent me at my forthcoming trial by FIELD GENERAL COURT-MARTIAL.

In the Field

8 th March 1945.

N.L. Smith
(A 3691 Pte Smith, N.L)

A
Comms

Certificate in accordance with the Army Act Sec. 163 (1) (jj)

I certify that

No A.3691 Rank Pte. Name SMITH. N. L.

of the PERTH REGIMENT

was arrested at FOLIGNO at 2200 hrs,

on the FIRST day of JANUARY 1945

Signature of P.M., A.P.M., or other Officer into whose custody the above named person was taken on arrest. G Cotter

Rank Captain

Appointment (if any) D.A.P.M. 71 SUB-AREA

Commanding

Date 2 Jan 45.

A Comm's.

PSS4 1378 10M 11-44

Substitute for AFB 296
or MFB 356

STATEMENT OF CHARACTER & PARTICULARS OF SERVICE OF ACCUSED

No. [illegible] Rank [illegible] Name SMITH, N.L. Unit [illegible]

Age 26 Married or Single [illegible] No of Dependents Nil

Date of Attestation 29 Jun 40

Number of days in close arrest awaiting trial 55

Civil Nil Military 55 Hospital Nil Total 55

Dates of appointments, promotions, etc, (if any)

Nil

Decorations [illegible]

In the Field

12 Mar 45
(date)

(Officer i/c Regtl Books)

The Perth Regiment C.A.

Sheet No. 1 destroyed 29 Jan 42

Date of enlistment 29 Jan 40 — Sheet No. 1

No. A3691 Name SMITH N.L. — Sq., Batty., or Company C — Corps C.I.C. — Signature O.C. Company etc. J.M. Gregg Maj

Date of last entry in Company Conduct Sheet 22 May 43 — No. and date of last drunk 4 Oct 41 No.3 — G.C. Badges N/A — Long Service and G.C. Pay

Army Form B.122

Place	Date of offence	Rank	Cause of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	29 Dec 40	Pte		AA 15(2) Failing to appear at place of pde at 0700 hrs	Sgt Robbins	Forf 3 dys pay	30 Dec 40	Lt-Col WW Slack	Forf 1 dys pay
Field	1 May 41	Pte		AA Sec 40 Jostling civilians obscene language, improperly dressed	Doc'y	21 days detn.	19 May 41	Lt-Col WW Slack	
Field	27 May 41	Pte		AA 9(2)Disobeying lawful comd	Sgt Rowan Pte Meyers	120 hrs detn.	28 May 41	Lt-Col WW Slack	
Field	6 Sep 41	Pte		AA 15(1) AWL 2359 hrs 2-9-41 to 2130 5-9-41(2 dys 21 hrs 31 mins)	Cpl Paladyczuk	168 hrs detn	6 Sep 41	Lt-Col WW Slack	Forf 3 dys pay.
Field	6 Dec 41	Pte		AA Sec 15(1) AWL 2359 hrs 6-12-41 to 0100 hrs 7-12-41 (1 hr. 1 min.)	Doc'y.	168 hrs detn & costs of app. 13/9.	10 Dec 41	Lt-Col WW Slack	

P.T.O.

Wt. 29249/793, 2m.m. 11/40, S.P. Co., 51-7951

Place	Date of offence	Rank	Cases of Breaking arrest	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	13 May 42	Pte		AA Sec 10(4) Breaking out of Camp A	L/Sgt McDonald	14 days C.B. and stoppages	16 May 42	Major Trascheresau	
				AA Sec 15(1) AWL 1700 hrs 13-5-42 to 1920 hrs 13-5-42 (2 hrs 20 mins)	L/C Middleton Dooly.	cost of appren.			
Field	22 May 42	Pte		AA 15(1) AWL 0300 hrs 22-5-42 to 1830 hrs 30-5-42 (8 dys 15 hrs.30 mins)	CSM Augwood Cpl. Hewer	Forf 7 days pay	4 Jun 42	Capt Nelson	Forf 9 days pay
Field	17 May 43	Pte		AA 15(1) AWOAS AWL from 1300 hrs 17 May 43 to 1620 hrs 17 May 43 - 3 hrs 20 mins.	Sgt Huntowery W.H.	3 days forf pay FRI 14(2)	18 May 43	Lt-Col JG Wharnsbois	
Field	8 Aug 44	Pte		(1) AA 15(1) AWOAS AWL from 1730 hrs 8 Aug 44 until 1750 hrs 8 Aug 44 (total 20 mins) (2) AWOAS Sec 10(4) Breaking barracks when under open arrest	Lt Hamley J.A.	28 days F.P. 28 days f.o.p. FRI 14(2)			Forf 31 days pay under FRI. total forf 5½ days pay
XIXXX									

Army Form B.122

Date of enlistment: 29 Jan 40 Sheet No. 1

No. A3691 Name SMITH R.L. Sq. Batty., or Company C Corps C.M.P.

Date of last entry in Company Conduct Sheet: 22 May 43 No. and date of last drunk: 4 Oct 41 No. 3 G.C. Badges: N/A Long Service and G.C. Pay:

Signature O.C. Company etc.: M.M. Gregg Maj

Place	Date of offence	Rank	Cases of Drunkenness	Offence	Names of Witnesses	Punishment Awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				(3) 15(1) AWL from 1000 hrs 8 Aug 44 until 2200 hrs 7 Sep 44 (Total absence 30 days 4 hrs.					
Field	2 Oct 44	Pte		AA 9(2) MOAS disobeying a lawful command given by superior offr by refusing to go on patrol when ordered to do so.	L/C Ferguson L. Pte Martin A.B.	28 days F.P. 28 days fop	4 Oct 44	Lt-Col MM Reid	

I certify that this is a true copy of the original document in my possession as custodian of the regimental documents.

(D.F. Thompson) Lieut-A/Adjt.

[P.T.O.

3128 - Spr Smith - W.P

F-91550 Spr. Smith, W.P.
No.1 Cdn Eng Hldg Unit.

Army Form A.3.

Correspondence to be PINNED here.

PROCEEDINGS REVIEWED

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this 4th day of November, 1941.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS, CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[illegible]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*[illegible]

*(1. [illegible]

*(2. [illegible]

*(3. [illegible]

[illegible]

President.

Rank.	Name.	Regiment.
Major	D. Fletcher	No.1 Cdn Inf Hldg Unit.

Members.

Rank.	Name.	Regiment.
Captain	W. Stockdale	No.1 Cdn Inf Hldg Unit.
Lieutenant	G.W. Beal	No.1 Cdn Inf Hldg Unit.
Lieutenant	T.H. Bromby	No.1 Armoured Corps H.U.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Brigadier

Commanding Cdn Base Units, Cdn Army.
Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
F-91550 SPR. SMITH, W.P. No.1 Cdn Eng Hldg Unit.	First Charge A.A. sec 15(1) See charge sheet attached.	Guilty	Guilty. The court sentences the accused No F 91550 Spr. Smith W.P. of No 1 C.E.H.U. to undergo detention for two years.	Finding & Sentence Confirmed but sentence remitted to eighteen months detention. J.J.B. Bolton Brig

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) J.J.B. Bolton Brigadier (Signed) D. Fletcher Major

Commanding Cdn Base Units, Cdn Army. *Convening Officer (d)* No 1 C.E.H.U. *President.*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the Eight day of November /1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) D H
*(4. ~~The officers under instruction~~) Do

were duly sworn.

* Omit if not applicable.

Signed this Eight day of November 1941.

D Fletcher Major
President of the Court Martial

C. Certificate in case of death sentences.

* See footnote (2) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*~~I direct that the soldier named in the margin be not committed to prison until further orders.~~)

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 11th day of November 1941.

J.J.B. Bolton Brigadier
Confirming Officer.

Promulgated and extracts taken in the case of F. 91550 Spr. Smith, W.P.

(a) (Dated) 15 Nov 41 (Signed) A.C. Hunter, Capt

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

-2-

Exhibit (2) D.

CHARGE SHEET

The accused, No.F-91550, Sapper Wallace Peter Smith, No.1 Cdn Engineer Holding Unit, a soldier of the Canadian Army (Overseas) is charged with;

First Charge
Sec. 15(1)
Army Act

ABSENTING HIMSELF WITHOUT LEAVE,

in that he,

at Guillemont Barracks, COVE, Hants., absented himself without leave, from 2359 hrs. on the 28th day of September 1941, until apprehended by the Port of London Police at about 0915 hrs. on the 26th day of October 1941 at the West India Dock, London.

(A.I.Flood) Major,
A/Officer Commanding,
No.1 Cdn Engineer Holding Unit,
C.A.(O.S.).

COVE, Hants.,
30th. October 1941.

To be tried by Field General Court Martial

(F.R. Phelan) Brigadier
Commanding Cdn Base Units.

Farnborough, Hants
This 4th day of Nov 41.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD
AT COVE ON THE 8 DAY OF NOV 41.

TRIAL OF:- No. F.91550. SMITH. W.P. . SAPPER.

The order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:- (Name) THOMSON. W.P. LT. (Unit) No 1. CDN. ENG. HQLD.

Defending Officer:- (Name) WALLACE. W.L. LT. (Unit) No. 1. CDN. ENG. HQLD.

At 1000 hrs the trial commences.

The order convening the Court is read, signed by the President and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1. Do you object to be tried by me as President or by any of the officers whose names you have heard read over? A1- No

The President, members and judge-advocate (if any) are duly sworn.

The officers under instruction are duly sworn.

Q2. Do you object to — acting as shorthand writer?

A2.-

The shorthand writer is duly sworn.

The accused pleading Guilty to the charges in the above mentioned charge sheet, R.P.35(B) is duly complied with.

The summary of evidence is read, signed by the President, and attached to the proceedings.

Q3. Do you wish to make any statement in mitigation of punishment?

A3.- No.

Q4. Do you wish to give evidence yourself or to call any witnesses as to character? A4.- No.

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER.

Prisoner's defence counsel (officer) urged the effect that the soldier was worried on affairs at home & being assured that her employer had conducting herself as he expected.

Summary of evidence	1.	
Charge sheet	2.	
Minutes of proceedings	3.	3 writs allied & R.C.
Statement of charges	4.	
Statement of Service	5.	
Statement of Regt. Pay	6.	

Exhibit 3 to letter Major

SUMMARY OF EVIDENCE

Summary of Evidence in the case of Sapper Wallace Peter Smith, No.1 Cdn Engineer Holding Unit, a soldier of the Canadian Army (Overseas)

Evidence taken on oath by order of Lt.-Col. L.F.Barnes, Officer Commanding, No.1 Cdn Engineer Holding Unit.

FIRST WITNESS: Lieut. H.A.Mantle, No.1 Cdn Engineer Holding Unit, having been duly sworn states;

I am A/Asst/Adjutant of No.1 Cdn Engineer Holding Unit. I produce the following documents, which, I have satisfied myself, refer to the accused:

(a) Record of the Declaration of Court of Inquiry marked Exhibit "A".
(b) A.F.B.252 and Statement of Evidence as submitted by the Canadian Military Police, marked Exhibit "B".
(c) Statement of Evidence from Port of London Authority, Police, marked Exhibit "C".

H A Mantle Lieut.

The accused declines to cross-examine this witness.

SECOND WITNESS: H-13228, Cpl. Newbury, C.E., No.1 Cdn Engineer Holding Unit, having been duly sworn states;

I am H-13228, Cpl. Newbury, C.E., No.1 Cdn Engineer Holding UNit. On the 29th. of September 1941 I was A/Sec. Sgt. of No.1 Sec. "A" Coy. No.1 Cdn Engineer Holding Unit. I called the roll at reveille and found F-91550, Spr. Smith, W.P. absent. He was on pass, the pass expiring at 2359 hrs. 28 Sep 41. I reported him absent from that time until 06 Oct 41.

L E Newbury Cpl.

The accused declines to cross-examine this witness.

I certify that in my opinion, the attendance of:-
P.Sgt. McLaughlin, Port of London Police
L/Cpl. Dickerson, Cdn Provost Corps
is, owing to the expense and loss of time involved, not readily procurable and written statements of their evidence, signed by them, have been read to the accused, and are attached hereto as Exhibits.

[illegible] Lieut.

I do not require the attendance of these witnesses for the purpose of cross-examination.

Sp. W P Smith

The accused, after being duly cautioned as provided by R.P.4(E) declines to make a statement reserving his defence.

Certified that R.P.4(C)(D)(E)and(F) have been complied with.

Taken down before me in the presence and hearing of the accused at Guillemont Barracks, COVE, Hants. this 29th day of October 1941.

[illegible] Lieut.
No.1 Cdn Engineer Holding Unit
C.A.(O.S.)

PORT OF LONDON AUTHORITY
CIVIL POLICE OFFICE
WEST INDIA

Police Office
India & Millwall Docks
26th October 1941.

Sir,

I beg to report at 9.15.a.m. 26th October, 1941. I was informed that a Canadian soldier was aboard the S.S."Wigry", a Polish ship lying at "E" Warehouse, West India Dock.

With P.C.180, Matthews W. I went aboard the ship, where I saw Sapper Wallace Smith, No F.91550, First Coy., Royal Canadian Engineers, Cove, Aldershot, lying in a bunk in the crews' quarters.

I asked Smith what he was doing aboard the ship and he replied" I am on seven days leave from Aldershot, and I came aboard last night about 10 o'clock with two of the crew who are natives of the same town as myself, in Canada, and some Fusiliers who are stationed in the Dock". This statement was verified by the other Canadians. I asked Smith for his papers, but he told me that he had lost them all.

I communicated with the Royal Canadian Military Police, Henrietta Street, W. and Provost Cpl Dickenson came to the Dock and took Smith to the above address.

As Smith said that he had his pay book when he entered Dock a search was made and it was found under the bed-clothes.

F.S.P. informed.

(Signed) P.McLaughlin. P.S.11.

CANADIAN MILITARY POLICE
LONDON AREA

Statement of in the case of

EVIDENCE

1-91550 Spr.Smith W.P.
No.1.Cdn.Eng.Hold.Unit

Sir:

At London at about 1000 Hrs.on the 26-Oct-41.I was on duty at No.6.Prov.Coy,H.Q.when acting on instructions received I proceeded to the West India Dock Police Stn.where I received the custody of the s/m soldier.He had been arrested by P.Sgt.McLaughlan of the Port of London Police as an absentee.I escorted him to No.6.Prov.Coy,H.Q.where I handed him over to the N.C.O.i/c cells to be detained. Statement from Police is att'd.

London
27-Oct-41 .....L/cpl
D-93507 Dickenson J.

Sir:

I was the N.C.O.i/c cells when the s/m soldier was detained.

London
27-Oct-41 .....L/cpl
K-53481 Bianchini A.

REMARKS

The accused has no Conduct Sheet

Army Form B 252
(See King's Regulations)

CHARGE

No.1.Cdn.Eng.Hold.Unit — Regiment / Battery / Squadron / Troop or Company

CHARGE against No. F-91550 Rank Spr.

Name Smith W.P.

Place London Date of Offence 26-Oct-41

OFFENCE W.O.O A.S.absent without leave from 2359 hrs. 26 Sept 41 until apprehended by the Port of London Police at about 0915 hrs.on the 26-Oct-41 at the West India Dock London.

CANADIAN MILITARY POLICE
LONDON AREA.

Names of Witnesses:—

P.Sgt.McLaughlin Port or London Police

L/Cpl.Dickerson Cdn.Prov.Corps

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded B 1 P 6

By whom Awarded Adjutant.

P.T.O.

Army Form B 175

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier

Record of the Declaration of a Court of Inquiry assembled at Guillemont Barracks, COVE, Hants., on the 22nd. day of October, 1941, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No.F-91550, Spr. Smith, W.P. of the No.1 Cdn Engineer Holding Unit, Canadian Army (Overseas).

DECLARATION

The Court declare that F-91550, Spr. Smith, W.P. No.1 Cdn Engineer Holding Unit, illegally absented himself without leave at Guillemont Barracks COVE, Hants., on the 28th day of September 1941, and that he is still absent as of the 21st day of October 1941 and that he was deficient and is still deficient of the following articles to the value of £5-5-7.

Article	Number	Value
Battle dress blouses	1	£ 1 - 2 - 6
" " trousers	1	1 0 6
Boots, ankle prs	1	1 2 6
Braces, prs.	1	0 1 6
Caps, F.S.	1	0 2 5
Shoes, canvas, prs.	1	0 3 6
Socks, woolen, prs.	1	0 1 11
Helmets, steel, MK 11	1	0 0 0
Respirator, A/G		
Container	1	
Facepiece	1	
Haversack	1	
Outfits, A/Dim	1	0 19 0½
Ointment, A/G, #2 jars	1	0 0 6½
Eyeshields, prs.	6	0 2 3
TOTAL		£5 5 7

Signed at Guillemont Barracks, COVE, Hants., this 22nd. day of October 1941.

President - D.S.Morse, Lieut. R.C.E.

Members A.C.Ferguson, Lieut. R.C.E.

D.D.Love Lieut. R.C.E.

signed - L.F.Barnes, Lt.-Col., R.C.E.
Officer Commanding,
No.1 Cdn Engineer Holding Unit
C.A.(O.S.)

CERTIFIED TRUE COPY:- J.A.Crich Lieut.

ADJUTANT
No.1 Cdn. Engineer Holding Unit C.A.

Edward (4) DF

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 557

I certify that I have this morning examined

No. [illegible] ~~Spr.~~ ~~Smith~~ ~~E.P.~~

of ~~No.~~ ~~Can.~~ ~~R.H.V.~~ and in my opinion he

is ~~unfit~~ fit to undergo Trial by Court Martial.

Station Cove.

Date Nov. 8 1941

[signature] Capt
Medical Officer.

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 8th day of Nov 1941

.....
OFFICER i/c RECORDS
No. 1 Cdn. Engineers Holding Unit, C.A.

Exhibit (5) 571

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

F-91550, Spr. Smith, W.F. of the No.1 Cdn Engineer Holding Unit

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with:—

Note.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be assigned to the proceedings.

Gen. Pam. 664, 8.41.

	*Within last 12 months.	*Since Enlistment.
For Absence without leave	3 times	7 times.
For Conduct to the prejudice etc.	1 times	1 times.
For Drunkenness	times	3 times.
For	times	times.

*The numbers inserted should correspond with the number of Entries in the Conduct sheets, permanence being given to the most serious offence in each entry, and to any recognized special acts of gallantry or distinguished conduct.

Instructions.—If the charge is for drunkenness the entries for drunkenness must be shown separately and dated.

Number of instances of gallantry or distinguished conduct.

or,

There are no entries in the Conduct sheets of the accused.

2. The accused has not been previously convicted,

or,

Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

W1. 8484/554 10,000 2/42 W. S. Ltd. 51—4804

3. The accused is not under sentence at the present time,

or,

The accused was at the present time under sentence for

beginning on the day of

4. The accused has been in confinement, awaiting trial on the present charges for days in Civil Custody,

and days in Military Custody.

Total days.

Of which days were spent in hospital.

5. The present age of the accused according to his attestation paper is 38 years 8 mos.

6. The date of his attestation specified in his attestation paper is 18 Nov. 1939

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 year 12 mos.

8. The accused is entitled to deferred pay or gratuity in respect of 1-11½/12 years' service.

9. The accused is entitled to reckon 1-11½/12 years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward [or is in possession of or entitled to].

11. [If the accused is a warrant officer.] The accused before he was made a warrant officer last held the regimental rank of

12. [In the case of an officer.] The said holds in the army the rank of , dated and in his regiment [or corps or department] the rank of , dated

13. The accused has served [or has not served] continuously, without reduction, to the present date.

Date of Promotion.

In the rank of	years,	
In the rank of	years,	
In the rank of	years,	

(Instructions.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name P-91580 Spr. Smith W.P. of the No.1 Cdn Engineer Holding Unit

NOTE.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
F.G.C.M.	17th July 1941	A.A.Sec. 15(1)(Absent without leave 24 days)	Ninety Days (90) Detention	Remission 18 days (18)

(Continued overleaf.

CERTIFIED TRUE COPY:- ADJUTANT

No. F-91550 Name Smith W.P. No. and date of last drunk 11 Sep 40 Unit 201 Coy Engineer Holding Unit C.A. Corps R.E. Date of enlistment 18 Nov. 39 G.C. Badges Signature O.C. Company, etc. H.L. Meuser Character

Date of last entry in Company Conduct Sheet 12 Oct 40 Part Entry or Company Period not reckoning towards freedom from extra fine Sheet No. 2

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
1 Fd.Coy	17 Nov 40	Spr.	2	A.A.15(1) WOAS absenting himself without leave until 2245 hrs 7 Dec. 12 (Absent 20 days)	Documentary	27 Days Detention	22 Jan 41	Major Walsh RHU	27 days pay FRI 149(1) 18 days pay FRI 149(1)(c) 20 day pay 149(1)(a) Forfeits 18 days pay
(Released from Detention Barrack -Aldershot-18-2-41, Sentence havin expired)									
Bordon Hants.	16/4/ 41	Spr.		A.A.15(1) WOAS absenting himself without leave 17 days 22 hrs. 20 mins.	Cpl. Fisher L/Cpl Savage	27 Days Detention	5/6/41	Lt-Col Barnes	
(Released from the Detention Barracks -Witley/ May 31 1941-Sentence having expired- Remission earned under Rules for Detention Barracks and Military Prisons- Nil days- Commandants Initials.									

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Bordon Hants.	3 June 1941	Spr	3	A.A.15(1) WDAS Absent without leave 2230 hrs. 3 June 41 0820 hrs. 27 June 41(Absent 24 days)	Documentary	Ninety days detention(90) Remission of Eighteen days (18)	17th July 1941	F.C.C.M.	24 days 18 days 72 days FRI149 (1)(a) (1)(b) (1)(b)
(Released from the Detention Barrack at WITLEY on Sep 2 1941- Sentence having expired Remission earned under Rules for Detention Barracks and Military Prisons 24 Days Commandants Initials.									

M.F.M. 6
(A.F.B. 122)

No. F-91550 Name Smith, W.P. Sqn., Battery or Company 1 Fd. Coy. Corps R.C.E Date of enlistment 18 Nov Sheet No. 339 G.C. Badges Service or Proficiency Pay Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Signature O.C. company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Aldershot Eng.	13 Mar.40	Spr.		To replace original lost A.A.15(1) When on active service absent without leave from 1730 hrs. 13 Mar 40 until 0040 hrs 18 Mar 40	Sgt Dauphinee E.W.	14 days C.B.	19 Mar 40	Major F.R. Henshaw, M.C.	Forfeits 5 days pay FRI 149 (1)(a)
Aldershot Eng.	1 May 40	Spr.	1	A.A.40 when on active service conduct to the prejudice etc. in that he accosted a superior officer on the public highway for money	Sgt Dauphinee	168 hrs. Detn. forfeits 7 days pay FRI 149(1)(a)	2 May 40	See RCE Pt.11 Order No.107 D.3 May 40	
Aldershot	17 May 40	Spr	2	A.A.19 Drunkenness A.A.19 Drunkenness (First offence)	Sgt Dauphinee	Admonished Fined 5 dollars	18 May 40	Major F.R. Henshaw, M.C.	

(P.T.O.)

No. F-91550 Name Smith, W.P. Sqn., Battery, or Company 1 Fd. Coy R.C.E Corps Date of enlistment 18 Nov 1939 G.C. Badges Service or Proficiency Pay

M.F.M. 6 (A.F.B. 132) 500M—6.39 (1703) H.Q. 1777-45-13

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. Signature O.C. Company, etc. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				To replace original lost					
Aldershot Eng.	13 Mar.40	Spr.		A.A.15(1) When on active service absent without leave from 1730 hrs. 13 Mar 40 until 0040 hrs 18 Mar 40	Sgt Dauphinee E.H.	14 days C.B.	19 Mar40	Major F.R. Henshaw, M.C.	Forfeits 5 days pay FRI 149 (1)(a)
Aldershot Eng.	1 May 40	Spr.	1	A.A.40 when on active service conduct to the prejudice etc. in that he accosted a superior officer on the public highway for money	Sgt Dauphinee	168 hrs. Detn. forfeits 7 days pay FRI 149(1)(a)	2 May 40	See RCE Pt.11 Order No.107 D.3 May 40	
Aldershot Eng.	17 May40	Spr	2	A.A.19 Drunkenness(First offence) A.A.19 When on active service Drunkenness	Sgt Dauphinee	Admonished Fined 5 dollars	18 May 40	Major F.R. Henshaw, M.C.	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	Offence	Names of witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Charlwood Eng.	20 Aug 40	Spr.	2	A.A.15(1) When on active service absent without leave from 2359 hrs 20 Aug 40 until 2300 hrs. 27 Aug 40(Absent 6 days 11 hrs.)	L/Sgt Seaton W.W.	14 days detention	28 Aug 40	Major H.L. Meuser	Forfeits 8 days pay FRI 149(1)(a)
Charlwood Eng.	11 Sep 40	Spr.	3	A.A.15(1) When on active service absent without leave from 0830 hrs 11 Sep 40 until 1330 hrs. 11 Sep 40(Absent 4 hrs.)	C.S.M. Harmond P.J.	7 days C.B.	12 Sep 40	Major H.L. Meuser	Forfeits 3 days pay 149(1)(a)
Tadworth Eng	2 Oct 40	Spr.	3	(2) A.A.19.Drunkenness A.A.15(1) When on active service absent without leave from 2230 hrs 2 Oct until 1500 hrs. 22 Oct 40 (Absent 19 days 16 hrs. 30 mins.)	Sgt. Seaton W.W.	27 Days Detention	9 Nov 40	Major H.L. Meuser	Forfeits 47 days pay FRI 149 (1)(a)(b)

FLASH NUMBER THREE

FLASH NUMBER THREE

FLASH NUMBER THREE

FLASH NUMBER THREE

FLASH NUMBER THREE

FLASH NUMBER THREE

GG-101 (case #3)

SPR SMITH W.P.

See B-362 for 1st case

See D-312 for 2nd case

F. 91550 Spr. Smith W.P.
1 C.E.R.U.
BGHQ 5-6-2/214 GG-101

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

On Active Service, this 5th day of June, 1943. (Order convening the Court.)

Whereas it appears to me, the undersigned, an officer in Command of B. Group Cdn. Reinforcement Units, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * [redacted] PS [redacted]

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* [redacted]

PS [redacted]

*Omit where Convening Officer is a Commanding Officer in the Field Forces.

*Omit if not applicable.

Proceedings Reviewed
W.H. WAUGH Capt. ..... (JAG) G.S.O.1
for Reviewing Officer
25 Jun 43

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	J. Steele	1 C.S.R.U.

Members.

Rank.	Name.		Regiment.
A Capt.	A. MONETTE	from	1 C.E.R.U.
A Lieutenant	G.P. BROWN	from	1 C.A.S.C.R.U.

*Must be signed personally by the Officer commanding at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed Sgd. P.R. Shields
(P.R. Shields) Brig.
Comd "B" Gp. C.R.U.
Commanding Convening Officer.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
F.91550 Spr SMITH, Walter, Peter.	First Charge A.A. Sec 15(1)	Guilty	Guilty To undergo detention for a period of nine months J. Steele Maj 7 June 43	Confirmed Sgd P.R. SHIELDS Brig. 8 Jun 43
	See Attached Charge Sheet			

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) Sgd P.R. Shields (P.R. SHIELDS) Brig.
Commanding "B" Gp C.R.U.
Convening Officer (a)

(Signed) Sgd. J. Steele MAJOR
1 C.S.R.U.
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the Seventh day of June 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*3. [redacted] JS
*(4. The officers under instruction)

were duly sworn.

*Omit if not applicable.

Signed this 7 day of June 19 43.

Sgd J. STEELE Major.
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (i) on page 782 M.M.I., 1929.

[redacted]

Signed this day of 19 .

JS
President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*[redacted] PS

Signed this 8 day of June 1943.

Sgd P.R. Shields Brig.
Confirming Officer.

Promulgated and extracts taken in the case of

(a) (Dated) 9 June 43 (Signed) Sgd. V.J. Thompson Lt-col.

Promulgated and extracts taken in the case of

(Dated) Entered Part II Orders (Signed)

Dated 12-6-43 Order No. 140

Promulgated and extracts taken in the case of

No.1 Cdn Engineers' Holding Unit C.A.

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] W—4[illegible] 20,000 2/42 A.J.I. & N. Ltd Gp 699

CHARGE SHEET.

The accused P.91550 Spr. Smith, Wallace, Peter, Royal Canadian Engineers, No.1 Canadian Engineer Reinforcement Unit, a soldier of the Canadian Army (Overseas) is charged with,

FIRST CHARGE
A.A. 15(1)

When on active service, absenting himself without leave,

in that he

At Guillemont Barracks, COVE, Hants., absented himself without leave from 0030 hrs 9 April 43 until apprehended by the Canadian Provost Corps at London, at 1430 hrs 1 June 43.

(Total Absence 52 Days 14 hrs)

COVE, Hants.,
this 3rd Day
of June 1943

Sgd. V.S. Thompson
(V.S. THOMPSON) Lt.-col RCE
Cmd.
No. 1 Trng Wing,
No.1 C.E.R.U.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

5 Jun 43

Sgd. P.R. SHIELDS
(P.R. SHIELDS) BRIG.
COMDG "B" GP.
CDN RFT UNITS.

Sgd J.Steele Major.

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 557

I certify that I have this morning examined No. F. 91550 Spr. Smith W.P. of No. 1 Cdn Eng Reinf Unit and in my opinion he is fit to undergo Trial by Court Martial.

Station COVE

Date 7 -6- 43

Sgd. T.W. Brokovski Lieut.
Medical Officer.

Sgd. J. Steele Major.

2nd Case F. 91550 SMITH W.P.

Prosecutor Lieut. R. Hendry #1 C.E.R.U.

Defence Lieut. D.L. Cowan #1 C.E.R.E.

After arraignement being read the accused pleads GUILTY

Summary of evidence read to the Court by the President.

Record of the Court of Enquiry and statement by Provost rendered by the Prosecution.

The defense makes a statement in mitigation of punishment as follows:

"This man came overseas in the Spring of 1940. He was then 38 years of age and had three children. His record was fair until the Fall of 1941 at which time he and his wife became estranged. She has the custody of the children and he has only had scant information of his family since that time. Drinking has probably led him to his A.W.L. troubles and loss of sense of responsibility. This is all obviously a result of his domestic troubles which although the Army did discuss advising on did not see fit to take action regarding the custody of the children

Sgd J. Steele Major.

EXHIBIT "A"

CERTIFICATE IN ACCORDANCE WITH P.C. 2797 of 10 Apr 42.

I CERTIFY that No. F.91550 Rank Spr Name SMITH W.P.
Unit No.1 C.E.R.U. was arrested at London (Place)
at 1430 hrs on 1 June 43 and that at the time of his arrest he was wearing (Military Uniform or (~~XIXXXIXXXIXXXIXXX~~).
Signature of Provost-Marshal, Assistant Provost Marshal or other Officer or the Commanding Officer of the portion of His Majesty's Forces or the officer, Warrant Officer, or Non-Commissioned Officer in charge of the detachment of the Canadian Provost Corps, Canadian Army into whose custody the above named person was taken on arrest.
(Strike out part inapplicable)

Sgd W. Fern Capt.
(W. Fern) D.A.P.M.
London Area

Sgd J. Steele Major

EXHIBIT B

RECORD of the Declaration of a Court of Inquiry assembled at No.1 C.E.R.U. on the 10th day of May 1943. for the purose of investigating and recording the absence without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental necessaries or Clothing of No. F.91550 Spr. Smith W.P.

D E C L A R A T I O N.

The Court declare that No. F.91550 Spr. Smith W.P. illegally absented himself without leave from Guillemont Barracks, COVE, Hants, the 10 May 43 he was deficient, and that he is still deficient of the following articles;--

FOR KIT DEFICIENCIES -- SEE OVERLEAF

Names of President and Members:

SIGNED at No. 1 Cdn Engineer Reinforcement Unit this 17 day of May 1943

Capt. J.A.C. Bowen, No.1 CERU - PRESIDENT.
Lieut. H.B. Douglas, No.1 CERU - MEMBER.
Lieut. G.R. Warner, No.1 CERU - MEMBER.

Signature of Officer Commanding (G.H. WHYTE) Colonel

Certified true copy E.J. Drunin Major
1 C. Eng R.U.
Signature of officer having custody of original record
J. Steele Major

KIT DEFICIENCIES OF F-91550 SPR SMITH W P.

			£	S	D	£	S	D
Anklets, web.	prs	1.	0	3	5½	0	2	7
Badges, Shoulder,	prs	3.	0	1	4½	0	1	1½
B.D. Blouse Serge		2.	2	15	4	2	1	6
B.D. Trousers Serge	prs	2.	2	15	10	2	1	11
Boots Ankle, w/Laces	prs	1.	1	1	6	0	16	1½
Braces	prs	1.	0	1	3½	0	0	10½
Brushes, Hair		1.	0	1	1	0	0	10
Brushes, Cloth		1.	0	1	1	0	0	10
Caps, Comforter		1.	0	1	1½	0	0	10
Caps, Field Service		1.	0	3	8	0	2	9
Combs, Hair		1.	0	0	2	0	0	1½
Discs, Identity		2.	0	0	2	0	0	1
Drawers, Woolen	prs	2.	0	10	6	0	7	11
Dressings First Field		1.	0	1	1	0	0	10
Gloves Woolen	prs	1.	0	2	7½	0	2	0
Housewife,		1.	0	2	3	0	1	6½
Jersey Pullover		1.	0	6	9	0	5	1
Knife, Clasp		1.	0	5	2½	0	3	11
Overalls, Comb		2.	0	12	7	0	8	7
Shirts, Angola drab.		2.	0	18	4	0	13	9
Vests, Woolen		2.	0	10	8	0	7	8
Socks, Worsted	prs	4.	0	6	8	0	5	0
Towels, Hand		1.	0	0	11½	0	0	9
Shorts Gym	prs	2.	0	3	10	0	2	11
Vests, Gym		2.	0	3	0	0	2	3
Drawers, Cello	prs	2.	0	4	1	0	3	1
Capes, A/G		1.	0	19	10	0	14	10½
Ointment A/G 2oz sets		2.	0	2	4	0	1	7
Bags, ration		1.	0	0	2	0	0	1½
Slings, Rifle		1.	0	1	1	0	0	10
Sheets, Ground		1.	0	10	9	0	8	0½
			£ 13	8	3½	£ 10	0	6
				100%			75%	

~~Certified true copy.~~

SUMMARY OF EVIDENCE

Summary of evidence in the case of F.91550 Spr SMITH, W.P. Royal Canadian Engineers, No.1 Canadian Engineer Re-inforcement Unit, a soldier of the Canadian Army (Overseas).

The Officer Commanding has directed that the evidence be taken under oath.

FIRST WITNESS.
For the Prosecution

M.5356 Spr. (A/Cpl.) McKinney G.C. having been duly sworn states:-

"I am, M-5356 Spr. (A/Cpl) McKinney G.C. on the morning of 9 April 1943, I, as Corporal i/c of No. 2 Section "A" Coy, called the roll at 0600 hrs. I found that F.91550 Spr. SMITH, W.P. was absent, and I have not seen him since.

The accused declines to cross-examine the witness.

Sgd. A/Cpl. McKinney G.C.
M/5356 A/Cpl. McKinney G.C.

SECOND WITNESS.
For the Prosecution

"B-5946 Spr. (A/Cpl) WILDE, J. having been duly sworn states:-

I am, B-5946 Spr. (A/Cpl) WILDE, J. I took over duties of the Guard on the 9th April 43 and took over Guard Room Reports and found F.91550 Spr. SMITH W.P. had failed to turn in his pass at 0030 hrs on 9 April 43.

The accused declines to cross-examine the witness.

Sgd. James Wilde,
B-5946 A/Cpl. WILDE, J.

THIRD WITNESS
For the prosecution

"Lieut. G.F.B. HUMBLE, having been duly sworn states:-

"I am Lieut. G.F.B. HUMBLE, Records Officer No.1 Canadian Engineer Reinforcement Unit, I present the following documents,

(a) A Certificate in accordance with P.C. 2797
(b) Declaration of a Court of Inquiry, which I am satisfied refer to the accused.

The accused declines to cross-examine the witness.

Sgd. G.F.B. Humble.
Lieut. G.F.B. HUMBLE

Certified true copy

Sgd. J. Steele Major.

The accused was cautioned as follows:-

Do you wish to make any statement or to give evidence on oath. You are not obliged to say anything, If you do not wish to do so, but any statement you may make, or evidence you may give will be taken down in writing and may be used as evidence.

The accused stated that he had no statement to make.

Certified that Rules of Procedure 4(c)(d)(e)(f) and (g) have been complied with.

Taken down by me in the presence of the accused at COVE, Hants., this third day of June 1943.

Sgd. ANTOINE MONETTE.
(ANTOINE MONETTE) Capt. R.C.E.

} statements.

I, F.91550 Spr. SMITH, W.P. Royal Canadian Engineers, requests that an officer be appointed to act as my defence in my forthcoming trial by Field General Court Martial. I would like to have the services of Lieut. G. Turner.

Signed F. 91550 Spr. SMITH W.P.
Sgd W.P. Smith

Sgd. J. Steele Major.

M.F.B. 355
22M—5-41 (572-5)
H.Q. 1772-39-620
A.F.B. 266

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
F.91550	Sapper	SMITH, Wallace Peter	No. 1 CERU

1. The following is a fair and true summary of the entries in the Service and General / Regimental and Squadron, Battery Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For	A.A. 15(1)	4 times	(A.A. 15(1)	9 times
For		times		times
For		times		times
For		times		times

There are no entries in the conduct sheets of the accused.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. [illegible]

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. [illegible]

[illegible]

day of

4. The accused has been in confinement awaiting trial on the present charges, for Nil days in civil custody, and 6 days in military custody, making a total of 6 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is / attestation paper is 40 1/12

6. The date of his attestation specified in his attestation paper 18 Nov 1939

7. The service which the accused is allowed to reckon towards discharge is 3 7/12

8. The accused is entitled to reckon 3 7/12 service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no military decoration, or military reward [illegible]

10. [illegible]

Certified true copy

Sgd J. Steele Major

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

.....dated....., and in his regiment (or corps), the rank of

.....dated.....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

.....Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with of accused. Number F.91550 Rank Spr. Unit Air Force

Name SMITH, Wallace Peter of No. 1 C.E.H.U. Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
F.G.C.M.	Field 17 July 41	AA 15(1) Absent 24 Days	90 Days Detn	18 Days
F.G.C.M.	Field 8 Nov 41	AA 15(1) Absent 28 Days	18 Months	180 Days

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody G.T.B. HUMBLE Lieut.

Signed this 4 day of June 1943

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

Certified true copy

Certified True Copy D.L. COUNSELL Lt. R.C.E.

No. 91330 Name SMITH W.P. Sqn., Battery, or Company — Corps — Date of enlistment 15 NOV 1939 — G.C. Badges — Service or Proficiency Pay — 3rd Pte J. STEELE

M.F.M. 6 (A.F. B.122) 40/P & /8136 (2965)

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Regt. No. — Signature O.C. Company, etc.

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	20 Aug 40	Spr		AA 15 (1) 2 YEARS ORE from 21 Sep 39 to 20 Aug 40	C/Sgt	14 Days Detn	28 Aug 40	Maj W.L.	Forf 28 Days pay
Field	4 Sep 40	Spr		AA 15 (1) 2 YEARS ORE from 4 Sep 40 to 3 Sep 42	C.S.M.	7 Days C.B.	12 Sep 40	Maj W.L.	Forf 7 Days pay
Field	20 Oct 40	Spr	3	(a) AA 15 (1) 2 YEARS ORE from 2230 HRS 20 Oct 40 UNTIL 1500 HRS 22 Oct 40 (ABSENT 49 DAYS 16 HRS. 30 MIN) (b) AA 15 (1) 2 YEARS ORE from 2230 HRS 20 Oct 40 until 1500 hrs 21 Sept 1941 (Absent in desr)	Sergeant			Accused	FPR 1 day (1) (a) FPR 1 day (1) (b)
FIELD	17 NOV 40	SPR		AA 15 (1) 2 YEARS ORE WITH LESS HRS 7 DAYS 40 (ABSENT 26 DAYS)	DOCUMENTARY	27 DAYS DETN	23 JAN 41	MAJ. W.L.	FORF 27 DAYS PAY FPR 1 DAY (1) (a) FPR 1 DAY (1) (b)
FIELD	18 JAN 41	SPR		AA 15 (1) 2 YEARS ORE (2 DAYS 22 HRS 20 MINS)	CPL FISHER SPR. SINGH	27 DAYS DETN	3 FEB 41	LT COL. DENNIS	15 DAYS PAY FPR 1 DAY (1) (a) 12 DAYS PAY FPR 1 DAY (1) (b)
FIELD	3 JUNE 41	SPR		AA 15 (1) 2 YEARS ORE (2 DAYS 22 HRS 20 MINS) 3 JUN 41 UNTIL 0845 HRS 17 JUN 41 (ABSENT 13 DAYS)	DOCUMENTARY	90 DAYS DETN REMISSION OF 13 DAYS	17 JUN 41	F.E.C.O.	FORF 90 DAYS PAY AA 15 (1) (a) 19 (1) (a) 72 (1) (a)

TOTAL 91 DAYS DETN

PREVIOUS SHEET DESTROYED IN ACCORDANCE WITH. O.A.P.O. 2634 / 1942

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
FIELD	29 DEC 41	SPR		AWOL FROM 2359 HRS 13 DEC 41 UNTIL 0900 HRS 14 DEC 41	DECLARATION MADE	18 DAYS DETN	5 NOV FROM 41	COMMANDING OFFICE	ESC. DAYS 5
FIELD	22 NOV 42	SPR		AWOL FROM 2200 HRS 22 NOV 42 UNTIL 1800 HRS 12 DEC 42 SURRENDERED	DECLARATION MADE	21 DAYS DETN	6 DEC 42	LT COL W.S. THOMPSON	FORF 21 DAYS PAY UNDER 71(1)(a) QUIT APPREHENSION 71(1)(f)
FIELD	17 JUN 43	SPR		AWOL FROM 1200 HRS 17 JUN 43 TO 1300 HRS 19 JUN 43 ABSENT 50 HOURS	DECLARATION MADE	14 DAYS C.B.	19 JUN 43	LT COL W.S. THOMPSON	FORF 10 DAYS PAY UNDER 71(1)(a)
FIELD	19 JUN 43	SPR		(1) D.A.I.S. (2) AWOL FROM 2200 HRS 2 JUN 43 TO 2015 HRS 21 JUN 43 ABSENT 167 HRS 45 MINS	DECLARATION MADE	21 DAYS DETN	23 JUN 43	LT COL W.S. THOMPSON	FORF 2 DAYS PAY UNDER 71(1)(a)
FIELD	19 FEB 42	SPR		(2) DID AC WORK FAILING TO MAINTAIN REASONABLE CHILL 1919.12 (1) AWOL FROM 0030 HRS 19 FEB 42 TIL 2345 HRS 11 MAR 42 ABSENT 19 DAYS 23 HRS 15 MINS	DECLARATION MADE / ROLL/ENTRY	21 DAYS DETN	12 MAR 42	LT COL C.H. MITCHELL	FORF 10 DAYS PAY UNDER 71(1)(a)

362 B. Jaffer Smith to D.

Correspondence to be PINNED here.

F-91550 Spr. Smith,W.F.
No.1 Cdn Eng Hldg Unit

Orig

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this 11th day of July, 1941.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS,CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; [illegible]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

[illegible]

President.

Rank.	Name.	Regiment.
Major	J.K.M. Flexman	No.1 Cdn Eng Hldg Unit

Members.

Rank.	Name.	Regiment.
Captain	A.M. Black	No.1 RCASC Hldg Unit
Lieutenant	R.S. Partridge	No.1 Cdn Sigs Hldg Unit
Lieutenant	F.M. Webster	No.1 Cdn Gen Hldg Unit

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed L. F. Ross Major-General

Commanding Cdn Base Units,Cdn Army.
Convening Officer.

SCHEDULE.

Number, Rank (*a*) Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
F-91550 SPR. SMITH, W.P. No.1 Cdn Engr Hldg Unit.	First Charge A.A. sec 15(1)		Guilty 90 days detention.	I confirm the findings & sentence in the Court but remit 18 days of the sentence
	See charge sheet attached.	Guilty.	To undergo detention for ninety days.	

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*):—

(Signed) L. F. Page. Major-General (Signed) J. R. Bowman Maj.
Commanding Cdn Base Units, Cdn Army. *Presiding*
Convening Officer (*e*)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 17th day of July, 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) Court Reporter
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 17 day of July 19 41
J. R. Bowman Major.
President of the Court Martial.

C. Certificate in case of death sentence.

* See footnote (*b*) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19 .

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

* ~~I direct that the soldier named in the margin be not committed to prison until further order.~~)

Signed this 24th day of July 1941.
L. F. Page. Major-General.
Confirming Officer.

Promulgated and extracts taken in the case of F. 91550 Spr. Smith. W.P.
(*a*) (Dated) 31 July 41 (Signed) H. A. Crickmore Capt. R.C.E.
ADJUTANT
No. 1 Cdn. Engineer Holding Unit C.A.

Promulgated and extracts taken in the case of
(Dated) (Signed)

Promulgated and extracts taken in the case of
(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused No. F-91580, Sapper Wallace Peter Smith, No. 1 (Cdn) Engineer Holding Unit, a soldier of the Canadian Army (Overseas) is charged with:

FIRST CHARGE
Sec 15(1)
ARMY ACT

Absenting himself without leave,

in that he,

at Louisburg East Barracks, GORDON, Hants., absented himself without leave from 2230 hours on the 3rd. day of June 1941, until apprehended by the Canadian Provost Corps, at the Union Jack Club, on Waterloo Road, London, at about 0820 hours on the 27th. day of June 1941.

(L.P.Barnes) Lt.-Col.
Officer Commanding,
No. 1 (Cdn) Engineer Holding Unit,
Canadian Army (Overseas).

GORDON, Hants.
4th. July 1941

To be tried by Field General Court Martial

(L.E. Page) Major-General
Commanding CAn Base Units.

Gordon, Hants
This 11th day of July 41.

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 557

I certify that I have this morning examined

No. T.A.S.C. Spr. Brian W.E.

of H.Q. Engineer Hill ...and in my opinion he

is ~~fit~~ Unfit to undergo Trial by Court Martial.

Station. Barrow Island

Date. 17 July 41.

Medical Officer.

F-91550, Spr. Smith, W.P., No. 1 Cdn. Engineer Holding Unit, tried by Field General Court-Martial at Bordon, Hants., on the 17th day of July, 1941.

The order convening the Court, the charge-sheet, summary of evidence and medical certificate are laid before the Court.

Prosecutor - Capt. H.R. Cleveland
Defending Officer - Lieut. Maussez

At 1000 hours the Trial commences.

The names of the President and members of the Court are read over in the hearing of the accused and they severally answer to their names.

Q1 - Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?
A1 - No, sir.

The President and members are duly sworn.

Q2 - Do you object to M-15577 S/Sgt. Stanley Fidler, The Edmonton Regiment, H.Q., C.B.U., acting as Court Reporter?
A2 - No, sir.

The Court Reporter is duly sworn.

The charge-sheet is signed by the President and annexed to the proceedings.

The accused is arraigned upon each charge in the above mentioned charge-sheet.

Q3 - Are you guilty or not guilty of the first charge against you, which you have heard read?
A3 - Guilty, sir.

R.P. 35(B) is complied with by the Court.

Q4 - Do you wish to make any statement in mitigation of punishment?
A4 - (Defending Officer) On behalf of F-91550, Spr. Smith, W.F. The accused has pleaded guilty to the charge of a.w.l. and thrown himself on the mercy of the Court. In making a plea of mitigation I would draw your attention to the following facts. First, by pleading guilty he has saved the department considerable expense and the additional trouble incidental with bringing witnesses from London to support the charges. His present act and the acts which preceded have not been committed with malice or forethought or with any idea of insubordination or lawlessness. There are certain forces which are brought to bear on all of us and some men react in one way and others in a different manner. I submit that this man's actions are the direct result of certain factors concerning his home life and while I do not condone his method of seeking relief I can readily see that a certain type of individual would react in this manner. The facts are that this man has a very serious disorganization of his home affairs. The Dependents Allowance Board has notified him that they will make no further allowance to his wife and recommend that his children should be placed in an orphanage. Mr. R. Parkinson Goffe a barrister from Nova Scotia has written to him at the instigation of his father and sisters to be granted power to take action against his wife; also for power to institute action for the removal of the children from her care and for them to be placed in an orphanage. His mother who apparently had a certain restraining and supervising authority in the family and she died in July, 1940. From a perusal of his conduct sheet, which is evidence you will note that there is only one minor infraction.
President - We cannot accept any statement as to character at this time. You must confine your remarks to statements in mitigation.
Defending Officer - The facts outlined, I think, will convince you gentlemen that this man has been under considerable strain and that his actions have not been deliberate or premeditated. He simply takes a drink to try and forget his troubles and one drink leads to another and he finally wanders away from camp and becomes absent without leave. I do not

for one minute condone this man's means of getting relief but I think that you will agree that we all react in different ways to a set of circumstances or pressure and this man's action is one form of relief taken by some men. The interest of the commanding officer and adjutant of No. 1 Cdn. Engineer Holding Unit is evidenced by the fact that a cablegram has been sent on this man's behalf through our command post to this man's father and a reply is expected at any time. I have also been in contact with this man's padre who also feels.....

President - I must remind you that character evidence comes later.

Defending Officer - With that I will make a plea for mitigation of sentence.

Capt. H.R. Cleveland, No. 1 Cdn. Engineer Holding Unit, is duly sworn.

Q5 - Have you any evidence to produce as to the character and particulars of service of the accused?

A5 - Yes, sir, A.F.B. 296 and M.F.M. 6.

Q6 - Is the accused the person named in the statement which you have heard read?

A6 - Yes, sir.

Q7 - Have you compared the contents of the above statement with the regimental books?

A7 - Yes, sir.

Q8 - Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

A8 - Yes, sir.

The accused declines to cross-examine.

Q9 - Do you wish to address the Court?

A9 - (Defending Officer) If you will check back on the man's conduct sheet you will find that before he had news of his trouble at home there was only one minor infraction for which he was brought up. Since that time his family troubles had been bothering his mind and he lost his mother and then there was the matter of the dependents allowance and he would take a drink to forget about it and the first thing he knows he is absent without leave. He has no civil convictions at all and his civil life was clear and free and his only serious trouble has been since he became upset and I think that can be understood. I am convinced, and his padre is convinced, that as soon as his troubles are cleared up he will be a good dependable soldier. His two brothers are serving in the army and their conduct sheets are clean. While the trouble has been going on there was no Roman Catholic padre in the district and he didn't go to his senior officers, but it is only during the last two months he has had a Roman Catholic padre. I think there is a very strong case in mitigation of punishment for this man and when his home life is cleared up he will be of service to the army.

President - I believe you mean there was no Roman Catholic padre attached to the unit, not the camp?

Defending Officer - That is right.

The Court is closed for the consideration of the sentence.

SUMMARY OF EVIDENCE

In the cas of No. F-91550, Sapper Wallace Peter Smith, No. 1 (Cdn) Engineer Helding Unit, a soldier of the Canadian Army (Overseas)

FIRST WITNESS C-2314 L/Sgt. White, J.L. No. 1 (Cdn) Engineer Helding Unit, having been duly swern states:

During the period 3 June 1941 until 27 June 1941, inclusive, I was section sergeant of No. 3 Section "A" Cey. No. 1 (Cdn) Engineer Helding Unit.

At about 2230 hours on the 3rd. June 1941, Cpl. Fulmer reported to me that F-91550 Spr. Smith, W.P., whom I new recognize was absent from his quarters at the Tattoo Roll Call. I went to Spr. Smith's quarters and checked this report and found that Spr. Smith was absent.

On the morning of 4th. June 1941, I called the roll of the section and Spr. Smith failed to answer to his name, and ha s failed to do so up until the present.

J R White L/Sgt.

The accused declines to cross-examine the witness.

SECOND WITNESS Lieut. W.S. Hogg, No. 1 (Cdn) Engineer Helding Unit, ha ving been duly swern, sta tes:

I am Officer i/c Records No. 1 (Cdn) Engineer Helding Unit, and as such, produce in evidence, certified true copies of documents as follows:

(A) AFB 252, Certificate of apprehension and evidence a s submitted by the Canadian Military Police, LONDON Area, marked exhibit "A".

I have satisfied myself that these documents refer to the accused.

W S Hogg Lieut.

The accused makes no objection to the above documentary evidence,

The accused declines to cross-examine the witness.

The accused a fter be ng duly warned as provided by R.P. 4(E), declines to make a statement.

Certified that R.P.4(C)(D)(E) and (F) have been complied x with.

Taken down before me in the presence and hearing of the a ccused a t Louisburg East Barracks, BORDON, Hants., this 4th. day of July, 1941.

W H Cleveland

(H.H. Cleveland) Captain
No. 1 (Cdn) Engineer Helding Un
C.A. (O.S.)

Exhibit "A"

Army Form B 252
(See King's Regulations)

CHARGE

R.C.E. Holding Unit. | Regiment / Battery / Squadron / Troop or / Company

CHARGE against No. F-91550 Rank Spr

Name Smith W.E.

Place London. Date of Offence 27-Jun-41.

OFFENCE W.O.A.S.(1)Absent without leave from until apprehended by the Can Provost Corps at the Union Jack Club on Waterloo Rd. at about 0220 Hrs on the 27-Jun-41.

W. E. Smith for D.A.P.M.

CANADIAN MILITARY POLICE
LONDON AREA.

Names of Witnesses:—

L/Cpl Keenie, Canadian Provost Corps.

Pte Rex, Canadian Provost Corps.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded Adjutant.

P.T.O.

Statement of **EVIDENCE** in the case of

F-91550 Spr Smith W.P.
R.C.E. Holding Unit.

Sir,

At London on the 27-Jun-41 at about 0820 Hrs while on duty at the Union Jack Club on Waterloo Rd. and in company with Pte Rex I saw the a/m soldier. I approached him and asked him for his pass. He could not produce one. He was A.W.L. I placed him under arrest and escorted him to Cdn Provost Corps H.Q. where I handed him over to the N.C.O. i/c of Cells to be detained.

London.
27-Jun-41. R. E. Keenie L/Cpl
(H-16062 Keenie E.)

Sir,

I have read over and corroborate the above statement.

London.
27-Jun-41. R. I. Rex Pte
(C-5610 Rex R.)

REMARKS

COPY.

CANADIAN MILITARY HEADQUARTERS.

PT/F/91550 Pay2.

Paymaster
1st. Cdn. Eng Hold Unit.

F-91550 Spr. Smith W.F.

1. A letter has been received from the Dependents Allowance Board, stating that no further allowances will be sent to the wife of the marginally noted soldier, and that he should appoint a guardian for his children and assign pay to the guardian.

2. They further state that the Childrens' Aid Society of Halifax is a suitable agency to look after the welfare of his children.

3. Please have Spr. Smith paraded and M.F.M.19 completed, effective 8 Dec. 40, transferring his assignment from his wife to the guardian of his children as designated by him, and also apply for dependents allowance as soon as possible.

(M.J.Beard) Major
for Chief Paymaster
Canadian Army (Overseas)

COPY OF TELEGRAM TO JAMES SMITH.

JAMES SMITH.
28½ SPRING GARDEN ROAD
HALIFAX, CANADA.

CABLE ME PREPAID HOLDING UNIT WHERE ABOUTS OF CHILDREN AND WHO IS CARING FOR THEM STOP CAN YOU SUGGEST GUARDIAN TO RECEIVE ALLOWANCE LOOK AFTER THEM STOP DONT WANT THEM IN ORPHANAGE.

WALLACE SMITH.

EMPLOYMENT OF SOLICITOR

I, Wallis Peter Smith, R.C.N. C.A.S.F., now serving in England with the Canadian Army, and of Halifax, N.S. Canada, hereby retain and employ Mr. R.Parkinson Goffe, of Halifax, N.S. Canada, as my solicitor, to investigate and take action against my wife, Charlotte Frances Smith, also of Halifax, N.S. Canada, for the removing from her custody two of my children, viz. Lois Marie Smith, aged 10, and Wallis Joseph Smith, aged 3, and placing them in the custody and guardianship of the Mother Superior of the St. Joseph's Roman Catholic Orphanage, and the Home of the Guardian Angel respectively, in the City of Halifax, N.S. Canada.

COPY

Halifax, N.S.
30 March 1941.

Gapper Wallis P. Smith.
1st Field Coy. R.C.E.
F-91550 C.A.S.F.

Dear Sir.

Your sister, Mrs. Jean Landry, of 236 Lower Water St., of the City of Halifax, has engaged me to act on your behalf in removing two of your children, viz. Lois Marie, and Wallis Joseph, from their Mother, and your wife, and placing them in the custody and guardianship of the R.C.Orphanages. To make my position Legal, I have sent you an employment form, which please sign and return to me as early as possible, as action cannot be taken by me until I have your signed authority to act for you in this matter.

I have had three long interviews with both Mrs. Landry and Mrs. Hanna, and also yesterday at Mrs. Landry's with your daughter. They have given me all and very full particulars of everything that has occured since you left Halifax, shown me your letters to them respecting your wife's behaviour, and your desire to have the children removed and placed in a home till your return D.V.

The Childrens' Aid Society will do nothing and the Legion cannot do anything in the matter, so your only remedy is to seek legal advice, I have already consulted with the Deputy Judge & Probation Officer of the Juvenile Court, discussed the matter fully with him, and he assures me that there will be no trouble in having the children sent to homes, should the matter be brought before him in his Judicial capacity. In the event of my getting an order for their removal from the custody of their mother, which I have no doubt I shall get, I shall inform you to instruct your C.O. to pay over to the Mother Superior of each of these Homes the Allowance for each of these children. There must be a cheque drawn to each of these Homes, one for Lois and the other for Wallis. The girl goes to St. Joseph's and the boy to the Guardian Angel.

Mrs. Landry tells me she has already written to you informing you of the action she is taking in the matter to have the children removed from the custody of their mother.
Awaiting your early reply.

Yours very truly
(Signed) H.Parkinson Goffs.

P.S. This is a copy of my letter and employment order sent you last month. Should you receive both letters and employment order, sign the latter and return, as the former order may be lost in transit by enemy action.

I certify that, in my opinion, the attendance of L/Cpl. Keenie E. and Pte. Rex H., is, owing to the expense and loss of time involved, not readily procurable, and a written statement of their evidence, signed by them, has been read to the accused and is attached hereto as Exhibit A

H.R. Cleveland

(H.R. Cleveland) Capt.

I do not require the attendance of these witnesses for the purpose of cross examination.

W.P. Smith Spr.

BORDON, Hants.
4th. July, 1941

CERTIFIED TRUE COPY

OFFICER i/c RECORDS

No. P-01550 Name Smith, W.P. | Sqn., Battery, or Company 1st.Fld Coy | Corps R.C.E. | Date of enlistment 18/11/39 | G.C. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc.

M.F.M. 6 (A.F.B. 122)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Aldershot Eng.	13/3 40	Spr.		A.A.15(1)When on Active Service Absent Without Leave from 1750 hrs. 13 Mar 40 until 0040 hrs 18 Mar 40.	Sgt. Dauphinee E.H.	14 days C.B.	19/3/40	Major F.R. Henshaw M.C.	Forfeits 5 days pay F.R.&I. 149(1)(a)
Aldershot Eng.	1 May 40	Spr.	1	A.A.40.When on Active Service Condust to the prejudice,etc. in that he accosted a superior officer on the public highway for money. .A.A.19.Drunkeness.(First Offence)	Sgt. Dauphinee, E.H.	168 hrs. Detention Forfeits 7 days pay.F.R.&I.149 (1)(a)	2/5/40	See R.C.E. Pt.II Order No. 107 D/3 May 40.	
Aldershot Eng.	17 May 40	Spr.	2	A.A.19.When on Active Service Drunkeness	Sgt. Dauphine, E.H.	Admonished Fined 5 dollars	18 May 40	Major F.R. Henshaw,M.C.	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Charlwood Eng.	20/ Aug.40	Spr.	2	A.A.15(1)When on Active Service Absent Without Leave from 2359 hrs. 20 Aug. until 2300 hrs 27 Aug. 40. Absent 6 days 11 hrs.	L/Sgt. Seaton, W.W.	14 days Detention	28 Aug. 40	Major H.L. Meuser.	Forfeits 21 days pay F.R.&L 149(1)(a)
Charlwood Eng.	11 Sep. 40	Spr.	3	.A.A.15(1)When on Active Service Absent Without Leave from 0930 hrs 11 Sept. 40 until 1330 hrs 11 Sept 40. Absent 4 hrs. (2) A.A.19 Drunkeness.	C.S.M. Hammond F.J.	7 days C.B.	12 Sept. 40	Major H.L. Meuser.	Forfeits 2 days pay 149 (1)(a)
Wadworth Eng.	2 Oct. 40	Spr.	3	A.A.15(1)When on Active Service Absent Without Leave from 2230 hrs 2 Oct. until 1500 hrs 22 Oct. 40 Absent 19 days 16 hrs. 30 mins.	Sgt. Seaton W.W.	27 days Detention	9 Nov 40	Major H.L. Meuser.	Forfeits 27 days pa 149(1)(a) (b)

No. | Name | Sqn., Battery, or Company | Corps | Date of enlistment | G.C. Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc.

M.F.M. 6 (A.F.B. 122) 10M—8-39 (1733) H.Q. 1771-45-18

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Fld.Coy.	17 Nov.40	Spr.	3	A.A.15(1)W.O.A.S.absenting himself without leave until 2245 hrs 7 Dec. 12(Absent 20 days.)	Documentary	27 days Detention	23 Jan 41	Major G. Walsh 1 CMU	Forfeits 27 days F.R.&I.149(1)(b) 18 days F.R.&I. 149(1)(c)20 days day F.R&I.149 (1 (a)
Aldershot	16/4/41	Spr.	3	A.A.15(1)W.O.A.S.absenting himself without leave. 17 days 22 hrs. 30 mins.	Cpl. Fisher L/Cpl. Savage.	27 Days Detention	5/5/41	Lt.-Col. L.F.Barnes	Forfeits 18 days pa F.R.&I.149(1)(a)

(P.T.O.)

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

F-91550 Spr. Smith W.P. of the No.1 (Cdn) Engineer Holding Unit

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—The Regimental and Squadron, Battery or Company Conduct sheets are to be produced in Court with this statement but are not to be entered in the proceedings.

New Para. 66a, A.F. 1881.

*The numbers herein stated should correspond with the number of *Entries* in the Conduct sheets, punishment being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instructions.—If the charge is for drunkenness the entries for drunkenness should be stated separately and dated.

	*Within last 12 months.	*Since Enlistment.
For Absent without leave	times	Six times.
For Drunkenness	times	Three times.
For Conduct to the Prejudice etc.	times	One time.
For	times	times.

~~Number of instances of gallantry or distinguished conduct.~~

~~or~~

~~There are no entries in the Conduct sheets of the accused.~~

2. The accused has not been previously convicted.

or,

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, as set out in the Schedule annexed to this statement.~~

W1 (20843)(B4) 20,000 2/40 W. & L.Ltd. 33—4(B)a

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial	Date and place of Trial or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 17 day of June 41

ADJUTANT
No.1 Cdn. Engineer Holding Unit CAN

3 The accused is not under sentence at the present time,

or,

~~The accused at the present time is under sentence for~~

~~beginning on the~~ ~~day of~~

4. The accused has been in confinement, awaiting trial on the present charges for NO days in Civil Custody,

and 20 days in Military Custody.

Total 20 days.

Of which NO days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper 38 yrs, 1½ Mo

6. The date of his ~~birth~~ attestation specified in his ~~record of service~~ attestation paper is 16th. Nov. 1939

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 yr. 8 months

8. The accused is entitled to deferred pay or gratuity in respect of 1,8/12 years' service.

9. The accused is entitled to reckon 1-8/12 years' service for the purpose of determining his pension, &c.

10. [redacted]

11. [redacted]

12. [redacted]

13. [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

(Instruction.—If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name of the

NOTE.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

(Continued overleaf

191 A

Pte Smith, W.J. 1015/1291

No 1 Coy (M.G.) Aldg Unit

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 5th day of February, 1941.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS, CANADIAN ARMY, on active service, that the persons named in the annexed schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; [redacted]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

[redacted]

Judge-Advocate — Lieut. H.A. MacPherson — H.Q. Cdn. Base Units.

	President.	
Rank.	Name.	Regiment.
Lt. Col.	L.H.W. Slack, M.C., V.D.	No. 1 Cdn. Inf. Hldg. Unit
	Members.	
Rank.	Name.	Regiment.
Captain	W.M. Stedman	No. 2 Cdn. Inf. Hldg. Unit
Lieut.	E.H.C. Leather	No. 1 Cdn. Arty. Hldg. Unit
Lieut.	C.A. Dodson	No. 1 Cdn. Arty. Hldg. Unit

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

Signed L. F. Page Brigadier

Commanding CANADIAN BASE UNITS, CANADIAN ARMY

Convening Officer.

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B-76706 PTE. SMITH, W.J. No. 1 Cdn. M.G. Holding Unit	First Charge A.A. Sec. 8(1) as per charge sheet	NOT GUILTY	GUILTY	
	Second Charge (Alternative) A.A. Sec. 41	NOT GUILTY	NOT GUILTY TO UNDERGO DETENTION FOR A PERIOD OF NINETY DAYS.	NOT confirmed on the Grounds that the finding is not in accordance with the weight of Evidence

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :— No.

(Signed) L. F. Page, Brigadier (Signed) R. W. H. Slack (Confirming Officer)
Commanding CANADIAN BASE UNITS, G.H.Q. ARMY. President.
Convening Officer (c)

(a) Appointment acting rank or acting appointment, if any, to be recorded in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 7th day of February, 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. The ~~interpreter~~) Court Stenographer
*(4. The officers under instruction)
were duly sworn.

* Omit if not applicable.

Signed this 7th day of February 1941.

R. W. H. Slack
President of the Court Martial
H. C. Mackie Lieut. Judge Advocate

C. Certificate in case of death sentences.

* See footnote (g) on page 762 M.M.L. 1940.

~~I certify that the terms of *A.C.I. 570 of 1918 have been~~ complied with.

Signed this day of 19

President of the Court Martial

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or having such authority, recommends suspension.

~~(I direct that the soldier named in the margin be not committed to prison until further orders.)~~ L.

Signed this 26 day of February 1941.

L. F. Page Brigadier.
Confirming Officer.

Promulgated and extracts taken in the case of B 76706 Pte Smith W.J.

(a) (Dated) 3rd March 1941 (Signed) R. E. Lockhart Captain M.D.
No. 1 M.G. Holding Unit C.A.S.F.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

Review of C.M. on B-76706 Pte. Smith, W.J.
No.1 Cdn (M.C.) Holding Unit

1. From a perusal of the evidence submitted in this case it is evident that the prosecution must depend almost entirely on circumstantial evidence.

2. The only direct evidence is that of Cpl Kirk who, as is only natural, appeared determined to track down and arrest his assailant.

3. He followed up the M.C. concerned, how, does not come out in the evidence, though this point is brought out in the summary of evidence.

4. It is considered peculiar that the prosecution did not produce the evidence of sentries to show that a M.C. passed them that night between certain times.

5. Be that as it may Cpl Kirk did eventually arrive at the M.C. Holding Unit where he went direct to the Provost Sgt., Sgt. Pickling, who led him to the accused's quarters.

6. It would appear from the evidence that Sgt. Pickling immediately, and before Kirk could identify the accused, asked the accused where he had been that night.

7. I cannot but believe that Kirk in the course of his investigations that night, obtained the information that Smith was the owner of a M.C.

8. From this it would appear that Kirk obtained information that a man named Smith owned a M.C. and the said Smith was to all intents and purposes identified by Pickling and not by Kirk.

9. It is considered that an identification of this nature was irregular and prejudicial to the accused and cannot be considered valid.

10. In analysing the time element it is to be noted that Cpl Kirk states that the assault took place at 0015 hours on Dec 19th, that he traced up the accused and examined the M.C. at 0040 hours where as Sgt. Pickling states the M.C. was not examined until 0130 hours. Discrepancies of time in the statements of these two witnesses all the way through amount to approximately one hour i.e., Pickling's times are one hour after Kirk's. This may be due to a confusion of the 24 hours system in the minds of one or the other and in any case has no great bearing on the case.

11. If the evidence of the accused and Pte. Fairlie can be relied on the accused was in his quarters from at least 2250 hours 18th Dec until the time of his arrest. There may be collusion here and if so there is a definite case of perjury but in view of the fact that the court have made no move to bring a charge of perjury against either of these witnesses it is presumed that they must have accepted the evidence.

12. Considerable stress was laid on the condition of the accused's clothing. From his own statement he was working at the Garage from 2000 hours to 2030 hours after which time he rode his M.C. from the Garage to the R.A.A.F.I. and then to his quarters in the rain. Evidence was produced to show that conditions around the garage were wet and muddy.

13. As regards the condition of the accused's trousers Cpl Kirk states they were wet but Sgt. Pickling says they were damp. If the latter statement can be accepted it is possible their dampness might be due to his work around the garage and his subsequent ride on his M.C.

14. As regars the condition of the boots Cpl Kirk states they were muddy and wet; Sgt. Pickling states they were damp. However Cpl Anderson states he saw them at 2330 hours on the 18th and describes them as wet and muddy which would bear out the statement

of the accused hat he got them in this state working at the garage.

15. The condition of the greatcoat and hat is described by Kirk as wet though no one else seems to have noticed them.

16. Some doubt must be cast on Cpl Kirk's powers of observation when one studies the evidence as to the position of the accused. When Kirk and Pickling entered the room, Kirk swears that the accused was partially dressed and lying on his bed, Sgt. Pickling swears the accused was undressed and in bed which statement is borne out by Pte. Fairlie who states that at 2250 hours the accused was lying on his bed but later got undressed and went to bed.

17. The guilt or innocence of the accused would appear to hinge on three factors:-

(a) The possibility of the accused being at the place of the assault at the time it was committed.

(b) The positive identification of the accused by Cpl Kirk.

(c) Certain circumstantial evidence with relation to the condition of the accused's M.C. and clothing.

18. As regards (a) above, Cpl Kirk swears it was the accused who assaulted him, this the accused denies on oath and further swears that he was in his quarters from approx 2230 hours 18th until arrested there. This statement is corroborated by Pte. Fairlie.

19. As regards (b) it is open to question as to whether or not Cpl Kirk could have identified the accused without having carried out his previous investigation as to who owned a M.C. The fact that Sgt. Pickling helped identification by addressing the accused in the presence of Kirk weakens the evidence of identification. It is considered a pity that Kirk did not ask for a proper identification parade.

20. As regards (c) it is pointed out that in a crime of this nature much must depend on circumstantial evidence but it must be remembered that if facts cannot lie they very often deceive. The M.M.L. points out that "before a Court finds an accused person guilty on circumstantial evidence, it must be satisfied not only that the circumstances are consistent with the accused having committed the act, but that they are inconsistent with any other rational conclusion than that the accused was the guilty person."

21. What is the circumstantial evidence produced?

(a) That the M.C. was warm therefore proving that the accused had been riding it. Sgt. Pickling swears it was "quite cold". Further the accused admits having ridden it that evening some time before the commission of the crime, Sgt. Pickling's evidence would bear out this statement.

(b) That the accused's boots were wet and muddy intimating that the accused was at the scene of the crime. The accused swears that he was working that evening at the garage and a witness states that conditions at the garage are such as to make a man's boots wet and muddy. Further, another witness (Anderson) swears that the boots were wet and muddy at 2230 hours or 55 minutes before the crime was committed and one hour and ten minutes before Kirk saw the boots. It is unlikely that the boots would have dried out in that time.

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(b) That the accused's boots were wet and muddy intimating that the accused was at the scene of the crime. The accused swears that he was working that evening at the garage and a witness states that conditions at the garage are such as to make a man's boots wet and muddy. Further, another witness (Anderson) swears that the boots were wet and muddy at 2230 hours or 55 minutes before the crime was committed and one hour and ten minutes before Kirk saw the boots. It is unlikely that the boots could have dried out in that time.

The condition of the accused's trousers were stated by Kirk to be wet but by Pickling to be damp. The accused had been working at the garage and on his own admission had ridden his M.C. that evening. Evidence shows that it was a wet night. The condition of the trousers could have been due to these latter circumstances.

It is considered therefore that while these circumstances are consistent with the accused having committed the act yet nevertheless they are NOT inconsistent with any other rational conclusion; in other words the condition of the clothing could have been due to the actions of the accused prior to the time the crime was committed and therefore weight should not be given to this circumstantial evidence.

22. In view of the foregoing I am of the opinion that the evidence produced does not prove beyond any reasonable doubt that the accused committed the crime and that the finding is not in accordance with the weight of evidence produced and therefore withhold confirmation on these grounds.

17-3-41

L. F. Page

(L.F. Page) Brigadier
Commanding, Canadian Base Units.

- 1 -.

Charge-Sheet.

The Accused, No. B-76706, Pte. Smith, W.J., of No. 1 Cdn. (M.G.) Holding Unit, C.A.B.F., is charged with:

FIRST CHARGE
A A Sec. 8(1)

Striking his superior officer, being in execution of his office,

in that he

at Bordon Camp on or about the 19th Dec. 40 struck with his fist the face of Cpl. Kirk, W.F. of 2nd Canadian Division Field Security Section, who was at the time investigating the said accused's failure to comply with traffic regulations.

or in the alternative

SECOND CHARGE
A A Sec 11

with committing a civil offence, that is to say, common assult

in that he

at time and place aforesaid assulted said Cpl. Kirk in manner aforesaid.

.....
(F.I. Carpenter) Lieut-Colonel.
O.C. No. 1 Cdn. (M.G.) Holding Unit.
C.A.B.F.

Bordon, Hants.
5 Jan. 41.

To be tried by Field General Court Martial.

.....Brigadier,
Cmdg. Cdn. Base Units,
Cdn. Army.

Bordon Camp, Hants.
5th February, 1941.

1/S.

MEDICAL OFFICER'S CERTIFICATE

I certify that B-76706, Pte. Smith. W.J. of No. 1 Cdn. (M.G.) Holding Unit. C.A.S.F. is Fit to undergo trial by Court-Martial, and such punishment as might be awarded HRLD

Boulogne Hants
Feb 8th 1941

H R L Davis
.....Captain,
1 Cdn. (M.G.) Holding Unit. ~~CASF~~ RCAMC.
C.A.S.F.

B-76706, Pte. Smith, W.J., No. 1 Cdn. M.G. Holding Unit, Canadian Army, tried by Field General Court-Martial at Bordon, Hants., on the 7th day of February, 1941.

The order convening the Court, the charge-sheet and the summary of evidence are laid before the Court.

Prosecutor - Lieut. Carson
Defending Officer - Lieut. Prescott

The names of the President and members of the Court are read over in the hearing of the accused and they severally answer to their names.

Q1 - Do you object to be tried by me as President, or by any of the officers whose names you have heard read over?
A1 - No, sir.

The President and members are duly sworn.

Q2 - Do you object to M-15577 Sgt. Stanley Fidler, The Edmonton Regiment, C.M.H.Q., acting as Court Stenographer?
A2 - No, sir.

The Court Stenographer is duly sworn.

The charge-sheet is signed by the President and annexed to the proceedings.

The accused is arraigned upon each charge in the above mentioned charge-sheet.

Q3 - Are you guilty or not guilty of the first charge against you, which you have heard read?
A3 - Not guilty, sir.
Q4 - Are you guilty or not guilty of the second charge against you, which you have heard read?
A4 - Not guilty, sir.

The Prosecutor proceeds to call witnesses.

First witness for the prosecution, D-9478, Cpl. Kirk, 2 Div. Fd. Security Section, being duly sworn, is examined by the prosecutor.

Q5 - You are Cpl. Kirk, D-9478, 2 Div. Field Security Section, stationed at Aldershot?
A5 - Yes, sir.
Q6 - What can you tell us in your own words?
A6 - On the morning of the 19th November, at approximately 0015 hours I was travelling on the Hedley-Bordon road towards the Bordon cross-roads and saw a motor-cycle in front of me and noticed two drivers and I got directly behind it and turned on my bright light and saw two soldiers, one of them on the pillion.
Q7 - Approximately where was this? If you have any notes you are permitted to refer to them. Try to remember as well as you can where you saw it.
A7 - On the Bordon-Hedley Road about three-quarters of the way down Broxhead Common. I ordered the driver to halt and repeated the order a few times and he stopped and I drove about eight yards in front and got off and went back and told the driver he wasn't allowed to ride pillion and he stated that it wasn't a military machine and I said it was a service colour and it had got no licence on it and he said he had bought it a few days previous and I asked him if he had the ownership for it and he stated that he didn't and I asked him if he had his paybook and he said no and I asked the man with him and he said no, their paybooks were turned in.
Q8 - You say this was about 0015 hours on the 19th?
A8 - Yes, sir.
Q9 - What was the nature of the night?
A9 - A rainy night, sir.
Q10 - Did you ask for any further identifications?
A10 - Yes, if they had any letters addressed to them and they stated they didn't and the driver of the machine stated that he was R. Hope of

The Toronto Scottish Regiment, stationed in Aldershot.

Q11 - Did the other man make any statement?
A11 - No, sir.
Q12 - Apart from the conversation you have related; was there any conversation between the rider and yourself?
A12 - Just when I asked for the pay-book, sir.
Q13 - No other statement?
A13 - No, sir.
Q14 - Any other conversation between yourself and the driver of the vehicle?
A14 - We were talking all the time and he asked who I was and I told him I was from the Field Security Section and told him I was a corporal. That was all up until then.
Q15 - When this conversation took place where were you with reference to the motor cycle?
A15 - On the left hand curb, sir.
Q16 - Which?
A16 - Between the motor-cycles; mine was in front.
Q17 - Were you sitting on yours?
A17 - No, I went back.
Q18 - Where were you with reference to the two men on the motor-cycle when the conversation took place?
A18 - In between the front wheel and the curb.
Q19 - Approximately how far would you be from the driver?
A19 - Two feet.
Q20 - Did you have a flashlight with you?
A20 - No, sir, I didn't.
Q21 - Could you see the driver of the motor-cycle?
A21 - I could see him and that was all.
Q22 - You couldn't pick out any distinguishing marks?
A22 - No, sir.
Q23 - Even at two feet?
A23 - No, sir.
Q24 - We got as far as the conversation which ended with you saying you were a corporal of the field service. Will you go on from there?
A24 - There was no light on the motor-cycle whatsoever, but on either side of the front headlight was two flashlight brackets and neither was working and one had a dull glow to it.
Q25 - When did you notice those?
A25 - When I drove along behind I notice there was no tail light and then in front I noticed no headlight.
Q26 - You stated just a little while ago that you couldn't see clearly any distinguishing marks about the person; how could you distinguish the two brackets?
A26 - I was standing right at the brackets.
Q27 - Did you or did you not make a point of looking at them?
A27 - I did.
Q28 - What followed next?
A28 - I asked what kind of machine it was and had my report book out in my hand and he stated some name I can't remember and it didn't sound right to me and I went to my machine and turned on the bright light to shine on the civilian machine. After I had turned my machine around it was only approximately three yards in front of them.
Q29 - The front of your front tire?
A29 - My headlight.
Q30 - What direction was the other machine facing with reference to your headlights?
A30 - The two headlights were facing one another then, sir.
Q31 - You say you turned your motor-cycle around; what happened then?
A31 - I went to look at the make of the machine and the driver got off and said "You field security men are all a bunch of squealing bastards" and struck me in the face and I fell to the road and he continued punching me.
Q32 - You say that as soon as you got turned around the driver got off his machine. Where were you; did you stay on the machine?
A32 - I just shoved it around.
Q33 - Tell us about it?
A33 - I turned it around on the centre of the road and got it back to the curb facing their machine and when I was between the handlebars and the front wheel the driver jumped off and hit me in the face.
Q34 - At that time, when you got the motor-bike in position, what state of a view did you have of the people ahead of you?
A34 - A good view; I had a bright light.

Q35 - Could you distinguish very clearly every part of the civilian motor-cycle?
A35 - The front part, sir.
Q36 - Where was the driver at that moment?
A36 - He was...I am not positive whether he was sitting on the saddle or standing beside it, but he was at it.
Q37 - Did you get a clear view of him?
A37 - Yes, sir.
Q38 - At that time how far would you be away?
A38 - About three and a half yards, sir.
Q39 - Did your light shine on him; his whole height?
A39 - Yes, sir.
Q40 - You are prepared to swear you got a very clear view of his face?
A40 - Yes, sir.
Q41 - This is he?
A41 - The accused.
Q42 - You are prepared to swear the person you saw that night was the accused?
A42 - Yes, sir.
Q43 - Any doubt?
A43 - No, sir.
Q44 - When you got your cycle turned around what happened?
A44 - He came to where I was standing and hit me in the face and I fell to the road and he came on top of me and hit me again and the other fellow came and after they had finished I was practically in the ditch along the curb. I wasn't feeling any too good and they got on the machine and said if I tried to follow I would get the same thing. I picked up my things and proceeded to the Bordon cross-roads.
Q45 - What personal damage was done to you?
A45 - My teeth were broken, sir, and I had a swollen face and a cut inside my lip leaving a welt over here, sir.
Q46 - What was the immediate cause of it; have you any idea?
A46 - Do you mean was it the fist or the road?
Q47 - The immediate cause?
A47 - A man's fist.
Q48 - Coming into contact with your face?
A48 - Yes, sir.
Q49 - Would that cause any damage to the man's fist?
A49 - I don't know.
Q50 - Do you know whether it was a covered or bare fist?
A50 - Covered.
Q51 - Do you know what covering?
A51 - It was dark.
Q52 - You don't know whether it was leather or anything else?
A52 - No, sir.
Q53 - Getting back to where the light was shining on the civilian bicycle, did you get a clear view of the pillion rider?
A53 - No, sir.
Q54 - Did you attempt to get a clear view?
A54 - Yes, sir, but I couldn't be positive of recognizing him.
Q55 - Was he behind or ahead of the accused?
A55 - Behind.
Q56 - Was he on the machine?
A56 - I couldn't be sure. I could see part of the rider and part of the pillion rider and so I thought the rider might have been standing alongside.
Q57 - Were there any distinguishing marks about the accused which would assist you in recognizing him again?
A57 - Just his face, sir.
Q58 - You say after you picked yourself up you started in the direction which the civilian bicycle had gone. What took place?
A58 - I met a constable of the Whitehill police station standing at the curb, I know him personally, and I asked if he saw a machine with-out a licence and two riders and he said he had and I asked what direction it had taken and he said the direction of Bordon village.
Q59 - Apart from getting that information from the police were you able to get any other information?
A59 - No, sir. [illegible]
Q60 - I went on in the direction of Bordon Village and figured that if they went that way they would belong to the Machine Gun Holding Unit instead of Aldershot so I went up to the guards at Canada

Hutments and asked if they saw a motor-cycle enter the barracks and they said no.

Q61 - As a result of certain investigations you made where did you go?
A61 - I went up the Bordon road to the Canada Hutments and Guadaloupe Barracks after that. I went around, turned right at the first cross-roads this side of Bordon village which took me by Havannah Barracks and there were no guards going into the back of the Machine Gun Holding Unit and so I went to where the Australians were and asked them.

Q62 - As a result of these investigations what did you do?
A62 - I came back and went to the Bordon road and went to the Machine Gun Holding Unit and woke up Sgt. Fickling and we went through the lines and found the motor-cycle which I identified immediately by its brackets and I felt the cylinders and they were warm.

Q63 - What do you mean you found the machine?
A63 - The one I had already come in contact with.

Q64 - How did you identify it?
A64 - By the service colour, no plates and the two flashlight brackets. At that time there were no flashlights in them and I felt the cylinders.

Q65 - And what did you find?
A65 - That the cylinders were warm.

Q66 - What time would that be?
A66 - Approximately between twenty-five and twenty to one.

Q67 - You say you felt the radiator -- the cylinders -- and they were warm. Could you describe that any further?
A67 - In what way, sir?

Q68 - In what state of warmness were they?
A68 - If it was my own machine I would say it had been ridden about ten or fifteen minutes previous.

Q69 - Have you ridden long?
69 - A little over four years.

70 - Constantly over four years?
0 - I drove in the P.F. and over here.

1 - Did you have a flashlight when you investigated this machine in the M.G. Barracks?
- No, sir, it had stopped raining and it was pretty clear.

- Did you have any light; was there a light?
- I couldn't be sure if Sgt. Fickling had one or not.

Could you say whether one was used to examine it?
I don't think so, sir.

You say it was a clear night then?
Not absolutely clear, but clearer than before.

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Q71 - Did you have a flashlight when you investigated this machine in the M.G. Barracks?
A71 - No, sir, it had stopped raining and it was pretty clear.
Q72 - Did you have any light; was there a light?
A72 - I couldn't be sure if Sgt. Fickling had one or not.
Q73 - Could you say whether one was used to examine it?
A73 - I don't think so, sir.
Q74 - You say it was a clear night then?
A74 - Not absolutely clear, but clearer than before.
Q75 - What examination did you make?
A75 - That was enough. I looked for the licence plates, the service colour, the two flashlight brackets on either side of the headlight.
Q76 - You say you didn't know whether Sgt. Fickling had a light. What had he to do with the matter?
A76 - I went and woke him up in his quarters.
Q77 - He was in your company. What did you do then?
A77 - Went into the quarters. The machine was on a porch immediately in front of the quarters and we opened a couple of doors downstairs and looked in and I didn't see anybody there I recognized and opened the door of the room in which Smith was and Smith was on his bed smoking a cigarette and I recognized him, having been in contact with him on the road.
Q78 - Did you make an examination of his clothes?
A78 - The sergeant put him under arrest immediately and when Smith was getting dressed I called the sergeant's attention to the trousers; the bottoms were wet the same as mine from the condition of the road.
Q79 - How far down would that extend?
A79 - The same as these today.
Q80 - Would you describe it for the benefit of the shorthand writer?
A80 - From about three inches below the knees to the cuffs.
Q81 - What else was there about the condition of his clothing?
A81 - His boots were sandy and wet.
Q82 - Have you any way of knowing they were his boots?
A82 - They were the ones he put on.

Q83 - Anything else?
A83 - His greatcoat was hanging up behind his bed on a clothes peg on the wall and it was wet. His hat looked wet and a bit scruffy from the rain.
Q84 - Was there any examination at all of his bed?
A84 - It didn't look like it had been slept in.
Q85 - Is that just an observation?
A85 - Yes, sir.
Q86 - It looked as though it had been slept in?
A86 - It hadn't been slept in, sir.
Q87 - Was there any conversation in Smith's presence?
A87 - Yes, sir. He asked what he was being placed under arrest for and when he asked he looked at me and I said "This is the reason" and pointed to my face which was messed up and he asked me if I road a motor-cycle and I said "Yes" and he asked "Did you fall off it" and I said "Not yet" then I left and went to the guard-room and was met by Sgt. Fickling and Smith at the guard-room.
Q88 - After that did you do anything in connection with the case?
A88 - The sergeant and I went around to the sentries.
Q89 - Did you or did you not find any assistance from the sentries in identifying the machine or the persons on the machine?
A89 - Yes, I did get assistance, sir.
Q90 - What assistance did you get? After this, as a result of going back to see the sentries, did you take any other course of action?
A90 - The sergeant was with me and they told the same thing to me with the sergeant with me.
Q91 - Is there anything else immediately concerning the case which you wish to tell us?
A91 - I don't think so, sir.
Q92 - Did you have anything further to do with the case apart from the proceedings leading up to this?
A92 - After I had seen the sentries I returned back to my station.

Cross-examination by the defending officer.

Q93 - I believe you stated now that you turned your cycle around and placed the headlight on the accused and the machine. How does it come in the summary of evidence that you said you started to turn your cycle around and the addused hit you?
A93 - I started to leave the cycle.
Q94 - You didn't say that in the summary the first time.
A94 - I thought I did, sir.
Q95 - There have been so many summaries taken on this that I don't remember it was the first or second one. You did actually turn your machine. How far up does the headlight show?
A95 - In the air, sir?
Q96 - To distinguish people in front of you?
A96 - You can see a man's height.
Q97 - And you are definitely sure of your identification of the accused?
A97 - Yes, sir.
Q98 - And you don't know if the accused was sitting on the saddle or standing beside?
A98 - No, sir.
Q99 - You don't know his position but you can recognize him?
A99 - He could have been leaning up against the saddle.
Q100 - When did it stop raining that evening?
A100 - It stopped around 1230 or 1232.
Q101 - Before or after you were struck in the face by the accused?
A101 - Afterwards, sir.
Q102 - Very long afterwards?
A102 - It couldn't be very long; just about ten or fifteen minutes.
Q103 - Would the accused have time to drive back to where you claim his machine was parked?
A103 - I don't know how fast he rode.
Q104 - The reason I asked that was you stated the rain washed out all tracks of the machine.
A104 - The statement I made was that it would be about ten or fifteen minutes.
Q105 - Ten or fifteen minutes and it had stopped raining. How long did it take you to get to his quarters? What I want to get from you is how long would you say it had been parked where you said you found it?

A105 - I don't know when he parked it.
Q106 - But if you say it is the same machine you would know how long it would take to get back?
A106 - I couldn't say how many minutes.
Q107 - Just a few minutes?
A107 - Ten or fifteen minutes.
Q108 - There were no tracks around that motor-cycle?
A108 - I gave a look around and saw no tracks.
Q109 - You state in your summary that the rain had washed out all tracks?
A109 - That is right.
Q110 - But in the short time it was possible for the machine to be parked there and the rain continued, that little bit of rain could wash the tracks away?
A110 - The drainage all runs down.
Q111 - It ran down there that night?
A111 - Yes, sir.
Q112 - And would wash deep tracks away in two or three minutes?
A112 - I said it had washed all tracks away.
Q113 - Your contention is that he rode it into the barracks?
A113 - He had to get in some way.
Q114 - He must have carried it in then; you say there were no tracks.
A114 - I looked for tracks at the one gate with the barbed wire barrier.
Q115 - You state, too, that you recognized the accused's hat; it was a Toronto Scottish hat was it?
A115 - Yes, sir.
Q116 - Could it have been any other Scottish unit?
A116 - Not that I have seen before. The Toronto Scottish I have seen around Bordon wore that type.
Q117 - You can't be sure if it was a Toronto Scottish?
A117 - It was a green and white, sir.
Q118 - And you can't recognize the pillion rider at all?
A118 - No, sir.
Q119 - In the summary of evidence did you explain that you had told the accused you were a corporal of the Field Security?
A119 - I don't remember, sir.
Q120 - Or did you just think about that now?
A120 - When I gave the summary of evidence I was told to give it in brief.
Q121 - Could he have seen whether you were a corporal or not?
A121 - Yes, sir, I had my greatcoat on and new stripes on it.
Q122 - And you think he could see them?
A122 - In the headlights when I turned around.
Q123 - You stated, too, that the accused's boots were wet. How long do you think boots would stay wet; were they very muddied up?
A123 - There's a lot of sand it doesn't get off easily.
Q124 - If they were wet at seven o'clock would they be wet at twelve?
A124 - My boots have sand on them in the morning, but they are dry.
Q125 - Was there any radiator in the accused's room?
A125 - No, sir.
Q126 - Was there any way in which he could dry boots out in that room?
A126 - There was a fire at the end of the room. I am not positive where it was, but it was somewhere.
Q127 - His boots were not near the fire were they?
A127 - No, sir.
Q128 - When you were first talking to the accused was he sitting on the bicycle?
A128 - Sitting on the bicycle.
Q129 - Where was the pillion rider then?
A129 - Sitting across the pillion with his two feet on the ground; straddled.
Q130 - Facing you?
A130 - Yes, sir.
Q131 - You were within two feet of him?
A131 - Standing at the handlebars, sir.
Q132 - You noticed flashlight brackets on the machine?
A132 - The brackets were nickel-plated; they were shiney. The accused tried the flashlight and the light on the right-hand side had a dull glow.
Q133 - But you couldn't identify him at that time?
A133 - No, sir.
Q134 - You couldn't swear that the machine in the M.G. Holding Unit was the machine you stopped earlier on?
A134 - I would swear to it.

Q135 - You don't think it possible that there could be another machine with two flashlight brackets?
A135 - This was of service colour, two flashlight brackets, no licence plates.
Q136 - And you definitely swear it is the same machine?
A136 - Yes, sir.

Re-examination by the prosecutor

Q137 - One question arises out of cross-examination. You state that you looked at only one gate with the barbed wire. Do you know of your own knowledge whether there were any other gates leading in?
A137 - Where the Australian guards were.
Q138 - You don't know if there is any other entrance?
A138 - If I am not mistaken I think I saw one there.
Q139 - You don't know definitely whether there is more than one gate?
A139 - One were the guards were and the one I examined.

Re-examination by the defending officer.

Q140 - You stated that the brackets were shiney?
A140 - Yes, sir.
Q141 - Were they painted?
A141 - All I can say is that it was a dark night. I don't know if they were painted or what colour the paint was on it.
Q142 - It it was shown to you that at least one of the brackets was painted black would you say you had made a mistake?
A142 - No, sir.
Q143 - The sentries didn't in any way help you to identify the accused?
A143 - No, sir.
Q144 - Knew nothing regarding the accused?
A144 - No, sir.

Questions by the Judge-Advocate.

Q145 - What were you doing that night?
A145 - Patrol.
Q146 - What district?
A146 - Within the Aldershot Command.
Q147 - What are the functions of this patrol?
A147 - To take care of Fifth Columnist activity, counter-espionage and information.
Q148 - Is it your duty to stop a motor-cycle which you see with no lights?
A148 - If a soldier is riding it comes under security of personnel.
Q149 - You stated that there were flashlights in the brackets when you first saw the motor-cycle on the road?
A149 - Yes, sir.
Q150 - Then you saw another motor-cycle at the M.G. Holding Unit but it had no flashlights. Did you see them there?
A150 - No, sir.
Q151 - You don't know where they went?
A151 - No, sir.
Q152 - When you went to Smith's room did you have any conversation with Sgt. Fickling on the way up?
A152 - I called his attention to the cylinders on the machine.
Q153 - Did he tell you whose motor-cycle it was?
A153 - No, sir.
Q154 - Did he tell you the name of the man you were going to see?
A154 - When we were in the guard-room I asked him if he knew anybody owning a civilian motor-cycle and somebody mentioned in the guard-room.....
Q155 - Was Smith present?
A155 - No, sir.
Q156 - You can't give that, it was hearsay.
Q156 - Had you any way of knowing before you went in that room that the person you were going to see was the owner of the motor-cycle?
A156 - I am positive I had never seen the accused before that night.
Q157 - Nothing impressed on your mind that the man you were going to see was the owner of the motor-cycle?
A157 - No, sir.

Q158 - You stated this incident took place shortly after midnight on the 19th November; you mean 19th December, don't you?
A158 - Yes, sir.
Q159 - The original assault, you allege, was about 0015 hours?
A159 - Yes, sir, approximately.
Q160 - And you said later that you arrived at the accused's room about twenty-five or twenty to one?
A160 - What made me think it was that time was that when the accused was brought to the guard-room I am sure the admittance slip was made out for ten to one.
Q161 - Where did this assault take place; at the other side of St. Lucia Barracks and the bridge?
A161 - At the back of St. Lucia Barracks near the bridge.
Q162 - During that twenty minutes between the time you stopped -- approximately a quarter past twelve -- between then and twenty-five minutes to one -- in twenty or twenty-five minutes time -- you had a discussion with the men on the road, you were assaulted, you looked about in the darkness for your things, you started your motor-cycle again; was it stopped?
A162 - Yes, sir.
Q163 - You started your motor-cycle again, went to the cross-roads and spoke to the constable [redacted], picked up the sergeant and went to the guard-room and talked to the sentries; all that in twenty minutes, and in thirty-five minutes time you had the man under arrest in the guard-room?
A163 - That is right, sir.

Re-examination by the prosecutor.

Q164 - How long would it take you to go from the place the assault took place to the M.G. Holding Unit?
A164 - Between ten and fifteen minutes, sir, approximately.
Q165 - You would say fifteen minutes at the outside?
A165 - I couldn't say what it would be at the outside, but I would say somewhere around fifteen or twenty minutes.

Second witness for the prosecution, A-34088, Sgt. Fickling, A., No. 1 M.G. Holding Unit, being duly sworn, is examined by the prosecutor.

Q166 - You are A-34088, Sgt. Fickling, A., Provost Sergeant, No. 1 M.G. Holding Unit, Bordon, Hants.?
A166 - Yes, sir.
Q167 - In the case of Pte. Smith, what can you tell us about it?
A167 - On the night of December 19th, or early in the morning about one-twenty-five hours, Cpl. Kirk came to my quarters and awakened me and asked me if there was any military machines in the lines.
Q168 - Was the accused present at that time?
A168 - No, sir.
Q169 - Who was this Cpl. Kirk you say came in to see you?
A169 - A corporal of the security squad.
Q170 - As a result what did you do?
A170 - I immediately got up and dressed and went down the lines to where a motor-cycle in question was outside of a room.
Q171 - What can you tell us about the motor-cycle; where was it?
A171 - Parked outside the accused's room.
Q172 - Do you know anything of your own knowledge about the machine?
A172 - In what way, a description of the machine?
Q173 - What did you find?
A173 - It had two brackets, one on either side, apparently for holding lights or fastening something on to.
Q174 - Can you remember the colour?
A174 - Painted the same colour as an army machine.
Q175 - Was it an army machine or do you know?
A175 - I couldn't state.
Q176 - Did it have a licence or a licence plate?
A176 - No licence plate.
Q177 - Any army number on it?
A177 - No, I don't believe so.
Q178 - Did you examine this motor-cycle outside the accused's quarters that night?
A178 - No, sir.

Q179 - What kind of a night was it?
A179 - A dark night.
Q180 - Did you see the motor-cycle clearly?
A180 - I had my flashlight, of course.
Q181 - Did you use it?
A181 - Yes, sir.
Q182 - What else can you tell us about this motor-cycle that particular evening or do you know anything about it?
A182 - It was standing against the wall when we went in.
Q183 - When you say you didn't examine it, but you say it had two brackets on it, how could you tell that without examining it?
A183 - When I put the light on it was on the front of the machine.
Q184 - Did you feel the machine?
A184 - The motor after I came out of the quarters; the accused's quarters.
Q185 - About what time would that be?
A185 - About 0130 hours.
Q186 - How did you find it?
A186 - Quite cold sir.
Q187 - Would you say it was of such a temperature it may or may not have been in operation earlier that night?
A187 - I wouldn't like to state that.
Q188 - And you say you felt it at 0130 hours?
A188 - Approximately.
Q189 - Upon coming upon this motor-cycle in company with Cpl. Kirk what did you do?
A189 - Went to the guard-room and placed him under arrest.
Q190 - Before that?
A190 - Went into the quarters and found the accused and two others.
Q191 - Who were the two others?
A191 - Fairlie and Spence.
Q192 - What took place in the quarters?
A192 - I asked Smith where he had been that night.
Q193 - Where was Smith in the room?
A193 - Lying in bed smoking a cigarette.
Q194 - Was he undressed or dressed?
A194 - Undressed in bed.
Q195 - What took place then? I think you said there was some conversation with Smith.
A195 - I asked him where he had been and he said he had been in all night.
Q196 - Anything more?
A196 - Cpl. Kirk went in with me and he asked Smith questions with regards to where he had been. Smith told him he had been in all night.
Q197 - Did you examine Smith's clothing?
A197 - The corporal asked how they were damp and I looked at the clothing and found they were damp from the knee down and his shoes were damp.
Q198 - Did you have a close look at the shoes?
A198 - No, sir.
Q199 - Would you care to tell us how damp?
A199 - No, sir.
Q200 - How do you know the shoes you saw and the pants belonged to Smith?
A200 - They were under his bed.
Q201 - Well, then, what happened after this was drawn to your attention?
A201 - I asked Smith if he would come down to the barracks as he was under arrest.
Q202 - Did he go?
A202 - Yes, sir.
Q203 - He must have got dressed.
A203 - Yes, sir.
Q204 - Did he put the shoes on that were under the bed?
A204 - I couldn't be sure, sir.
Q205 - What about the trousers?
A205 - He took a pair down from the wall, sir.
Q206 - Were they the trousers you had examined and found wet?
A206 - I think they were.
Q207 - Did you notice his greatcoat?
A207 - No, sir.
Q208 - Did you know anything about the ownership of the motor-cycle leaning against the wall outside Smith's quarters?
A208 - No, sir.
Q209 - Had you seen it before?
A209 - I had seen the accused riding it.

Q210 - What kind of a night was it when you first came out after Cpl. Kirk roused you from bed?
A210 - Quite dark.
Q211 - Was it raining?
A211 - I don't think it was at that time.

Cross-examination by the Defending Officer.

Q212 - Did you say anything to the corporal as to where you were going when you looked at the machine; did you tell Cpl. Kirk where you were taking him?
A212 - (Prosecutor) The accused wasn't present; I don't think that evidence is permissible.
Defending Officer - I am submitting that the evidence is permissible.
Judge-Advocate - I think it is definitely alright.
Q213 - I wouldn't say it is hearsay; it is the privilege of the accused in a case of this kind. Did you tell Cpl. Kirk where you were taking him that night when you took him to Smith's quarters?
A213 - I thought it was very likely it was his machine and took him to his room.
Q214 - Can you tell me what happened when you and Cpl. Kirk first went into Smith's quarters; did you speak first, or who spoke first?
A214 - I spoke first and asked where he had been.
Q215 - After you had talked to Smith did Cpl. Kirk say "That is the man who assaulted me earlier in the evening" or words to that effect?
A215 - Words to that effect.
Q216 - That was after you spoke to Smith?
A216 - Yes, I think so, sir.
Q217 - You stated you were taking him to who you thought owned the machine?
A217 - Who I thought owned the machine.
Q218 - Did the corporal explain to you in any way how he could identify the machine?
A218 - Yes, sir, by the brackets on the front.
Q219 - Do you know whether they were painted or a nickel colour?
A219 - I think painted; I wouldn't say for sure.
Q220 - You had a flashlight when you examined that machine?
A220 - Yes, sir.
Q221 - Did you use it to see if there were any tracks of the machine?
A221 - On the ground?
Q222 - Yes.
A222 - No, sir.
Q223 - Did Cpl. Kirk examine the ground for tracks?
A223 - I couldn't say for sure about that, sir.
Q224 - You state that the accused's trousers were damp. Could they have been wet early in the evening and been damp when you went in and found them?
A224 - I think so, sir. The ground where the accused was working was damp all the time.
Q225 - Where was that?
A225 - The M.T. Garage.
Q226 - You know of your own knowledge that the ground was muddy?
A226 - Yes, sir.
Q227 - Had it been raining very long?
A227 - Whether it rains or not it is always muddy because of the pipe; there is a large overflow quite often.
Q228 - The accused's boots were quite damp, you state. Were they as damp as if the accused had been wearing them maybe five or six hours earlier?
A228 - I didn't examine them very closely.
Q229 - They weren't by any fire were they?
A229 - No, sir.
Q230 - You say there were two others with the accused in the room when you and Cpl. Kirk went in?
A230 - Yes, sir.
Q231 - Who were they?
A231 - Pte. Fairlie and Pte. Spence.
Q232 - You felt the cylinders of the motor-cycle and they were cold?
A232 - Yes, sir.

Q233 - When did you see Cpl. Kirk feel the cylinders?
A233 - About the same time.
Q234 - Did he say they were warm at that time?
A234 - I am not just sure whether he said they were warm or not.
Q235 - You didn't consider they were?
A235 - I didn't consider they were.
Q236 - Was it a cold night?
A236 - About the ordinary run of English weather, sir.
Q237 - About what hour did you put the accused in the guard-room?
A237 - About 0134 hours, sir.
Q238 - And it was as a result of the identification of Cpl. Kirk that you placed the accused in the guard-room?
A238 - Yes, sir.
Q239 - You have no other evidence to connect the accused with the assault of Cpl. Kirk on the night of the 19th?
A239 - No, sir.

Questions by the Judge-Advocate.

Q240 - What bruises did you observe on Cpl. Kirk?
A240 - One on the eye and one on the lip.
Q241 - New ones?
A241 - Yes, sir.
Q242 - As to the hour, what time of day was it when you were awakened?
A242 - About 0125 hours, sir.
Q243 - It wouldn't be 1225?
A243 - No, sir, about one-thirty.

Re-examination by the defending officer.

Q244 - Were the accused's hands examined in your presence on that evening?
A244 - I didn't examine them, sir; I don't know whether the corporal did or not.

Questions by the Court.

Q245 - When you went to the room there were three in it?
A245 - Yes, sir.
Q246 - Were the other two inmates awake?
A246 - Fairlie was awake.
Q247 - Were you speaking to him?
A247 - I wasn't speaking to him myself, but the accused was speaking to him and he asked if he had been in all night and he said that as far as he was concerned he had been

Questions by the Judge-Advocate.

Q248 - Would you care to state whether the ground over which the motor-cycle would be travelling was hard or soft?
A248 - Maccadam. I don't think a motor-cycle would make any impression.

Third witness for the prosecution, D-77176, Pte. Fairlie, E., No. 1 Cdn. M.G. Holding Unit, being duly sworn, is examined by the prosecutor.

Q249 - Up until the early morning of December 19th you were room-mate of the accused, Smith, is that correct?
A249 - Yes, sir.
Q250 - What can you tell us of the evening of December 18th, that is, of your own knowledge?
A250 - On the evening of the 18th I went to Guildford from the M.T. garage with Lyons, another driver, and took some students.
Q251 - Was the accused with you?
A251 - No, sir.
Q252 - Did you get to Guildford?
A252 - Yes, sir.
Q253 - Did you get back?
A253 - Yes, sir.

Q254 - Did you run into the accused at Guildford?
A254 - No, sir.
Q255 - What time did you get back?
A255 - The school took until about a quarter past nine and we got back to the garage at ten o'clock or a little afterwards.
Q256 - Is the garage in the barrack area?
A256 - Yes, sir.
Q257 - What time did you get back?
A257 - Ten or about ten after ten.
Q258 - What did you do then?
A258 - Parked the car and reported and proceeded to my quarters. Lyons went to, sir, and he went to his quarters and I went to mine which are alongside each other.
Q259 - Did you notice any motor-cycle outside the quarters at that time?
A259 - I couldn't say, sir, but that is the place Smith generally has it placed, but I couldn't swear, I didn't pay any attention.
Q260 - Did you go upstairs?
A260 - Yes, sir.
Q261 - What time would it be when you got to your room?
A261 - Just a little after ten.
Q262 - Who was there?
A262 - Smith and Spence.
Q263 - What took place?
A263 - When I went in the room I proceeded to take my clothes off and read a book.
Q264 - Was there any conversation?
A264 - A general conversation about Guildford, just a general conversation.
Q265 - What condition was Smith in at that time, dressed or undressed?
A265 - Not dressed or undressed. He was on his bed with his sleeves rolled up and his shoes off.
Q266 - Where were his shoes?
A266 - I don't know; I imagine under his bed.
Q267 - Did he have his trousers on?
A267 - I believe he did.
Q268 - Did you notice them particularly?
A268 - No, sir, I didn't take any notice of his uniform at all.
Q269 - There were just the three of you in the room at the time?
A269 - Just the three.
Q270 - Did anybody come in later or did anybody go out?
A270 - Well, sir, one of the R.P's came up for tea.
Q271 - Did anybody leave the room to do anything in connection with tea?
A271 - Not that I remember.
Q272 - You say an R.P. came in?
A272 - Just the one on duty, I don't remember his name.
Q273 - Was Smith in the room at that time?
A273 - Yes, sir.
Q274 - How long did the R.P. remain in the room?
A274 - Half an hour anyway, sir.
Q275 - About what time did he come in?
A275 - Judging from the time I came back to the room, I would say about ten to eleven.
Q276 - And he stayed half an hour?
A276 - About that.
Q277 - Did anybody leave the room during that time?
A277 - Not during that time.
Q278 - What time did he leave, roughly?
A278 - I couldn't say, sir, I couldn't say what time he left but I'd say he would be there about half an hour.
Q279 - Do you know whether or not Smith owns a motor-cycle?
A279 - I believe he does.
Q280 - What is it like; an old army bike?
A280 - It looks something like an army bike but I don't think it is.
Q281 - Have you ever noticed the fore part of it and any flashlight brackets?
A281 - I have never been on the bike and never examined it closely.
Q282 - After the R.P. left the room did anybody else come in, or did anybody leave the room?
A282 - No, sir.
Q283 - What were you doing all this time?
A283 - Laying on the bed talking and reading.
Q284 - Did you have tea?
A284 - Yes, sir.

Q285 - How long were you talking, reading and drinking tea?
A285 - Until quite late, sir.
Q286 - Yes.
A286 - We kept drinking tea until it was finished and after the R.P. went I finished mine and put everything away.
Q287 - Then what did you do?
A287 - Lay down again on the bed.
Q288 - You told us that nobody else came into the room. After this did anyone come into the room?
A288 - After we finished our tea, quite late on, the provost sergeant came in with two other men and took Pte. Smith out of the room. They were the only ones to come to the room to my knowledge.
Q289 - You had no way of figuring time?
A289 - I generally look out on the clock on Havannah Barracks.
Q290 - Did anybody have a watch?
A290 - Not to my knowledge.
Q291 - Between the time the R.P. left and Sgt. Fickling and Cpl. Kirk came in did anyone leave the room?
A291 - After, sir?
Q292 - Immediately after the R.P. left; between that time and the time Fickling came in, had anyone come in or gone out?
A292 - Not to my knowledge.
Q293 - Are you prepared to swear nobody came in or that nobody want out; you are prepared to swear that?
A293 - Yes, sir.

Cross-examination by the defending officer.

Q294 - Fairlie, the accused is supposed to have assaulted Cpl. Kirk on the night of December 19th at approximately 0015 hours. Could, within your knowledge, that be physically possible?
A294 - No, sir.

Questions by the Judge-Advocate.

Q295 - You are speaking of the night when Smith was taken away to the guard-room?
A295 - Yes, sir.
Q296 - That night was the night of the 18-19 December?
A296 - Yes, sir.
Q297 - What time was reveille?
A297 - Six-thirty.
Q298 - And you were still awake and knocking around at twelve-fifteen?
A298 - That is right, sir.
Q299 - You had a long hard drive?
A299 - I didn't say hard.
Q300 - And you hadn't gone to sleep by twelve-fifteen?
A300 - No, sir.
Q301 - You were in bed?
A301 - Yes, sir.
Q302 - And had been in the room continuously since you came in at first?
A302 - Yes, sir.
Q303 - You realize you are under oath?
A303 - Yes, sir.

Questions by the President.

Q304 - Did the accused leave the room after you came in?
A304 - Not that I know of, sir.
Q305 - And you were awake all the time?
A305 - Yes, sir.

Questions by the Judge-Advocate.

Q306 - What was said when the sergeant first came in the room?
A306 - He hammered on the door and came in and said something about Smitty and then he walked over and spoke to Smith and then the other came in and followed him over and said he wanted Smith arrested, sir.

Questions by the Court.

Q307 - Do you remember what day it was: Wednesday, Thursday, Friday or Saturday?
A307 - I am not quite clear on the day.
Q308 - Did you go to Guildford every night?
A308 - That was the first time I went down on the trip.
Q309 - To school?
A309 - Yes, sir.
Q310 - What nights were they having it?
A310 - On Tuesday or Friday, I believe, sir.
Q311 - It wasn't Thursday?
A311 - It could have been Thursday. As I say, it wasn't quite clear to me.
Q312 - You do know it was the same night the sergeant came in with Cpl. Kirk?
A312 - Yes, sir, it was the same night.

Questions by the Judge-Advocate.

Q313 - You stated you came in at approximately ten-fifteen and Smith was lying on the bed with his boots off.
A313 - He was lying on the bed and I think he did, sir.
Q314 - Did he get undressed?
A314 - He got undressed later on.
Q315 - What condition of dress or undress was he in?
A315 - Just lying on the bed and I think he had his pants on and his boots off.
Q316 - Lying on the bed?
A316 - Yes, sir.
Q317 - You are sure of that?
A317 - Yes, sir.
Q318 - You are quite satisfied he hadn't got under the covers?
A318 - I believe he was lying on the bed, sir.
Q319 - Were his clothes wet?
A319 - I couldn't say; I never examined his clothes.
Q320 - Were you to bed this time, yourself, when they came in?
A320 - I was in bed, sir.
Q321 - This third person, was he present for the rest of the night?
A321 - He was, sir.
Q322 - He and Pte. Smith were both there when you came in?
A322 - Yes, sir.

Re-examination by the defending officer.

Q323 - Did you drive that truck to Guildford that night?
A323 - No, sir, Lyons was the driver.

Re-examination by the prosecutor.

Q324 - And you say there was another person in the room. Who was that?
A324 - Pte. Spence.
Q325 - Was he awake all this time?
A325 - No, sir, he was asleep.

Fourth witness for the prosecution, D-76237, Pte. Spence, G., No. 1 Cdn. M.G. Holding Unit, being duly sworn, is examined by the prosecutor.

Q326 - You are a room-mate of the accused and Pte. Fairlie?
A326 - Yes, sir.
Q327 - How long have you three been room-mates?
A327 - Quite a while.
Q328 - The three of you get along quite well?
A328 - Yes, sir.
Q329 - All on very good terms?
A329 - Yes, sir.

Q330 - Do you remember back about the 18th December, last year; can you remember that night?
A330 - I can remember it fairly well, sir.
Q331 - What can you remember about it?
A331 - I was at a show in the N.A.A.F.I. Hut and after that went to bed, sir.
Q332 - What time did you go to bed that night?
A332 - Before ten, sir.
Q333 - Anybody in the room when you went in?
A333 - No, sir.
Q334 - Did it take you long to go to bed?
A334 - No, sir.
Q335 - Did you hear anybody come in after you went to bed?
A335 - No, I didn't hear anybody at all.
Q336 - How do you remember that date?
A336 - The day after that I heard all about what was supposed to have gone on.
Q337 - Did you talk to Smith about it afterwards?
A337 - No, it was what I heard from Fairlie and so on.
Q338 - How did you fix that date in your mind?
A338 - I have been up about six times.
Q339 - You have memorized your story?
A339 - I have been up several times and things stick in your memory.
Q340 - So that you don't know whether anybody came in that night?
A340 - I know Fairlie came in. I had been asleep before he came in.
Q341 - Did he wake you up?
A341 - Yes, sir.
Q342 - Did you stay awake?
A342 - No, sir.
Q343 - What was he doing?
A343 - He just nudged me and asked for a smoke and I gave it to him and went to sleep.
Q344 - Did you sleep all night?
A344 - No, sir.
Q345 - When did you waken?
A345 - When Sgt. Fickling came up with two men. They were in when I woke, there was a noise going on.
Q346 - Did you notice what was going on?
A346 - I didn't bother.
Q347 - You know nothing about it?
A347 - Not very much, just what I have told you.
Q348 - Do you know if Smith was in that night?
A348 - I heard Sgt. Fickling talking to him.

The Defending Officer declines to cross-examine this witness.

Questions by the Judge-Advocate.

Q349 - When Fairlie came in he wakened you and asked you for a smoke. Did you open your eyes?
A349 - Yes, sir.
Q350 - Was Smith in the room then?
A350 - I don't know, sir.
Q351 - Could you see from your bed?
A351 - If you take particular notice. His bed is in one corner and mine in another.
Q352 - Was there any noise in the room when you woke up?
A352 - No, sir.
Q353 - Just the three of you living there?
A353 - Yes, sir.
Q354 - Was there a provost corporal there?
A354 - I didn't know him to be in.
Q355 - Did you have any tea that night?
A355 - I didn't have any myself.
Q356 - You knew they made some?
A356 - No, I didn't, sir.
Q357 - You said there was no noise in the room?
A357 - Just when they came up to take Smith out.
Q358 - But the talking previously, at the time of the tea, didn't wake you up. Is that correct?
A358 - Yes, sir.

Fifth witness for the prosecution, K-62275, L/Cpl. Anderson, H., No. 1 Cdn. M.G. Holding Unit, being duly sworn, is examined by the prosecutor.

Q359 - You are L/Cpl. Anderson, H., No. 1 M.G. Holding Unit?
A359 - Yes, sir.
Q360 - One of the regimental police?
A360 - Yes, sir.
Q361 - Were you on the evening of the 18th, morning of the 19th December, 1940?
A361 - I was, and for some time before that.
Q362 - Have you known the accused, Smith, for some time?
A362 - I have known him to see him and that is all.
Q363 - Do you know Pte. Spence who was living in the same room as Smith?
A363 - I have seen him driving for the major.
Q364 - How much have you had to do with Smith or Spence?
A364 - Nothing much.
Q365 - Did you eat with them at the mess-hall?
A365 - They have been at my table sometimes, sir.
Q366 - Were you in any way friends with Smith or Spence?
A366 - No more than anybody else.
Q367 - Did you, on occasion, drop in and have chats with either of them?
A367 - Occasionally, yes, sir.
Q368 - And they dropped into your place?
A368 - Yes, sir.
Q369 - And you knew them well enough to chum around; in other words, you were friendly?
A369 - No more than anybody else.
Q370 - Fairlie the same way?
A370 - Well, I would say the same way.
Q371 - You dropped in and had tea sometimes?
A371 - No, just before Christmas they asked me up to have tea.
Q372 - You knew Fairlie well enough to drop in when he was there?
A372 - I was never up to see Fairlie. He was there and I have only known him since affair; before that, I knew him to see him.
Q373 - Did he know you?
A373 - They all know me.
Q374 - Did he speak to you by name?
A374 - I don't know whether he spoke to me by name or rank.
Q375 - You have seen quite a bit of him since this affair?
A375 - I have seen Smith and Fairlie at the times we have given evidence.
Q376 - What can you tell us of this evening you know so well?
A376 - I don't remember much it is a long time back.
Q377 - You were in Smith's room on the night of the 18th?
A377 - Yes, sir.
Q378 - Was he there when you went in?
A378 - Yes, sir.
Q379 - What time?
A379 - About 2245 hours.
Q380 - Was he there all the time you were there?
A380 - Yes, sir, I wasn't there very long.
Q381 - He didn't leave the room while you were there?
A381 - No, sir.
Q382 - What time did you leave?
A382 - About twenty after eleven.
Q383 - Did you notice what condition of dress the accused was in?
A383 - Undressed and in his shirt sleeves; he had his pants on and his boots off.
Q384 - Did you notice anything about his pants?
A384 - No, sir, not that I remember.
Q385 - He had his boots off?
A385 - They were facing out from under the bed.
Q386 - What condition were they in?
A386 - Well, I don't know, a little muddy if I remember right, sir.
Q387 - Would you care to say anything more about them?
A387 - They were wet and muddy.
Q388 - Very wet and muddy?
A388 - I wasn't looking for wet and muddy clothes. After they asked me so many times it is one of the things on the evidence I can remember but before that I wasn't there to inspect clothes or uniform or anything else.
Q389 - Anything in particular about the conversation that night?
A389 - Not out of the ordinary.

Q390 - Any discussion about the motor-bike?
A390 - Not that I can recall, sir.

The defending officer declines to cross-examine this witness.

Questions by the President.

Q391 - Did you see the motor-cycle at all that night?
A391 - The police hut is No. 166, two doors from the accused. I had been around checking up on the blackouts and on my way back stumbled over a motor-cycle while looking for my hut.
Q392 - About what time?
A392 - Ten-thirty.
Q393 - Then you had tea?
A393 - I stoked up my fire and went back and had tea.
Q394 - Did you see it again?
A394 - No, sir.
Q395 - Did you go down that way?
A395 - Yes, sir.
Q396 - And you didn't see the motor-cycle?
A396 - It may have been there, but I never noticed it.

Questions by the Court.

Q397 - Do you or do you not remember that night?
A397 - I don't remember all the details. I can remember what time I went to the room and the time I stoked up the fires.
Q398 - How about the mud on his boots?
A398 - I am quite certain of that.
Q399 - Do you remember that the boots were muddy and wet?
A399 - Yes, sir.
Q400 - And you say you didn't notice his trousers?
A400 - I don't know, I wasn't that close to the man.
Q401 - Where were his boots?
A401 - Underneath the bed.
Q402 - Where was the accused?
A402 - Generally around the room.
Q403 - Did you see the accused more often than his boots, or were you looking just at his boots?
A403 - I was looking for nothing.
Q404 - But you noticed Smith moving around and lying on his bed?
A404 - Yes, sir.
Q405 - And you didn't notice his trousers?
A405 - I wouldn't say they were wet or dry, I wasn't that close.
Q406 - What nights do they have N.A.A.F.I. shows in that holding unit?
A406 - N.A.A.F.I. on Monday and stage shows on Wednesdays and another picture show on Friday, sir.
Q407 - There is one on Wednesday?
A407 - A London party comes up every Wednesday.

The Case for the Prosecution is closed.

Defending Officer - I would ask on behalf of the defence that the case be dismissed on the grounds that there is no prima facie case. We have heard one witness who has identified the accused, but we have heard others who have said it was impossible for him to be the man. It is the duty of the prosecution to show that he is the man beyond any reasonable doubt. The only evidence the prosecution has brought forward today in connection with the accused is that of Cpl. Kirk and he has shown by his evidence how biased he was. He didn't want the Court to believe he had been told where he was going by the sergeant and he identified him from the assault earlier in the evening. We have the evidence of Sgt. Pickling and other witnesses and they state definitely that he pointed out the accused to Cpl. Kirk. That point is sufficient to show that Cpl. Kirk's story, while he may be conscientiously believing he is telling the truth, is [illegible] prejudiced and as that is the only evidence the prosecution has produced I move for a dismissal of this case.

Prosecutor - I admit that the case presents considerable difficulty, but in the last analysis it appears to me that it boils down to credibility. There is a great deal of circumstantial evidence linking the accused with the motor-cycle. There is certain circumstantial evidence that the accused was out in the evening and that there was mud on his boots and they were wet. With respect to the motor-cycle, the brackets were seen and it was the same or similar colouring and in both cases there was the lack of a licence plate. I submit that those circumstances alone are enoughto prove that the accused was connected with this offence. Then we have the positive identification on the part of Cpl. Kirk who states he had ample opportunity, or ample light, to see the accused or driver of the motor-cycle and he has identified him as the driver of the motor-cycle, and I submit that while we have only the evidence of Cpl. Kirk positively identifying the accused as the one who committed the offence, I submit there is sufficient evidence to at least put him on his defence. There is one other thing that has given me trouble and that is the fact that the accused has been in detention since December 18th and it is not for the prosecutor to press for a prosecution and consequently we will rest our case on the credibility of the different witnesses.

Judge-Advocate -- It is, I believe, my duty to sum up further, but with your permission I will over-look that.

The Court is closed for the consideration of the motion for dismissal.

President - The motion for dismissal has been denied.

First witness for the defence, B-76706, Pte. Smith, W.J., No. 1 Cdn. M.G. Holding Unit, being duly sworn, is examined by the defending officer.

Q408 - What is your number, name and regiment?
A408 - B-76706, Toronto Scottish Regiment, Pte. Smith, W.J.
Q409 - Where do you live?
A409 - No. 164, Married Quarters, Guadaloupe Barracks.
Q410 - When did you enlist?
A410 - The 11th March, last year.
Q411 - Did you make any attempt to enlist before.
A411 - I was in the Toronto Scottish approximately twelve years.
Q412 - When did you first try to enlist after war broke out?
A412 - I was discharged on September 5th.
Q413 - What year?
A413 - 1939.
Q414 - That was after war broke out?
A414 - Yes, sir.
Q415 - Why were you let out of the army?
A415 - My wife is blind and I have three children.
Q416 - Your commanding officer gave you a certificate to that effect?
A416 - Yes, sir, I have a letter in my pocket, sir.
Q417 - Then you did come back in March, 1940?
A417 - Yes, sir.
Q418 - When did you come back to England?
A418 - I landed in Bordon on August 2nd.
Q419 - Did you at any time last fall purchase a motor-cycle?
A419 - Yes, sir.
Q420 - Do you know the approximate date?
A420 - Yes, sir, I have receipts in my pocket. (Produces receipts)
Q421 - What job have you been doing at the Machine Gun Holding Unit?
A421 - Since I came over here I was on machine gun drill and was a gunner on ack-ack and from there a driver at the M.T. garage.
Q422 - About the middle of December what were you doing?
A422 - Driving.
Q423 - How long had you been driving before the night of December 18th?
A423 - As close as I can remember, nearly four months.
Q424 - Did you, after you purchased this motor-cycle, make any repairs?
A424 - Yes, sir.
Q425 - Was it in working order when you purchased it?
A425 - No, sir.

Q426 - Previous to the 18th how long had it been fit to drive?
A426 - About a week.
Q427 - Where had you been driving it?
A427 - Around the barracks.
Q428 - You didn't have a licence?
A428 - I intended getting one; I had an application for it.
Q429 - Were you the only one who drove it?
A429 - To my knowledge I was the only one, and the R.P. had taken it around one or two times.
Q430 - Where did you generally leave your motor-cycle?
A430 - On the porch, sir.
Q431 - Could other people have driven it?
A431 - Yes, sir.
Q432 - On the night in question, December 18th, what were you doing?
A432 - I was working on a truck in the garage from approximately eight to eight-thirty.
Q433 - Could you tell me the condition of the ground around?
A433 - Wet and muddy.
Q434 - Did you ever get your feet, pants and boots wet while working?
A434 - Yes, sir, they were always wet.
Q435 - On the night of December 18th when you were working at the M.T. garage, did you or did you not get your boots wet?
A435 - Yes, sir.
Q436 - What did you do after leaving?
A436 - Went to the N.A.A.F.I.
Q437 - How?
A437 - On my motor-cycle.
Q438 - What did you do after going to the show?
A438 - I didn't go to the show. I just went right in and out and talked with one of the men outside the N.A.A.F.I. and went to my quarters.
Q439 - What time?
A439 - Between half past nine and ten.
Q440 - You drove your motor-cycle to your quarters?
A440 - Yes, sir.
Q441 - What did you do then?
A441 - I took off my boots and tunic and read a letter I had got and lay around smoking until Fairlie came in.
Q442 - Was Spence in the room?
A442 - Yes, sir.
Q443 - Where was he?
A443 - In bed, sir.
Q444 - Can you say if he was asleep?
A444 - He appeared to me to be sleeping.
Q445 - What did you do after Fairlie came in?
A445 - We sat talking.
Q446 - Did anyone else come in before twelve?
A446 - L/Cpl. Anderson came in, sir.
Q447 - What time?
A447 - Approximately ten-twenty or thereabouts.
Q448 - What did you do after Anderson came in?
A448 - Had tea, sir, and talked.
Q449 - And how long did Anderson stay in the room?
A449 - Approximately half an hour, sir.
Q450 - When Anderson left after approximately half an hour what did you do then?
A450 - Got undressed and went to bed, sir.
Q451 - Did you take your trousers and shirt off?
A451 - Trousers and socks.
Q452 - And you got into bed?
A452 - Yes, sir.
Q453 - Did you get out of bed between that time and the time Sgt. Fickling came into your quarters?
A453 - Not that I can remember.
Q454 - Did you go out on your motor-cycle?
A454 - No, sir.
Q455 - Did you see Cpl. Kirk before he came in with Sgt. Fickling?
A455 - No, sir.
Q456 - Did they examine your hands?
A456 - No, sir.
Q457 - Were there any marks on your hands at all?
A457 - No, sir.

Q458 - Kirk identified you as being the man who struck him at 0015 hours on December 19th?
A458 - Sir, I wasn't out of my barracks.
Q459 - If he says that he must be mistaken?
A459 - Yes, sir, definitely.
Q460 - Have you ever served any periods of detention since you have been in the army?
A460 - No, sir, I have not.
Q461 - And you emphatically deny you committed the offence charged?
A461 - I do.

Cross-examination by the prosecutor.

Q462 - Smith, you say that after Anderson left at roughly 2315 hours you immediately went to bed that night?
A462 - Yes, sir.
Q463 - You didn't leave the room at all?
A463 - No, sir.
Q464 - You are quite clear on that are you?
A464 - Quite, sir.
Q465 - Because in one of your statements here, which was given by you, apparently before E.P. Lee, Lieutenant, No. 1 Cdn. M.G. Holding Unit, you stated that Anderson left at about 2315 hours and later on you got up and went to the toilet. Do you remember that?
A465 - I do now, sir.
Q466 - So that you want to amend your statement?
A466 - Yes, I did go to the toilet.
Q467 - Then you said that Fairlie woke up; he had been asleep?
A467 - To my knowledge, yes, or dozing.
Q468 - You heard him say in evidence that no-one left the room until Cpl. Kirk and Sgt. Fickling came. What have you to say about that?
A468 - It is correct except that I did go to the toilet.
Q469 - You have also heard him say he was awake and he would have heard anyone leaving the room. Do you remember that statement?
A469 - He would hear anyone leaving the room, he sleeps next to the door. It might have slipped his memory the same as mine.
Q470 - He could be mistaken?
A470 - He could be.
Q471 - Do you think quite a bit of his evidence was mistaken?
A471 - No, sir.
Q472 - Do you think that if you had merely driven it from the N.A.A.F.I. to the quarters that the cylinders would still have been warm?
A472 - At what time, sir?
Q473 - You left the N.A.A.F.I. when?
A473 - Approximately nine-thirty.
Q474 - And you drove to your own lines?
A474 - Yes, sir.
Q475 - And do you think the engine could have remained warm until Cpl. Kirk felt the cylinders?
A475 - I don't know, sir.
Q476 - How long have you ridden this particular motor-bike?
A476 - Just about a week, sir.
Q477 - Do you know anything about other motor-bikes?
A477 - No, sir.
Q478 - So you don't know how long it may have remained warm after that?
A478 - No, sir, I don't.
Q479 - How long have you known Fairlie?
A479 - I have known him since they started the mobile ack-ack, sir.
Q480 - How long in months had you been rooming together?
A480 - Not long, sir. I don't know whether it was a month or not.
Q481 - You were fairly good friends?
A481 - Just as ordinary people; friendly. We didn't chum together.
Q482 - Had you ever driven him out on your motor-bike before?
A482 - No, sir.
Q483 - Did you have him around this night?
A483 - No, sir.
Q484 - Are you sure you weren't outside the barrack room on this particular night?
A484 - Outside of going to the N.A.A.F.I. I wasn't outside of the barrack area.

Q485 - You think Fairlie made several mistakes in his evidence?
A485 - I don't think that.
Q486 - You state he was asleep and he woke up; he states you didn't go out and you state you did.
A486 - What I think he meant was I didn't get dressed and go out. As far as him saying I didn't leave the room, he was mistaken.

Questions by the President

Q487 - How far is the goilet from the barrack room?
A487 - Just downstairs.
Q488 - Tell me how you were dressed to go to the toilet?
A488 - In my underwear, sir.

Re-examination by the defending officer.

Q489 - How long have you been in detention now?
A489 - Fifty-three days today, sir.

Questions by the Judge-Advocate.

Q490 - Who made out these receipts?
A490 - The sergeant of the paymaster.
Q491 - Is it a machine from the Government?
A491 - From him.
Q492 - His own machine?
A492 - Asfar as I know.
Q493 - Did he give you a log book?
A493 - No ownership card of any kind.
Q494 - Is it insured?
A494 - Not by me, sir.
Q495 - Do you realize you are committing an offence driving it?
A495 - I didn't drive it on the public road, just in the barracks.

Prosecutor's closing address.

I have very little to add to what I stated before on the motion for dismissal. May I sum up briefly this way. We have only one witness who gave positive evidence of identification and in all fairness to the accused he can give no particulars of identification about the accused except that he wore a Toronto Scottish cap. There is plenty of circumstantial evidence pointing to the accused. The accused had a motor-bike answering to the description of that sought by Cpl. Kirk who had been assaulted under this charge. Cpl. Kirk is positive of identifying the motor-bike and found it at Smith's quarters. Also Smith's boots and trousers and, according to Cpl. Kirk, his greatcoat as well were wet. One thing on which we have to be fair to the accused is that while Cpl. Kirk is very definite, Sgt. Fickling is not so definite on the clothes. He knows nothing about the greatcoat, but did notice wet on the shoes and on the trousers. Statements from Anderson submit that the shoes were wet and dirty. Neither Sgt. Fickling or Anderson cared to state beyong that the condition of the shoes; they were merely wet and dirty. In addition to that the evidence of the Crown has been given by the friends of the accused and evidently talked over and facts and times agree. They are alibi witnesses and there may be a case of mistaken identity. I feel it is for the prosecution to point this out. The case is clearly one of credibility, a question of the evidence given by Cpl. Kirk as against the evidence given by everyone else. Sgt. Fickling does not corroborate the evidence of Cpl. Kirk, but to some extent is rather hazy. It seems to me that with the definite identification given by Cpl. Kirk, plus the circumstantial evidence, there is sufficient evidence to cause at least consideration. But, for myself, I do feel very strongly about this case and not knowing very much about it I do feel that justice has been done. The case should have been brought in much earlier. The accused has been in detention fifty-three days awaiting trial and while that can be taken into consideration, I believe it is not for the prosecution to press too closely for conviction.

Defending officer's closing address.

I do not wish to take up too much time of the Court. This is clearly a case of mistaken identity. I happened to sit on a case once where five witnesses definitely identified two taxi drivers and they were convicted of murder and two days later it was found that those witnesses were mistaken in their identification. Cpl. Kirk has shown a strong aversion to the accused and a strong desire to obtain a conviction. That is not the job of the provost and from his evidence he shows it. He says there was no flashlight used in identifying the machine and Sgt. Fickling says that he used a flashlight. Cpl. Kirk was either mistaken in that or deliberately telling a falsehood and I feel quite strongly regarding the evidence of Cpl. Kirk; it was quite unfair. He positively swears before the Court that the machine found at the Machine Gun Holding Unit was the machine on the road. Any witness, I think, who will positively swear to such a thing, his evidence must be treated with apprehension. He has tried to lead the Court to believe that he identified the accused without any help. He says Sgt. Fickling did not tell him whom they were going to meet and it is quite natural that Sgt. Fickling would tell him, and Sgt. Fickling says he addressed Smith first and in that way he pointed him out to the corporal. The identification could be wiped out on that ground alone. It is the duty of the prosecution to show that Smith is guilty of these offences beyond a reasonable doubt. That burden has not been discharged. The accused on the stand gave a straightforward story. He attempted to get in the army, and was in, and his commanding officer, knowing his circumstances at home, sent him out of the army and after seeing that arrangements were made for his wife he came over. He served for twelve years with the Toronto Scottish and his record was a good one, and when his wife was taken care of he again joined up and here he is over here, and his record is good, and because of one provost corporal he has been in detention fifty-three days while all evidence points to the innocence of the accused and I think, in the sense of British fair play and justice, the case against the accused should be dismissed.

Judge-Advocate -- It is my duty to again sum up but with your permission I will not do so at this time.

The Court is closed for the consideration of the finding.

The Court being re-opened the accused is again brought before it.

Lieut. J.M. Prescott, No. 1 Artillery Holding Unit, being duly sworn, is examined by the Judge-Advocate.

Q496 - Have you any evidence to produce as to the character and particulars of service of the accused?
A496 - I produce A.F.B. 296 and [redacted] 6 of the accused, certified by myself.
Q497 - Is the accused the person named in the statement which you have just read?
A497 - He is.
Q498 - Have you compared the contents of the above statement with the regimental books?
A498 - I have.
Q499 - Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?
A499 - They are.

Questions by the President.

Q500 - Do you wish to address the Court?
A500 - (Defending Officer) I take it then that the Court has found the accused guilty of the offence charged?
President - We have made a finding.
Defending Officer - The accused has said all he can say regarding this matter.

The Court is closed for the consideration of the sentence.

LIST OF WITNESSES FOR THE PROSECUTION.

No. P.9478, Cpl. Kirk. W.F.	2nd Div. Field Security Sec. Ald.
No. A-34088 Sgt. Fickling. A.	1 Cdn. (MG) Holding Unit. CASF.
No. K-62275 L/Cpl. Anderson.	" " " " " "
No. D-76237 Pte. Spence. George.	" " " " " "

FOR THE DEFENCE.

None.

12 62275 - L/Cpl. Anderson N.
Regtl. Police on 18 Dec/40.
(Had arrested Pte Smith late
R.S. had finished checking
up Black Cat at 10:30 &
stumbled by [illegible] hut (166
Manning Depot) which is
two rooms from cookhouse.
(Above is 164) & stumbled
over and fell on [illegible]
up [illegible] & [illegible]
about 10:45 &
went upstairs in 164 & into
second room - I saw no
one (Albion Square
but heard him [illegible]
& see him) - Pte Fowler
and Pte Smith were there &
had [illegible] up 7
Can Pros are staying in
room 7 and in room Nick
& Sugar were there (Son Albert)
went in & no word in
that usual conversation
No one came in during
evening to [illegible] Albert &
went in & Pte Smith [illegible] home)
Good night [illegible]

Remember Smith saying while [illegible] Pte Smith did robbery [illegible] on Albert in [illegible]

(2)

one man asleep all time I was there & took no part in proceedings. I left the room about 11.20 and went straight to my room as I did not notice any motor bike ~~at that time~~ when I think all are not at Pelo before it was outside the ~~Officers~~ Quarters & the building that Pte Smith lives in. I went straight to sleep & don't see Pte Smith until next morning. I had often seen Pte. Smith's bike resting outside he barracks he lives in.

~~No~~ I'm not against him. I'm not for him.

K62275 Sgt Anderson

Pte. Smith - no more questions.

Q. What do you mean by you are not for nor against us.

A. I'm not giving my evidence as a friend. I am merely stating the truth

B. 77176 Pte. Fairlie E.

Driver M. T. Sovereys.

I slept in the same room as
accd. 164 Hearn and Saunders.
think Fri. 19 or 18 Dec. I left
here about 6 p.m. took Field post
with Corbett Hearn & Saunders &
returned to M. T. lines about 10 p.m. From
there I walked to Divisional Headqrs
with Pte & got into Poperinghe
about 10½ p.m. I found
Hearn in room there, Spen both
laying on bed in their clothes.
Both had boots off & Corbett (except
I made myself comfy & tried
to keep & read paper & about
10 45 or 11 p.m. I had tea - from
an urn supplied in the room
sugar, milk, bread, & Robinson
came in about 10 50 & had tea &
Robinson left about 11½ From
there came in, left room up
& Robinson's leaving at 11½ & I put
light away & went to bed & read a
book for about an hour after
11½ No one entered or left
room during that time.
6/16, 12½ I stayed up until a map
on the door was made up. I left

Provost Sgt. Fielding & 2 other men entered, I don't know first what time. We have no means of telling time, no watch in the room & none of the occupants have a watch. Can judge the times stated in this statement from the time I arrived back at the garage from Guild Hall.

Any movement in the room would have awakened me. I would have known if they had left room. No one left room before Provost Sgt. Comin.

Pte Hynes was one who went to Guild Hall with me & returned at about 10 p.m.

E. Fowler
D 7767

Examined.

Q. Was Pte Spence in bed & sleeping when you came in.

A. He was.

No more new questions.

A I remember Fairlie getting up & talking.

Q Did you notice how Fairlie had?

A I wasn't interested

Q Have you ever had an altercation

A I can't see any

Q How did you identify me?

A I saw sufficient of him on the road when I turned my motor around to Dartely road.

Q Where was I? Standing up?

A On the Saddle.

Q How does your motor light shine, up, down or straight?

A Adjusted as per traffic regulations.

Q When your shone light, would it hit me, or the ground, or the face?

A Easily lighten the whole area in the machine shop.

Q Would the light shine clearly on my dear Brown face?

A. My side at this time was appro. 2 yds from the front of the Pole & would clearly light up and enough to recognize anyone.

b. Most of thing sits bed on most in bed.

A. The blankets were pushed down & accd was sitting on bed outside of the blankets, smoking.

[illegible]

Q. Yes.
Q Was it raining at time machine was supposed to have turned around?
A. Yes.
Q. What time was it when the two men attacked you.
A. Sometime between 12:15 & 12:30 & 50. first 12:45. I should say it was approx. 12:28. That would be the time I stopped the machine.
Q. How long were you at the scene of the alleged assault?
A. Approx. 5 mins.
Q Is it possible if anyone struck you or you state that there would be no marks on his hand?
A. ~~Knocking~~ I don't know.
Q. Did man have gloves on that night?
A Yes.
Q What kind of gloves.
A Don't remember.
Q How many pairs of gloves?
Q I only noticed the 1 pr.
Q Do you know how many men sleeping in room?

Q. Did you go from your room
to the [illegible] room alone
A. Yes. I left you & Sgt. F.
in your room. At this time you
were practically dressed.
Q. You would say Sgt. F. was left
after you went to [illegible] until
he had completed dressing?
A. Yes.
Q. Was it dark night?
A. - running hard & [illegible]
Q. - would you say it was
dark?
A. - arranged subconscious on
running night.
Q. Did the ~~[illegible]~~ ushers later
they recognized the machine
when you first saw them?
A. I testified no recognition
~~[illegible]~~ except that a
machine had passed with T.
& B. was running with a
[illegible] seems to me.
Q. Would you say it was?
possible for ushers to recognize
a man passing on a motor bike.
A. It is possible I no recognition
would be pretty hard.
Q. Could they tell there was 2
on the machine if

H. Dooley noticed one for.
Q. Did you all wear the greatcoat hanging on wall?
H. Dooley noticed the one
A. what could it was it is?
H. Some could is a mine from riding.
Q. Did you have a greatcoat on that night?
H. Yes.
Q. What shape was it in?
A. Bad enough to send to cleaners next day.
Q. Would you say the coat in my possession was bad enough to send to cleaners?
H. My greatcoat only got wet from driving, got dirty from me. Your greatcoat was wet.
Q. Was it raining out?
A. Yes.
Q. Had it been raining all day?
A. No.
Q. While I was getting dressed, did you leave the room?
A. Yes.
Q. Where did you go?
A. To the W.C. Down.

& what did he have to do with it.
I just showed him my face &
told him that is what had
happened. Face was bruised,
lips were cut & some teeth
were broken. He then asked if I
take a nap like & I state yes.
He asked if I had fallen off it.
I answered no, not yet.
I looked at his hands & ~~found~~
saw no marks on his hands.
Dismissed them & the Provost made
out an ~~old~~ written sheet.
Right after ~~the~~ Lt. Hobbs & I went
around to talk to certain
ones and some answers
they had given were previously.
I then reported back to my
unit.

Q. When you were first attention
doing chores, where were they
working?

A. On the left rear about
the head on clothes, jeep, & prop
the bodies were under
the bed.

Q. How many fr. Trousers
were hanging up there?

Sgt. Fielding went down the line & found a wounded man. I identified the man I had stopped on the rd. by the flashlight bracelet & our each [illegible] watch light values by serious calculation & agreed. I felt the explosives & found them secure. I then went into the dark in front of rd. & had just passed & found no one & turned when I could identify. I went upstairs & found Pte. Smith just getting into bed as sworn & I identified him as the person who had hit me on the road. I told the Provost Sgt. I would like to have him brought down with Sgt. Fielding & him under escort. I called Sgt. Fielding attention & [illegible] his boots, pants & greatcoat, which were in the same condition as mine, mud & water. Pte Smith asked: What has happened to me

Whitehall Police Station. I asked him if he had seen a machine carrying 2 persons & two lights. He said they had passed about 3 mins. before. He ran outside to stop them but had to jump back & ducks to avoid being hit. He states the machine had turned in the Direction of Bardon village. I immediately came up to 'Tel' Sq. & Hut. U.S. questioned guards back at Canada Hutments & Headquarters barracks. They said a machine had passed carrying no lights & 2 soldiers & that they thought he turned off right at the 1st road this side of Bardon village. I then enquired at the barred wired fence gate. There but could not find any tire prints, the road had been hard all night so no chance of finding them. I drew the only place the machine could have been the 'Tel' Sq. & started asking them the time & I got

at Cushetta. I asked if he had any letters or any thing I could identify him by & he claimed he had none. He then [illegible] she acquired [illegible] asked him his name & he told him F.B. Security Co. I asked what kind of a machine it was, they stated a make ark. I forget now. It didn't sound right to me so I turned my machine around & shined the headlight on their machine with that the driver got off & stated that all the F.B. Security men Branch [illegible] by Fred Federici, the Branch whom I recognized, struck me in face & knocked me down. He jumped on me and kept me punching me. He said nothing & effort that I got up but I dropped & was told by the same thing over again if I tried to follow them. They drove off then. After I picked up my belongings I proceeded to Cushetta & reported the affair to Sheriff's office & was told [illegible]

Cpl. Hill -

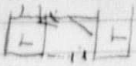
Looking up behind the machine I saw two soldiers on it (going in direction) Bourlon from Bapaume, going in same direction. I turned my head off them & saw the machine was smoke coloured & drew up alongside & ordered them to halt. I repeated this order in loud tone, & the pilot stopped & I drew my pistol from pocket & jumped my machine & ran [illegible] in front. I went back to them & started talking & told them they were not to proceed & they told me it was not a military machine. I said there was no civilian dress on it, so I asked for their credentials & then I & the pilot had one, they only got the machine a few days ago. I then asked for their log book & both claimed they did not have it with them. I ordered the Observer for his name & which he replied R. Hope - [illegible] Scottish Rifles. [illegible] statements in

Q. Where were my pants?
A. On the wall beside bed.
Q. Do you remember if
more than 1 pr. of pants.
A. Yes.
Q. Do you remember more
than 1 pr. pants?
A. Yes.
Q. While I was getting dressed
did Cpl. Pickham clean the room?
A. Yes. I don't remember Cpl
Pickham cleaning room
Q. While you were waiting
for me to get dressed were
you say, Cpl. Pickham clean
room & empty
ash cans?
A. I don't remember that he did.
Q. Do you remember, in what
kind of a night stand was
A. Real Dark.
Q. Would you say a man
would be easily recognized
in the dark?
A. Not in the dark.

M

A34088 Sgt. I. Fickling

machine about 0130 hrs. & found it cool. The machine was leaning against the wall about 3ft from the door of the house which was in.



Bike was parked as in diagram.

I brought same to Guard room & left him in custody of Cpl. Smith & I then spoke to the guard who stated they had heard a motor cycle by about 12:30. the guard did not see bike. Guard was Pte. Hawks & Pte McMullen, Pte McGee & Pte Hindfield. I then returned to my quarters.

Cpl. Smith drew attention to mothers back boots & trousers.

Q. Before saying "man carpet into trouble etc..." did you say anything else?

A. Yes. four or five times I asked what was wrong with his face.

Q. Do you remember answer?

A. no.

0125 Dec. 19/40

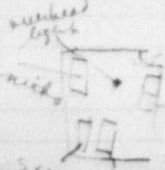
After Cpl Kirk & another
whom I don't know ~~[illegible]~~ me
up at my quarters woke me
up & ~~[illegible]~~ after. Found Pte.
Smith & Pte lying in bed smoking
cigarettes & told them he had
been & Sd. had been in all the
time & Cpl. Kirk was with me
& knew my whereabouts & Trainor
& Pte. Irene & Dempsey & Pte
Butterworth & ~~[illegible]~~ boots
muddy & wet & Smith
Sd that "he could get mad
& Dempsey & all the
group &". The ground round
the M. T. garage is Dempsey
almost all the time & Pte Irene
& Pte Irene
it had been raining that day.
Smith wanted to know
what was wrong & I told
him & came with me,
that he was under arrest.
Smith & I & Cpl. Kirk
"when you look for trouble
you can usually find
it." Smith got up & dressing.
On coming outside I
felt the water of Smith

A76737. Spence F.

I live in some rooms on the 1st floor of Mrs. Morris's house. Dark Red. My Major Shaw & some boys from Shaw & went to bed & was in bed by 9.40 at latest. Looked at watch coming out. Shaw & I went to bed. & slept right away. Was roused by Fairlie who wanted to have a smoke & went back & slept. Don't know what time it was. Kept thinking & remember was Shaw & Sgt. standing in room with & other & there when I think were ordered on to R.F.C. I made a remark "what was going on here", rolled over & went back & slept.

My bed is right across the room from the door.

G. Spence
A76737



Received from Pte Smith W.C.

the amount of £ s. 1 - 1 - Ten Shillings

as down payment on

Clews Imperial Motor Cycle

£ 6 - 6 - 0 Payment

Nominal Roll, attached to

No.	Rank.	Name			
[illegible]	A/Sgt	[illegible]			
[illegible]	Cpl.	Bleehlds,			
[illegible]		Howarth,			
[illegible]		Plant,			
[illegible]	L/C	[illegible]			
[illegible]	Pte.	Burton,			
[illegible]		Cobbins,			
[illegible]		Dickens,			
[illegible]		Donfrio,			
[illegible]		Fowler,			
[illegible]		Gervais,			
[illegible]		Gray,			
[illegible]		Helmrich,			
[illegible]		Hildbrand,			
[illegible]		Johnson,			
[illegible]		Kennedy,			
[illegible]		Labello,			
[illegible]		Lavoie,			
[illegible]		Lauria,			
[illegible]		Merifino,			
[illegible]		Mercier,			
[illegible]		Potter,			
[illegible]		Shaeffer,			
[illegible]		Singleton,			
[illegible]		Tessierville,			
[illegible]		Turnbull,			
[illegible]		Taylor,			
[illegible]		Thorpe,			
[illegible]		Vivash,			
[illegible]		Walker,			
[illegible]		Wright,			

Received from W. J. Smith, B76706

the sum of £1/0/0 (One pound)

in full settlement of debt contracted

with the undersigned for motor cycle

[illegible] Lt

D76805

D. [illegible]

Mob.

1

This is a summary of Evidence in the case of No B76706 Pte Smith W. J. 3 Edn (146) Holding Unit.

First witness for the prosecution.

Cpl Kirk W.F. No P.9478 of 2nd Div. Field Security Section at present having been duly sworn states that.

I was proceeding on my motor cycle along the Borden Headley Road at approximately 0020 hrs on 19th Dec 40 on duty. At about 500 yards before coming to the Borden cross roads I saw a motor cycle in front of me proceeding towards Borden cross-roads. There were no lights on it and I turned on my head light and saw that the motor cycle was service colour and saw that there was a soldier rider on it. I drove up alongside and ordered them to halt. I repeated the order

several times they stopped and I stopped about ten feet in front of them. I came back and at that time there were no lights on the machine and the accused whom I identify stated that there was a light and he lit the flashlight in one of the buckets at the front. There was a dull light showed from it then. His excuse was that it must have come off by vibration of the motor cycle. I asked him if it was an army machine and he said no. I stated there were no civilian licenses on it and asked for his driving permit and his pay book. He stated that his pay book had been taken up at the pay office and that his name was R. Hopper. T.S.R. aldershot. I asked what type of machine it was and I think he said it was a norton. Had decided sound

cried by me round the Engine.
so I told him to wait a minute
and I turned my machine
around so the headlight turned
them on his machine. Then Reid
jumped off the machine and told
me I would do that, I told them
I was first field already and
the accused said that we
were all a bunch of squealing
bastards, with that he rushed
me, hit me in the face and
knocked me on the road. I
tried to get up but he stood
over me and kept on punching
my face. No person with him
was standing over me also
and went on pelting, fists at
them. I got half up and
one of them hit me and I went
into the ditch. The accused
Pte Smith jumped on him I
me there and said that I was
looking for trouble and I got it.
and if I followed them I would
get more. After that they

began to get ready to go and I asked
them to help me look for the stuff
I had lost in the scuffle. They
let me & could find it, and
warned me not to follow, and
jumped on their machine and
went in the direction of Borden
cross roads. I sat on the side
of the ditch for a few minutes
and tried to recover myself.
I found my gun and looked for
my report book which could not
be found. I got on my machine
and on approaching Borden cross
roads I met a civilian motor
car which halted. I asked
if had seen a certain coloured
machine with no lights passing.
He described a machine which
tallied, and stated he had tried
to stop the two persons on it, and
they merely ran over him, as
he jumped to the kerb to avoid
being hit. He told me they
proceeded in Borden village
direction and as they were
wearing Tommy Scottish hats

I assumed they came from no 1
M G Training unit. The unit
was meeting a glingang and
I recognised the colours. I checked
up with the sentries on the
Inkerman Barracks and
Canada Cantonment gates. The
sentries at Canada [redacted]
stated that a motorcycle described
by me, had passed at about
0730 hrs and turned right into
a road called Buds Lane. The
stated they they must have fallen
as there was a lot of mud. I
found they must have turned
in at one of the gates on Buds
Lane. I went down the road
(Buds Lane) until I met the
Inkerman sentries and they
stated the motorcycle had not
passed them. As I came back
to Inkerman gates and got
through the sentries and proceeded
to look for the markings on the
lines. I found the markings
which the two soldiers who
had attacked me had used,

identifying by the flash light marks, Rennie heard and no lights. I felt the cylinders, which were still warm. I woke up the Provost Sergeant and stated my case to him. He immediately got up and came down to the machine with me. We went through the rooms and found the accused just finishing work. The Provost Sergeant told him he wanted him to come with him to the guard room, as I identified him as the man who had hit me. Pte Smith thanked Gunnam and stated I would have fallen off my machine if not the damage I had sustained. He stated he had been on his beat all night and called to a fellow across the road to keep it. And that fellow said "As far as I am concerned you were on all night" I called the Provost Sergeants attention to the wounds pains and bruises which were still red and muddy. He agreed he gave for that was that he was working down in the garage.

as the accused was getting dressed I went down stairs and examined the machine, which was in the bank of the guarding the accused limit on, and made sure it was the right machine. At 0140 hrs the Provost Sergeant placed the accused in the guard room under close arrest. I am returned to Tamboury H.

Qu. by the accused "when is the second man who was supposed to have been with me".

A. I didn't look any farther for the other man as I was feeling quite sick.

Qu. You say you recognised me - now is it you didn't recognise the other man during your investigation

A. I did not look for him, and I couldn't be sure that the other man in the room with the accused was the second man who attacked me, as he was unknown.

Qu. Why did not you look for the other man, you say there were two men

A. I was answered that before.

Q. How far just indicate in an
inch

A. The same amount applies, sir, I
joined the accused and I thought
he would put the other man
first.

Q. Then did you know there was
no bread in the machine, as
I understand they are very small.

A. I investigated the machine both
while I was drawing ash & it was
after it was stopped.

Q. Did you carry a screwdriver, did you
use it that night?

A. No I didn't use it.

Q. Why?

A. I didn't get a chance to.

~~Q. Do you notice this operation~~
~~take place and~~
~~answer.~~

P. 9478.
Cpl. H. Kirk

Record Evidence for the Prosecution.

Aged Pte King A No A 34088 I am 146 Infantry and having been duly sworn state that.

At about 0120 hrs on 19 Dec 40 I was awakened by Cpl King. He proceeded to tell me of an attack on him and I got up and dressed. He asked me if there was a German machine in the lines manned with army others, I told him there was one further down the lines that I knew of. We then proceeded to see if the machine was there. On the way down he told me how he owned identifying the machine used by the ~~Germans~~ men who had attacked him that is by the flash hider brackets either side of the head light, and no licence on it. When reaching the machine I examined it and found the flash hider brackets as the Cpl had explained to me, also there was no licence on it. He said

that he wanted the man who owned the machine placed under arrest, so we proceeded out to the room where the man slept, as I learned that the motorcycle had been used by Private Smith. On going into the Smiths quarters, the light was on, and the Smith was lying on bed smoking a cigarette. I asked him where he had been that evening and he said he had been down to the garage and that he had returned to his quarters and was in for the remainder of the evening. After the corporal had seen him, he said, "That is the man". We ordered Smith to know what was wrong. I told him there had been a hell trouble out on the road, and asked him to come with me to the guardroom. He said, "I will be all right, I will be here in the morning". But I told him under the circumstances I would have to put him under close arrest. So he proceeded to get up and dressed. We accused asked Cpl Clark what was the matter. We Cpl. showed him his face, and said "That is what the

trouble is, and the accused asked him if he rode a motorcycle. and the cpl said yes, and the accused asked him. if he had fallen off it. the cpl answered that he had never fallen off a motorcycle. the accused called cross the room and asked Pte Farley whether he had been in all evening, and Pte Farley replied "as far as I am concerned, you have". then I told accused to get his blankets and I placed him under close arrest in the guardroom. on the way past the machine on the way to the guard room at approx 0135 hrs I felt the motor, AF. ~~warked him to feel the~~ AF of the machine which was cool at that time [I meant actually mine cold & time] after placing the accused in the guardroom cpl Clark and I questioned the sentries in regards to whether they had seen the machine go by, and they replied yes, at approx 0030 hrs. I then returned to my quarters.

Que. You stated that the sentries said they had seen a machine fly by. Did they identify it as my machine?

A. Mr sentries said a motorcycle had gone by with a pillion rider, and that its motor had a peculiar sound.

Que. Did they tell you what sound it was?

A. They stated that it sounded like the sound of an army machine

A34088
Sgt. A. Hickling

Next witness for the prosecution.

Chas Anderson H. No 14622 Sgt of 1 Can 14 G Hdqtrs Unit. having been duly sworn states that,

I am present Corporal of 1 Can 14 G Hdqtrs Unit.

at about 2230 hrs on the night of 18 Dec 40 after making my rounds I went to my hut, which is ~~about~~ two doors from the room in which the accused lives. It was dark and I could see the

number of my hut and I walked
in two doors too far and shouted
out the armed motorcycle. I
heard a cry in my hut and stabbed at
the fire. Then I went back up to
the armed's room. He was in
at that time, that is 2245 hrs,
I spoke to the armed, whom I
recognize, and we had a
conversation and made and drank
a cup of tea. I left the armed's
quarters at about 2320 hrs, and
the armed was sitting on his
bed at that time. He had no shoes
on, no tunic and no hat. He
was getting ready to go to bed
at the time I left him. There
were two other men in
the room at the time I left the
armed. One was asleep, and
one awake. The man who
was awake is Pte Faulds,
and he had joined in the
conversation I had had with
the armed, and had also
had a cup of tea with the armed

and myself. after I left the accused I moved to my own quarters, and I did not notice a motorcycle there, but of course I was not looking for one.

I would like to add that while I have been living in my present quarters I have seen several of the transport drivers driving the accused's motorcycle around the camp.

Questions by the accused.

Q. Did any other men, apart from the transport drivers, drive about on my motorcycle.

A. Yes I have seen others.

Q. Do you think it possible that some one else could take my machine and without my knowledge?

A. after dark, yes sir.

L/Cpl. Anderson. K 62275

Parish enquiries for the prosecution.

Pte Spencer G. D 76237 I am a Pte holding unit having been duly sworn states that.

I live in the same hut as Privates Smith the accused whom I recognise. On the evening of Wednesday 18 Dec 40 I returned home after the NAAFI closed, at about 2110 hrs, and found that there was no one in. There are only three of us living in that hut, the accused, Pte Parkin and myself. I shaved and then went upstairs to throw the water away, I stopped for a minute or so on my way up, to speak to the fellows who were in the ground floor room, and then went upstairs and to bed. I fell asleep almost immediately and I did not hear either Pte Smith or Pte Parkin come in. I knew Pte Parkin came in as he partially roused me & I know a smoke, but I dozed completely back off, and fell asleep right away again. The next I heard was

Sgt Pickering, I made some remark as to what was going on, and I then went to sleep again.

Pte George Dyer
P/14237

The accused declines to cross-examine this witness.

The accused having been warned in accordance with R.P. 4 (5) (b) elects that he wishes to make a statement on oath, and having been duly sworn states that

on the evening of Wednesday 18 Dec 40 I was at the M.T. garage in the Barracks from about 2000 hrs until approximately 2030 hrs. I went from there to the NAAFI and was there for a few minutes. I came out of there and talked to some of the boys just outside the NAAFI for quite some time, nearly an hour at least. Then I went to my room, and got partially undressed. I was making on the stove to heat and lied on my bed and had a smoke, and some maid I had got. When I arrived at my room, the phone was on the table. Shortly after I had laid down

Pte Fairbairn came in, we were talking when Cpl Anderson came in, we made and had some tea, talked for a few minutes. Cpl Anderson left at about 2215 and I retired to bed. Later on I got up and went to the toilet, and when I came back, I had a smoke, Pte Fairbairn woke up and we talked for awhile, and then Sgt Tickling came in and placed me under arrest. I was not out on my motor cycle at all on the evening of 18th Dec 40, that is outside the Barracks area, but I did use my motorcycle to drive to and from the NAAFI and my quarters. I left my motorcycle that evening when I went to my room at about 2000 hrs. I did not lend it to any one else, during forenoon may have when it was in my quarters. until Sgt Tickling brought Cpl Kirk to my room, I never saw the key before.

Pte W. J. Smith
B76706

Taken down in the presence and hearing of the accused this 20th

day of December 1940

Certified that R. P 44 (c) (d) (e) has been complied with

Ethel Lund

Clerk (HG) Herbert Court
CAPE

Further evidence in the case of
B 76706 Pte Smith W.J. (TSR) 1 Can. M.G.
Holding Unit.

Fifth Witness for Prosecution

E 77176 Pte Fairlie, E having been duly sworn states.

I am an M/T driver with 1 Can M.G. Holding unit and on 14th Dec. 1940 I arrived back to the garages about 2200 hours from Guildford where I had been on duty. I put my truck away and then went to my quarters. Pte Smith, the accused, whom I recognize was there when I arrived. We talked for a while and L/Cpl Anderson came in and we had some tea. I proceeded to go to bed & Pte Smith the accused was lying down on his bed partly dressed. This was somewhere around eleven o'clock. I didn't go out again that night and neither did the accused. I went to bed & dozed a bit and talked some with the accused and was awake when the Provost Sgt came in with another Cpl. who accused Pte Smith, with giving him a beating.

Pte E Fairlie
1 Canadian Corps Holding Unit

The accused declines to cross-examine this witness

Description of Court by which Offence tried, or in respect of which Trial dated, or Officer exercising the charge disposing with Trial	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Tribal was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this day of

(R.E. Fullerton) Lieut.
Officer i/c Records
1 Cdn. M.G. Holding Unit

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

B76706 Pte. WJ. Smith of the 1 Cdn. M.G. Holding Unit.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—The Regimental and Squadron, Battery or Company Conduct sheets are to be produced to Court with this statement but are not to be entered in the proceedings.

See Para. 964, K.R. 1935.

*The numbers here stated should correspond with the entries in the Conduct sheets, precedence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Interpretation.—If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	*Within last 12 months.	*Since Enlistment.
For A.W.L.	3 times	3 times.
For	~~nil~~	~~nil~~.
For	~~nil~~	~~nil~~.
For	~~nil~~	~~nil~~.

Number of instances of gallantry or distinguished conduct.
Nil.

~~2.~~

~~There are no entries in the Conduct sheets of the accused.~~

~~2.~~ ~~He/she has/has not been previously convicted.~~

~~3.~~

~~Previous convictions of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 53 of the Army Act, are set out in the Schedule annexed to this statement.~~

W1. 4844/0004 30,000 2/40 W. & L.td. 11—6004

3. The accused is not under sentence at the present time,

or,

~~The accused at the present time is under sentence for ..... beginning on the ..... day of .....~~

4. The accused has been in confinement, awaiting trial on the present charges

for — days in Civil Custody,

and 50 days in Military Custody.

Total ..... days.

Of which ..... days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ / attestation paper is 30 years

6. The date of his ~~commission~~ / attestation specified in his ~~record of service~~ / attestation paper is March 11,1940

~~7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is .....~~

~~8. The accused is entitled to deferred pay or gratuity in respect of ..... years' service~~

~~9. The accused is entitled to reckon ..... years' service for the purpose of determining his pension &c.~~

10. The accused is in possession of, or entitled to, no military decoration or military reward ~~for is in possession of or entitled to~~

~~11. (If the accused is a warrant officer.) The accused holds the war-rank or warrant officer and holds the regimental rank of .....~~

~~12. (In the case of an officer.) The accused holds in the army the rank of ....., dated ....., and in his regiment or corps (or department) the rank of ..... dated .....~~

~~13. The accused has served as a non-commissioned officer continuously without reduction to the present date.~~

		Date of Promotion
~~In the rank of~~	~~years~~	
~~In the rank of~~	~~years~~	
~~In the rank of~~	~~years~~	

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ....., signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name B-76706 Pte. W.J. Smith of the 1 Cdn. M.G. Holding Unit

Note.—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted

Description of Court by which tried, or status of Officer imposing of the charge or dispensing with Trial	Date and place of Trial, or summary award, or of Order dispensing with Trial	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted
		--NIL--		

(Continued overleaf.)

Toronto Scottish Regiment (MG)

No. B76706 Name Smith, W.J. | Sqn., Battery, or Company | Corps | Date of enlistment 11-3-40 | G.C. Badges | Service or Proficiency Pay | M.F.M. 6 (A.F.R. 132)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature O.C. Company, etc. | Character

Place	Date of offence	Rank	Cause of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Roteau PQ.	25-5 40	Pte.		AWL from 2359 hrs 25-5-40 to 2350 hrs 4-6-40	Cpl. Hitchcock.	9 days pay 9 days C.B.	4-6-40	Lt-Col Forbes	For. 9 days pay
Gordon	10-10-40	"		AWL from 1200 hrs to about 1515 hrs. 10-10-40	Can Prov. Corps	Award for. 5 days pay	12-10-40	Lt-Col Carpenter	Award For 5 days pay.
"A"	30-11 40	"		AWL from 0800 hrs 30-11-40 to 0800 hrs 1-12-40	Cpl. Radford	For 1 days pay. 7 days C.B.	2-12-40	Mjr. Mc Quade.	For. 1 days pay

Compiled Correct
Superseded List
in Office Records

(P.T.O.)

SK-124
SK-125

Gnr. Smith. W.T.
Pte. Burley. R.E.G.

RECORDED AT CMHQ IN AB 180 5K-124 125

FIELD GENERAL COURT-MARTIAL

CPA66 (To Issue of AFA83) 40, P & S/1898 (40/1) 4/38B

RECEIVED 12 MAY 1945 JAG BRANCH C.M.H.Q.

Convened by MAJ. GEN E.L.M. BURNS Comd CDN SEC 1 ECH 21 A. GP dated 17 APR 45.

ACCUSED.

(Where trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmt/R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C/103004	~~Pte~~ GNR	-	WILLIAM THOMAS	SMITH	1 CDN SPEC VEH COY
C/123428	PTE	-	ROSS EDWARD GEORGE	BURLEY	

PROCEEDINGS REVIEWED

J. Rodique Lieut Capt 3 June 45

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) FRANCE on (date(s)) 20 APR 45 21 APR 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member~~, JA, ~~if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OF JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused ~~is~~ (are) amenable to military law, and each charge discloses an offence.(2)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused ~~is~~ (are) brought before the Court. At 1530 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused ~~is~~ (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(1)(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to LT PAUL LEMAY as interpreter? Ans C/103004 GNR SMITH - NO C/123428 PTE BURLEY - NO

The Interpreter is sworn.(1) Do you object to N/A as shorthand writer? Ans N/A

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO → GNR W.T. SMITH
NO → PTE R.E.G. BURLEY

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	D. MACKENZIE	ESSEX SCOT ATT 2 CDN CORPS
Member	CAPT	F.A. BAILLARGEON	1 CDN DIS CENTRE
Member	CAPT	E.B. VAN DINE	1 CDN DIS CENTRE
Judge-Advocate	LT-COL	J.M.E.L. FORTIER	ATT. CDN SEC 1 ECH 21 A Gp
Prosecutor	MAJOR	B.W. HOWARD	CDN SEC 1 ECH 21 A. Gp.
Defending Offr	CAPT	H.F. GIBSON	1 CDN SPEC VEH COY

Questions by President: Is the Prosecutor a lawyer? Ans YES Is the Defending Offr a lawyer? Ans YES(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused C/103004 GNR SMITH, W.T. C/123428 PTE BURLEY, R.E.G. before arraignment make(s) (no) (a) plea (s)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court by Def. 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or evidence several accused charged jointly to be tried separately (RP 16, 71), such plea, the submission made in support or against, the ruling and name of ~~the~~ and finding are recorded per Notes. For forms of record see references in fns to Rule cited. Insert in A6 rank ~~of~~ making the plea.)

A9. The accused ~~is~~ (are) arraigned (separately) on all charges in the charge sheet.(1) The accused ~~does~~ (do) ~~not~~ object to any charge (s). There is no amendment to be made to the Charge Sheet.(2) The President records the ~~plea~~ in Part I of the Schedule.

(1. RP 31, 112. See Instrs p 2. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C/103004 GNR W.T. SMITH
C/123428 PTE R.E.G. BURLEY.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged joint, special findings, etc.)
1st R.A. SEC AI	NOT GUILTY	GUILTY	GNR W.T. SMITH
2nd	NOT GUILTY	GUILTY	PTE R.E.G. BURLEY
3rd ditto	NOT GUILTY	GUILTY	PTE R.E.G. BURLEY ONLY.
4th R.A. SEC AI			
5th			
6th			

C.103004 Gnr Smith, W.T.
C.123428 Pte Burley, R.E.G. } FGCM 20, 21 Apr 45.

Having considered the petitions of the accused and it appearing that the proceedings involve substantial injustice to the accused and I, being a superior military authority, hereby direct, under the authority vested in me by KR(Can) 574 that the record of the conviction on the charge(s) in these proceedings be and the same is hereby removed and the accused relieved of all consequences of their trial thereon.

Place U.K.

Date 27 Oct 45

J.C. Murchie
(J.C. Murchie) Lieutenant-General
Chief of Staff
Canadian Military Headquarters
A Superior Military Authority.

PROMULGATED AND EXTRACTS TAKEN

Accused	Date
C. 103004 Gnr Smith, W.T. C.123428 Pte Burley, R.E.G.	4 Nov 45

Col
ing
ne Centre

I certify that the above is a true and correct record of the proceedings of the Court.

Confirming Officer

16 MAY 1945

May D.A.G.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (RP 37(A).) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (RP 44(H).) *Accused may change a plea of Not Guilty to Guilty during trial.* (RP 38.) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (RP 37(A).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2, to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).*

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court, etc, see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. RP 35 fn 3. 2. MML p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your pleas to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement on sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans _____(5)

(1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 37(D) fn 7. MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on _____ charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on _____ charge(s). Part I of the Schedule is amended accordingly

(1. Court may be closed to consider the statement. Delete whole or part not used.)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.)

B5. The Summary of Evidence is marked Ex _____, initialled and read aloud by the President.(1)

(1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. RP 37(A) (E).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C1. If any plea is changed to Not Guilty, trial thereon proceeds by completing paras D1 to D8 inclusive of Record Form D on p 3 and marking on appropriate record thereof as a separate sheet.)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans NO(1)

(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)

(1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the _____ charge(s).(2) The Court considers the submission.(3) The Court is re-opened, and the President announces that the submission is allowed, and considers the submission.(4) The Court is re-opened, and the President announces that the submission is disallowed on the _____ charge(s), and allowed on the _____ charge(s), and finds, accordingly, that the accused is (are) found Not Guilty on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).~~(5)

(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.)

NB. If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence except on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans SGT W.T. SMITH - WITNESS ON OATH

Do you intend to call witnesses on your behalf? Ans SGT R.B.G. BURLEY - WITNESS ON OATH

Ans SGT SMITH - NO Are they witnesses as to character only? Ans N/A

Ans SGT BURLEY - NO

(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court ~~is~~ (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President ~~finds the accused Not Guilty, and~~ states to the accused that the finding(s) of the Court on the _____ charge(s), being subject to confirmation, will be promulgated later.(1)

~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith.~~

~~Or, The President announces that the accused is found Not Guilty on the _____ charge(s), and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)~~

(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(7), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans SGT SMITH W.T. & R.B.G. & YES, MYSELF AS WITNESS.

(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for his information, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C, D and Ex E, F respectively.(3)

(1. AFB 335 or AFB 296. 2. AFB 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans YES, THRO MY DEFENDING OFFICER (2)

(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to present anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA.

(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishments or punishments (see above in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. As to sentences see AA 44, 138, 182, RP 46-50, 69, 108, 119(A), KR Can 838, 130, 143-566. Overseas RO 309, 1353, MML p 90, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr, see KR Can 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

RECORDED AT CMHQ IN AB 180 as 5K-124 125

FIELD GENERAL COURT-MARTIAL

CPA96 (To Beg. of AFA23) 40/P & S/1698 4/388

RECEIVED 12 MAY 1945 JAG BRANCH C.M.H.Q.

Convening Officer: MAJ. GEN E.L.M. BURNS Comd CDN SEC 1 ECH 21 A. GP dated 17 APR 45

ACCUSED.

(For trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptnt. A/rank or A/apptnt. if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptnt. A/R or A/Apptnt.	Full Christian Names.	Surname.	Unit.
C/103004	GNR	WILLIAM THOMAS	SMITH	1 CDN SPEC VEH COY
C/123428	PTE	ROSS EDWARD GEORGE	BURLEY	

PROCEEDINGS REVIEWED

Deputy Judge Advocate General

Lt Colonel

13 June 45

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held at the Fd in (country) FRANCE on (date(s)) 20 APR. 45 - 21. APR. 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member~~ JA, ~~if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p. 4. Citations do NOT include all relevant fns RQs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 495, for duties and instrs on how to record addresses, evidence, etc., which notes are hereafter called "Notes". As to general provisions for conducting the trial see AA 52, RP 36, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet ✓ attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused ~~is~~ are(are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused ~~is~~ are(are) brought before the Court. At 1540 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused ~~is~~ are(are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO (RFC).~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to LT. PAUL LEMAY as interpreter? Ans NO - GNR W.T. SMITH - NO - PTE R.E.G. BURLEY - NO

The Interpreter is sworn.(1) Do you object to N/A as shorthand writer? Ans N/A

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans NO - GNR W.T. SMITH NO - PTE R.E.G. BURLEY

(1. RP 71a. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 23, 71, 78, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under instr, if any~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	D. MACKENZIE	ESSEX SCOT ATT 2 CERG.
Member	CAPT.	F.A. BAILLARGEON	1 CDN DIV CENTRE
Member	CAPT.	E.B. VAN DINE	1 CDN DIV CENTRE
Judge-Advocate	LT-COL	J.M.E.L. FORTIER	ATT. CDN SEC 1 ECH 21 A Gp.
Prosecutor	MAJOR	B.W. HOWARD	CDN SEC 1 ECH 21 A. Gp.
Defending Offr	CAPT.	H.F. GIBSON	1 CDN SPEC VEH COY

Questions by President: Is the Prosecutor a lawyer? Ans YES Is the Defending Offr a lawyer? Ans YES (2)

(1. RP 26, 27, 109, 111. Use of offrs under instr will be retained separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused C/103004 GNR SMITH, W.T. C/123428 PTE BURLEY, R.E.G. before arraignment make(s) (no) (✓) plea.

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), (G)), or as to the jurisdiction of the Court (RP 25(A), 113), or on bar of trial (RP 26), or as to accused's mental fitness to stand trial (AA 130, RP 57), or evidence several accused charged jointly to be tried separately (RP 14, 71), such plea, the evidence made in support or against, the ruling and name of offr and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of offr making the plea.)

A9. The accused ~~is~~ are(are) arraigned (separately) on all charges in the charge sheet.(1) The accused ~~does~~ do(do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Notes p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 464 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is cleared and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C/103004 GNR W.T. SMITH C/123428 PTE R.E.G. BURLEY.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st R.R. SEC AI.	NOT GUILTY	GUILTY	GNR W.T. SMITH
2nd	NOT GUILTY	GUILTY	PTE R.E.G. BURLEY
3rd Same } 4th R.R. SEC 45 }	NOT GUILTY	GUILTY	PTE R.E.G. BURLEY ONLY.
5th			
6th			

C.103004 Gnr Smith, W.T.
C.123428 Pte Burley, R.E.G.) FGCM 20, 21 Apr 45.

Having considered the petitions of the accused and it appearing that the proceedings involve substantial injustice to the accused and I, being a superior military authority, hereby direct, under the authority vested in me by KR(Can) 574 that the record of the convictio on the charge(s) in these proceedings be and the same is hereby removed and the accused relieved of all consequences of their trial thereon.

Place U.K.

Date 27 Oct 45

(J.C. Murchie) Lieutenant-General
Chief of Staff
Canadian Military Headquarters
A Superior Military Authority

PROMULGATED AND EXTRACTS

Accused	Date
C. 103004 Gnr Smith, W.T. C.123428 Pte Burley, R.E.G.	6 Nov 45

Col
ing
ne Centre

Confirmed 18 MAY 1945 Confirming Offr

May 45 DIAG.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 5K-124 5K-125

CPA96 (To Head of APA81) 40/P & S/1698 (40101) 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by MAJ. GEN. E.L.M. BURNS Cond Regs 2nd A. Gp dated 17 APR 45

CDN SEC 1 ECH

RECEIVED 12 MAY 1945 JAG BRANCH CMHQ

ACCUSED.

(For trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt. A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C/103004	(a) GNR (b) ~~PTE~~	WILLIAM THOMAS	SMITH	1 CDN SPEC VEH COY
C/123428	(a) PTE (b) ~~L/CPL~~	ROSS EDWARD GEORGE	BURLEY	

PROCEEDINGS REVIEWED

J Churchill Lieut-Gen
3 June 45
REVIEWING OFFICER, JAG BRANCH, C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) FRANCE on (date(s)) 20 APR 45 21 APR 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member~~, JA, ~~if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OF JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order. CF 485, for paths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused ~~is~~ (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused ~~is~~ (are) brought before the Court. At 1400 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused ~~is~~ (are) fit to undergo trial by court-martial.(1)

~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO (1).~~

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to LT. PAUL LEMAY as interpreter ? Ans NO - GNR SMITH - NO PTE BURLEY - NO

The Interpreter is sworn.(1) Do you object to N/A as shorthand writer ? Ans N/A

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)

President to accused: Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO - GNR W.T. SMITH
NO - PTE R.E.G. BURLEY

(1. RP 110. 2. If no objection, waiting member retires. RP 68(8). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	D. MACKENZIE	ESSEX SCOT ATT 2 CBRG
Member	CAPT.	F.A. BAILLARGEON	1 CDN DIS CENTRE
Member	CAPT	E.B. FAIRLIE	1 CDN DIS CENTRE
Judge-Advocate	LT-COL	J.M.E.L. FORTIER	ATT. CDN SEC 1 ECH 21 A Gp
Prosecutor	MAJOR	B.W. HOWARD	CDN SEC 1 ECH 21 A. Gp
Defending Offr	CAPT	H.F. GIBSON	1 CDN SPEC VEH COY

Questions by President: Is the Prosecutor a lawyer ? Ans YES Is the Defending Offr a lawyer ? Ans YES (2)

(1. RP 26, 27, 128, 111. List of offrs under instr will be retained separately with proceedings for information of Comm Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (5) and fn 2 were not followed. See DI p 8.)

A8. The accused C/103004 GNR SMITH, W.T. C/123428 PTE BURLEY, R.E.G. before arraignment make(s) (no) (a) plea (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(2)), 108), or as to the jurisdiction of the Court (ss 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or as to which several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 rank and name of person making the plea.)

A9. The accused ~~is~~ (are) arraigned (separately) on all charges in the charge sheet.(1) The accused ~~does~~ (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Notes p 2. When more than one Charge Sheet: see RP 61; when several accused to be tried separately see RP 71(C), and use separate copies of CF 485 to record proceedings. 2. RP 31, RP 33. If otherwise, deletes and makes appropriate record per Notes.)

A10. The Court ~~is adjourned and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: C/103004 GNR W.T. SMITH C/123428 PTE R.E.G. BURLEY

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st R.A. SEC 40	NOT GUILTY	GUILTY	GNR. W.T. SMITH
2nd	NOT GUILTY	GUILTY	PTE R.E.G. BURLEY
~~3rd~~ 2nd	NOT GUILTY	GUILTY	PTE R.E.G. BURLEY GNR.
~~4th~~ R.A. SEC 40			
5th			
6th			

C.103004 Gnr Smith, W.T.
C.123428 Pte Burley, R.E.G.) FGCM 20, 21 Apr 45.

Having considered the petitions of the accused and it appearing that the proceedings involve substantial injustice to the accused and I, being a superior military authority, hereby direct, under the authority vested in me by KR(Can) 574 that the record of the conviction on the charge(s) in these proceedings be and the same is hereby removed and the accused relieved of all consequences of their trial thereon.

J Churchie
(J.C. Murchie) Lieutenant-General
Chief of Staff
Canadian Military Headquarters
A Superior Military Authority.

Place U.K.
Date 27 Oct 45

PROMULGATED AND EXTRACTS TAKEN

Accused	Date	Signature of Offr.
C. 103004 Gnr Smith, W.T. C.123428 Pte Burley, R.E.G.	6 Nov 45	J.T. Hodgins Capt

Confirming Officer
15 MAY 1945

I certify that this is a true and correct record of the proceedings in the case of the above accused.
May 45
DJAG

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

MINUTE OF PROMULGATION

FGCM 20,21 Apr 45: C/103004 Gnr William Thomas SMITH) 1 Cdn Spec
C/123428 Pte Ross Edward George BURLEY) Veh Coy

Charges	Findings	Sentence
Army Act Sec 41 Rape	Guilty	To suffer penal servitude for the term of five (5) years and to be discharged with ignominy from His Majesty's Service.
Army Act Sec 41 Common Assault	Guilty (Pte R E G Burley ONLY)	

Confirmation

In confirm the findings and sentence.

(Sgd) E G Weeks, Major-General
in charge of Administration
Canadian Military Headquarters

18 May 45

Promulgated and extracts taken in the field in Belgium
this 29th day of May 1945.

Medhurst
(J M Medhurst) Lt Col
Officer Commanding
1 Cdn Discipline Centre

I certify or irregular confirmation

18 MAY 1945 Confirming Officer

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT [illegible] IN AB 156 5K- 124 125

RECEIVED 12 MAY 1945 JAG BRANCH C.M.H.Q.

FIELD GENERAL COURT-MARTIAL

CPA86 (To face of AFA37) 40/P & S/1698 (40701) 4/38B

Convened by MAJ. GEN E.L.M. BURNS Comd 1 CDN SEC / ECH 21 A. GP dated 17 APR 45

ACCUSED.

(For trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 306, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C/103004	GNR	WILLIAM THOMAS	SMITH	1 CDN SPEC VEH COY
C/123428	PTE	ROSS EDWARD GEORGE	BURLEY	

PROCEEDINGS REVIEWED

Lt Col
3 June 45
REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) FRANCE on (date(s)) 20 APR 45 21 APR 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member~~, JA, ~~if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF 495, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 36, 62-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused ~~is~~ (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused ~~is~~ (are) brought before the Court. At 1400 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused ~~is~~ (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(3), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to LT PAUL LEMAY as interpreter? Ans NO — CPL F.J. SMITH - NO PTE R.A.S. BURLEY - NO

The Interpreter is sworn.(1) Do you object to N/A as shorthand writer? Ans N/A
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO — Gnr W.T. SMITH
NO — Pte R.E.G. BURLEY

(1. RP 110. 2. If no objection, waiting member retires. RP 66(8). If objection, see procedure AA 51, RP 35, 36, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	D. MACKENZIE	ESSEX SCOT ATT 2 CBRG.
Member	CAPT.	F.A. BAILLARGEON	1 CDN DIS CENTRE
Member	CAPT.	E.B. VAN DINE	1 CDN DIS CENTRE
Judge Advocate	LT-COL	J.M.E.L. FORTIER	ATT. CDN SEC 1 ECH 21 A Gp
Prosecutor	MAJOR	B.W. HOWARD	CDN SEC 1 ECH 21 A. Gp
Defending Offr	CAPT	H.F. GIBSON	1 CDN SPEC VEH COY

Questions by President: Is the Prosecutor a lawyer? Ans YES Is the Defending Offr a lawyer? Ans YES (1)

(1. RP 24, 27, 109, 111. List of offrs under instr will be recorded separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (8) and (9) 3 were not followed. See DI p 3.)

A8. The accused C/103004 GNR SMITH, W.T. C/123428 PTE BURLEY, R.E.G. before arraignment make(s) (no) (a) plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 109), or as to the jurisdiction of the Court (RP 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or evidence proved accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or opposition, the ruling and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in AB rank and name of [illegible] making the plea.)

A9. The accused ~~is~~ (are) arraigned (separately) on all charges in the charge sheet.(1) The accused ~~does~~ (do) not object to any charge.(2) ~~There is~~ (are) no amendment ~~to be~~ made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 11, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF 495 to record proceedings. 2. RP 22, RP 23. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

RECORDED [illegible] IN AB 160 [illegible] 5K-124 125

FIELD GENERAL COURT-MARTIAL

CPA86 (To Duplicate AFA33) W/P AB 160B (46570) 4/38B

Convened at CDN SEC 1 ECH MAJ. GEN E.L.M. BURNS Comd 4th Armd Div CA dated 17 APR 45.

ACCUSED.

(See RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Permt, R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C/103004	GNR	WILLIAM THOMAS	SMITH	1 CDN SPEC VEH COY
C/103348	PTE	ROSS EDWARD GEORGE	BURLEY	

Reviewing Officer, JAG Branch, C.M.H.Q. 3 June 45

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) FRANCE on (date(s)) 20 APR 45 21 APR 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Members~~, JA, ~~if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Creations do NOT include all relevant fms RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order. CF A65, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused ~~is~~ (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused ~~is~~ (are) brought before the Court. At 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused ~~is~~ (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to LT PAUL LEMAY as interpreter? Ans NO — GNR W.T. SMITH — PTE R.E.G. BURLEY

The Interpreter is sworn.(1) Do you object to N/A as shorthand writer? Ans N/A

The shorthand writer is sworn.(2)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans NO — GNR W.T. SMITH — PTE R.E.G. BURLEY

(1. RP 116. 2. If no objection, waiting member retires. RP (B)(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	MAJOR	D. MACKENZIE	ESSEX SCOT ATT 2 CBRG.
Member	CAPT.	E.A. BAILLARGEON	1 CDN DIS CENTRE
Member	CAPT.	E.B. VAN DINE	1 CDN DIS CENTRE
Judge-Advocate	LT-COL	J.M.E.L. FORTIER	ATT. CDN SEC 1 ECH 21 A Gp
Prosecutor	MAJOR	B.W. HOWARD	CDN SEC 1 ECH 21 A. Gp.
Defending Offr	CAPT.	H.F. GIBSON	1 CDN SPEC VEH COY

Questions by President; Is the Prosecutor a lawyer? Ans YES Is the Defending Offr a lawyer? Ans YES (1)

(1. RP 26, 27, 109, 111. List of offrs under instr will be retained separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dil p 8.)

A8. The accused C/103004 GNR SMITH, W.T. C/103348 PTE BURLEY, R.E.G. before arraignment make(s) (no) (a) plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(F), 106), or as to the jurisdiction of the Court (by the ~~PJA~~, 113), or as bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 120, RP 57), or evidence several accused charged jointly to be tried separately (RP 16, 71), such pleas, the addresses made in support or against, the and name of [illegible] and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 names [illegible] making the plea.)

A9. The accused ~~is~~ (are) arraigned (separately) on all charges in the charge sheet.(1) The accused ~~does~~ (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See Instrs 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and see separate copies of CF A56 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is cleared and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECEIVED 12 MAY 1945 JAG BRANCH C.M.H.Q.

PROCEEDINGS REVIEWED

[illegible] PTE

Reviewing Officer, JAG Branch, C.M.H.Q. 3 June 45

...beginning on (date) N/A (1)

...evidence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of [illegible] (days, of which N/A days were spent in hospital.(1) GNR W.T. SMITH 33 PTE BURLEY 33

(1. See RP 46(A) fn 2. Information should be found on MF B355 when it is admitted in evidence under E2.)

Sentence Awarded by the Court: GNR W.T. SMITH & PTE R.E.G. BURLEY) To Suffer penal servitude for the term of five (5) years and to be dismissed from His Majesty's service

(Sgd) [illegible] Judge-Advocate, if any. 21 April 45 Date awarded. (Sgd) Donald Mackenzie President. (RP 45, 50)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

I reserve the findings and sentences for confirmation by Lieut-Gen H. D. G. Crerar, C.B., D.S.O., C.B.E., Commanding First Canadian Army.

Date 30 Apr 45 (Sgd) [illegible] Commanding Cdn Sec 1 Cdn HQ 21 A Gp

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 54-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Mitigate of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 577. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is: I confirm the findings and sentences

(I direct that the accused be committed to prison or detention barracks with hard labour.) (For SA/SR. Delete if not used.)

(E.D. WEEKS) Major, Deputy Judge Advocate General, 1st Canadian Army

Date [illegible] Commanding [illegible] Confirming Officer.

10 MAY 1945

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date. Signature of Offr.

I certify that there are no illegalities or irregularities to justify withholding confirmation of these proceedings.

[illegible] DAG

May 45

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2, *to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L* p 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*ii*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 2. 2. *MAML* p 54 para 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement ? Ans ..... (5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 37(*D*) *fn* 7. 4. *MAML* p 54 para 47. 5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*ii*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence considered as relate to the charge dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by completing such of D1 to D8 inclusive of Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans ENR W.T. SMITH - NO PTE AREG BURLEY - NO (1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court deliberates and considers the submission.(3) The Court is reopened, and the President announces that the submission is [illegible] followed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~ D4
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MAML* p 72 *paras* 12-14 *and* p 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)
NB. If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence save on grounds of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans ENR W.T. SMITH - WITNESS ON OATH PTE A.R.G. BURLEY - WITNESS ON OATH Do you intend to call witnesses on your behalf ? Ans ENR SMITH - NO PTE BURLEY - NO Are they witnesses as to character only ? Ans N/A
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 80(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)
(2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 42, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 80(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)
(2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D8. The President announces the finding(s) of Not Guilty, and states to the accused that the finding(s) of the Court on the ENR SMITH W.T. ALL CHARGES PTE BURLEY A.R.G. FIRST AND SECOND CHARGES charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is [illegible] and signed.(2)
Use this alternative announcement if accused is found Not Guilty on all charges and there are pleas of Guilty outstanding and dealt with under Record Form B or C.

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
ENR SMITH W.T. - NO
PTE BURLEY A.R.G. - YES, MYSELF AS WITNESS.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 27(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for information, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(3) (g) (h), and (ii) they purport to be (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C, D and Ex E, F respectively.(3)
(1. *MFB* 355 *or MB* 296. 2. *MBM* 6. 3. *RP* 46, *KR Can* 550. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans YES, THRO MY DEFENDING OFFICER (2)
(1. *RP* 37(*C*), 44(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove such matters as are relevant and admissible which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, [illegible]
(1. *When several accused tried separately see RP* 71 (*D*). *Give sentence only, comprised of the punishment or punishments awarded in AA 4. AA* 4*A* and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. As to sentences see *AA* 64, 136, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-566. Overseas *RO* 309, 2323, 2326, *p* 60, 757-759. *As to sentences passed for civil offences by the law of England see AA* 41(5), *MAML* p 120. *When accused already under sentence of imprisonment or detention see AA* 44(1)(b), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest for Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see orders on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

CHARGE SHEET

The accused, C.103004 Pte. William Thomas SMITH and C.123428 Pte. Ross Edward George BURLEY, both of 1 Cdn Spec Veh Coy, soldiers of the Canadian Army Overseas, are charged with:

When on Active Service

1ST CHARGE
Sec. 41 A.A.

WHEN IN A PLACE NOT WITHIN HIS MAJESTY'S DOMINIONS, COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, RAPE

in that they

in the field at Macon, France, on or about 19 Mar 45, had carnal knowledge of Mlle. Laurence Thibert without her consent.

The accused, C.123428 Pte. Ross Edward George BURLEY, of 1 Cdn Spec Veh Coy, a soldier of the Canadian Army Overseas, is charged with:

When on Active Service

2ND CHARGE
Sec. 41 A.A.

COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, COMMON ASSAULT

in that he

in the field, at Macon, France, on or about 19 Mar 45, assaulted Monsieur Jean Pariat, Sub-Brigadier, French State Police, Macon, by kicking him in the stomach with his foot.

John B. Allan
(John B. Allan) Colonel
Officer Commanding
1 Cdn Spec Veh Coy

In the Field
In France
12 Apr 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C/103004	Pte	William Thomas	SMITH	
C/123428	Pte	Ross Edward George	BURLEY	1 Cdn Spec Veh Coy, RCOC

I direct that the accused be tried by FGCM jointly in respect to the first charge and that the second charge against the accused -- C/123428 Pte Ross Edward George BURLEY -- be tried at the same time.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 17 Apr 45 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(5). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	D MacKenzie	Essex Scot att 2 CBRG

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	F A Baillargeon	1 Cdn Dis Centre
Capt	E B VanDine	1 Cdn Dis Centre

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Lt-col	JMEL Fortier	att Cdn Sec 1 Ech HQ 21 A Gp

On Active Service in the Fd

in Belgium
(Country.)

E L M Burns
(Signed personally. RP 105 fn 2.) (Rank.)

Date 17 Apr 45

(E L M Burns) Major-Gen
Commanding Cdn Sec 1 Ech, HQ 21 Army Gp
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (CFAIR, 1b (Rev. of AFA3) as of 6 Dec 44)

(See overleaf for notes and notes for use on trial.)

Approved DJA

To be tried by Field General Court Martial.

E L M Burns

In the field
17 Apr 45

(E L M Burns) Major-Gen
GOIC
Cdn Sec 1 Ech
HQ 21 Army Gp

Approved on behalf of the JAG Cdn Army Overseas pursuant to K R (Can) 540 and Overseas R O 4756.

W H Waugh

In the field
17 Apr 45

(W H Waugh) Major
DJA
Cdn Sec 1 Ech
HQ 21 Army Gp

20 April 45

I certify that I have this day examined #C 103004 Gnr. Smith W.T and #C 123428 Pte Bunday R.E.C. and they are fit to stand ~~Crad~~ by court martial.

Geo Bettesworth Capt
RCAMC
MD - #2 CF. Staging Camp.

21 April 18

I certify that I have to-day examined C 10404 Gnr. Smyth W.T. and C 123428 Pte Burley R.E and that they are fit to undergo trial by court martial

G.W.B. Stevens
Capt. R.A.M.C.
M.O. #261. Staging Camp.

DM

1.

Joint Trial

C-103004 Gnr. SMITH, W.T.
and
C-123418 Pte BURLEY, R.S.G.
1 Can Spec Veh Coy.

1st Witness for the Prosecution

M. Joannes Roure, 5 Rue de Flace, Macon, France, having been duly sworn states:

My occupation is Secretary of the Inspector for the Railroad. I remember the night of 18/19 March 45. I was coming back home from a show given by the railway. Miss Thibert, Laurence and Mme Marie Blanc Valette were with me. I saw We were coming down Cour Moreau to reach Rue Flace. We were called accosted by 3 soldiers and when they reached us we made a few more steps. They started to speak and naturally I couldn't understand a word because I do not understand the English language. I do not know to what Army they belong. We talked to them until we reached the door, about ½ hour. A I want to mean my door which is 60 meters from where we were accosted. I could recognize one of them if I saw them again. The shortest one I could not recognize. I have seen

them once when they came for Evidence. I recognize the accused in the court here now. (Indicates accused). I can recognize them by their faces. I could see them on the 18/19 March when they accosted us. When we were accosted I could easily recognize their faces and I recognize their faces very well. They accosted us approx 11:10 at night. When they accosted us there was a light. I do not know if it was the light or moon light but I could recognize them. When I reached my door, Mme Valkette was far away and Mlle Thibert was against the wall with 2 of the soldiers. At that moment Miss Thibert was standing up, struggling and yelling for me. She was yelling "Come - what do they want to do". I was trying to walk in to my room ~~and the soldiers had a big thing in his hand~~. When I came to my door and tried to open it the middle-sized chap came towards me with the big thing in his hand. At that moment I saw ~~saw~~ him away about 10 or 15 metres. The soldier returned to the group. Miss Thibert and 2 soldiers were in the group. The soldier is here today who had the big thing in his hand. (Witness indicates Pte Smith, one of the accused).

two
had gone up to my room the soldiers
stood up and moved around. I
mean by ~~stood~~ the 'moved around' that
they did not keep the same place.
Miss Thibert was there and started
yelling for me at that time. The
soldiers moved and after that
practically didn't move. They did
not remain standing; either bent
down or got on their knees. I
saw a soldier whose movements were
up and down and sideways at the
same time. His back was moving
that way. It lasted from then to
the arrival of the police. From my
window I was yelling and shouting.
I saw 4 lights. I went down to
the street. On the street I saw
a big policeman. In the shadow
I saw movements. I do not know
if they were police. Miss Thibert
came towards me and ~~sat~~ on my
doorstep as I was reaching the door.
A policeman was holding a soldier
by the collar. He handed the
soldier over to me. That soldier is
here now (Indicates Smith, accused).
The tallest one went towards Place
Rotrou ~~Saint~~. I didn't see the other one
go. The tallest one is here (Indicates
Burley, ~~accused~~ accused).

When I saw he had reached the group I waited 5 minutes. Then I ran towards my door. I had my key in my hand, opened the door, shut it when I went in ~~and then looked~~ I saw ~~the door~~ and the soldier clapped on the door. I went up to my room on the 2nd floor. I opened my window and called for help. At that moment Miss Thibert was lying down, 6 or 7 metres to the right of my door in the ditch by the side of the road. There is no sidewalk there. She was calling for me and shouting and yelling: "They choke me; what do they want?" At that moment there were 3 soldiers around her. From my window I could not see them to be able to recognize them. Miss Thibert was lying in the ditch. One soldier was lying down on his knees and you could see all his back. I couldn't tell precisely if the soldier was at her head or at her feet. I could see the back of another soldier at the left of Mlle Thibert. I couldn't precisely see the third soldier. He was practically all hidden by the other 2 soldiers. ~~All I~~ I saw ~~could see were feet~~ I didn't see the third soldier. About 15 minutes after I

had gone up to my room the two soldiers stood up and moved around. I mean by ~~stood~~ moved around that they did not keep the same place. Miss Thibert was there and started yelling for me at that time. The soldiers moved and after that practically didn't move. They did not remain standing; either bent down or got on their [illegible] I saw a soldier whose movements were up and down and sideways at the same time. His back was moving that way. It lasted from then to the arrival of the police. From my window I was yelling and shouting. I saw 4 lights. I went down to the street. On the street I saw a big policeman. In the shadow I saw movements. I do not know if they were police. Miss Thibert came towards me and ~~sat~~ on my doorstep as I was reaching the door. A policeman was holding a soldier by the collar. He handed the soldier over to me. That soldier is here now (Indicates Smith, accused). The tallest one went towards Place Morgan ~~Square~~. I didn't see the other one go. The tallest one is here (Indicates Burley, ~~[illegible]~~ accused).

DM

He was running; the Police ran behind; the police fired a shot. The tallest one turned around and gave a kick to the police. But I do not know if he hit the police or not. By the tallest soldier I mean Burley. Miss Thibert stayed on my doorstep all this time. I came to her and we went up to my room. Her hair was over her face and she was bleeding from the mouth. Her head was very swollen. When we went to our room she showed us in the presence of Mme Valette that she had blood on the inside of her thighs. She showed us her legs but said nothing about her "private parts." After seeing her thighs the police brought me to the police station. Miss Thibert made no statement to me. From the time the 3 soldiers accosted us until the police arrived there was Miss Thibert, Madame Valette, 3 soldiers and myself. During that time I saw a civilian ~~of the~~ who went through the street when we were accosted. When Miss Thibert was calling for help I did not see any other soldiers.

Cross examination.

By the tallest soldiers, I mean the 1st one on the right (Indicates Burley). The smallest soldier is the one that is not here. From 5 Rue Flace to Place Gordon is 60 to 70 metres. Rue de Flace is not very wide; maybe 5 metres. The bldg. at 5 Rue de Flace is 4 stories high; ground floor, 1st and 2nd Floors and attic. Across the street is a stone wall. It is 8 feet high. There are trees behind the stone wall. On the a.m. of 19 March I attended at the Police Station with the 2 soldiers. I was there about 15 minutes. I was in the same room with these 2 soldiers at the Police station. When the evidence was taken some days later I was here with these two soldeers. When we were escorted I recognize them by their faces. I do not recognize the shortest one because nearest to me was the tallest one. The second one was to my left about 1 metre. (Witness indicates Burley as tallest and Smith as second one). I do not know what army they are in.

after Place Gaudon I would recognize them among 200 other soldiers. Burley talked to me at Place Gaudon. The one, Smith, spoke to me. I did not understand what he said. The tallest one said: "couché" The tallest one talked most. The shortest one was 2 metres from me and went for the girl. I couldn't say what kind of a hat the smallest one wore. The middle sized one had a beret; I am not sure. I couldn't say what hat the tallest one wore. I recognize the tallest one perfectly. While speaking he took his hat off and made gestures I cannot say what kind of a hat he had on. I cannot say it was a moon. It was clear and I saw his face. In my 1st declaration I told the captain that it was "clear" and they translated it to "moon light." I now do not know if it was moonlight or street light. There is a streetlight at Place Gaudon There is a centre one. Whether There are others, I do not know. There was no light from 5 Rue de Lace I saw 4 lights of bicycles. I thought it was the police. I did not know. I left the window at once and went down. I do not think

I waited inside. I think I at once opened the door. I did not wait to make sure it was the Police. Before the arrival of the police I did not leave the window. I heard footsteps; I opened the door. From the window to the door I came down four flights of stairs. From the window to the stairs on the second flight is 20 feet. There are 4 flights of stairs. Each flight has about 15 steps. From the end of the stairs to the front door is about 4 or 5 metres. I could not hear the footsteps as I was coming down stairs. I heard footsteps when I came to the door. I was not sure it was the police. I recall the Summary of Evidence. I remember making the statement "I did not see the soldiers change place but movement was constantly taking place." By movement I mean all was moving especially feet. I could not see distinctly. I cannot say definitely that the soldiers changed places. When I opened the door I saw a big policeman take Smith and put him against the wall. I don't know how many police were there. I saw one policeman

There was the tallest one to my right. I saw a few FFI coming down. I do not know how many. Maybe 2 or 3. I did not see an Arab soldiers. I did not hear a soldier swear in French. I was up in my room later. I let Pte Smith go; Somebody else held him.

I know Miss Thibert for 3 or 4 years. I never had sexual intercourse with her.

By the Court from the place where Miss Thibert was is 7 metres to the front door. And from there to my window is about 10 metres.

The one who came toward me with the big thing in his hand was Pte. Smith. It was quite long and big and dark color. My window I was in from the street is about 10 metres from the pavement. During the time I was at my window I saw no one leave or come to the group. I knew they were soldiers when I looked out of my window. It was the same group. They had not moved. It took me less than a minute to get up the stairs. I came down less faster than I went up. It was ½ hour before the Police arrived. I saw Miss Thibert all the time

By the J.A.

There were no leaves on the trees then. I saw the PFI when I went to hold the second soldier. Miss Thibart was saying "Noel, why don't you come" several times. Noel is my other name. The tallest soldier is Pte Burley. The smallest soldier is the one I cannot identify and have not seen since. The other soldier is in Court (indicates Pte Smith). I said I heard a shot. I do not know if it was before, while or after Burley kicked at the policeman. When I left my window to come down, Miss Thibart was in the group. After that she sat on the doorstep. In the group she was still lying down. I kept my eyes on her while she was in the group. It took a short time to get down stairs. It was about 1 minute. The group was 7½ metres from my door where the incident took place. One policeman had a torch. I cannot say how many policemen were there.

RP 83(2) complied with

2nd Witness for the Prosecution

Mme Marie Alice Valette, Maternity Hosp Employee, Macon, France having been duly sworn states.

I work at the Maternity Hosp. With me is Mlle L Thibert who works there too. I went to cinema on night of 18 Mar 45 with Mlle Thibert. We met M. Roure there and walked home together. When we came near Place Gardon we met 3 soldiers who came toward us to get information. After speaking for a while one said "to sleep". I Thought he meant Hotel. They did not speak French. After a discussion one put his arm around my waist. I was frightened and ran away; not far because my friend Mlle Thibert was behind held by 2 of the soldiers. I stopped and the one who put his arms around my waist returned to the others. My friend called to me and said she could not get away from the ones that were holding her. My friend was shouting and yelling and I went for help to Duhesme Barracks. She was shouting and yelling without words.

Soldiers were with my friend but I cannot recognize or say who they were. We ran into Rue de Place and it was dark. The 3 soldiers we met first stayed with my friend when I went for help. I could not recognize them. I came back with help in 1/2 to 3/4 of an hour. With me were French soldiers to help. There were no Civil Police with me, only French soldiers. I returned to the same place. My friend was then in the house. I saw 2 soldiers on the wall with French Police. I ran up stairs to M. Rome's apt. I saw my girl friend there. I couldn't recognize her. She had hair in her face and was full of blood. Her dress coat was torn and her step-ins. She had blood inside of her thighs. She was swollen around her lips she couldn't speak. All she could say was: "terrible". I asked her if she had been raped. She didn't want to say 'yes' but said it afterwards

Cross-examination:
At Place Gardon the I don't know how many lights there are. It is easy to see people in Place Gardon. I would recognize the one who put his arm around my waist. He is not one of these two. They were

Close to me. When I left the group the one returned to the group. I would be able to recognize a person seen 3 meters away in Place Gardon. We stopped because we thought they wanted information about their billets. They came very near. I would recognize the one who put his arm around my waist. I did not see the other 2 soldiers. They were near my friend. My girl friend and I were walking together when the soldiers came up to us. The soldiers were together. The 3 soldiers and we three civilians were close together when they first spoke. It was light enough to make a distinction between a man and woman. I could not say if I could see a person 5 metres away. I could see a person 10 metres away. Cannot say if I would know the person was man or woman. My girl friend could say only "Terrible." When I insisted on an answer she told me she had been raped. I asked "did they rape you" — she said: "Yes". She answered me in a matter of minutes. She was helpless at that time. She cried and couldn't say anything except "terrible" and "yes".

By the court:

About 15 or 20 minutes elapsed from the time we met the soldiers until I ran away.

By the J A.

I was coming back from the Cinema. We met 3 soldiers. I would not be able to identify any except the one who took me by the waist. We met the soldiers for the first time at 11:20 p m.

(RP 83(B) complied with)

3RD Witness for the ~~SBV~~ Prosecution ~~SBV~~

~~SBV~~ ~~Mlle Laurence Thibert, Macon Maternity Hospital, Macon, France having been duly sworn states:~~

The court is adjourned until 0915 — 21 Apr 45

Court reopens at 0915 hrs 21 Apr 45 pursuant to adjournment, same members and J.A. present.

GWB.

Witness for the Prosecution

Mlle Laurence Thibert, employee Macon Maternity Hospital, Macon, France, having been duly sworn states:

I am 26 years old. I am single. On 18 March 45 I went to the Theatre with my friend Mme Valette. The Theatre was finished around 12 or 12:15 P.M. I left with Mme Vallete and M. Roure. We went towards our home. We went through Place Gardon that night. At Place Gardon we were stopped by three persons with military uniforms. We stopped and they asked us for information. I do not understand English and I did not understand. I was to keep on going when one put his arm around my waist. I would not recognize him. I thought I could get rid of him but he kept on squeezing hard. We went forward about 20 metres but I could not get rid of him. There were two who came. They threw me on the ground. Mme Valette had already left. M Roure was not with me at this time. There were 2 soldiers with me. Later another soldier came when I was on the ground. The 2 soldiers pushed me to the ground.

I would not recognize the 2 soldiers who pushed me. I was lying on the ground and the other soldier came along. First they hit because I was yelling. Hit me on the face. I do not know how often; very many times. I was shouting at that time. I cried and called for M. Roure and the police. Then they tried to take my knickers down; as they couldn't they tore them. These are the knickers I was wearing that night. They were not like that, that night they were intact. They are torn like that because the soldiers tore them. They are in the same condition now as after they were torn.

(Received by the Court, 1 pr. knickers, marked Exhibit "A".)

After that they raped me. They opened my legs, threw themselves on me and put their penis in my sexual parts. They did this one at a time. Two soldiers did this. I would not recognize the soldiers who did this. At this time I was trying to protect myself but as there were 3 I had no chance. I was crying, shouting & yelling.

Each of 2 soldiers inserted their private parts in me. The 2 soldiers penetrated me. I am quite sure. They did not penetrate as they would have wanted to as I was struggling. I stayed with them 15 or 20 minutes and was able to get away on the arrival of the Police. When the Police arrived I ran away about 5 metres. I did not see what the Police did. I sat on a doorstep and put my head in my hands. Afterwards I went up to M Roure's apt. My physical condition was terrible; face swollen, hair uncombed and covered with blood. Later I saw Mme Valetto. She came up to me. I told her what happened.

We met 3 soldiers at Place Gordon. I could not recognize them. Two of the three soldiers raped me. The other helped. I had not seen them earlier in the evening. I had not seen them before at all. One of the soldiers we met at Place Gordon put his arm around my waist. He was present when I was lying on the ground. I believe this because he didn't leave me. The second soldier was one of the three who stopped me. There was no other people on the street. From when we were stopped until the Police arrived I saw only these 3 soldiers.

I was medically examined the following day by Dr. Authelin and by a Medical Officer. I do not know the nationality of the soldiers.

Cross examination:

I was lying on the ground not quite in front of M Rowe's apt. Was lying on the street opposite the apt. Before the Police arrived I was standing up approx 5 minutes — may be not that. I went to sit down after the incident. I walked 10 to 12 metres to reach the doorsteps. When I sat down I put my head in my hands. I was a little dazed. At that moment I couldn't recall just what I did then. I wasn't paying any more attention as to what went on. When I was on the ground I could not see the soldiers very well. The Three soldiers always held me. When one soldier tried to lie on top of me I kicked with my legs. I was ~~not~~ yelling very loud. I was frightened. I couldn't remember if any of the soldiers put their fingers into my private parts. I only thought ~~saw~~ them ~~escaping~~. It was a penis and not a finger that was inserted into my private parts. I remember very well his position and what he was doing at that time. He did not have his fingers

There too. I was trying to get away. It is 6 years since I have had any sexual intercourse. It is a little difficult to insert a penis if I was resisting. They did not use their fingers. I am positive. I remember what they were doing at that moment. They were trying to put their penis in my sexual parts. The other 2 soldiers were holding me; by legs & arms. I could not say exactly how they were holding me. I have told you before that I tried to insert their penis in my private parts. I do not know why I hesitated to tell Mme Valette ~~that~~ why that I had been raped; she asked me what have they done. It would not be right to say that at that time I was not sure what had been done. I was confused and bothered at that time. When I was at the ground I bit one soldier on the lower lip. I could not say I scratched any one in the face. I tried to protect my self with my hands & feet. I did not scratch any of them with my hands.

Re examination:

I have had no sexual intercourse for 6 years. I remember ~~the~~ that time the feelings that go with sexual intercourse

By The Court

I wore gloves that evening. I had one on my left hand and carrying the other. I understand no English. I did not recognize the type of uniform they were wearing. The police had arrived when I went to sit on the steps. I was able to disengage when the police arrived. After meeting three soldiers, at first only one stayed with me, the other two others were with M. Roure. I do not know how long I was with the one soldiers. Mrs Valette was in front of me 10 or 20 metres; M Roure was behind with the other soldiers.

By The J. A.

I stated that I bit me soldier on the lower lip. He was lying on me at the time having intercourse with me. I don't know if it was the 1st or 2nd soldier.

The soldiers who were with me when I was laying down are the same soldiers who met me when I was with M Roure. This took place after midnight.

By the Court

All the blood came from my nose. My nose bled. When the soldiers hit me the blood went over my body. They hit me with their fists.

I got up before the Police arrived. I was not sitting on the steps when the police arrived. The police were arriving near the place. They were walking. They had their bicycles. They were 10 metres away when I first saw them.

RP 53(B) complied with

By the J.A

I did not give my consent to the Soldiers who were with me that night to have intercourse with me

R.P. 53(A) complied with

4B. Witness for the Prosecution

M. Jean Pariat, Sub Brigadier, French State Police, Macon, France, having been duly sworn states:

On early a.m. of 19 Mar 45 I proceeded to Rue de Flacé, Macon. When we arrived it was dark and we put flashlights on. I saw Mlle Thibert sitting on a doorstep. About 1½ metres were 2 soldiers. I asked her if they were her aggressors. She said yes. We put them against the wall. M. Roure came downstairs and helped me keep the 2 soldiers while my 3 friends went to get the other soldier who ran away. I identify the 2 soldiers whom we held as the two accused here today. The bigger soldier was detained by M. Roure (Indicating Smith). I was looking after the other one. He tried once to run away (Indicating Burley). I fired a shot in the air to call my friend. He gave me a kick ~~on my holster~~ here (indicating pistol case) which knocked me to the ground. As I fell I held him

by the sleeve and as I saw he wanted to get rid of me I hit him with the butt of my revolver and he fell down on the sidewalk. Mlle Thibert had her head in her hands bending down with her elbows on her thighs. She looked overwhelmed and overcome. Her eyes were swollen; lips blue and swollen; eyes swollen and closed; thighs full of blood. I asked Mlle Thibert if ~~she had been~~ (or) the soldiers had stopped her to rob her ~~or rape her~~ or abuse her or rape her. She answered that they had tried to rape her. My friends did not find the 3rd soldier. I saw 2 soldiers in Rue de Flacé and 1 Algerian soldier who passed by approx 20 minutes after my arrival. The Janitor of the Normal School because we asked her to open the door to search the park; ~~I saw~~ ~~Paul~~ was the other (curieux) we saw. I went up to M. Roure's apt for about 10 ~~minutes~~. We put our lights on the soldiers and the whole area. While in M Roure's apt. Mme Valette came up. My friends detained the 2 soldiers down stairs. We ~~later~~ took them in the laundry of the Normal School ~~room~~ and later to the Police Station. The 2 accused are these

2 soldiers

Cross-examination:

On the telephone I was not told how many soldiers there were. Mlle Thebat + M. Roure told us there were 3 soldiers. We arrived at Rue de Flace by Place Gaston. We were riding bicycles. One bicycle had a light. There were 4 bicycles. We got off our bicycles at 5 Rue de Flace. We encircled the soldiers immediately. I did not strike the soldier in the eye immediately. I hit him later with the butt of my revolver. When we were encircling the soldiers I did not catch hold of one soldier causing him to fall to the ground. We then put the soldiers against the wall. M. Roure arrived 2 or 3 minutes later. It is not true that I struck Pte Bouley after he tried to run away. I struck him when he gave me a kick. He did not ~~hit~~ hit me with his fist. I was keeping the 2 soldiers in respect of my revolver against the wall and picking up bicycles with my other hand. Pte. Bouley could have run away without touching me up Rue de Flace. He tried to run to Place Gaston and came in touch with me. He hit my pistol holster

with his foot. M. Roure could not see the kick. I gave Pte Burley quite a severe blow. He had to be taken to the Hospital. I went with him. The Secretary of the Commissioner Gallie examined the soldiers at the Police station. He gave them a quick examination. He did not examine the front of their trousers. He just looked at them because Miss Thibert said she hadn't been raped but they had tried to rape her. He looked at them because we look at everybody. It was to me that Mlle Thibert said she had not been raped but they had tried to rape her. This was at the scene when I first asked her.

By the Court.

The soldiers were 1 metre or 1½ metres from Mlle Thibert when I arrived. She was sitting on the steps. They were about 20 cm from the steps. When I arrived they were standing up looking towards Place Gordon. I did not see a third soldier. M. Roure had not come down stairs yet when I approached the scene. It was too dark to see him in the window.

By The J.A

M. Ronne + Mlle Thibert said there was a 3rd soldier.

I spoke to Mlle Thibert on my arrival. ~~I said to her: I used then was the exact word~~ "were these soldiers the agressors, did they want to rob her or rape her."

She answered that they wanted to abuse of her but the exact words I do not remember. I don't believe she used the word "rape". ~~(illegible)~~ When I asked her if they had abuse of her she said yes they have abuse of me. I remember the Summary of Evidence. I don't remember if the exact term abuse or rape was used. It is the same thing. She replied "They tried to rape or abuse me". The word "try" was used or the word "attempt" was used.

Note: The sub brigadier (witness) wears his pistol case near the front of his belt on the left side.

When I asked Mlle Thibert whether she had been robbed or raped she was sitting on the steps. It was 1 minute after we arrived ~~(illegible)~~

We all had flashlights. They were not lighted when we came down the street on the bicycles Only 1 flashlight was lighted.

R P 88(Pa) Complied with

5th Witness for the Prosecution

Capt G. W. Bethune, RCAMC, HQ No 2 Staging Camps having been duly sworn states:

I examined Miss Laurence Thilett on a. m. of 19 March 45. Her face was disfigured and swollen and cut. Her general condition was good. There were injuries on the face and external genital organs She was hurt but not seriously.

Hemorrhages of both eyes which were conjuctival. They were the result of a blow on the eyes. The left eye was nearly shut. The inside of both lips cut and the upper lip badly swollen. Several minor lacerations on ~~both~~ left cheek. No bruises or lacerations noted on thorax. Patient complained of pain in left lower chest area but respiration is free and equal. External genitals: two

small abrasions noted; one on medial side of left labia minora, second slightly posterior lateral to first. These injuries appear rather fresh. Some whitish secretion was noted which when examined by microscope showed only usual vaginal debris. There was small bruise in inner aspect of left thigh. The abrasions were not in existence for more than 12 or 24 hours. I finished the examination at 1300 hours. There was no bruise further in the vagina. I could not say what caused the abrasions. I should think they could be caused by a penis.

Cross examination:

I think a finger could cause such an abrasion. There are other things that could cause such an abrasion. No disease could cause such an abrasion. Any rough hard object could cause such an abrasion. The bruise on the inside of the thigh was about 7 inches from the genital region. I have no idea how the bruise might be caused. The bruise was a week or 10

days old.

By the Court:

If the two injuries found on the external genitalia were caused by a hand object it would be necessary for that object to penetrate into the genital organs of the person concerned in my opinion.

RP 53(B) complied with.

~~It is not in the opinion~~

The Prosecutor does not intend to call Doctor Authelin and the Defence does not require him for cross examination Shown on Summary as 6th Witness

1st Witness for the Defence

C-123428 Pte Burley R. T.G., the accused, having been duly sworn states:

I am on convoy duty with 1 Spec Veh Coy. On 18 Mar arrived in Macon. After Supper I went down town between 9:15 and 9:30, looked round the town; went to 3 Cafes, drank some Red Wine; in 3rd Cafe met 2 women. I was with Gnr. Smith. No other soldier was with us. The ladies ordered their drinks and we made arrangements

to go to their rooms. I went with one and had sexual intercourse. It cost me 200 Francs. Then I rejoined Smith in the Cafe and we left. This was about 200 after midnight. We started following the GF sign to Bivouac. We came along by the Canal and made a night run. I heard shots; did not understand them. They sounded like a motorcycle and had a note of fear. I did not pay a great deal of attention to them. We followed on the street. The shooting ceased and we found out the cries came from steps where a girl was sitting. We now know her as Helle Tubert. We had no more than arrived; we heard footsteps going up the street away from us. We had come from the direction we know now as Place Gardon. I have seen this place since. The girl was sitting on the steps with her head in her arms; Her arms were on her knees. She sounded like a child that had received a severe beating from a parent and was crying over it. An instant after

We stopped & heard cycles behind me; was grabbed by right soldier, wheeled around and received a blow on left eye by some instrument. The 3 scars of that blow are still visible. (Witness shows scars to Court). It was a hard instrument that hit me; don't think it was a fist. The force of the yank on shoulder and forced blow knocked me down. Tom Smith was at my right. I fell with my head toward Place Gardon. I lay on ground. Did not see who hit me. Was more interested in escaping. Was quite dark on street; did not see person who hit me. I watched my chance to make an escape. I didn't get on my feet and didn't cover the distance the length of my body, when I was struck on left side of my head with what I now know as butt of pistol. (Shows Court the bruise). Knocked me down where I stayed. When I moved to escape I made no motions at the person near me. He was not in my road; was to my

left hand side. I lay on ground. Was taken by what I now know as Police to Police station. There I washed blood from hands & face; blood from cut in the eye. The Police ~~had~~ threw me roughly on the floor and then examined my hands and clothes.

Cross-examination

In Canada I was with RCASC. Came over here Xmas '44. Did Inf Trg in England. Went in Spec Veh Coy about Feb. 25; am a driver for them. It was my 2nd trip from Marseilles to Belgium. Stopped in Macon before. We wear no badges or Canada badges. The last cap badge I had was Inf. It was general knowledge that we were confined to bivouac area. Came into town knowing it was against regulations. I do not know the Cafe where I went upstairs. Came downstairs and rejoined Smith. Don't know what time. They were closing as I left with Smith. When the Police agent said it was 0100 hrs I can't deny it. Came up street with GF signs on it. Know name Place Gaudon from evidence given here

Cannot from where girl was sitting. Spoke to no civilians on the street that night. I would say that witness Roure was mistaken. I would say Mlle Thibert's story is not correct. I was anxious to get away because I had had a crack in the eye and was wondering why the girl was crying. There was no one else but the girl when I came up to the girl. I would say her evidence was wrong. I would also say that the police NCO's story is a fabrication except for the part where I attempted to get away. I cannot suggest why these 3 people should concoct this story. I had only been in the city once before. I had never met the people before. There was no ~~enmity~~ between us. It is not fair to say that I came into the city to have intercourse.

By the Court:

I heard fleeing footsteps going away from Place Gaudon.

The court will adjourn to view the scene of the incident and will resume examination of the witness afterwards.

The Court viewed the scene of the incident. Present were all members, J.A., Prosecutor and Defending Officers and the accused.

By the Court:

I was following GF signs. Rue de Flace is at right angles to the route following the GF signs. My ~~attention~~ intention was to follow GF signs. I thought Rue de Flace followed GF signs and was road to Camp. I heard whimpering when I was up to the girl. I heard footsteps going away from me. I had entered the road and heard footsteps running up the hill

By the J.A.

Was coming from Canal toward Place Gaudon. Heard footsteps on Rue de Flace, about 45 steps ~~from Place Gaudon~~ before reaching the door at 5 Rue de Flace. Was with Smith at the time. We had been carrying on a conversation in natural voice. Heard a male voice shortly after we turned the corner of the street near the Canal. Did not investigate the footsteps because when we came to the doorstep the girl was crying. That is the first time we knew something was wrong. Did not see the police. My

back was to them.

By the court:

I heard a shot fired when I attempted to escape. I was lying on the ground and then I was getting up I was hit on the head. The blow on the head followed the shot. I heard more than one person running. I wouldn't like to say more than five. They would be running up hill.

By the J.A.

I did not kick the Police. I deny it. I didn't know at the time they were police. I did not attack them. I did not hear the police talking to the girl. My evidence is that I was knocked down by the Police on their arrival. I did not see what took place. Smith was standing up to my right. He was not hit by the Police. I do not know if he tried to escape. I do not remember the Cafe near the Canal. I did not in the last 2 days see any gentlemen around the Court House who would be the owner of the Cafe. I did not see M Roure in his window when I was

coming up Rue de Place. As we entered the street the shouting stopped. I heard no woman's voice as I was in the street.

By the Court

I was standing facing the doorstep and the girl when ~~the handle of the~~ I was struck ~~struck~~ ~~hit~~ ~~me~~ the first time.

Sketch of area prepared by J.A. received by the Court as Exhibit "B" after being shown to ~~accused~~ by the accused.

RP 83(B) complied with

2nd Witness for the Defence:

C-103004 Gnr Smith W.T., the accused, having been duly sworn states.

I am on convoy duty of 1 Can Spec Veh ~~boy~~ and I arrived in Naccon on afternoon of 18 Jan 45. At approx 2100 hrs we went down town. We called in a few Cafes and in 3rd Cafe we met 2 girls. They could speak a few words of English. We had a drink with them. We found out through conversation

that we could pay for intercourse. Pte Burley was with me. I had intercourse up stairs and came down. We left the Cafe for the bivouac area. We came along a street by the canal; turned left; followed G.I. sign. We heard a man's voice; kept on walking to Place Gardone; entered Rue de Flace; heard footsteps going in opposite direction, up the hill; could not say how many; more than one. Saw girl on doorstep, head in her arms, crying; but down to look at her and ask what was wrong when a policeman put me up against the wall; grabbed my hands, forced them up over my head. Spoke to girl in French — the policeman did. Was searched and taken into a bldg. Then to Police Station; one stood close in front of me looking me up + down; looked at my hands; stayed in Police Station for 3 hrs. when Cdn Sgt came for us. Convoy got into Staging area about 1800 hrs. Several vehicles were there. There were several 100 men. They were no patches.

There were Canadian & English. Saw no other soldiers leaving camp at the time we left. Not difficult to get out of camp.

Cross-examination:

Knew we were not supposed to leave camp. Got to Cafe in town where we saw girls at 11:30 hrs. There were girls in other cafes. After I had intercourse I did not look to see the name of the Cafe. Bouley + I had intercourse in the same bldg. Do not know name of street where the Cafe is. No GF signs on that street. It is 2 or 3 blocks to Place Gardon. Heard man's voice when we got to Place Gardon. I do not understand French. Did not question pvte to investigate. Heard no female voice. Met no civilians as we crossed Place Gardon. The shooting stopped when we came into the street. Was not continuous shooting. Walked up Rue Flaie on same side as the girl was. When we were 50 yards to the house we heard footsteps running away. Saw no bicycle lights

behind us that time. Did not quicken pace when heard whimpering of girl. Was on Burley's right hand when police arrived. Walking on sidewalk. We were in front of woman; I was on Burley's right slightly ahead. Heard noise of dropping bicycles. When I looked around they were behind me. Heard the police say nothing to the girl. Then they made me stay by the wall with my hands over my head. A police guarded me. Then a man came out the house and guarded me. Another policeman was guarding Burley. One of the police was searching me.

I had been on previous trip with Burley to Macon. I saw a police strike at him. It knocked him down. I didn't see him try to get up. The man who gave evidence today is not the same police who put me against the wall. I saw the 6F signs at the corner of Rue de Flace.

I wouldn't see any reason for the witnesses making up the stories.

I say that stories connecting me and Burley with the incident are wrong.

By the J.A.

I saw the police talk to Mrs Thibert. She did not point out any body to the policeman. I saw a policeman there. Was in last Cafe approx 1½ hours.

By the Court

Saw no soldiers going from last Cafe to 5 Rue de Flace.

By the J.A.

Did not speak to Mrs. Roure That night. Did ~~not~~ recognize him when he came in court. He spent approx 2 hours in Police Stn. with us. He is the civilian who held me. When I was in front of 5 Rue Flace and saw the girl crying I did not see the door open.

RP 83(B) complied with

SHW

Prosecution Closing

The accused as to the joint charge are either guilty as charged or completely innocent. It is not a case for finding of lesser charges. Thibert says she was raped, the evidence of Roane + MO corroborates. It is solely a question whether done by these accus. or persons unknown.

Roane recognizes accus. as being 2 of 3 sols. who stopped them near light on Place Gardon they moved up street + he to refuge in house. says they were same solds as just met + they were still there when police arrived Thibert says can't identify but they were same sols. to whom talking on Place Gardon. Both say no other solds around + Clift there when police arrived. Valette says the ones who chased Thibert were same ones who stopped them on the Place. The chain of identification is complete in results solely on evidence of Roane plus circumstances of both accus. being at the scene when police arrive. If Thibert are believed the accus. did rape. 2 accus. believed then they did it. 2 accus.

The circumstances there being no raises one's curiosity + it is not a question of circumstantial evidence because they are undisputed. It is a matter of its effect on credibility.

Question of someone running away - everyone agrees that someone did. Pros. evidence is that it was the 3rd sold. Def suggests it was the several solds who committed the offence - Court must decide how creditable the witnesses are + how strong the story of accidental arrival is. Two witnesses on each side plus circumstances.

P.T.O

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On 2nd charge I suggest that the facts speak for themselves.

For the Defence

1. Onus on prosecution to prove charges beyond a reasonable doubt:
   (a) that a crime has been committed
   (b) connecting the accused with the crime.

2. In re 1(a) supra in the case of rape — must prove penetration of the penis into the private parts of the female complainant Mlle. Hibert.
   (a) Evidence of Capt. Bethune K.C. is that a finger could have caused the "bruises" just inside the private parts of the complainant. — Also that there were other possibilities of the cause of the presence of these two "bruises".
   (b) First complaint made by female Mlle. Hibert to French policeman Inspector Jean Parent when she was on the steps of 5 Rue de Flore soon after the alleged incident. — Evidence is that she definitely used the words "tried" or "attempted" to rape her.
   (c) female complainant Mlle. Hibert "did not want to say she had been raped" to Mdm. Valette in apartment at 5 Rue

as seen, but on being Valbelle's insistance she finally said "yes" — nothing else.

(d) Mlle. Thibert, female complainant says that no fingers were inserted in her private parts — only two penis. — that fingers were not inserted at the same time yet all this time she was struggling, and all three alleged soldiers were about her. . . At this time she was also very confused and excited x . . . Alleged soldier couldn't get her knickers off — indicative of the struggle. . . . Highly improbable, and must definitely not be regarded as raising doubt that ~~fingers~~ penis was used. Most probable that fingers used.

(e) There no crime of rape committed.
Offences of either
(i) indecent assault
(ii) assault causing grievous bodily harm
or (iii) common assault committed.

(3) .55

3. In re 1 (b) supra, there is no satisfactory evidence connecting accused with alleged crime of rape.

(a) Complainant Mlle. Thibert cannot recognize two accused

(b) Mme. Vallette could not recognize accused.

(c) Under Sin Rouire alleges he can recognize accused But he saw accused at police station, at Summary of Evidence, and at this Court.

(d) Under Sin Rouire's evidence unsatisfactory generally. Saw police cars or perhaps bicycles with gas lights shining. Was dazzled by policeman's Point.

— idea of light of the night do not coincide with the witnesses.

— his story of the time of appearance on the latter scene entirely in disagreement with other witnesses.

— "Could not be able to recognize the shortest one, — rather incredible because he hasn't seen him since.

(c) Complainant Mlle. Thibert has no clear recognition of details. Said the police arrived on scene when he ~~was~~ just got up from the ground. Said she wasn't sitting on the steps. Said she was dazed and didn't pay any attention to what was going on. Policeman Parisot said he was on the steps

(b) When they arrived Police examined accused, found nothing out of ordinary. Complainant Thibert says she sat on steps & struggled

(d) Accused gave stories consistent with the stories of all witnesses for the prosecution, in so far as recognition is concerned except the unsatisfactory witness Rowe.

4x In so far as the second charge of assault against the Burleys, no evidence that this took place

(a) Burley knocked down by policeman & hit in eye. This not mentioned in evidence of Parisot, the police

(b) Parisot says there was not much room for Burley to pass.

[redacted] SUMMING UP

1. It is my duty as Judge-Advocate to advise the Court on matters of law. The Court is the sole judge of the facts, and if in the course of my summing up I should pass any comment or express any opinion on the evidence, the Court should disregard same. It is my duty to advise the Court to the best of my ability of the law involved in this case. Before dealing specifically with the charge which the accused is facing, there are one or two general principles upon which I would like to direct your attention.

2. In the first place, under our system of law an accused is deemed to be innocent of any crime until he is proved guilty, and the burden of proving an accused's guilt rests on the Prosecution. In other words, he who alleges a fact must prove it. If the Court after careful consideration of the evidence heard during this trial, has a reasonable doubt as to the accused's guilt on the charge, then it must exercise that doubt in the accused's favour, and find him not guilty. Reasonable doubt may be defined as such a doubt as to be entertained by an ordinary man in the conduct of his own affairs, and such a one as is not founded on sympathy, caprice or bad will.

3. The accused is charged under Section 41 of the Army Act with:

> WHEN IN A PLACE NOT WITHIN HIS MAJESTY'S DOMINIONS, COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, RAPE
>
> in that he
>
> In the field at Macon, France, on or about the 19th March 45, had carnal knowledge of Mademoiselle Lawrence THIBERT, without her consent.

Before you can find the accused guilty as charged, you must be satisfied as alleged in the particulars of the charge, that on or about the 19th March 1945, the accused had carnal knowledge with Miss Thibert, without her consent.

4. Rape is defined in Archbold Criminal Pleading Evidence and Practice, 31st edition page 1018 as follows:

> "Rape is the carnal knowledge of a woman without her consent by force, fear or fraud."

The Manual of Military Law at page 113 para 37, defines rape as follows:

> "Rape is the act of a man having carnal knowledge without her consent of a female, who is not his wife."

Penetration is considered to constitute carnal knowledge; it must therefore be proved that there was actual penetration of the female organ by some part of the male organ. The slightest penetration will be sufficient; it is not necessary to prove that there was such penetration as would be sufficient to rupture the Hymen. To prove carnal knowledge it is not necessary to prove the actual emission of seed. It must also be proved that the rape was committed on the Prosecutrix by force and without her consent.

5. Certain declarations made by Miss Thibert after the incident has been admitted in evidence. With respect to these statements, I wish to advise the Court as follows: In the case of rape, the fact that a complaint was made by the Prosecutrix shortly after the alleged offence and the particulars of such complaint may be given in evidence, so far as they relate to the charge against the accused, not as evidence of the fact complained of, but as evidence of the consistency of the conduct of the Prosecutrix with her evidence given at the trial and as negativing consent on her part. Such complaint cannot be regarded as corroboration of the story of the Prosecutrix . As to the matter of corroboration on such a charge as rape, I must advise the Court that although corroboration is not essential in law, it is, in practice, required and it is the practice to warn the jury against the danger of acting upon her uncorroborated testimony, [redacted]

[redacted]

6. Circumstantial evidence has been adduced during this trial to prove the charge. On circumstantial evidence I wish to refer the Court to the Manual of Military Law, page 81, para 42, which reads as follows:

Read para 41

"From the circumstances in which crimes are ordinarily committed, it follows that direct evidence of their commission is not always obtainable, and that in very many cases reliance must be placed on circumstantial evidence. Such evidence is in no way inferior to direct evidence, and is in some respects superior to it; for it has become a proverb that "facts cannot lie", while witnesses may. On the other hand it must be borne in mind that if facts cannot lie, they may, and often do, deceive; in other words, that the interpretation which they appear to suggest is not that which ought to be placed upon it. Therefore, before the Court finds an accused person guilty on circumstantial evidence, it must be satisfied not only that the circumstances are consistent with the accused having committed the act, but that they are inconsistent with any other rational conclusion that the accused was the guilty person."

7. The facts in this case show that at one time there were 3 soldiers in the immediate surroundings where the incident took place. Miss Thibert cannot identify [redacted] those who would have committed the alleged rape. On this point I wish to direct the attention of the Court to the responsibility of parties to an offence. The Manual of Military Law page 106, para 14 states:

"The responsibility of a person for the natural consequences of his act is not limited to the simple case where he is present, and actually commits an offence with his own hand."

Para 16 states:

"If a person is present at the commission of an offence and aids and abets its commission for another person he is responsible as though he had committed it himself. But it is not necessary that he should be actually present as an eye witness or an ear witness of the transaction; he is, in law, present aiding and abetting if, with the intention of giving assistance he is near enough to afford it should occasion arise; thus, if two or three men go out together to commit burglary, and one waits at the corner of the street to keep watch while the others commit the burglary, the watcher will be guilty of burglary equally with the others. On the other hand, if the offence charged involves some special intent, it must be shown that the assistant was cognizant of the intentions of the person whom he assisted; thus on a charge of wounding with intent to murder it must be shown that an assistant not only assisted the principal offender in what he did, but also knew what his intention was, before the former can be convicted of the full charge."

(Page 4)

8. In this case the Court has four possible verdicts which it may make. If you are satisfied that the accused committed the offences as charged, you may find ~~him~~ them guilty of rape; if on the other hand it appears to the Court upon the evidence that the accused did not complete the offence of rape, but that ~~he is~~ they are guilty only of attempting to commit the same, the Court may acquit the accused of the charge of rape, but find ~~him~~ them guilty of attempting to commit rape; further if the Court comes to the conclusion that the accused did not commit any of the two previous offences, it may find the accused guilty of indecent assault. If the Court after reviewing the whole evidence comes to the conclusion that the Prosecution has failed to prove any of the above offences, they should acquit the accused. (1)

10. In concluding my summing up, I would ask the Court to keep in mind what I have already said about giving the benefit of any reasonable doubt to the accused.

By Judge-Advocate — Mr. President: Are there any further matters on which you wish me to advise the Court?

Answer: No

Prosecutor: Are there any further matters on which you wish me to advise the Court?

Answer: No

Defending Officer: Are there any further matters on which you wish me to advise the Court?

Answer: No

(1) With respect to the second charge against Pte Bentley, before you find the accused guilty as charged, you must be satisfied as alleged in the particulars of the charge that on or about the 19 June 45 the accused was absent from Parade by hiding him in the stores with his food. The facts of this charge are simple, and do not believe that it is necessary to remark.

Lt Col Judge Adv

E-1

The accused, Gnr. Smith, W.T. gives evidence as to his character:

I am 20 years old. Never been charged in Civil life for any crime. In the army my crime sheet is clear. I am from Ontario; Almont, Ont. I am single. Enlisted March 3, 1943. Arrived England 7 May 1944, came to Continent January 1945.

The accused, Pte Burley, R. E. G. gives evidence as to his character.

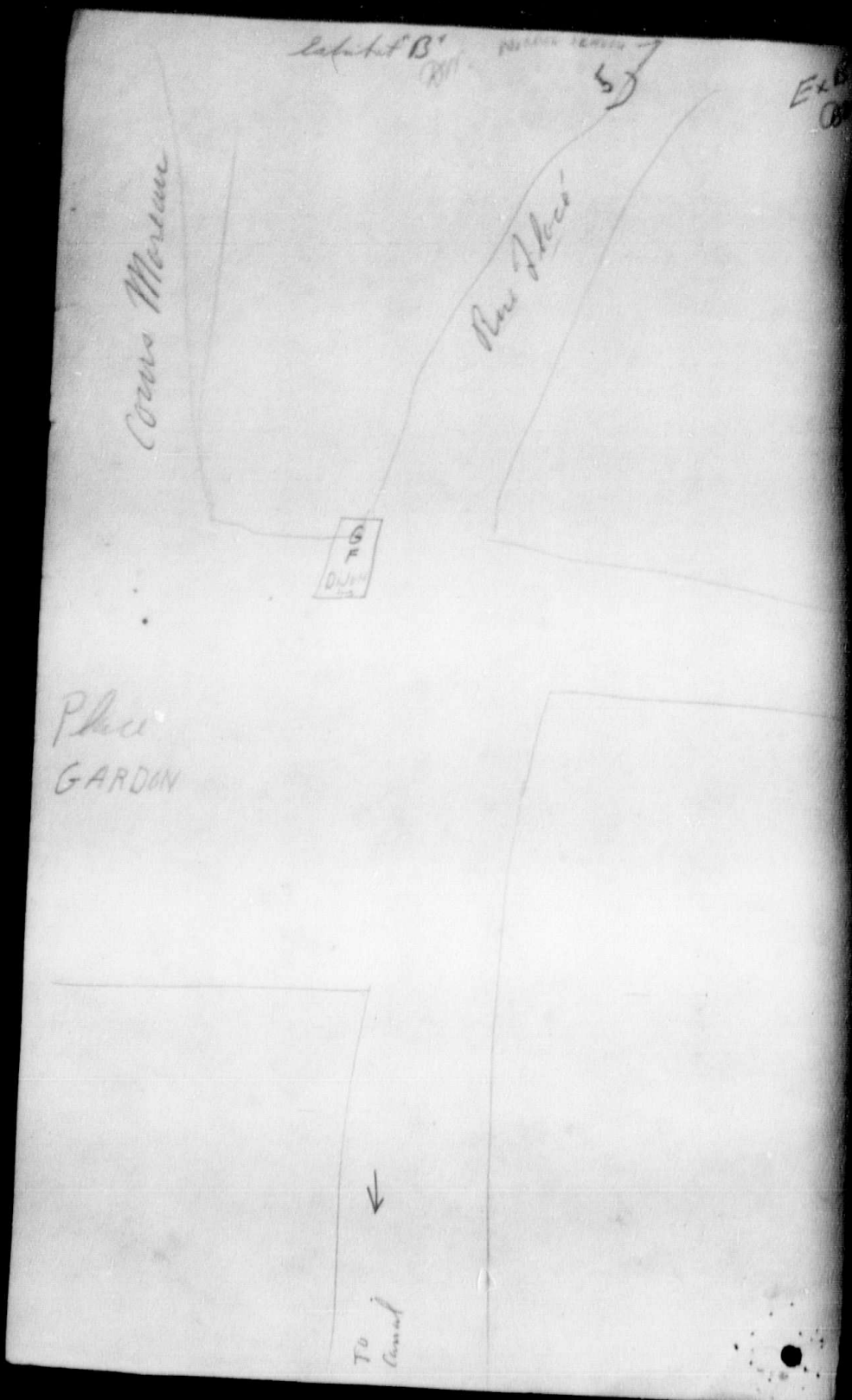
I am 31 years old; married with 2 children by my second wife and 1 by my first wife; never been charged in civil court; never been charged in the army. Enlisted RCAF 18 Feb 41. Enlisted Army 18 Jan 44. Was discharged from RCAF on compassionate grounds 7 Dec 1942. Arrived England 25 Dec 44 and on Continent Feb 45.

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E-3

Plea in Mitigation:

I should like to draw the attention of the Court to the MFR 6 of both accused and also to their statements regarding their freedom from any condition in Civil Court before their enlistment in the Army. They speak more strongly for the accused in requesting Mitigation than any argument that can be produced. This incident which is the subject of this FGCM is a difficulty in which both have become involved. Circumstances are peculiar. The appeared in this country is novel and it is submitted that this Court in passing sentence should not stamp these soldiers as criminals. Therefore when you come to the decision whether the sentence should be penal servitude or prison or detention, take all above factors into consideration: also consider the suggestion in MML P. 464 fn. 5. I submit that the court should considers it desirable to retain these 2 in the Army. Therefore the ends of justice will be satisfied and they will not be stamped as criminals. Detention is advisable.


Exhibit "B"
Cours Mersenne
Rue Thiers
G F
Place
GARDIN
To Canal

ARMY FORM B.296 (WAR). Exc

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
G.103004	Pte.	Smith, W.T.	1 Cdn Spec Veh Coy

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be asserted to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recorded special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For ------ Nil ---------- times.

For ____ times.

For ____ times.

For ____ times.

Date of first entry in Field Conduct Sheet N/A

Date of last entry in Field Conduct Sheet N/A

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*~~In the event of the accused's services in police constabulary~~ ~~xxxxx~~ ~~xxxxx~~ beginning on the ~~xxxxx~~

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for 2133 days in military custody, *i.e.*, ____ days in open arrest, 2133 days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 20 years, 10 months

6. The date of his attestation is 5 Mar 43

7. The service which the accused is allowed to reckon is N/A

*~~The accused is in possession of~~

*~~In the event of a conviction by a court martial the accused has served~~

~~xxxx

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		No previous convictions by Court-Martial		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 21st day of April, 1945

W. J. Gibson
Capt.

ARMY FORM B.296 (WAR) 2nd

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C.123428	Pte.	Burley, R.E.G.	1 Cdn Spec Veh Coy

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, precedence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For ------- Nil ---------- times.

For ____ times.

For ____ times.

For ____ times.

Date of first entry in Field Conduct Sheet N/A

Date of last entry in Field Conduct Sheet N/A

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf. Nil

*3. ~~The accused is in possession of a good conduct badge, having obtained the~~ ~~day of~~

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for 33 days in military custody, *i.e.*, — days in open arrest, 33 days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 30 years, 10 months

6. The date of his attestation is 18 Jan 44

7. The service which the accused is allowed to reckon is N/A

*Strike out if not applicable.

*8. ~~The accused is in possession of~~

*9. ~~If the accused is a non-commissioned officer, he holds the~~ ~~without reduction, to the present date.~~ ~~Date of promotion~~

~~He is the substantive rank of~~

~~He has not substantive rank.~~

~~He is the acting rank of~~

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(23054) W.L.42129/4259 45,000 15/44 A.& E.W.Ltd. Gp.698 Form F.2 G(W)(2)

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		No previous convictions by Court-Martial		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 21 st day of April, 1945

W. F. Gibson
Capt.

No. C.103084 Name SMITH, W.T. Sqn, Battery, or Company Corps R.C.A. Date of enlistment 5 Mar 43 GC Badges Service or Proficiency Pay 3/17 MFM 6

Date of last entry in Company Conduct Sheet N/A No. and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No 1 Signature OC Company, etc (Sgd) EG Miller, Lt. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	19/3/43			Blood Donor (375 C.C.)					

CERTIFIED TRUE COPY OF ORIGINAL DOCUMENT HELD IN MY POSSESSION

14 Apr 45

(Officer having custody of Regimental Books)

3/17 MFM 6 (AFB 122) 40/FAS/13615412

No. C-123428 Name BURLEY, R. Sqn, Battery, or Company — Corps R.C.A.S.C. Date of enlistment 18 Jan 44 GC Badges — Service or Proficiency Pay N/A

Date of last entry in Company Conduct Sheet — No. and date of last drunk N/A — Period not reckoning towards freedom from extra fine N/A — Sheet No One — Signature OC Company, etc (Sgd) JR Rajotte, Major — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Previous sheet destroyed 18 Jul 44 Nil Entries Nil cases of Drunkeness									

CERTIFIED TRUE COPY OF ORIGINAL DOCUMENT HELD IN MY POSSESSION

14 Apr 45

R. Shilcock Lieut.
(Officer having custody of Regimental Books)

(PTO)

NOTICE OF INTENTION TO TRY ACCUSED PERSONS JOINTLY
(R.P. 16)

TAKE NOTICE that it is intended to try you jointly on a charge of rape. If you give evidence yourself and in so doing incriminate the other soldier charged jointly with you, you are liable to be cross-examined as to character under R.P. 80(D)(iii).

John B. Allan

(John B. Allan) Colonel
O.C. 1 Cdn Spec Veh Coy

To: C.104004 Pte Smith, W.T.

C.123428 Pte Burley, R.E.G.

SUMMARY OF EVIDENCE

In the case of No.C104004 Private SMITH W.T. and No.C.123428 Private HURLEY R.E. both of 1 Canadian Special Vehicle Company.

By direction of the commanding officer the summary of evidence is taken on oath.

1st Witness for the prosecution

Mlle. Laurence TISSERT having been duly sworn states :-

I am twenty six years of age and am employed at the Macon Maternity Hospital where I reside. I am an assistant nurse.

I am unable to recognise the two accused. On the night 18th-19th March 1945 at about 0030 hrs I was returning from the theatre accompanied by Monsieur Roure and Madame Valette. At the Place Garion we were stopped by three soldiers who spoke to us. As they did not speak French I did not understand what they said although we tried to do so, especially Monsieur Roure. Madame Valette, however, did not stop and proceeded ahead. I followed her after a few minutes leaving Monsieur Roure still talking to the three soldiers. As I tried to follow Madame Valette one of the soldiers followed me and attempted to put his arm around me. I resisted whilst walking for about 20 yards. This soldier then threw me to the ground; I cannot now remember how I was thrown to the ground, but another of the soldiers was then present. When I was lying on the ground I shouted but was hit on the face by one of the soldiers. I continued to shout for the police, whilst one or both of the soldiers held my arms and legs. One of the soldiers pushed up my clothes at the same time tearing my knickers. I can produce the latter. One of the soldiers then inserted his penis in my private parts. He did not insert it fully. It was however an insertion, and he stayed on me a few minutes between my legs. As soon as this soldier had finished, another soldier took his place and also inserted his penis into my private parts. Again it was an insertion but not a full insertion. The whole time I was screaming and struggling. The second soldier did not stay on me as long as the first soldier. I then managed to escape a few yards and after sitting down [redacted] two French policemen arrived on the scene. They arrived within two minutes from my getting up from the place where I had been assaulted. When I saw the French policemen I noticed that one of them was holding a [redacted] soldiers and another soldier was still on the ground in the same place where I had been assaulted. I also heard a shot being fired.

Before and after being attacked there were no other soldiers in the vicinity, than those mentioned above. Immediately after the French policemen had arrived on the scene I went up to the apartment of Monsieur Roure and outside of which the incident had taken place. I then washed my face arms and legs. On the inside of both my thighs there was blood; I think the blood came from my nose as a result of being struck in the face.

Immediately I saw Monsieur Roure in his apartment I made a complaint to him of what had happened. This would be about ten minutes after the incident. I remained in the apartment with Mme. Valette for about an hour and a half. I then returned to the hospital with Mme. Valette and Monsieur Roure and at about midday the following day, the 19th March, I was examined by Dr. Authelin.

I did not in any way consent to what took place.

I was aware that the three soldiers were Canadians by reason of what Monsieur Roure told me in their presence.

(Continued)

L. Tisser

1.

1st witness for the prosecution (Continued)

Cross examined by Private Burley.

Question 1. Did you scratch or bite either of the soldiers alleged to have assaulted you ?
Answer 1. I think I bit the second soldier.
Question 2. Where did you bite him ?
Answer 2. About the lips.
Question 3. Did you bite sufficiently hard to leave a mark or to draw blood ?
Answer 3. I cannot say.

The accused Private Smith declines to cross-examine this witness.

L. Thibert

2nd Witness for the prosecution

Monsieur Jean PARIAT Sub-Brigadier French State Police Macon having been duly sworn states :-

On the 19th March 1945 at about 0045 hrs and as a result of a telephone call received by me I proceeded to Rue de Place near Place Gardon accompanied by three other policemen Sercy, Michelot and Eurhold. Outside No.5 Rue de Place I saw a young woman, Mlle. Thibert, whom I know and am able to recognise. She was sitting on the steps of the house and bending over. I saw that both her face and legs were covered with blood. The blood on her legs was on the inside of her thighs, and she was in a distressed condition. Within about a yard of Mlle. Thibert there were two soldiers dressed in khaki and whom I now recognise as the two accused; at the time in question I also had my electric torch with me which I shone on the accused. In the presence of the accused I began to ask Mlle. Thibert if the soldiers wanted to steal her bag or to rape her. She replied "They tried to rape me" There were no other soldiers in the vicinity at the time. Whilst speaking to Mlle. Thibert I was joined by Monsieur Roure who pointed to the accused Private Burley, saying "He struck Mlle. Thibert harder than the other soldier". In consequence of this I then arrested the accused. Neither of them had replied to the accusations made against them. During this time the other policemen who had accompanied me left me to search for a third soldier who had been referred to by Mlle. Thibert during my speaking to her.

After arresting the accused I placed them against the wall, Monsieur Roure guarding one and I the other. The accused Private Burley then attempted to escape and in preventing him from doing so he kicked me in the stomach with his foot. I was kicked in a vicious manner but my revolver and holster took the impact. As I was standing on the edge of the pavement at the time, I fell to the ground. His attack was such that it was necessary for me to throw the accused Private Burley to the ground by pulling his legs and to hit him on the head with the butt of my pistol. As a result I caused a scalp wound which later received attention. I then conducted both the accused to the Police station at Macon accompanied by Monsieur Roure.

When the accused Private Burley attempted to escape I fired a shot in the air with my revolver.

2nd witness for the prosecution (Continued)

Each accused declines to cross-examine this witness.

3rd witness for the prosecution.

Madame Marie Alice VALETTE Maternity Hospital Macon having been duly sworn states :-

At about 0030 hrs on the night 18th-19th March 1945 I was returning from the theatre accompanied by my friend Mlle. Thibert and a Monsieur Roure when we were stopped by three soldiers dressed in Khaki. I did not understand what they said except that one of them used the word "couchez". They stopped us at the corner of Rue Place and Place Gardon. The soldier who spoke the word "couchez" was considerably smaller than the accused whom I am unable to recognise. One of the soldiers attempted to put his arm around my waist and when I saw that Mlle. Thibert was similarly accosted I made my escape. The soldier who put his arm around my waist was the small one above mentioned. As I made my escape I saw one of the soldiers strike Mlle. Thibert on the head. I immediately went to the French Barracks for assistance. I later returned with two soldiers and saw two soldiers against the wall with a policeman in attendance. As Mlle. Thibert was not there and after making enquiries I went into an apartment where I found Mlle. Thibert. I then saw that her face and legs were covered with blood, the latter being covered on the inside of the knees. Her coat was also torn and dirty on the back. When I first saw her Mlle. Thibert said "It's awful, it's awful" and in consequence I asked her " Were the soldiers raping you ?" She replied " Yes, yes." after I had asked her a second time and when I had asked her the further question whether the soldiers had managed to rape her. Mlle. Thibert also showed me her petticoat which was covered with blood and her knickers which were torn near the crutch. I was with her in the apartment for nearly two hours and we returned to the hospital together at 0300 hrs. Before returning to the hospital I helped Mlle. Thibert to clean herself and her clothing. She was in a distressed condition and unable to speak her face being in a very contused condition.

Each accused declines to cross-examine this witness.

4th witness for the prosecution.

Captain G.W. Bethune HQ Camp No. 2 Staging Camp ROAD having been duly sworn states :-

On 19th March 1945 I examined Mlle. Laurence Thibert at the Maternity Hospital Macon. I examined her at approximately 1200 hrs in the presence of Dr. Authelin. She was then in bed. Her general condition was good. Her pulse normal, The face was disfigured by swellings and laceration. There were haemorrhages noted in both eyes, apparently conjunctival. In the right eye there were two haemorrhages, in left eye one haemorrhage. The left eye was [redacted] nearly swollen shut. Inside of both lips cut and upper lip badly swollen. No loose teeth were noted and the jaw apparently not broken. There were several minor lacerations on left zygomatic area (cheek-bone).

4th witness for the prosecution (Continued)

Mlle.Thibert also appeared to be suffering pain on the 9th,10th and 11th ribs on the left side.

External genitalia showed two raw looking areas,one on medial aspect of left labia minora and the other similarly injury slightly posterior and slightly lateral to the former. The first area was slightly smaller than the size of a shilling; and the other area about .5 x .5 centimetres. These injuries were consistent with having been caused within 12 to 18 hrs. They were inside the private parts but before the vaginal canal.

I also noted some whitish secretion on the inside of the private parts which when examined under the microscope showed nothing but usual vaginal debris.

There was also a small bruise on the inside of the left thigh which did not appear to be fresh.

In my opinion a logical explanation of the injuries noted would be rape.

Each of the accused declines to cross-examine this witness.

W.W. Bottaro Capt.

5th witness for the prosecution.

Monsieur Joannes MUNS 5 Rue de Place Maoon having been duly sworn states:-

On the night 18th-19th March 1945 at about 0030 hours I returned from the theatre with Mme.Valette and Mlle.Thibert. I know Mlle.Thibert very well. At the corner of the Rue de Place and the Place Gerdon three soldiers stopped us after first calling to us. I recognise the accused as two of the soldiers who then stopped us. The accused whom I now know as Private Burley began to speak to me when we were stopped. The third suldier was small. When speaking to the accused Private Burley I gathered that they wanted to sleep somewhere. Whilst I was showing Private Burley a place to sleep I noticed Mme.Valette with one of the soldiers about 30 yards away. I saw her escape from this soldier, who returned towards Mlle.Thibert who was then about 10 yards away from me and who, I think, was then with the smaller soldier. At the time there were no other persons or soldiers in the vicinity. Whilst I was speaking to Private Burley,who seemed to be in an intoxicated condition,I saw Mlle.Thibert struggling with the other two soldiers about 10 yards away. She was also shouting to me. Owing to the violent demeanour of Private Burley towards me I made my escape and at the same time I saw him go towards the other two soldiers with Mlle. Thibert.

When I made my escape I ran after Mme.Valette at the same time shouting to her to get help. As I was unable to see her I returned to the scene of the struggle where I saw Mlle.Thibert standing up against a wall with the three soldiers around her. She was still struggling. I went to help her but as I did so the accused Private Smith came running towards me with something in his hand. I again ran away to a distance of about 20 yards. I then saw Private Smith return to the other two soldiers with Mlle.Thibert. I remained at the last mentioned distance for about 10 minutes during which time I saw and heard Mlle.Thibert struggling and shouting. I then returned to my apartment at 5 Rue de Place which was about 15 yards away from the scene of the struggle. As I entered the house the soldier Private Smith again ran towards me but I managed to lock the door. I then entered my apartment which is on the second floor of 5 Rue de Place and to the front. I immediately opened m my window and continued to

4.

5th witness for the prosecution. (Continued).

shout for help. I also saw that the struggle was still taking place on the opposite side of the road.

Mlle. Thibert was lying on the ground with the three soldiers still there. One soldier was either bending over or kneeling at Mlle. Thibert's head. I could only see his back. Another soldier was bending over her left side and the third soldier was lying at and half-on and half-off her right hand side. Struggling still seemed to be taking place. I watched this part of the incident for about a quarter of an hour and I was still shouting for help. I did not see the soldiers change place, but movement was constantly taking place.

The night was clear and the moon shining and I was able to see what took place.

After about a quarter of an hour I saw the two soldiers on the right and left sides of Mlle. Thibert straighten themselves. I also saw the former soldier return to his lying position.

About this time four policemen arrived on the scene and I went down to the road. I then heard one of the soldiers running away. The other two soldiers, the accused, were in the custody of two of the policemen. A few seconds afterwards I saw the accused Private Burley attempt to escape and having a struggle with one of the policemen whom I should be able to recognise again. In the struggle I saw Private Burley kick the policeman in the stomach. I also heard a shot. ~~about the same time.~~

Afterwards I returned to Mlle. Thibert who was sitting on the step of No. 5 Rue de Flace. Her face was covered with blood and her mouth was swollen. It was impossible to recognise her. When she was in my apartment I also saw her legs; on the inside of both thighs and between the knees and her ~~private parts~~ I saw streaks of blood. Although I accompanied Mlle. Thibert up to my apartment she did not then make any complaint to me about what had happened, except to ask me why I had not helped her. I remained in my apartment with Mlle. Thibert for some 10 minutes after which I left her in the company of Mme. Valette. I then went to the Police Station and after returning accompanied Mlle. Thibert and Mme. Valette to the Maternity Hospital.

J.R. ✓

Each of the accused declines to cross-examine this witness.

~~5th witness for the prosecution~~

6th witness for the prosecution.

Doctor AUBERLIN of Macon having been duly sworn states :-

I know and am able to recognise Mlle. Thibert. I examined Mlle Thibert at about 1130 hrs on the same morning of the alleged offence at the Maternity Hospital, Macon. She then complained of contusions on both eyes. She also complained of a contusion on the right side of her body. Mlle. Thibert also stated that a soldier had tried to rape her. I then examined Mlle. Thibert and found her to be suffering from contusions on both eyes, and one scratch on the left lip of her private parts ie, the fourchette. The contusions on both eyes consisted of contusions of both eyelids, and the eyes themselves were bloodshot, principally the left eye. Mlle. Thibert was also in a distressed condition.

The scratch at the fourchette was of recent origin, and her injuries generally were consistent in my opinion with the complaint made to me by Mlle. Thibert. She also produced to me her knickers which I noticed were torn. I should be able to identify the same again.

Cross examined by the accused Private Burley.

Question 1. Can you definitely state whether or not Mlle. Thibert was raped.
Answer 1. I cannot definitely say.
Question 2. What in your opinion caused the scratch at the fourchette ?
Answer 2. It was consistent with being caused by the organ of a man. The scratch referred to by me was a "ecchymose" or bruise.
Question 3. Can you say whether or not Mlle. Thibert was a virgin ?
Answer 3. She was not a virgin.

The accused Private Smith declines to cross-examine this witness.

J Auberlin

Each of the accused having been duly cautioned in accordance with Rule of Procedure 4(E) reserves his respective defence.

Certified that Rule of Procedure 4(C),(D),(E) and (F) have been complied with .

Taken down before me in the presence and hearing of the accused the 2nd and 3rd days of April 1945 at Macon, France.

Captain,
Legal Staff.
J.A.G. Branch Hq 12 L of C Area. BLA.

LIST OF WITNESSES FOR THE PROSECUTION

1st Witness	- Mlle. Laurence Thibert	Macon Maternity Hospital, Macon, Fr
2nd Witness	- Monsr. Jean Pariat	French State Police, Macon, France
3rd Witness	- Mme. Marie Alice Valette	Maternity Hospital, Macon, France
4th Witness	- Capt. G.W. Bethune	HQ Camp No.2 Staging Camp RCAMC
5th Witness	- Monsr. Joannes Roure	5 Rue de Place, Macon, France
6th Witness	- Doctor Authelin	Macon, France

LIST OF WITNESSES FOR THE DEFENCE

Nil

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SP[illegible]

Accused: C103004 Gnr W T Smith
C123428 Pte R E G Burley

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as [illegible] specs. [illegible] ged jointly.
1st AA Sec 41	Not Guilty	Guilty	Gnr W T Smith
2nd	Not Guilty	Guilty	Pte R E G Burley
3rd			
4th AA Sec 41	Not Guilty	Guilty	Pte R E G Burley only
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for N/A beginning on (date) N/A (1)
(1. Insert sentence being served, or delete. If not applicable. See RP 46(A). Information should be found on MF B255 or AF B296.)

Time in confinement awaiting present trial—a total of [illegible] days, of which Nil days were spent in hospital.(2)
(2. See RP 46(A) fn 2. Information should be found on MF B255 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

Gnr W T Smith
Pte R E G Burley } To suffer penal servitude for the term of five (5) years and to be discharged with ignominy from his Majesty's Service.

(Sgd) "Lionel Portier" Judge-Advocate, if any. Lt Col — 21 April 45 Date awarded. — (Sgd) "Donald Mackenzie" Major President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

I reserve the findings and sentences for confirmation

Date 30 Apr 45 (Sgd) "E G L W Burley" Maj Commanding Cdn Sec 1 Bch HQ 21 A Gp

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the findings and sentence.

I direct that the accused be not committed to prison or detention barracks until further orders.(1)
(1. AA 57A. Delete if not used.)

(Sgd) E. G. Weeks, Major-Gen.

Date 18 May 45 — ~~Commanding~~ i/c Administration
Confirming Officer.
Canadian Military Headquarters

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused — Date — Signature of Offr.

C103604 Gnr W T Smith 29 May 45
C123428 Pte Burley 29 May 45 J Inchmont Lt Col
Condy 16th Bde Gp

I certify that there are no illegalities or irregularities to justify withholding confirmation of these proceedings.
3 May 45 DJAG Col Bch GHQ 21 Gp

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

File here 1st Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans PTE R.E.G. BURLEY - NO CAPT J. SMITH - NO
(1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.)

D2. The Prosecutor makes (~~an~~) (no) opening address.(1) DM.
(1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).)

D3. The evidence for the Prosecution is taken.(1)
(1. RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed/allowed on the charge(s), and allowed on the charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)~~ DM
(1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans PTE R.E.G. BURLEY - WILL NOT GIVE EVIDENCE ON OATH BUT WILL MAKE A STATEMENT Do you intend to call witnesses on your behalf? Ans PTE BURLEY - NO Are they witnesses as to character only? Ans N/A.
(1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court ~~is~~ (are) recorded in Part I of the Schedule.(2) The Court is re-opened. DM.
(1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ~~PTE BURLEY R.E.G. 1 JP CHARGE~~ charge(s), being subject to confirmation, will be promulgated later.(1) ~~PTE BURLEY R.E.G. 1 JP CHARGE~~ The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2) DM DM
(Or, The President announces that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2))
(1. AA 54(3) (6), RP 45, 120(A). 2. AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1) ~~ONLY A STATEMENT WILL BE~~ Ans PTE BURLEY R.E.G. ~~I~~ Yes, character & conduct
(1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true ~~copy~~ (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C D and Ex E F respectively.(3) DM.
(1. MFB 355 or MFB 296. 2. MFM 6. 3. RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans Yes I do and Defending Officer
(1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. AA 54(6), RP 120(A).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, ~~Summary of~~.(2) DM
(1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566, Overseas AO 109, 2123, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. Where accused already under sentence of imprisonment or detention see AA 44(1B), 68(1), KR Con 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

~~NOTICE OF PROMULGATION~~

FGCM 20,21 Apr 45: C/103004 Gnr William Thomas SMITH) 1 Cdn Spec
C/123428 Pte Ross Edward George BURLEY) Veh Coy

Charges	Findings	Sentence
Army Act Sec 41 Rape	Guilty	To suffer penal servitude for the term of five (5) years and to be discharged with ignominy from His Majesty's Service.
Army Act Sec 41 Common Assault	Guilty (Pte R E G Burley ONLY)	

Confirmation

In confirm the findings and sentence.

(Sgd) E G Weeks, Major-General
in charge of Administration
Canadian Military Headquarters

18 May 45

Promulgated and extracts taken in the field in ~~Belgium~~ this 20th day of May 1945.

J F Medhurst

(J F Medhurst) Lt Col
Officer Commanding
1 Cdn Discipline Centre

C.103004 Gnr Smith, W.T.)
C.123428 Pte Burley, R.E.G.) PGCM 20, 21 Apr 45.

Having considered the petitions of the accused and it appearing that the proceedings involve substantial injustice to the accused and I, being a superior military authority, hereby direct, under the authority vested in me by KR(Can) 574 that the record of the conviction on the charge(s) in these proceedings be and the same is hereby removed and the accused relieved of all consequences of their trial thereon.

"J C Murchie"
(J.C. Murchie) Lieutenant-General
Chief of Staff
Canadian Military Headquarters.

Place U.K.

A Superior Military Authority.

Date 27 Oct 45

PROMULGATED AND EXTRACTS TAKEN

Accused	Date	Signature of Offr.
C.103004 Gnr Smith, W.T. C.123428 Pte Burley, R.E.G.	6 Nov 45	F W Hoad, Capt

515-124
TA-125

CPA86 (In lieu of AFA81)
40/P & B/1695 16(44)
4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of Maj Gen E L M Burns Comd 1 Cdn Sec 1 Echn HQ 21 A Gp dated 17 Apr 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C/103004	Gnr		William Thomas	SMITH	1 Cdn Spec
C/123428	Pte		Ross Edward George	BURLEY	Veh Coy

Certified true copy
A Lemay Maj

PROCEEDINGS OF TRIAL.

Held in the Fd in (*country*) FRANCE on (*date(s)*) 20, Apr 45
21 Apr 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member~~, JA, ~~if any, and Offrs under instr, if any~~, assemble, and the Court is closed. Dis

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) Dis
The Court is satisfied that it is properly convened and constituted(2), accused ~~is~~ (are) amenable to military law, and Dis
each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused ~~is~~ (are) brought before the Court. At 1400 hours trial commences. Dis

A4. The Prosecutor produces a Medical Certificate that accused ~~is~~ (are) fit to undergo trial by court-martial.(1) Dis
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~ Dis

(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.

A5. President to accused: Do you object to Lt Paul LEMAY as interpreter? Ans Gnr R.I.P. Smith - No
Pte R.E.G. BURLEY - No

The Interpreter is sworn.(1) Do you object to N/A as shorthand writer? Ans N/A
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
No - Gnr R Smith
Ans No - Pte (2) R G BURLEY

(1. RP 110. 2. If no objection, waiting member retires. RP 68(E). If objection, see procedure AA 51, RP 25, 71, 16, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under instr, if any~~, are sworn.(1) The following are the Dis
ranks, names and units of the offrs comprising the Court, etc:

President	Major	D MacKenzie	Essex Scot att 2 CBRC
Member	Capt	F A Baillargeon	1 Cdn Dis Centre
Member	Capt	E B Van Dine	1 Cdn Dis Centre
Judge-Advocate	Lt Col	J M & L FORTIER	Att Cdn Sec 1 Ech 21 A Gp
Prosecutor	Major	B W Howard	Cdn Sec 1 Ech 21 A Gp
Defending Offr	Capt	H F Gibson	1 Cdn Spec Veh Coy

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dis p 3.)

A8. The accused C/103420 Gnr Smith R.I.P. C/123428 Pte Burley R.E.G. before arraignment make(s) (no) (a) plea Dis
(3)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 24, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused ~~is~~ (are) arraigned (separately) on all charges in the charge sheet.(1) The accused ~~does~~ (do) Dis
not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The pro-
ceedings are continued on Record Form P

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans ..... (5)

(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 37(D) fn 5 para 3. MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty of ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(*1. Court may be cleared to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

-DM-

CHARGE SHEET

The accused, C103004 Gnr William Thomas SMITH and C123428 Pte Ross Edward George BURLEY, both of 1 Cdn Spec Veh Coy, soldiers of the Canadian Army Overseas, are charged with:

When on Active Service

1st CHARGE Sec 41 A.A. WHEN IN A PLACE NOT WITHIN HIS MAJESTY'S DOMINIONS, COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, RAPE

in that they

in the field at Macon, France, on or about 19 March 45, had carnal knowledge of Mlle. Laurence Thibert without her consent.

The accused C123428 Pte Ross Edward George BURLEY of 1 Cdn Spec Veh Coy, a soldier of the Canadian Army Overseas is charged with:

When On Active Service

2ND CHARGE Sec 41 A.A. COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, COMMON ASSAULT

in that he

in the field, at Macon, France, on or about 19 Mar 45, assaulted Monsieur Jean Pariat, Sub-Brigadier, French State Police, Macon, by kicking him in the stomach with his foot.

In the Field
In France
12 Apr 45

" John B Allan "
(John B Allan) Colonel
Officer Commanding
1 Cdn Spec Veh Coy

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field
17 Apr 45

" E L M Burns "
(E L M Burns) Major-Gen
GOIC
Cdn Sec 1 ECH
HQ 21 Army Gp

Approved on behalf of the JAG Cdn Army Overseas pursuant to K R (Can) 540 and Overseas F O 4756.

In the Field
17 Apr 45

" W H Waugh "
(W H Waugh) Major
DJA
Cdn Sec 1 Ech
HQ 21 Army Gp

D M

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C/103004	Pte		William Thomas	SMITH	
C/123428	Pte		Ross Edward George	BURLEY	1 Cdn Spec Veh Coy, RCOC

I direct that the accused be tried by FGCM jointly in respect to the first charge and that the second charge against the accused -- C/123428 Pte Ross Edward George BURLEY -- be tried at the same time.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 17 Apr 45 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial". ELMB

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)
(Delete part in brackets when not required for compliance with RP 105(C).) ELMB

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ ELMB
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Major	D MacKenzie	Essex Scot att 2 CBRD

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	F A Baillargeon	1 Cdn Dis Centre
Capt	E B Van Dine	1 Cdn Dis Centre

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)
Lt-col	JMEL Fortier	att Cdn Sec 1 Ech HQ 21 A Gp

On Active Service in the Fd

in Belgium (Country.)

" E L M Burns " (Signed personally. RP 105 fn 2.)

(E L M Burns) Major-Gen (Rank.)

Dat 17 Apr 45

Commanding Cdn Sec 1 Ech, HQ 21 Army Gp

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 90 (Th Rev. of AFA 3) 40-7 in E/6971 (8143) *(See overleaf for oaths and notes for use on trial.)*

" W H Waugh " Major
DJA

Approved

20 April 45

I certify that I have this day examined C103004 Gnr Smith W.I. and C123428 Pte Burley R.E.G. and they are fit to stand trial by Court Martial.

" G W Bettrum " Capt
RCAMC
MO - #2 GP Staging Camp

21 April 45

I certify that I have to-day examined C10404 Gnr Smith W.T. and C123428 Pte Burley E.E. And that they are fit to undergo trial by Court Martial.

" G T Bettrum " Capt

MO #2 GF Staging Camp

JOINT TRIAL

C103004 Gnr SMITH W.T.
and
C123428 Pte Burley R.E.G.
1 Cdn Spec Veh Coy

1st Witness for the Prosecution

M Joannes Roure, 5 Rue de Flace, Macon, France, having been duly sworn states:

My occupartion is Secretary of the Inspector for the Railroad. I remember the night of 18/19 March 45. I was coming back home from a show given by the railway. Miss Thibert Laurence and Mme Marie Alice Valette were with me. We were coming down conr Moreau to reach Rue Flace. We were called by 3 soldiers and when they reached us we made a few more steps. They started to speak and naturally I couldn't understand a word because I do not understand the English language. I do not know to what Army they belong. We talked to them until we reached the door, approx ½ hour until I went in, I mean my door which is 60 metres from where we were accosted. I could recognize 2 out of 3 if I saw them again. The shortest one I could not recognize. I have seen them once when they came for Evidence. I recognize the accused in the court here now. (Indicates accused). I can recognize them by their faces. I could see them on night of 18/19 March when they accosted us. When we were accosted I could easily recognize their faces and I recognize their faces very well. They accosted us approx 1230 at night. When they accosted us there was a light. I do not know if it was the light or moon light but I could recognize them. When I reached my door, Mme Vallette was far away and Mlle Thibert was against the wall with 2 of the soldiers. At that moment Miss Thibert was standing up, struggling and yelling for me. She was yelling " come - what do they want to do " I was trying to walk into my home. When I came to my door and tried to open it the middle sized chap came towards me with the big thing in his hand. At that moment I ran away about 10 or 15 metres. The soldier returned to the group - Miss Thibert and 2 soldiers were in the group. The soldier is here today who had the big thing in his hand (Witness indicates Pte Smith, one of the accused). When I saw he had reached the group I waited 5 minutes. Then I ran towards my door. I had my key in my hand, opened the door, shut it when I when I went in and the soldier clapped on the door. I went up to my room on the 2nd floor. I opened the window and called for help. At that moment Miss Thibert was lying down, 6 or 7 metres to the right of my door in the ditch by the side of the road. There is no sidewalk there. She was calling for me and shouting and yelling "they choke me; what do they want". At that moment there were 3 soldiers around her. From my window I could not see them to be able to recognize them. Miss Thibert was lying down in the ditch. One soldier was lying down on his knees and you could see all of his back. I couldn't tell precisely if the soldier was at her head or at her feet. I could see the back of another soldier at the left of Mlle Thibert. I couldn't precisely see the third soldier. He was practically all hidden by the other 2 soldiers. I didnt see the third soldier. Approx 15 minutes after I had gone up to my room the two soldiers stood up and moved around. I mean by moved around that they did not keep the same place. Miss Thibert was there and started yelling for me at that time. The soldiers moved and after that practically didnt move. They did not remain standing, either bent down or got on their knees. I saw a soldier whose movements were up and down and sideways at the same time. His back was moving that way. It lasted from then to the arrival of the police. From my window I was yelling and shouting. I saw 4 lights. I went down to the street. On the street I saw a big policeman. In the shadow I saw movements I do not know if they were police. Miss Thibert came towards me and sat on my doorstep as I was reaching the door. A policeman was holding a soldier by the collar. He handed the soldier over to me. That soldier is here now (Indicates Smith, accused) The tallest one went towards Place Moreau. I didnt see the other one go. The tallest one is here (Indicates Burley, accused)

He was running; the Police ran behind; the police fired a shot. The tallest one turned around and gave a kick to the police. But I do not know if he hit the police or not. By the tallest soldier I mean Burley. Miss Thibert stayed on my doorstep all this time. I came to her and we went up to my room. Her hair was over her face and she was bleeding from the mouth. Her head was very swollen. When we went to our room she showed us in the presence of Mme Vallete that she had blood on the inside of her thighs. She showed us her legs but said nothing about her "private parts". After seeing her thighs the police brought me to the police station. Miss Thibert made no statement to me. From the time the 3 soldiers accosted us until the police arrived. There was Miss Thibert, Madame Valette, 3 soldiers and myself. During that time I saw a civilain who went through the street when we were accosted. When Miss Thibert was calling for help. I did not see any other soldiers.

Cross examination

By the tallest soldier, I mean the 1st one on the right (Indicates Burley). The smallest soldiers is the one that is not here. From 5 Rue Place to Place Gardon is 60 to 70 metres. Rue de Place is not very wide; maybe 5 metres. The bldg at 5 Rue de Place is 4 stores high; ground floor, 1st and 2nd floor and attic. Across the street is a stone wall. It is 8 feet high. There are trees behind the stone wall. On the a.m. of the 19 March I attended at the Plice Station with the 2 soldiers. I was there about 15 minutes. I was in the same room with these 2 soldiers at the Police Station. When the evidence was taken some days later I was here with these two soldiers When we were accosted I recognize them by their faces. I do not recognize the shortest one because nearest to me was the tallest one. The second one was to my left about 1 metre. (Witness indicates Burley as tallest and Smith as second one). I do not know what army they are in. After Place Gardon I would recognize them among 200 other soldiers. Burley talked to me at Place Gardon. The one, Smith, spoke to me. I did not understand what he said. The tallest one said, "couche". The tallest one talked most. The shortest one was 2 metres from me and went for the girl. I couldn't say what kind of a hat the smallest one wore. The middle sized one had a beret; I am not sure. I couldn't say what had the tallest one wore. I recognize the tallest one perfectly. While speaking he took his hat off and made gestures. I cannot say what kind of a hat he had one. I cannot say it was a moon. It was clear and I saw his face. In my 1st declaration I told the Captain that it was "clear" and they translated it to "moon light" I now do not know if it was moonlight or street light. There is a street light at Place Gardon. There is a centre one. Whether there are other I do not know. There was no light from 5 Rue de Place. I saw 4 lights of bicycles. I thought it was the police. I did not know. I left the window at once and went down. I do not wait to make sure it was think I at once opened the door. I did not wait to make sure it was the Police. Before the arrival of the police I did not leave the window. I heard footsteps; I opened the door. From the window to the stairs on the second flight is 20 feet. There are 4 flights of stairs. Each flight has about 15 steps. From the end for the stairs to the front door is about 4 or 5 metres. I could not hear the footsteps as I was coming downstairs. I heard footsteps when I came to the door. I was not sure it was the police. I recall the summary of evidence. I remember making the statement "I did not see the soldiers change place but movement was constantly taking place". By movement I mean all was moving especially feet. I could not see distinctly. I cannot say definitely that the soldiers changed places. When I opened the door I saw big policeman take Smith and put him against the wall. I don't know how many police were there. I saw one policeman . There was the tallest one to my right. I saw a few FFI coming down. I do not know how many. Maybe 2 or 3. I did not see an Arab soldier. I did not hear soldier swear in French. I was up in my room later. I let Pte Smith go, somebody else held him.

ow Miss Thibert for 3 or 4 years. I never had sexual intercourse er.

By the Court

From the place where Miss Thibert was is 7 metres to the front door. And from there to my window is about 10 metres. The one who came toward me with the big thing in his hand was Pte Smith. It was quite long and big and dark colour. My window I was in from the street is about 10 metres from the pavement. During the time I was at my window I saw no one leave or come to the group. I knew they were soldiers when I looked out of my window. It was the same group. They had not moved. It took me less than a minute to get up the stairs. I came down less faster than I went up. It was ½ hour before the Police arrived. I saw Miss Thibert all the time

By the J.A.

There were no leaves on the trees then. I saw the FFI when I went to hold the second soldier. Miss Thibert was saying "Noel, why don't you come" several times. Noel is my other name. The tallest soldier is Pte Burley. The smallest soldiers is the one I cannot identify and have not seen since. The other soldier is in Court (indicates Pte Smith I said I heard a shot. I do not know if it was before, while or after Burley kicked at the policeman. When I left my window to come down. Miss Thibert was in the group. After that she sat on the doorstep. In the group she was still lying down. I kept my eyes on her while she was in the group. It took a short time to get down stairs. It was approx 1 minute. The group was 7 metres from my door where the incident took place. One policeman had a torch. I cannot say how many policemen were there.

RP 83 (b) complied with.

2nd Witness for the Prosecution

Mme Marie Alice Valette, Maternity Hosp, Employee, Macon, France, having been duly sworn states:

I work at the Maternity Hosp. With me is Mlle L Thibert who works there too. I went to cinema on night of 18 Mar 45 with Mlle Thibert. We met M Roure there and walked home together. When we came near Place Gardon we met 3 soldiers who came toward us to get information. After speaking for a while one said "to sleep" I thought he meant Hotel. They did not speak French. After a discussion one put his arm around my waist. I was frightened and ran away; not far because my friend Mlle Thibert was behind held by 2 of the soldiers. I stopped and the one who put his arms around my waist returned to the others. My friend called to me and said she could not get away from the ones that were holding her. My friend was shouting and yelling and I went for help to Dahesme Barracks. She was shouting and yelling without words. Soldiers were with my friend but I cannot recognize or say who they were. We ran into Rue de Place and it was dark. The 3 soldier we met first stayed with my friend when I went for help. I could not recognize them. I came back with help in ½ to ¾ of an hour. With me were Frnch soldiers to help. There were no Civil Police with me; only French soldiers. I returned to the same place. My friend was then in the house. I saw 2 soldiers on the wall with French police. I ran up stairs to M Roure's apt. I saw my girl friend there. I couldn't recognize her. She had hair in her face and was full of blood. Her dress coat was torn and her step-ins. She had blood inside of her thigh She was swollen around her lips she couldn't speak. All she could say was; "terrible". I asked her if she had been raped. She didn't want to say "yes" but said it afterwards.

Cross examination.

At Place Gardon I dont know how many lights there are. It is easy to see people in Place Gardon. I would recognize the one who put his arm around my waist. He is not one of these two. They were close to me. When I left the group the one returned to the group. I would be able to recognize a person see 3 metres away in Place Gardon. We stopped because we thought they wanted information about their billets. They came very near. I would recognize the one who put his arm around my waist.

I did not see the other 2 soldiers. They were near my friend. My [redacted] friend and I were walking together when the soldiers came up to us. The soldiers were together. The 3 soldiers and we three civilians were close together when they first spoke. It was light enough to make a distinction between a man and woman. I could not say if I could see aperson 5 metres away. I could see a person 10 metres away. Cannot say if I would know the person was man or woman. My girl friend could say only "terrible". When Insisted on an answer she told me she had been raped. I asked "did they rape you" - she said "yes". She answered me in a matter of minutes. She was helpless at that time. She cried and couldn't say anything except terrible and "yes".

By the Court

Approx 15 or 20 minutes elapsed from the time we met the soldiers until I ran away.

By the J.A.

I was coming back from the Cinema. We met 3 soldiers. I would not be able to identify any except the one who took me by the waist. We met the soldiers for the first time at 12.20 p.m.

RP 83 (b) complied with.

The Court is adjourned until 0915 - 21 Apr 45.

Court reopens at 0915 hrs 21 Apr 45 pursuant to adjournment, same members and J.A. present.

D/M

3rd Witness for the Prosecution

Mlle Laurence Thibert, Employee Macon Maternity Hospital, Macon, France, having been duly sworn states:

I am 26 years old. I am single. On 18 March 45 I went to the theatre with my friend Mme Valette. The theatres was finished around 12 or 12.15 p.m. I left with Mme Vallete and M Roure. We went towards our home. We went through Place Gardon that night. At Place Gardon we were stopped by three persons with military uniforms. We stopped and they asked us for information. I do not understand English and I did not understand. I was to keep on going when one put his arm around my waist. I would not recognize him. I though I could get ride of him but he kpt on squeezing hard. We went forward about 20 metres but I could not get rid of him. There were two who came. They threw me on the ground. Mme Valette had already left. M Roure was not with me at this time. There were 2 soldiers with me. Later another soldier came when I was on the ground. The 2 soldiers pushed me to the ground. I would not recognize the 2 soldiers who pushed me. I was lying on the ground and the other soldier came along. First they hit because I was yelling. Hit me on the face. I do not know how often; very many times. I was shouting at that time. I cried and called for M Roure and the police. Then they tried to take my knickers down; as the couldn't they tore them. These are the knickers I was wearing that night. They were not like that, that night. They were intact. They are torn like that because the soldiers tore them. They are in the same condition now as after they were torn.

(Received by the Court, 1 pr knickers, marked Exhibit "A")

After that they raped me. They opened my legs, threw themselves on me and put their penis in my sexual parts. They did this one at a time. Two soldiers did this. I would not recognize the soldiers who did this. At this time I was trying to protect myself but as there were 3 I had no chance. I was crying, shouting and yelling. Each of 2 soldiers inserted their private parts in me. The 2 soldiers penetrated me. I am quite sure. They did not penetrate as they would have wanted to as I was struggling. I stayed with them 15 or 20 minutes and was able to get away on the arrival of the police. When the Police arrived I ran away about 5 metres. I did not see what the Police did. I sat on a doorstep and put my head in my hands. Afterwards I went up to M Roure's apt. My physical condition was terrible; face swollen, hair uncombed and covered with blood. Later I saw Mme Valette. She came up to me. I told her what happened.

We met 3 soldiers at Place Gardon. I could not recognize them. Two of three raped me. The other helped. I had not seen them earlier in the evening. I had not seen them before at all. One of the soldier we met at Place Gardon put his arm around my waist. He was present when I was lying on the ground. I believe this because he didn't leave me. The second soldier was one of the three who stopped me. There was no other people on the street. From where we were stopped until the police arrived I saw only these 3 soldiers. I was medically examined the following day be Dr Authelin and by a Medical Officer. I do not know the nationality of the soldiers.

Cross examination.

I was lying on the ground not quite in front of M Roure's apt. Was lying on the street opposite the apt. Before the Police arrived I was standing up approx 5 minutes - maybe not that. I went to sit down after the incident. I walked 10 to 12 metres to reach the doorstep. When I sat down I put my head in my hands. I was a little dazed. At that moment I couldn't recall just what I did then. I was n't paying any more attention as to what went on. When I was on the ground I could not see the soldiers very well. The three soldiers always held me. When one soldier tired to lie on top of me I kicked with my legs. I was yelling very loud. I was frightened. I couldn't remember if any of the soldiers put their fingers into my private parts. I only thought then escaping. It was a penis and not a finger that was inserted into my private parts. I remember very well his position and what he was doing at that time. He did not have his fingers there too. I was trying to get away.

It is 6 years since I had had any sexual intercourse. It is a little difficult to insert a penis if I was resisting. They did not use their fingers. I am positive. I remember what they were doing at that moment. They were trying to put their penis in my private parts. The other 2 soldiers were holding me, be legs and arms. I could not say exactly how they were holding me. I have told you before that 2 tried to insert their penis in my private parts. I do not know why I hesitated to tell Mme Valette that I had been raped; she asked me what have they done. It would not be right to say that at at that time I was not sure what had been done. I was confused and bothered at that time. When I was on the ground I bit one soldier on the lower lip. I could not say I scratched any one in the face. I tried to protect myself with my hands and feet. I did not scratch any of them with my hands.

Re examination.

I have had no sexual intercourse for 6 years. I remember from that time the feelings that go with sexual intercourse.

By the Court

I wore gloves that evening. I had one on my left hand and carrying the other. I understand no English. I did not recognize the type of uniform, they were wearing. The police had arrived when I went to sit on the steps. I was able to disengage when the police arrived. After meeting three soldiers, at first only one stayed with me, the other two others were with M Roure. I do not know how long I was with the one soldier. Mme Valette was in front of me 10 or 20 metres; M Roure was behind with the other soldiers.

By the JA.

I stated that I bit one soldier on the lower lip. He was lying on me at the time having intercourse with me. I don't know if it was the 1st or 2nd soldier. The soldiers who were with me when I was laying down are the same soldiers who met me when I was with M Roure. This took place after midnight.

By the Court

All the blood came from my nose. My nose bled. When the soldiers hit me the blood went over my body. They hit me with their fist. I got up before the Police arrived. I was not sitting on the steps when the police arrived. The police were arriving near the place. They were walking. They had their bicycles. They were 10 metres away when I first saw them.

RP 83 (b) complied with.

By the JA

I did not give my consent to the soldiers who were with me that night to have intercourse with me.

RP 83 (b) complied with.

4th Witness for the Prosecution

M Jean Pariat, Sub Brigadier, French State Police, Macon, France, havin been duly sworn states:

On early a.m. of 19 Mar 45 I proceeded to Rue de Place, Macon, when we arrived it was dark and we put flashlights on. I saw Mlle Thibert sitting on a doorstep. About 1½ metres were 2 soldiers. I asked her if they were her aggressors. She said yes. We put them against the wall. M Roure came downstairs and helped me keep the 2 soldiers while my 3 friends went to get the other soldier who ran away. I identify the 2 soldiers whom we held as the two accused here today. The bigger soldier was detained by M Roure (Indicating Smith) I was looking after the other one. He tried once to run away (Indicating Burley) I fired a shot in the air to call my freind. He gave me a kick here (indicating pistol case) which knocked me to the ground. As I fell I held him by the sleeve and as I saw he wanted to get rid of me I hit him with butt of my revolver and he fell down on the sidewalk. Mlle Thibert had her head in her hands bending down with her elbows on her thighs. She looked overwhelmed and overcome. Her eyese were swollen; lips blue and swollen, eyese swollen and closed, thighs full of blood. I asked Mlle Thibert if the soldiers had stopped her to rob her or abuse her or rape her. She answered that they had tried to rape her. My friends did not find the 3rd soldier. I saw 2 soldiers in Rue de Place and 1 Algerian soldier who passed by approx 20 minutes after my arrival. The Janitor of the Normal School because we asked her to open the door to search the par; was the other civilian we saw. I went to M Roure's apt for about 10 minutes. We put our lights on the soldiers and the whole area. While in M Roure's apt. Mme Valette came up. My friends detained the 2 soldiers downstairs. We took them in the laundry of the Normal School and later to the police statio The 2 accused are those 2 soldiers.

Cross examination:

On the telephone I was not told how many soldiers there were. Mlle Thibert & M Roure told us there were 3 soldiers. We arrived at Rue de Place by Place Gardon. We were riding bicycles. One bicycle had a light. There 4 bicycles. We got off our bicycles at 5 Rue de Place We encircled the soldiers immediately. I did not strike the soldier in the eye immediately. I hit him later with the butt of my revolver. When we were encircling the soldiers I did not catch hold of one soldir causing him to fall to the ground. We then put the soldiers against the wall. M Roure arrived 2 or 3 minutes later. It is not true that I struck Pte Burley after he tried to run away. I struck him when he gave me a kick. He did not hit me with his fist. I was keeping the 2 soldiers in respect of my revolver against the wall, and picking up bicycles with my other hand. Pte Burley could have runaway without touching me up Rue de Place. He tried to run to Place Gardon and came in touch with me. He hit my pistol holster with his foot. M Roure could not see the kick. I gave Pt Burley quite a severe blow. He had to be taken to the Hospital - I went with him. The Secretary of the Commissionaire examined the soldiers at the Police Station. He gave them a quick examination. He did not examine the front of their trousers. He just looked at them because Miss Thibert said she hadn't been raped but xxxxhad tried to rape her. He looked at them because we look at everybody. It was to me that Mlle Thibert said she had not been raped but ehy had tried to rape her. This was at the scene when I first asked her.

By the Court

The soldiers were 1 metre or 1½ metres from Mlle Thibert when I arrived. She was sitting on the steps. They were about 20 cm from the steps. When I arrived they were standing up looking towards Place Gardon. I did not see a third soldier. M Roure had not come down stairs yet when I approached the scene. It was too dark to see him in the window.

By the JA

M Roure & Mlle Thibert said there was a 3rd soldier. I spoke to Mlle Thibert on my arrival. I said to her "were these soldiers the agressors, did they want to rob her or rape her". She answered that they wanted to abuse of her but the exact words I do not remember. I don't believe she used the word "rape". When I asked her if they had abuse of her she said yes they have abuse of me. I remember the Summary of Evidence. I don't remember if the exact term abuse or rape was used. It is the same thing. She replied "they tried to rape or abuse me". The word "try" was used or the word "attempt" was used.
NOTE The sub brigadier (witness) wears his pistol case near the front of his belt on the left side.

When I asked Mlle Thibert whether she had been robbed or raped she was sitting on the steps. It was 1 minute after we arrived. We all had flashlights. They were not lighted when we came down the street on the bicycles. Only 1 flashlight was lighted.

RP 83 (b) complied with.

5th Witness for the Prosecution

Capt G W Bethune, RCAMC, HQ No 2 Staging Camp having been duly sworn states:

I examined Miss Laurence Thibert on a.m. of 19 March 45. Her face was disfigured and swollen and cut. Her general condition was good. There were injuries on the face and external gevital organs. She was hurt but not seriously.

Hemmorages of both eyes which were conjuctival. They were the result of a blow on the eyes. The left eye was nearly shut. The inside of both lips cut and the upper lip badly swollen. Several minor lacerations on left cheek. No bruises or lacerations noted on thorax. Patient complained of pain in left lower chest area but respiration is free and equal. External genitals, two small abrasions noted, one on needial side of left labia minora, second slightly posterior lateral to first. These injuries appear rather fresh. Some whitish secretion was noted which when examined by microscope showed only usual vaginal debris. There was small bruise in inner aspect of left thigh. The abrasions were not in existence for more than 18 or 20 hours. I finished the examination at 1300 hours. There was no bruises further in the lips of the genital. I could not say what caused the abrasions. I should think they could be caused by a penis.

Cross examination

I think a finger could cause such an abrasion. There are other things that could cause such an abrasion. No disease that I have ever seen could cause such an abrasion. Any rough hard object could cause such an abrasion. The bruise on the inside of the thigh was about 7 inches from the genital region. I have no idea how the bruise might be caused. The bruise was a week or 10 days old.

By the Court

If the two injuries found on the external genitalia were caused by a hard object it would be necessary for that object to penetrate into the genital organs of the person concnerned in my opinion.

RP 83 (b) complied with.

DM

The prosecutor does not intend to call Doctor Authelin and the Defence does not require him for cross examination shown on Summary as 6th Witness.

1st Witness for the Defence

C123428 Pte Burley R.E.C., the accused, having been duly sworn states:

I am on convoy duty with 1 Spec Veh Coy. On 18 Mar arrived in Macon. After supper I went down town between 9.15 and 9.30, looked around the town; want to 3 cafes, drank some Red Wine; in 3rd cafe met 2 women. I was with Gnr Smith. No other soldier was with us. The ladies ordered their drinks and we made arrangments to go to their rooms. I went with one and had sexual intercourse. It cost me 200 Francs. Then I rejoined Smith in the Cafe and we left. This was after midnight. We started following the 6F Sign to bivouac. We came along by the canal and made a right turn. I heard shouts, did not understand them. They sounded like a male voice and had a note of fear. I did not pay a great deal of attention to them. We followed on the street. The shouting continued and we found out the cries came from steps where a girl was sitting. We now know her as Mlle Thibert. We had no more than arrived; we heard foot steps going up the street away from us. We had come from the direction we know now as Place Gardon. I have seen this place since. The girl was sitting on the steps with her head in her arms; her arms across her knees. She sounded like a child that had received a severe beating from a parent and was crying over it. An instant after we stopped I heard bycycles behind me; was grabbed by right soldier, wheeled around and received a blow on left eye by some instrument. The 3 scars of that blow are still visible. (Witness shows scars to court) It was a hard instrument that hit me; don't think it was a fist. The force of the yank on shoulder and force of blow knocked me down. Gnr Smith was at my right. I fell with my head toward Place Gardon. I lay on ground. Did not see who hit me. Was more interested in escaping. Was quite dark on street; did not see person who hit me. I watched my chance to make an escape I didn't cover the distance the length of my body when I was struck on left side of my head with what I now know as butt of pistol. (Shows Court the bruise). Knocked me down where I stayed. When I moved to escape I made no motions at the person near me. He was not in my road, was to my left hand side. I lay on ground was taken by what I now know as Police to Police Station. There I washed blood from hands & face; blood from cut in the eye. The Police threw me roughly on the floor and then examined my hands and clothes.

Cross examination.

In Canada I was with RCASC. Came over here Xmas 44. Did Inf Trg in England. Went in Spec Veh Coy about Feb 25; am a driver for them. It was my 2nd trip from Marseilles to Belgium. Stopped in Macon before. We wear no badges or Canada badges. The last cap badeg I had was Inf. It was general knowledge that we were confirmed to bivouac area. Came into town knowing it was against regulations. I do not know the Cafe where I went upstairs. Came downstairs and rejoined Smith. Don't know what time. They were closing as I left with Smith. When the police agent said it was 0100 hrs I can't deny it. Came up street with 6F signs on it. Know name Place Cardon from evidence given here, and from where girl was sitting. Spoke to no civilians on the street that night. I would say that witness Roure was mistaken. I would say Mlle Thibert's story is not correct. I was anxious to get away because I had had a crack in the eye and was wondering why the girl was crying. There was no one else but the girl when I came up to the girl. I would say her evidence was wrong. I would also say that the police NCO's story is a fabrication except for the part where I attempted to get away. I cannot suggest why these 3 people should concoit this story. I had only been in the city once before. I had never met the people before. There was no enmity between us. It is not fair to say that I came into the city to have intercourse.

By the Court

By the Court

D M

I heard fleeing footsteps going away from Place Gardon.

The Court will adjourn to view the scene of the incident and will resume examination of the witness afterwards.

The Court viewed the scene of the incident. Present were all members, J.A., Prosecuting and Defending Officers and the accused.

By the Court

I was following 6F signs. Rue de Place is at right angles to the route following the 6F signs. My intention was to follow 6F signs. I thought Rue de Place followed 6F signs and was road to camp. I heard whimpering when I was up to the girl. I heard footsteps going away from me. I had entered the road and heard footsteps running up the hill.

By the J.A.

Was coming from Canal toward Place Gardon. Heard footsteps on Rue de Place, about 45 steps before reching the door of 5 Rue de Place Was with Smith at the time. We had been carrying on a conversation, in natural voice. Heard a male voice shortly after we turned the corner of the street near the canal. Did not investigate the footsteps because when we came to the doorstep the girl was crying. This is the first time we knew something was wrong. Did not see the police. My back was to them.

By the Court

I heard a shot fired when I attempted to escape. I was lying on the ground and then I was getting up I was hit on the head. The blow on the head followed the shot. I heard more than one person running. I wouldn't like to say more than five. They would be running up hill.

By the J.A.

I did not kick the police. I deny it. I didn't know at the time they were police. I did not attack them. I did not hear the police talking to the girl. My evidence is that I was knocked down by the Police on their arrival. I did not see what took place. Smith was standing up to my right. He was not hit by the Police. I do not know if he tried to escape. I do not remember the Cafe near the canal. I did not in the last 2 days see any gentlemen around the court house who would be the owner of the Cafe. I did not see M Roure in his window when I was coming up Rue de Place. As we entered the street the shouting stopped. I heard no woman's voice as I was in the street.

By the Court

I was standing facing the doorstep and the girl when I was hit the first time.

Sketch of area prepared by J.A. received by the Court as Exhibit "B", after being shown to the and accepted by the accused.

RP 83 (b) complied with.

2nd Witness for the Defence:

C103004 Gnr Smith W.T., the accused, having been duly sworn states.

I am on convoy duty of 1 Cdn Spec Veh Coy and I arrived in Macon on afternoon of 18 Mar 45. At approx 2100 hrs we went down town. We called in a few cafes and in 3rd Cafe we met 2 girls. They could speak a few words of English. We had a drink with them. We found out through conversation that we could pay for intercourse. Pte Burley was with me. I had intercourse upstairs and came down. We left the Cafe for the bivouac area. We came along a street by the canal; turned left, followed 6F sign. We heard a man's voice; kept on walking to Place Gardon entered Rue de Place, heard footsteps going in opposite direction, up the hill; could not say how many; more than one.

Saw girl on doorstep, head in her arms, crying, bent down to look at her and ask what was wrong when a policeman put me up against the wall; grabbed my hands, forced them up over my head. Spoke to girl in French - the Policeman did. Was searched and taken into a bldg. When to Police Station; one stood close in front of me looking me up and down; looked at my hands, stayed in Police Station for 3 hrs. When Cdn Sgt came for us. Convoy got into Staging area about 1800 hrs. Several vehicles were there. There were several 100 men. They wore no patches. There were Canadian & English. Saw no other soldiers leaving camp at the time we left. Not difficult to get out of camp.

Cross examination.

Knew we were not supposed to leave camp. Got to Cafe in town where we saw girls at 2230 hrs. There were girls in other cafes. After I had intercourse I did not look to see the name of the Cafe. Burley & I had intercourse in the same bldg. Do not know name of street where the Cafe is. No 6F signs on that street. If is 2 or 3 blocks to Place Gardon. Heard man's voice when we got to Place Gardon. I do not understand French. Did not quicken pace to investigate. Heard no female voice. Met no civilians as we crossed Place Gardon. The shouting stopped when we came into the street. Was not continuous shouting. Walked up Rue Place on same side as the girl was. When we were 50 yards to the house we heard footsteps running away. Saw no bicycle lights behind us that time. Did not quicken pace when heard whimpering of girl. Was on Burley's right hand when police arrived. Walking on sidewalk. We were in front of woman, I was on Burley's right slightly ahead. Heard noise of dropping bicycles. When I looked around they were behind me. Heard the police say nothing to the girl. Then they made me stay by the wall with my hands over my head. A police guarded me. When a man came out the house and guarded me. Another policeman was guarding Burley. One of the police was searching me.

I had been on previous trip with Burley to Macon. I saw a police strike at him. It knocked him down. I didnt see him try to get up. The man who gave evidence today is not the same police who put me against the wall. I saw the 6 F signs at the corner of Rue de Place. I wouldn't see any reason for the witnesses making up the stories. I say that stores connecting me and Burley with the incident are wrong.

By the J.A.

I saw the police talk to Miss Thibert. She did not point out anybody to the policeman. I saw 4 policeman there. Was in last cafe approx 1½ hours.

By the Court

Saw no soldiers going from Last Cafe to 5 Rue de Place.

By the J.A.

Did not speak to Mr Roure that night. Did recognize him when he came in court. He spent approx 2 hours in Police Stn, with us. He is the civilian who held me. When I was in front of 5 Rue Place and saw the girl crying I did not see the door open.

RP 83 (b) complied with.

DM

Prosecution Closing

The accused as to the joint charge are either guilty as charged or completely innocent. It is not a case for finding of lesser charges. Thibert says she was raped, the evidence of Roures & MO corroborates It is solely a question whether done by these accused or persons unknown.

Roure recognizes accus as being 2 of 3 sols who stopped them near light on Place Gardon they moved up street and he to refuge in house, says they were some solds as first met and they were still there when police arrived. Thibert says can't identify but they were some sols to whom talking on Place Gardon. Both say no other sols around and still there when police arrived. Valette says the ones who chased Thibert were same ones who stopped them on the place. The chain of identification is complete but rests solely on Evidence of Roare plus circumstances of both accus being at the scene when police arrive. If her, Thibert are believed the accus did it, 2 accus believed then they didn't do it.

The circumstance of there being there raises one's curiosity. It is not a question of circumstantial evidence because they are identified It is a matter for its effect on credibility.

Question of someone running away - everyone agrees that someone did. Pros evidence is that it was the 3rd sold. Def suggest it was the several solds who committed the offence. Court must decide how creditable the witnesses are and how strong the story of acidental arrival is. Two witness on each side plus circumstances.

On 2nd charge I suggest that the facts speak for themselves.

DM

DM

For the Defence

1 Onus on prosecution to prove charges beyond a reasonable doubt:

(a) that a crime has been committed
(b) connecting the accused with the crime.

2. In re 1(a) supra in the case of rape - must prove penetration of the penis into the private parts of the female - complainant Mlle Thibert.

(a) Evidence of Capt Betheine RCAMC is that a finger could have caused the two bruises just inside the private parts of the complainant. - also that these were other possibilities of the cuse of the presence of these two bruises.

(b) First complaint made by the female Mlle Thibert to French policeman Monsieur Jean Pariat when she was on the steps of 5 rue de Flace soon after the alleged incident - Evidence is tht she definitely used thw words "tried" or attempted" to rape her.

(c) female complainant Mlle Thibert "did not want to say she had been raped" to Mdm Vallette in apartment at 5 Rue de Flace but on Madame Vallette's insistance she finally said "Yes" - nothing else.

(d) Mlle Thibert, female complainant says that no fingers were inserted in her private parts - only two penis. - that fingers were not inserted at the same time yet all this time she was struggling and all thr e alleged soldiers were about her. At time she was alone very confused and excited. Alleged soldier couldnt get her knickers off - indicative of the struggle. Highly improbable, and most definitely not beyond a reasonable doubt that penis used. Most probable that finger used.

(e) Therefore no crime of rape committed.
Offences of either
(a) indecent assault
(b) assault causing grevious body harm
(c) common assault
committed.

3. In re 1(b) spra, there is no satisfactory evidence connecting accused with alleged crime of rape.

(a) complainant Mlle Thibert cannot recognize two accused.
(b) Mdme Vallette couldnt recognize accused.
(c) Monsieur Roure alleges he can recognize accused. But he saw accused at Police station, at Summary of Evidence and at this court.
(d) Monsieur Roure's evidence unsatisfactory generally. Saw policemen on four bicycles with four lights shining. This denied by policeman Pariat. - idea of light of the light do not coincide with the witnesses - his story of the time of appearance on the latter scene entirely in disagreement with other witnesses, - Couldn't be able to recognize the shortest one, - rather in distress because he hasn't seen him since.
(e) Complainant Mlle Thibert has no clear recognition of details. Said the police arrived on scene when she just got up from the ground. Said shw wasn't sitting on the steps - said she was dazed and didn't pay any attention to what was going on - Policeman Pariat said she was on the steps when they arrived.
(f) Police examined accused found nothing out of ordinary. Complainant Thibert says she bit on lips and struggled.
(g) Accused give stores consistent with the stores of all witnesses for the prosecution, in so far as recognition is concerned except the unsatisfactory witness Roure.

DM

4 In so far as the second charge of assault against Pte Burley, no evidence that this took place.

(a) Burley knocked down by policeman and hit in eye. This not mentioned in evidence of Pariat the policeman.

(b) Pariat says there wasn't much room for Burley to pass.

DM

D/17

SUMMING UP

1. TT is my duty as Judge-Advocate to advise the Court on matters of law. The Court is the sole Judge of the facts, and if in the course of my summing up I should pass any comment or express any opinion on the evidence, the Court should disregard same. It is my duty to advise the Court to the best of my ability of the law involved in this case. Before dealing specifically with the charge which the accused are facing, there are one or two general principles upon which I would like to direct your attention.

2. In the first place, under our system of law an accused is deem to be innocent of any crime until he is proved guilty, and the burden of proving an accused's guilt rests on the prosecution. In other words, he who alleges a fact must prove it. If the Court after careful consideration of the evidence heard during the trial, has a reasonable doubt as the accused's guilt on the charge, then it must exercise that doubt in the accused's favour, and find them not guilty. Reasonable doubt may be defined as such a doubt as to be entertained by an ordinary man in the conduct of his own affairs, and such a one as is not founded on sympathy, caprice or bad will.

3. The accused are charged under Section 41 of the Army Act with:

WHEN IN A PLACE NOT WITHIN HIS MAJESTY'S DOMINIONS, COMMITTING A CIVIL OFFENCE, THAT IS TO SAY RAPE

in that he

In the Field at Macon, France, on or about the 19th March 45, had carnal knowledge of Mademoiselle Lawrence THIBERT, without her consent.

Before you can find the accused guilty as charged, you must be satisfied as alleged in the particulars of the charge, that on or about the 19th March 1945, the accused had carnal knowledge with Miss Thibert, without her consent.

4. Rape is defined in Archbod Criminal Pleading Evidence and Practice 31st edition page 1018 as follows:

"Rape is the carnal knowledge of a woman without her consent by force, fear or fraud."

The Manual of Military Law at page 113 para 37, defines rape as follows:

"Rape is the act of a man having carnal knowledge without her consent of a female, who is not his wife."

Penetration is considered to constitute carnal knowledge; it must therefore be proved that there was actual penetration of the female organ by some part of the male organ. The slightest penetration will be sufficient; it is not necessary to prove that there was such penetration as would be sufficient to rupture the HYmen. To prove carnal knowledge it is not necessary to prove the actual emission of seed. It must also be proved that the rape was committed on the Prosecutrix by force and without her consent.

5. Certain declarations made by Miss Thibert after the incident has been admitted in evidence. With respect to these statements, I wish to advise the Court as follows: In the case of rape, the fact that a complaint made by the Prosecutrix shortly after the alleged offence and the particulars of such complaint may be given in evidence, so far as they relate to the charge against the accused, not as evidence of the fact complained of, but as evidence of the consistency of the conduct of the Prosecutrix with her evidence given at the trial and as negativing consent to her part. Such complaint cannot be regarded as corroboration of the story of the Prosecutrix. As to the matter of corroboration on such a charge as rape, I must advise the Court that although corroboration is not essential in law, it is, in practive, required and it is the practice to warn the jury against the danger of acting upon her uncorroborated testimony.

D 171

6. Circumstantial evidence has been adduced during this trial to prove the charge. On circumstantial evidence I wish to refer the Court to the Manual of Military Law, page 81, para 41 and 42, which reads as follows:

"from the circumstances in which crimes are ordinarily committed, it follows that direct evidence of their commission is not always obtainable, and that in very many cases reliance must be placed on circumstantial evidence. Such evidence is in no way inferior to direct evidence, and is in some respects superior to it; for it has become a proverb that "facts cannot lie", while witnesses may. On the other hand it must be borne in mind that if facts cannot lie, they may, and often do, deceive; in other words, that the interpretation which they appear to suggest is not that which ought to be placed upon it. Therefore, before the Court finds an accused person guilty on circumstantial evidence, it must be satisfied not only that the circumstances are consistent with the accused having committed the act, but that they are inconsistent with any other rational conclusion that the accused was the guilty person."

7. The facts in this case show that at one time there were 3 soldiers in the immediate surroundings where the incident took place. Miss Thibert cannot identify those who would have committed the alleged rape. On this point I wish to direct the attention of the Court to the responsibility of parties to an offence. The Manual of Military Law page 106, para 14 states:

"The responsibility of a person for the natural consequences of his act is not limited to the simple case where he is present, and actually commits an offence with his own hand."

Para 16 states:

"If a person is present at the commission of an offence and aids and abets its commission for another person he is responsible as though he had committed it himself. But it is not necessary that he should be actually present as an eye witness or an ear witness of the transaction; he is, in law, present aiding and abbetting if, with the intention of giving assistance he is near enough to afford it should occasion arise; thus, if two or three men go out together to commit, burglary, and one waits at the corner of the street to keep watch while the others commit burglary, the watcher will be guilty of burglary equally with the others. On the other hand, if the offence charged involves some special intent, it must be shown that the assistant was cognizant of the intentions of the person whom he assisted; thus on a charge of wounding with intent to murder it must be shown that an assistant not only assisted the principal offender in what he did, but also knew what his intention was, before the former can be convicted of the full charge."

8. In this case the Court has four possible verdicts which it may take. If you are satisfied that the accused committed the offences as charged, you may find them guilty of rape; if on the other hand it appears to the Court upon the evidence that the accused did not complete the offence of rape, but that they are guilty only of attempting to commit the same, the Court may acquit the accused of the charge of rape, but find him guilty of attempting to commit rape; further if the Court comes to the conclusion that the accused did not commit any of the two previous offences, it may find the accused guilty of indecent assault. If the Court after reviewing the whole evidence comes to the conclusion that the Prosecution has failed to prove any of the above offences, they should acquit the accused.

10. In concluding my summing up, I would ask the Court to keep in mind what I have already said about giving the benefit of any reasonable doubt to the accused.

By Judge Advocate:

Mr. President:	Are thero any further matters on which you wish me to advise the Court?
Answer:	No
Prosecutor:	Are there any further matters on which you wish me to advise the Court?
Answer:	No.
Defending Officer	Are there any further matters on which you wish me to advise the Court?
Answer:	No.

9. With respect to the second charge against Pte Burley, before you find the accused guilty as charged, you must be satisfied as alleged in the particulars of the charge that on or about the 19 Mar 45 the accused assaulted Jean Pariat by kicking him in the stomach with his foot. The facts of this charge are simple, and do not believe that it is necessary to convict.

" Lavel Fortier " Lt Col.

DM

E-1

The accused, Gnr Smith W.T. gives evidence as to his character:

I am 20 years old. Never been charged in civil life for any crime. In the Army my crime sheet is clear. I am from Ontario; Almont, Ont. I am single. Englisted March 3, 1943. Arrived England 7 May 1944, came to continent January 1945.

The accused Pte Burley R.E.G. gives evidence as to his character:

I am 31 years old, married with 2 children by my second wife and 1 by my first wife; never been charged in civil court, never been charged in the army. Enlisted RCAF 18 Feb 41. Enlisted Army 18 Jan 44. Was discharged from RCAF on compassionate grounds 7 Dec 1942. Arrived England 25 Dec 44 and on continent Feb 45.

E-3

Plea in Mitigation

I should like to draw the attention of the Court to the MFM 6 of both accused and also the their statements regarding their freedom from any conviction in Civil Court before their enlistment in the Army. They speak more strongly for the accused in requesting Mitigation than any argument there can be produced. This incident which is the subject of this FGCM is a difficulty in which both have become involved. Circumstances are peculiar. The experience in this country is novel and it is submitted that this Court in passing sentence should not stamp these soldiers as criminals. Therefore when you come to the decision whether the sentence should be penal servitude or prison or detention, take all above factors into consideration; also consider the suggestion in MML P464 p.n. 5. I submit that the court should consider it desirable to retain these 2 in the Army. Therefore the ends of justice will be satisfied and they will not be stamped as criminals. Detention is advisable.

E+C

ARMY FORM B.200 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C.103004	Pte.	Smith, W.T.	1 Cdn Spec Veh Coy

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For ------- Nil ---------- times.

For ——— times.

For ——— times.

For ——— times.

Date of first entry in Field Conduct Sheet N/A

Date of last entry in Field Conduct Sheet N/A

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

~~3. The accused at the present time is under sentence, to~~ ~~beginning on the~~ ~~day of~~

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for 24 33 days in military custody, *i.e.*, ——— days in open arrest, 24 33 days in close arrest; of which Nil days were spent in hospital.

HFG HFG

5. The present age of the accused is 20 years, 10 months

6. The date of his attestation ~~enlistment~~ is 5 Mar 43

7. The service which the accused is allowed to reckon is N/A

~~8. The accused is in possession of a~~

~~9. He has served as a regular officer or soldier. The accused has served continuously without interruption, to the present date~~

~~In the existing rank of~~

~~In the next inferior rank of~~

~~In the rank of~~

(State the military decoration (if any) held by accused.)

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

W1.42120/6200 45,000 11/44 A.& E.W.Ltd. Gp.689 Form C.A.6/Wa/44

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		No previous convictions by Court-Martial		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 21st day of April, 1945

"H. F. Gibson" Capt.

E & D

ARMY FORM B.296 (WAR)

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C.123428	Pte.	Burley, R.E.G.	1 Cdn Spec Veh Coy

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be answered to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized (special) acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For ------- Nil ---------- times.

For ____ times.

For ____ times.

For ____ times.

Date of first entry in Field Conduct Sheet N/A

Date of last entry in Field Conduct Sheet N/A

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. [illegible] HEG

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for 24 33 days in military custody, *i.e.*, — days in open arrest, 24 33 days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 30 years, 10 months

6. The date of his attestation is 18 Jan 44

7. The service which the accused is allowed to reckon is N/A

8. [illegible]

9. [illegible]

Insert the military decorations (if any) held by accused.

Is the [illegible]

Is the [illegible]

Is the [illegible]

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(22094) Wt.42129/4399 42,000 11/44 A.D.K.W.Ltd. Gp.698 Forms/T.S.S(War)/8

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		No previous convictions by Court-Martial		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 21st day of April, 1945 "H.S. Gibson" Capt.

MFM 6 B & E
(AFB 122)
(11-PAM)100 (3438) DM

No C103004 Name SMITH W T | Sqn, Battery, or Company N/A | Corps R.C.A. | Date of enlistment 5 Mar 43 | GC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet N/A | No and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No 1 | Signature OC Company, etc (Sgd) EG Miller Lt.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field 19/3/43				BLOOD DONOR (375 C.C.) CERTIFIED TRUE COPY OF ORIGINAL DOCUMENT HELD IN MY POSSESSION " R S M Heath " Major Officer having custody of Regimental Books. 14 Apr 45					

(PTO)

MFM 6 (AFB 122) 40/PAM/126 (3488) B+F D/M

No C12342 Name BURLEY R Sqn, Battery, or Company Corps R.C.A.S.C. Date of enlistment 18 Jan 44 GC Badges Service or Proficiency Pay N/A

Date of last entry in Company Conduct Sheet — No and date of last drunk N/A — Period not reckoning towards freedom from extra fine N/A — Sheet No 1 — Signature OC Company, etc (sgd) JR Rajotte, Major — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Previous sheet destroyed				18 Jul 44 Nil Entries Nil cases of drunkenness					
				CERTIFIED TRUE COPY OF ORIGINAL DOCUMENT HELD IN MY POSSESSION " R S M Heath " Major Officer having custody of Regimental Books.					
				14 Apr 45					

(PTO)

DM

NOTICE OF INTENTION TO TRY ACCUSED PERSONS JOINTLY
(R.P. 16)

TAKE NOTICE that it is intended to try you jointly on a charge of rape. If you give evidence yourself and in so doing incriminate the other soldier charged jointly with you, you are liable to be cross-examined as to character under R.P. 80(d)(iii).

" John B Allan "

(John B Allan) Colonel
O.C. 1 Cdn Spec Veh Coy.

TO: C104004 Pte Smith, W.T.

C123428 Pte Burley, R.E.G.

SUMMARY OF EVIDENCE

in the case of No.[illegible] Private SMITH W.T. and No.C.123428 Private BURLEY R.H. both of 1 Canadian Special Vehicle Company.

By direction of the commanding officer the summary of evidence is taken on oath.

1st Witness for the prosecution

Mlle. Laurence THIBERT having been duly sworn states :-

I am twenty six years of age and am employed at the Macon Maternity Hospital where I reside. I am an assistant nurse.
I am unable to recognise the two accused. On the night 18th-19th March 1945 at about 0030 hrs I was returning from the theatre accompanied by Monsieur Roure and Madame Valette. At the Place Gardon we were stopped by three soldiers who spoke to us. As they did not speak French I did not understand what they said although we tried to do so, especially Monsieur Roure. Madame Valette, however, did not stop and proceeded ahead. I followed her after a few minutes leaving Monsieur Roure still talking to the three soldiers. As I tried to follow Madame Valette one of the soldiers followed me and attempted to put his arm around me. I resisted whilst walking for about 20 yards. This soldier then threw me to the ground; I cannot now remember how I was thrown to the ground, but another of the soldiers was then present. When I was lying on the ground I shouted but was hit on the face by one of the soldiers. I continued to shout for the police, whilst one or both of the soldiers held my arms and legs. One of the soldiers pushed up my clothes at the same time tearing my knickers. I can produce the latter. One of the soldiers then inserted his penis in my private parts. He did not insert it fully. It was however an insertion, and he stayed on me a few minutes between my legs. As soon as this soldier had finished, another soldier took his place and also inserted his penis into my private parts. Again it was an insertion but not a full insertion. The whole time I was screaming and struggling. The second soldier did not stay on me as long as the first soldier. I then managed to escape a few yards and after sitting down some two French policemen arrived on the scene. They arrived within two minutes from my getting up from the place where I had been assaulted. When I saw the French policemen I noticed that one of them was holding a ~~machine~~ soldiers and another soldier was still on the ground in the same place where I had been assaulted. I also heard a shot being fired.

Before and after being attacked there were no other soldiers in the vicinity, than those mentioned above. Immediately after the French policemen had arrived on the scene I went up to the apartment of Monsieur Roure and outside of which the incident had taken place. I then washed my face arms and legs. On the inside of both my thighs there was blood; I think the blood came from my nose as a result of being struck in the face.

Immediately I saw Monsieur Roure in his apartment I made a complaint to him of what had happened. This would be about ten minutes after the incident. I remained in the apartment with Mme. Valette for about an hour and a half. I then returned to the hospital with Mme. Valette and Monsieur Roure and at about midday the following day, the 19th March, I was examined by Dr. Authelin.

I did not in any way comment to what took place.

I was aware that the three soldiers were Canadians by reason of what Monsieur Roure told me in their presence.

(Continued)

(Signed) L. THIBERT

1.

1st witness for the prosecution (Continued)

Cross examined by Private Burley.

Question 1. Did you scratch or bite either of the soldiers alleged to have assaulted you ?
Answer 1. I think I bit the second soldier.
Question 2. Where did you bite him ?
Answer 2. About the lips.
Question 3. Did you bite sufficiently hard to leave a mark or to draw blood ?
Answer 3. I cannot say.

The accused Private Smith declines to cross-examine this witness.

(Signed) L. THIBERT.

2nd Witness for the prosecution

Monsieur Jean PARIAT Sub-Brigadier French State Police Rouen having been duly sworn states :-

On the 19th March 1945 at about 0045 hrs and as a result of a telephone call received by me I proceeded to Rue de Place near Place Cordon accompanied by three other policemen Savy, Michelet and Marbold. Outside No.5 Rue de Place I saw a young woman, Mlle. Thibert, whom I know and am able to recognise. She was sitting on the steps of the house and bending over. I saw that both her face and legs were covered with blood. The blood on her legs was on the inside of her thighs, and she was in a distressed condition. Within about a yard of Mlle. Thibert there were two soldiers dressed in khaki and whom I now recognise as the two accused; at the time in question I also had my electric torch with me which I shone on the accused. In the presence of the accused I began to ask Mlle. Thibert if the soldiers wanted to steal her bag or to rape her. She replied "They tried to rape me" There were no other soldiers in the vicinity at the time. Whilst speaking to Mlle. Thibert I was joined by Monsieur Roure who pointed to the accused Private Burley, saying "He struck Mlle. Thibert harder than the other soldier". In consequence of this I then arrested the accused. Neither of them had replied to the accusations made against them. During this time the other policemen who had accompanied me left me to search for a third soldier who had been referred to by Mlle. Thibert during my speaking to her.

After arresting the accused I placed them against the wall, Monsieur Roure guarding one and I the other. The accused Private Burley then attempted to escape and in preventing him from doing so he kicked me in the stomach with his foot. I was kicked in a vicious manner but my revolver and holster took the impact. As I was standing on the edge of the pavement at the time, I fell to the ground. His attack was such that it was necessary for me to throw the accused Private Burley to the ground by pulling his legs and to hit him on the head with the butt of my pistol. As a result I caused a scalp wound which later received attention. I then conducted both the accused to the Police station at Rouen accompanied by Monsieur Roure.

When the accused Private Burley attempted to escape I fired a shot in the air with my revolver.

2nd witness for the prosecution (Continued)

Each accused declines to cross-examine this witness.

(Signed) J.PARIAT.

3rd witness for the prosecution.

Madame Marie Alice VALETTE Maternity Hospital Macon having been duly sworn states :-

At about 0030 hrs on the night 18th-19th March 1945 I was returning from the theatre accompanied by my friend Mlle.Thibert and a Monsieur Roure when we were stopped by three soldiers dressed in Khaki. I did not understand what they said except that one of them used the word "couches" They stopped us at the corner of Rue Place and Place Gardon. The soldier who spoke the word "couches" was considerably smaller than the accused whom I am unable to recognise. One of the soldiers attempted to put his arm around my waist and when I saw that Mlle.Thibert was similarly accosted I made my escape. The soldier who put his arm around my waist was the small one above mentioned. As I made my escape I saw one of the soldiers strike Mlle.Thibert on the head. I immediately went to the French Barracks for assistance. I later returned with two soldiers and saw two soldiers against the wall with a policeman in attendance. As Mlle. Thibert was not there and after making enquiries I went into an apartment where I found Mlle.Thibert. I then saw that her face and legs were covered with blood, the latter being covered on the inside of the knees. Her coat was also torn and dirty on the back. When I first saw her Mlle.Thibert said "It's awful, it's awful" and in consequence I asked her " Were the soldiers raping you ?" She replied " Yes, yes." after I had asked her a second time and when I had asked her the further question whether the soldiers had managed to rape her. Mlle.Thibert also showed me her petticoat which was covered with blood and her knickers which were torn near the crutch. I was with her in the apartment for nearly two hours and we returned to the hospital together at 0500 hrs. Before returning to the hospital I helped Mlle.Thibert to clean herself and her clothing. She was in a distressed condition and unable to speak her face being in a very distressed condition.

Each accused declines to cross-examine this witness.

(Signed) VALETTE

4th witness for the prosecution.

Captain C.W.Bethune RAMC Camp No.2 Staging Camp RAMC having been duly sworn states :-

On 19th March 1945 I examined Mlle.Laurence Thibert at the Maternity Hospital Macon. I examined her at approximately 1200 hrs in the presence of Dr. Authelin. She was then in bed. Her general condition was good. Her pulse normal. The face was disfigured by swellings and lacerations. There were haemorrhages noted in both eyes apparently conjunctival. In the right eye there were two haemorrhages, in left eye one haemorrhage. The left eye was almost completely closed nearly swollen shut. Inside of both lips cut and upper lip badly swollen. No loose teeth were noted and the jaw apparently not broken. There were several minor lacerations on left zygomatic area (cheek-bone).

3.

4th witness for the prosecution. (Continued)

Mlle. Thibert also appeared to be suffering pain on the 9th, 10th and 11th ribs on the left side.

External genitalia showed two raw looking areas, one on medial aspect of left labia minora and the other similarly injury slightly posterior and slightly lateral to the former. The first area was slightly smaller than the size of a shilling, and the other area about .5 x .5 centimetres. These injuries were consistent with having been caused within 12 to 18 hrs. They were inside the private parts but before the vaginal canal.

I also noted some whitish secretion on the inside of the private parts which when examined under the microscope showed nothing but usual vaginal debris.

There was also a small bruise on the inside of the left thigh which did not appear to be fresh.

In my opinion a logical explanation of the injuries noted would be rape.

Each of the accused declines to cross-examine this witness.

(Signed) G.W. ARTHURS.
Capt.

5th witness for the prosecution.

Monsieur Joannes ROURE 5 Rue de Place Macon having been duly sworn states:-

On the night 18th-19th March 1945 at about 0030 hours I returned from the theatre with Mme. Valette and Mlle. Thibert. I know Mlle. Thibert very well. At the corner of the Rue de Place and the Place Gordon three soldiers stopped us after first calling to us. I recognise the accused as two of the soldiers who then stopped us. The accused whom I now know as Private Burley began to speak to me when we were stopped. The third soldier was small. When speaking to the accused Private Burley I gathered that they wanted to sleep somewhere. Whilst I was showing Private Burley a place to sleep I noticed Mme. Valette with one of the soldiers about 30 yards away. I saw her escape from this soldier, who returned towards Mlle. Thibert who was then about 10 yards away from me and who, I think, was then with the smaller soldier. At the time there were no other persons or soldiers in the vicinity. Whilst I was speaking to Private Burley, who seemed to be in an intoxicated condition, I saw Mlle. Thibert struggling with the other two soldiers about 10 yards away. She was also shouting to me. Owing to the violent demeanour of Private Burley towards me I made my escape and at the same time I saw him go towards the other two soldiers with Mlle. Thibert.

When I made my escape I ran after Mme. Valette at the same time shouting to her to get help. As I was unable to see her I returned to the scene of the struggle where I saw Mlle. Thibert standing up against a wall with the three soldiers around her. She was still struggling. I went to help her but as I did so the accused Private Smith came running towards me with something in his hand. I again ran away to a distance of about 20 yards. I then saw Private Smith return to the other two soldiers with Mlle. Thibert. I remained at the last mentioned distance for about 10 minutes during which time I saw and heard Mlle. Thibert struggling and shouting. I then returned to my apartment at 5 Rue de Place which was about 15 yards away from the scene of the struggle. As I entered the house the soldier Private Smith again ran towards me but I managed to lock the door. I then entered my apartment which is on the second floor of 5 Rue de Place and to the front. I immediately opened it my window and continued to

5th witness for the prosecution. (Continued).

shout for help. I also saw that the struggle was still taking place on the opposite side of the road.

Mlle. Thibert was lying on the ground with the three soldiers still there. One soldier was either bending over or kneeling at Mlle. Thibert's head. I could only see his back. Another soldier was bending over her left side and the third soldier was lying at and half-on and half-off her right hand side. Struggling still seemed to be taking place. I watched this part of the incident for about a quarter of an hour and I was still shouting for help. I did not see the soldiers change place, but movement was constantly taking place.

The night was clear and the moon shining and I was able to see what took place.

After about a quarter of an hour I saw the two soldiers on the right and left sides of Mlle. Thibert straighten themselves. I also saw the former soldier return to his lying position.

About this time four policemen arrived on the scene and I went down to the road. I then heard one of the soldiers running away. The other two soldiers, the accused, were in the custody of two of the policemen. A few seconds afterwards I saw the accused Private Burley attempt to escape and having a struggle with one of the policemen whom I should be able to recognise again. In the struggle I saw Private Burley kick the policeman in the stomach. I also heard a shot, ~~simultaneously~~.

Afterwards I returned to Mlle. Thibert who was sitting on the step of No. 5 Rue de Plaee. Her face was covered with blood and her mouth was swollen. It was impossible to recognise her. When she was in my apartment I also saw her legs on the inside of both thighs and between the knees and her ~~private parts~~ I saw streaks of blood. Although I accompanied Mlle. Thibert up to my apartment she did not then make any complaint to me about what had happened, except to ask me why I had not helped her. I remained in my apartment with Mlle. Thibert for some 10 minutes after which I left her in the company of Mme. Valette. I then went to the Police Station and after returning accompanied Mlle. Thibert and Mme. Valette to the Maternity Hospital. Each of the accused declines to cross-examine this witness.

J.R.

6th witness for the prosecution

6th witness for the prosecution.

Doctor AUTHELIN of Macon having been duly sworn states :-

I know and am able to recognise Mlle. Thibert. I examined Mlle Thibert at about 1130 hrs on the same morning of the alleged offence at the Maternity Hospital, Macon. She then complained of contusions on both eyes. She also complained of a contusion on the right side of her body. Mlle. Thibert also stated that a soldier had tried to rape her. I then examined Mlle. Thibert and found her to be suffering from contusions on both eyes, and ~~xxxxxx~~ one scratch on the left lip of her private parts ie, the fourchette. The contusions on both eyes consisted of contusions of both eyelids, ~~xxxxxxxxxxxxxx~~ and the eyes themselves were bloodshot, principally the left eye. Mlle. Thibert was also in a distressed condition.

The scratch at the fourchette was of recent origin, and her injuries generally were consistent in my opinion with the complaint made to me by Mlle. Thibert. She also produced to me her knickers which I noticed were torn. I should be able to identify the same again.

Cross examined by the accused Private Burley.

Question 1. Can you definitely state whether or not Mlle. Thibert was raped.
Answer 1. I cannot definitely say.
Question 2. What in your opinion caused the scratch at the fourchette ?
Answer 2. It was consistent with being caused by the organ of a man. The scratch referred to by me was a "~~xxxxxxxx~~" or bruise.
Question 3. Can you say whether or not Mlle. Thibert was a virgin ?
Answer 3. She was not a virgin.

The accused Private Smith declines to cross-examine this witness.

(Signed) J. AUTHELIN.

Each of the accused having been duly cautioned in accordance with Rule of Procedure 4(E) reserves his respective defence.

Certified that Rule of Procedure 4(C),(D),(E) and (F) have been complied with .

Taken down before me in the presence and hearing of the accused the 2nd and 3rd days of April 1945 at Macon, France.

(Signed) H. CASTLE.
Captain,
Legal Staff.
J.A.G. Branch HQ 12 L of C Area. BLA.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

C103004 Gnr W T Smith
Accused: C123428 Pte R E G Burley

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 41	Not Guilty	Guilty	Gnr W T Smith
		Not Guilty	Guilty	Pte R E G Burley
~~XXX~~				
2nd	AA Sec 41	Not Guilty	Guilty	Pte R E G Burley ONLY
~~XXXX~~				
~~XXXX~~				
~~XXXX~~				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for N/A beginning on (date) N/A (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ~~FOURTEEN~~ Gnr 5 14/5/45 Pte 15 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:
Gnr W T Smith
Pte R E G Burley } To suffer penal servitude for the term of five (5) years and to be discharged with ignominy from His Majesty's Service.

(Sgd) "Lavel Fortier" Judge-Advocate, if any Lt Col — 21 Arpil 45 Date awarded. — (Sgd) "Donald Mackenzie" Major President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

I reserve the findings and sentences for confirmation

Date 30 Apr 45 (Sgd) "E L M Burns" Maj Gen Commanding Cdn Sec 1 Ech HQ 21 A Gp

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

I confirm the findings and sentence.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~(1)
(1. AA 57A. Delete if not used.)

(Sgd) E.G. Weeks, Major-Gen

Date 18 May 45 — ~~Commanding~~ I/c Administration — Confirming Officer — Canadian Military Headquarters

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Can 576, 577.)

Accused.	Date.	Signature of Offr.
C103004 GNR WT SMITH	29MAY45	JMedhurst
C123428 PTE REG BURLEY	29MAY45	

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

I certify that there are no illegalities or irregularities to justify withholding confirmation of these proceedings.
3 May 45 — "T G Norris" Col — DJAG. Cdn Sec 1 Ech HQ 21 A Gp

SK-124
SK-125

CPAmp (In lieu of AFA81 40/P & B/Tobs (6144)) 4/388

FIELD GENERAL COURT-MARTIAL

Convened by Order of Maj Gen E L M Burns Comd Cdn Sec 1 Ech HQ 21 A Gp dated 17 Apr 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
C/103004	Gnr		William Thomas	SMITH	1 Cdn Spec
C/123428	Pte		Ross Edward George	BURLEY	Veh Coy

Certified true copy
[illegible] Major.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) FRANCE on (date(s)) 20, Apr 45
21 Apr 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member~~, JA, ~~if any, and Offrs under instr, if any~~, assemble, and the Court is closed. DM

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A93, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) DM
The Court is satisfied that it is properly convened and constituted(2), accused ~~is~~ (are) amenable to military law, and DM
each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused ~~is~~ (are) brought before the Court. At 1400 hours trial commences. DM

A4. The Prosecutor produces a Medical Certificate that accused ~~is~~ (are) fit to undergo trial by court-martial.(1) DM
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~ DM
(1. KR Can 557. 2. AA 46(8), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to Lt Paul LEMAY (interpreter.) Ans Gnr W.T. Smith - No Pte R.E.G. BURLEY - No
The Interpreter is sworn.(1) Do you object to N/A as shorthand writer? Ans N/A
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans No - Gnr W T Smith
No - Pte R E G BURLEY
(1. RP 110. 2. If no objection, waiting member retires. RP 66(8). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, JA, ~~if any, and Offrs under instr, if any,~~ are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc: DM

President	Major	D MacKenzie	Essex Scot att 2 CBRG
Member	Capt	F A Baillargeon	1 Cdn Dis Centre
Member	Capt	E B Van Dine	1 Cdn Dis Centre
Judge-Advocate	Lt Col	J M E L FORTIER	Att Cdn Sec 1 Ech 21 A Gp
Prosecutor	Major	B W Howard	Cdn Sec 1 Ech 21 A Gp
Defending Offr	Capt	H F Gibson	1 Cdn Spec Veh Coy

Questions by President: Is the Prosecutor a lawyer? Ans Yes Is the Defending Offr a lawyer? Ans Yes (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def/Offr not, accused entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See D/ p 3.)

A8. The accused C103004 Gnr Smith W.T. C123428 Pte Burley R.E.G. before arraignment make(s) (no) (~~a~~) plea. DM
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 13C, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused ~~is~~ (are) arraigned (separately) on all charges in the charge sheet.(1) The accused ~~does~~ (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. DM
(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is closed and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*B*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans N (5)
(*1. RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 120(*A*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP* 37(*A*) (*b*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence considered as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans NO
(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) (no) opening address.(1) DM
(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP* 39(*C*). 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(2) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(1)~~ DM
(*1. Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans PTE BURLEY WILL MAKE AN OATH Do you intend to call witnesses on your behalf ? Ans PTE BURLEY & ~~are they witnesses as to character only ?~~ Ans N/A
(*1. RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 66(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court ~~is~~ (are) recorded in Part I of the Schedule.(2) The Court is re-opened. DM
(*1. RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President ~~announces the finding(s), if any, of Not Guilty, and~~ states to the accused that the finding(s) of the Court on the ~~FTE BURLEY~~ ~~charge(s), being subject to confirmation, will be promulgated later.(1)~~ DM
~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)~~ DM
DM
(*1. AA* 54(2) (*d*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans PTE BURLEY WILL GIVE evidence himself and witnesses
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex C. D. and Ex E. F. respectively.(3)
(*1. MFB* 355 *or MFB* 296. 2. *MFM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans Yes, the accused Defending Officer (2)
(*1. RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA* 54(4), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) DM
(*1. When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 46. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 68, 118, 119(*A*), *KR Can* 308, 330, 363-366, *Overseas AO* 309, 2303, *MML p* 65, 727-729. *As to sentences assigned for civil offences by the law of England see AA* 41(*3*), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(*1*) (*b*), 68(*1*), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

D M

CHARGE SHEET

The accused, C103004 Gnr William Thomas SMITH and C123428 Pte Ross Edward George BURLEY, both of 1 Cdn Spec Beh Coy, soldiers of the Canadian Army Overseas, are charged with:

When on Active Service

1st CHARGE WHEN IN A PLACE NOT WITHIN HIS MAJESTY'S DOMINIONS, COMMITTING
Sec 41 A.A. A CIVIL OFFENCE, THAT IS TO SAY, RAPE

in that they

in the field at Macon, France, on or about 19 March 45, had carnal knowledge of Mlle. Laurence Thibert without her consent.

The accused C123428 Pte Ross Edward George BURLEY of 1 Cdn Spec Veh Coy, a soldier of the Canadian Army Overseas is charged with:

When On Active Service

2ND CHARGE COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, COMMON ASSAULT
Sec 41 A.A.

in that he

in the field, at Macon, France, on or about 19 Mar 45, assaulted Monsieur Jean Pariat, Sub-Brigadier, French State Police, Macon, by kicking him in the stomach with his foot.

In the Field
In France
12 Apr 45

" John B Allan "
(John B Allan) Colonel
Officer Commanding
1 Cdn Spec Veh Coy

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

In the Field
17 Apr 45

" E L M Burns "
(E L M Burns) Major-Gen
GOIC
Cdn Sec 1 Ech
HQ 21 Army Gp

Approved on behalf of the JAG Cdn Army Overseas pursuant to K R (Can) 540 and Overseas R O 4756.

In the Field
17 Apr 45

" W H Waugh "
(W H Waugh) Major
DJA
Cdn Sec 1 Ech
HQ 21 Army Gp

D M.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(8).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt	Full Christian Names.	Surname.	Unit.
C/103004	Pte		William Thomas	SMITH	
C/123428	Pte		Ross Edward George	BURLEY	1 Cdn Spec Veh Coy, RCOC

I direct that the accused be tried by FGCM jointly in respect to the first charge and that the second charge against the accused -- C/123428 Pte Ross Edward George BURLEY -- be tried at the same time.

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (*date*) 17 Apr 45 endorsed by me, (~~or by an offr of my staff for me~~), "To be tried by Field General Court-Martial". ELMB

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; (~~and that it is not practicable to delay the trial for reference to a superior qualified offr.~~)
(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder. ELMB

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ ELMB
(*AA 49, RP 106(B), 107(4). Delete the whole or part, if not applicable.*)

5. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.
(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	D MacKenzie		Essex Scot att 2 CBRG

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	F A Baillargeon		1 Cdn Dis Centre
Capt	E B Van Dine		1 Cdn Dis Centre

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)
Lt-col	JMEL Fortier		att Cdn Sec 1 Ech HQ 21 A Gp

On Active Service in the Fd

in Belgium (*Country.*)

" E L M Burns "
(*Signed personally. RP 105 fn 2.*)
(E L M Burns) Major-Gen (*Rank.*)
Commanding Cdn Sec 1 Ech, HQ 21 Army Gp
Convening Officer.

Dat 17 Apr 45

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (CFA 85 (2a Rev of AFA 2) 40-7-A-S-1697 (8142)) (*See overleaf for notes and notes for use on trial.*)

" W H Waugh " Major
DJA

Approved

20 April 45

I certify that I have this day examined C103004 Gnr Smith W.T. and C123428 Pte Burley R.E.G. and they are fit to stand trial by Court Martial.

" G W Bettrum " Capt
RCAMC
MO - #2 GF Staging Camp

21 April 45

I certify that I have to-day examined C10404 Gnr Smith W.T. and C123428 Pte Burley R.E. And that they are fit to undergo trial by Court Martial.

" G W Bettrum " Capt

Capt RCAMC
MO #2 GF Staging Camp

JOINT TRIAL

C103004 Gnr SMITH W.T.
and
C123428 Pte Burley R.E.G.
1 Cdn Spec Veh Coy

1st Witness for the Prosecution

M Joannes Roure, 5 Rue de Place, Macon, France, having been duly sworn states:

My occupartion is Secretary of the Inspector for the Railroad. I remember the night of 18/19 March 45. I was coming back home from a show given by the railway. Miss Thibert Laurence and Mme Marie Alice Valette were with me. We were coming down conr Moreau to reach Rue Place. We were called by 3 soldiers and when they reached us we made a few more steps. They started to speak and naturally I couldn't understand a word because I do not understand the English language. I do not know to what Army they belong. We talked to them until we reached the door, approx ½ hour until I went in, I mean my door which is 60 metres from where we were accosted. I could recognize 2 out of 3 if I saw them again. The shortest one I could not recognize. I have seen them once when they came for Evidence. I recognize the accused in the court here now. (Indicates accused). I can recognize them by their faces. I could see them on night of 18/19 March when they accosted us. When we were accosted I could easily recognize their faces and I recognize their faces very well. They accosted us approx 1230 at night. When they accosted us there was a light. I do not know if it was the light or moon light but I could recognize them. When I reached my door, Mme Vallette was far away and Mlle Thibert was against the wall with 2 of the soldiers. At that moment Miss Thibert was standing up, struggling and yellling for me. She was yelling " come - what do they want to do " I was trying to walk into my home. When I came to my door and tried to open it the middle sized chap came towards me with the big thing in his hand. At that moment I ran away about 10 or 15 metres. The soldier returned to the group - Miss Thibert and 2 soldiers were in the group. The soldier is here today who had the big thing in his hand (Witness indicates Pte Smith, one of the accused). When I saw he had reached the group I waited 5 minutes. Then I ran towards my door. I had my key in my hand, opened the door, shut it when I when I went in and the soldier clapped on the door. I went up to my room on the 2nd floor. I opened the window and called for help. At that moment Miss Thibert was lying down, 6 or 7 metres to the right of my door in the ditch by the side of the road. There is no sidewalk there. She was calling for me and shouting and yelling "they choke me; what do they want". At that moment there were 3 soldiers around her. From my window I could not see them to be able to recognize them. Miss Thibert was lying down in the ditch. One soldier was lying down on his knees and you could see all of his back. I couldn't tell precisely if the soldier was at her head or at her feet. I could see the back of another soldier at the left of Mlle Thibert. I couldn't precisely see the third soldier. He was practically all hidden by the other 2 soldiers. I didnt see the third soldier. Approx 15 minutes after I had gone up to my room the two soldiers stood up and moved around. I mean by moved around that they did not keep the same place. Miss Thibert was there and started yelling for me at that time. The soldiers moved and after that practically didnt move. They did not remain standing, either bent down or got on their knees. I saw a soldier whose moveents were up and down and sideways at the same time. His back was moving that way. It lasted from then to the arrival of the police. From my window I was yelling and shouting. I saw 4 lights. I went down to the street. On the street I saw a big policeman. In the shadow I saw movements I do not know if they were police. Miss Thibert came towards me and sat on my doorstep as I was reaching the door. A policeman was holding a soldier by the collar. He handed the soldier over to me. That soldier is here now (Indicates Smith, accused) The tallest one went towards Place Moreau. I didnt see the other one go. The tallest one is here (Indicates Burley, accused)

He was running; the Police ran behind; the police fired a shot. The tallest one turned around and gave a kick to the police. But I do not know if he hit the police or not. By the tallest soldier I mean Burley. Miss Thibert stayed on my doorstep all this time. I came to her and we went up to my room. Her hair was over her face and she was bleeding from the mouth. Her head was very swollen. When we went to our room she showed us in the presence of Mme Vallete that she had blood on the inside of her thighs. She showed us her legs but said nothing about her "private parts". After seeing her thighs the police brought me to the police station. Miss Thibert made no statement to me. From the time the 3 soldiers accosted us until the police arrived. There was Miss Thibert, Madame Valette, 3 soldiers and myself. During that time I saw a civilain who went through the street when we were accosted. When Miss Thibert was calling for help. I did not see any other soldiers.

Cross examination

By the tallest soldier, I mean the 1st one on the right (Indicates Burley). The smallest soldiers is the one that is not here. From 5 Rue Flace to Place Gardon is 60 to 70 metres. Rue de Flace is not very wide; maybe 5 metres. The bldg at 5 Rue de Flace is 4 stores high; ground floor; 1st and 2nd floor and attic. Across the street is a stone wall. It is 8 feet high. There are trees behind the stone wall. On the a.m. of the 19 March I attended at the Plice Station with the 2 soldiers. I was there about 15 minutes. I was in the same room with these 2 soldiers at the Police Station. When the evidence was taken some days later I was here with these two soldiers When we were accosted I recognize them by their faces. I do not recognize the shortest one because nearest to me was the tallest one. The second one was to my left about 1 metre. I do not Burley as tallest and Smith as second one). (Witness indicates they are in. After Place Gardon I would recognize them among 200 other soldiers. Burley talked to me at Place Gardon. The one, Smith, spoke to me. I did not understand what he said. The tallest one said, "couche". The tallest one talked most. The shortest one was 2 metres from me and went for the girl. I couldn't say what kind of a hat the smallest one wore. The middle sized one had a beret; I am not sure. I couldn't say what had the tallest one wore. I recognize the tallest one perfectly. While speaking he took his hat off and made gestures. I cannot say what kind of a hat he had one. I cannot say it was a moon. It was clear and I saw his face. In my 1st declaration I told the Captain that it was "clear" and they translated it to "moon light" I now do not know if it was moonlight or street light. There is a street light at Place Gardon. There is a centre one. Whether there are other I do not know. There was no light from 5 Rue de Flace. I saw 4 lights of bicycles. I thought it was the police. I did not know. I left the window at once and went down. I do not think I waited inside. I think I at once opened the door. I did not wait to make sure it was the Police. Before the arrival of the police I did not leave the window. I heard footsteps; I opened the door. From the window to the irs on the second flight is 20 feet. There are 4 flights of stairs. Each flight has about 15 steps. From the end for the stairs to the front door is about 4 or 5 metres. I heard footsteps when I came to the door. as I was coming downstairs. I could not hear the footsteps I was not sure it was the police. I recall the summary of evidence. I remember making the statement "I did not see the soldiers change place but movement was constantly taking place". By movement I mean all was moving especially feet. I could not see distinctly. I cannot say definitely that the soldiers changed places. When I opened the door I saw big policeman take Smith and put him against the wall. I don't know how many police were there. I saw one policeman . There was the tallest one to my right. I saw a few FFI coming down. I do not know how many. Maybe 2 or 3. I did not see an Arab soldier. I did not hear soldier swear in French. I was up in my room later. I let Pte Smith go, somebody else held him.

I know Miss Thibert for 3 or 4 years. I never had sexual intercouse with her.

By the Court

From the place where Miss Thibert was is 7 metres to the front door. And from there to my window is about 10 metres. The one who came toward me with the big thing in his hand was Pte Smith. It was quite long and big and dark colour. My window I was in from the street is about 10 metres from the pavement. During the time I was at my window I saw no one leave or come to the group. I knew they were soldiers when I looked out of my window. It was the same group. They had not moved. It took me less than a minute to get up the stairs. I came down less faster than I went up. It was ½ hour before the Police arrived. I saw Miss Thibert all the time

By the J.A.

There were no leaves on the trees then. I saw the FFI when I went to hold the second soldier. Miss Thibert was saying "Noel, why don't you come" several times. Noel is my other name. The tallest soldier is Pte Burley. The smallest soldiers is the one I cannot identify and have not seen since. The other soldier is in Court (indicates Pte Smith) I said I heard a shot. I do not know if it was before, while or after Burley kicked at the policeman. When I left my window to come down. Miss Thibert was in the group. After that she sat on the doorstep. In the group she was still lying down. I kept my eyes on her while she was in the group. It took a short time to get down stairs. It was approx 1 minute. The group was 7 metres from my door where the incident took place. One policeman had a torch. I cannot say how many policemen were there.

RP 83 (b) complied with.

2nd Witness for the Prosecution

Mme Marie Alice Valette, Maternity Hosp, Employee, Macon, France, having been duly sworn states:

I work at the Maternity Hosp. With me is Mlle L Thibert who works there too. I went to cinema on night of 18 Mar 45 with Mlle Thibert. We met M Roure there and walked home together. When we came near Place Gardon we met 3 soldiers who came toward us to get information. After speaking for a while one said "to sleep" I thought he meant Hotel. They did not speak French. After a discussion one put his arm around my waist. I was frightened and ran away; not far because my friend Mlle Thibert was behind held by 2 of the soldiers. I stopped and the one who put his arms around my waist returned to the others. My friend called to me and said she could not get away from the ones that were holding her. My friend was shouting and yelling and I went for help to Dahesme Barracks. She was shouting and yelling without words. Soldiers were with my friend but I cannot recognize or say who they were. We ran into Rue de Place and it was dark. The 3 soldier we met first stayed with my friend when I went for help. I could not recognize them. I came back with help in ½ to ¾ of an hour. With me were Frnch soldiers to help. There were no Civil Police with me; only French soldiers. I returned to the same place. My friend was then in the house. I saw 2 soldiers on the wall with French police. I ran up stairs to M Roure's apt. I saw my girl friend there. I couldn't recognize her. She had hair in her face and was full of blood. Her dress coat was torn and her step-ins. She had blood inside of her thigh She was swollen around her lips she couldn't speak. All she could say was; "terrible". I asked her if she had been raped. She didn't want to say "yes" but said it afterwards.

Cross examination.

At Place Gardon I dont know how many lights there are. It is easy to see people in Place Gardon. I would recognize the one who put his arm around my waist. He is not one of these two. They were close to me. When I left the group the one returned to the group. I would be able to recognize a person see 3 metres away in Place Gardon. We stopped because we thought they wanted information about their billets. They came very near. I would recognize the one who put his arm around my waist.

DM

I did not see the other 2 soldiers. They were near my friend. My girl friend and I were walking toegether when the soldiers came up to us. The soldiers were together. The 3 soldiers and we three civilians were close together when they first spoke. It was light enough to make a distinction between a man and woman. I could not say if I could see aperson 5 metres away. I could see a person 10 metres away. Cannot say if I would know the person was man or woman. My girl friend could say only "terrible". When Insisted on an answer she told me she had been raped. I asked "did they rape you" - she said "yes". She answered me in a matter of minutes. She was helpless at that time. She cried and couldn't say anything except terrible and "yes".

By the Court

Approx 15 or 20 minutes elapsed from the time we met the soldiers until I ran away.

By the J.A.

I was coming back from the Cinema. We met 3 soldiers. I would not be able to identify any except the one who took me by the waist. We met the soldiers for the first time at 12.20 p.m.

RP 83 (b) complied with.

The Court is adjourned until 0915 - 21 Apr 45.

Court reopens at 0915 hrs 21 Apr 45 pursuant to adjournment, same members and J.A. present.

3rd Witness for the Prosecution

Mlle Laurence Thibert, Employee Macon Maternity Hospital, Macon, France, having been duly sworn states:

I am 26 years old. I am single. On 18 March 45 I went to the theatre with my friend Mme Valette. The theatres was finished around 12 or 12.15 p.m. I left with Mme Vallete and M Roure. We went towards our home. We went through Place Gardon that night. At Place Gardon we were stopped by three persons with military uniforms. We stopped and they asked us for information. I do not understand English and I did not understand. I was to keep on going when one put his arm around my waist. I would not recognize him. I though I could get ride of him but he kpt on squeezing hard. We went forward about 20 metres but I could not get rid of him. There were two who came. They threw me on the ground. Mme Valette had already left. M Roure was not with me at this time. There were 2 soldiers with me. Later another soldier came when I was on the ground. The 2 soldiers pushed me to the ground. I would not recognize the 2 soldiers who pushed me. I was lying on the ground and the other soldier came along. First they hit because I was yelling. Hit me on the face. I do not know how often; very many times. I was shouting at that time. I cried and called for M Roure and the police. Then they tried to take my knickers down; as the couldn't they tore them. These are the knickers I was wearing that night. They were not like that, that night. They were intact. They are torn like that because the soldiers tore them. They are in the same condition now as after they were torn.

(Received by the Court, 1 pr knickers, marked Exhibit "A")

After that they raped me. They opened my legs, threw themselves on me and put their penis in my sexual parts. They did this one at a time. Two soldiers did this. I would not recognize the soldiers who did this. At this time I was trying to protect myself but as there were 3 I had no chance. I was crying, shouting and yelling. Each of 2 soldiers inserted their private parts in me. The 2 soldiers penetrated me. I am quite sure. They did not penetrate as they would have wanted to as I was struggling. I stayed with them 15 or 20 minutes and was able to get away on the arrival of the police. When the Police arrived I ran away about 5 metres. I did not see what the Police did. I sat on a doorstep and put my head in my hands. Afterwards I went up to M Roure's apt. My physical condition was terrible; face swollen, hair uncombed and covered with blood. Later I saw Mme Valette. She came up to me. I told her what happened.

We met 3 soldiers at Place Gardon. I could not recognize them. Two of three raped me. The other helped. I had not seen them earlier in the evening. I had not seen them before at all. One of the soldier we met at Place Gardon put his arm around my waist. He was present when I was lying on the ground. I believe this because he didn't leave me. The second soldier was one of the three who stopped me. There was no other people on the street. From where we were stopped until the police arrived I saw only these 3 soldiers. I was medically examined the following day be Dr Authelin and by a Medical Officer. I do not know the nationality of the soldiers.

Cross examination.

I was lying on the ground not quite in front of M Roure's apt. Was lying on the street opposite the apt. Before the Police arrived I was standing up approx 5 minutes - maybe not that. I went to sit down after the incident. I walked 10 to 12 metres to reach the doorstep. When I sat down I put my head in my hands. I was a little dazed. At that moment I couldn't recall just what I did then. I was n't paying any more attention as to what went on. When I was on the ground I could not see the soldiers very well. The three soldiers always held me. When one soldier tired to lie on top of me I kicked with my legs. I was yelling very loud. I was frightened. I couldn't remember if any of the soldiers put their fingers into my private parts. I only thought then escaping. It was a penis and not a finger that was inserted into my private parts. I remember very well his position and what he was doing at that time. He did not have his fingers there too. I was trying to get away.

It is 6 years since I had had any sexual intercourse. It is a little difficult to insert a penis if I was resisting. They did not use their fingers. I am positive. I remember what they were doing at that moment. They were trying to put their penis in my private parts. The other 2 soldiers were holding me, be legs and arms. I could not say exactly how they were holding me. I have told you before that 2 tried to insert their penis in my private parts. I do not know why I hesitated to tell Mme Valette that I had been raped; she asked me what have they done. It would not be right to say that at at that time I was not sure what had been done. I was confused and bothered at that time. When I was on the ground I bit one soldier on the lower lip. I could not say I scratched any one in the face. I tried to protect myself with my hands and feet. I did not scratch any of them with my hands.

Re examination.

I have had no sexual intercourse for 6 years. I remember from that time the feelings that go with sexual intercourse.

By the Court

I wore gloves that evening. I had one on my left hand and carrying the other. I understand no English. I did not recognize the type of uniform, they were wearing. The police had arrived when I went to sit on the steps. I was able to disengage when the police arrived. After meeting three soldiers, at first only one stayed with me, the other two others were with M Roure. I do not know how long I was with the one soldier. Mrs Valette was in front of me 10 or 20 metres; M Roure was behind with the other soldiers.

By the JA.

I stated that I bit one soldier on the lower lip. He was lying on me at the time having intercourse with me. I don't know if it was the 1st or 2nd soldier. The soldiers who were with me when I was laying down are the same soldiers who met me when I was with M Roure. This took place after midnight.

By the Court

All the blood came from my nose. My nose bled. When the soldiers hit me the blood went over my body. They hit me with their fist. I got up before the Police arrived. I was not sitting on the steps when the police arrived. The police were arriving near the place. They were walking. They had their bicycles. They were 10 metres away when I first saw them.

RP 83 (b) complied with.

By the JA

I did not give my consent to the soldiers who were with me that night to have intercourse with me.

RP 83 (b) complied with.

4th Witness for the Prosecution

M Jean Pariat, Sub Brigadier, French State Police, Macon, France, having been duly sworn states:

On early a.m. of 19 Mar 45 I proceeded to Rue de Place, Macon, when we arrived it was dark and we put flashlights on. I saw Mlle Thibert sitting on a doorstep. About 1½ metres were 2 soldiers. I asked her if they were her aggressors. She said yes. We put them against the wall. M Roure came downstairs and helped me keep the 2 soldiers while my 3 friends went to get the other soldier who ran away. I identify the 2 soldiers whom we held as the two accused here today. The bigger soldier was detained by M Roure (Indicating Smith) I was looking after the other one. He tried once to run away (Indicating Burley) I fired a shot in the air to call my freind. He gave me a kick here (indicating pistol case) which knocked me to the ground. As I fell I held him by the sleeve and as I saw he wanted to get rid of me I hit him with butt of my revolver and he fell down on the sidewalk. Mlle Thibert had her head in her hands bending down with her elbows on her thighs. She looked overwhelmed and overcome. Her eyese were swollen; lips blue and swollen, eyese swollen and closed, thighs full of blood. I asked Mlle Thibert if the soldiers had stopped her to rob her or abuse her or rape her. She answered that they had tried to rape her. My friends did not find the 3rd soldier. I saw 2 soldiers in Rue de Place and 1 Algerian soldier who passed by approx 20 minutes after my arrival. The Janitor of the Normal School because we asked her to open the door to search the par; was the other civilian we saw. I went to M Roure's apt for about 10 minutes. We put our lights on the soldiers and the whole area. While in M Roure's apt. Mme Valette came up. My friends detained the 2 soldiers downstairs. We took them in the laundry of the Normal School and later to the police station The 2 accused are those 2 soldiers.

Cross examination:

On the telephone I was not told how many soldiers there were. Mlle Thibert & M Roure told us there were 3 soldiers. We arrived at Rue de Place by Place Gardon. We were riding bicycles. One bicycle had a light. There 4 bicycles. We got off our bicycles at 5 Rue de Place We encircled the soldiers immediately. I did not strike the soldier in the eye immediately. I hit him later with the butt of my revolver. When we were encircling the soldiers I did not catch hold of one soldier causing him to fall to the ground. We then put the soldiers against the wall. M Roure arrived 2 or 3 minutes later. It is not true that I struck Pte Burley after he tried to run away. I struck him when he gave me a kick. He did not hit me with his fist. I was keeping the 2 soldiers in respect of my revolver against the wall, and picking up bicycles with my other hand. Pte Burley could have runaway without touching me up Rue de Place. He tried to run to Place Gardon and came in touch with me. He hit my pistol holster with his foot. M Roure could not see the kick. I gave Pte Burley quite a severe blow. He had to be taken to the Hospital - I went with him. The Secretary of the Commissionaire examined the soldiers at the Police Station. He gave them a quick examination. He did not examine the front of their trousers. He just looked at them because Miss Thibert said she hadn't been raped but ~~xxx~~had tried to rape her. He looked at them because we look at everybody. It was to me that Mlle Thibert said she had not been raped but ehy had tried to rape her. This was at the scene when I first asked her.

By the Court

The soldiers were 1 metre or 1½ metres from Mlle Thibert when I arrived. She was sitting on the steps. They were about 20 cm from the steps. When I arrived they were standing up looking towards Place Gardon. I did not see a third soldier. M Roure had not come down stairs yet when I approached the scene. It was too dark to see him in the window.

By the JA

M Roure & Mlle Thibert said there was a 3rd soldier. I spoke to Mlle Thibert on my arrival. I said to her "were these soldiers the agressors, did they want to rob her or rape her". She answered that they wanted to abuse of her but the exact words I do not remember. I don't believe she used the word "rape". When I asked her if they had abuse of her she said yes they have abuse of me. I remember the Summary of Evidence. I don't remember if the exact term abuse or rape was used. It is the same thing. She replied "they tried to rape or abuse me". The word "try" was used or the word "attempt" was used.
NOTE The sub brigadier (witness) wears his pistol case near the front of his belt on the left side.

When I asked Mlle Thibert whether she had been robbed or raped she was sitting on the steps. It was 1 minute after we arrived. We all had flashlights. They were not lighted when we came down the street on the bicycles. Only 1 flashlight was lighted.

RP 83 (b) complied with.

5th Witness for the Prosecution

Capt G W Bethinie, RCAMC, HQ No 2 Staging Camp having been duly sworn states:

I examined Miss Laurence Thibert on a.m. of 19 March 45. Her face was disfigured and swollen and cut. Her general condition was good. There were injuries on the face and external gevital organs. She was hurt but not seriously.

Hemmoraghes of both eyes which were conjuctival. They were the result of a blow on the eyes. The left eye was nearly shut. The inside of both lips cut and the upper lip badly swollen. Several minor lacerations on left cheek. No bruises or lacerations noted on thorax. Patient complained of pain in left lower chest area but respiration is free and equal. External genitals, two small abrasions noted, one on needial side of left labia minora, second slightly posterior lateral to first. These injuries appear rather fresh. Some whitish secretion was noted which when examined by microscope showed only usual vaginal debris. There was small bruise in inner aspect of left thigh. The abrasions were not in existence for more than 18 or 20 hours. I finished the examination at 1300 hours. There was no bruises further in the lips of the genital. I could not say what caused the abrasions. I should think they could be caused by a penis.

Cross examination

I think a finger could cause such an abrasion. There are other things that could cause such an abrasion. No disease that I have ever seen could cause such an abrasion. Any rough hard object could cause such an abrasion. The bruise on the inside of the thigh was about 7 inches from the genital region. I have no idea how the bruise might be caused. The bruise was a week or 10 days old.

By the Court

If the two injuries found on the external genitalia were caused by a hard object it would be necessary for that object to penetrate into the genital organs of the person concnerned in my opinion.

RP 83 (b) complied with.

DM

The prosecutor does not intend to call Doctor Authelin and the Defence does not require him for cross examination shown on Summary as 6th Witness.

1st Witness for the Defence

C123428 Pte Burley R.E.G., the accused, having been duly sworn states:

I am on convoy duty with 1 Spec Veh Coy. On 18 Mar arrived in Macon. After supper I went down town between 9.15 and 9.30, looked around the town; want to 3 cafes, drank some Red Wine; in 3rd cafe met 2 women. I was with Gnr Smith. No other soldier was with us. The ladies ordered their drinks and we made arrangments to go to their rooms. I went with one and had sexual intercourse. It cost me 200 Francs. Then I rejoined Smith in the Cafe and we left. This was after midnight. We started following the 6F Sign to bivouac. We came along by the canal and made a right turn. I heard shouts, did not understand them. They sounded like a male voice and had a note of fear. I did not pay a great deal of attention to them. We followed on the street. The shouting continued and we found out the cries came from steps where a girl was sitting. We now know her as Mlle Thibert. We had no more than arrived; we heard foot steps going up the street away from us. We had come from the direction we know now as Place Gardon. I have seen this place since. The girl was sitting on the steps with her head in her arms; her arms across her knees. She sounded like a child that had received a severe beating from a parent and was crying over it. An instant after we stopped I heard bycycles behind me; was grabbed by right soldier, wheeled around and received a blow on left eye by some instrument. The 3 scars of that blow are still visible. (Witness shows scars to court) It was a hard instrument that hit me; don't think it was a fist. The force of the yank on shoulder and farce of blow knocked me down. Gnr Smith was at my right. I fell with my head toward Place Gardon. I lay on ground. Did not see who hit me. Was more interested in escaping. Was quite dark on street; did not see person who hit me. I watched my chance to make an escape I didn't cover the distance the length of my body when I was struck on left side of my head with what I now know as butt of pistol. (Shows Court the bruise). Knocked me down where I stayed. When I moved to escape I made no motions at the person near me. He was not in my road, was to my left hand side. I lay on ground was taken by what I now know as Police to Police Station. There I washed blood from hands & face; blood from cut in the eye. The Police threw me roughly on the floor and then examined my hands and clothes.

Cross examination.

In Canada I was with RCASC. Came over here Xmas 44. Did Inf Trg in England. Went in Spec Veh Coy about Feb 25; am a driver for them. It was my 2nd trip from Marseilles to Belgium. Stopped in Macon before. We wear no badges or Canada badges. The last cap badeg I had was Inf. It was general knowledge that we were confirmed to bivouac area. Came into town knowing it was against regulations. I do not know the Cafe where I went upstairs. Came downstairs and rejoined Smith. Don't know what time. They were closing as I left with Smith. When the police agent said it was 0100 hrs I can't deny it. Came up street with 6F signs on it. Know name Place Gardon from evidence given here, and from where girl was sitting. Spoke to no civilians on the street that night. I would say that witness Roure was mistaken. I would say Mlle Thibert's story is not correct. I was anxious to get away because I had had a crack in the eye and was wondering why the girl was crying. There was no one else but the girl when I came up to the girl. I would say her evidence was wrong. I would also say that the police NCO's story is a fabrication except for the part where I attempted to get away. I cannot suggest why these 3 people should conoit this story. I had only been in the city once before. I had never met the people before. There was no enmity between us. It is not fair to say that I came into the city to have intercourse.

By the Court

By the Court

I heard fleeing footsteps going awa from Place Gardon.

The Court will adjourn to view the scene of the incident and will resume examination of the witness afterwards.

The Court viewed the scene of the incident. Present were all members, J.A., Prosecuting and Defending Officers and the accused.

By the Court

I was following 6F signs. Rue de Flace is at right angles to the route following the 6F signs. My intention was to follow 6F signs. I thought Rue de Flace followed 6F signs and was road to camp. I heard whimpering when I was up to the girl. I heard footsteps going away from me. I had entered the road and heard footsteps running up the hill.

By the J.A.

Was coming from Canal toward Place Gardon. Heard footsteps on Rue de Flace, about 45 steps before reching the door of 5 Rue de Flace Was with Smith at the time. We h d been carrying on a conversation, in natural voice. Heard a male voice shortly after we turned the corner of the street near the canal. Did not investigate the footsteps because when we came to the doorstep the girl was crying. This is the first time we knew something was wrong. Did not see the police. My back was to them.

By the Court

I heard a shot fired when I attempted to escape. I was lying on the ground and then I was getting up I was hit on the head. The blow on the head followed the shot. I heard more than one person running. I wouldn't like to say more than five. They would be running up hill.

By the J.A.

I did not kick the police. I deny it. I didn't know at the time they were police. I did not attack them. I did not hear the police talking to the girl. My evidence is that I was knocked down by the Police on their arrival. I did not see what took place. Smith was standing up to my right. He was not hit by the Police. I do not know if he tried to escape. I do not remember the Cafe near the canal. I did not in the last 2 days see any gentlemen around the court house who would be the owner of the Cafe. I did not see M Roure in his window when I was coming up Rue de Flace. As we entered the street the shouting stopped. I heard no woman's voice as I was in the street.

By the Court

I was standing facing the doorstep and the girl when I was hit the first time.

Sketch of area prepared by J.A. received by the Court as Exhibit "B". after being shown to the and accepted by the accused.

RP 83 (b) complied with.

2nd Witness for the Defence:

C103004 Gnr Smith W.T., the accused, having been duly sworn states.

I am on convoy duty of 1 Cdn Spec Veh Coy and I arrived in Macon on afternoon of 18 Mar 45. At approx 2100 hrs we went down town. We called in a few cafes and in 3rd Cafe we met 2 girls. They could speak a few words of English. We had a drink with them. We found out through conversation that we could pay for intercourse. Pte Burley was with me. I had intercourse upstairs and came down. We left the Cafe for the bivouac area. We came along a street by the canal; turned left, followed 6F sign. We heard a man's voice; kept on walking to Place Gardon entered Rue de Flace, heard footsteps going in opposite direction, up the hill; could not say how many; more than one.

Saw girl on doorstep, head in her arms, crying, bent down to look at her and ask what was wrong when a policeman put me up against the wall; grabbed my hands, forced them up over my head. Spoke to girl in French - the Policeman did. Was searched and taken into a bldg. When to Police Station; one stood close in front of me looking me up and down; looked at my hands, stayed in Police Station for 3 hrs. When Cdn Sgt came for us. Convoy got into Staging area about 1800 hrs. Several vehicles were there. There were several 100 men. They wore no patches. There were Canadian & English. Saw no other soldiers leaving camp at the time we left. Not difficult to get out of camp.

Cross examination.

Knew we were not supposed to leave camp. Got to Cafe in town where we saw girls at 2230 hrs. There were girls in other cafes. After I had intercourse I did not look to see the name of the Cafe. Burley & I had intercourse in the same bldg. Do not know name of street where the Cafe is. No 6F signs on that street. If is 2 or 3 blocks to Place Gardon. Heard man's voice when we got to Place Gardon. I do not understand French. Did not quicken pace to investigate. Heard no female voice. Met no civilians as we crossed Place Gardon. The shouting stopped when we came into the street. Was not continuous shouting. Walked up Rue Place on same side as the girl was. When we were 50 yards to the house we heard footsteps running away. Saw no bicycle lights behind us that time. Did not quicken pace when heard whimpering of girl. Was on Burley's right hand when police arrived. Walking on sidewalk. We were in front of woman, i was on Burley's right slightly ahead. Heard noise of dropping bicycles. When I looked around they were behind me. Heard the police say nothing to the girl. Then they made me stay by the wall with my hands over my head. A police guarded me. When a man came out the house and guarded me. Another policeman was guarding Burley. One of the police was searching me.

I had been on previous trip with Burley to Macon. I saw a police strike at him. It knocked him down. I didnt see him try to get up. The man who gave evidence today is not the same police who put me against the wall. I saw the 6 F signs at the corner of Rue de Place. I wouldn't see any reason for the witnesses making up the stories. I say that stores connecting me and Burley with the incident are wrong.

By the J.A.

I saw the police talk to Miss Thibert. She did not point out anybody to the policeman. I saw 4 policeman there. Was in last cafe approx 1½ hours.

By the Court

Saw no soldiers going from Last Cafe to 5 Rue de Place.

By the J.A.

Did not speak to Mr Roure that night. Did recognize him when he came in court. He spent approx 2 hours in Police Stn, with us. He is the civilian who held me. When I was in front of 5 Rue Place and saw the girl crying I did not see the door open.

RP 83 (b) complied with.

Prosecution Closing

The accused as to the joint charge are either guilty as charged or completely innocent. It is not a case for finding of lesser charges. Thibert says she was raped, the evidence of Roures & MO corroborates It is solely a question whether done by these accused or persons unknown.

Roure recognizes accus as being 2 of 3 sols who stopped them near light on Place Gardon they moved up street and he to refuge in house, says they were some solds as first met and they were still there when police arrived. Thibert says can't identify but they were some sols to whom talking on Place Gardon. Both say no other sols around and still there when police arrived. Valette says the ones who chased Thibert were same ones who stopped them on the place. The chain of identification is complete but rests solely on Evidence of Roare plus circumstances of both accus being at the scene when police arrive. If her, Thibert are believed the accus did it, & accus believed then they didn't do it.

The circumstance of there being there raises one's curiosity. It is not a question of circumstantial evidence because they are identified It is a matter for its effect on credibility.

Question of someone running away - everyone agrees that someone did. Pros evidence is that it was the 3rd sold. Def suggest it was the several solds who committed the offence. Court must decide how creditable the witnesses are and how strong the story of acidental arrival is. Two witness on each side plus circumstances.

On 2nd charge I suggest that the facts speak for themselves.

DM

For the Defence

1 Onus on prosecution to prove charges beyond a reasonable doubt:

(a) that a crime has been committed
(b) connecting the accused with the crime.

2. In re 1(a) supna in the case of rape - must prove penetration of the penis into the private parts of the female - complainant Mlle Thibert.

(a) Evidence of Capt Betheine RCAMC is that a finger could have caused the two bruises just inside the private parts of the complainant. - also that these were other possibilities of the cuse of the presence of these two bruises.

(b) First complaint made by the female Mlle Thibert to French policeman Monsieur Jean Pariat when she was on the steps of 5 rue de Place soon after the alleged incident - Evidence is tht she definitely used the words "tried" or attempted" to rape her.

(c) female complainant Mlle Thibert "did not want to say she had been raped" to Mdm Vallette in apartment at 5 Rue de Place but on Madame Vallette's insistance she finally said "Yes" - nothing else.

(d) Mlle Thibert, female complainant says that no fingers were inserted in her private parts - only two penis. - that fingers were not inserted at the same time yet all this time she was struggling and all three alleged soldiers were about her. At time she was alone very confused and excited. Alleged soldier couldnt get her knickers off - indicative of the struggle. Highly improbable, and most definitely not beyond a reasonable doubt that penis used. Most probable that fingers used.

(e) Therefore no crime of rape committed.
Offences of either
(a) indecent assault
(b) assault causing grevious body harm
(c) common assault
committed.

3. In re 1(b) spra, there is no satisfactory evidence connecting accused with alleged crime of rape.

(a) complainant Mlle Thibert cannot recognize two accused.
(b) Mdme Vallette couldnt recognize accused.
(c) Monsieur Roure alleges he can recognize accused. But he saw accused at Police station, at Summary of Evidence and at this court.
(d) Monsieur Roure's evidence unsatisfactory generally. Saw policemen on four bicycles with four lights shining. This denied by policeman Pariat. - idea of light of the light do not coincide with the witnesses - his story of the time of appearance on the latter scene entirely in disagreement with other witnesses, - Couldn't be able to recognize the shortest one, - rather in distress because he hasn't seen him since.
(e) Complainant Mlle Thibert has no clear recognition of details. Said the police arrived on scene when she just got up from the ground. Said she wasn't sitting on the steps - said she was dazed and didn't pay any attention to what was going on - Policeman Pariat said she was on the steps when they arrived.
(f) Police examined accused found nothing out of ordinary. Complainant Thibert says she bit on lips and struggled.
(g) Accused give stores consistent with the stores of all witnesses for the prosecution, in so far as recognition is concerned except the unsatisfactory witness Roure.

DM

4 In so far as the second charge of assault against Pte Burley, no evidence that this took place.

(a) Burley knocked down by policeman and hit in eye. This not mentioned in evidence of Pariat the policeman.

(b) Pariat says there wasn't much room for Burley to pass.

DM

DM

SUMMING UP

1. TT is my duty as Judge-Advocate to advise the Court on matters of law. The Court is the sole Judge of the facts, and if in the course of my summing up I should pass any comment or express any opinion on the evidence, the Court should disregard same. It is my duty to advise the Court to the best of my ability of the law involved in this case. Before dealing specifically with the charge which the accused are facing, there are one or two general principles upon which I would like to direct your attention.

2. In the first place, under our system of law an accused is deem to be innocent of any crime until he is proved guilty, and the burden of proving an accused's guilt rests on the prosecution. In other words, he who alleges a fact must prove it. If the Court after careful consideration of the evidence heard during the trial, has a reasonable doubt as the accused's guilt on the charge, then it must exercise that doubt in the accused's favour, and find them not guilty. Reasonable doubt may be defined as such a doubt as to be entertained by an ordinary man in the conduct of his own affairs, and such a one as is not founded on sympathy, caprice or bad will.

3. The accused are charged under Section 41 of the Army Act with:

WHEN IN A PLACE NOT WITHIN HIS MAJESTY'S DOMINIONS, COMMITTING A CIVIL OFFENCE, THAT IS TO SAY RAPE

in that he

In the Field at Macon, France, on or about the 19th March 45, had carnal knowledge of Mademoiselle Lawrence THIBERT, without her consent.

Before you can find the accused guilty as charged, you must be satisfied as alleged in the particulars of the charge, that on or about the 19th March 1945, the accused had carnal knowledge with Miss Thibert, without her consent.

4. Rape is defined in Archbod Criminal Pleading Evidence and Practice 31st edition page 1018 as follows:

"Rape is the carnal knowledge of a woman without her consent by force, fear or fraud."

The Manual of Military Law at page 113 para 37, defines rape as follows:

"Rape is the act of a man having carnal knowledge without her consent of a female, who is not his wife."

Penetration is considered to constitute carnal knowledge; it must therefore be proved that there was actual penetration of the female organ by some part of the male organ. The slightest penetration will be sufficient; it is not necessary to prove that there was such penetration as would be sufficient to rupture the HYmen. To prove carnal knowledge it is not necessary to prove the actual emission of seed. It must also be proved that the rape was committed on the Prosecutrix by force and without her consent.

5. Certain declarations made by Miss Thibert after the incident has been admitted in evidence. With respect to these statements, I wish to advise the Court as follows: In the case of rape, the fact that a complaint made by the Prosecutrix shortly after the alleged offence and the particulars of such complaint may be given in evidence, so far as they relate to the charge against the accused, not as evidence of the fact complained of, but as evidence of the consistency of the conduct of the Prosecutrix with her evidence given at the trial and as negativing consent to her part. Such complaint cannot be regarded as corroboration of the story of the Prosecutrix. As to the matter of corroboration on such a charge as rape, I must advise the Court that although corroboration is not essential in law, it is, in practive, required and it is the practice to warn the jury against the danger of acting upon her uncorroborated testimony.

DM

6. Circumstantial evidence has been adduced during this trial to prove the charge. On circumstantial evidence I wish to refer the Court to the Manual of Military Law, page 81, para 41 and 42, which reads as follows:

"from the circumstances in which crimes are ordinarily committed, it follows that direct evidence of their commission is not always obtainable, and that in very many cases reliance must be placed on circumstantial evidence. Such evidence is in no way inferior to direct evidence, and is in some respects superior to it; for it has become a proverb that "facts cannot lie", while witnesses may. On the other hand it must be borne in mind that if facts cannot lie, they may, and often do, deceive; in other words, that the interpretation which they appear to suggest is not that which ought to be placed upon it. Therefore, before the Court finds an accused person guilty on circumstantial evidence, it must be satisfied not only that the circumstances are consistent with the accused having committed the act, but that they are inconsistent with any other rational conclusion that the accused was the guilty person."

7. The facts in this case show that at one time there were 3 soldiers in the immediate surroundings where the incident took place. Miss Thibert cannot identify those who would have committed the alleged rape. On this point I wish to direct the attention of the Court to the responsibility of parties to an offence. The Manual of Military Law page 106, para 14 states:

"The responsibility of a person for the natural consequences of his act is not limited to the simple case where he is present, and actually commits an offence with his own hand."

Para 16 states:

"If a person is present at the commission of an offence and aids and abets its commission for another person he is responsible as though he had committed it himself. But it is not necessary that he should be actually present as an eye witness or an ear witness of the transaction; he is, in law, present aiding and abbetting if, with the intention of giving assistance he is near enough to afford it should occasion arise; thus, if two or three men go out together to commit, burglary, and one waits at the corner of the street to keep watch while the others commit burglary, the watcher will be guilty of burglary equally with the others. On the other hand, if the offence charged involves some special intent, it must be shown that the assistant was cognizant of the intentions of the person whom he assisted; thus on a charge of wounding with intent to murder it must be shown that an assistant not only assisted the principal offender in what he did, but also knew what his intention was, before the former can be convicted of the full charge."

8. In this case the Court has four possible verdicts which it may take. If you are satisfied that the accused committed the offences as charged, you may find them guilty of rape; if on the other hand it appears to the Court upon the evidence that the accused did not complete the offence of rape, but that they are guilty only of attempting to commit the same, the Court may acquit the accused of the charge of rape, but find him guilty of attempting to commit rape; further if the Court comes to the conclusion that the accused did not commit any of the two previous offences, it may find the accused guilty of indecent assault. If the Court after reviewing the whole evidence comes to the conclusion that the Prosecution has failed to prove any of the above offences, they should acquit the accused.

10. In concluding my summing up, I would ask the Court to keep in mind what I have already said about giving the benefit of any reasonable doubt to the accused.

By Judge Advocate:

Mr. President:	Are there any further matters on which you wish me to advise the Court?
Answer:	No
Prosecutor:	Are there any further matters on which you wish me to advise the Court?
Answer:	No.
Defending Officer	Are there any further matters on which you wish me to advise the Court?
Answer:	No.

9. With respect to the second charge against Pte Burley, before you find the accused guilty as charged, you must be satisfied as alleged in the particulars of the charge that on or about the 19 Mar 45 the accused assaulted Jean Pariat by kicking him in the stomach with his foot. The facts of this charge are simple, and do not believe that it is necessary to convict.

" Lavel Fortier " Lt Col.

D/M

E-1

The accused, Gnr Smith W.T. gives evidence as to his character:

I am 20 years old. Never been charged in civil life for any crime. In the Army my crime sheet is clear. I am from Ontario; Almont, Ont. I am single. Englisted March 3, 1943. Arrived England 7 May 1944, came to continent January 1945.

The accused Pte Burley R.E.G. gives evidence as to his character:

I am 31 years old, married with 2 children by my second wife and 1 by my first wife; never been charged in civil court, never been charged in the army. Enlisted RCAF 18 Feb 41. Enlisted Army 18 Jan 44. Was discharged from RCAF on compassionate grounds 7 Dec 1942. Arrived England 25 Dec 44 and on continent Feb 45.

E-3

Plea in Mitigation

I,should like to draw the attention of the Court to the MFM 6 of both accused and also the their statements regarding their freedom from any conviction in Civil Court before their enlistment in the Army. They speak more strongly for the accused in requesting Mitigation than any argument there can be produced. This incident which is the subject of this FGCM is a difficulty in which both have become involved. Circumstances are peculiar. The experience in this country is novel and it is submitted that this Court in passing sentence should not stamp these soldiers as criminals. Therefore when you come to the decision whether the sentence should be penal servitude or prison or detention, take all above factors into consideration; also consider the suggestion in MML P464 p.n. 5. I submit that the court should consider it desirable to retain these 2 in the Army. Therefore the ends of justice will be satisfied and they will not be stamped as criminals. Detention is advisable.

E1C.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C.103004	Pte.	Smith, W.T.	1 Cdn Spec Veh Coy

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For ------ Nil ---------- times.

For ..... times.

For ..... times.

For ..... times.

Date of first entry in Field Conduct Sheet N/A

Date of last entry in Field Conduct Sheet N/A

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

~~3. The accused has not been awaiting trial on the present charges.~~

HFC

HFC

3. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for ~~24~~ 33 days in military custody, *i.e.*, ... days in open arrest, ~~24~~ 33 days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 20 years, 10 months

6. The date of his attestation is 5 Mar 43

7. The service which the accused is allowed to reckon is N/A

†State the military decoration (if any) held by accused.

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(25534) Wt.42128/4299 42,000 11/44 A.& E.W.Ltd. Gp.689 Forms/C.2 S(War)/4

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		No previous convictions by Court-Martial		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 21 st day of April, 1945

"H.J. Gibson" Capt

E 40

ARMY FORM B.206 (WAR)

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
C.123428	Pte.	Burley, R.E.G.	1 Cdn Spec Veh Coy

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each case. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For ------- Nil ---------- times.

For ____ times.

For ____ times.

For ____ times.

Date of first entry in Field Conduct Sheet N/A

Date of last entry in Field Conduct Sheet N/A

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

~~3. The accused has not undergone any period of imprisonment or detention~~ HFG

~~awarded by a court martial or a civil court during the~~ HFG

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for ~~24~~ 33 days in military custody, *i.e.*, ____ days in open arrest, ~~24~~ 33 days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 30 years, 10 months

6. The date of his attestation is 18 Jan 44

7. The service which the accused is allowed to reckon is N/A

[State the military decorations (if any) held by accused.]

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(28034) Wt.41229-4299 45,000 11/44 A.S.& E.W.Ltd. Gp.8/5 Forms C.2 & C.Warr/4

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		No previous convictions by Court-Martial		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 21st day of April, 1945

H. F. Gibson Capt

No. C103004 Name SMITH W T | Sqn, Battery, or Company | Corps R.C.A. | Date of enlistment 5 Mar 43 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 46/P&S/106 (3438) D Pt

Date of last entry in Company Conduct Sheet: N/A | No and date of last drunk: N/A | Period not reckoning towards freedom from extra fine: N/A | Sheet No 1 | Signature OC Company, etc: (Sgd) EG Miller Lt. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field 19/3/43				BLOOD DONOR (375 C.C.)					

CERTIFIED TRUE COPY OF ORIGINAL DOCUMENT HELD IN MY POSSESSION
" R [illegible] M Heath " Major
Officer having custody of Regimental Books.
14 Apr 45

(PTO)

MFM 6 (AFB 122) 40/PAS/156 (3428)

E & F DM.

No C123428 Name BURLEY R Sqn, Battery, or Company Corps R.C.A.S.C. Date of enlistment 18 Jan 44 GC Badges (sgd) JR Rajotte, Major Signature OC Company, etc Service or Proficiency Pay N/A

Date of last entry in Company Conduct Sheet No and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No 1 Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Previous sheet destroyed 18 Jul 44 Nil Entries Nil cases of drunkenness									
CERTIFIED TRUE COPY OF ORIGINAL DOCUMENT HELD IN MY POSSESSION " R S M Heath " Major Officer having custody of Regimental Books. 14 Apr 45									

(P50)

DM

NOTICE OF INTENTION TO TRY ACCUSED PERSONS JOINTLY
(R.P. 16)

TAKE NOTICE that it is intended to try you jointly on a charge of rape. If you give evidence yourself and in so doing incriminate the other soldier charged jointly with you, you are liable to be cross-examined as to character under R.P. 80(d)(iii).

" John B Allan "

(John B Allan) Colonel
O.C. 1 Cdn Spec Veh Coy.

TO: C104004 Pte Smith, W.T.

C123428 Pte Burley, R.E.G.

SUMMARY OF EVIDENCE

in the case of No.910,004 Private SMITH W.T. and No.C.123428 Private BURLEY R.E. both of 1 Canadian Special Vehicle Company.

By direction of the commanding officer the summary of evidence is taken on oath.

1st Witness for the prosecution

Mlle. Laurence THIBERT having been duly sworn states :-

I am twenty six years of age and am employed at the Macon Maternity Hospital where I reside. I am an assistant nurse. I am unable to recognise the two accused. On the night 18th-19th March 1945 at about 0030 hrs I was returning from the theatre accompanied by Monsieur Roure and Madame Valette. At the Place Gardon we were stopped by three soldiers who spoke to us. As they did not speak French I did not understand what they said although we tried to do so, especially Monsieur Roure. Madame Valette, however, did not stop and proceeded ahead. I followed her after a few minutes leaving Monsieur Roure still talking to the three soldiers. As I tried to follow Madame Valette one of the soldiers followed me and attempted to put his arm around me. I resisted whilst walking for about 20 yards. This soldier then threw me to the ground; I cannot now remember how I was thrown to the ground, but another of the soldiers was then present. When I was lying on the ground I shouted but was hit on the face by one of the soldiers. I continued to shout for the police, whilst one or both of the soldiers held my arms and legs. One of the soldiers pushed up my clothes at the same time tearing my knickers. I can produce the latter. One of the soldiers then inserted his penis in my private parts. He did not insert it fully. It was however an insertion, and he stayed on me a few minutes between my legs. As soon as this soldier had finished, another soldier took his place and also inserted his penis into my private parts. Again it was an insertion but not a full insertion. The whole time I was screaming and struggling. The second soldier did not stay on me as long as the first soldier. I then managed to escape a few yards and after sitting down ~~xxx~~ two French policemen arrived on the scene. They arrived within two minutes from my getting up from the place where I had been assaulted. When I saw the French policemen I noticed that one of them was holding a ~~xxxxxxxx~~ soldiers and another soldier was still on the ground in the same place where I had been assaulted. I also heard a shot being fired.

Before and after being attacked there were no other soldiers in the vicinity, than those mentioned above. Immediately after the French policemen had arrived on the scene I went up to the apartment of Monsieur Roure and outside of which the incident had taken place. I then washed my face arms and legs. On the inside of both my thighs there was blood; I think the blood came from my nose as a result of being struck in the face.

Immediately I saw Monsieur Roure in his apartment I made a complaint to him of what had happened. This would be about ten minutes after the incident. I remained in the apartment with Mme. Valette for about an hour and a half. I then returned to the hospital with Mme. Valette and Monsieur Roure and at about midday the following day, the 19th March, I was examined by Dr. Authelin.

I did not in any way consent to what took place.

I was aware that the three soldiers were Canadians by reason of what Monsieur Roure told me in their presence.

(Continued)

(Signed) L. THIBERT

1st witness for the prosecution (Continued)

Cross examined by Private Burley.

Question 1. Did you scratch or bite either of the soldiers alleged to have assaulted you ?

Answer 1. I think I bit the second soldier.

Question 2. Where did you bite him ?

Answer 2. About the lips.

Question 3. Did you bite sufficiently hard to leave a mark or to draw blood ?

Answer 3. I cannot say.

The accused Private Smith declines to cross-examine this witness.

(Signed) L.THIBERT.

2nd Witness for the prosecution

Monsieur Jean PARIAT Sub-Brigadier French State Police Macon having been duly sworn states :-

On the 19th March 1945 at about 0045 hrs and as a result of a telephone call received by me I proceeded to Rue de Place near Place Gardon accompanied by three other policemen Seroy, Michelot and Murhold. Outside No.5 Rue de Place I saw a young woman, Mlle. Thibert, whom I know and am able to recognise. She was sitting on the steps of the house and bending over. I saw that both her face and legs were covered with blood. The blood on her legs was on the inside of her thighs, and she was in a distressed condition. Within about a yard of Mlle. Thibert there were two soldiers dressed in khaki and whom I now recognise as the two accused; at the time in question I also had my electric torch with me which I shone on the accused. In the presence of the accused I began to ask Mlle. Thibert if the soldiers wanted to steal her bag or to rape her. She replied "They tried to rape me" There were no other soldiers in the vicinity at the time. Whilst speaking to Mlle. Thibert I was joined by Monsieur Roure who pointed to the accused Private Burley, saying "He struck Mlle. Thibert harder than the other soldier". In consequence of this I then arrested the accused. Neither of them had replied to the accusations made against them. During this time the other policemen who had accompanied me left me to search for a third soldier who had been referred to by Mlle. Thibert during my speaking to her.

After arresting the accused I placed them against the wall, Monsieur Roure guarding one and I the other. The accused Private Burley then attempted to escape and in preventing him from doing so he kicked me in the stomach with his foot. I was kicked in a vicious manner but my revolver and holster took the impact. As I was standing on the edge of the pavement at the time, I fell to the ground. His attack was such that it was necessary for me to throw the accused Private Burley to the ~~ground by pulling his legs~~ and to hit him on the head with the butt of my pistol. As a result I caused a scalp wound which later received attention. I then conducted both the accused to the Police station at Macon accompanied by Monsieur Roure.

When the accused Private Burley attempted to escape I fired a shot in the air with my revolver.

2nd witness for the prosecution (Continued)

Each accused declines to cross-examine this witness.

(Signed) J.PARIAT.

3rd witness for the prosecution.

Madame Marie Alice VALETTE Maternity Hospital Macon having been duly sworn states :-

At about 0030 hrs on the night 18th-19th March 1945 I was returning from the theatre accompanied by my friend Mlle.Thibert and a Monsieur Roure when we were stopped by three soldiers dressed in Khaki. I did not understand what they said except that one of them used the word "couchez? They stopped us at the corner of the Place and Place Gardon. The soldier who spoke the word "couchez" was considerably smaller than the accused whom I am unable to recognise. One of the soldiers attempted to put his arm around my waist and when I saw that Mlle.Thibert was similarly accosted I made my escape. The soldier who put his arm around my waist was the small one above mentioned. As I made my escape I saw one of the soldiers strike Mlle.Thibert on the head. I immediately went to the French Barracks for assistance. I later returned with two soldiers and saw two soldiers against the wall with a policeman in attendance. As Mlle. Thibert was not there and after making enquiries I went into an apartment where I found Mlle.Thibert. I then saw that her face and legs were covered with blood, the latter being covered on the inside of the knees. Her coat was also torn and dirty on the back. When I first saw her Mlle.Thibert said "It's awful, it's awful" and in consequence I asked her " Were the soldiers raping you ?" She replied " Yes, yes." after I had asked her a second time and when I had asked her the further question whether the soldiers had managed to rape her. Mlle.Thibert also showed me her petticoat which was covered with blood and her knickers which were torn near the crutch. I was with her in the apartment for nearly two hours and we returned to the hospital together at 0500 hrs. Before returning to the hospital I helped Mlle.Thibert to clean herself and her clothing. She was in a distressed condition and unable to speak her face being in a very contused condition.

Each accused declines to cross-examine this witness.

(Signed) VALETTE

4th witness for the prosecution.

Captain G.W.Bethune HQ Camp No.2 Staging Camp MMAC having been duly sworn states :-

On 19th March 1945 I examined Mlle.Laurence Thibert at the Maternity Hospital Macon. I examined her at approximately 1200 hrs in the presence of Dr. Authelin. She was then in bed. Her general condition was good. Her pulse normal, The face was disfigured by swelling and laceration. There were haemorrhages noted in both eyes apparently conjunctival. In the right eye there were two haemorrhages, in left eye one haemorrhage. The left eye was [illegible] nearly swollen shut. Inside of both lips cut and upper lip badly swollen. No loose teeth were noted and the jaw apparently not broken. There were several minor lacerations on left zygomatic area (cheek-bone).

3.

4th witness for the prosecution (Continued)

Mlle. Thibert also appeared to be suffering pain on the 9th, 10th and 11th ribs on the left side.

External genitalia showed two raw looking areas, one on medial aspect of left labia minora and the other similarly injury slightly posterior and slightly lateral to the former. The first area was slightly smaller than the size of a shilling; and the other area about .5 x .5 centimetres. These injuries were consistent with having been caused within 12 to 18 hrs. They were inside the private parts but before the vaginal canal.

I also noted some whitish secretion on the inside of the private parts which when examined under the microscope showed nothing but usual vaginal debris.

There was also a small bruise on the inside of the left thigh which did not appear to be fresh.

In my opinion a logical explanation of the injuries noted would be rape.

Each of the accused declines to cross-examine this witness.

(Signed) G.W. [illegible]
Capt.

5th witness for the prosecution.

Monsieur Jeannes [illegible] 5 Rue de Place Macon having been duly sworn states:-

On the night 18th-19th March 1945 at about 0130 hours I returned from the theatre with Mme. Valette and Mlle. Thibert. I knew Mlle. Thibert very well. At the corner of the Rue de Place and the Place Gordon three soldiers stopped us after first calling to us. I recognise the accused as two of the soldiers who then stopped us. The accused whom I now know as Private Burley began to speak to me when we were stopped. The third soldier was small. When speaking to the accused Private Burley I gathered that they wanted to sleep somewhere. Whilst I was showing Private Burley a place to sleep I noticed Mme. Valette with one of the soldiers about 30 yards away. I saw her escape from this soldier, who returned towards Mlle. Thibert who was then about 10 yards away from me and who, I think, was then with the smaller soldier. At the time there were no other persons or soldiers in the vicinity. Whilst I was speaking to Private Burley, who seemed to be in an intoxicated condition, I saw Mlle. Thibert struggling with the other two soldiers about 10 yards away. She was also shouting to me. Owing to the violent demeanour of Private Burley towards me I made my escape and at the same time I saw him go towards the other two soldiers with Mlle. Thibert.

When I made my escape I ran after Mme. Valette at the same time shouting to her to get help. As I was unable to see her I returned to the scene of the struggle where I saw Mlle. Thibert standing up against a wall with the three soldiers around her. She was still struggling. I went to help her but as I did so the accused Private Smith came running towards me with something in his hand. I again ran away to a distance of about 20 yards. I then saw Private Smith return to the other two soldiers with Mlle. Thibert. I remained at the last mentioned distance for about 10 minutes during which time I saw and heard Mlle. Thibert struggling and shouting. I then returned to my apartment at 5 Rue de Place which was about 15 yards away from the scene of the struggle. As I entered the house the soldier Private Smith again ran towards me but I managed to lock the door. I then entered my apartment which is on the second floor of 5 Rue de Place and to the front. I immediately opened th my window and continued to

4.

9th witness for the prosecution. (Continued).

shout for help. I also saw that the struggle was still taking place on the opposite side of the road.

Mlle. Thibert was lying on the ground with the three soldiers still there. One soldier was either bending over or kneeling at Mlle. Thibert's head. I could only see his back. Another soldier was bending over her left side and the third soldier was lying at and half-on and half-off her right hand side. Struggling still seemed to be taking place. I watched this part of the incident for about a quarter of an hour and I was still shouting for help. I did not see the soldiers change place, but movement was constantly taking place.

The night was clear and the moon shining and I was able to see what took place.

After about a quarter of an hour I saw the two soldiers on the right and left sides of Mlle. Thibert straighten themselves. I also saw the former soldier return to his lying position.

About this time four policemen arrived on the scene and I went down to the road. I then heard one of the soldiers running away. The other two soldiers, the accused, were in the custody of two of the policemen. A few seconds afterwards I saw the accused Private Burley attempt to escape and having a struggle with one of the policemen whom I should be able to recognise again. In the struggle I saw Private Burley kick the policeman in the stomach. I also heard a shot. ~~Shortly afterwards.~~

Afterwards I returned to Mlle. Thibert who was sitting on the step of No. 5 Rue de Plaine. Her face was covered with blood and her mouth was swollen. It was impossible to recognise her. When she was in my apartment I also saw her legs on the inside of both thighs and between the knees and her ~~private parts~~ I saw streaks of blood. Although I accompanied Mlle. Thibert up to my apartment she did not then make any complaint to me about what had happened, except to ask me why I had not helped her. I remained in my apartment with Mlle. Thibert for some 10 minutes after which I left her in the company of Mme. Valette. I then went to the Police Station and after returning accompanied Mlle. Thibert and Mme. Valette to the Maternity Hospital.

Each of the accused declines to cross-examine this witness.

"Rucq"

~~9th witness for the prosecution~~

D21.

6th witness for the prosecution.

Doctor AUTHELIN of Macon having been duly sworn states :-

I know and am able to recognise Mlle. Thibert. I examined Mlle Thibert at about 1130 hrs on the 2nd morning of the alleged offence at the Maternity Hospital, Macon. She then complained of contusion on both eyes. She also complained of a contusion on the right side of her body. Mlle. Thibert also stated that a soldier had tried to rape her. I then examined Mlle. Thibert and found her to be suffering from contusions on both eyes, and ~~xxxxxx~~ one scratch on the left lip of her private parts in the fourchette. The contusions on both eyes consisted of contusions of both eyelids, ~~xxxx xxxxxxxxxxx~~ and the eyes themselves were bloodshot, principally the left eye. Mlle. Thibert was also in a distressed condition.

The scratch at the fourchette was of recent origin, and her injuries generally were consistent in my opinion with the complaint made to me by Mlle. Thibert. She also produced to me her knickers which I noticed were torn. I should be able to identify the same again.

Cross examined by the accused Private Burlaf.

Question 1. Can you definitely state whether or not Mlle. Thibert was raped.
Answer 1. I cannot definitely say.
Question 2. What in your opinion caused the scratch at the fourchette ?
Answer 2. It was consistent with being caused by the organ of a man. The scratch referred to by me was a "~~xxxxxxxx~~" or bruise.
Question 3. Can you say whether or not Mlle. Thibert was a virgin ?
Answer 3. She was not a virgin.

The accused Private Smith declines to cross-examine this witness.

(Signed) J. AUTHELIN.

Each of the accused having been duly cautioned in accordance with Rule of Proc ure 4(E) reserves his respective defence.

Certified that Rule of Procedure 4(C),(D),(E) and (F) have been complied with .

Taken down before me in the presence and hearing of the accused the 2nd and 3rd days of April 1945 at Macon, France.

(Signed) H. CASTLE.
Captain,
Legal Staff.
J.A.G. Branch HQ 12 L of C Area. B.A.

5T-76

Pte. L. Smith, N.T.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-161146 Private Walter Thomas SMITH 15 Cdn Base Dental Coy CDC

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 15	GUILTY	GUILTY	
2nd	AA Sec 40	GUILTY	GUILTY	
3rd	AA Sec 40	GUILTY	GUILTY	
4th				
5th				
6th				

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 64 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)
(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 14 days, of which Nil days were spent in hospital.(1)
(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence unless (2).)

Sentence Awarded by the Court:
To undergo a detention for a period of One Hundred and Twenty (120) days and to be put under stoppages of Pay until the same be made good

Date awarded. President. (RP 45, 50.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 27(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

I direct that the accused be not committed to prison or detention barracks until further orders.(1) (1. To be struck out if not used.)

Date 24 Sep 45 (Sgd) D C Spry Commanding Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date. Signature of Offr.

B 161146 Pte Smith W.T. 25 Sepys

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECEIVED 28 SEP 1945 C.M.H.Q.

5-76

CPA96 (To lieu of AFA81) 40/P & R/1698 (6144) 4/38B

FIELD GENERAL COURT-MARTIAL

Convened by Order of Maj-Gen D C Spry Comd Cdn Repat Unit dated 12 Sep 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-161146	Private	Walter Thomas	SMITH	15 Cdn Base Dental Coy CDC

PROCEEDINGS REVIEWED 1973 28 Sep 45
[illegible] OFFICER, JAG BRANCH CMHQ England

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ..... on (date(s)) 14 SEP 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, p 495, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 72, 74, 94, 103, 119, 122.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 45, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1745 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ..... as interpreter? Ans .....~~
~~The Interpreter is sworn.~~(1) Do you object to CPL[illegible] as shorthand writer? Ans NO
The shorthand writer is sworn.(1)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans NO, SIR.(2)
(1. RP 110. 2. If no objection, waiting member returns. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	LT-COL	D L REDMAN	HQ CRU
Member	CAPT	G E RICHARDS	4 VRD-1 CCOD
Member	LIEUT	R E DUNFORD	4 VRD-1 CCOD
~~Judge Advocate~~			
Prosecutor	LIEUT	R A COOPER	1 ADMTPTCOY
Defending Offr	CAPT	J ROWE	15 CBDC CDC

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans NO (2)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (A) and fn 2 were not followed. See DI p 2.)

A8. The accused ..... before arraignment make(s) (no) (~~a~~) plea. (2)
(1. If a special plea is made for separate trial on one or more charges (RP 62(C), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~do~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 20, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF AFMs to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is cleared and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any~~, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused : Do you wish to make a statement ? Ans. N O - S I R (3)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (4) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex. A , initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114*, *115*.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. ..... Do you intend to call witnesses on your behalf ? Ans. ..... Are they witnesses as to character only ? Ans. .....
(1. *RP 115.* 2. *RP 40(A), see 60(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 113(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (b), RP 45, 120(A).* 2. *AA 54(2), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. N O - S I R
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~original~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport so to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. B and Ex. C respectively.(3)
(1. *MFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. N O T E - A T
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(1. *When several accused tried unjointly see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 46.* As to sentences *see AA 44, 138, 182, RP 46-50, 69, 116, 119(A), KR Con 358, 332, 563-564, Overseas RO 809, 2222, MML p 66, 757-759.* As to sentences assigned for civil offences by the law of England *see AA 41(5), MML p 730.* When accused already under sentence of imprisonment or detention *see AA 44(1B), 68(1), KR Con 564.* 2. *RP 50.* As to release from arrest by Confirming Offr *see KR Con 567.* As to assembly and disposal of record after trial *see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, B.161146 Pte. SMITH, Walter Thomas, No.15 Canadian Base Dental Coy.(A),CDC, a soldier of the Canadian Army Overseas is charged with:

FIRST CHARGE
Sec.15(1) AA

WHEN ON ACTIVE SERVICE ABSENTING HIMSELF WITHOUT LEAVE

in that he

At Brighstone, Farnborough, Hants, did absent himself without leave from 2300 hrs 30 Aug. 45 until apprehended at Formby Lancs at 1530 hrs 31 Aug. 45. Cost of apprehension £2-8-5. (Total time absent 16 hrs,30 mins.)

SECOND CHARGE
Sec.40 AA

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he

on 31 Aug. 45 was concerned in the improper use of WD vehicle CM 1164432.

THIRD CHARGE
Sec. 40 AA

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in that he

At Formby, Lancs. on 31 Aug. 45, when questioned by Capt. E.V. Nathan, The King's Regt. No. 19 Infantry Training Centre, British Army, behaved in an insolent and unsoldierly manner.

(R.F. Denholm) Lt.-Col.,
Officer Commanding,
15 Cdn.Base Dental Coy.,(A),
Canadian Dental Corps.

Farnborough, Hants
10 Sep. 45

To be tried by Field General Court Martial.

(D.C. Spry) Maj-Gen.
Commander,
Cdn.Hft.Units.

In the Field.
12 Sep 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23. RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names. Surname.	Unit.
B-161146	Private	Walter Thomas SMITH	15 Cdn Base Dental Coy CDC

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 12 Sep 45 endorsed by me, "~~[illegible]~~" To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~[illegible]~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~[illegible]~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~[illegible]~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-Col	D.L. Redman, VD	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
A Captain	To be detailed by 4 VRD 1 CCOD	
A Lieutenant	To be detailed by 4 VRD 1 CCOD	
	~~WAITING MEMBER~~	
	~~JUDGE ADVOCATE~~	

On Active Service in the Fd

in England (Country.)

Dat 12 Sep 45

D C Spry (Signed personally. RP 105 fn 2.)

(D C SPRY)

Maj-General (Rank.)

Commanding Canadian Repatriation Units

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A CFA 65 (In lieu of AFA 2) 80-P-45-1697 (5143)

(See overleaf for oaths and notes for use on trial.)

Medical Officer's Certificate:

I certify that B.161146 Pte. SMITH, W.T., 15 C.B.D.C.(A),
is fit/~~unfit~~ to undergo trial by Court Martial.

14 Sept 45 John A. McC. Neill Capt.
Medical Officer

Statement in Investigation of Punishment.

B-161146 Pte Smith, Walter Thomas
No. 15 Canadian Base Dental Coy (A) C.D.C.

Pte W.T. Smith age twenty (20) enlisted in the Canadian Army 1 May 1944 and since then has served seven months in the United Kingdom.

He has a clean crime sheet.

He realizes he is guilt on all three charges.

It is pointed out that this man was only acquainted with the other accused soldiers for a period of a few weeks prior to his ~~arrest~~ for the charges stated

Capt
No 15 Cdn Base Dental Coy (A).

Summary of Evidence in the case of B 161146 Pte Smith W.T. No 15 Cdn.Base Dental Corps,a soldier in the Canadian Army Overseas.

By direction of the Commanding Officer this Summary of Evidence is taken on Oath.

Under provision of Overseas R.O. 5352 a certificate of apprehension,Army Act Sec 163(1)(ii) signed by Major Henley,Commading No.19 Infantry Training Centre is presented herewith as Appendix A,also Expense Voucher signed by Capt Harrison No.6 Area Provost Coy,London as Appendix B. These documents have been read over and shown to the accused.

FIRST WITNESS: B 30200 Sgt.Pearce,N.W. No.15 C.B.D.C. having been duly sworn states:

I was Orderly Sgt. for No.15 C.B.D.C. on 30 Aug 45. At apprex. 2300 hrs 30 Aug 45 I took tattoo roll call and discovered Pte Smith, whom I recognise,to be absent. I marked him absent on Tattoo report.

The accused decli nes to cross-examine the witness.

...N. W. Pearce.....
(B 30200 Sgt.Pearce,N.W.)

SECOND WITNESS: Capt.E.V.Nathan,The King's Regt.No.19 I.T.C. Formby,Lancs. A statement of this witness' evidence purporting to be signed by him has been read to the accused and is included in the Summary of Evidence and marked Appendix C.

Having regard to the expense and loss of time involved the attendance of this witn ess cannot in my opinion be readily procured.

R.A.Cooper Lt
.....
(R.A Cooper,Lieut.) Officer detailed to take the Summary of Evidence.

The accused does not demand the attendance of this witness for cross-examination.

THIRD WITNESS: R.S.M.Hollihead,H. The King's Regt. No.19 I.T.C.Formby,Lancs.A statement of this witness' evidence purporting to be signed by him has been read to the accused and is included in the Summary of Evidence and ~~is included~~ marked as Appendix D.

Having regard to the expense and loss of time involved the attendance of this witness cannot in my opinion be readily procured.

R.A.Cooper Lt
.....
(R.A.Cooper,Lieut.) Officer detailed to take the Summary of Evidence.

The accused does not demand the attendance of this witness for cross-examination.

The accused was cautioned as follows."Do you wish to make any statement or to give evidence on Oath?.You are not obliged to say anything or to give evidence unless you wish to do so,but whatever you say or any evidence you give will be taken down in writing and may be given in evidence".

The accused declines to make a statement and reserves his defence.

I certify that the foregoing Summary of Evidence,consisting of one page was taken down by me in the presence and hearing of the accused,and that Rules of Procedure 4(C)(d)(e)(f)and(g) have been complied with.

BOROUGH,HANTS.
7 Sep 45

R.A.Cooper Lt
.....
(R.A.Cooper Lieut.) Officer detailed to take the Summary of Evidence.

EXA

(A)

CERTIFICATE UNDER THE ARMY ACT, SECTION 163 (1) (iii)

I Major M.G.H. Henley. Certify that.6.161146.Dvr.Smith..W.T.....of R.C.A.S.C. the.....was arrested by R.S.M. Hollihead at Formby at about 1530 hrs. on the 31st. day of August, 1945.

Harington Barracks, Formby. 1 Sep '45.

M. G. H. Henley Major, Commanding No. 19 Infantry Training Centre.

(P)

Expense Voucher [illegible]

Ref: KR & O (Can) 539

Reg No B-161140 Rank Pte. Name Smith, W.T. Unit "S" C.B.D.C.

The following expenses were incurred in apprehending and returning the M/N Soldier to ~~his Unit from~~ London from Formby

Date	Particulars	Amount		
2 Sept 43	Escorts return fare from LONDON To Formby (½ Portion)		3	5
	Prisoners single fare to LONDON From Formby		16	—
	Prisoners fare from to			
	Escorts & Prisoners expenses for Bed, Meals, Bus fares		11	0
	Total £	2	8	5

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

R P Cameron Capt

Officer Issuing Railway Warrant and Expense monies
No. 6 Area Provost Company, Canadian Provost Corps, London

1/35 CMHQ 100-55
40/P & S/483 (6762)

(C)

STATEMENT

Statement by B77552 Capt. R.V. Nathan. The King's Regt.
No.19 I.T.C. Formby.

At approx 1915 hrs Friday 31.August 1945, I was proceeding towards Harington Barracks, Formby, on a bicycle via Victoria Road. As I approached the Level Crossing, I noticed that the Level Crossing Gate was closed, so I pulled up approx 10/15 yards from the Freshfield side of the Gate(Approx by Cross ' Newsagent). There were several junveniles on cycles, dismounted and waiting also to cross the line. During the wait an Army Saloon Car of Ford make, with American body, slipped past me and pulled up sharply between the spot where I was waiting and just behind the Junveniles.

I noticed that the occupants of the car were soldiers and appeared to be very untidy, i.e. Tunics unbuttoned, and hats pushed to the back of their heads. Although the gates was still closed, the driver of the car started to sound the horn impatiently, and kept it up continuously until the gates opened. Prior to the gates opening I was rather impressed by the ridiculous manner in which the driver kept sounding the horn, and just about to move towards the car to ascertain, why they were making themselves so ridiculous to the people standing by, when the gates opened, and I changed my mind and decided to tackle them on the other side of the crossing. I therefore mounted my cycle and [redacted] the car and passed over the railway line. At this stage there was a 3 Ton Lorry belonging to this I.T.C. waiting on the opposite side of the gate, having come from Camp and was proceeding towards Freshfield via Victoria Road.

The Army Driven Car followed behind me over the lines, but could not over take me on account of the Army 3 Ton just moving off in the opposite direction. As I passed the car in the first instance, I noticed that the occupants were all Private soldiers. During the time the car was moving behind me over the lines, the horn was again being sounded impatiently, obviously meant for me to get off the road, as I was the only user of the road immediately infront. This annoyed me terribly, and as I got just past College Path(on my left) I dismounted from my cycle, and as I did so a Young Girl of approx seven years of age also riding a cycle, almost went into my rear wheel. The Ford car was then only 2/3 yards behind this little girl and had to pull up. I approached the car, at the same time getting my note-book and pencil from my pocket. As I approached the stationery car and reached the door, the soldier sitting next to the driver shouted something in obscene language to me, and with a grin on his face the driver of the car, put in the gears and the car flashed away.

I felt that this act on their part had made me, and Officer in His Majestys' Forces look ridiculously small to the pedestrians that had collected by the gates. Knowing that the road along which the car had disappeared led direct to the Beach and that there was no road back for them, only returning along the same road. I made up my mind to wait for them at the entrance to the camp on their return. I cycled into Camp, and asked the Regimental Policeman on duty if by chance the car answering to the discription that I gave had come into the Camp. He replied "Yes" it has gone to the Canteen, and looking down in the direction of the N.A.A.F.I. (Proctors Road) I saw the car in question. I went to the Guard Room, contacted a Regimental Police Cpl., and instructed him to get Sgt Turner, Regimental Police Sgt, to detain the car on its way out and bring it with the occupants down to "Y" Company Office. This would be approximately 1530 hrs.

Shortly after my return to "Y" Company, I noticed the car in question pull outside the Office, the driver shouting something about 'where is the Orderly Room'. I replied "never mind the Orderly Room, the three of you get out of that car and come in here at once". They entered the office in a very truculent manner, I noticed they were intoxicated. They all had their tunics(B.D.) undone, two of them only with hats, and two of them stood with their hands in their trouser pockets and faced me in a very casual manner. I demanded their A.B. 64 or other means of identification, as I recognised them as Canadian Soldiers'. At this stage "Y" Company Sergeant Major Comer instructed them to take their hands out of their pockets. They had no means of identification with them, and they all started to talk at once. One of them demanding to know what I required them or their identification Cards for, and then they started.

Continued 2

to talk among themselves, each trying to say something. I told them to shut up as I would do all the talking necessary and that I wanted their names and numbers in order to prefer a charge against them for irregular conduct towards me on the public highway.

This seemed to annoy them intensly, they told me to calm down, and one of the three who appeared more arrogant than the rest told me that it was no business of mine. At this stage the A/Adjutant Lieut Thompson, King's Regt happened by chance to come into the Office.

He was present when this same arrogant soldier stated that they took no notice of British Officers, neither did they salute them, and it was no business of the British what they did on the roads, as they the Canadians did not interfere with the British Soldiers.

They then proceeded to give the following particulars, since proved fictitious: -

H. 10432 WILSON
W. 3824.5 JONES
M. 101537 HENDERSON.

Lieut T.J. Thompson then questioned them himself and was not satisfied with their Bona Fides.

I asked them why they were so impatient at the Level Crossing to which the arrogant one replied " It was a matter of urgency"

I said do you call it a matter of urgency having only to go to the Canteen. He said "Yes" we were after cigarettes, but the Canteen was closed. He had a few drinks in a Pub at Wrenhfield and we had our cigaretts stolen from the car. On being asked where they were making for they said Glasgow. At this stage S.S.M. Hollihead arrived at "W" Company office after being sent for by the Adjutant.

In reply to my request for a Regimental Route, Work Ticket or some other voucher, they produced a Work Ticket, from which it was noticed that they had just received and signed for 4 gallons of petrol from the R.A.S.C. Garage, S.S.M. Hollihead in the meantime was checking the number of the vehicle outside. The number confirmed with the number of Work Ticket. S.S.M. Hollihead further reported that there was no other articles of Kit or Baggage in the car, which did not seem to correspond with their story about going up to Glasgow. The Work Ticket showed that they had come from Farnbrough. They did not seem very sure of the road to Glasgow neither could they give the Adjutant any satisfactory answer as to why they should be in Formby at all if their story was correct.

The driver of the car according to the Work Ticket was Lt-Colonel Stuart. The soldiers' were still very arrogant, displaying terrible lack of discipline. They were held outside on the instructions of the Adjutant pending a phone call which I had put through to a Canadian Unit. The phone number and address was obtained from the Work Ticket and was an Aldershot number.

On instructions from the Adjutant Lt Thompson, I contacted the Adjutant of the Canadian Unit and learnt that the 3 soldiers' were not known to them by either the names or numbers that they had given me, but that the car was, according to the number, a stolen car. The car had been missing since 5-30 Yesterday Thursday 30.8.45. The Canadian Unit Adjutant asked me if the car was in a serviceable condition. I informed him that it was. He requested me to place the 3 men under arrest and that he would arrange for an escort to report here to-morrow Saturday 1st Sept.1945, to collect them and the car. I went outside and the 3 soldiers' who were then sitting in the car were ordered by the S.S.M. in the presence of the Adjutant and myself to get out and proceed down the road. They were still interested when they got out of the car at approx 1600 hrs. Inside the Guard Room I informed the 3 soldiers', that they were being detained for being in possession of a stolen Car, to which they replied "thats right".

The car was later moved to the R.A.S.C. Garage for safe custody.

Continued.....3

Cas No. C.M. 1164432. I did not mention any further charges that might be pending, neither did I administer the usual formal warning regarding the making of any statements.

Harrington Barracks,
WORSBY, Lancs
31.8.45

Capt. The King's Regt.
Commanding "V" Company No.1 I.T.C.

D

COPY

DISCIPLINE REPORT AGAINST:-

H-65807 Dvr. Bannatyne, R.C. R.C.A.S.C.
i/c A.T. Coy.
B-161146 Dvr. Smith, W.T. R.C.A.S.C.
15 C.B.D.C.
M-101537 Pte Bremner, G.
1/c S.I. Training Bn.

R.S.M. Hollihead, H. The King's Regiment, No 19 I.T.C. Formby,

States:-

Sir, At Formby on the 31st Aug 1945, at about 1530 hrs, I saw three soldiers of the R.C. Army in "V" Company Office, H.65807 Dvr. Bannatyne was one of them. He was in possession of Transport Work Ticket No 63 as the driver of W.D. Vehicle No CM 1164432. He stated that he was driving his two companions B.161146 Dvr. Smith. 15 C.B.D.C., R.C.A.S.C. and M.101537 Pte Bremner, G. 1/C.S.I. Training Bn. to a transit camp in Scotland. He had applied for petrol which he had received 4 gallons. Owing to their attitude towards an Officer their statements were checked. On the result of these enquiries I placed the accused and both his companions under "Close Arrest". Dvr. Bannatyne later admitted to me that he had stolen the car No. CM 1164432 and that he was A.W.O.L. from 0800 hrs. 31 Aug '45. The three soldiers had travelled from Aldershot Area in this car.

Sir,

(Sgd) H. Hollihead R.S.M.
The King's Regiment, Formby

Certified a true copy.

R.A.Cooper Lt

(R.A.Cooper,Lieut) Officer detailed to take the Summary of Evidence.

ACCOMPANYING PERSONS ARRESTED:-

H 6)807 Dvr. Beamatyne.S.C. R.C.A.S.C.
1/c A.T. Coy.
B 1b1146 Dvr. Smith.W.F. R.C.A.S.C.
15 C.B.S.C.
M.101937 Pte. Brenner.C.
1/c C.I. Training Bn.

R.S.M. Hollinrod.H. The King's Regiment, No. 2) I.T.C. Formby.

States:-

Sir, At Formby on the 31st August 1943, at about 1930 hrs. I saw three soldiers of the R.C. Army in 'V' Company Office. H.6)807 Dvr. Beamatyne was one of them. He was in possession of Transport Work Ticket No. 63 as the driver of W.D. Vehicle No. CM 1)6432. He stated that he was driving his two companions B.1b1146 Dvr. Smith. 15 C.B.S.C., R.C.A.S.C. and M. 101937 Pte. Brenner.C. 1/C.I. Training Bn. to a transit camp in Scotland. He had applied for petrol which he had received 4 gallons. Owing to their attitude towards an Officer their statements were checked. On the result of these enquiries I placed the accused and both his companions under 'Close Arrest'. Dvr. Beamatyne later admitted to me that he had stolen the car No. CM 1)6432 and that he was A.W.O.L. from 0001 hrs. 31 Aug. '43. The three soldiers had travelled from Aldershot area in this car.

Sir,

R.S.M.
The King's Regiment, Formby.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
B.161146	PTE.	SMITH, Walter Thomas	15 Cdn.Base Dental Coy(A)

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be annexed to the proceedings. The numbers herein stated should correspond with the number of entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For .... times.
For NIL. ..... times.
For .... times.
For .... times.

Date of first entry in Field Conduct Sheet N/A

Date of last entry in Field Conduct Sheet N/A

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*Strike out if not applicable.

*3. The accused at the present time is under sentence to ~~[illegible]~~ N/A
beginning on the ~~[illegible]~~ day of N/A

4. The accused has been awaiting trial on the present charges for nil days in civil custody; and for 14 days in military custody, i.e., ~~[illegible]~~ days in open arrest, 14 days in close arrest; of which nil days were spent in hospital.

5. The present age of the accused is 20 Years

6. The date of his attestation or ~~enlistment or call-up or transfer to the Army~~ is 28 APR, 44

7. The service which the accused is allowed to reckon is 1 YR. 139 dys.

†State the military decorations (if any) held by accused.

8. The accused is in possession of† nil

9. *(If the accused is a warrant officer or N.C.O.).* The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
In the substantive rank of N/A	
In the war substantive rank of	
In the acting rank of	

EXB

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

(*21072) Wt.36721/8703 25,000 9/44 A.S.L.S. Ltd. Gp.698

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
		NIL.		

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 14th day of Sep. 1945

for (R.F. Denholm) Lt.-Col.

M.F.M. 6
(A.F. B.122)
40/P & /5136 (2668)

No. 161146 Name SMITH, W.T. Sqn., Battery, or Company 15 CBDC Corps C.D.C. Date of enlistment 28-4-44 G.C. Badges nil Service or Proficiency Pay Yes Character Good.

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. 1 | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				"NIL - Entries					

Certified True Copy:

J.P. Cox Capt
for Officer Commanding
No. 15 C.B.D.C., C.D.C.

(P.T.O.)

List of Exhibits:

(a) Certificate under AA Sec 163 (I)(11).

(b) Cost of apprehension and return.

(c) Original statement by Capt. E.V. Nathan, The King's Regt., 19 I.T.C., Formby, Lancs.

(d) Original statement by RSM. Hollihead, H., The King's Regt., 19 I.T.C., Formby, Lancs.

List of Witnesses:

For prosecution:

1. B.30200 Sgt. Pearce, N.W., 15 C.B.D.C.(A).
2. Capt. E.V. Nathan, The King's Regt., 19 I.T.C., Formby, Lancs.
3. RSM. Hollihead, H., The King's Regt., 19 I.T.C., Formby, Lancs.

I, B.161146 Pte. Smith, W.T., desire to have an officer to represent me at my trial by Field General Court Martial.

10 Sep. 45.

Pte Smith W T
.....
B.161146 Pte. Smith, W.T.

ZZZ-90.

Gnr. Smith Z.

RECEIVED 19 OCT 1944 JAG BRANCH C.M.H.Q.

RECORDED AT CMHQ IN AB 160 ZZZ-90

FIELD GENERAL COURT-MARTIAL

CFA66 (In lieu of AFA3) 40/P.A.S./1808 (3804)

Convened at [illegible] by Brig J.C.Stewart CBE DSO Comd "C" Gp, CRU dated 30 Sep 44

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: E-46926 Gnr SMITH, Zephefren - 2 CARU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec 15(1)	GUILTY	GUILTY	
2nd AA Sec 40	GUILTY	Guilty	
3rd AA Sec 40	Guilty	Guilty	
~~4th~~			
~~5th~~			
~~6th~~			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and re loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ~~beginning on (date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 44 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for a period of Ninety (90) days.

(Sgd) [illegible] 30 Oct 44 (Sgd) [illegible] Col

Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date (Sgd) Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 52, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~ (1. AA 57A. Delete if not used.)

(Sgd) J. C. Stewart

Date 30 Oct 44 Commanding J. C. STEWART, Brigadier, Commanding "C" Group, Con. Reinforcement Units.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused Date

E-46926 Gnr Smith Z 30 Oct 44 [illegible] Lt Col

Published HQ 222 d/11 Oct 44 R.H.Bellisle Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

PROCEEDINGS REVIEWED

J.C.Campbell Maj-Gen

20 Oct 44.

REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
E-46926	Gnr		Zephefren	SMITH	2 CARU

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date) 30 Oct 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instrs, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant finn RDs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1530 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO(2).~~

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

~~A5. President to accused: Do you object to be interpreted? Ans~~

~~The Interpreter is sworn.~~(1) Do you object to [illegible] as shorthand writer? Ans NO SIR

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO, SIR

(1. RP 110. 2. If no objection, waiting member returns. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instrs, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt Col	D.L.	REDMAN	HQ, CRU
Member	CAPT	F.R.	CHESSEX	1 CARU
Member	LT	J.E.	LAZIER	2 CARU
~~Judge-Advocate~~				
Prosecutor	CAPT	H.C.	REES	2 CARU
Defending Offr	LT	R.H.	BELISLE	2 CARU

Questions by President: Is the Prosecutor a lawyer? Ans YES Is the Defending Offr a lawyer? Ans YES(2)

(1. RP 26, 27, 109, 111. List of offrs under instrs will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 33.)

A8. The accused before arraignment makes(s) (no) (~~of~~ plea (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or the one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to Rule cited. Insert in AE rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court ~~is cleared and~~ considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative (RP 37(A).) As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence. (RP 44(H).) Accused may change a plea of Not Guilty to Guilty during trial. (RP 38.) As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (RP 37(A).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; swearing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. NO SIR (5)

(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para L3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his plea(s) of guilty to Not Guilty on the charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s).~~ Part I of the Schedule is amended accordingly.(2)

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans .....(1)

(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 93(C).*)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)

NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (RP 60(C), 114, 115.)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither?

Ans .....

Do you intend to call witnesses on your behalf?

Ans .....

Are these witnesses as to character only? Ans .....

(1. *RP 195.* 2. *RP 40(A), see 80(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)

Ans TO GIVE EVIDENCE NOT AT

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 27(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex "C" respectively.(2)

(1. *MFB 255 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s) and in mitigation of punishment?(1) Ans. Yes - Brought Up Offs (NOTE AT

(1. *RP 27(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused after his witnesses is sworn on oath anything here or previously stated which would affect the amount of punishment. RP 87(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and by other JA, if any.~~(2)

(1. *When several accused tried separately see RP 70(f). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 558, 236, 563-564. Overseas: R(I) 309, 1333, MML p 60, 757-759. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(18), 58(1), KR Con 564.* 2. *RP 50. As to release from arrest by Confirming Offr see KR Con 567. As to assembly and dispersal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Remarks of C.O. (explanation of delay etc)

The accused E-46926 Gnr Smith, Z. was apprehended by a Naval Picket in London on 22 Aug 44 and was admitted to No 2 CARU Guard Room on 25 Aug 44. On 26 Aug 44 the accused was remanded for a Summary of Evidence on two charges, AWL and wearing the uniform of a Naval Rating. As the accused was known to have been friendly with a Gnr David, L. who is in Civil Custody, the Cdn Provost Corps interviewed Gnr Smith with a view to clearing up some of the thefts which have been occuring in this Unit. Gnr Smith admitted to the Cdn Provost that he stole property from a Cdn Soldier, which led to a third charge being laid. The documentary evidence received from the Naval authorities in London showed a wrong date, so the officer taking the Summary of Evidence had to go to London to get this corrected. The remainder of the delay was caused by awaiting substantial evidence from No 9 Cdn Provost Corps to substantiate the third charge.

Date 11 Oct 44

.....
a/Commanding Officer, No 2 C.A.R.U

CHARGE SHEET

The accused E-46926 Gunner Zephefren SMITH, of No 2 Cdn Arty Rft Unit, a soldier of the Cdn Army Overseas is charged with:

1st Charge
Section 15(1)
Army Act

WHEN ON ACTIVE SERVICE
ABSENTING HIMSELF WITHOUT LEAVE

In that he,

in the field, absented himself without leave from 2230 hrs 1 Aug 44 until being apprehended by a Naval Picket at London at 1035 hrs 22 Aug 44. Time absent 20 days, 12 hours and 5 minutes.

2nd Charge
Section 40
Army Act

WHEN ON ACTIVE SERVICE
CONDUCT TO THE PREJUDICE OF GOOD
ORDER AND MILITARY DISCIPLINE

In that he,

at London, on 22 Aug 44 was, without authority wearing the uniform of a Naval Rating.

3rd Charge
Section 40
Army Act

WHEN ON ACTIVE SERVICE
CONDUCT TO THE PREJUDICE OF GOOD
ORDER AND MILITARY DISCIPLINE

In that he,

on approx 12 Aug 44, was improperly in possession of property belonging to a soldier of the Cdn Army Overseas.

Huron Camp
Bramshott Hants
25 Sep 44

(Mackenzie Waters) Colonel
Commanding Officer
No 2 Cdn Arty Rft Unit
Cdn Army (Overseas)

To be tried by Field General Court Martial

Commanding 3rd Cp, Cdn Reinforcement Units Brigadier
(Convening Officer)

Bordon, Hants

30 Sep 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
E-46926	Gnr		Zephefren	SMITH	2 CARU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person named above as the accused, being subject to military law, has committed the offence(s) set forth in the Charge Sheet attached and on (*date*) this date endorsed by me, ("A true copy whereof is hereto annexed"), " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; [and that a delay in the trial would not be detrimental to the service.]

(*Delete part in brackets when not required for compliance with RP 105(C).*)

3. I hereby convene a Field General Court-Martial to try the said person, and to consist of the Offrs appointed or detailed hereunder.

4. [I authorize the accused to appear without counsel.] [I direct that the accused be represented by counsel.]

(*AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.*)

5. [I also appoint an officer to act as prosecutor.]

(*RP 106(E). Delete, if none appointed.*)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Lt-Col	D.L. Redman VD		HQ CRU

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Captain	detailed by CO		1 CARU
Lieutenant	detailed by CO		2 CARU

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England
(Country.)

(Signed personally. RP 105 fn 2.)

Brigadier
(Rank.)

Date 30 Sep 44

Commanding "C" Group, Cdn Reinforcement Units
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (FGCM) (To form of APA) 40-7-6-8/1697 (4401)

(See overleaf for oaths and notes for use on trial.)

Medical Officers Certificate
K.R. (Can) para 557

I certify that I have this morning examined No E-46926
Gunner Smith, Z. of No 2 C.A.R.U., and in my opinion
he is fit to undergo trial by Court Martial.

H.P. Anderson Capt. RCAMC
(Medical Officer)

No 2 C.A.R.U.

5 Oct 44

F.G.C.M. IN THE CASE OF

E 46926 Gnr SMITH, Z, 2 CARU

5TH OCT 44

After the accused had plead guilty the Defending Officer stated that there was contained as Ex "D" to the summary a statement of a Gnr David. He said that this statement was not taken in the presence or hearing of the accused and he asked that the said ex be struck from the summary and not read to or by the Court. The Prosecutor agreed with the facts stated by the Defending Officer. The Court, therefore, without reading the statement returned it to the Prosecutor. as it was irrelevant and probably prejudicial to accused
The Prosecutor also stated that the reason that the name of the soldier of the Cdn Army who owned the property referred to in the 3rd Charge was not given in the charge was because it was unknown.

When the AFB 296 was introduced the Defending officer said that this form shows the accused was 49 days in close arrest awaiting trial but it does not disclose that for 23 days he was in shackles.

STATEMENT BY THE ACCUSED IN MITIGATION E-1

Sir,

I joined the army 9 Jun 41, I came over seas on the 22 Nov 41. I was trained as a gunner 1st class in the LAA, I came over with the 7 LAA and never had any crimes while I was with the unit, I got to be a full Bdr but was sent to the hospital before it was confirmed and while in the hosp I lost my pay for the rank and when I came to 2 CARU I was stripped of my stripes. I passed my basic training, qualified as an AA gunner again and ATk gunner, and then I paraded to the CO for being put on a draft, I paraded to Major Sutherland six times to be put on draft to Italy, he refused me because I was a driver IC and was needed here. I am category "A", and feel that I am fully trained, about four months ago I was put on basic training again, I was fed up at being treated like that and paraded three times to be put on draft for France, I was a qualified gunner and a driver and I wanted to go with a unit, however I was again refused and so I just went loose. I was picked up in Londnn by the Naval Provost on the 22 Aug 1944, they sent me to 2 CARU guard room on the 25 Aug 44, they kept me in hand cuffs for 24 days day and night. They were only taken off for my meals and when I changed clothes, I slept with them on and I don't know why because the guards told me that I was the best prisoner that they had, I did not try to escape and I did everything that they told me to do. I still want to go on draft, I am willing to go to any unit whether it is artillery or not, I am not married and 23 Years of age, in civil life I was a boxer and a truck driver in Westmount P.Q. My only complaint against the army is being kept around the RU when other Canadian are fighting a war, I want to go with the rest of them and be with them while they are fighting, whether it is Italy or France or anywhere. The kit bag which had the leather writing case in that I am accused of stealing was left by the owner in the wash room, I heard about it being there and after about a month I took the writing case and sold it, I needed a bit of money, and I did not think that the owner was coming back to get it and no one else seemed to want it. I did not want to steal it, I do not want anyone to think that I am a thief. As far as the Naval uniform is concerned, I was in Hammersmith at a picture show, it was around 15 Aug 44, I had met a Cdn sailor and we went drinking and had a bit too much and felt doing most anything he suggested changing clothes just to see how it would feel, I consented, while we were sleeping in the air raid shelter he

ran away and took my uniform. I wor the sailor's clothes until I got picked up in London. I looked for him for a week but as yet have not found or heard of him.

PLEA IN MITIGATION E-3

Sir,

The accused is prepared to make a full and open confession of his crimes and is therefore throwing himself on the mercy of the Court. He has been in the army since Jun 41 and in that better than three years of time has only had two compartively minor charges brought against him, in connection with these present charges, I have had the opportunity, in the presence of the Prosecutor, while waiting for the commencement of the trial, to have conversation with some of the witnesses for the Prosecution and they told me as the Prosecutor can verify, that the accused had been extremely co-operative in making a full disclosure of his crimes. The two able-bodied seamen of the Royal Navy who apprehended him stated that at the time he was picked up they were clothed in heavy oil skins, they merely spoke to him and he willingly and obligingly went with them. If he had attempted to avoid apprehension he could have easily done so. The accused prior to these charges has, as I mentioned, had but two small crimes, otherwise a good military record, as you have learned from him.

It would appear from the accused statement and his confession that he is extremely penitant for this crime or misdeed of which he has pleaded guilty and has expressed the desire to see service, not for service's or excitement's sake but because his fellow Canadians are fighting a war and he feels it is his duty to be there also doing whatever he can. I ask the Court to give him the lightest possible sentence under the circumstances.

CONFESSION IS WRITTEN OUT AND IS ATTACHED.

SUMMARY OF EVIDENCE IN THE CASE OF E-46926 Gunner Zephefren SMITH, of No 2 Cdn Arty Rft Unit, a soldier of the Cdn Army Overseas.

By direction of the Commanding Officer the Summary of Evidence is taken on oath.

1st Witness for the prosecution

Lieut. G.W. Currie, Administrative Officer "B" Trg Wing, No 2 C.A.R.U., an officer of the Cdn Army Overseas, having been duly sworn states:

"I produce:
CERTIFIED TRUE EXTRACT FROM NO 2 CARU PART II ORDER No 169 d/5 Aug 44 purporting to be signed by Capt. R.L. Allely, Records Officer, No 2 CARU, relating to the accused whom I now recognize. This certified true extract is marked Exhibit "A" and annexed to the Summary of Evidence.

The accused declines to cross-examine this witness.

2nd Witness for the prosecution

C/J 84859 A/B White, T.P.B., Royal Navy, having been duly sworn states:

A written statement of this witness' evidence purporting to be signed by him has been read to the accused and is included in this Summary of Evidence as Appendix "B".

Owing to the exigencies of the service the accused does not demand the presence of this witness for cross-examination.

D Korn Lieut.

(D. Korn) Lieut., RCA
Officer detailed to take the Summary of Evidence

3rd Witness for the prosecution

C/J 89594 A/B Fox, T.J., Royal Navy, having been duly sworn states:

A written statement of this witness' evidence purporting to be signed by him has been read to the accused and is included in this Summary of Evidence as Appendix "C".

Owing to the exigencies of the service the accused does not demand the presence of this witness for cross-examination.

D Korn Lieut.

(D. Korn) Lieut., RCA
Officer detailed to take the Summary of Evidence

4th Witness for the prosecution

K-25606 Cpl Halley, L.W. of No 9 Cdn Provost Corps, a soldier of the Cdn Army Overseas, having been duly sworn states:

"On 28 Aug 44 I proceeded to Guildford Police Station and interviewed Gnr David, L. After being duly cautioned Gnr David volunteered the following statement."

A written statement purporting to be signed by Lomer David has been read to the accused and is included in this Summary of Evidence as Exhibit "D".

(to page 2)

4th Witness for the prosecution (Cont'd)

"On 29 Aug 44 I interviewed Gnr Smith, Z. whom I now recognize, in the Guard Room, No 2 C.A.R.U. After having been duly cautioned Gnr Smith volunteered the following statement."

A written statement purporting to be signed by Gnr Smith is included in this Summary of Evidence as Exhibit "E".

I next interviewed E-100375 L/Bdr Grondin, A. of "B" Bty No 2 C.A.R.U. and obtained from him a leather writing case with the initials S.T.M. on it. R W Halley

This leather writing case is marked Exhibit "F" and annexed to the Summary of Evidence.

The accused declines to cross-examine this witness.

5th Witness for the prosecution

E-100375 L/Bdr Grondin, A. of "B" Bty, No 2 C.A.R.U. a soldier of the Cdn Army Overseas, having been duly sworn states:

"Between 1200 and 1230 hrs on approx 12 Aug 44, Gnr Smith, Z. whom I now recognize approached me in Hut No 6 Huron Camp, No 2 C.A.R.U. and offered for sale a leather writing case, which I now recognize as exhibit "F". I told Gnr Smith that I had only seven Shilling and Gnr Smith replied that he would accept the seven Shilling for the writing case. I asked him where he got the writing case and he told me that he got it from his girl friend in London. The leather writing case had the initials S.T.M. on it.

A. Grondin

The accused declines to cross-examine this witness.

The accused was cautioned as follows. "Do you wish to make a statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

I certify that the foregoing Summary of Evidence consisting of one and one-half pages was taken down by me in the presence and hearing of the accused and that Rules of Procedure 4(c),(d),(e),(f) and (g) have been complied with

D Korn Lieut.

(D. Korn) Lieut., RCA
No 2 Cdn Arty Aft Unit
Officer detailed to take the Summary of Evidence

Huron Camp
Bramshott, Hants
25 Sep 44

No. 2 Canadian Artillery Reinforcement Unit,
Canadian Army Overseas.

Last Order No: 168 d/4 Aug 44.

PART II ORDERS
Issued by
Col. Mackenzie Waters, MC, VD, Commanding Officer

This Order No: 169 d/5 Aug 44

Exhibit "A"

SECTION "B" OTHER RANKS

8. ABSENT WITHOUT LEAVE:

(a) Absent without leave from times and dates as shown, and still absent a period over 24 hours.

E-46926 Gnr. SMITH, Z. 2230 hours 1 Aug 44 (A)

(Mackenzie Waters) Colonel,
Commanding Officer
No. 2 Canadian Artille ry Reinforcement Unit,
Canadian Army Overseas.

CERTIFIED TRUE EXTRACT

R.K. Allely

(R.L. Allely) Captain, RCA
Records Officer
No 2 Cdn Arty Rft Unit
Officer having custody of original document

At about 1035 hrs on the 28 Aug 44 in company with A/B Thomas George FOX I was patrolling Trafalgar Square when I saw a Naval rating approach us. He was stopped and asked to produce Pay and Identity Book and Leave Pass. He could not produce either and was therefore escorted to London Naval Picket HQ for further questioning. He gave the name of Smith, Z and admitted that he was a soldier in Naval uniform and without authority, and that he was absent without leave approx one month. He was handed over under escort to the Cdn Provost Corps.

"B"

Thomas Felix Baldamley White

C/J 84859 A/B White, T.F.B.

At about 1035 hrs on the 22 Aug 44 in company with A/B T.P.B. White I was patrolling Trafalgar Square when I saw a naval rating approach us. He was stopped and asked to produce pay and Identity Book and Leave Pass. He could not produce either and was therefore escorted to London Naval Picket HQ for further questioning. He gave the name of Smith, Z and admitted that he was a soldier in Naval uniform and without authority, and that he was absent without leave approx one month. He was handed over under escort to the Cdn Provost Corps.

Thomas George Fox

C/J 89594 A/B Fox, T.J.

"C"

Exhibit D

CANADIAN PROVOST CORPS

STATEMENT II

DATE 28 August 44

SUBJECT -

STATEMENT OF Regt. No. Lomer David

of 2 CARU. Taken at: Guildford Civil Police Station 1230 hrs.

'I have been warned that I am not obliged to say anything unless I wish to do so, but that anything I now say will be taken down in writing and may be given in evidence.'

'To show that I understand the above warning, I make this statement voluntarily and with my own knowledge.'

SIGNED: Lomer David

STATES:

I was waiting in the hut for Pat around 1600 hrs the date I do not remember, when Pat came to me with a Kit Bag. He open the Bag and took out a pr of oxfords and 2 leather laces, what else I do not remember. After that occurred he left for London I believe.

When the watch which I stole from Pratt was sold, Pat, now known as Smith, sold that watch in my presence to an civilian in a Public House in Guildford for £3-0-0. After I stole the watch, Smith or Pat sold it for me. Smith told me at the first that he had stolen a lot of Kit Bags and that it was an easy way of making money.

I also stole a wrist watch from the cook's hut and also a pocket watch, a wooden cigarette case, two fountain pens, and a propelling pencil.

At the time of taking the above, I was sleeping in that hut, when Pat woke me up. I saw Pat searching in the items and I began also, and got the following as listed above.

Lomer David

Exhibit E

CANADIAN PROVOST CORPS

SUBJECT: Theft of Personal Property: DATE: 29/Aug/44

STATEMENT of Rect No: E 46926 Grn: Smith Z.

of No.2 C.A.R.U. Taken at:- 0930 hrs. 29 Aug 44 No.2 C.A.R.U.

"I have been warned that I am not obliged to say anything unless I wish to do so, but anything I now say will be taken down in writing and may be given in evidence".

"To show that I understand the above warning, I make this statement voluntarily and sign my name herewith".

SIGNED: Z. Smith

STATES:

Around the 5th of August 1944 I went into Hut 4 2 C.A.R.U. and stole a Pnr's: Kit/Bag: containing a pair of shoes and a leather writing case. I sold the leather writing case to E100375 A/L/Bdr: Gerrdin A. of B.Sty. 2 C.A.R.U.

On another date I stole a dress shirt from hut 5 2 C.A.R.U.

Signed: Z Smith.

E 46926 Smrt Smith Z.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
E-46926	Gunner	SMITH, Z.	No 2 Cdn Arty Rft Unit

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be entered to the proceedings. The numbers herein stated should correspond with the number of Entries in the Field Conduct Sheet, prominence being given to the most serious offence in each entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :— since completion of 6 Mos service within last 12 Mos.

For ____ ____ times.

For A.A.Sec.15(1) ONE TWO times.

For ____ ____ times.

For ____ ____ times.

~~Date of first entry in Field Conduct Sheet~~ ____

~~Date of last entry in Field Conduct Sheet~~ ____

~~2. Previous convictions of the accused by a court martial or a civil court are to be stated overleaf.~~

*Strike out if not applicable.

~~*3. The accused is the present charge is under suspended~~ ____

~~beginning on~~ ____

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for 44 days in military custody, *i.e.*, Nil days in open arrest, 44 days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 23 years 159 days

6. The date of his attestation ~~joining up for military service~~ is 9 Jun 41

7. The service which the accused is allowed to reckon is 3 years 118 days

†State the military decorations (if any) held by accused.

8. The accused is in possession of† CVSM and Clasp

~~9. If the accused is a warrant officer or N.C.O. The accused has not previously been reduced to the present rank~~

~~Date of Promotion~~

~~In Regimental Service~~ ____ ____

~~In the rank of Sergeant~~ ____ ____

~~In the present rank~~ ____ ____

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

W1-2670/648 500,000 5/41 A.& E.W.Ltd. Gp.698
W1-2670/1672 50,000 5/42 " " Forms/B.296 War/2

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.

N/A

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 26th day of Sep 1944

(G.W. Currie) Lieut., RCA
Admin Officer, "P" Trg Wing
No 2 C.A.R.U.

3/17 MFM 6
(AFB 122)
40/PAM/136 (5418

No. E46926 Name SMITH, Z. | Sqn. Battery, or Company | Corps R.C.A. | Date of enlistment 9 Jun 41 | GC Badges | Service or Proficiency Pay | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 1 | Signature OC Company, etc

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	28 Apr 43			A.A.Sec.15(1) A.W.L. from 2359 hrs 28 Apr 43 to 1230 hrs 30 Apr 43. Absent 1 day, 22 hrs, 31 mins	Documentary	Reverts to permanent rank of Gunner	1 May 43	Lt-Col.F.J. Thorne	Forf 2 days pay FRI 149 (1)(a)
Field	14 Nov 43	Gnr		A.A.Sec.15(1) A.W.L. from 1700 hrs 14 Nov 43 to 0630 hrs 15 Nov 43. Absent 13 hrs and 30 mins.	Sgt Ironside L/B Browning	14 days C.B.	15 Nov 43	Major FAL Charlesworth	Forf 1 day pay FRI 149(1)(a)

CERTIFIED TRUE COPY OF ORIGINAL MFM 6

(G.W. Currie) Lieut., RCA
Administrative Officer
"P" Training Wing, No 2 C.A.R.U.

Officer having custody of original document.

(PTO)

9 Provost Field

C.R.U.

28 Aug 44

Re;- C10614 Gnr.Lomer David,2 C.A.R.U.
Theft of Personal Property

1. On information received the writer accompanied by L/Cpl. Pond S.H. No.9 Provost Coy. proceeded to 2 C.A.R.U. and there contacted the Adjt. Lieut.C.W. Currie RCAF Wing who informed us that Gnr. Smith wanted in connection with David had been apprehended, Lieut.Currie gave us permission to interview Smith at 2 C.A.R.U. Guard Room.

944.2-52

2. R46926 Gnr. Smith Z. was then interviewed and the following statement obtained after he had been duly warned.

BEGINS: At approx. 1500hrs. 27 July 44 I was paid £3-0-0 around 1700hrs. 27 Jul 44 I left C.A.R.U. and went to Milford. After the Pubs closed I took the train and the first thing that I remember was waking up in Bournemouth on Friday morning 28 Jul 44. I got the train back the same morning and stayed the rest of the day in London. Around 0200hrs. 29 Jul 44 I took the train to Guildford,I stayed in Guildford all day Saturday and returned to C.A.R.U. Saturday night.I stayed in Hut 4 at 2 C.A. R.U. Saturday night. On Sunday morning 30 Jul 44 I returned to Guildford and being around there all Sunday I returned to C.A.R.U. around midnight and went into No.2 Kitchen where I asked Picotte if I could press my uniform, he said that it was O.K. Later the morning of the 31 Jul 44 I met David in the kitchen. On Monday morning 31 Jul 44 David,Picotte and myself took the early morning bus to Midhurst,we spent the rest of the day there,Picotte left us around 1700hrs. I met a girl in Hazelmere and stayed with her,returning to the kitchen around midnight, David was already around in the kitchen, we stayed that night in the kitchen,on Tuesday morning the 1 Aug 44 David and I returned to Midhurst later in the day Picotte joined us,David left us and Picotte and I met two girls and stayed with them. Picotte left around 1600hrs. to return to camp, I stayed at Midhurst until 2100hrs. when I left for Hazelmere,after the dance I left for 2 C.A.R.U. and stayed in the kitchen that night. On Wednesday morning 2 Aug 44 David and I left for Guildford, we stayed in Guildford during the day and returned to C.A.R.U. ariund midnight and stayed in the kitchen. On Thursday 3 Aug 44 I believe David and myself went back to Guildford and stayed there all day, we returned to the kitchen that night. Friday I hung around and slept in the kitchen that night. On Saturday 5 Aug 44 I went to Guildford in the afternoon I met some fellows from C.A.R.U. and stayed w with them.later that night I met an A.T.S. and stayed with her the rest of the evening. I then returned to C.A.R.U. and slep in the kitchen. On Sunday 6 Aug 44 when I woke up in the kitchen I found that David had left, so left and went to Guildford,I met David he showed a watch which I had seen o Picotte's wrist. David asked me if I knew where I could se it, I showed him a Pub where I thought we could get rid of he wished to buy a watch, he offered us £3-0-0 which Davi On arrival at the Pub I met a civilian there and asked hi said was O.K. After selling the watch we hung around Guil until approx. 2100hrs. when we took the train to Richmon On Monday 7 Aug 44 David and I stayed around Richmond ur approx. 1900hrs. at which time I left David and went on my own.

22/8/44

P.T.O.

STATEMENT OF K46926 Gnr. Smith L. Cont'd.

Later I met an American Sergeant and spent about three hours in a Pub with him, I left the American around 2130hrs. and went to Victoria met a girl and stayed with her that night. On Tuesday 8 Aug 44 the gilr gave me money to return to Richmond, I returned to Richmond and met David, we stayed the night in Richmond. On Wednesday 9 Aug 44 we stayed all day in Richmond and slept at the same place as before, it is a house rebted by a women in the Ambulance Corps, her name is Mary last name not known, she always keeps Canadians on the loose, she lives just off the main street, in a very much bombed house, which I believe has a small signe in the door with Canadian Red Cross or a small card, I believe that any Canadian can meet her around 1530hrs. in a Service Cafe in Richmond, direction which is given by a signe in the railway station. On Thursday 10 Aug 44 we left Richmond and returned to Guildford and then returned to Bramshot we hung around here then returned to Guildford, where David got some more money, where he got the money I do not know, later we returned to Richmond and slept in a shelter that night. On Friday 11 Aug 44 we stayed in Hammersmith all day and slept in the shelter that night. On Saturday 12 Aug 44 we again stayed in Hammersmith and again slept in the shelter. On Sunday 13 Aug 44 we went to the picture show at Hammersmith, I left David around 1700hrs. on returning to the shelter that night I could not find David, since then I have not seen David. I was with David when he sold the watch that he stole from Picotte, I have never stolen any article or money. During the period from the time I left David until the 22 Aug 44 I spent the time in London during the whole period, I was A.W.L. and did not steal anything. ENDS:

Signed L. Smith

3. Further questioning of Smith failed to gain any admissions of theft nor could any further information be given on this women called Mary mentioned in Smith's statement.

4. We then proceeded to Guildford Civil Police Station and obtained a further statement from David.
BEGINS:
I was waiting in the bush for Pat around 1500hrs. the date I do not remember, when Pat came to me with a kit bag, he opened the bag and took out a pair od Oxfords and a leather writing case, what else I do not remember. After that occurred he left for London I believe. When the watch which I stole from Picotte was sold Pat now known by Smith sold this watch in my presence to a civilian in a Public House in Guildford for £3-0-0 Although O I stole the watch Smith or Pat sold it for me. Smith told me at the first that he had stolen a lot of kit bags and that it was an easy way of making money. I also stole a wrist watch from the Cook's hut and also a pocket watch, wooden cigarette case, two fountain pens, and a propelling pencil. At the time of taking the above I was sleeping in this hut, when Pat woke me up, I saw Pat searching in the tunic's and I began also and got the following as listed above. ENDS:

Lomer David

5. The wrist watch stolen by David is now held at the Guildford Civil Police Station the owner as yet not identified.

6. David was quite adamant that Smith had stolen a number of articles from 2 C.A.R.U. and was quite sure that Smith had stolen a leather case but did not know to whom it belonged.

7. David was also questioned as to the whereabouts of this Mary women in Richmond, but could add nothing to Smith's statements.

8. Smith will be questioned again in regards to the theft at 2 C.A.R.U. and a further report submitted.
INVESTIGATION CONTINUING

L W Halley
K25605 L/Cpl. Halley L.W.
No. 9 Cdn. Provost Coy.

CONT'D. PAGE THREE)

A.P.M.
H.Q. C.R.U.

1. Forwarded for your information, this is a further to previous reports submitted and I have instructed Halley and Pond to continue questioning Smith in an endeavour to get further information, or break him down.

2. It is interesting to note that since this case first started in the middle of the month, there have been practically no complaints of thefts from 2 C.A.R.U.

3. Both Halley and Pond deserve a lot of credit for their work in this case, and the cooperation by the Civil Police has been gratifying.

(F.A.Love) Capt.,
Officer Commanding,
No.9 Cdn.Provost Coy.

29 Aug 44
FAL/H

FORM OF APPLICATION FOR A COURT-MARTIAL

No 2 Cdn Arty Rft Unit

Station Huron Camp, Bramshott, Hants Date 25 Sep 1944

Application for a Field General Court-Martial

SIR,

I have the honour to submit three charges against No. E-46926 Gunner Zephefren SMITH of the Unit under my command, and request you will obtain the sanction of Commander "C" Group that a Field General Court-Martial may be assembled for his trial at such place as may be designated.

The case was investigated by (a) Lt-Col.W.H.Taylor,OC,"P" Trg Wing, No 2 CARU and the Summary of Evidence taken by Lt.D.Korn,"P" Trg Wing, No 2 CARU

A Court of Inquiry was held on [redacted] (date(s)).

President [redacted] Rank

Members [redacted] Rank

[redacted] Rank

[redacted] Rank

The accused is now at No 2 C.A.R.U. His general character is (e) Fair

I enclose the following documents (d):—

1. Charge Sheet (in duplicate) (g).
2. Summary of Evidence, original (f) and [redacted] copies.
3. Original Exhibits (g).
4. List of witnesses for the prosecution and defence (with their present stations or addresses) (g).
5. List of Exhibits (h).
6. [redacted]
7. Statement as to character (M.F.B. 356) and regimental and company, etc., conduct sheets (or Field Conduct sheets) of accused (g).
8. Statement by accused as to whether or not he desires to have an officer assigned by the Convening Officer to represent him at the trial (R.P. 14 (B)) (h).

Your obedient servant,

Signature of Commanding Officer

(Mackenzie Waters) Colonel
Commanding Officer
No 2 Cdn Arty Rft Unit
Cdn Army (Overseas)

To: Commander
"C" Group
Cdn Rft Units

MEDICAL OFFICER'S CERTIFICATE

I certify that No E-46926 Gnr SMITH, Z. of No 2 C.A.R.U. [redacted]

is F.I. to undergo trial by Court-Martial.

Att'd No 2 C.A.R.U.

F.H.Cademan Capt. RCAMC

Signature of the Medical Officer.

"Insert "fit" or "unfit."

(a) Here insert name of:—
(i) Officer who investigated the charges.
(ii) Company, etc., Commander who made preliminary enquiry into the case.
(iii) Officer who took down the Summary of Evidence (R.P. 19 (B)) (iii)).
(b) To be filled in if there has been a Court of Enquiry respecting any matters connected with the charges; otherwise to be struck out (R.P. 19 (B) (iii)).
(c) To be filled in by the Commanding Officer.
(d) Any items not applicable to be struck out.
(e) One copy to be sent to the President; one copy to be filed with the application for trial.
(f) Original summary of evidence to be sent to the President.
(g) 3, 4, 6 and 7 to be returned to the Officer Commanding the unit of the accused with the notice of trial.
(h) 5 and 8 to be sent to the President.
(i) If the accused has elected to be tried under A.A. 46 (3), the fact should be recorded at the top of this form.)

M.F.B. 321
40 F & S 650

PROSECUTING OFFICER: Capt. H.C. Rees, No 2 CARU

Defending Officer: Lieut J.A. Deacon, No 1 CARU

LIST OF WITNESSES

FOR THE PROSECUTION

Lt.G.W.Currie, Admin Offr, "P" Trg Wing, No 2 CARU

C/J 84859 A/B White, T.P.B. Royal Navy

C/J 89594 A/B Fox, T.J., Royal Navy

K-25608 Cpl Halley, L.W., No 9 Cdn Provost Corps

E-100375 L/Bdr Grondin, A., "B" Bty, No 2 CARU

FOR THE DEFENCE

- - - - - - - - - - NIL - - - - - - - - - - - -

LIST OF EXHIBITS

(a) Certified True Extracts from No 2 CARU Part II Order No 169 d/5 Aug 44

(b) Statement of C/J 84859 A/B White, T.P.B. Royal Navy

(c) Statement of C/J 98594 A/B Fox, T.J. Royal Navy

(d) Statement by Lomer David

(e) Statement by the accused

(f) Leather writing case (initials B.T.M.)

"P" TRAINING WING
No 2 C.A.R.U.

PW/5-4-5
25 Sep 44

Commanding Officer
No 2 C.A.R.U.

F.G.C.M. - E-46926 Gnr SMITH, Z.

1. It is respectfully requested that an officer be appointed to defend me at my forthcoming trial by Field General Court Martial.

Z. Smith

E-46926 Gnr Smith, Z.

"P" TRAINING WING
No 2 C.A.R.U.

PW/5-4-5
25 Sep 44

Commanding Officer
No 2 C.A.R.U.

F.G.C.M. - E-46926 Gnr SMITH, Z.

1. I acknowledge having duly received this date a copy of the Charge Sheet and a copy of the Summary of Evidence concerning my forthcoming trial by Field General Court Martial.

Z. Smith

E-46926 Gnr Smith, Z.

"P" TRAINING WING
NO 2 CARU

PW/ 5-4-4
5 Oct 44.

E 46926 Gnr. Smith, Z.
Wearing of Handcuffs

1. Owing to the seriousness of the charges likely to be laid against the m/n, from evidence in S.I.S. Report on C 10614 Gnr. David, L. dated 18 Aug 44, there was reason to believe that this man might try to escape, the Wing Comd ordered him to be placed in handcuffs.

(G.W.Currie)Lieut.,
Assistant Admin Offr.,
"P" Training Wing,
No. 2 C.A.R.U.

29 G. Tpr SMITHERS, J.N.

O. H. M. S.

M. F. B. 270

6/Smithers, J.N./O
C-70405, Tpr. Smithers, J.N.
No.1 Cdn. Sigs. Reinf. Unit.

296

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this thirtieth day of March, 1942.

Whereas it appears to me, the undersigned, an officer in Command of Canadian Reinforcement Units, Canadian Army, Overseas, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[redacted]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers [redacted] appointed or detailed hereunder.

* Omit if not applicable.

*[redacted]

PROCEEDINGS REVIEWED.

[redacted]

President.

Rank.	Name.	Regiment.
MAJOR	A.E.FORT,	No.1 Cdn. Arty.Reinf. Unit.

Members.

Rank.	Name.	Regiment.
A Captain	from	No.5 Cdn.Div.Inf. Reinf.Unit.
A Lieutenant	from	No.5 Cdn.Div. Inf. Reinf.Unit.
A Lieutenant	from WAITING MEMBER	No.1 Cdn.Arty.Reinf. Unit.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed J.G.Bruce Brigadier.

Commanding Cdn. Reinforcement Units.
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
C-70405 Trooper, Smithers, J.N.				
FIRST CHARGE	A.A.18 (4)	not guilty	not guilty	
Second Charge. (alternative)	A.A.40	not guilty		
	See charge sheet attached.			

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) [illegible] Brigadier. (Signed) [illegible] #1CARU
Commanding Cdn. Reinforcement Units. *Convening Officer* (*e*) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 2nd day of April 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court —
2. The witnesses —
*(3. ~~The interpreter~~) ~~Short hand writer~~ AEF —
*(4. The officers under instruction) —
were duly sworn.

* Omit if not applicable.

Signed this 2nd day of April 1942

[illegible]
President of the Court Martial.

C. Certificate in case of death sentence.

* See footnote (2) on page 762 M.M.L. 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*(I [redacted])

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this day of April, 1942.

, Brigadier,
Confirming Officer.

Promulgated and extracts taken in the case of

(*a*) (Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible]

CHARGE SHEET

The accused, C-70405, Trooper Joseph Norbert Smithers, 4 Recce Bn (PLDG) No.1 Cdn Signals Reinforcement Unit, a soldier of the Canadian Army Overseas,

is charged with

1st Charge
A.A. Sec 18(4) — While on active service, Stealing property belonging to a person subject to Military Law.

in that he,

at Delville Barracks, Cove, Hants on 20 Mar 42, at approximately 0015 hrs did steal by finding, one Bulova wrist watch, one signal signet ring, the property of G-16035 A/Cpl Moore,H.E., a person subject to military law.

Alternative
A.A. Sec 40 — While on active service, Conduct to the prejudice of good order and military discipline,

in that he,

at Delville Barracks, Cove, Hants on 21 Mar 42 at 0640 hrs was in improper possession of 1 Bulova wrist watch and one signal signet ring, the property of G-16035 A/Cpl Moore,H.E., a person subject to military law.

Delville Barracks,
Cove, Hants
23 Mar 42.

F.A.Burgess
(F.A.Burgess Lt-Col.,
O.C. RCCS Training Wing,
No.1 Cdn Signals Reinforcement Unit.

To be tried by Field General Court Martial.

F.R.Phelan Brigadier.
(F.R.Phelan) Commanding Cdn.Reinf. Units, Convening Officer.

SUMMARY OF EVIDENCE.

In the case of C-70405 Tpr. Smithers, J.N. 4 Recce Bn (PLDG) No. 3 Coy No. 1 Cdn. Sigs. Rein. Unit, Canadian Army (Overseas).

The Commanding Officer directs that the evidence be given under oath.

Officer taking Summary, Capt. W. Blake, RCCS No. 1 Cdn. Signals Reinforcement Unit, Canadian Army (Overseas).

FIRST WITNESS.

G-16035 A/Cpl Moore, H.E., RCCS, No. 1 Cdn. Signals Reinforcement Unit, having been duly sworn, states:

"I am G-16035 A/Cpl. Moore, H.E. Onethe night 19 Mar 42, between the hours approx of 12 and 1 o'clock, I was in the wash room and before proceeding with my toilet, I removed my ring and watch. I then placed my ring and watch on the shelf above the basins, completed my toilet and then returned to my room. I was in the habit of twisting my ring about my finger and missed it, also my watch. I returned to the ablution room and searched for the ring and watch. I flashed my flashlight on the floor to try and locate the ring and watch. Not finding them in the ablution room, I proceeded to each room, turned on one switch and using my flashlight, inquired from those that were awake if they had seen or picked up my ring and watch. I went into Room 5, turned on one switch, and noticing accused awake, I inquired if he had seen or picked up the ring and watch in the ablution room. His reply was "No". I then proceeded to my own quarters and went to bed. At approximately reveille on the 20 Mar 42, I made further inquiries, in each room whether they had seen or picked up my watch and ring. Receiving no information, I reported the matter to Sgt. Harrington. At approximately 0815 hrs 20 Mar 42 I reported the articles missing to CSM McKeown, I left the matter in his hands.

The accused declined to cross-examine this witness, G-16035 A/Cpl. Moore, H.E.

G16035
A/Cpl. Moore

SECOND WITNESS.

B-31345 A/Sgt Harrington, F.G., R.C.C.S., No. 1 Cdn. Signals Reinforcement Unit, having been duly sworn, states:

"I am B-31345 A/Sgt Harrington, F.G. I am N.C.O. in charge of Spider 8. At approximately 0630 hrs morning of Friday 20 Mar 42, Cpl. Moore reported to me the loss of one wrist watch and one ring. I reported this to CSM McKeown. On his instructions at approx 0630 hrs on the morning of Saturday 21 Mar 42, a complete kit inspection was begun in spider 8. During this inspection, one wrist watch and one ring were produced from an inside pocket of the accused's tunic. This ring and wrist watch were identified by Cpl. Moore as his own property.

Question: "Sgt Harrington, when you and CSM McKeown came into Room 5
(Accused) Spider 8, this morning Saturday 21 Mar 42, who woke me up?"

Answer: "I did. I woke up the entire room".

Question: "Sgt Harrington, who was the first man you inspected?"
(accused)

Answer: "Tpr. Smithers".

Question: "Sgt. Harrington, as you entered the room which end and what
(accused) side did you begin your tour of inspection?"

Answer:
"I proceeded the full length of the room turned about and inspected the first occupied bed on the left".

Question "Sgt Harrington, did CSM McKeown tell you to start your
(accused) inspection from any particular end of the room?"

Answer: "Yes".

Question: Sgt. Harrington, where did CSM McKeown begin his tour of
(accused) inspection?"

Answer: "I do not know the definite bed at which he started, but he did start at the opposite end of the room from myself, B-31345 A/Sgt Harrington, F.G.".

B-31345
A/Sgt Harrington FG

THIRD WITNESS.

L-53365 Tpr. MacLean, D.C., 8 Recce Bn., No. 1 Cdn. Signals Reinforcement Unit, having been duly sworn, states:

"I am L-53365 Tpr. MacLean, D.C., On Friday 20 Mar 42, between 1500 and 1530 hrs, I borrowed a flashlight from Sgt Harrington and made a thorough examination with the use of the flashlight of the unused palliasses in Room 5, Spider 8. I checked behind the radiators and blackouts in the hall to the right from Room 5 to the ablution room. I made a thorough examination of the ablution room, the pipes under the wash basins, the shelves, the tins holding cleaning sand, the bathroom and the pipes above the shelves and bath. The other bathroom was locked. I also examined the air raid shelter between Rooms 4 & 5 and found nothing in there but benches. I returned the flashlight to Sgt Harrington and told him that nothing of any value had been found.

Question: "Tpr MacLean, D.C. Who gave you orders to make such a thorough inspection of the quarters"?

Answer: "No one ordered me. No one knew that I was going to do so."

Question: "Tpr MacLean, was anyone else around while you made the inspection?"

Answer: "There were men in the ablution room and in the hut".

L53365 Tpr D. MacLean

FOURTH WITNESS.

B-88472 A/CSM McKeown, R., No. 3 Coy., No. 1 Cdn. Signals Reinforcement Unit, having been duly sworn, states:

"I am B-88472 A/CSM McKeown, R., On Friday, 20 Mar 42, Sgt. Harrington, FG reported the loss by Cpl. Moore, H.E., of a wrist watch and signet ring, RCCS Crest. At reveille 21 Mar 42, I proceeded to Spider 8, instructed all room N.C.O.s to inspect the personal belongings of the men in their respective rooms. I proceeded to Room 5 with Sgt. Harrington, F.G., who is in charge of that particular room. We started at the end farthest from the door, Sgt. Harrington, taking the right hand side going in and I taking the left hand side, myself. I had inspected one man's belongings and had started on a second man's belongings when Sgt Harrington, F.G. called my attention to a wrist watch and a signet ring which had been found in possession of Tpr Smithers, J.H. I called Cpl. Moore and asked him if he could identify the wrist watch and ring as being his own. This he did, I then placed Tpr Smithers, J.H. under close arrest.

The accused declined to cross-examine this witness.

B-88472 A/CSM R. McKeown

FIFTH WITNESS.

D-3232 Tpr. McWilliams, R., Recce Bn, No. 1 Cdn. Signals Reinforcement Unit, having been duly sworn, states:

"I am D-3232 Tpr. McWilliams, R. At approximately 0630 hrs this morning Saturday 21 Mar 42, I was awakened by Sgt Harrington, and CSM McKeown. I was told that there was to be a kit inspection. I turned out my personal belongings on the bed, and was inspected by CSM McKeown. When he had just finished, Sgt Harrington, who was inspecting Tpr. Smithers belongings, asked Tpr Smithers if the watch and ring that had just been produced was his own. I do not think Tpr Smithers made any answer. Sgt Harrington then called CSM McKeown and pointed out to CSM McKeown the watch and ring lying on the bed. CSM McKeown then sent for Cpl Moore who came and identified the watch and ring as his own.

Question: "Tpr McWilliams, when Sgt Harrington asked me if said watch and ring belonged to me, is it possible that you did not hear my reply."

Answer: "It is quite possible that I did not hear reply"

D3232 Tpr R McWilliams

A87

In accordance with R.P. 4(c) (d) (e) and (f), after all the evidence against the accused had been given in his presence, under oath, the accused was asked "Do you wish to make any statement or to give evidence upon oath?" "You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence."

The accused, having been duly cautioned as above, made the following statement:

"On Thursday night, 19 Mar 42, at approximately 2350 hrs, I went into the ablution room to make my toilet. After approximately five minutes had passed, I proceeded back to my room and went to bed. At approximately 0020 hrs Friday 20 Mar 42, Cpl Moore came into the room and inquired if anybody had seen or had his watch and ring. "No" was the answer he got. So he left the room. At approximately 0630 hrs Cpl Moore again came into the room to make inquiries about his watch and ring. But he received no information in regard to them. At approximately 0130 hrs 21 Mar 42, I proceeded to the ablution room. As I entered the room, I noticed on the shelf nearest the showers behind a soap box a ring. After finishing my toilet I decided to look at said ring. When I moved the soap box, I also saw a Bulova wrist watch. After hearing that someone in the spider had lost said articles, I decided to take them into my room and turn them over to the Sgt in charge, first thing at Reveille, because I did not want anybody to take them and not return them to the owner. At approximately 0630 hrs Saturday 21 Mar 42, I was awakened by Sgt Harrington and I heard him say "That the whole of the hut and spider was under suspicion of theft. I was not yet quite awake and the next thing that I heard him say "Was to place all personal belongings that were in our tunic and trousers on the bed." So I got up, reached for my tunic and emptied said watch and ring on to the bed. I did not make any statement about finding them earlier that morning because I got nervous with all the confusion. I was then put under close arrest.

[illegible] Sgt.

Taken down by me,
This 21st day of March 1942, at Delville Barracks, Cove, Hants, in the presence and hearing of the accused.

Certified that Rule of Procedure 4 has been complied with.

(W. Blake), Capt RCCS
No. 1 Cdn. Signals Reinforcement Unit.

2 Apr 42

This is to Certify that C-70405 Tpr Smithers, J.M., No.1 Cdn Signals Reinforcement Unit is FIT to stand trial by Court Martial.

J. M. Keller Capt. M.O.
No.1 Cdn Signals Reinforcement Unit.

A & Q or
Engr
DCIRU

XXX-45

PTE SMOLLA, L.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : D138107 PTE. LEON SMOLLA 3 BN 1 C.B.R.D.

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ [redacted] beginning on (date) ..... (1) N/D

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of Nil days, of which Nil days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo Sixty days detention.

(Sgd) ..... Judge-Advocate, if any. 10th Aug/44. Date awarded. (Sgd) A. J. Duck Major. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is : Confirmed Ewl

~~I direct that the accused be not committed to prison or detention barracks until further ordered.~~ Ewl

(1. AA 57A. Delete if not used.)

(Sgd) E.W. Hardenby Brig

Date 10 Aug 44 Commanding COMMANDER Confirming Officer 1 CDN BASE ROA [illegible]

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr.
D138107 Pte Leon Smolla	12 Aug 44	[illegible] A.D.J.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 XXX-45.

RECEIVED 2 SEP 1944 JAG BRANCH C.M.H.Q.

J.130

FIELD GENERAL COURT-MARTIAL

CPA86 (In lieu of AFA3) 40/P & B/1608 (14665) 4/38B

Convened by Orde W. Hardenby. Brig. Comd 1 C.B.R. 61. dated 8th Aug/44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 306, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A./Apptmt.	Full Christian Names.	Surname.	Unit.
D138107	Pte.	Leon	Smolla	3 BN 1 C.B.R.D.

PROCEEDINGS REVIEWED 27 Aug 44 JCAC Evan Wallace Capt REVIEWING OFFICER, JAG BRANCH C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ITALY on (date(s)) 10th Aug/44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 2A 44

A1. The President, Members, waiting Member, ~~JAs if any, and Offrs under instr, if any~~, assemble, and the Court is closed. N/D

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto.(2) The Court is satisfied that it is properly convened and constituted(3), accused is (are) amenable to military law, and each charge discloses an offence.(4) A/D

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 0930 hours trial commences. A/D

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2) A/D.

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to ..... as interpreter ? Ans ..... A/D

The Interpreter is sworn.(1) ~~Do you object to ..... as shorthand writer ? Ans .....~~ ~~The shorthand writer is sworn.(2)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans Nil.(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 60(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JAs if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc : A/D

President	MAJOR	A. J. DUCK	(CAC)	5 BN. 2 C.B.R.D.
Member	CAPT	J. H. WELLS A/D	(CAC)	2 Can Hvy Regt (The Queen's Own Rifles of Canada)
Member	LIEUT	M. S. FERGUSON	(R.C.E.S)	7 BN. 2 C.B.R.D.
Judge-Advocate				
Prosecutor	LIEUT.	W.C. HIDER	(CAC)	3 BN 1 C.B.R.D.
Defending Offr	Lieut	R.B. Crozier	(CAC)	3 BN. 1 C.B.R.D.

Questions by President : Is the Prosecutor a lawyer ? Ans No Is the Defending Offr a lawyer ? Ans No (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Dir p 3.)

A8. The accused D138107 PTE. LEON SMOLLA before arraignment makes(s) ~~made~~ (a) plea A/D

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addressee mode in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does ~~does~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. A/D.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A86 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form B.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(4) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your pleas to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. NO. (5)

(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 25(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) (changes) (his) (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly. NE

(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex H., initialled and read aloud by the President.(1)

(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)

(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. .....(1)

(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)

(1. *RP* 39(*B*), 65(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 93(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(1. *RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)

(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para* D8.)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both(2) in which case you will be subject to cross-examination.(3) You may, however, make a statement without being sworn(4) and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans. ..... Do you intend to call witnesses on your behalf ? Ans. ..... Are they witnesses as to character only ? Ans. .....

(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 80(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)

(1. *AA* 54(3) (*d*), *RP* 45, 120(*A*). 2. *AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans. NO. 6

(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex 'C' and Ex 'D' respectively.(3) 4B

(1. *MFB* 255 *or AFB* 296. 2. *MEM* 6. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. YES. (2)

(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(1. *AA* 54(*8*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2) 4B

(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 358, 330, 363-366, *Overseas RO* 309, 1323, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MEML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(1)(*b*), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

A/T Duck (by pursuit)

A/B.

oOo CHARGE SHEET oOo

The accused D-138107 Private Leon SMOLLA on the strength of 3 Canadian Reinforcement Battalion, 1 Canadian Base Reinforcement Depot, a soldier of the Candian Army Overseas, placed on Active Service is charged with:

First Charge
Army Act
Sec 6(2)(c)

WHEN ON ACTIVE SERVICE, WHEN A SOLDIER ACTING AS SENTINEL, BEING DRUNK ON HIS POST

in that he

In the Field in Italy at approximately 2215 hours 30 Jul 44 when on Guard Duty at No 2 Canadian Field Punishment Camp was drunk at his post.

~~Second Charge~~
Army Act
Sec 40

~~WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE~~

in that he

Ewd

~~In the Field in Italy at approximately 2215 hours 30 Jul 44 when on Guard Duty at No 2 Canadian Field Punishment Camp did Intentionally discharge his firearm, with no apparent cause.~~

(W.W. Mathers) lt-Col
Commanding Officer,
3 Cdn Rft Bn, 1 C.B.R.D.

In the Field
4 August 1944.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
In Italy
8 Aug 44

(E.W. HALDENBY) Brigadier
Comd 1 Cdn Base Rft Gp
Cdn Army - C M F

N.P.D.

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D138107	Pte		Leon	SMOLLA	3 Bn 1 CBRD

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on *(date)* 8 Aug 44 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial". GWH

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary Field General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr)~~ GWH

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ GWH

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I nine appoint as Judge Advocate thereat the Offr mentioned hereunder.~~ GWH

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major	A J	DUCK	(CAC)	6 Bn 2 CBRD
(Rank.)		(Must be named. RP 106.)		(Unit.)

MEMBERS.

Capt	J E	WELLS	(CAC)	2 Cdn Reelloc'n Centre
Lieut	M S	FERGUSSON	(RCOS)	7 Bn 2 CBRD
(Rank.)		(Named or detailed. RP 106.)		(Unit.)

WAITING MEMBER.

Capt or Lieut to be detailed by OC 7 Bn 2 CBRD		
(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE ADVOCATE~~ GWH

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in Italy (Country.)

(Signed personally. RP 105 fn 2) Brigadier (Rank.)

(E. W. HALDENBY)

Date 8 Aug 44 Commanding 1 Cdn Base Rft Gp - CMF

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (DFAAS 1/2b Dets OF AFAS) (See overleaf for oaths and notes for use on trial.)

oOo MEDICAL OFFICER'S CERTIFICATE oOo

4/.D

I hereb certify thay I have this day examined

No. D138107 Rank Pte Name SMOLLA L.

and in my opinion is fit to undergo trial by

Court Martial

Date 10/8/44

(Medical Officer)

DEFENCE EXHIBIT B
Lt. Dunlop, Recorder

Plea for Mitigation of Punishment
in the case of
D38107 Pte Pinella, L.

The defence wishes to put before the court a number of mitigating factors which it feels will operate strongly in reducing the punishment that might otherwise be awarded.

2 The accused has had a good record in the Army. His Field Conduct Sheet (NFM.6) shows only two minor awards — the one for buttons not shined, the other for kit incorrectly laid out. These offences do not indicate a man confirmed in the behavior of a bad soldier. Rather, I think, they are part of the normal record of every good,

6. The offence was not committed under circumstances or in a place where such misconduct would be prejudicial to the lives and safety of the fellow soldiers of the accused. No parallel can be drawn between an offence of this nature committed while on sentry duty outside a field punishment camp at base, and a similar offence committed while in proximity to the enemy. I suggest to ~~that~~ the members of the court that the punishment should be mitigated accordingly.

average soldier in the Canadian Army. Any man, who a good soldier can fall from grace once, and get himself into trouble.

3. R. The accused is only 22 years of age. He volunteered for active service in December 1942 and has the Canadian Volunteer Service Medal, for 18 months honourable service.

4. R. The accused has been in Italy approximately 2½ months. The members of the court are aware of the extreme potency of Italian liquors, and of the fact that much of it is "doctored." The fact that the accused was unable

P3

I suggest that the accused might have been suffering from systemic poisoning induced by drinking bad liquor.

to walk to the R.A.P. almost 12 hours after being placed in custody, is proof that he was most powerfully affected. He could not have been in his normal mind at the time of his arrest, nor is it usual for a plain case of drunkenness to have such lasting effects.

The members of the court are also aware of the many disciplinary cases that have resulted among troops newly arrived in this theatre, purely through ignorance of the effects of native liquors.

5. The accused has never before appeared in civil court, and

has never before been in military detention.

6. The accused has owned up honourably to his fault, and has behaved throughout this trial like a good soldier, who knows he has done wrong, and is only too anxious to make amends.

7. In view of these facts — of his good record — his youth — the fact that he is recently arrived in this country — his ignorance of Italian liquors — his honorable admission of his fault, I appeal to the members of the court to

take a lenient view in awarding punishment.

I ~~feel certain~~ suggest that the standard of discipline in the service will not be improved by severity punishing a soldier who has a good record, who has made one mistake, and is man enough to acknowledge it fully.

R. B. Eggen Lieut.
Reporting Officer

Exhibit 'B'

Summary of Evidence

in the case of D138107 Pte. Smolla, L. present on strength Coy, 3 Bn, 1 CBRD, a soldier in the Canadian Army Overseas, placed on Active Service.

By direction of the commanding officer the evidence is taken on oath.

First Witness for Prosecution -

M17210 Cpl. Freeland CB. PLDG company 3 Bn 1 CBRD.

having been duly sworn states: M17210 Cpl Freeland CB.

M17210 Cpl Freeland CB. At about 2200 hrs 30 July 44 I posted the reliefs detail guarding No 2 Cdn. Fd. Pow. Camp. The accused D138107 Pte Smolla, L. whom I now recognize, was one of the sentries in my detail. I fell the detail in at camp & marched them to their respective posts. I did not notice anything at the time, to indicate that the accused was under the influence of alcohol. Later about 2230 hours I heard 3 shots fired from the general direction of the accused post. I immediately ran toward the post and on the way I met a provost sergt. headed in the same direction. The Sergt. arrived a few moments before me & when I got there he had already taken the rifle away from the accused. He handed me the rifle and I placed Pte Smolla under close arrest & me brought him back to the office & handed him over to the other provost. Next morning at 1000 hours I went with a provost to the accused cell where we found him in no condition to walk by himself. I went out to get 2 of my guard, returned to the cell & helped Pte Smolla to the RAP.

C. B. Freeland.
M17210 Cpl Freeland CB.

The accused declines to cross-examine this witness.

Second Witness for Prosecution.

H10735 Pte Conn LF 14 Coy 3Bn, 1CBRD.

I H10735 Pte Conn LF having been duly sworn
I am H10735 Pte Conn LF
states, A the night of 30 July 44 I was posted as
a guard at the near fence of No 2 Cdn Fd Pun Camp.
2200 hours. Pte Smolla whom I now recognize,
was also on this detail and was posted on the beat
next to mine just around the corner of the fence.
When we came on guard Col Freeland who was guard
Col told the accused to smarten up when he posted us.
When the corporal left we started on our beats & after
a few minutes I heard some noise and 3 shots coming
from around the corner on Pte Smolla's beat.
I went around the corner & saw the accused coming
toward me. I was nervous & grabbed his rifle and
started to wrestle with him. Col Freeland arrived,
placed Pte Smolla under arrest, and took him away.

L/Cpl Conn
H10735 Pte Conn LF

The accused declines to cross examine this witness.

Third Witness for Prosecution.

M17442 A/Sergt. Camfield SC. No 2 Cdn Fd Pun Camp.

M17442 A/Sergt Camfield SC having been duly sworn
I am M17442 A/Sgt Camfield SC
states, A on the night of 30 July 44 I was duty
NCO at the orderly room at 2 Cdn Fd Pun. Camp.
At about 2215 hours I left the orderly room where
Sgt Cunningham and I had been on duty, and as I was
proceeding in the direction of the back gate I heard the
sound of a rifle being discharged. I hurried to the
back compound fence, & as I was there I heard 4 shots
came, 2 on the way I heard the sound of 2 more
shots being fired. As I reached the fence I found 2 of
the guards wrestling and I at once hurried out there
the back gate where I met Col Freeland the guard corporal
The guard corporal and I proceeded to the place where
the men were wrestling & found Pte Smolla whom I
now recognize wrestling with Pte Conn. These were the
sentries on the beats at the back fence. I took the
rifle from the accused & ordered Col Freeland to place
him under arrest. In my opinion the accused was in a
very drunken condition as I smelled liquor on his breath
& had to support him on the way back to the orderly room.

A/C Camfield
M17442 A Sergt Camfield SC

The accused declines to cross-examine this witness.

Fourth Witness for Prosecution:-

FT5609 A/Sergt. Cunningham RH. Cdn Provost Corps. No 2 Cdn Fd. Pun Camp.

FT5609 A/Sergt Cunningham RH having been duly sworn states: On 30 July 44 at about 2215 hours while on duty as orderly sergt at the unit orderly room I heard the sound of a shot. Later Sgt Canfield returned to the orderly room and stated that one of the guards had been placed under close arrest. He said that the guard was in a drunken condition & had fired 3 shots while on duty on the road fence. I visited his cell shortly after he had been placed under close arrest & found the accused whom I now recognize as [illegible] lying in the front of the door in a very peculiar position. Owing to the fact that he did not respond to calling and because of his awkward position he was sleeping in, in my opinion the accused was in a drunken condition.

R.H. Cunningham
FT5609 A/Sergt Cunningham RH

The accused declines To cross examine this witness.

The accused was cautioned as follows:

Do you wish to make a statement on To give evidence upon oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

The accused declines to make any statement on To give evidence on oath at this Time.

I certify that the foregoing summary of evidence consisting of 3 pages was taken down by me in the presence of the accused on the 3rd Aug 44. I hereby certify that the provisions of R.P. (c) (d) (e) (f) & (g) have been complied with.

Jno Cdn Pro.
Offr i/c Trial & the this Summary of Evidence

In the Field
3 Aug 44

D-138107 SMOLLA, L
No Name

Sqn, Battery, or Company

Corps CIC

Date of enlistment 3 Dec 42 OC

Date of last entry in "Company Conduct Sheet" N/A

No and date of last drunk N/A

Period not reckoning towards freedom from extra fine N/A

Sheet No 1

Badges

Signature OC Company, etc C. Allan Capt

Service or Proficiency Pay N/A

Character

MFM 6 (AFB 122) 40/P&S/136 (3438)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sheet destroyed after 6 months service. Last Entry 20-3-43					Last case of drunkeness 20-3-43	(1) C.		Allan Capt	
Field	10 Oct 43	Tpr		W.O.A.S. Conduct to the prejudice etc., in that he did not have his buttons shined.	Lieut. S.B. HENDERSON	3 days C.B.	11 Oct 43	Lieut. S.B. HENDERSON.	
Field	18 Nov 43	Tpr		A.A. Sec. 40 Conduct to the prejudice etc., in that his kit was incorrectly laid out.	Lieut. K.C. Clarke	7 days C.B.	20 Nov 43	Capt. C. Allen	7 extra drills

CERTIFIED TO BE A TRUE COPY FROM REGT'L BOOKS IN MY CUSTODY

J. A. Kimball (Lt) Adjutant

Officer Having Charge of Regt'l Books.

Exhibit "D" to Affidavit of [illegible] Pte.

ARMY FORM B.206.

Statement as to Character and Particulars of Service of Accused.

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D-136107	Pte.	SMOLLA, Leon	3 Cdn Rft Bn, 1 CBRD.

1. The following is a fair and true summary of the entries in the regimental and ~~squadron, battery,~~ or company conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—At a trial by field general court martial this summary may be compiled from the said conduct sheet.

The conduct sheet(s) mentioned should be produced in court with this statement but not attached to the proceedings.

† See para. 477, K.R., 1940.

* The entries here stated should correspond with the entries in the conduct sheet. Punishments being given in the most severe order, and terms of imprisonment, special acts of gallantry, or distinguished conduct.

Instructions with the object to be disclosed are that the entries in drunkenness must be stated separately and dated.

	* Within last 12 months.	*Since Enlistment.
For A.A. Sec. 40	2 times	2 times.
For A.A. Sec. 19	times	1 times.
For	times	times.
For	times	times.
For	times	times.

~~Number of instances of gallantry or distinguished conduct.~~

~~There are no entries in the conduct sheet of the accused.~~

2. The accused has not been previously convicted ~~by~~

~~by a court-martial of the accused by a court-martial or by a civil court, or summarily under section 47 of the Army Act or of offences dealt with under section 73 of the Army Act, or set out in the schedule annexed to that statement.~~

3. The accused is not under sentence at the present time, ~~The last entry in the conduct sheet is to the following effect~~

~~beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for 0 days in civil custody, and ~~days~~ days as military custody, making a total of ~~days~~ days, of which 0 days were spent in hospital.

5. The present age of the accused according to his ~~attestation~~ MEM PT I is 22 years 166 days

6. The date of his ~~attestation~~ specified in his MEM PT I is 3 Dec 42

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 1 yr 246 dys

~~8. The accused is entitled to deferred pay or gratuity in respect of~~

9. The accused is entitled to reckon 1 yr 246 dys service for the purpose of determining his pension, etc.

10. The accused ~~is in possession of, or entitled to, a military decoration or military reward (or has previously been in possession of or~~ entitled to (*state any military decoration or reward*)). C.V.S.M.

~~(If the accused is a warrant officer.) The accused held~~ on his ~~last~~ promotion to warrant officer ~~rank of~~

~~(If the case of an officer.) The accused holds on the army list the rank of~~ and on his present appointment the rank of

(*18200) Wt 13802/144 125,000 8/41 A.S.E.W.Ltd. Gp.698

19. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

Date of Promotion.

In the rank of _____ years, _____

In the rank of _____ years, _____

In the rank of _____ years, _____

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraphs concerned amended accordingly.*)

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

Name _____ Regiment (or as the case may be).

No. _____ Rank _____ of _____

(INSTRUCTION.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.*)

Description of court by which tried, or states of officer disposing of the charge or the passing with trial	Date and place of trial, or summary award under A.A. 47, or of order disposing with trial	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the disposing authority	Punishment remitted

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 8 day of August 1944.

William Allen Lt Col.

I hereby acknowledge having received a copy of the Charge Sheet and Summary of Evidence in Connection with my forthcoming trial by Field General Court Martial.

.....J. Sandle.....

In the Field

.....5 Aug 44.....

I request the Convening Officer to appoint no qualified officer

to defend me at my forthcoming trial by Court Martial.

L. Sarolla .....Sgd

Date.....5th Aug 44.....

LIST OF WITNESSES FOR THE PROSECUTION AND DEFENCE

M-17210	Cpl	Freeland, C.B.	PLDG Coy 3 Bn, 1 CBRD
H-10735	Pte	Cann, L.F.	14 Coy 3 Bn, 1 CBRD.
M-17442	A/Sgt	Camfield, S.C.	No 2 Cdn Fd Pun Camp
F-85609	A/Sgt	Cunningham, R.H.	Cdn Provost Corps No 2 Cdn Fd Pun Camp

1582 Pte D. F. Smith.

D-82249 Pte. Smout, W.F.
No.2 C.I.H.U.

A.O. 256

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 7th day of October, 1941.

Whereas it appears to me, the undersigned, an officer in Command of CANADIAN BASE UNITS, CDN ARMY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[redacted]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

* Omit if not applicable.

*[redacted]

*(1. [redacted])

*(2. [redacted])

[redacted]

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	D.A. Petrie	No.3 Cdn Inf Hldg Unit

Members.

Rank.	Name.	Regiment.
Captain	A.L. Gollnick	No.3 Cdn Inf Hldg Unit
Lieutenant	J.E. Fox	No.2 Cdn Inf Hldg Unit
Lieutenant	I.H. MacIntosh	No.2 Cdn Inf Hldg Unit

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed [signature] Brigadier

Commanding Cdn Base Units, Cdn Army

Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
D-82249 PTE. SMOUT, W.F. No.2 Cdn Inf Hldg Unit.	First Charge A.A. sec 15(1) See charge sheet attached.	Guilty	Guilty TO UNDERGO DETENTION FOR SIXTY (60) DAYS.	Confirmed D.M. Mulcahy Brig

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) D.M. Mulcahy Brigadier (Signed) [illegible] President

Commanding Cdn Base Units, Cdn Army. *Convening Officer* (*e*)

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 14th day of October, 1941, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~ The shorthand writer
*(4. The officers under instruction)

were duly sworn.

* Omit if not applicable.

Signed this 14th day of October, 1941.

[illegible]
President of the Court Martial.

C. Certificate in case of death sentences

* See footnote (h) on page 702 M.M.L. 1929.

[illegible]

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~]

Signed this 23rd day of October 1941.

D.M. Mulcahy Brigadier
Confirming Officer.

Promulgated and extracts taken in the case of D82249 Pte. Smout W.F.

(*a*) (Dated) OCT 24 1941 (Signed) [illegible] Lieut.-Col.
Officer Commanding No. 2 Cdn Inf Holding Unit CASF

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

[illegible] Wt. 38643-1326 Mac. 2,40 W. & G. Ltd. Cp. 740-2

B

CHARGE SHEET

The accused, D82249 Private Smout, W.F., The Black Watch (RHR) of Canada, #2 Canadian Infantry Holding Unit, a soldier of the Canadian Army (Overseas) is charged with:

First Charge
Section 15(1)
Army Act

When on active service, absenting himself without leave,

in that he,

at Laurentide Camp, Witley, Surrey, at about 1800 hours on the 2nd September 1941 did absent himself without leave until he surrendered to the Quarter Guard at Laurentide Camp at about 2120 hours on the 20th September 1941.

(F.S. MATHEWSON) Lieut.-Col.
Officer Commanding
No. 2 Cdn. Inf. Holding Unit.

Laurentide Camp
Witley, Surrey
27 September 1941

To be tried by Field General Court Martial

(P.R. Phelan) Brigadier
Commanding Cdn Base Units

Bordon, Hants
This 7th day of Oct 41.

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL HELD
AT WITLEY ON THE 14th DAY OF OCT 41.

TRIAL OF:- No. D-82249, Pte. SMCUT W.F., No. 2 CIHU.

The order convening the Court, charge sheet, summary of evidence and medical certificate are laid before the Court.

The Court satisfy themselves as provided by R.P. 22 & 23.

The accused is brought before the Court.

Prosecutor:- (Name) Lt F.S. Weatherston (Unit) 1 CIHU.

Defending Officer:- (Name) Lt I.H. Louson (Unit) 2 CIHU.

At 1120 hrs the trial commences.

The order convening the Court is read, signed by the President and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Q1. Do you object to be tried by me as President or by any of the officers whose names you have heard read over? A1-No, sir.

The President, members and judge-advocate (if any) are duly sworn.

The officers under instruction are duly sworn.

~~Q2. Do you ... A2.-~~

~~The accused ...~~

The accused pleading Guilty to the charges in the above mentioned charge sheet, R.P.35(B) is duly complied with.

The summary of evidence is read, signed by the President, and attached to the proceedings.

Q3. Do you wish to make any statement in mitigation of punishment?

A3.- No, sir.

Q4. Do you wish to give evidence yourself or to call any witnesses as to character? A4.- No, sir.

BRIEF SUMMARY OF STATEMENT IN MITIGATION OF PUNISHMENT AND EVIDENCE AS TO CHARACTER.

Prosecutor presents AF B-296 and copy MFM-6.

Def Offcr states accused O.A.S. since May 40. Spring 41 requested permission marry; no action taken. Got married without permission and as result no dependant's allowance. Wife in financial difficulties. Aug 41 accused recd letter from wife saying she was going to farm in Kent to pick hops. Accused went AWL in order see his wife; took him nine days to locate wife. Returned voluntarily. Wishes to soldier and as result secure adjustment in allowance for wife. Requests leniency. Accused awaiting trial 24 days.

.....
President of Court Martial.

SUMMARY OF EVIDENCE
in the case of

D82249 Pte. Smout, W.F., Black Watch (RHR) of Canada, Reinforcements, No. 2 Canadian Infantry Holding Unit, a soldier of the Canadian Army (Overseas)

Evidence taken under oath by direction of the Commanding Officer.

First Witness for Prosecution

D81796 Sgt. Brooker, E.J. of the Black Watch Company, #2 Canadian Infantry Holding Unit, having been duly sworn states:

"I was Company Orderly Sergeant of the Black Watch Company #2 C.I.H.U. on September 2nd 1941. At 1800 hours on that day I was calling the roll of a working party. Pte. Smout did not answer his name.

E J Brooker Sgt.
(E.J. Brooker)

The accused declines to cross-examine this witness.

Second Witness for Prosecution

D82356 L/C W.N. Price having been duly sworn, states:

"On the night of 20th September 1941 at 2120 hours, the accused, Private Smout, reported at the guard house and was immediately turned over to the Regimental Police.

W N Price L/C
(W.N. PRICE) Black Watch Coy -2 CIHU

The accused declines to cross-examine this witness.

Third Witness for Prosecution

D82845 Sgt. Hull, J.F. of the Black Watch Company, #2 CIHU having been duly sworn, states:

"On 20th September 1941 I was Guard Commander. While on my tour of duty I reported back to the Guard Room, and found that Pte. Smout had reported in at the Guard Room at 2120 hours. I then instructed L/C Price to turn him in to the Regimental Police, after ordering him to place Smout under close arrest, which he did. I received a receipt for the accused. Then I made out two reports, one to the R.S.M. and one to the Company.

J.F. Hull Sgt.
(J.F. HULL)

The accused declines to cross-examine this witness.

SUMMARY OF EVIDENCE
in the case of
D82249 Pte. Smout, W.F. (continued)

The accused, having been duly warned under R.P. 4 (e) elects to make the following statement under oath:

"The reason I came back was to soldier, in order to help my wife out, as she is finding it kind of tough."

W. F. Smout Pte
(W.F. SMOUT)

Certified that Rules of Procedure 4(c) (d) (e) and (f) have been duly complied with.

Taken down in the presence and hearing of the accused.

J.H. Chicoine
(J.H. CHICOINE) Lieut.
Officer detailed by O.C. #2 C.I.H.U.
to take Summary of Evidence.

Laurentide Camp
Witley, Surrey
27 September 1941

MEDICAL OFFICER'S CERTIFICATE

K.R. (CAN) PARA 557

I certify that I have this morning examined

No D-82245 Pte. Smout, W.F.

of B.W.C. and in my opinion he

is fit to undergo Trial by Court Martial.

Station Laurentide Camp.

Date 14 Oct. 1941

Medical Officer

C

STATEMENT BY THE ACCUSED

I, Reg. No. D82245 (Rank) Pte (Name) Smout, W.F.

Black Watch (RHR) of Canada Regiment Reinforcement, No. 2 Cdn.

Infantry Holding Unit, certify having received free of cost a copy

of the charge sheet, summary of evidence, list of witnesses, copy/copies

of Exhibits and list of Exhibits.

I desire the services of a suitable officer to represent me at my

trial and should Lieut. E.R. Bennett (Rank) (Name) Black Watch Company (Unit)

be available, I would like to avail myself of his services as

defending officer.

(Sgd) W.F. Smout

Laurentide Camp
Witley, Surrey
30 September 1941 ...1941

E

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

D82249 Pte Smout, W.P. of the Black Watch (RHR) of Canada Reinforcements, #2 C.I.H.U.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, Battery or Company Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

	*Within last 12 months.	*Since Enlistment.
For A^ 15-(1) Jnl	2 times	2 times.
For	times	times.
For	times	times.
For	times	times.

Number of instances of gallantry or distinguished conduct, nil

or,

There are no entries in the Conduct sheets of the accused.

2. The accused has not been previously convicted,

or,

Previous convictions of the accused by a court martial or a civil court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 14th day of October 1941

A.W. Beveridge Capt.
Adjutant,
Canadian Infantry Training Unit,
C.A.(O.)

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.

3 The accused is not under sentence at the present time,

or,

The accused is under sentence of / / /

B Coy
1st Bn The Black Watch (RHR) of Canada C.A.S.F.

No. D82247 Name Smout, W.F. Sqn., Battery, or Company Corps Date of enlistment 29 May 1940 G.C. Badges Service or Proficiency Pay MFM 6 (A.F.B. 122) (10M-5-40 (1701) H.Q. 1777-41-15

Date of last entry in Company Conduct Sheet No. and date of last drunk Period not reckoning towards freedom from extra fine Sheet No. 1 Signature O.C. Company, etc. E. Rawlings Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Aldershot Hants	1 Mar 1941	Pte		W.O.A.S. - A.W.L. from 0630 hr 1 Mar until 0630 hr 17 Mar 41 AA 17-1	D81407 Cpl Nicholson H.R. Sgt. Lobban	20 days Detention	17 Mar 1941 Lt-Col K.G. Blackader		Forfeits 16 dy pay
RELEASED FRO DET ATION BARRACK ALDERSHOT ON 5-4-41 SENTENCE HAVING EXPIRED. 1 DAY REMITTED									
Laurentide Camp	15-7-41	Pte		A.W.A.L. from 0900 hr 15 Jul 41 until 1115 hr 26 Jul 41 Absent 11 days 3 hr 15 min.) AA Sec 15(2)	D81020 Sjt. Webster C. Documentary Evidence	27 days Detn	28-7-41 Lt-Col. F.S. Mathewson		Forfeits 12 days pay for absence under PRI 149 1(a). Forfeiture 27 days pay under PRI 149 (1) (b)

CERTIFIED TRUE COPY

J.H. Chicoine Lieut.
(J.H. Chicoine) R. 22e Regt.

(P.T.O.)

ZZZ-24

PTE SMOUT W.F.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D-82249 Pte Warren Franklin SMOUT 1 CASCRU

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st A.A.15(1)	Guilty	Guilty	
2nd			
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 8.)

~~At present under sentence~~ for ~~(1)~~ beginning on ~~(date)~~ (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 8 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo Detention for a period of One Hundred and Fifty (150) Days.

21 Sep 144 (Sgd) W.H. Copeland Lt-col

(Sgd) ..... Judge-Advocate, if any. Date awarded. President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6, 46(A), 51-56, 120, MML pp 759-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Seeding back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Can 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

Date 25 Sept 44 (Sgd) J. Connelly (A. B. Connelly) Brigadier. Commander, "B" Group

Commanding Con HQ Units Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr
B-82249 Pte Smout, W.F.	6 Oct 44	(W.H. Copeland) Lt-col A/Comd No 1 Holding Wing
Part II Order 237 d/7 Oct 44.		A/Capt for Capt 1 Cdn A & C Rft Unit
		OIC No 1 Holding Wing 1 Cdn. A.S.C. Reinf. Unit.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 222-24

RECEIVED 13 OCT 1944 HQ 1 CDN CORPS

FIELD GENERAL COURT-MARTIAL

CPA86 (In lieu of AFA3) 40/P.S.D./1608 (2004)

Convening Order of Brig A.B. Connelly Comd "B" Gp CRU dated 18 Sep 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D-82249	Pte		Warren Franklin	SMOUT	1 CASCRU

PROCEEDINGS REVIEWED

J.A. Cavelhill Major 14 OCT 1944

REVIEWING OFFICER, JAG BRANCH, C.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 21 SEP 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any,~~ and Offrs under instr, ~~if any~~, assemble, and the Court is closed.

(PRINTED MATTER NOT IN ITALICS FOR GUIDANCE. WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is ~~(are)~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~(are)~~ brought before the Court. At 1215 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is ~~(are)~~ fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)~~

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. ~~President to accused:~~ Do you object to ..... as interpreter? Ans ~~The Interpreter is sworn.(1)~~ Do you object to ..... as shorthand writer? Ans ~~The shorthand writer is sworn.(1)~~

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans N.O. SIR(2)

(1. RP 110. 2. If no objection, waiting member retires. RP 98(E). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any,~~ and Offrs under instr, ~~if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-col	D.L. Redman, V.D.	HQ CRU
Member	CHPT	V.I. McCALLUM	1 CERU
Member	LT	A.C. BROOKS	1 CGRU
~~Judge-Advocate~~			
Prosecutor	LT	A. BALLANTYNE	1 CASCRU
Defending Offr	LT	R.A. COOPER	1 CASCRU

Questions by President: Is the Prosecutor a lawyer? Ans N.O. Is the Defending Offr a lawyer? Ans N.O.(2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 99 (B) and (c) 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) ~~(has)~~ plea. (2)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), (G)), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in AB rank and name of the accused making the plea.)

A9. The accused is ~~(are)~~ arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does ~~(do)~~ not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (~~is cleared and~~) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form (1)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 51(*A*) *and fn* 2 *as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court etc see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President ~~or JA, if any,~~ complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1) and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans. N O S I R.(5)
(*1. RP 37(B). 2. RP 37(D) fn 4. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on charge(s). Part I of the Schedule is amended accordingly.~~
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (~~are~~) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex "A", initialled and read aloud by the President.(1)
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by one of paras D1 to D8 inclusive of Record Form D on p* 3. *RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by employing such paras D1 to D8 inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans .....(1)
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (an) (no) opening address.(1)
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1)
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans ..... Do you intend to call witnesses on your behalf ?
Ans ..... Are they witnesses as to character only ? Ans .....
(*1. RP 105. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(6).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(*1. RP 42, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(*1. AA 54(2) (6), RP 45, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans N O S I R
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (~~copies~~) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 165(3) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex "B" and Ex "C" respectively.(3)
(*1. MFB 325 or MFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. BY DEF OFFR NOTE ATT.(2)
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything there or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(*1. AA 54(2), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the J.A. if any(2)~~.
(*1. When several accused tried separately see RP 25(D). One sentence only, comprised of the punishment or punishments laid down in AA 46, 44 and its proviso, is to be awarded to cover all charges on all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566. Overseas RO 309, 2323, MML p 80, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(3), 68(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused, D-82249 Private Warren Franklin SMOUT, RCASC, on strength of 1 Cdn ASC Rft Unit, a soldier of the Canadian Army Overseas, is charged with, When On Active Service:-

Sec 15 (1) Army Act — ABSENTING HIMSELF WITHOUT LEAVE

in that he

IN THE FIELD, absented himself without leave from 1 Cdn ASC Rft Unit from 2230 hours 14 August 1944 until 2320 hours 11 September 1944 when he surrendered himself to H-100146 Cpl Cook, D.A., No 6 (Area) Provost Coy, LONDON.

TOTAL TIME ABSENT :- 28 days, 50 minutes.

(H.P. Bennick) Colonel,
Commanding,
1 Cdn ASC Rft Unit

IN THE FIELD.
16 SEPTEMBER 1944.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

18 Sep 44

(A.B. Connelly) Brig
Comd "B" Gp
Cdn Rft Units.

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA81)
40/FA&S/1607 (2nd)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D-82249	Pte		Warren Franklin	SMOUT	1 CASCRU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 16 Sep 44 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Lt-col (Rank.)	D.L. Redman, V.D. (Must be named. RP 106.)	1 CRU (Unit.)

MEMBERS.

Captain	to be detailed by	1 CRU
Lieutenant (Rank.)	to be detailed by (Named or detailed. RP 106.)	1 CRU (Unit.)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

A.B. Connelly (Signed personally. RP 105 fn 2.) (Rank.)

Dat. 18 Sep 44

Commanding
(A.B. Connelly) Brig Convening Officer.
Comd "B" Gp CRU

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

Medical Officers' Certif.
K.R. (Can) para 557

I certify that I have this morning examined No: [illegible] 822749
Pte Sargent W.E. and in my opinion he is fit to
(rank) (name)

undergo trial by Court Martial.
Station: Blankenberghe
Date: 21 Sept 44

[illegible] Capt
(Medical Officer)

E-3

Plea of Mitigation D-82249 Pte. Smout, W.F.

1. Pte Smout joined the Canadian Army at Montreal on 29 May 40. On completing 3 months training he arrived overseas with the Black Watch of Canada on 4 Sep 40. Subsequently he qualified as a cook and was transferred to the RCASC in Feb 44. Since that time he has been at No. 1 ASC Rft Unit.

2. Pte Smout was married in June 1941 and in Nov 1943 he became the father of a daughter. From the time of his marriage until July of this year his wife has received only 7 or 8 allowance cheques and only one for the child.

3. Mrs Smout and daughter live in London and were unable to leave in spite of the raids due to the financed difficulties occasioned by the non receipt of allowance cheques. Pte Smout had applied repeatedly for pass or leave to see his family and endeavour to arrange for their evacuation but no leave or pass had been granted. Finally he became so anxious for their welfare that he left without permission to attempt to straighten out their difficulties.

4. The question of Pte Smout dependent allowances is being envestigated, but as yet no definit results have been obtained.

5. In addition to the above difficulties, Mrs Smout's mother with whom she is living has been quite antagonistic and an unhappy atmosphere exist which has caused Pte Smout considerable worry and anxiety. Due to his wife not receiving allowances regularly he has not been able to find a home for her apart from her mother.

6. Pte Smout is A category and 25 years of age. He is anxious to return to infantry and to serve in the field. He is prepared to relinquish his trade qualifications for this purpose.

E-3

Released per A.F.

SUMMARY OF EVIDENCE

IN THE CASE OF D-82249 Private Warren Franklin SMOUT, RCASC, on strength of 1 Cdn ASC Rft Unit, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer the Summary of Evidence is taken on oath.

1st WITNESS (For the Prosecution) Capt J.M. Stewart, RCASC, on strength of 1 Cdn ASC Rft Unit, having been duly sworn states:-

I am Capt J.M. Stewart, RCASC, on strength of 1 Cdn ASC Rft Unit and produce the following documents relating to the accused, whom I now recognize:-

(a) Certified True Copy of AFB 115, Record of the Declaration of a Court of Inquiry declaring that D-82249 Pte Smout, W.F. 1 Cdn ASC Rft Unit, illegally absented himself without leave from 1 Cdn ASC Rft Unit at 2230 hours 14 August 1944. Marked Exhibit "A"

(b) Certificate in Accordance with the Army Act Section 163 (i) (j), certifying that D-82249 Pte Smout, W.F. of 1 Cdn ASC Rft Unit surrendered himself to H-100146 Cpl Cook, D.A., No 6 Cdn Provost Coy on 11th day of September 1944 at 2320 hours. Marked Exhibit "B"

THE ACCUSED DECLINED TO CROSS EXAMINE THIS WITNESS

J.M. Stewart, Capt

(J.M. Stewart) Capt

2nd WITNESS (For the Prosecution) H-100146 Cpl Cook, D.A., No 6 (Area) Cdn Provost Coy. (Documentary).

Statement of evidence on reverse of AFB 252.

3rd WITNESS (For the Prosecution) B-44320 L/Cpl Thaxter, R., No 6 (Area) Cdn Provost Coy. (Documentary).

Corroborates evidence on reverse of AFB 252.

"I hereby certify that in my opinion the attendance of the 2nd and 3rd witnesses for the prosecution, owing to the expense and loss of time involved, are not readily procurable and a statement of evidence purporting to be signed by them has been read to the accused and is attached hereto marked Exhibit "C" (Reverse side)."

(A. Ballantyne) Lieut RCASC
Offr detailed to take
Summary of Evidence

I do not require the attendance of the 2nd and 3rd witnesses for the prosecution for the purpose of cross-examination.

W.F. Smout

(D-82249 Pte Smout, W.F.)

The accused was cautioned as follows, "Do you wish to make a statement or give evidence on oath ? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

THE ACCUSED DECLINED TO MAKE A STATEMENT AT THIS TIME

113

I hereby certify that the foregoing Summary of Evidence consisting of two (2) pages was taken down by me in writing at 1 Cdn ASC Rft Unit on this 14th day of September 1944 in the presence and hearing of the accused and that R.P. 4 (c) (d) (e) (f) and (g) have been complied with.

A Ballantyne

(A. Ballantyne) Lieut RCASC
Offr detailed to take
Summary of Evidence

Ex A

IN THE FIELD.
14 SEPTEMBER 1944.

EXHIBIT "A"

Army Form B 115.

Record of the Declaration of a Court of Inquiry on the Illegal Absence of a Soldier.

RECORD of the Declaration of a Court of Inquiry assembled at Blenheim Barracks Farnborough, Hants, on the 7th day of Sep 19 44, for the purpose of investigating and recording the absence, without leave, from his duty, and deficiency, if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of No. D 82249, Pte Smouts, W.M. 1 Cdn A.S.C. Rft Unit.

DECLARATION.

The Court declare that D 82249, Pte Smouts, W.M. 1 Cdn ASC Rft Unit, illegally absented himself without leave from Malplaquet Barracks Farnborough, Hants, at 2230 hrs, 14th of Aug 1944 and that he is still so absent and that on this 7th day of Sep 1944 he is deficient equipment, clothing, and Regimental necessities to the value of £5-6-1, 75% of the value being £3-18-10¾, as per att list Appendix "A".

(R.T. Grant) Capt RCASC PRESIDENT
1 Cdn A.S.C. Rft Unit.

(J. Taylor) Lieut RCASC MEMBER
1 Cdn A.S.C. Rft Unit

(W.H. Roberts) Lieut RCASC MEMBER
1 Cdn A.S.C. Rft Unit

Names of President and Members

Signature of Commanding Officer

CERTIFIED TRUE COPY

E.A. Lynch Major

Signature of Officer having custody of the Original Record.

(26827) W.L.51045/500 100,000 2/44 A.A.E.W.Ltd. Gp.698 Form/B.115/61

Card & Ad

1 Cdn ASC Rft Unit

EXHIBIT "B".

CERTIFICATE UNDER THE ARMY ACT, SECTION 153 (1) (j)

I,. . . . . .certify that

Regt. No.D.82249. . .Rank. . Pte.. . .Name. . Smout.W.E. . . . .

Regiment. . .No.1.R.C.A.S.C B.V.. . . . . .

Unit. . . . . .(CRU). . . . . .

Stationed at. . . . . .

Surrendered himself to No.W-109146. .Rank. Cpl..Name. .Cook.D.A. . .

of the.Canadian Provost Corps..No.6 (Area).Coy. . . . . .

on the 11. .day of. Sept.. . .1944., at. .23.30. . hours. . . . .

. . . . . .AS AN ABSENTEE WITH OUT LEAVE. . . . . .

At the time of his surrender he was wearing (Military uniform) or ~~(Civilian clothes)~~.

Signature of Provost-Marshall, Assistant Provost-Marshall or other officer or Commanding Officer of the portion of His Majesty's Forces or the officer, warrant officer, or the non-commissioned officer in charge of the detachment of the Canadian Provost Corps, Canadian Army, into whose custody the above named person was taken on surrendering.
(Strike out part inapplicable).

London
12-Sept-44

(R.J. Stinson), Capt.,
D.A.P.M. C.M.H.Q.

CHARGE EXHIBIT "C"

Army Form B 252
(See King's Regulations)

No. 1 R.C.A.S.C.R.U. (GRU) Regiment

Battery / Squadron / Troop or Company

CHARGE against No. D-82249 Rank Pte

Name Smout, W.F.

Place London Date of Offence 11 Sept.44

OFFENCE W.O.A.S. was A.W.L.

R. J. STINSON, CAPT.
D.A.P.M.
C.M.H.Q.

Names of Witnesses:—

Cpl Cook, D.A. Cdn. Provost Corps.
L/Cpl. Thaxter, R. Cdn. Provost Corps.

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant

G.H.Q.P.P. 2934

P.T.O.

Statement of **EVIDENCE** in the case of
D-82249 Pte. Smout.W.F.
No.1 R.C.A.S.C.R.U. (CRU)

Sir;

At London at about 23.20hrs.11 Sept.44 I was on duty at No.6 Provost Coy.Detention Room, accompanied by L/Cpl.Thaxter when the a/m soldier surrendered himself to me as an absentee.

I placed him under arrest and he was handed over to the N.C.O i/c Cells to be detained.

London
11 Sept.44

L.A. Cook. Cpl.
H-100146 Cook.D.A.

Sir;

I have read over and corroborate the above statement.

London
11 Sept.44

R.R. Thaxter L/Cpl.
B-44320 Thaxter.R.

REMARKS

4. The accused has been in confinement, awaiting trial on the present charges for Nil days in Civil Custody, and 8 days in Military Custody.

Total 8 days.

Of which Nil days were spent in hospital.

5. The present age of the accused according to his attestation paper is 25 Years

6. The date of his attestation specified in his attestation paper is 21 May 1940

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is Nil

9. The accused is entitled to reckon Nil years' service for the purpose of determining his pension, &c.

10. The accused is in possession of, or entitled to, no military decoration or military reward for is in possession of or entitled to

11. *(If the accused is a warrant officer.)*

12. *(In the case of an officer.)*

In the rank of NOT APPLICABLE

In the rank of , years.

In the rank of , years.

In the rank of , years.

(Instruction.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked , signed by the president, and annexed to the proceedings.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.

Army Number, Rank and Name D-82249 Pte SMOUT, W.F. of the 1 Cdn ASC Rft Unit

NOTE.—*A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted*

Description of Court by which tried, or status of Officer disposing of the charge or dispensing with Trial.	Date and place of Trial, or summary award, or of Order dispensing with Trial.	Charges upon which convicted, or in respect of which Trial was dispensed with.	Sentence of the Court or Authority disposing of the charge, or Order of the Dispensing Authority.	Punishment remitted.
F.G.C.M.	7 Oct 41 In The Field	WOA8 AWL from 1800 hrs 2 Sep 41 till he surrendered himself to the Unit Guard Room at 2120 hrs 20 Sep 41. A.A. Sec 15 (1)	60 days Detention	
F.G.C.M.	24 Jan 42 In The Field	WOA8 AWL from 1400 hrs 20 Dec 41 until apprehended by CMP at Victoria Station London at approx 2230 hrs 8 Jan 42 absent 19 days 8 hrs 30 mins A.A. Sec 15 (1)	90 days Detention	
CIVIL COURT	1 Jul 42 Newcastle-on-tyne	Larceny - £5-10-0 from a dwelling house	3 months imprisonment with hard labour	
F.G.C.M.	23 Jun 43 In The Field	(1) AA Sec 15 (1) WOA8 AWL from 2200 hrs 7 May 43 till 1200 hrs 25 May 43. Absent 17 days 14 hrs	1 year Detention stoppages of £2-11-0	

(Continued overleaf

Army Form B296.

Statement as to Character and Particulars of Service of Accused.

D-82249 Pte Smout, W.F. of the 1 Cdn A S C Rft Unit

1. The following is a fair and true summary of the entries in the Regimental ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~ Conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

Note.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be referred to in the proceedings.

Thes Para. 864, K.R. 1965.

*The numbers herein stated should correspond with the number of Entries in the Conduct sheets, punishment being given to the most severe offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

Instructions.—If the charge is for drunkenness the entries to circumstances must be stated separately and dated.

	*Within last 12 months.		*Since Enlistment.	
For A.A. Sec 15 (1)	THREE	times	NINE	times.
For A.A. Sec 40		times	TWO	times.
For		times		times.
For		times		times.

~~xxxxxxxxxxxxxxxxxxxx

NX-82249 Name Smout W.F. | Sqn, Battery, or Company | Corps R.C.A.S.C. | Date of enlistment 21 May 40 | GC Badges N/A | Service or Proficiency Pay N/A

MFM 6 (AFB 122) 40/PAM/156 (3488)

Date of last entry in Company Conduct Sheet: N/A | No and date of last drunk: N/A | Period not reckoning towards freedom from extra fine: N/A | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	1 Mar 41	Pte		WOAS AWL from 0630 hrs 1 Mar 41 until 0030 hrs 17 Mar 41 AA Sec 15(1)	Cpl Nicholson	21 days detn	17Mar41	Lt-col Blackader	16 days pay FR&I 149(1)(a) FR&I 149(1)(b)
Field	15Jul 41	Ptt		WOAS AWL from 0800 hrs 15 Jul 41 till 1115 hrs 26 Jul 41 11 days 3 hrs 15 mins Sec 15(1)	Documentary	27 days detn	28Jul41	Lt-col Mathewson	12 days pay FR&I 149(1)(a) 27 days pay FR&I 149(1)(b)
Field	2Sep41	Pte		WOAS AWL from 1800 hrs 2 Sep 41 untill he surrendered himself to the unit guard room at 2120 20 Sep 41. Close arrest 2120 hrs 20 Sep 41 to2359 hrs 6 Oct 41		60 days detn	7 Oct41	F.G.C.M.	FR&I 149(1(b 60 days pay FR&I 149(1)(a) 19 days pay FR&I 149(1)(c) 16 days pay

Ex C

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	20Dec 41	Pte		WOAS AWL from 1400 hrs 20 Dec 41 until apprehended by CMP at Victoria Station, London at about 2230 hrs 8 Jan 42 Absent 19 days 8 hrs 30 mins. AA Sec 15(1)	Sjt Deigan CSM Wellington	90 days detn	24Jan42	F.G.C.M.	90 days pay FR&I 149(1)(b)20 days pay FR&I 149(1)(a)15 days pay FR&I 149(1)(c)(i)
Field	8Jun 42	Pte		WOAS AWL from 0800 hrs 8 Jun 42 until apprehended by civil police at Gosforth North. Absent 11 days AA Sec 15(1)	Documetary	Admonished	4 Sep42	Lt-col NCA Hervey	11 days pay FR&I 149(1)(a)
Field	19Jun 42	Pte		Tried by Moathall Civil Court Newcastle-on-Tyne on 1 Jul 42 Charge Larceny £5-10-0 from a dwelling house		3 months imprisonment with hard labour	1 Jul 42	Civil Court	Forf 104 days pay
Field	29Nov 42	Pte		WOAS AWL fromm 0800 hrs 29 Nov42 to 0925 hrs 1 DEC 42. 2 days 1 hrs 25 mins AA Sec 15(1)	Cpl Fox WJL	10 days C.B.	2 Dec42	Lt-col Hervey	Forf 3 days pay FR&I 149(1)(a)

No D-82241 Name Smout W.J. | Sqn, Battery, or Company | Corps | Date of enlistment | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/156 (B488)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	30Jan 43	Pte		SEC 40 AA Conduct to the prej etc when on guard duty was found asleep in a WD Vehicle	L/C Chusroski	14 days FP 14 days pay FR&I 149(2)	30Jan43	Lt-col KR Mitchell	
Field	31Mar 43	Pte		WOAS AWL from 2358 hrs 31 Mar43 till 1300 hrs 3 Apr 43(2 days 13 hrs) 1 min) AA Sec 15(1)	CSM Darwin	7 days C.B. 5 days pay	6 Apr 43		Forf 3 days p pay FR&I 149 (1)(a)
Field	7 Apr 43	Pte		(1)WOAS AWL from 1300 hrs 7 Apr43 till 13 Apr 43(TTA 6 days 10 hrs AA Sec 15(1) (2) Conduct to the prej etc improper possession of anothers pay book AA Sec 40	Documentary	14 days F.P. 14 days pay	24 Apr 43	Cost of Apprehension £2-3-9	Forf 7 days pay FR&I 149 (1)(a)

(PT9)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	7May 43	Pte		(1) WOAS AA Sec 15(1) AWL from 2200 hrs 7 May 43 until apprehended 1200 hrs 25 May 43,17 days 14 hrs (2) WOAS AA Sec 18 (4) Stealing property belonging to a person subject to Military Law (3) WOAS AA Sec 40		1 yr detn stoppages £2-11-0 cost of apprehen.	23 Jun 43	F.G.C.M.	18 days pay FR&I 149(1)(a) 366 days pay FR&I 149(1)(b) 28 days pay FR&I 149(1)(c)(i) Total 400 days pay

No D-82349 Name Smout W.F. | Sqn, Battery, or Company | Corps R.C.A.S.C. | Date of enlistment | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/136 (3488)

Date of last entry in Company Conduct Sheet | No and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No | Signature OC Company, etc | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	25Mar 44	Pte		WOAS AWL from 2230 hrs 25 Mar 44 till 2200 hrs 26 Mar 44 AA Sec 15(1) TTA 23 hrs 30 mins	Sgt Marshall Documentary	7 days C.B. 7 days pay	28Mar44	Major W.H. Copeland	7 days pay FR&I 149(2)
Field	8Apr 44	Pte		AA Sec 15(1) AWL from 0830 hrs 8 Apr 44 till app by civil police at 1050 hrs 18 Apr 44, including cost of return of £5-8-4 (Absent 10 dys 2 hrs 20 mins)	L/Bdr Manning Documentary	28 days F.P. Forf 28 days pay FR&I 149 (2) Placed under stoppage of pay £4-9-6 FR&I 172(8)	1 May 44	Lt-col H.C. Fair	Forf 11 days pay FR&I 149 (1)(a) Stopp of pay £4-9-6 FR&I 172(8)
Field	2Jul 44	Pte		WOAS AWL from 0700 hrs 2 Jul 44 until 2000 hrs 13 Jul 44 TTA 11 days 13 hrs AA Sec 15(1)	Documentary	27 days detn	15Jul44	Lt-col L.C.	12 days pay FR&I 149(1)a 2 days pay FR&I 149(1)c (1)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
				CERTIFIED TRUE COPY COMPILED FROM DOCUMENTS IN MY POSSESSION					
				(Officer i/c Records) 1 Cdn A S C Rft Unit					

LIST OF EXHIBITS

(a) Certified True Copy of AFB 115 Record of the Declaration of a Court of Inquiry declaring that D-82249 Pte Smout, W.F. illegally absented himself without leave from 2230 hrs 14 Aug 44.

(b) Certificate in Accordance with the Army Act Section 163 (1) (j) certifying that D-82249 Pte Smout, W.F. surrendered himself to H-100146 Cpl Cook, D.A., No 6 Cdn Provost Coy in London at 2320 hrs 11 Sept 44

(c) AFB 252 purporting to be signed by H-100146 Cpl Cook, D.A. Certifying that D-82249 Pte Smout, W.F. surrendered himself to H-100146 Cpl Cook, W.F. of No 6 Cdn Provost Coy in London at 2320 hrs on 11 Sep 44.

I, the accused, D-82249 Pte Smout, W.F., RCASC, on strength of 1 Cdn ASC Rft Unit desire that the convening authorities appoint a competent officer to defend me at my forthcoming Trial by Field General Court Martial.

W.F. Smout

(D-82249 Pte Smout, W.F.)

OFFICER UNDER INSTRUCTION

F.G.C.M. 21 Sep 44

Lt A.K. BAYLES, 1 C.E.R.U.

PROMULGATION

D-82249 Pte SMOUT, W.F.

Having been tried by Field General Court Martial In The Field on 21 Sep 44.

Charge A.A. Sec 15 (1) - WOAS ABSENTING HIMSELF WITHOUT LEAVE in that he in the Fd absented himself without leave from 2230 hours 14 Aug 44 till 2320 hrs 11 Sep 44 when he surrendered himself to the Cdn Provost Corps in London.
TOTAL TIME ABSENT 28 days, 50 minutes.

Findings 1st Charge - GUILTY

Sentence To undergo Detention for a period of one hundred and fifty (150) days.

Confirmation Findings and Sentence confirmed by Brigadier A.B. Connelly, Commander "B" Gp, Cdn Rft Units on 25 Sep 44.

In Custody Under Close Arrest from 2320 hrs 11 Sep 44 till 1215 hrs 21 Sep 44 (Date of Trial).

Forfeitures FORFEITS 29 days pay FR&I 149 (1) (a)
150 days pay FR&I 149 (1) (b)
9 days pay FR&I 149 (1) (c) (i)

TOTAL FORFEITURE 188 days pay.

Promulgated IN THE FIELD on 6 October 1944.

DO 237 d/7 Oct 44

2258 - Pte Smout W.7.

O. H. M. S.

M. F. B. 270

Correspondence is to be PINNED here.

PROCEEDINGS REVIEWED

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this twenty-first day of January, 1942.

Whereas it appears to me, the undersigned, an officer in command of 5 Cdn Inf Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[and that it is not practicable to convene for the purpose a General Court Martial]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*[A Judge Advocate is appointed

*[A Deputy Judge Advocate is appointed

*[The Officer holding the rank of ... is appointed President]

for the following reasons, namely:-]

In my opinion, military exigencies, namely the dispersion of units, difficulties of communication and other difficulties, render it inexpedient to observe the provisions of those rules inconsistent with appendix "A" to D.R.O. 772 on the trial of the person named in the annexed schedule.

President.

Rank.	Name.	Regiment.
Major	T.V. Donald.	Calg Highrs

Members.

Rank.	Name.	Regiment.
Captain	E. Tremblay.	R de Mais.
Lieut	G. Fraser.	R.M.C.
Lieut	K.M. Johnston.	R.C.C.S. attd Calg Highrs.

* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed G.B. Whitehead Brigadier

Commanding 5 Cdn Inf Bde.

Convening Officer.

V

2

SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D/82249 Pte. Warren Franklin Smout, R.H.C., a soldier of the Canadian Army (A.F.)	FIRST CHARGE Sec 15(1) ARMY ACT WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE, in that he, (See charge sheet attached.)	Guilty.	Guilty. ~~To undergo detention for period of 90 days~~ ~~& forfeit all pay & allowances~~ ~~during period of detention.~~ ~~Recommended to mercy.~~ ~~14/2~~	

To undergo detention for period of 90 days & forfeiture of pay 14/2. To cover expenses.

Confirm
G V Whitehead Brig

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):—

(Signed) G V Whitehead (G.V. Whitehead) Brigadier, Commanding 5 Cdn Inf Bde. — Confirming Officer (e)

(Signed) I R Donald major The Calgary Highlanders Regt President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

19

3

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 24th day of January 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The interpreter~~) 2nd
*(4. ~~The officers under instruction~~) 1st.
were duly sworn.

* Omit if not applicable.

Signed this 24th day of January 1942.

I R Donald major
President of the Court Martial.

C. Certificate in case of death sentence.

* See footnote (b) on page 764 M.M.L. 1929.

~~I certify that the terms of *A.C.I. 330 of 1918 have been~~ complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

~~*I direct that the order named in the margin be not committed to prison until further orders.~~ GVW

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or, having such authority, recommends suspension.

Signed this 26th day of January 1942.

G V Whitehead Brig
Confirming Officer
COMD. 5 CDN. INF. BDE.

Promulgated and extracts taken in the case of D82249 Pte Smout WF

(a) (Dated) 27 Jan 42 (Signed) C Scault, Lt. Col

Promulgated and extracts taken in the case of D82249 Pte Smout WF

(Dated) 30 Jan 42 (Signed) G V Whitehead Brig
COMD. 5 CDN. INF. BDE.

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

5

CHARGE SHEET

The accused D/82249, Pte. Warren Franklin Smout, 1st Bn The Black Watch (RHR) of Canada, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 15(1)
Army Act

WHEN ON ACTIVE SERVICE, ABSENTING HIMSELF WITHOUT LEAVE,

in that he, at Ratton Park, Eastbourne, did absent himself without leave, from 1400 hrs, 20 Dec 1941, until he surrendered himself to the Corps of Military Police, at Victoria Station, London, at about 2230 hrs on the 6th January 1942, incurring expenses thereby in the sum of £-/14/8, made up as follows:-

Escort return fare from London to Eastbourne	£-/9/ 9
Prisoners single fare from London to Eastbourne	-/4/11
	£-/14/8

TO BE TRIED BY F.G.C.M.

This 21st Day of January, 1942

(G.V.Whitehead) Brigadier
Comd 5 Cdn Inf Bde

6

The accused states that he wishes Lieut. I.H.Louson to act as his Defending Officer.

4

RECORD OF PROCEEDINGS OF A "F.G.C.M."

1. Trial of No.D-82249 Pte.SMOUT,WARREN,FRANKLIN,
   1st Bn the Black Watch (RHR) of Canada
   Held at EASTBOURNE,Sussex, on the 24th day of January 1942.

2. President:-Major T.R.DONALD,Calgary Highlanders

   MEMBERS:- Capt.R.TREMBLAY, R.de Mais.
   Lieut. G.FRASER 1 R.H.C.
   WAITING MEMBER:- Lieut.F.M.JOHNSTON R.C.C.S. att.Calg.Highs'

3. PROSECUTOR:- Lieut.J.E.FOX 1 R.H.C.

   DEFENDING OFFICER:- Lieut.I.LOUSON. 1 R.H.C.

4. The accused is arraigned and pleads guilty to the following charge:
   WOAS absented himself without leave,in that he, at Hatton Park, Eastbourne,did absent himself without leave,from 1400 hrs 20 Dec.41 until he surrendered himself to the Corps of Military Police at Victoria Station,London,at about 2230 hrs on the 8 Jan 1942, incurring expenses,thereby in the sum of £ -14-8,made up as follows
   Escort return fare from London to Eastbourne - £ -4-11
   Prisoners single fare from London to Eastbourne - £ -9-9
   £-14-8

5. Rule of procedure 35 (B) is complied with.

6. The Summary of Evidence is read.

7. The Prosecutor files AFB 296 and Certified Copy of MFM 6.

8. The accused through his defending officer makes the following statement in mitigation of sentence:-
   The accused was married in June 1941 and had only seen his wife twice since then.On the 17th Dec.41 he received a letter from his wife asking him to come and see her at Christmas as she was not well. He went Absent without leave on 20 Dec.41 and gave himself up to the Military Police on the 8th Jan.42. He has spent 15 days in close arrest before trial.

CERTIFIED A TRUE RECORD OF THIS
TRIAL. 24 day of January 1942

signed A B Donald Maj (President)

17

ABSTRACT OF EVIDENCE
in the case of
D-82249 Pte. Smout, W.F.
taken by Lieut. J.E. Fox at the direction of the Commanding Officer, in accordance with D.R.O. 772

FIRST WITNESS D-81103 Sgt. Deigan, C.J., 1st Bn The Black Watch (RHR) of Canada, states that he is Platoon Sergeant of No. 14 Platoon, 'C' Coy, 1 RHC, on the 20th Dec. 1941, No. 14 Platoon was on a Bde wiring fatigue. At 1400 hrs he called the platoon roll and found the accused to be missing. The witness declares that he did not see the accused again until he saw him in the Guard Room under charge on the 8th January, 1942.

SECOND WITNESS D-81265 C.S.M. Wellington, W.H., 1st Bn The Black Watch (RHR) of Canada, stated that he is C.S.M. of 'C' Coy, 1 RHC and in that capacity is in a position to testify that the accused, who is on the strength of the said Coy. was absent from his unit from the time he went A.W.L. on the 20th Dec. 1941 until he was brought back by the Military Police on the 8th Jan. 1942.

THIRD WITNESS (Documentary)

3rd WITNESS:-

Lieut. J.A.Kenny stated that he is Adjutant R.H.C. and produced certificate in accordance with A.A. 163 (1)(11) marked Exhibit "A" which refers to the accused and a statement of expenses Exhibit "B" incurred returning the accused to his unit.

detained. He was sober and properly dressed and uniform.

Victoria Station,
London 8/1/42.

(sgd.) H. Bates L/Cpl.
C.M.P.

Eastbourne,
14 January, 1942.

Lieut.
1st Bn The Black Watch (RHR)
of Canada.

Witness sign

15 P.1.
1 B.D. recall wages
Proceed.

(Substitite for A.F.B. 296)
or M.F.B. 355

STATEMENT OF CHARACTER AND PARTICULARS
OF SERVICE OF THE ACCUSED.

No D-82249 NAME Pte. Smout, W.F. UNIT 1st Bn The Black Watch(RHR) of Canada

AGE 21 MARRIED OR SINGLE married No.of Dependants NIL

DATE OF ATTESTATION 29th May, 1940.

NO. OF DAYS SPENT IN CLOSE ARREST (TO DATE OF TRIAL)

CIVIL — MILITARY 15 days HOSPITAL — TOTAL 15

DATES OF PROMOTIONS, APPOINTMENTS AND CONFIRMATION OF RANK, IF ANY

not applicable

A CERTIFIED TRUE COPY OF M.F.M. 6 MUST ACCOMPANY THIS FORM

(Officer i/c Records)

LRH Unit

Dated at Eastbourne, Sussex.

This 24 day of JAN 1942

(To be dated and signed as of date of trial)

1st Bn, The Black Watch (RHR) of Canada C.A.S.F.

MFM 6 (A F B 122) 5000M—8-39 (1702) H.Q. 1771-43-18

No. D82249 Name SMOUT, W.F. Sqn., Battery, or Company C Coy. Corps

Date of enlistment 29 MAY 1940 O.C. Badges N/L Service or Signature O.C. Company, etc. MAJOR HM RAMSAY

Character Indifferent

Date of last entry in Company Conduct Sheet N/L No. and date of last drunk N/L Period not reckoning towards freedom from extra fine N/L Sheet No. 1

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Aldershot Hants	1 Mar 1941	Pte		W.O.A.S. - A.W.L. from 0630 1 Mar. until 0030 Rus. 17 Mar. 41 AA 15(1) Released from the Detention Barrack Aldershot on 5-4-1941 sentence Running expired. (Sgd) W.H.G.	D-81264 Cpl Nicholson H.R. Sgt Sabian.	21 days detn	17 Mar 1941	LT-Col H.G. BLACKADER	FORFEITS 16 DAYS' PAY 1 Day remitted under Rule 123 Mil Detn Barrs Ro = Mad Forfeits
Laurentide Camp	15-7 1941	Pte		W.O.A.S. - A.W.L. from 0800 Rus. 15 July '41 until 1115 Rus. 26 July '41 (Absent 11 Days 3 hrs 15 mins) AA 15(2)	D 81020 Sgt. Webster, C. Sergeant evidence	37 days detn	28-7-41	LT-Col MATHIESON (Sgd)	32 days Pay & Allce. 149 (1) H Forfeits 27 Days pay

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Sauvetide Camp	2-9 1941	Pte		A.W.O.L., absenting himself without leave in that he at Sauvetide Camp at about 1800 hrs did absent himself without leave until he surrendered to the Quarter Guard at Sauvetide Camp at 2120 hrs on the 20-9-41. AA 15(1)		To undergo detention for 60 days.	7-10 1941	F.G.C.M. (Sgd) G.G. Taylor, Capt.	Sentence confirmed.
						Released from the Detention Barracks Aldershot on Nov 15, 1941 sentence having expired. Remission earned under Rules for detention Barracks & Military Prisons 22 days. Commandants Initials [illegible]			

CERTIFIED TRUE COPY

[signature]
LIEUT A/Adj

OC THE BLACK WATCH (RHR) OF CANADA.

CHARGE

9

Army Form B 252
(See King's Regulations)

CANADIAN BLACK WATCH. Regiment

"C" COY. 1st. Btn. Battery / Squadron / Troop or / Company

CHARGE against No. D/82249 Rank Pte.

Name SMOUT. W.

Place Date of Offence

OFFENCE W.O.A.S. Absent from [illegible] until surrendering to the Military Police at 2230hrs 8/1/42 at Victoria Station London S.W.1.

Lieut
O. i/c Detention Room
No. 6 Provost Company.

Names of Witnesses :— L/Cpl. H. BATES [illegible]

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Adjutant.

10

Statement of EVIDENCE in the case of

No.D/82249. Pte. SMOUT. W.
"C"Coy. 1st. Btn. CANADIAN BLACK WATCH.
Stationed at RATTEN PARK. EASTBOURNE.

Sir,

At London on the 8th.January.1942 at 2230hrs I was on duty at Victoria Station when the a/m soldier surrendered himself to me as an absentee.

He was not in possession of a pass or A.B. 64 Part 1 or 2. He said,"I am 20 days absent, and want to go back to my unit".

I contacted the Canadian Provost Corps Henrietta Street by telephone who sent an escort. The a/m soldier was handed over to L/Cpl E.G. BRUCE. and conducted to Henrietta St. to be detained.

He was sober and properly dressed in uniform.

VICTORIA STATION.
LONDON.
8/1/42.

[redacted] L/CPL.
Corps Of Military Police.

REMARKS

No Complaints

11 TBP President

Ref: M.R.& O.(Can.)539

Regt. No. D-82249

Rank Private.

Name Snout W.

Regt. Black Watch of Canada

Unit: "C" Coy.

The following expenses were incurred in apprehending and returning the A/W soldier to his unit from London.

DATE	PARTICULARS	AMOUNT
	~~(Transfer) £48~~	~~£ s. d.~~
9 Jan.42	Escort return fare from London to Eastbourne	0. 9. 9
	Prisoners single fare to London from	
	Prisoners Single fare from London to Eastbourne	0. 4. 11.
9 Jan.42	Escorts expense for bed, meals, bus fares and meals for the prisoner.	Nil.....
	TOTAL ~~£48~~	£ ~~0. 0. 0.~~ 0. 14 - 8

I certify that the above statement of expenses is correct and that the amounts are fair and just.

M. C. Byers Lt
for O.C. No 5 Prov. Coy.
Canadian Provost Corps.

MEDICAL OFFICER'S CERTIFACATE

3 P.1

I certify that No. D-82249 Pte.SMOUT,W.F. of The 1st Bn The Black Watch (RHR) of Canada,Overseas, Regiment is fit to undergo trial by Court-Martial.

Sig.of Medical Officer [signature] Capt.
R.C.A.M.C. att 1 RHC

Date 24 Jan 1942.

TTT-153.

Thur. Smyth. A.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D132087 Gnr. Anthony Smyk 12 Bn 2 CBRA.

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	Not Guilty	~~Not Guilty of desertion~~ Guilty	Guilty of absence without leave from 0900 hrs 16 Jul to 1715 hrs 16 Jul 44
2nd	Not Guilty	Not Guilty	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)
(I. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 5 days, of which Nil days were spent in hospital. (2)
(I. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court: ~~To undergo detention for twelve months~~ To undergo detention for forty five days

(Sgd) ..... Judge-Advocate, if any. 22 Jul 44 Date awarded. (Sgd) ..... President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

I ..... (Sgd) ..... Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 572. Duties and powers of reviewing offrs: AA 57, 157A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Finding and sentence confirmed.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ (I. AA 57A. Delete if not used.)

(Sgd) H Rutherford Brig

Date 5 Aug 44 Commanding 2 Corps R.A. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
D-132087 Gnr Smyk, A.	7 Aug 44	M.E. Wadhams Lt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

D.O. No 190
8 Aug 44
1 CAC RU

RECEIVED 14 AUG 1944 [illegible]

RECORDED AT CMHQ IN AB 160

III-153

CF A96 (In lieu of AFA21) 40-P & R-1608 (40/01)

FIELD GENERAL COURT-MARTIAL

4/38B

Convened by Order of Lt Col W J Stewart Comd 13 Bn 2 CBRA dated 21 Jul 44

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent confirmed rank, and (b) apptmt. A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Apptmt.	Full Christian Names.	Surname.	Unit.
D132087	Gnr.	Anthony	Smyk	12 Bn 2 CBRA

PROCEEDINGS REVIEWED
J C Caulfield Capt
14 Aug 44
Date

PROCEEDINGS REVIEWED

PROCEEDINGS OF TRIAL.

REVIEWING OFFICER, ~~Lt-Colonel~~ Captain C.M.H.Q.

Held in the [illegible] on (date(s)) 22 Jul 44

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT. 9/44

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fns ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc., which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)
(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 09.30 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.(2)
(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to ..... as interpreter? Ans .....
The Interpreter is sworn.(1) Do you object to ..... as shorthand writer? Ans .....
The shorthand writer is sworn.(2)
(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?
Ans NO (2)
(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 23, 71, 18, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Major	J T Madell	6 Lt M G
Member	Lt	E A Baldock	13 Bn 2 CBRA
Member	Lt	L R Saunders	13 Bn 2 CBRA
~~Judge-Advocate~~			
Prosecutor	Lt	J G Blatchford	13 Bn 2 CBRA
Defending Offr	Capt	L E Callaghen	12 Bn 2 CBRA

Questions by President: Is the Prosecutor a lawyer? Ans No Is the Defending Offr a lawyer? Ans No (3)
(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.) (2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 69 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused D132087 Gnr Anthony Smyk before arraignment make(s) (no) plea. (3)
(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (were) arraigned (separately) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.
(1. RP 20, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D A 47

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 90(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 85-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination ; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans.....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 3 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form* E.
5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on.....charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on.....charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 15(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p* 3 *and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. no .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)
(1. *RP* 39(*C*), *114, KR Con* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the.....charge(s), and allowed on the.....charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges use second alternative in para* D8.)
NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?
Ans. yes as a witness. Do you intend to call witnesses on your behalf ?
Ans. yes. Are they witnesses as to character only ? Ans.....
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. Cf* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 80(*C*). *Note the further opportunity in para* E1 *of Record Form* E. *Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. The President announces the findings, ~~same~~ of Not Guilty, and states to the accused that the finding(s) of the Court on the second, third charge(s) being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA* 54(2) (*b*), *RP* 45, 120(*A*). 2. *AA* 54(2), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans. no.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 183(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex. B. and Ex. C. respectively.(3)
(1. *MFB 315 or MFB 294.* 2. *MFM 6.* 3. *RP* 46, *KR Con* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 7.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans. no .....(2)
(1. *RP* 37(*C*), 44(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(*6*), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the J.A. if any.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-52, 69, 118, 119(*A*), *KR Con* 308, 330, 343-346, *Overseas RO* 309, 2323, *MML p* 60, 737-739. *As to sentences assigned for civil offences by the law of England see AA* 41(2), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(3) (*b*), 68(*1*), *KR Con* 304. 2. *RP* 52. *As to release from arrest by Confirming Offr see KR Con* 347. *As to assembly and disposal of record after trial see insets on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

In the Field

3 Aug 44

FGCM - 22 Jul 44
D-132087 Gnr Smyk, A.
12 CBR Bn

The court, having re-assembled by order of Brigadier A. W. Beament, CBE., CD, O-i/c Cdn Sec. GHQ 1 Ech 21 Army Group for the purpose of re-considering their finding and sentence recorded on the FGCM of D-132087 Gnr. Smyk, A. 12 CBR Bn., have attentivily considered the observations of the confirming authority, contained in his letter 529/FGCM/1 (OIC) 31 Jul 44 attached as exhibit " X 1 " and signed by the president of this FGCM.

The court do now revoke their finding and find the accused Guilty of absence without leave from 0900 hrs 16 Jul 44 to 1715 hrs 16 Jul 44.

The Court do hereby sentence the accused to undergo detention for forty-five days.

Signed in the Field this 3 day of Aug 1944.

(A. F. Magill) Major
President. FGCM.

CDN SEC GHQ 1 ECH - 21 A GP

'X1'

529/FGCM/1 (OIC)

31 Jul 44

Major J.F. Madill
6 Cdn Town Major Unit.

FGCM - 22 Jul 44
D-132087 Gnr Smyk, A.
12 CBR Bn

1. A Field General Court-Martial of which you were President assembled on 22 Jul 44 to try the m/n soldier on two charges, one under AA 12(1)(a) and the second under AA 15(1), on both of which the accused pleaded not guilty. The accused was found guilty on the first charge and not guilty on the second, and sentenced "to undergo detention for twelve months".

2. Under the provisions of AA 54(2) I direct that the Court which tried the accused re-assemble for the purpose of reconsidering their finding on the first charge and, if there is a new finding which involves a sente[redacted] passing a fresh sentence.

3. The reasons for requiring such revision are:

(a) That a perusal of the proceedings shows that there was an irregularity in the form of the charge which would prevent at law a finding of guilty on the first charge.

(b) That a perusal of the proceedings shows that even though the charge had been properly drawn, there was not sufficient evidence for the Court to justify the finding of guilty on the first charge. The evidence was neither well presented nor well recorded, but an analysis of it indicates that the only period of AWL which was satisfactorily established was from 0900 hrs 16 Jul 44 to 1715 hrs 16 Jul 44. This being so, there is no satisfactory evidence before the Court to show that the accused was in fact absent at the time that the draft left, and so the finding of guilty of desertion is not supported.

4. The Court will re-assemble as soon as possible. It is appreciated that the exigencies of the service will occasion some delay in this regard, but it is your duty as President to ensure that the Court re-assemble as soon as circumstances permit. The form of proceedings on revision is contained in MML p 759.

5. Before assembly the President and members of the Court should familiarize themselves with the provisions of M.M.L. pp 63-64, Art 94, A.A.54(2) and fns thereto, A.A.56(3), R.P.51(B) (i) and fns thereto, R.P.52 and fns thereto, R.P. 120 (G) and fns thereto.

6. The following matters should be noted particularly:

(1) That the Court shall re-assemble in closed court and shall not receive further evidence.

(2) That if the Court does not adhere to its former finding, the finding and sentence shall be revoked, a new finding recorded and if the new finding involves a sentence, a new sentence shall be passed afresh.

(3) After revision the President shall date and sign the decision of the Court and transmit the proceedings for confirmation as required by R.P.97(B).

(A.W. Beament) Brigadier
OIC
Cdn Sec GHQ 1 Ech - 21 A Gp.

CHARGE SHEET

The accused, D.132087 Gunner Anthony SKYK,
56 Coy, on the strength of 12 Cdn Base Rft Bn,
a soldier in the Canadian Army Overseas,
is charged with:

FIRST CHARGE — When On Active Service, Deserting His Majesty's Service.

ARMY ACT
SEC 12 (1)(a)

in that he,

In the field, having been duly warned for draft, did absent himself without leave, from 0930 hrs 16 July 44, until surrendering himself to 12 Cdn Base Rft Bn Guard, at 0715 hrs 17 July 44.

(Total Absence:- 21 hours and 45 minutes.)

SECOND CHARGE — When On Active Service, Absenting Himself Without Leave.

ARMY ACT
SEC 15 (1)

in that he,

In the field, when in close arrest, did absent himself without leave, from 2200 hrs 17 July 44 until surrendering himself to 12 Cdn Base Rft Bn Guard, at 0700 hrs 18 July 44.

(Total Absence:- 9 hours.)

In the Field,
20 July 44.

.....Lt-Col.
(A.O. Hood)
Commanding 12 Bn, 2 Cdn Base Rft Gp.

To be tried by Field General Court-Martial.

(W.J. Stewart) Lt-Col
Commanding 13 Bn 2 CBRG

In the field
22 Jul 44

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B11945	Gnr		Raymond	BUGAS	12 CBR Bn
D132087	Gnr		Anthony	SMYK	12 CBR Bn
A42467	Pte		Stanley	PRIMROSE	13 CBR Bn

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has (have) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 21 Jul 44 endorsed by me, ([redacted]) " To be tried by Field General Court-Martial ".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; [redacted]
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. [redacted]
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. [redacted]
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

Major (Rank.)	J.P. Madill (Must be named. RP 106.)	6 Cdn Town Major Unit (Unit.)

MEMBERS.

A Lieutenant	To be detailed by OC	13 CBR Bn
A Lieutenant (Rank.)	To be detailed by OC (Named or detailed. RP 106.)	13 CBR Bn (Unit.)

WAITING MEMBER.

A Lieutenant (Rank.)	To be detailed by OC (Named or detailed, if any. RP 106.)	13 CBR Bn (Unit.)
[redacted]		
(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 21 Jul 44

(Signed personally. RP 105 fn 2.) Lt-Col. (Rank.)

(W.J. Stewart) Lt-Col.
Commanding 13 Bn 2 CBR Gp
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (CPA30 (In lieu of AFA3) 45-P & S-1697 (4911))

(See overleaf for oaths and notes for use on trial.)

Ex "A"

MEDICAL OFFICERS CERTIFICATE

(KR(Can) Para 557)
(CMHQ CL 173)

I certify that I have this day examined D132087. (No.)

Ens. (Rank) Smyk A. (Name) and in my opinion he is

~~unfit~~ fit to undergo trial by Court-Martial.

Station Fulda

Date. 22 July 44.

(Sgd)
Medical Officer
(unit) 12 CIR RB

D 12 357 G

The court re-commenced at 1845 hrs and continues to sit when & the fact that a number of court was having the Cond on 22 Jul.

1. Not guilty
2. Not guilty

Prosecution Evidence

Witness: Capt Brown R.C.A. 56 Coy 12 Bn C.B.R. Group duly sworn states.

Pros. Q. Do you recognise the accused?
A. Yes.
Q. Will you tell court what happened on 16 July xx
A On the 16 Jul warning notice for draft's his h was given. — Gnr Smyt was among those warned. The warning was announced so that all could hear & all personnel who asked if there were any questions. Gnr Smyt was reported absent at a parade called on 16 Jul. Owing to Gnr Smyt's absence it was necessary to put another man in his place on draft. Gnr Smyt did not report between 0900 hrs 16 Jul until approx 0600 hrs 17 Jul.

Q Gnr Smyt was a member of your company?
A. yes.
Q. Then it would be through your orderly room that he would make application for a pass
A yes.
Q and no pass was issued between those dates
A No
Q was there anything to lead Gnr Smyt to believe his draft was cancelled
A No.
Q When previous drafts were cancelled would he have been notified of such.
A All personnel were notified when drafts were cancelled on parade

Witness: Sgt Calvert D 6003 12 Bn CBRG. duly sworn states.

Pros Q. Do you recog the accused
A. yes sir
Q. Will you tell the Court of what happened on the morning of July 16

A. Yes I inspected the lines at 0600hrs. Sgt Smyth was not there
Q. What was your duty?
A. I was troop leader & the accd was in my troop
Q When next did you see accused
A At approx 0900hrs
Q When did the draft leave
A I think it was 0700 hrs on Monday morning

Witness B69681 Sgt Dambrough 12 Bn CBRA duly sworn states

Pros. Q. Do you recognise accd
A. Yes Sunyt Sir
Q. Will you tell the Court what happened on 16 Jul 44 & accd
A I was guard Commander 16 Jul 44 & accd approached me at the guard room & told me that he was A.W.L. since Sunday at approx 0900hrs

Def. Q. Was accd with any escort?
A. No he was by himself

~~Witness~~ Sgt Elson
Witness Cpl Smyth 12 Bn CBRA duly sworn states
Def Q. From the time of being warned for draft until the 16th was there any confusion in your mind the draft was cancelled
A. Yes, Sir
Q. What happened in previous drafts that you were warned for
A. They were cancelled
Q. Were you notified of such cancellations
A. No Sir not personally
Q. When you left Camp on 16th what information did you have regarding drafts you were warned for
A. When I left on the 16th I did not know that there was a draft going out
Q. What made you leave Camp at that time
A. There was nothing to do in Camp so I went to town
Q. Was there anything else to influence accd to leave camp
A. Nothing else Sir

Q. Why did you return to Camp.
A. I had stayed away long enough & was out of money
Q. When was the first time you heard you had missed the draft
A. When I returned to my lines
Q What did you do then
A I reported to the guardhouse
Q Did anyone tell you to do so.
A. Yes some of the men who had been taken off the draft.

Pros. Q. You Smyt Capt Brown said that reveals were notified in cancellations
A. No Sir men were never warned.
Q Then how did you know
A. Well sometimes passes were granted
Q. On Sunday morning 17th left without a pass is this usual?
A No Sir
Q. Is it usual to leave camp without a pass
A No Sir
Q. When asked why you returned from pass you stated you had been away long enough — For what?
A. My Francee had to return to Work

Def. 2nd charge

Witness [illegible] Sgt Elroy 12 Bn CIB Pte duty orderly station
Q Do you recognise Accused
A Yes Corn Smyt
Q. What happened 17 Jul
A At approx 1700 hrs I discovered accused was not in the Guard Hut & I marked him absent.
Q. Was the accused back in the morning
A Yes the bombardier reported that accused had come in while I was at breakfast approx 0700 hrs
Q When accd was missed in Guard Hut did you look for him or his kit

Q. No I didn't know where his tent was under Maja
Q. The accused could have been in his tent then?
A. Yes
Cont. Q. Was accused placed in your charge
A. When I took over the guard he answered to me
Q. Did the accused have any permission to leave the guard tent
A. No, Sir
Q. On the morning of 18th did accused offer explanation as to his absence
A. Yes, Sir, he said he had spent the night in his own tent
Q. Did you search for him when he was missing
A. I had men look for him in the latrine & around the guard house

Witness Sgt Dambrough 12 Bn 2 CBR duly sworn states

def Q. Will you identify the accused
A Yes Sir Gnr Smyt
Q. What was your duty on 17 July
A I was guard commander
Q. What happened on the morning 17 Jul
A The accused reported to me — I sent him to his tent with instructions to report to me every hour until such time as he was brought up on charge
Q. Was he sent to his tent under escort
A Yes Sir
Q. Was that escort with him during daytime especially at meals
A Not at meal times Sir
Q. Did the accused report every hour
A Yes Sir until he went for Med
Q. Did he parade to you under escort
A. No Sir he didn't
Q. Did you at anytime warn him to stay in guard tent that night
A No Sir
Q. Do you think it possible that during this time he was marked absent he could have been in his own tent
A Yes, Sir

Sgt Dansborough
Pros. Q. Did you provide escort
A. Yes Sir
Q. Did you see him on return from company office
A No Sir
Q. Did anyone inform you as to how he was dealt with
A. No, Sir

Witness. C. 10095 Gnr Romaine 12 Bn CBRA duly sworn states

Def. Q. Do you recognise Anthony Smyth
A. Yes Sir he is here
Q. When did you see him on the night of 17 July.
A. At 10.30. I was returning from town
Q. What was he doing
A He was in bed
Q. Did you here him go out during the evening
A No

Pros. Q. Do you sleep in the same tent?
A He he sleeps two tents below
Q. Would it be possible for him to leave his tent without your knowing
A I didnt stay all night to watch him

Witness E2833 Gnr Mallette 12 Bn CBRA duly sworn states

Def Q. Do you know a soldier named Gnr Smyth
A. Yes Sir here he is
Q. Will you tell when you saw him on monday 17 Jul.
A. I saw him at 10.30 a quarter to Eleven
Q Where?
A In his tent
Q Doing what?
A He was in bed
Q Did you hear him get up & go out after you saw him
A He, Sir. I went to bed after I saw him
Pros. Q. Do you sleep in the same tent
A He Sir he sleeps two tents away

Witness deemed

Def Q What happened after you were told to report to your tent? - did you do so.
A. Yes
Q. What else did you do that day.
A. Stayed near my tent all day

Q. Did anyone tell you you were to sleep in the guard tent at night
A. No one told me that Sir.
Q. And did anyone come to your tent looking for you during the day or night
A. No Sir
Q. ~~Why did the Guard Commander~~
Q. Did you leave the camp area during the day or night
A. no Sir

Pros. Q. Your Army you said that Sgt Dawborough told to report to your tent & repeat back to him every hour
A. Yes Sir
Q. What happened at Coy Mess
A. I was remanded to the Colonel &
I was taken back to guard tent
Q. To whom were you handed over
A. no body
Q. Who took you over
A. The Escort
Q. What did you do at 1830hours
A. I returned to my tent.

NOT GUILTY.

DAILY ORDERS
by
Lt. Col. A.O. HOOD,
Commanding,
12 Cdn Base Rft Bn.

Last Order No 100

Part 1 Orders — 12 Jul 44 — No 101

.....

...1.....

7. WARNING FOR DRAFT.
(a) The u/m were warned for draft on 10 Jul 44.
(b) All were present on parade.
(c) Warning was given by Capt E.M. BROWN
(d) Nominal roll was certified by Major D.W.M. Cooper, Capt D.M. Slater, M 66663 RSM LACROIX T.E.A. E 6059 BSM DEMPSTER R.G. (these pers proceeding on draft) Capt L.B. Skinner Capt. T. Morgan L 6098 BSM Sheppard K 11339 Sjt Teesdale G.W. (these pers not proceeding on draft.

[redacted]

D 132087 Gnr SMYK A.

[redacted]

...(L.B. SKINNER) Capt., R.C.A....
(L.B. SKINNER) Capt., R.C.A.
/jpg Adjt. 12 Cdn Base Reinforcement Bn.

CERTIFIED TRUE EXTRACT (L.B. Skinner) Capt, Adjt 12 C B R Bn.

ARMY FORM B.296.

Statement as to Character and Particulars of Service of Accused.

Number	*Rank*	*Name*	*Regiment (or as the case may be)*
D.132087	Gnr.	SMYK A.	12 Cdn. Base Rft. Bn.

1. The following is a fair and true summary of the entries in the regimental ~~and squadron, battery or company~~ conduct sheets† of the accused, exclusive of convictions by a court martial or a civil court, of summary awards under section 47 of the Army Act, and of cases in which trial has been dispensed with :—

NOTE.—At a trial by field general court martial this summary may be compiled from the field conduct sheet. The conduct sheet(s) mentioned should be produced in court with this statement but not annexed to the proceedings.

† See para. 677, K.R., 1940.

* The numbers herein stated should correspond with the number of entries in the conduct sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

INSTRUCTION. — If the charge is for drunkenness the entries for drunkenness must be stated separately and dated.

	* Within last 12 months		* Since Enlistment	
For A.A.Sec 15 (1)	3	times	3	times
For A.A.Sec.15 (3)	1	times	1	times
For A.A.Sec. 40	Nil	times	2	times
~~For ——~~		~~times~~		~~times~~
~~For ——~~		~~times~~		~~times~~

~~Number of instances of gallantry or distinguished conduct ——~~

~~—or—~~

~~There are no entries in the conduct sheets of the accused.~~

2. The accused has not been previously convicted, *or*

~~Previous convictions† of the accused by a court martial or a civil court, summary awards under section 47 of the Army Act, and dispensations with trial under section 71 of the Army Act, are set out in the schedule annexed to this statement.~~

3. The accused is not under sentence at the present time, *or* ~~The accused at the present time is under sentence for~~ ——— beginning on the day of ———

4. The accused has been in confinement, awaiting trial on the present charges, for Nil days in civil custody, and 5 days in military custody, making a total of 5 days, of which Nil days were spent in hospital.

5. The present age of the accused according to his ~~record of service~~ attestation paper is 24 yrs 251 Days

6. The date of his ~~commission~~ attestation specified in his ~~record of service~~ attestation paper is 3 Yrs. 96 Days

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is 3 Yrs. 96 Days

8. The accused is entitled to deferred pay or gratuity in respect of 3 Yrs 96 Days service.

9. The accused is entitled to reckon 3 Yrs. 96 Days service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military award (*or* is in possession of *or* entitled to (*state any military decoration or reward*).

11. ~~(*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of ——~~

12. ~~(*In the case of an officer.*) The accused holds in the army the rank of ——, dated —— and in his regiment (*or corps or department*) the rank of —— dated ——~~

W1.32037/189 20M. 5/40. P. Ltd. T51-3.

Schedule of Convictions by a Court Martial or Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with of accused.

No. D.132067 *Rank* Gnr. *Name* SMYK A. of 12 Cdn. Base Rft. Bn. (or as the case may be).

(INSTRUCTION—A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.)

Description of court by which tried, or styles of officer disposing of the charge or dispensing with trial.	Date and place of trial, or summary award under A.A. 47, or of order dispensing with trial.	Charges upon which convicted, or in respect of which trial was dispensed with.	Sentence of the court or authority disposing of the charge, or order of the dispensing authority.	Punishment remitted.

I HEREBY CERTIFY that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 22 day of July 1944

(L.B.Skinner) Capt. Adj. 12 Cdn Base Rft. Bn.

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date.

Date of Promotion.

In the rank of ..... years, ...

In the rank of ..... years, ...

In the rank of ..... years, ...

(INSTRUCTION—*If no matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through, except that in the case of a trial by field general court-martial the information may be collected from such sources as are available and the paragraph concerned amended accordingly.*)

M.F.M. 6 (A.F.B. 122) 500M—11-41 (2498) H.Q. 1773-99-1652

No. D13208 Name Smyk, Anthony Sqn., Battery, or Company RCA Corps RCA Date of enlistment 17-4-41 G.C. Badges Tradesmen's Rates of Pay N/A

No. and date of last drunk N/A Period not reckoning towards freedom from extra fine N/A Sheet No. One Signature O.C. Company, etc. W.B.Clark Lt. Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with same	By whom awarded	Remarks
Barret Fort	11 Feb. 43	Gnr.		Prejudice to good order and Military Discipline.(A.A.Sec. 40)	L/Bdr.Thomosin A/Bdr.Saunders	Forfeiture 4 days pay FR&I.149(2)	12th. Feb. 43	Capt.H.W. SELBIE	
Barret Fort	30th May 43	Gnr.		Conduct to the Prejudice of Good Order & Military Discipline (A.A.Sec. 40)	L/Bdr.Tompson R. Gnr.Bodenbuch E.M.	Forfits 10 days pay F.R.& I.149(2)	30-3 48	Major G.E. Seldon	
Barret Fort	22 July 43	Gnr.		A.W.L. from 1700 hours 22 July 43 to 2100 hours 27 July 43(Absent 5 Days 4 hours)	L/Bdr. Thompson R.	Auto.For 6 days pay Forf.10 days pay 14 days C.B.	28 Jul 43	Capt.SGB. Fullerton	FR&I 149(1)a FR&I 149(2)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Barret Fort	11 Nov. 43	Gnr.		Absent without Leave from 1100 hours 6 Nov 43 to 0220 hrs 11 Nov 43 (Absent 4 days 15 hrs 20 min) A.A.Sec.15 (1)	Sgt. Aitken L/C Nesland #42 Fro Coy	14 days C.B. Forf. 8 days pay. FR&I 149 -2	12 Nov.43	Capt. S.G.B. Fullerton	Auto Forf. 5 days pay FR&I 149-1(a)
Brandon Man	24 Mar. 44	Gnr		AWL from 2200 Hrs 23 Mar.44 to 1815 hrs 24 Mar 44 (Absent 20 hrs 15 mins.)A.A.Sec 15(1)	Documentary	Admonished	10 Apr. 44	Major A.C. Benjamin	Forf.1 day FR&I 149
Field	22 May 1944 1 Jun 44	Gnr		BLOOD DONOR WOAB being Found beyond the limits fixed by Regtl Orders without a pass or written leave from his C.O. in that he at approx 2000 hrs 1 Jun 44 was found in London.AA.Sec 15(3)	Documentary	4 days pay	7 Jun 44	H.L.Armstrong Lt/Col.	Forf 4 days pay

CERTIFIED TRUE COPY

L.R.Skinner

(L.R.Skinner)Capt. ADj. 12 Bn.2 C.B.R. Group.
Officer having custody of Original Document

SUMMARY OF EVIDENCE

in the case of

D 152087 Gnr Smyk A 56 Coy, on the strength of 12 Cdn Base Rft Bn. Canadian Army Overseas.

BY DIRECTION OF THE COMMANDING OFFICER EVIDENCE IS TAKEN ON OATH

FIRST WITNESS
For the Prosecution: D 6003 Sgt Calvert, F. 56 Coy 12 CBR Bn. being duly sworn states :

I was N.C.O. in charge of "B" Troop "H" Serial 56 Coy on 16 Jul 44. At 0930 hrs 16Jul 44 I called the roll of my Troop and the accused, being a member of said Troop, failed to answer his name. I reported him to the Coy Sgt Major as absent from 0930 hrs 16 July.

F. Calvert

D 6003 Sgt Calvert F
12 Cdn Base Rft Bn.

The accused declines to cross examine the above witness.

SECOND WITNESS
For the Prosecution : B 69681 Sgt Darnbrough, A.C. 58 Coy 12 CBR Bn, being duly sworn states:

On the night 16-17 July 44 I was N.C.O. in charge of 12 Bn. Guard. At 0715 hrs 17 July the accused reported to me in the Guard Room, sober and properly dressed. I instructed him to report to his tent and stay there until called.

A C Darnbrough

B 69681 Sgt Darnbrough A. C.
12 Cdn Base Rft Bn.

The accused declines to cross examine the above witness.

THIRD WITNESS
For the Prosecution :L 10187 Sgt Evoy E.M. 60 Coy 12 CBR Bn, being duly sworn states:

I was N.C.O. in charge of 12 Bn. Guard on 17 July 44. At 2200 hrs 17 July 44 the accused, who during the evening had been confined there under close arrest, was not in the Guart tent. I sent various members of the guard to look for him in the immediate vicinity and in the latrines and washrooms. The accused was not to be found. I reported him as having escaped and absent from 2200 hrs 17 Jul 44.

E. M. Evoy

L 10187 Sgt Evoy E.M.
12 Cdn Base Rft Bn.

The accused declines to cross examine the above witness

..... to page 2

FOURTH WITNESS
For the
Prosecution : H 15084 Bdr MacDonald D.W.F. 60 Coy. 12 CBH Bn, being duly sworn states:

On 18 July 44 I was second in Command of 12 Bn Guard. At about 0700 hrs 18 Jul 44, while Sgt Evoy (N.C.O. in charge)(was awayat breakfast, the accused reported to me in the Guard Room. I placed him under close arrest, and reported this to Sgt Evoy, on his return from breakfast.

Cross Examined By the Accused:

Question 1. "What time was it when I came in ?".

Answer 1. According to the watch I had borrowed from the Sgt. it was 0700 hrs.

D.W.F. MacDonald.

H 15084 Bdr MacDonald D.W.F
12 Cdn Base Rft Bn.

The accused Declines to further examine the Witness

FIFTH WITNESS
For the
Prosecution : Capt E, M Brown N.C.A. Comd 56 Coy 12 CBH Bn, being duly sworn states:

I am Coy Comd of 56 Coy, and the accused D 132087 Gnr Smyk A is on the strength of 56 Coy. On 10 Jul 44 I called the roll of personnel being warned for draft. Gnr Smyk was present at this warning parade and answered his name.
The warning included the following:
" You have been selected to proceed on draft, and you are now warned that you must be present and ready to go when the draft is dispatched".
" Any unauthorized failure on your part to go with the draft when it leaves will result in your being charged with desertion on active service".
" If you are convicted of desertion the Court has the power to sentence you to a maximum sentence of penal servitude for life".
" At some time prior to the departure of the draft a parade will be called on which you must be present and at which the exact date and time of departure will be told to you".
The warning was announced in definite, precise and unequivocal terms and in such tone of voice that no one on parade could fail to hear it or understand it. Personnel were asked if they understood the nature of the warning, and if there were any questions. There were no questions.
I submit a Certified True Extract from 12 CBH Bn Daily Orier " 101 dated 12 July 44, in which notice of warning was published, which extract refers to the accused.

(E.M. Brown) Capt. N.C.A.
12 Cdn Base Rft Bn.

The accused declines to cross examine the above witness

.... to page 3

The Accused was Cautioned As Follows: "Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but anything you say or any evidence you may give will be taken down in writing and may be given in evidence.

THE ACCUSED DECLINES TO MAKE ANY STATEMENT, AND RESERVES HIS DEFENCE.

I certify that the foregoing Summary of Evidence, consisting of three pages, was taken down by me, in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (f) and (g) have been complied with.

In the Field
19 July 44

(H.C.Malloch) Lt.RCA
12 Cdn Base Wft Bn
(Officer detailed to take down Summary of Evidence).

ADDITIONAL EVIDENCE

in the case of

D.132087 Gnr Smyk, A. 56 Coy, on the strength of 12 Cdn Base Rft Bn, Canadian Army Overseas.

BY DIRECTION OF THE COMMANDING OFFICER EVIDENCE IS TAKEN ON OATH

FIFTH WITNESS (recalled) :

Capt E.M. Brown, R.C.A., Comd 56 Coy, 12 ~~CBR~~ Bn, being duly sworn states:

When the accused was reported absent, it was found necessary to replace him on the draft, by another soldier. The accused was still absent when the draft, for which the accused had been warned, departed, at 0600 hrs 17 July 44.

(E.M. Brown) Capt., R.C.A.,
12 Cdn Base Rft Bn.

The accused declines to cross examine the above witness.

The Accused Was Cautioned As Follows: "Do you wish to make any statement or to give evidence on oath ? You are not obliged to say anything or to give evidence unless you wish to do so, but anything you say or any evidence you may give will be taken down in writing and may be given in evidence".

THE ACCUSED DECLINES TO MAKE ANY STATEMENT, AND RESERVES HIS DEFENCE.

I certify that the foregoing Additional Evidence, consisting of one page, was taken down by me, in the presence and hearing of the accused, and that Rules of Procedure 4 (c), (d), (e) and (f) have been complied with.

In the Field,
20 July 44.

(W.C. Malloch) Lt, R.C.A.
12 Cdn Base Rft Bn.
(Officer detailed to take down Additional Evidence).

LIST OF WITNESSES

in the case of

D 132087 Gnr SMYK A.

For the Prosecution:

1. Sgt Calvert F ✓ (
2. Sgt Darnbrough A.C. ✓ (
3. Sgt Evoy E.M. ✓ (All of 12 CBR Bn
4. ~~Bdr MacDonald D.W.F.~~ (
5. Capt E. M. Brown RCA ✓ (

For the Defense---------- Nil

LIST OF EXHIBITS

"A" Certified tru extract from Pt II Order No 101

(L.B.Skinner) Capt R.C.A.

12 Cdn. Base Rft. Bn. 20th. July 44

I request that Capt. L.E.CALLAGHAN defend me at my forthcoming trial by D.G.C.M.

I certify that I have received a copy of the Charge Sheet and Summary of Evidence to be used at my trial by F.G.C.M.

D.132087 Gnr. Smyk A.
12 Cdn.Base Rft. Bn.

10-19-27

TPR SMYK J.E.

DD-27

A2 G Wright Major

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this 29th day of April, 1943.

Whereas it appears to me, the undersigned, an officer in Command of FIRST CANADIAN CORPS ARTILLERY, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; * ~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

* ~~I am unable to appoint~~

*~~(1. Three Officers to form the Court.)~~

*~~2. A Field Officer as President.)~~

~~for the following reasons, namely.....~~

Proceedings Reviewed [illegible] 11 May 43

(73)

NOTE.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	G. Wright	1 Cdn L A A Regt

Members.

Rank.	Name.	Regiment.
Capt	H. L. Williams	1 Cdn L A A Regt
Lieut	L. C. Luke	1 Cdn Corps Ord Fd Pk

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed E C Plew

(E. C. Plew) Brigadier

Commanding C.C.R.A., 1 Cdn Corps

Convening Officer.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
D-77807 Trooper James Edward Smyk 32 Cdn Recce Regt	First Charge A.A. Sec 15(1) Second Charge A.A. Sec 24 Third Charge A.A. Sec 40 FINDING 1ST CHARGE Guilty 2ND CHARGE Guilty 3RD CHARGE Guilty	Guilty Guilty Guilty	~~automatic~~ ~~forfeiture of~~ ~~pay 44 days~~ ~~under FR 22~~ ~~40(1)~~. Stoppage of pay entitled to be made and the sum of $1.19.6 in respect to the ~~cost of~~ loss of kit by neglect and the sum of $0.13.6 in respect to cost of apprehension. To undergo 120 days detention G Wright Major 30 Apr. 43	Confirmed E.C. Plow B-G CCRA

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :—

(Signed) E.C. Plow (Signed) G Wright Major
(E. C. Plow) Brigadier
C.C.R.A. *Commanding* 1 Cdn Corps — *Convening Officer* (c)
1 LAA Regt RCA — *President*

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (If necessary) to be PINNED here.

I certify that the above Court assembled on the 30 day of April 43 and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule. **B.** Certificate of President as to proceedings.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. ~~The~~ Interpreter) Nil
*(4. ~~The officers under instruction~~) Nil
were duly sworn.

*Omit if not applicable.

Signed this 30 day of April 1943

G Wright Major
President of the Court Martial. 1 LAA Regt RCA.

I certify that the terms of *A.C.I. 370 of 1918 have been complied with. **C.** Certificate in case of death sentences.

*See footnote (b) on page 762 M.M.L. 1929.

Signed this day of Nil 19

President of the Court Martial.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences. **D.** Confirmation.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(~~I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.~~) Nil

Signed this 3rd day of May 1943.

E.C. Plow
(E. C. Plow) Brigadier
CCRA *Confirming Officer.* 1 Cdn Corps

Promulgated and extracts taken in the case of D77807 Tpr Smyk, J.E.

(a) (Dated) 4th day of May 1943 (Signed) R.A. Buckingham (A/Lt (I.O.)
32 Cdn Recce Regt (RMR).

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

(8817) W1-8817/900 30,000 2-43 A.S.E.W.L.Ltd. Gp.979

B2.

CHARGE SHEET

D77607 Tpr. James Edward SMYK, 32 Cdn Recce Regt (RMR), a soldier of the Canadian Army Overseas, is charged with, while on active service,

FIRST CHARGE AA15(1)

Absenting himself without leave,

in that he,

in the field absented himself without leave from 1200 hrs about 44 days
13 Feb 43 until arrested in London 1030 hrs 29 Mar 43.

SECOND CHARGE AA 24

Losing by neglect his equipment and regimental necessaries,

in that he,

in the field on 24 Apr 43 was found to be deficient of the following articles of clothing and equipment valued at 75% Ordnance Vocabulary prices:

1 cap badge	0 - 0 - 4
2 shoulder titles	0 - 0 - 11½
1 pair braces	0 - 0 - 11½
1 pr woollen drawers	0 - 4 - 0
2 flannel shirts	0 -13 - 9
1 pr socks	0 - 1 - 3
1 First Field Dressing	0 - 0 - 10
1 web support strap	0 - 1 - 0½
1 respirator	0 -15 - 9
6 sets eyeshields	0 - 0 - 3½
1 jar ointment A/Gas No.2	0 - 0 - 4
	£1 -19 - 6

THIRD CHARGE AA 40

Conduct to the prejudice of good order and military discipline,

in that he,

in the field when arrested in London 29 Mar 43 was in possession of a falsefied pass, which he represented to be genuine.

(J.A. Calder) Lt. Col.
Comd 32 Cdn Recce Regt (RMR)

In the Field
26 Apr 43

To be tried by Field General Court Martial.

(Z.C. Plow) Brigadier
C.R.A. 1 Cdn Corps.

Field
25.

A9

30 Apr 43

I, certify that I have this morning examined Lt Wright RMP

D 77807 Tpr Smyk J. E.

and find him ~~unfit~~ fit to under go Field General

Court Martial

J. McEachern Capt.

~~C.D.~~ A. McKenzie Capt. M. C.
R.C.A.M.C.
Attd. 32 Cdn Recce Regt (R.M.R.)

A

Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a ~~Field General~~ Court-Martial held at 427 Fortress Coy RCASC

on the 30 day of April 1943 by order of

Brigadier E C Plow

Commanding CCRA 1 Cdn. Corps

dated the 30 day of April 1943

President, G Wright Major 1 LAA Regt RCA

Members, { R J Williams Capt 1 LAA Regt RCA

{ J C Luke Lieut HQ 1 Cdn Corps Ord Fd. Pk.

~~Members.~~

, ~~Judge Advocate~~

Trial of* D 77797 Trooper James Edward Smyth 32 Cdn. Recce. Regt (RMR)

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that [illegible] is not available to serve owing to~~

~~, waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† B M Stevens Capt. 32 Cdn. Recce Regt.

Counsel‡ or defending officer† E N Hand Capt 32 Cdn Recce Regt

At 1130 o'clock the Trial commences.

The order convening the Court is read, and is marked A2 signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? Answer.

No

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q6378 Wt. W 14650/78. 10,000 pads. 6/40. K. & H., Ltd. G667/11. (Forms A 9/2).

B

The President, and members ~~and judge-advocate~~ are duly sworn.

~~The following officers under instruction are duly sworn.~~ Dol

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read ? *Question to the accused.*

Guilty *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read ? *Question.*

Guilty *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read ? *Question.*

Guilty *Answer.*

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read ?~~ Dol *Question.*

Answer.

The accused having pleaded Guilty to 1st 2nd 3rd charges the provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge. *Instruction.*

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*~~[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again:]~~

The accused is found guilty of 1st and 2nd 3rd charges

†The summary ~~(or abstract)~~ of evidence is read, marked B3 signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment ?

Answer. The ~~accused~~ Defending Officer in mitigation of punishment says : Yes

[*or* hands in a written statement, which is read, marked C, signed by the President, and attached to the proceedings.]

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

[redacted]

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

N/O

Answer.

Evidence as to character.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

~~The Court is closed for the consideration of the finding.~~

~~The Court find that the accused~~ Guilty

*When the Court is already open this sentence will be struck out.

Proceedings on Conviction *before Sentence.*

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

Capt. R. H. Stevens is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* Yes.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked E. 1 & E. 2, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* Yes

[illegible]

Cross-examined by the accused. - None

Question to the accused.

Do you wish to address the Court? *Answer.* No

The Court is closed for the consideration of the sentence.

F

Sentence.

The Court sentence the accused D77807 Tpr. James ~~Edward~~ Smyk.
32 Cdn. Recce Regt. (RMR)
~~Automatic forfeiture of 44 days pay under FR & I 1149 (4)~~ ~~$88~~
Stoppage of pay until he has made good the sum of $1.14.6 in respect of loss of kit by neglect and the sum of $0.13.8 in respect to cost of apprehension.
To undergo 120 days detention.

G Wright Major
30 Apr. 43.

C

Plea in Mitigation of Punishment.

In entering a plea in mitigation of sentence I would take the Court to keep in mind the age of the accused. He is only 18 and has been in this country approx. 1 yr. The charge he is being tried on are the first known charges he has had in the Army. For the past several months he has been a Pfc. under my command and as such has been an efficient soldier.

J. D. Edmonds Capt.
32 Adm Recon Regt Div

J. Wright Major

B3.

Summary of Evidence

In the Case of 077807 Tpr Lumpkin J.C. 32 Cdo Recce Regt (RMR)

By direction of the Commanding Officer this is taken on oath.

Lieut Wilkins for the Prosecution

076398 S.Q.M.S. Roberts R.M. having been duly sworn states: I am S.Q.M.S. of HQ Sqn of which the accused is a member. I present in evidence that the accused absented himself without leave at 1200 hrs 19 Feb 43. certified Copy of extract in MB 68 relative to the accused. I also present AFB 252 in evidence that the accused was arrested in London (and later pass expired & returned to unit) approx 1030 hrs 29 Mar 43. also details of escort & expenses amounting to 13 shillings and 8 pence. I checked the kit of the accused 24 Apr 43 and found him deficient of the articles as per Appended list. Items shown thereon are 45% of a/d vacant price. Receipt for pass to be a false one in that the signature appearing thereon is not that of 076398 S.Q.M.S. Roberts R.M. Major Mackae.

Certified extract of MB 68 is attached as Appendix "B", details of escort expenses Appendix "C", list of deficiencies Appendix "D", pass pass Appendix "E".

The accused declines to cross examine this witness.

The accused having been cautioned in accordance with Rule declines to make a statement

Certified that Rule has been complied with

taken down by me in the hearing and presence of the accused this 26th day of Apr 43

Lt Wright
M.I.Sgn

Lt Stevens Capt
32 Cdo Recce Regt (RMR).

RECORD of the Declaration of a Court of Inquiry assembled in the field on the 9th day of March 1943, for the purpose of investigating and recording the absence without leave, from his duty, and deficiency if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries, or Clothing of D77807 Tpr Smyk, J.E.

DECLARATION

The Court declare, that D77807 Tpr Smyk, J.E. absented himself without leave at 1200 hrs 13 Feb 43 while stationed at Tilgate Camp, Sussex that he was absent 21 clear days on 7 Mar 43 and that he is still absent.

Names of President and Members		
Major D. MacRae	President	32 Cdn Recce Regt (RMR)
Capt. B.W. Stevens	Member	32 Cdn Recce Regt (RMR)
D76000 RSM (WO 1) J.A. Mitchell	Member	32 Cdn Recce Regt (RMR)

signed J.A. Calder Lt. Col.
Comd 32 Cdn Recce Regt (RMR)

CERTIFIED TO BE A TRUE ~~COPY~~ extract FROM THE REGIMENTAL RECORDS IN MY POSSESSION.

(B.W. Stevens) Capt & Adjt.
32 Cdn Recce Regt (RMR)

26 Apr 43

Appendix "A" referred to in Statement of Evidence of D76369 SQMS Roberts P.M.

P.M. Roberts S.D.A.S.
D76369 SQMS Roberts RM



War calling-out of the active Army Reserve is ordered every soldier on pass must return immediately to his unit without waiting for instructions.

No. ... Regiment 32 nd Recce Regt (R.M.R.)

PASS

Army Form B 295
(In pads of 100)

No. D. 72863 (Rank) L/Cpl (Name) Lang E. J. E.

has permission to be absent from his quarters duty, from 1200 hrs.

22/3/43. to 1200 hrs Mon 29/3/43.

for the purpose of proceeding to* London Canada

(Station) Field

(Date) 22 March 43

Apply at "D" Ref. to W.O. Transport Section for Rail Warrants & Return

D 76349 S.Q.M.S. Rations & Fuel

Lt. Col. Commanding Recce Regt (R.M.R.)

CHARGE

Army Form B 252
King's Regulations

R.M.P. 32nd. RECCE

Regiment / Battery / Squadron / Troop or / Company

CHARGE against No. D-77807 Rank Tpr.

Name Smyth, J.E.

Place London Date of Offence 29-Mar-43

OFFENCE W.O.A.S. Being in possession of and using a document purporting to be a genuine leave pass knowing it not to be genuine when checked by the Canadian Provost Corps in the Albion Hotel, Vauxhall Bdge. Rd. London, at about 1030 hrs. on the 29-Mar-43

W. FERN, CAPT. D.A.P.M. LONDON AREA.

Names of Witnesses Sgt. Harrison, Canadian Provost Corps. (S.I.S.)

Signature of O.C. Battery, Squadron, Troop or Company

Punishment Awarded

By whom Awarded

Appendix 'B' referred to in Minutes of 3rd Bde 29th Sig Regt Roberts S.C. 2nd I.C. Pte Roberts D/77 29th Sig Regt (Bde) Pte Roberts D/77 29th Sig Regt (Bde)

Adjutant.

P.T.O.

Statement of **EVIDENCE** in the case of
D-77807 Tpr. Smyk, J.E.
32nd. RECCE Btn. R.M. Regt.

Sir;

At London on the 29-Mar-43 at about 1030 hrs. I was on duty in the Albion Hotel, Vauxhall Bdge. Rd. there I saw the a/m soldier. I approached him and asked to see his pass. He produced one which showed him to be on leave to 1200 hrs. 29-Mar-43. I was not satisfied that it was genuine and on being questioned he then admitted that he was A.W.L. I placed him under arrest and escorted him to No 6 Coy. Canadian Provost Corps detention room where I turned him over to the N.C.O. i/c cells to be detained.

London
29-Mar-43

455237 J. T. Harrison ..... Sgt.
Harrison, J. T.

W. FERNI CAPT.
D.A.P.M.
LONDON AREA

REMARKS

Expense Voucher Re—: Ref: K.R. & O. (Can) 539

Reg. No 22502 Rank Lieut Name Smyth J.C. Unit 32 Recce Regt Lt Major

The following expenses were incurred in apprehending and returning the M/N Soldier to his Unit From London to Seaford

Date	Particulars	Amount		
23 Apr 43	Escorts return fare from LONDON To Seaford		9	1
	Prisoners single fare to LONDON From			
	Prisoners fare from London To Seaford		4	9
	Escorts & Prisoners expenses for Bed, Meals, Bus fares			
	Appendix C referred to in Statement of Evidence 9076398 SGMS Roberts. Pte Roberts 9076398 SGMS. Total £		13	8

9076398 Coms Roberts.

I certify that the above statement of Expenses is Correct, and that the amounts are fair and just.

Lt Stevens A/A 32 Cdn Recce Regt (Rank)

Officer Issuing Railway Warrant and Expense monies
No. 6 Provost Company, Canadian Provost Corps, London.

O.M.H.Q. 1006/56
339/P & S/483

32 CDN RECCE REGT (R.M.R.)

"HQ" Sqn. Revised List of Deficiencies in Kit of 24 Apr 43
D77807 Tpr. Smyk, J E

QUANTITY	ARTICLES	VOCAB. PRICE £	s	d	75% £	s	d
1	Badge, cap	0	0	5	0	0	4
2	Titles, shoulder	0	1	3	0	0	11½
~~1~~	~~Blouse, B.D.~~	~~1~~	~~7~~	~~8~~	1	6	9
~~1~~	~~Socks, ankle~~	~~1~~	~~1~~	~~6~~	0	~~16~~	~~1½~~
1	Braces	0	1	3½	0	0	11½
~~1~~	~~Greatcoat~~	~~3~~	~~17~~	~~0½~~	2	~~17~~	~~9½~~
1	Drawers, woollen	0	5	3	0	4	0
2	Shirts, flannel	0	18	4	0	13	9
1	Socks	0	1	8	0	1	3
1	Dressing, field	0	1	1	0	0	10
1	Strap, web support	0	1	4½	0	1	~~0½~~
1	Respirator	1	1	0	0	15	9
1	Eyeshields	0	0	4½	0	0	3½
6	Ointment No.2	0	0	5½	0	0	4
~~5~~		~~5~~	~~10~~	~~8½~~	~~4~~	~~14~~	~~8~~
		2	2	6	1	19	6

Appendix 'E' Refund to Statement
Remittance of 176391 Sgms Roberts P.M.
Pte Roberts R.C.O.M.B.
D/76398 SGMS Roberts P.M.

A.C. Roberts
(F.M. ROBERTS) SGMS.
"HQ" Sqn.

O.C. "H.Q." SQN. 32 CDN. RECCE REGT. (R.M.R.)

Lt Stevens Capt D
32 Canadian Recce Regt (R.M.R.)

Request for Defending officer
Case of 27780 1/Lt Lemyk J.E.

I wish to have an officer defend me at my trial and if satisfactory to the commanding officer I wish to have Capt Ewald 32 Cav Recn Regt (Mtd) defend me.

J. E. Lemyk
27780 1/Lt Lemyk J.E.

Capt Howard Capt
32 Cav Recn Regt (Mtd)

E

M.F.B. 355
H.Q. 1772-39-620
10M-8-40 (M19)

Goodwright

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
D77807	Tpr	SMYK, J.E.	32 Cdn Recce Regt (RMR)

1. The following is a fair and true summary of the entries in the ~~Service~~ Regimental and Squadron, Battery Conduct sheets ~~A Company Conduct~~ sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court. Air Force Act of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
For AA 40 Conduct etc	3 times	3 times
For AA15(1)	1 times	1 times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct NIL

~~There are no entries in the conduct sheets of the accused.~~

NOTE:—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

~~Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act A.F.A. 72 Section 47 of the Army Act and dispensations with trial under A.A. 75 are set out in the Schedule annexed to this statement.~~

3. The accused is not under sentence at the present time.

~~The accused at the present time is under sentence for beginning on the day of~~

4. The accused has been in confinement awaiting trial on the present charges, for 24 days in civil custody, and 4 days in military custody, making a total of 28 days in custody, of which NIL days were spent in hospital.

5. The present age of the accused according to his record of service is 20 years 10 months

6. The date of his ~~enlistment~~ attestation specified in his record of service is 9 Oct 41

7. The service which the accused is allowed to reckon towards discharge is

8. The accused is entitled to reckon service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force military decoration, or air force military reward (or is in possession of or entitled to). State any air force military decoration or reward.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit dated ....., and in his regiment (or corps), the rank of ..... dated .....

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

..... Date of promotion.

In the rank of ..... years.

In the rank of ..... years.

In the rank of ..... years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Army Act, and of cases in which trial has been dispensed with of accused, Number ..... Rank .....

Name ..... of ..... Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 26th day of April 1943 [illegible] 32 Can Res Bn

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked ..... signed by the president, and annexed to the proceedings.

OLD SHEET DESTROYED 23 JUNE 42

No. D7787 Name SMYK, J. Sqn., Battery, or Company HQ. Corps 32 CDN RECCE REGT (R.M.R.) Date of enlistment 9 OCT 41 G.C. Badges — Proficiency —

Date of last entry in Company Conduct Sheet 31/3/42 No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. 1 Signature O.C. Company, etc. S.M. ALLEN MAJOR

Place	Date of offence	Rank	Class of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
IN THE FIELD	13 OCT 42	PTE	-	WAS GUILTY TO THE PREJUDICE IN THAT HE CAME ON PARADE WITH DIRTY BOOTS ON AQ SEC 40	4/SGT LEATHERBARROW A.H.	2 DAYS C.B.	13 OCT. 42	MAJ D. MACRAE	
IN THE FIELD	21 OCT 42	PTE	-	CONDUCT ETC SEC 40 - TALKING ON PARADE	SGT OWENS T.P. SGT SILLKING A.H.	2 DAYS C.B.	21 OCT. 42	MAJ D. MACRAE.	
IN THE FIELD	15 NOV 42	PTE	-	CONDUCT ETC - SMOKING ON PARADE - SEC 40	CQMS ROBERTS	2 DAYS C.B.	16 NOV. 42	MAJ. D. MACRAE.	
IN THE FIELD	29 NOV 42	PTE	-	AWL 15 (1) 1600 HRS, 29 NOV - TILL 1930 HRS. 29 NOV 42 3 HRS 30 MINS	CPL MCKENZIE M.R. CPL HAGLES, J.D.	10 DAYS C.B	30 NOV. 42	CAPT SPACEY	FINES 1 DAYS PAY (MINOR DUTY)

CERTIFIED TO BE A TRUE COPY FROM THE RECORDS IN MY POSSESSION.

(S.M. STEVENS) CAPT & ADJT.
32 CDN RECCE REGT (R.M.R.)
15 MAR 43

5 21-97

Iyer Lmuyk, J. E.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: D77807 Tpr SMYK, J.E. - 3 Cdn Repat Dep

Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA 8(2)	NOT GUILTY	GUILTY	
2nd AA 10(3)	NOT GUILTY	GUILTY	
3rd			
4th			
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence for~~ ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 14 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To forfeit all ordinary pay for a period of Sixty(60) days.

(Sgd) ..... 9 Oct/45 ..... (Sgd) ..... (RP 45, 50.)

Judge-Advocate, if any. Date awarded. President.

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised: AA 54(3). Sending back finding or sentence for revision by Court: AA 54(2), RP 122(C). If not confirmed, accused may be tried again: AA 137, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

Date 10 Oct 45 (Sgd) A.B. Connelly Brig

Commanding B GROUP CRU

Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused.	Date.	Signature of Offr.
D77807 Tpr Smyk, J.E.	20 Oct 45	[illegible] Capt

Entered in Canada Draft 393 part II Order 12 d/15 Oct 45 Ord Howard, Capt

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDS OFFICER
3 CDN REPAT DEP

RECORDED AT CMHQ IN AB 1[illegible] 54-97

FIELD GENERAL COURT-MARTIAL

CPA96 (In lieu of AFA81) 40/P & B/1698 (44) 4/38B

Convened by Order of Brig A.B. Connelly, CBE Comd "B" Gp, CRU dated 5 Oct 45

RECEIVED 28 OCT 45 CANADIAN MILITARY HEADQUARTERS

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D77807	Tpr		Joseph Edward	SMYK	3 Cdn Repat Dep

PROCEEDINGS REVIEWED

R Howard Capt

for OFFICER, AD GENERAL

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 9 OCT 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs under instr, if any~~, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 62-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. ~~President to accused: Do you object to ..... as interpreter? Ans .....~~

~~The Interpreter is sworn.~~(1) Do you object to ..... as shorthand writer? Ans .....

The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court?

Ans NO SIR (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 23, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt-Col	D.L. Redman, VD	HQ CRU
Member	Captain	B.M. BROAD	2 Cdn Repat Dep
Member	Lieutenant	A.M. BROOKS	2 Cdn Repat Dep
~~Judge-Advocate~~			
Prosecutor	CAPT	F.R.J. DILL	3 CDN REPAT DEP
Defending Offr	CAPT	J.S. MERCER	3 CDN REPAT DEP

Questions by President: Is the Prosecutor a lawyer? Ans NO Is the Defending Offr a lawyer? Ans. NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 69 (B) and fn 2 were not followed. See DI p 2.)

A8. The accused ..... before arraignment make(s) (no) (~~a~~) plea. (1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 112), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 37), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (~~separately~~) on all charges in the charge sheet.(1) The accused does (~~does~~) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form A

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)[1], and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.[2]
(*1. RP 35 fn 3. 2. MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).[1] If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty[2], or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined[3], we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.[4]

President to accused: Do you wish to make a statement ? Ans .....[5]
(*1. RP 37(B). 2. RP 37(D) fn 6. 3. RP 35(B) fn 3 para 3, MML p 54 para 47. 4. See para E3 of Record Form E. 5. Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.[1] The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.[1]
(*1. RP 35(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.[1]
(*1. If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D4 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.[1]
(*1. RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.[1]
(*1. Under B5 such parts only of the Summary of Evidence has read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

Pin here Loose Sheets of Record.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans NO SIR.[1]
(*1. If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (his) (no) opening address.[1]
(*1. RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.[1] NOTE TAKEN
(*1. RP 39(C), 114, KR Can 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.[1] The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the ..... charge(s).[2] The Court is closed, and considers the submission.[3] The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on the latter charge(s).[4]
(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42. 4. Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.[1] You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.[2] You may, however, make a statement without being sworn, and you will not be subject to cross-examination.[3] But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.[4] You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans Give Evidence. Do you intend to call witnesses on your behalf ? Ans YES SIR. Are they witnesses as to character only ? Ans NO SIR.
(*1. RP 115. 2. RP 40(A), see 80(D). 3. RP 40 fn 10. 4. RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.[1] NOTE All
(*1. RP 114, 115, 116. For procedure see Notes on back of Convening Order. CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 42, 103(E).*)

D7. The Court is closed to consider the finding(s).[1] The finding(s) of the Court is (are) recorded in Part I of the Schedule.[2] The Court is re-opened.
(*1. RP 43, 117(A). See Notes in Part I of Schedule. 2. RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.[1]
Or. The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.[2]
(*1. AA 54(3) (c), RP 43, 120(A). 2. AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character ?[1] Ans NO SIR.
(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 27(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service[1], and certified true copy (copies) of Conduct Sheet(s)[2], purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex A and Ex C respectively.[3]
(*1. MFB 355 or AFB 296. 2. MFM 6. 3. RP 46, KR Can 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?[1] Ans YES SIR I HAVE NOTE-TAKEN.[2]
(*1. RP 37(C), 46(D). 2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.[1]
(*1. AA 54(6), RP 122(A).*)

E5. The Court considers the sentence.[1] The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.[2]
(*1. When several accused tried separately see RP 71 (D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Can 308, 330, 563-566, Overseas AO 309, 2323, MML p 60, 737-739. As to sentences consigned for civil offences by the law of England see AA 41(3), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 96(1), KR Can 564. 2. RP 50. As to release from arrest by Confirming Offr see KR Can 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused D 77807 Tpr Joseph Edward Smyk, on strength of No 3 Canadian Repatriation Depot, a soldier of the Canadian Army Overseas, is charged with -

FIRST CHARGE
AA 8 (2)

When on Active Service Used Insubordinate Language to His Superior Officer

in that he

at London, England, on 21 Sep 45 did say to M 1838 L/cpl Jones, D. a NCO of the Canadian Provost Corps. "Get the fuck out of here you one-striped bastards. You have no business here," or words to that effect.

SECOND CHARGE
AA 10 (3)

When on Active Service Resisted An Escort Whose Duty it Was to Have Him in Charge

in that he

at London, England, on 21 Sep 45, while under escort of M 1838 L/cpl Jones, D. and F 52076 Cpl Ryan, T.E. of the Canadian Provost Corps resisted the escort by kicking and struggling.

(K.G. McCullagh) Lt-Col
Commanding Officer,
No 3 Canadian Repatriation Depot
Canadian Army (Overseas)

Cove, Hants
2 Oct 45.

TO BE TRIED BY FIELD GENERAL COURT-MARTIAL

(A.H. Connelly) Brig
Comd "B" Gp
Cdn Repat Units

Cove, Hants
5 Oct 45

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(6).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
D77807	Tpr		Joseph Edward	SMYK	3 Cdn Repat Dep

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~(have)~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 2 Oct 45 endorsed by me, ~~(or by an offr of my staff for me)~~, " To be tried by Field General Court-Martial ",

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial ; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr ;~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~5. I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt-Col	D.L. Redman, VD	HQ CRU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Captain	to be detailed by CO	2 Cdn Repat Dep
Lieutenant	to be detailed by CO	2 Cdn Repat Dep

~~WAITING MEMBER.~~

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

~~JUDGE-ADVOCATE.~~

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in ENGLAND (Country.)

A.B. Connelly (A.B. Connelly) (Signed personally. RP 105 fn 2.)

Brig (Rank.)

Dat 5 OCT 45

Commanding "B" Gp, Cdn Repat Units

Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

Medical Officers' Certificate
K.R. (Can) Para 557

I certify that I have examined No. D-27807 (Rank) Tpr (Name) SMITH J.E.

#1 WING Of #3 Cdn Repat Depot and in my opinion he

is Fit/~~Unfit~~ to undergo trial by Court Martial.

Station #3 Cdn Repat Depot Signed [illegible] Medical Officer

Date 9 Oct 45

TRIAL OF

D-77807 TPR SMYK JE ------- 3 CDN REPAT DEP

PROSECUTION

FIRST WITNESS

F-52076 CPL RYAN TE, No 6 Coy, Canadian Provost Corps, sworn, states:-

Q. Will you give your evidence to the Court on this case?
A. I, F-52076, Cpl Ryan TE, of No 6 Provost Company, London, was on duty at Piccadilly Circus on the night of 21 Sep 45, when I was called to the Standard Bar. I sent a L/Cpl Jones and a L/Cpl Marion to answer the call. I was later called by another L/Cpl to take the truck down to the Standard Bar. I accompanied the truck down there. I noticed the two patrol-men I mentioned before holding Tpr Smyk; I recognize him in this Court. They were holding him on the side-walk; he was struggling with his hands and kicking with his feet; he shoved his hands about in an effort to get clear. I approached them and I told the L/Cpls to place him in the truck and he was put under close arrest. It was then necessary to use force to have Tpr Smyk placed in the truck. When I ordered him to get in the truck he used very obscene language calling me "two-stripe bastard", "a dirty cocksucking Provost". He used many forms of bad language when he was placed in the truck. He made a kick at me. That is when I ordered his boots removed to keep him from injuring anyone in the truck. It was still necessary to use force in order to subdue him.

Q. Had he been drinking?
A. When I approached him I could smell alcohol on his breath.

CROSS EXAMINED

Q. You stated under oath that the first time that you saw the accused was on the side-walk near the Standard Bar, is that correct?
A. Yes, Sir.

Q. You, yourself, didn't go inside the Bar, is that correct?
A. Right, Sir.

Q. I produce to you AFV 252, did you sign this? (showing the witness a form with a signature on it)?
A. Yes, Sir, this is my signature.

(DOCUMENT - FORM AFV 252 - MARKED EX 1 BY COURT)

Q. On this document you stated that you went in the public house and that you spoke to the accused and now under oath you said that you did not, how do you explain that?
A. In making out this 252 I put down that I sent the two L/Cpls down and that I assisted them to the door.

Q. Is that statement in Ex 1 true as signed by you?
A. Everything is true on it except for the fact that I entered the Standard Bar; I didn't enter in the Standard Bar.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83 (B).

SECOND WITNESS

M-1838 L/CPL JONES D, No 6 Coy, Canadian Provost Corps, sworn, states:-

Q. Will you give your evidence to the Court on this case?
A. Sir, on 21 Sep 45, I was on duty in Piccadilly Circus with Cpl Ryan and L/Cpl Marion at about 2215 hrs when Cpl Ryan detailed Marion and myself to go to the Standard Pub on Coventry Street. On arriving there, we found the accused, whom I recognize in this Court as Tpr Smyk, causing a disturbance, arguing and using profane language. We ordered him to leave. He refused calling us, "Get the fuck out of here you cocksucking one-stripe bastard, you have no business here." We seized him and we took him out. He was struggling all the way using his hands and feet. When we got outside we met another Corporal on patrol and we sent him for the truck. Cpl Ryan came with a truck and we put him in it. He was till struggling and it became necessary to remove his boots so that he wouldn't cause us any bodily harm. We took him to Store Street and we took him to the detention room. He had alcohol on his breath.

Q. How did he talk?
A. Sensibly when he did talk.

Q. Could he walk straight?
A. Yes.

CROSS-EXAMINED

Q. Did Cpl Ryan accompany you inside of the Standard Bar?
A. No, Sir.

Q. At exactly what time did you arrive at the Standard Bar?
A. 2215 hours, Sir.

Q. I show you Ex 1, is your signature on it?
A. Yes, Sir.

Q. In this statement you corroborate with Cpl Ryan that he went in the Standard Bar, ~~is that~~ statement correct or not?
A. That is quite a while ago, Sir.

Q. This statement was taken eleven days after the incident; it was still fresh in your mind. I take it that the Cpl did not enter the Standard Bar; did you see him in the bar?
A. No, Sir, I did not see him in the bar.

RE-EXAMINED

Q. How many charges do you make on an average night?
A. Not very many.

Q. It is possible that the evidence you made on Ex 1 could be slightly distorted and that your evidence as given on oath to-day is true?
A. Yes, Sir.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83 (B)

THIRD WITNESS

D-132992 L/CPL MARION, R, No 6 Company, Canadian Provost Corps, sworn, states:-

Q. Will you give the Court your evidence in this case?
A. While on duty on Piccadilly Circus on 21 Sep 45, at approx

THIRD WITNESS (CONTINUED)

A. 2215 hours, Cpl Ryan sent me and Jones to go to the Standard Bar to see what the trouble was. We went there to the bar and saw the accused, Tpr Smyk, mixed up with civilians. He was using obscene language and as we approached him we ordered him to leave the bar and he replied, "Get the fuck out of here youone-stripe cocksucking bastards?" We used force to take him out of the bar.because he was struggling with his hands on purpose.

Q. Who actually took the accused?
A. Me and Cpl Jones. The two other L/Cpls were already inside of the bar and they helped us; I don't know who they were. We sent one of them to get the truck and Cpl Ryan. As soon as the truck came in, we had to use force again and Cpl Ryan put him under close arrest and put him under charge. Cpl Ryan and L/Cpl Jones left the accused in the truck and I stayed there.

CROSS-EXAMINED

Q. You have just stated under oath that you arrived at the Standard Bar at 2215?
A. Yes, Sir.

Q. I suggest to you that the bar was closed at 10 o'clock that evening, is that correct?
A. It was not closed when we got there, Sir.

Q. Do you again state that the time was 2215 hours?
A. Yes, Sir.

Q. Do you know if Cpl Ryan entered the bar that night?
A. No, Sir.

Q. Just Jones and yourself?
A. Yes, Sir.

Q. You are sure of 2215 hours?
A. Yes, Sir, it was approx 2215 hours.

Q. Do you see Tpr Smyk in this room?
A. (The witness looks all around the room and finally stops and points to the accused and said) This is Tpr Smyk, Sir.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83 (B).

THE PROSECUTION IS CLOSED

DEFENCE

FIRST WITNESS

The accused, sworn, states:-

Q. Just what were youdoing in London that night?
A. I proceeded to go on my last embarkation leave before I left for Canada. I met a few friends in London and we proceeded to the Standard Bar at approximately 6 o'clock that evening. I was drinking in there most of the evening. I was drinking gin and scotch.

Q. How many drinks did you have?
A. I don't remember, a good many.

Q. Is it correct to say that you were having a celebration?
A. Yes, Sir.

Q. What do you remember of the incident on that night?
A. Not very much, I think I was pretty drunk; until the next morning when I woke up in No 6 Provost Detention Barracks.

CROSS-EXAMINED

Q. You do admit that you were drunk?
A. Yes, Sir.

Q. And yet you don't remember what happened?
A. Yes, Sir.

Q. How do you know you were drunk?
A. I was not in my proper sense and was not behaving in a sober way.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B).

SECOND WITNESS

Mr C. Williams, 6 Marlborough Avenue, Edgeware, London, sworn, states:-

Q. Where are you employed?
A. At the Standard Bar, Piccadilly Circus, London.

Q. Were you on duty on the night of 21 Sep 45?
A. Yes, Sir.

Q. On that particular night do you remember anything unusual that occurred there at the bar?
A. Just before closing time I heard extra noise. We get it quite often and I went out and called the Canadian Provost.

Q. Why did youcall the Provost?
A. It was just to clear out the bar, merely to safe-guard ourselves. We close at 10 o'clock and we start to clear at about twnety minutes to ten.

Q. On that particular night you did not call the Provost to arrest any particular individual?
A. No, Sir.

Q. Was there any undue disturbance that night?
A. We have been very fortunate in having little trouble; we have never had trouble.

Q. Do you remember the Provost coming into the bar that night?
A. No, Sir. I went over to phone to the Provost and the Cpl said that he couldn't come. When I got back there were already two Provost in there outside of the bar.

Q. You did see then the Provost take a Canadian out of the bar before closing time, is that correct?
A. No he was already out when I came back.

Q. Did the manager report any undue occurrence in the bar that night, any damage or anything at all?
A. No, Sir.

CROSS-EXAMINED

Q. Why did you call the Canadian Provost?
A. I don't know, [redacted] we usually call the Canadian Provost every night to clear the bar.

Q. Can you identify anybody in this Court?
A. I can now, I saw the accused the other day at the taking of the summary.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83 (B)

STATEMENT BY THE DEFENDING OFFICER ON THE FINDINGS (ATTACHED)

STATEMENT BY THE PROSECUTING OFFICER ON THE FINDINGS (" ")

THE COURT IS CLOSED

THE COURT IS RE-OPENED

PLEA IN MITIGATION BY THE DEFENDING OFFICER [redacted]

The accused has served in Italy and France and wears ribbons for all these campaigns. He was on his way back to Canada, in fact he is on draft now. He would have been home had it not been for this unfortunate incident. He was having a celebration on this particular night and he had a few drinks too many. I would ask the Court to deal leniently with the accused and take these facts in consideration. It has been shown that the evidence was not reliable and I think the accused should be given consideration on that ground.

(1) May it please the Court I would like to go over the evidence given on the first charge

It has been shown that the original statement of charge No 252 signed by Cpl Ryan & Cpl Jones on which this Court Martial has based their sentence is not correct & that both Ryan & Jones signed their names to a report which they now admit was not correct

Kemble Cpl Ryan stated that accompanied by Cpl Jones he went up to the accused inside the bar and requested him to leave — saying that he refused & that he then ordered him to leave. He refused stating to Cpl Ryan Get away from me you bloody

Looking at the first charge it reads — he did say to Cpl Jones Get to Hell out of here Cpl Ryan has made the statement that he went up to the accused & that the accused spoke to him so therefore the charge is wrong according to that statement

Now Cpl Jones has signed & corroborates that statement so which one are we to believe.

2nd Now about the second charge you have heard Pte Williams state that the accused did not accompany the escort NCO'S & went outside quietly & that he did not make anything out of the way about the prisoner when he was leaving

You also heard Pte Williams state that there was no unnecessary disturbance but might & that although the escort was called on it was for the express purpose of clearing the bar & not to put any undue

Q: I would like to say something now about resisting an escort
it has been shown that the accused had been drinking
& naturally enough he would have resented the
Provost asking him to leave & especially insisting
him along. What is the natural reaction
to being insisted? — There is not one of
us that wouldn't in some way try to ~~[illegible]~~
~~[illegible]~~ counteract the insisting — It's
the natural reaction — but because a man
reacts in a natural way you cannot say
that he was actually resisting an escort
Any man who has been drinking will resent
being shoved along & he doesn't mean any
harm by it — or despite it he can
finally the soldier has having a final celebration, —
his last leave prior to returning to Canada
and naturally enough has having a fast time
& drinking more than he normally would
Due to the lack of evidence on the part of
the Prosecution & due to the confusion &
unreliability of the evidence as offered I
have no hesitation in asking this Court
to dismiss both charges against the accused

My

J. Stevens Capt
Defence Officer

from the evidence given by the present
Cases there is conclusive evidence that the
accused was guilty of misconduct in presence
of the enemy in that he
deserted to a superior officer and that he
resisted the escort after he was placed
under close arrest. The struggle was so
intense that it became necessary to secure
his hands in order to avoid his being bitten
The accused pleads Guilty to the
Charge & Specification & guilty of arrest.
witnesses may be called clearly & with direct
Called Pte Present. - decent not to talk
because he is proud the place with the fist of
disease he is proud the place with the fist of

I should ~~~~ a Guilty Sentence
I say that must have the a Guilty Sentence
of death in order to clear the Air

CHARGE

Army Form B 252
(See King's Regulations)

No. 3 Cdn. Repat Depot ..... Regiment

..... Battery / Squadron / Troop or / Company

CHARGE against No. D-77807 Rank Pte.

Name Smyk, J.E.

Place London Date of Offence 21-Sept.-45.

OFFENCE A.O.A. (1) Resisted arrest.

(2) Conduct to the prejudice of good order and Military discipline.

(3) Failed to comply with an order given by an N.C.O. of the Provost Corps while in the execution of his duty.

Names of Witnesses:—

1. Ryan, T.E. No.6(Area)Cdn. Provost Coy.

2. Cpl. Jones, D. No.6(Area)Cdn. Provost Coy.

Signature of O.C. Battery, Squadron, Troop or Company }

Punishment Awarded }

By whom Awarded }

Adjutant.

P.T.O.

SDA/40

Ex. MW

Statement of **EVIDENCE** in the case of
D-72807 Tpr. Smyk, J.E.
No. 3 Cdn. Repat Depot

Sir:

At London at about 2145 hrs. 21-Sept.45. I was on patrol duty on COVENTRY STREET in company with L/CPL. Jones, D., when the Proprietor summoned me to his Public House, where I saw the s/m soldier.

He was in argument with civilians using obscene language. I approached him and requested him to leave. He refused. I then ordered him to leave. He refused stating, "Get away from me you God-damned, cocksucking, one-striped bastards."

I placed him under close arrest and force was necessary to escort him to No. 6(Area)Cdn. Provost Detention Office, where he was turned over to the N.C.O. i/c of cells to be detained.

.....Cpl.
F-58076 T.E. Ryan.
No. 6(Area)Cdn. Provost Coy

London.
21-Sept.45

Sir:

I have read over and corroborate the above statement.

REMARKS

.....L/Cpl
M-1858 D. Jones.
No. 6(Area)Cdn. Provost Coy.

London.
21-Sept.45.

ARMY FORM B.296 (WAR).

Statement as to Character and Particulars of Service of Accused.

(For Use at Trials by Field General Courts-Martial only).

Number.	*Rank.*	*Name.*	*Regiment (or as the case may be).*
D-77807	Tpr	SMYK Joseph Edward	4 RECCE Regt.

NOTE.—The Field Conduct Sheet is to be produced in Court with this statement but is not to be assessed to the prejudice of the accused. The numbers of ENTRIES in the Field Conduct Sheet, punishments being given in each section, should correspond with the number of entry. If the charge is for drunkenness or absence without leave, the entries for drunkenness or absence, as the case may be, should be stated separately. Any recognized special acts of gallantry or distinguished conduct recorded on the Field Conduct Sheet should also be inserted here.

1. The following is a fair and true summary of the entries in the Field Conduct Sheet of the accused, exclusive of convictions by a court martial or a civil court :—

For A. W. L. 2 times.

For Sec 40 A.A. 4 times.

For ____ ____ times.

For ____ ____ times.

Date of first entry in Field Conduct Sheet 30 Nov 42

Date of last entry in Field Conduct Sheet 5 Aug 43

2. Previous convictions of the accused by a court martial or a civil court are set out in the Schedule overleaf.

*3. ~~[illegible]~~

*Strike out if not applicable.

4. The accused has been awaiting trial on the present charges for Nil days in civil custody; and for 18 days in military custody, i.e., Nil days in open arrest, 18 days in close arrest; of which Nil days were spent in hospital.

5. The present age of the accused is 23 years, months ~~days~~.

6. The date of his attestation 8 Oct 1941

7. The service which the accused is allowed to reckon is

8. The accused is in possession of: France & Germany Star
1939-1945 Star
Italy Star, Defence Medal.

9. (*If the accused is a warrant officer or N.C.O.*) The accused has served continuously, without reduction, to the present date—

	Date of Promotion.
[illegible]	
[illegible]	
[illegible]	

†State the military operation (if any) held by accused.

INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*

E & B

MJ

(20/684) W1.4211/P.4289 45,000 11/44 A.& E.W.Ltd. Gp.698 Forms/B.296/War/1

SCHEDULE OF CONVICTIONS BY A COURT-MARTIAL OR CIVIL COURT.

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted or sentence suspended.
FGCM	30 Apr 43 Field	A. A. Sec 15(1) A.W.I. 43 days 22½ hours. A. A. Sec 24 (2) losing by neglect equipment to value £1-19-6 A. A. Sec 40 Conduct to the prejudice of good orcer and military discipline-possession of false pass.	120 days detention stopages of pay £1-19-6 plus stopage of pay £0-13-8	40 days remitted
Civil Court	5 Nov 43 Crawley England	Driving without lights	Fined £1-10-0	----------

I HEREBY CERTIFY that the foregoing particulars, which have been extracted from the regimental books in my custody, are correct to the best of my knowledge and belief.

Signed this 9th day of October 1945

(W. S. Fergusson) Capt.,
Adjt No I Wing, 3 Cdn Repl Depot.

OLD SHEET DESTROYED 23 JUN 42

No. D 77807 Name SMYK, J. | Sqn, Battery, or Company HQ | Corps R.M.R.(MG) | Date of enlistment 9 Oct 41 | Service or Proficiency Pay | 3/17 MFM 6 (AFB 122) 40/P&S/136 (7808)

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No. | Signature OC Company, etc J.G. Allen, Maj. 6th D.C.R.C.H. | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
In the Field	13 Oct 42	Pte.		W.A.S.-Conduct to the prejudice etc.-in that he came on parade with dirty boots on.-13 Oct 42 A.A. Sec 40.	L/Sgt. Leatherbarrow A.N.	2 days C.B.	13 Oct 42	Maj.D. MacRae.	
In the Field	21 Oct 42	Pte.		Conduct etc. - Talking on Parade 21 Oct 42 - A.A. Sec 40	Sgt.Owens,TA Sgt.Suckling	2 days C.B.	21 Oct 42	Maj. D. MacRae.	
In the Field	15 Nov 42	Pte.		W.A.S. - Conduct to the prejudice etc.-Smoking on Parade.	CQMS Roberts, P.	2 days C.B.	15 Nov 42	Maj. D. MacRae.	
In the Field.	29 Nov 42	Pte.		A.W.L. 1600 hrs 29 Nov 42 till 1930 hrs 29 Nov 42-Absent 3 hrs 30 mins. A A Sec 15(1)	Cpl.McKenzie, M.R. & Cpl. Howles, J.D.	10 days C.B.	30 Nov 42	Capt.Stacey	Forfeits 1 days pay.

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Field	13 Feb 43	Pte.		Sec 15(1)-AWL - 1200 hrs 13 Feb 1030 hrs 29 Mar.43 dys 22hrs Sec 24(2)AA-Losing by neglect Regtl Equip.value £1-19-6 Sec 40 AA -Conduct to prej.etc. had a flase pass in his possession.	Sgt.Owens,J. SQMS.Roberts,P. Documentary from SIS	120 dys Det ention. Stoppage of pay 1-19-6 loss of equipment.Stoppage of pay 0-13-6 Escort expenses.	FOCM 30 Apr.43 Convened and confirmed CCMA-1Cdn Corps.	Pres.Maj. J.Wright,1 LAA Regt. Brig.E.C.Plow	Auto Forf 32 dys pay 1030 hrs 29 Mar 2359 hrs 29 Apr.
Field.	Prior to 5 Mar 43.	Pte.		Driving pedal cycle without lights in Crawley.	Civilian Police.	Fined£1-0-0	5 Mar 43	Court of Summary Jurisdicti on, Horsham.	
						Released from the Detention barracks, Field, on Jul 1,43, Sentence having expired. Remissoon earned under "Rules for Detention Barracks and Military Prisons" 40 days. Commandants Initials.....			

CERTIFIED TRUE COPY:

(T.G. Gamble) Lt-Col.
OIC Cond #1 Wing, 3 Cdn Repat Depot.

D 77807 Smyke, J.E.
No. Name

Sqn, Battery, or Company: Corps C.A.C.

Date of enlistment:

GC Badges:

Service or Proficiency Pay:

3/17 MFM 6 (AFB 122) 40/P&S/136 (7808)

Date of last entry in Company Conduct Sheet:

No. and date of last drunk:

Period not reckoning towards freedom from extra fine:

Sheet No.:

Signature OC Company, etc:

Character:

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Supplementary Copy; - Documents not available for checking from H.U.									
Field	2 Aug	Tpr.		A.A. Sec 15(1) AWL from 1215 hrs until 0815 hrs 3 Aug.(20 hrs)	SSM McKenzie L/C Haggarty	7 dys F.P. 7 dys Pay.	5 Aug 43	W.W.C. Derling, Maj.	Auto Forf one days pay.
Field.	27 Nov 43	Tpr.		Sec 40 A.A. -Unfit for guard duty.	Sgt.Armstrong W.E	7 dys pay	29 Nov 43	Maj.M.A.C. Stroud.	

CERTIFIED TRUE COPY:

(S.O. Gamble) Lt-Col. - Offr Comd,
#1 Wing - 3 Cdn Repat Depot.

(FTO)

SUMMARY OF EVIDENCE in the case of D 77807 Tpr Smyk, J.E. Canadian Armoured Corps on the strength of No 3 Canadian Repatriation Depot, (I Wing) CD 393, a soldier of the Canadian Army Overseas.

By direction of the Commanding Officer, the summary of Evidence is taken on oath.

First Witness For the Prosecution

F 52076 Cpl Ryan, T.E., Canadian Provost Corps, on strength of No 6 Co'y, a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:--

"I am F 52076 Cpl Ryan, T.E., of No 6 Co'y Canadian Provost Corps. At approximately 2215 hrs. 21 Sep 45, I was on duty in Piccadilly Circus, London, with M 1838 L/cpl Jones, D. and D 132992 L/cpl Marion, R. of the Canadian Provost Corps, An employee of the Standard Bar, Piccadilly Circus, approached me and made a request. I, immediately, sent L/cpl Jones and L/cpl Marion to the Standard Bar to see what the trouble was. A few minutes later a L/cpl from another patrol came to me and made a report. I, immediately, went to the bar with the truck and noticed L/cpl Jones and L/cpl Marion struggling on the sidewalk outside the bar with D 77807 Tpr. Smyk, J.E. whom I now recognize. I ordered the l/cpls to place him on the truck. This being done, with use of force, I got in the back of the truck myself, accompanied by L/cpl Jones and told the accused to keep quiet and to stop struggling as he was under arrest. He replied, "I don't give a fuck, I can beat all the God-damned Provost in this truck. You no good two-striped, cocksucking bastard." He continued to struggle violently with his arms and feet and it was necessary to remove his boots and use force in order to subdue him. On arrival at Store Street Detention Barracks, I handed him over to the N.C.O. i/c of cells.

ACCUSED The accused declined to question the witness.

.....
F 52076 Cpl. Ryan, T.E.
No 6 Coy Canadian Provost Corps

Second Witness For the Prosecution

M 1838 L/cpl Jones, D. of the Canadian Provost Corps of No 6 Co'y, a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:--

"I am M 1838 L/cpl Jones, D. of No 6 Co'y Canadian Provost Corps. At approximately 2215 hrs. 21 Sep 45, I was on duty in Piccadilly Circus, London, with F 52076 Cpl Ryan, T.E. and D 132992 L/cpl Marion, R. of the Canadian Provost Corps. L/cpl Marion and I were detailed by Cpl Ryan to go to the Standard Bar in Piccadilly Circus to investigate a complaint. As we entered the bar we found D 77807 Tpr. Smyk, J.E., whom I now recognize, arguing with civilians and using obscene language. We approached him and ordered him to leave the bar. He refused saying, "Get the fuck out of here you one-striped bastards. You have no business here." We, immediately, seized him and took him outside. At that moment another patrol passed by and I sent one of the L/cpls of that patrol to get Cpl Ryan and the truck. Tpr. Smyk, violently, resisted arrest on the street using his arms and feet in an effort to strike us, and continued using profane language, saying, "Let me go you dirty cocksuckers." In a few minutes Cpl Ryan appeared on the scene with the truck. He continued to struggle using his arms and feet and it became necessary to remove his boots to prevent him from causing us bodily harm. On arrival at Store Street Detention Barracks he was turned over to the N.C.O. i/c of cells.

ACCUSED The accused declined to question the witness.

.....D Jones.....
M 1838 L/cpl Jones, D.
No 6 Co'y Canadian Provost Corps

Third Witness For the Prosecution

D 132992 L/cpl Marion, R. of the Canadian Provost Corps of No 6 Co'y, a soldier of the Canadian Army Overseas, having been duly sworn, states as follows:--

"I am D 132992 L/cpl Marion, R. of No 6 Co'y Canadian Provost Corps. At approximately 2215 hrs 21 Sep 45 I was on duty in Piccadilly Circus, London with F 52076 Cpl Ryan, T.E. and M 1838 L/cpl Jones, D. of the Canadian Provost Corps. Cpl Ryan, on information he received, sent L/cpl Jones and I to the Standard Bar, in Piccadilly Circus. L/cpl Jones and I entered the bar ~~the~~ I, immediately, noticed D 77807 Tpr. Smyk, J.E. in the middle of a group of civilians with whom he was arguing and using obscene language. As we approached him he said, "Get the fuck out of here you one-striped cocksucking bastards. You have no business here." We ordered him to leave the bar and he refused, so we, immediately, used force and took him outside with difficulty as he was struggling fiercely, using his arms and feet in an effort to strike us. As soon as we got outside another patrol of the Canadian Provost Corps came along. When Cpl Ryan arrived with the truck a few minutes later we placed him in the truck with great difficulty as he was struggling with his arms and feet all the while. Cpl Ryan then ordered me to remain on duty at Piccadilly Circus and the truck left with Cpl Ryan, L/cpl Jones and the accused.

ACCUSED

The accused declined to question the witness.

D 132992 L/Cpl Marion R.
.....
D 132992 L/Cpl Marion, R.
No 6 Co'y Canadian Provost Corps.

The accused having been duly cautioned as follows: "Do you wish to make any statement or give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence."

Reserves his defence.

I certify that the foregoing summary of evidence consisting of 3 pages was taken down by me in the presence and in the hearing of the accused and that Rules of Procedure 4 (c) (d) (e) (f) have been complied with.

.....
(Lieut. P.R.J. Dill)
Officer detailed to take down summary of evidence.

Cove.

2 Oct. 45.

WITNESS FOR THE PROSECUTION

F-52076 Cpl Ryan T E on strength No 6 Coy Canadian Provost Corps.

M-1838 L/Cpl JONES D on strength No 6 Coy Canadian Provost Corps.

D-132992 L/Cpl MARION R on strength No 6 Coy Canadian Provost Corps.

WITNESS FOR THE DEFENCE

NIL

EXHIBITS FOR THE PROSECUTION

NIL

STATEMENT BY THE ACCUSED IN ACCORDANCE WITH R.P. 14 (h)

This is to certify that I have received one copy of the Summary of Evidence and one copy of the charge sheet, in my forth coming Field General Court Martial.

(D-77607 Tpr Joseph Edward Smyk)

STATEMENT BY THE ACCUSED IN ACCORDANCE WITH R.P. 14 (b)

I desire to have an Officer assigned to represent me at my trial by Field General Court Martial.
I request the services of [illegible]
if he is available.

(D-77607 Tpr Joseph Edward Smyk)

Hove, Hants,
OCT 45

Lt-Col [illegible] McCullagh
Commanding Officer
No 3 Canadian Repatriation Depot

36 R.

Pte SMYTH, A A

O. H. M. S.

M. F. B. 270

36R

Correspondence to be PINNED here.

RECEIVED 23 OCT 1942

Army Form A.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.
Order convening the Court.

On Active Service, this 19th day of October, 1942

Whereas it appears to me, the undersigned, an officer in Command of Royal Canadian Artillery Just Cdn Bde on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *[~~and that it is not practicable to delay the trial for reference to a superior qualified officer~~.]

* Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers hereunder named.

* Omit if not applicable.

*[I am unable to appoint ~~as~~
*(a) ~~Three Officers to form the Court.~~);
*(a) ~~A Field Officer as President.~~);
*(a) ~~Three Officers having more than one year's service.~~);
~~for the following reasons, namely:—~~]

PROCEEDINGS REVIEWED

President.

Rank.	Name.	Regiment.
Major	R.B. Fraser	2 Cdn Fd Pk Coy

Members.

Rank.	Name.	Regiment.
Captain	K.L. Campbell	4 Cdn Recce Regt
Captain	S.M. Smith	4 Cdn Recce Regt
Captain	E.A. Ballantyne	2 Cdn Fd Pk Coy.

(*Nothing) signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him

*Signed [illegible]
Commanding R.C.A. 1 Cdn Bde
Convening Officer.

SCHEDULE.

Number, Rank (*a*), Name and Unit of Accused (*b*)	Offence charged	*Plea	Finding, and if Convicted, Sentence (*c*)	How dealt with by Confirming Officer (*d*)
C.12528 Pte Smyth, A.A. RC.E.C (Attd. 1 Can Mob Bath Unit RCAMC)	1st Charge Sec. 40 A.A.	Not guilty.	Guilty. R.B.F.	Grnfrom the finding & the Court and remit the sentence
	2nd Charge Sec 19 A.A.	Guilty	Guilty. R.B.F. To be put under stoppage of pay until he has made good the sum of $117.60 in respect of damage to M.D. vehicle # C.L.4426130, and to suffer twenty-eight days field punishment and 8 days forfeiture of pay from 22 October 1942. R.B. Fraser, Major RCE.	i/c 28 days. This Punishment and stoppage of pay & £12.0.0 Brigadier

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (a)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (*to be recorded on separate sheet if necessary*) :— No. R.B.F.

(Signed) [illegible] Brigadier (Signed) R.B. Fraser, Major RCE.
Commanding RCE 1 Can Div *Convening Officer* (*e*) *President.*

(*a*) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
(*b*) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.
(*c*) Recommendation to mercy, if any, to be inserted in this column.
(*d*) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(*e*) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 22nd day of October 1942, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses and Court Stenographer
~~(3. The interpreter)~~ R.B.F.
~~*(4. The officers under instruction)~~ R.B.F.

were duly sworn.

* Omit if not applicable.

Signed this 22nd day of October 1942

R.B. Fraser Major RCE
President of the Court Martial.

C. Certificate in case of death sentence.

* See footnote (b) on page 7 of M.M.L. 1939

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

R.B.F.
President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

* (I direct that the soldier named in the margin be not committed to prison until further orders.)

* To be omitted unless penal servitude or imprisonment having been awarded, the Confirming Officer either has no authority to commit to prison, or having such authority, recommends suspension.

Signed this 26 day of October 1942

[illegible] Brigadier
Confirming Officer

Promulgated and extracts taken in the case of C12528 Pte Smyth AA

(*a*) (Dated) 29 Oct 42 (Signed) W M Calver Lieut
O.C. No. 1 Con. MOBILE BATH UNIT

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(*a*) When several cases are promulgated in one unit on the same day the Officer need only sign once.

CHARGE SHEET

The accused, C 12528, Pte A.A.Smyth, RCASC attached to No. 1 Cdn Mobile Bath Unit RCAMC, a soldier of the Canadian Army is charged with, WHILE ON ACTIVE SERVICE

1st CHARGE
A.A.Sec.40

NEGLECT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE.

In that he on the 29 Sep 42 did drive W.D. Vehicle No. CL 4426130 negligently thereby causing damage to said vehicle estimated at $117.60.

2nd CHARGE
A.A.Sec.19

DRUNKENNESS.

In that he, on the 29 Sep 42, WHILE ON ACTIVE SERVICE, on duty and while in charge of W.D. Vehicle CL 4426130 was drunk.

Remanded for F.G.C.M. 12 Oct 42.

H.M.Calver
(H.M.Calver) Lieut.
O.C. No. 1 Cdn Mobile Bath Unit
RCAMC.

To be tried by Field General Court Martial

17 Oct 42

Brigadier

R.B. Fraser Major R.C.E.

MEDICAL OFFICER'S REPORT

I certify that No. C-12528 Pte. A.A. Smyth

of No.1 Cdn.Mob.Bath *is in a* good *state of health,*

and is fit *to undergo Trial by Court Martial.*

G. Murray Fraser
Medical Officer Major

Station Field

Date 22 Oct. 42

R.B. Fraser Major RCE.

M.F.B. 246
80T A 8/372

PROCEEDINGS OF A FIELD GENERAL COURT MARTIAL

held in the Field on the 22nd day of October 1942.

Accused - C-12582 Pte. Smyth, A.A. 1 Cdn. Mob. Bath.

The Order convening the Court, the charge sheet and Summary of Evidence are laid before the Court.

The Court complies with R.S. P. 22 and 23, Legal constitution of the Court (4) amenability of the accused and the validity of the charge, The Court opened at 1000 hrs.

The accused and all persons including the witnesses are brought in before the Court.

Prosecutor - Lieut. H.M.Calver, 1 Cdn. Mobile Bath.
Defending Officer - -Lieut. J. Eccleston, 1 Div. Sigs.

The medical certificate of the accused is laid before the Court.

The convening order is read by the President to the accused. The President and the Members of the Court answer to their names.

Q.1 "Do you object to be tried by me as President or by any of the Officers whose names you have heard read?"
A.1 "No, Sir."

The President and members are duly sworn.

Q.2 "Do you object to L/Sgt. Saunders acting as Court stenographer?"
A.2 "No, Sir."

The Court stenographer is duly sworn.

The accused is arraigned upon the charges in the above mentioned charge sheet.

Rule of Procedure 39(a) is now complied with.

The Prosecutor makes the following opening address.

"Sir, this man has two charges laid against him. One of which is drunkenness, he has pleaded guilty to that charge, the other is of negligence and he has pleaded not guilty to that charge. I will call witnesses to prove him guilty of the costs of damage to vehicle No. CL 4426130 and will also prove him guilty of negligence."

First Witness for the Prosecution. Capt. Green, 1 Cdn. Div. Workshops having been duly sworn, is questioned by the Prosecutor;-

Q.3 "Can you tell the Court the extent of damages to vehicle No. CL 4426130 which is in your workshop for repair?"
A.3 "I can give you an approx cost. It is impossible for me to give exact prices of parts, as part list is not made available to Fd. Workshops, -
Labour - 60 hours at 3/ an hour - - £9-0-0
Frame assembly, approx Cdn.price $55.20 - - £12-7-1
2 water pump assemblies $3.00 - - 13/4
Complete steering gear assembly $16.20 - - £3-11-8
1 petrol tank $2.75 - - 12/5
1 rear cab window .85¢ - - 3/9
Making an approx total cost of $117.60 - - £26-5-3."

Q.4 "From the extent of the damage caused, can you give the Court the approx speed of the vehicle?"
A.4 "I couldn't because it all depends where the vehicle was hit."

Q.5 "But having seen the damage couldn't you gauge the speed, I don't mean m.p.h. but very fast or slow?"

TO PAGE -2-

A.5 "It is impossible to estimate the speed at all as the truck rolled over."

No further questions.

Second witness for the Prosecution. A-29599 Pte. McLaughlin, E.F. 1 Cdn. Mob. Bath. having been duly sworn is questioned by the Prosecutor;-

Q.6 "On the 29th of Sep you were riding in vehicle CL 4426130. Will you tell the Court why you were in the vehicle and what happened that day?"

A.6 "We were sent out on the bath truck to bath the Carlton and York Regt. We had a chit and were paid there, we then proceeded to point baths were to be set up. After we got the showers set up we went over to the pub just on the corner with the intention of getting some sandwiches. There were no sandwiches but we did have a few beers while we were there. We went back to the showers where we had some trouble with the burner, so we dismantled and started back to our own unit. On our way back we stopped at an English Camp where we had been bathing before and had 3 or 4 ciders as I remember. We then started back to our unit again. I remember the truck skidding and I got quiet a bump on the head from there it is very vague as that kind of dazed me, but I remember the officer picking us up in the car and driving us back to the unit."

Questioned by the Court.

Q.7 "You said you went over to the pub after you had the showers set up, about what time was that?"

A.7 "Between 10 and 11 in the morning , Sir."

Q.8 "How long were you in the pub?"

A.8 "Not over 25 or 30 minutes, Sir."

Questioned by the Defence.

Q.9 "When you left the English unit, can you state what condition you were in, were you in full control of yourself?"

A.9 "Yes, Sir."

Q.10 "Did Smyth have the same number of drinks as you?"

A.10 "Yes, Sir."

No further questions.

Third Witness for the Prosecution. Capt. A.S.Bruce. 18th Super Heavy Bty., R.A. having been duly sworn is questioned by the Prosecution;-

Q.11 "Will you tell the Court just what you know of the accident?"

A.11 "On the day of the accident I was coming from Lewes to Polegate when I was stopped by a Bdr who reported an accident. I went to the scene of the accident and saw a truck lying on the side of the road with its back against the side of a wall of a barn. The back of the truck had knocked a hole in the wall. There were two occupants in the truck, one had a cut over the eye and they both seemed ina dazed condition. The driver moved the truck across the road out of the way of any traffic. After a while a Cdn. Legion Officer came along followed by an R.C.A.M.C. Officer who took the men away."

Q.12 "What tracks or marks did you see at the scene of the accident?"

A.12 "At the bend as the truck went off the road there were skid marks on the off side of the road, the truck hit a post, swerved back and went backwards into the barn."

TO PAGE -3-

Questioned by the Court.

Q.13 "You state that when you went over to the truck there were two occupants in it, is the accused one of those men?"
A.13 "Yes, Sir."

Questioned by the Defence.

Q.14 "When the truck struck the post, was it going in or out?"
A.14 "Must have been going out, Sir."

No further questions.

Fourth Witness for the Prosecution. 932096 Bdr Clemo, D. 18th Super Heavy Bty, R.A. having been duly sworn, is questioned by the Prosecutor;-

Q.15 "Do you ever remember seeing the accused before?"
A.15 "I saw him on the day of the accident and I see him today in Court."

Q.16 "Will you tell the Court what you know of the accident?"
A.16 "I was stopped by a civilian and was asked if I could get medical aid for 2 men that had just had an accident. I went over to the 2 men to see if I could be of any help and they told me I could do nothing to help them."

Q.17 "Were there any makks on the road?"
A.17 "There were skid marks on the wrong side of the road at the scene of the accident."

No further questions

Fifth Witness for the Prosecution. B-85977 Pte. Vansinclair, E.J. R.C.A.S.C. att'd to No. 2 Cdn. Fd.Hyg.Sec. R.C.A.M.C. having been duly sworn, is questioned by the Prosecuter;-

Q.18 "Do you know the accused?"
A.18 "Yes, Sir."

Q.19 "Are you in charge of work tickets here?"
A.19 "Yes, Sir."

Q.20 "Was a work ticket made out for Smyth on the 29 Sep.
A.20 "Yes, Sir."

Q.21 "What else can you tell the Court?"
A.21 "On 29 Sep I was instructed to accompany an Officer to investigate an accident. We proceeded to the scene of the accident and found vehicle No. CL 4426130 badly damaged. There were skid marks on the wrong side of the road. On examining the vehicle we found some bottles of cider in the cab and on questioning a civilian policeman he said that other bottles had been thrown out the window of a truck. There were skid marks further down the road made by a similar type of vehicle."

Q.22 "Can you describe the direction of the truck?"
A.22 "It was originally coming from Lewes, after the accident it was facing towards Lewes and off the road. The brakes had been applied after taking the corner, the vehicle turned at a complete right angle then hit the barn."

RBF

Questioned by the Defence.

Q.23 "Were all the marks on the road made by tires?"
A.23 "Yes, Sir."

TO PAGE -4-

Q.24 "What was the condition of the road?"
A.24 "It was dry when we were there, Sir, but that was some time after the accident."

Questioned by the Court.

Q.25 "You said that further down the road there were skid marks made by a similar type of vehicle. What do you base your opinion on?"
A.25 "I compared the skid marks at the scene of the accident with those I had seen further down the road, Sir."

Q.26 "You are prepared to make a statement that the skid marks are the same?"
A.26 "They were made by the same type of vehicle, Sir."

Q.27 "Was any of the bath equipment damaged?"
A.27 "Yes, Sir, it had broken loose and was damaged."

No further questions

Prosecution closed.

The accused C-12582 Pte. Smyth, A.A. having been duly warned makes the following statement on oath;-

"We were sent to the Carlton and York Regt to bath them, we had a chit with us to get paid. We were supposed to eat there, but every time we came they complained about always eating there, so we decided that now that we had some money we would go out and eat. We couldn't find any eats but had a few brown ales in a pub. On the way back to out unit we had to pass an English Camp and went in to get some cider for one of the boys back at camp and while we were there we had a few ourselves. We started back to our unit again, the pavement was wet and we skidded into a barn."

Questioned by the Defence.

Q.28 "Since breakfast that day had you had anything to eat?"
A.28 "No, Sir."

Q.29 "Were you accustomed to drinking hard cider that you get in this country?"
A.29 "We have had a few before but have always classed it as something like coca-cola."

Q.30 "When you left the English Camp, were you in control of yourself?"
A.30 "Yes, Sir."

Q.31 "How many ciders did you have?"
A.31 "I had three half pints, Sir, I knew I had that many but just to make sure, I have gone back and asked them to make sure."

No further questions

The Prosecutor makes the following closing address.

"There is little to be said in closing, as I said before the accused has pleaded guilty to drunkenness and I would prove him guilty of negligence. Negligence comes from losing control of a vehicle, drunkenness causes loss of control of ones senses which proves negligence. With that in mind I think I have proved the vehicle was out of control and added to that is the evidence of the skid marks on the wrong side of the road. Smyth has been a driver over here for a number of years and has had only one accident of which he was aquitted, which shows that the accused is a good driver when he is in control of a vehcile."

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The Defence makes no closing address.

The Court is closed for the finding.

The Posecutor, Lieut. Calver, 1 Cdn. Mob.Bath makes the following statement;-

"I hereby produce certified true copy of the accused's M.F.M. 6 also a particulars of his service."

Court questions the Prosecutor.

Q.32 "Did the accused elect trial by court martial?"
A.32 "He was remanded for Court Martial, Sir."

The Defending Officer makes the following statement in mitigation of sentence;-

"Sir, all I can say is it is the 1st offence of drunkenness against the accused and at this particular time he had nothing to eat. He has sworn on oath that he only had a few beers and later 3 half pints of cider. The effect of the cider on top of the beer crept up on him on his way home and when he did come to make the turn, he was not in full control of his senses and overshot the corner."

The Court is closed for consideration of the Sentence.

R.B.Fraser

(R.B.Fraser) Major
President
O.C.2nd.Cdn.Fd.Pk.Coy., R.C.E.

SUMMARY OF EVIDENCE IN THE CASE OF C-12528 PTE. A.A. SMYTH, R.C.A.S.C. ATTACHED TO THE No.1, CDN. MOBILE BATH UNIT, R.C.A.M.C.

1st Witness for the prosecution.

A-29599 Pte. McLaughlin, E. No.1 Cdn. Mobile Bath Unit, RCAMC, having been duly sworn states:--

I am, A-29599 Pte. McLaughlin, E. of No.1 Cdn. Mobile Bath Unit. On 29th of September I was ordered to accompany Pte. Smyth to Denton to Baths the Carlton & York Regiment. We went to R. 22 R. but they were on scheme, so we proceeded to the Carlton & York Regiment. We got paid there and went to Bath Location. We went into a Pub and had a few beers. We went back to bath equipment and waited for parade to arrive. When they came we found that the oil line was broken, so could not operate the burner. We dismantled the equipment and proceeded home. We stopped in at the A.A. Site at Tarring Neville and got some cider to bring home for some lads back at the Unit. From there we proceeded home to the Unit.

Question:- How fast was the lorry travelling from Tarring Neville to the accident?

A. A moderate rate of speed.
Q. Do you remember skidding before the accident ?
A. Yes on wet pavement.
Q. Where was this ?
A. Just at the accident.
Q. Did you skid before that ?
A. No.
Q. Did you drink any cider ?
A. Yes a few small glasses.
Q. Did Pte. Smyth drink any cider ?
A. Yes about the same.

The accused declined to crossexamine this witness.

Pte E J McLaughlin
A-29599 Pte. McLaughlin, E.

2nd Witness for the Prosecution.

B-85977 Pte. VanSinclair, E.J., R.C.A.S.C. Attached to No.2 Cdn Fd Hyg Sec. RCAMC., having been duly sworn states:---

I am, B-85977 Pte. VanSinclair, E.J. RCASC, attached as in W.E. to No.2 Cdn Fd Hyg Sec. RCAMC. At about 1730 hrs 29th day of September 1942, it was reported to me that an accident had occured involving a vehicle of No.1 Cdn Mobile Bath Unit Ford 3 Ton Lorry CL 4426130. In company of Lieut Calver we proceeded to the scene of the accident at MR 889269 We found the said vehicle parked partially off the road facing Lewes. The vehicle was damaged in the front the chassis bumper and fenders were bent. On the opposite side of the road a stone stable was damaged having a hole in the wall. Skidmarks were found on the roadway of the lorry which had presumably turned a complete right angle. On examining the cab of the vehicle we found four bottles containing apple cider. After interviewing the civilian policeman who was on the scene and from him learned of other marks of skidding at approximately ½ mile along the road to Lewes we investigated these. In this instance the marks again showed signs of a similar vehicle turning sideways on the roadway the front end of which presumably mounted the bank. The pavement at the time of the investigation was dry but it had rained previously in the day and quite possibly would have been wet at the time of the accident occured.

Question:--How long after the accident were you there ?
A. 2½ to 3 hours afterwards.
Q. What was the approximate route of the vehicle from the ski marks and damage?
A. The vehicle was proceeding toward Polegate. It had just rounded the curve, failed to straighten out and struck the embankment on the left side, then struck the barn.

The accused declined to cross-examine this witness.

J. Van Lanham Capt. P.A.

3rd Witness
Capt. Bruce,
18 Super Navy Btty.RA.

Capt Bruce
18 Super Navy Btty RA. Having been duly sworn states:

I was travelling in a truck from Newhaven to Clynde on Tuesday 29th September 1942 when rounding a bend on the Lewes -- Polegate road I was stopped by one of my bombardiers who told me that an accident had taken place. I got out and saw a truck at the side of the road with its back against the wall of a barn. The upper framework of the truck had damaged and knocked a hole in its wall. There were two other ranks of the truck, one had a cut above his eye and the other seems to be dazed. They both appeared to be suffering from shock. After a little while a Canadian Legion Officer came along followed shortly after by a Canadian R.A.M.C. officer who took the two soldiers away.
The truck appeared to be damaged and was with difficulty moved on the grass verge on the opposite of the road. In my opinion it would not have been possible to move the truck without aid.

Question:--Did you notice any skid marks ?
A. Yes. The truck had on coming around the bend mounted the grass verge on the right hand side and knocked over a white direction post. I did not see any marks on the road.
Q. Did the condition of the two men appear to be caused entirely by shock ?
A. Not being a medical man I cannot say whether it was entirely due to shock but there was some smell of drink.

Question by the accused.

Q. Were there any skid marks ?
A. No the marks seems to be caused by overshooting.

The accused declined to further cross-question this witness.

Capt. Bruce.

4th Witness for the Prosecution.

L/Bdr. William[illegible] 952178 Having been duly sworn states:

While proceeding along the road from Beddingham to Clynde about 1600 hrs and turning around a bend I saw a lorry in the ditch against the wall. I stopped the car and Mr came up to me and said a man had sustained injuries in the accident and that he thought he should be taken to hospital Capt Bruce who I was driving told me to get the man into the car and we would take the man to Lewes to hospital the man having said that he was alright and got back in the lorry. The driver of the lorry then attempted to remove the vehicle which he manage with some trouble, and parked it on the grass verge. I took over traffic control at the bend the welfare officer arrived and asked the two men to get into his car which they proceeded to do. Next time I looked around they were in the car and longer I handed over the control of traffic to another man. About that time a Canadian Medical Officer arrived . He spoke to the injured man both men got into the M.O's car and were driven away. We kept one man on guard of the vehicle

4th Witness (Con'td)

and proceeded to Glynde.
Question:-- Did you see tracks or skid marks that would show the route of the lorry ?
A. Yes.
Q. Can you describe them ?
A. The lorry took the bend far too wide mounted the grass verge. Knock down a traffic guide post swinging across the road and appeared to me to strike the wall and the back swinging around stricking the wall.
Q. What was the condition of the driver ?
A. He seemed very unsteady.
Question by accused:--
What was the condition of the road ?
A. Drying.
The accused declined to further cross-question this witness.

D.W. Clement Edm.
932178 L/Bdr. Willmuth.

6th. Witness for the Prosecution.

932096 Bdr. D. Climo. Having been duly sworn states.

I am 932096 Bdr. D. Climo. While approaching Glynde from Lewes we were stopped by a civilian doing traffic control and asked if we could get medical help for two people in a truck that had been in an accident. I went up to the soldiers and asked if they wished to be taken to an M.O. and they said no. Then Capt. Bruce arrived and I reported to him.

Question:-- Did you notice any truck or skid marks ?
A. There were tracks on the off side of the road and skid marks after leaving the grass verge.
Q. Did you notice the condition of the men ?
A. They seemed to be in a very dazed condition.
The accused declined to further cross-question this witness.

D. Climo Bdr.
932096 Bdr. D. Climo.

6th. Witness for the Prosecution.

B-84206 Cpl. Taylor, F.W. No.2 Cdn Fd Hyg Sec. RCAMC.
Having been duly sworn states:

I am Cpl. Taylor, F.W. No.2 Cdn Fd Hyg Sec. on 29 September 1942, I was orderly corporal. On instruction from Lieut. Calver, I accompanied him to inform Dvr. Smyth that he was under arrest. He was placed under arrest. After being warned Dvr. Smyth was placed under close arrest by Major Fraser. Pte. Cadogan proceeded to the room to stand guard. Dvr. Smyth requested to see the major but Major Fraser would not permit this. He was then returned to his room. On returning to his room we took the necessary procedure of removing his boots and socks. During this period I was caught in the face by the boot, but I am not in the position to state definetely whether in taking off the boot. The leg pushed the boot or I pulled the boot. At that time Cpl. Pendleburywas assisting with Pte. Cadogan in removing the man's boots and socks. After this was completed Cpl. Pendleburyand Pte. Cadogan remained in the room of Dvr. Smyth as I had other duties to attend to. From this time on until Dvr. Sm th was removed to NDMP. I was not in the room.

R3f

6th. Witness for the Prosecution. (Contd)

Question:-- Why did you have Smyth's boots removed ?
A. It is always a part of procedure when a man is place under close arrest.
Q. In what condition was Dvr. Smyth ?
A. In my opinion he was under the influence of liquor.

The accused declined to crossexamine this witness.

Cpl. Taylor F.W.
B-84206 Cpl. Taylor, F.W.

7th. Witness for the Prosecution

K-52467 Cpl. Pendlebury, W. No.2 Cdn Fd Hyg Sec. RCAMC., Having been duly sworn states:--

Question:-- What was the condition of Dvr. Smyth on the evening of 29 Sep. 42.?
A. Dvr. Smyth seemed to have had one or two drinks.
Q. Why were Dvr. Smyth's boots being removed ?
A. Because he had been placed under close arrest and we had no guard room.

Question by accused:-

Q. Do you think that Cpl. Taylor got intentional or unintentional ?
A. I think Cpl. Taylor was kicked unintentionally and Dvr. Smyth had no intention of striking an N.C.O.

The accused declined to further cross-question this witness.

Lieutenant Murray Fraser
K-52467 Cpl. Pendlebury, W.

th. Witness for he Prosecution.

Major G. Murray Fraser, O.C. No.2 Cdn Fd Hyg Sec. RCAMC. Having been duly sworn states:--

On 29 Sep. 42 it was reported to me that C-12528 Dvr. Smyth, had been involved in an accident and had been brought back to this unit by Capt. McKinnon 9 Cdn. Fd. Amb. I had Dvr. Smyth paraded and after interrogating and observing him I was of the opinion that he was drunk. I ordered his placed under arrest. About an hour later he became unruly. As there is no guard room and the guards were unable to control him I telephoned No.1 Cdn. Provost Coy and requested that Dvr. Smyth be removed to a guard room. He was removed by two men from No.1 Prov. Coy. to the guard room of the Seaforths.

The accused declined to crossexamine this witness.

G. Murray Fraser
(G. Murray Fraser) Major.

A witness from the workshop will be summoned to give evidence as to the extent of the damage to the lorry.

The accused having been duly cautioned in accordance with Rule of Procedure 4 (Z) reserves his defence.

C-12528 Dvr. Smyth, A.A.

Certified that Rule of Procedure 4 (C) (D) (F) and (G) have been complied with. (c)
Taken down by me in the presence and hearing of the accused this 7 day of October 1942, in the field.

H. M. Taylor Lieut.
Signature of Officer taking Summary.

No. 1 Cdn Mobile Bath Unit

No. C 14628 Name Smyth A.A. Sqn., Battery, or Company

Corps RCAMC

Date of enlistment 3-9-39 G.C. Badges

Service or Proficiency Pay

M.F.M. 6 (A.F.B. 122) 33674—8-39 (1793) H.Q. 1772-41-14

Date of last entry in Conduct Sheet

No. and date of last drunk

Period not reckoning towards freedom from extra fine

Sheet No.

Signature O.C. Company, etc.

Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Crookham	29-4-40	Pte		Insubordination to an N.C.O. A.A.& (2)	L/Cpl Jackson L/Cpl V.Fox	14 days detention	6 May 40	Major Brown	
Reigate	25-10-40	Pte		WOAS AWL 6 hrs	Sgt Woods	7 days C.B. (Forfeits 1 days pay.)	26-10-40	Capt Waugh	
Reigate	13-12-40	Pte		AWL 6 hrs 26 mins	Sgt Woods	7 days C.B. (Forfeits 1 days pay	14-12-40	Capt Waugh	
Merstham	14-1-41	Pte		AWL 2 hrs 26 mins	Cpl Bolingford	7 days C.B. 2 days Forfeiture	15-1-41	Capt Waugh	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Merstham	2 Apr 41	Pte		Act to the prejudice of good order and military discipline	Cpl Trumphour Pte Rawlings	7 days C.B. 3 days Forfeiture	3 Apr 41	Capt Waugh	
Caterham	28-6-41	Pte		Conduct to the prejudice of good order and military discipline	Mr.E.Hillier Miss Beatrice Parfitt Pte Coe	14 days F.P. 14 days Forfeiture	2 Jul 41	Capt Waugh	
Field	6 Aug 41	Pte		A.W.L. 8 hrs 6 mins	Cpl Polkinghorne Cpl Burns	Admonished (1 days Forfeiture	8-Aug 41	Capt Waugh	
Field	19-11-41	Pte		Disobeying a lawful order of his superior officer	Cpl Trew Pte Hutchinson Pte Flood	10 days C.B. on 10 days Forfeiture.	20-11-41	Capt Waugh	
Field	22-7-42	Pte		AWL 9 hrs	Sgt Duffy	7 days C.B. (Forf. 1 day)	23-7-42	Act.C.O. 9 Cdn FA Amb.	

Certified a true copy [signature]

R.B. Evans Major R.C.E.

SHORT STATEMENT AS TO PARTICULARS
OF SERVICE OF THE ACCUSED

(a) The accused has been in confinement awaiting trial on the present charges for .Nil... days in civil custody and ....one.. days in military custody making a total of .one. days of which ..no... days were spent in hospital.

(b) The present age of the accused according to his attestation paper is ..27.. years.

(c) The date of his attestation specified in his attestation paper is 8 Sep. 1939

(d) The accused is in possession of, or entitled to no military decoration of military reward, (~~exxxx



Officer Commanding
No.1 Cdn Mobile Bath Unit

12 Oct 42

Sir:

On thinking the matter over I would request that the Convening Officer does not provide a Defending Officer, as I expect to be able to provide my own.

Respectfully,

R Bruce Lieut RCE

C 12528 Dvr Smyth A

SE - 107

Tpr. Smyth, G. J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : B 62 274 TPR SMYTHE G. J.

Charge. (Insert " alternative " where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	NOT GUILTY	NOT GUILTY	
2nd			
3rd			
4th			
5th			
6th			

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

At present under sentence for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of ..... days, of which ..... days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

Not guilty. AJC

(Sgd) ..... Judge-Advocate, if any. 3 Apr 45 Date awarded. (Sgd) G J Lennon President. (RP 45, 50) Maj

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 759-761, KR Con 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(G). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Con 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

Mdml

I direct that the accused be not committed to prison or detention barracks until further orders.(1)

(1. AA 57A. Delete if not used.)

Date 9/Apr/45 (Sgd) J Edmund Brigadier Commanding Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 576, 577.)

Accused. Date. Signature of Offr.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160 5E-107

FIELD GENERAL COURT-MARTIAL

W.A.66 (To lieu of AFA3) 40/P & S/1698 (4000) 4/38B

Convened by Order of COL SA LEE Comd I C BAGp dated 3 APR 1945

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptmt, A/rank or A/apptmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prmnt R. (b) Apptmt, A/R or A/Appt.	Full Christian Names.	Surname.	Unit.
B 62 274	Tpr	Gilbert Joseph	Smyth	2 Cdn NETS

PROCEEDINGS REVIEWED J Mulholland Capt 28 Apr 45 JAG CANADIAN CMHQ.

REVIEWING OFFICER, JAG ITALY

PROCEEDINGS OF TRIAL.

Held at ..... on (date(s)) 4 APR 1945

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 102, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet & attached thereto.(1) AJC
The Court is satisfied that it is properly convened and constituted(2), accused is ~~not~~ amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is ~~not~~ brought before the Court. At 1035 hours trial commences. AJC

A4. The Prosecutor produces a Medical Certificate that accused is ~~not~~ AJC fit to undergo trial by court-martial.(1)
~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO(1).~~ AJC

(1. KR Con 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused : ~~Do you object to ..... as interpreter ? Ans .....~~ AJC
~~The interpreter is sworn.(1)~~ Do you object to #36757 Pte BOND F.W. as shorthand writer ? Ans NO AJC
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1)
President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?
Ans NO (2) AJC

(1. RP 100. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 78, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	MAJOR	A.F. CANNON	12 Cdn Inf Bde 1 Cdn Inf Div AJC
Member	CAPT	J.L. WALLACE	2 Cdn NETS AJC
Member	CAPT	W J M. MOGAN	HQ I C BAGp AJC
Judge-Advocate	—		
Prosecutor	LIEUT	D.M. NICHOLS	2 Cdn NETS AJC
Defending Offr	LIEUT	F.R LAFLECHE	2 Cdn NETS AJC

Questions by President : Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans NO (1) AJC

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See Div p 33.)

A8. The accused B 62 274 TPR GILBERT JOSEPH SMYTH ~~stands~~ arraigned makes (a) plea AJC
~~of NOT GUILTY.~~ (1) AJC

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in full rank and name of the accused making the plea.)

A9. The accused is (~~not~~) AJC arraigned ~~(separately)~~ on all charges in the charge sheet.(1) The accused does (~~not~~) AJC not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 31, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is closed and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D. AJC

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

0-70

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated :*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP* 37(*A*).)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*) ; *powers and duties of JA see RP* 103 ; *duty of Prosecutor see RP* 60(*A*) (*B*) ; *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92 ; *swearing and withdrawal of witnesses from Court see RP* 81, 82 ; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85 ; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116 ; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6 ; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)

(*1. RP* 35 *fn* 3. *2. MML p* 54 *para* 47.)

B2. President to accused : The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination(4) and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused : Do you wish to make a statement ? Ans .....(5)

(*1. RP* 37(*B*). *2. RP* 37(*D*) *fn* 6. *3. RP* 25(*B*) *fn* 3 *para* 3, *MML p* 54 *para* 47. *4. See para E3 of Record Form E.*
5. Statement, if any, recorded per Notes.)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.

(*1. Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)

(*1. RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)

(*1. If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 5 before proceeding with C 2.(1)

(*1. RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)

(*1. Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused : Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans NO (1)

(*1. If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (no) (no) opening address.(1)

(*1. RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1)

(*1. RP* 39(*C*), 114, *KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not establish a prima facie case against the accused on the — FIRST — charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is ~~sustained~~ on the — FIRST — charge(s), ~~but~~ allowed on the ..... charge(s), and that, accordingly, ~~the trial will proceed on the former, but~~ the accused is (are) found Not Guilty on ~~the latter charge(s)~~.(4)

(*1. Delete remainder of this para, if submission not made. 2. Arguments on submission, answer and reply are recorded per Notes. 3. RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. *4. Delete part not used. If accused acquitted on all charges use second alternative in para D8.*)

NB : If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), 114, 115.)

D5. President to accused : You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused : Do you wish to give evidence yourself as a witness, make a statement, or do neither ?

Ans .....

Do you intend to call witnesses on your behalf ?

Ans .....

Are they witnesses as to character only ? Ans .....

(*1. RP* 115. *2. RP* 40(*A*), *see* 80(*D*). *3. RP* 40 *fn* 10. *4. RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)

(*1. RP* 114, 115, 116. *For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.

(*1. RP* 43, 117(*A*). *See Notes in Part I of Schedule. 2. RP* 44(*A*).)

D8. The President announces the findings, if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated hereafter.

Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(1)

(*1. AA* 54(3) (*c*), *RP* 45, 120(*A*). *2. AA* 54(3), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

~~E1. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.~~

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused : Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)

Ans .....

(*1. If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex ..... and Ex ..... respectively.(3)

(*1. AFB* 255 *or AFB* 294. *2. MFM* 6. *3. RP* 46, *KR Can* 552. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused : Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans .....(2)

(*1. RP* 37(*C*), 44(*D*). *2. Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on such anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)

(*1. AA* 54(6), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)

(*1. Where separate accused tried separately see RP* 75 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 43, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 65, 118, 119(*A*), *KR Can* 308, 330, 563-566. *Overseas RO* 309, 2323, *MML p* 66, 257-259. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(18), 68(1), *KR Can* 564. *2. RP* 50. *As to release from arrest by Convening Offr see KR Can* 567. *As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

a & c

CHARGE SHEET

The accused, B.62274 Trooper Gilbert Joseph SMYTH, No. 2 Canadian Non Effective Transit Depot, 1 Canadian Base Reinforcement Group, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 40
Army Act

WHEN ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE,

in the Field in Italy, at or about 2300 hrs 31 Dec 44, improperly attempted to draw a pistol from his blouse and engaged in a scuffle with A.44021 Trooper Graves, H.K.

In the Field
28 Mar 45

D.J.Burgoyne
(D.J.Burgoyne) Major
Commanding Officer
2 Cdn N.E.T.D.
1 Cdn Base Rft Group

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

In the Field
In Italy
~~31 Mar 45~~
3 APR 45

(S.A. Lee) Colonel
Comd 1 Cdn Base Rft Gp

Q.18.C

FIELD GENERAL COURT-MARTIAL

CFA90 (In lieu of AFA21) 40/PAM/1697 (2065)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy, AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) apptnt, A/rank or A/apptnt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

ACCUSED.

Number	(a) Prmnt R.	(b) Apptnt, A/R or A/Apptnt	Full Christian Names.	Surname.	Unit.
B.62274	Tpr.		Gilbert Joseph	SMYTH	2 Cdn NETD

CONVENTING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person~~(s)~~ named above as the accused, being subject to military law, has ~~(have)~~ committed the offence~~(s)~~ set forth in the Charge Sheet~~(s)~~ attached and on (date) ~~31 MAY 45~~ 5 APR 45 endorsed by me, ~~(or by an offr of my staff for me)~~ " To be tried by Field General Court-Martial "5 APR 45 "

2. And whereas I am of opinion that it is not practicable that such offence~~(s)~~ should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~

(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person~~(s)~~, and to consist of the Offrs appointed or detailed hereunder.

~~4. I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~

(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

~~6. I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~

(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)		(Must be named. RP 106.)	(Unit.)
Major	A.F. CANNON	CIC	1R Cdn Town Major

MEMBERS.

(Rank.)		(Named or detailed. RP 106.)	(Unit.)
Capt	J.L. WALLACE	RCA	2 Cdn NETD
Capt	W.G.M. MCCAN	CAC	HQ 1 CBRGP

WAITING MEMBER.

(Rank.)		(Named or detailed, if any. RP 106.)	(Unit.)
Capt or Lieut to be detailed by OC 2 Cdn NETD			

JUDGE-ADVOCATE.

(Rank.)		(Must be named, if any. RP 106.)	(Unit.)

Active Service in the Fd

Italy
(Country.)

~~31 MAY 45~~
5 APR 45

(Signed personally. RP 105 fn 2.)
(S.X. Lee)
Commanding 1 Cdn Base Rft Group
Convening Officer.

Colonel
(Rank.)

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for oaths and notes for use on trial.)

MEDICAL OFFICER'S CERTIFICATE

A 72

I hereby certify that I have this day examined

No. B.62274 Rank TPR. Name SMYTHE G.J.

and in my opinion is fit to undergo trial by Court Martial.

Date 4 APR 45

J.M.C. Martin Capt
Medical Officer

COURT-MARTIAL OF B26274 TPR. Gilbert Joseph SMYTH - 2 NETD

QUESTIONS BY THE PROSECUTING OFFICER

FIRST WITNESS: E44021 L/CPL. GRAVES, H.K.

Q. Will you tell the Court what happened on or around 31 Dec 44, and also how you were employed at that time?
A. On Dec 31 1944 I was employed as a cook's helper. At approximately 2300 hours there was a knock on the kitchen door but I did not answer the knock. The door was pushed open, and had been barricaded by means of a hay wrack. Tpr Smyth entered the kitchen. Tpr May who was helping me in the kitchen asked the accused what he wanted. The man replied nothing. Tpr May once again told the accused he had better go out. The accused didn't move. I then turned the accused around and give hima shove towards the door. The accused took approximately three or four steps, turned around and said I will show you I don't have to get out if I don't want to. He then unbuttened his tunic and I saw the butt of a pistol. I took the pistol from him and turned the accused over to the R.Ps. Tpr May followed me over, with the pistol. Tpr. Perrin examined the pistol and foundit had five rounds in the pistol.

Q. Was the accused sober at the time, in your opinion?
A. In my opinion, he was sober.

Q. What sort of a pistol was it?
A. It was a Smith and Weston Pistol.

Q. What is the number of the pistol?
A. The number is V431018.

Q. When did you take the number of the pistol?
A. I took the number downwhen it was turned over to me, approximately 1 Feb 1945. The Unit was breaking up at the time.

Q. It was turned over to you as evidence, is that correct?
A. Yes Sir.

Q. Would you demonstrate to the Court how Tpr Smyth appeared when you saw him on the 31 Dec 1944.
A. He started to unbutten his tunic and put his hand inside.

Q. How did the accused grasp the pistol, if he did?
A. Between his thumb and his first two fingers of his right hand.

Q. Was the pistol grasped in the normal manner?
A. Yes Sir.

Q. What did you do with him then?
A. I rushed him.

Q. When you attacked him, what did you do?
A. I backed him against the wall and put my hand on the pistol to prevent him from pulling it.

Q. Where were his hands at this time?
A. His hands were here to.

Q. Were the accused's hands on the pistol or on your hands?
A. The one hand was on the pistol and he was trying to get the other on the pistol.

Q. How was the pistol finally drawn?
A. He eventually got a hold of it.

NOTE: The Prosecuting Officer produces a Smith & Weston 38, number V431018, as exhibit P1.

Q. How much of a struggle was there between you and the accused?
A. It didn't last long, I backed the accused against the wall and started to hit him with my head.

Q. What was your reason for this violent action in the first place?
A. I didn't know whether he intended to draw the pistol or not so I didn't want to take a chance.

Q. Did he make any attempt to draw the pistol when he had the thumb and fingers on the butt, in the first instance?

A. He wouldn't have had time anyways.

Q. At what point, in the scuffle, did the accused attempt to draw the pistol?
A. After he had taken three or four steps.

Q. After you pushed him?
A. Yes Sir.

Q. Explain to the Court just what he did when he attempted to draw the pistol?
A. He had taken approximately three or four paces and said - I don't have to go out if I don't want to go and then unbuttoned his tunic, and then I rushed him and took the pistol from him, on seeing the butt inside the tunic.

Q. Did the accused later make an attempt to draw this pistol?
A. When I was trying to take it away from him.

Cross-Examined:-

Q. What rank ~~was there~~ did you hold at the time in the kitchen at about 2300 hours?
A. Trooper, Sir.

Q. When Tpr Smyth unbuttoned his tunic is it not possible that he did so because he wanted to get something else out?

A. It is possible but not probable.

Q. Would not his object have been to prevent you from obtaining the pistol?
A. It is possible.

Q. Were you present when the pistol was examined to see if it carried any bullets?
A. Yes Sir.

QUESTION BY THE COURT

Q. Would you say that, in your opinion, the accused was sober, or had he been drinking?
A. Yes, he had been drinking.

SECOND WITNESS: B63266 TPR. PERRIN, M.F. duly sworn to comply with AP 113(1)

Q. How were you employed on the 31 Dec 1944?
A. As Regimental Police.

Q. Was there a pistol turned into you on that date?
A. Yes. On the 31 Dec 1944 at 2315 hours a 38 Smith & Wesson pistol was brought to me by Tpr. May. In receiving the pistol I proved the pistol and found that it contained five rounds of live ammunition. I then proceeded in getting the Orderly Officer to take over.

Q. What was the number of this pistol?
A. I don't know the number, Sir. I am unable to comply with AP 113(1)

NO CROSS-EXAMINATION

DEFENDING OFFICER TO THE COURT:
The Defence moves that the Prosecution has failed to establish a Prima Facia case under AP. 40.
The principle reason is that the witness Graves made a statement approximately like this - That the witness would not have time to attempt to draw a pistol. Moreover he made no statement that the accused's manner was so vague that he could not have been sure whether the accused intended to draw the pistol consequently taking no chances he attacked him when he saw the pistol in the man's hands.

COURT-MARTIAL OF B26274 TPR. Gilbert Joseph Harris

QUESTIONS BY THE PROSECUTING OFFICER

FIRST WITNESS: Z44021 L/CPL. GRAVES, H.K.

Q. Will you tell the Court what happened on or around 31
. else how you were employed at that time?
A. On Dec 31 1944 I was employed as a cook's helper. At ab
2300 hours there was a knock on the kitchen door but I did no
answer the knock. The door was pushed open, and had been barric
by means of a hay wrack. Tpr Smyth entered the kitchen. Tpr May
who was helping me in the kitchen asked the accused what he wanted.
The man replied nothing. Tpr May once again told the accused he
had better go out. The accused didn't move. I then turned the
accused around and give him a shove towards the door. The accused
took approximately three or four steps, turned around and said
I will show you I don't have to get out if I don't want to. He
then unbuttoned his tunic and I saw the butt of a pistol. I took
the pistol from him and turned the accused over to the M.Ps. Tpr
May followed me over, with the pistol. Tpr. P examined
the pistol and foundit had five rounds in the pistol.

Q. Was the accused sober at the time, in your opinion?
A. In my opinion, he was sober.

Q. What sort of a pistol was it?
A. It was a Smith and Weston Pistol.

Q. What is the number of the pistol?
A. The number is V431018.

Q. When did you take the number of the pistol?
A. I took the number downwhen it was turned over to me, approximately
1 Feb 1945. The Unit was breaking up at the time.

Q. It was turned over to you as evidence, is that correct?
A. Yes Sir.

Q. Would you demonstrate to the Court how Tpr Smyth appeared when
you saw him on the 31 Dec 1944.
A. He started to unbutton his tunic and put his hand inside.

Q. How did the accused grasp the pistol, if he did?
A. Between his thumb and his first two fingers of his right hand.

Q. Was the pistol grasped in the normal manner?
A. Yes Sir.

Q. What did you do with him then?
A. I rushed him.

Q. When you attacked him, what did you do?
A. I backed him against the wall and put my hand on the pistol to
prevent him from pulling it.

Q. Where were his hands at this time?
A. His hands were here to.

Q. Were the accused's hands on the pistol or on your hands?
A. The one hand was on the pistol and he was trying to get the other
on the pistol.

Q. How was the pistol finally drawn?
A. I eventually got a hold of it.

NOTE: The Prosecuting Officer produces a Smith & Weston M, number V431018, as exhibit P1.

Q. How much of a struggle was there between you and the accused?
A. It didn't last long. I backed the accused against the wall and
started to hit him with my head.

Q. What was your reason for this violent action in the first place?
A. I didn't know whether he intended to draw the pistol or not so I
didn't want to take a chance.

COURT-MARTIAL OF B26274 TPR. Gilbert Joseph SMYTH - 2 NETD

QUESTIONS BY THE PROSECUTING OFFICER

OK

FIRST WITNESS: B44021 L/CPL. GRAVES, H.K.

Q. Will you tell the Court what happened on or around 31 Dec 44, and also how you were employed at that time?
A. On Dec 31 1944 I was employed as a cook's helper. At approximately 2300 hours there was a knock on the kitchen door but I did not answer the knock. The door was pushed open, and had been barricaded by means of a hay wrack. Tpr Smyth entered the kitchen. Tpr May who was helping me in the kitchen asked the accused what he wanted. The man replied nothing. Tpr May once again told the accused he had better go out. The accused didn't move. I then turned the accused around and give him a shove towards the door. The accused took approximately three or four steps, turned around and said I will show you I don't have to get out if I don't want to. He then unbuttoned his tunic and I saw the butt of a pistol. I took the pistol from him and turned the accused over to the R.Ps. Tpr May followed me over, with the pistol. Tpr. P examined the pistol and foundit had five rounds in the pistol.

Q. Was the accused sober at the time, in your opinion?
A. In my opinion, he was sober.

Q. What sort of a pistol was it?
A. It was a Smith and Weston Pistol.

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Q. When did you take the number of the pistol?
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Q. It was turned over to you as evidence, is that correct?
A. Yes Sir.

Q. Would you demonstrate to the Court how Tpr Smyth appeared when you saw him on the 31 Dec 1944.
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Q. Were the accused's hands on the pistol or on your hands?
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Q. How was the pistol finally drawn?
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NOTE: The Prosecuting Officer produces a Smith & Weston 38, number V431018, as exhibit P1.

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A. It didn't last long, I backed the accused against the wall and started to hit him with my head.

Q. What was your reason for this violent action in the first place?
A. I didn't know whether he intended to draw the pistol or not so I didn't want to take a chance.

Q. Did he make any attempt to draw the pistol when he had the thumb and fingers on the butt, in the first instance?

A. He wouldn't have had time anyways.

Q. At what point, in the scuffle, did the accused attempt to draw the pistol?
A. After he had taken three or four steps.

Q. After you pushed him?
A. Yes Sir.

Q. Explain to the Court just what he did when he attempted to draw the pistol?
A. He had taken approximately three or four paces and said - I don't have to go out if I don't want to go and then unbuttoned his tunic, and then I rushed him and took the pistol from him, on seeing the butt inside the tunic.

Q. Did the accused later make an attempt to draw this pistol?
A. When I was trying to take it away from him.

Cross-Examined:-

Q. What rank was there in the kitchen at about 2300 hours?
A. Trooper, Sir.

Q. When Tpr Smyth unbuttoned his tunic is it not possible that he did so because he wanted to get something else out?

A. It is possible but not probable.

Q. Would not his object have been to prevent you from obtaining the pistol?
A. It is possible.

Q. Were you present when the pistol was examined to see if it carried any bullets?
A. Yes Sir.

QUESTION BY THE COURT

Q. Would you say that, in your opinion, the accused was sober, or had he been drinking?
A. Yes, ~~he had~~ been drinking.

SECOND WITNESS: 363268 TPR.

Q. How were you employed on the 31 Dec 1944?
A. As Regimental Police.

Q. Was there a pistol turned into you on that date?
A. Yes. On the 31 Dec 1944 at 2315 hours a .34 Smith's Weston pistol was brought to me by Tpr. May. In receiving the pistol I proved the pistol and found that it contained five rounds of live ammunition. I then proceeded in getting the Orderly Officer to take over.

Q. What was the number of this pistol?
A. I don't know the number, Sir.

NO CROSS-EXAMINATION

DEFENDING OFFICER TO THE COURT:
The Defence moves that the Prosecution has failed to establish a Prima Facia case under R.P. 40.
The principle reason is that the witness Graves made a statement approximately like this - That the witness would not have time to attempt to draw a pistol. Moreover he made no statement that the accused's manner was so vague that he could not have been sure whether the accused intended to draw the pistol consequently taking no chances he attacked him when he saw the pistol in the man's hands.

SUMMARY OF EVIDENCE

in the case of

B62274 Trooper SMYTH, Gilbert Joseph

of CANADIAN ARMOURED CORPS TRAINING UNIT

By direction of the Commanding Officer, evidence to taken on Oath.

In the field,
In Italy,
4 Jan 45.

FIRST WITNESS (for the prosecution)

A44021 TPR GRAVES, H.K., on strength of C.A.C.T.U. having been duly sworn states:

"I am A44021 TPR GRAVES, H.K., on strength Cdn Armd Corps Trg Unit. I am on the P.E. of C.A.C.T.U. and employed in the mens kitchen as cooks helper. At about 2300 hrs on the 31 Dec I was in the kitchen in company with Tpr May. At this time there was a knock on the door and the door was forced open. We had previously placed a hay box against the door to keep anyone from coming into the kitchen. The accused Tpr Smyth came into the kitchen. Tpr May asked the accused what he (Smyth) thought the doors were barricaded for. The accused answered, "To keep men like myself out." Tpr May said "you had better get out." I saw the accused was not going to leave so I walked over to him and told him he had better get going. He refused to move so I gave him a push. He stepped about four paces away, turned around and said " I will show you I dont have to get out if I dont want to go." He then unbottoned his tunic and started to draw out a pistol. I then rushed him and took the pistol away from him. I handed the pistol to Tpr May. I turned the accused over to the regimental police."

The accused declines to question this witness.

T/pr H K Graves
(H.K. Graves)

SECOND WITNESS (for the prosecution)

M63661 TPR MAY, F.A., on strength of C.A.C.T.U. having been duly sworn states:

"I am M63661 TPR MAY, F.A., on strength of the Cdn Armd Corps Trg Unit. At about 2300 hrs on 31 Dec 44 I was employed as night fireman in the mens kitchen. At this time there was a knock on the

and a few seconds after the accused pushed the door open and came in. I asked him what he wanted and he replied "nothing". I asked him to leave and he made no move. Tpr Graves stepped toward the accused and gave him a little push. The accused went towards the door and said " I do not have to leave unless I care to." At this time Tpr Graves rushed him and and pushed him out into the hallway. I stepped out, into the hallway where the accused and Tpr Graves were scuffling. Immediately after the scuffling Tpr Graves handed me a loaded pistol. I turned the pistol over to the regimental police."

The accused declines to question this witness.

Fred May

~~Certified true statement~~
~~C.O. Canadian Corps~~
(F.A. May)

THIRD WITNESS
(for the prosecution)

B74507 SGT CAMERON, J.A., on strength of C.A.C.T.U. having been duly sworn states;

"I am B74507 SGT CAMERON, J.A., on strength of the Tank Squadron C.A.C.T.U., employed as Duty Sergeant. On the 29th Dec 1944 I was acting S.S.M. of Tank Sqn. At approximately 1600 hrs 29 Dec 44 a draft had arrived in and was reported all present. They were formed up as a parade and before being broken off they were warned to have all weapons in their possession turned into the Q.M. stores, immediately after they were alloted their billets."

The accused declines to question this witness.

J.A. Cameron
(J.A. Cameron)

FOURTH WITNESS
(for the prosecution)

B63268 TPR PERRON, M., on strength of C.A.C.T.U. having been duly sworn states;

"I am B63268 TPR PERRON, M., on strength of C.A.C.T.U. and employed in the regimental police. On the 31st of Dec between 2300 hrs and 2310 hrs Tpr May handed me this .38 Smith and Wesson pistol # 431018 loaded, containing five rounds, ~~stating it had been taken from Tpr Smyth.~~ (Exhibit A). I went and got the Orderly Officer and he took charge from there on. I accompanied Tpr Smyth over to his billets to pick up his equipment. While carrying Smyth's bed roll from his billets to the detention barracks, one Enfield pistol # M 1618 fell to the floor. On checking this pistol I found on live round in the barrel.

The accused declines to question this witness.

M. Perron
(M. Perron)

FIFTH WITNESS
(for the prosecution)

A42181 TPR BRAGG, W., on strength of C.A.C.T.U. having been duly sworn states;

"I am A42181 TPR BRAGG, W., on strength of C.A.C.T.U.

and employed as Tech. storeman. Pistols V # 431018 Smith and Wesson and M 1518 Enfield were not received by me on the 29 Dec 44."

The accused declines to question this witness.

W. Bragg.
(W. Bragg)

SIXTH WITNESS (for the defence)

B74379 TPR JOBIN, A.J., on strength of C.A.C.T.U. having been duly sworn states:

"I am B74379 TPR JOBIN, A.J., on strength of C.A.C.T.U. On 31 Dec 44, we had a big party in our room to celebrate the New Year, as the party got on its way there was a lot of talk about shooting in the New Year. The [redacted] only one that was not drinking heavy. The accused went over to my bed and picked up my revolver and put it in his tunic. I saw him put it in his tunic and I thought at the time that was the safest place for it as there was a lot of talk of shooting in the Ney Year. He then returned to the corner and rejoined the party."

Q.- Did I ask you if it wasnt better for me to take the pistol before I went over and got it?

A.- Yes.

The accused declines to question this witness further.

a.j. Jobin
(A.J. Jobin)

SEVENTH WITNESS (for the defence)

B74386 TPR NELSON, W.L., on strength of C.A.C.T.U. having been duly sworn states:

"I am B74386 TPR NELSON, W.L., on strength of C.A.C.T.U. On 31 Dec 44, we had a party in our room. Around 2130 hrs some one suggested we shoot the old year out and the New Year in and also ring the bell in our room. Shortly after this Tpr Smyth left the party and went to his bed in the corner. A little later I saw the accused talking to Tpr Jobin. Tpr Jobin returned to the party and I dont know whether Tpr Smyth did or not.

Q.- Did Tpr Jobin tell you I had taken his pistol for safe keeping?

A.- I dont remember.

The accused declines to question this witness further.

W.L. Nelson
(W.L. Nelson)

Having been duly cautioned in accordance with R.P. 4 (e), the accused declines to make any statement or to give evidence on oath, and reserves his defence.

This Summary of Evidence was taken down by me in the presence and hearing of the accused and in accordance with R.P. (c), (d), (e),(f), and (g) this 4th day of January 1945.

A.E. Armstrong Lieut

(A.E. Armstrong) Lieut.,
Cdn Armd Corps Trg Unit,
Officer detailed to take Summary.

In the field,
In Italy,
4 Jan 1945.

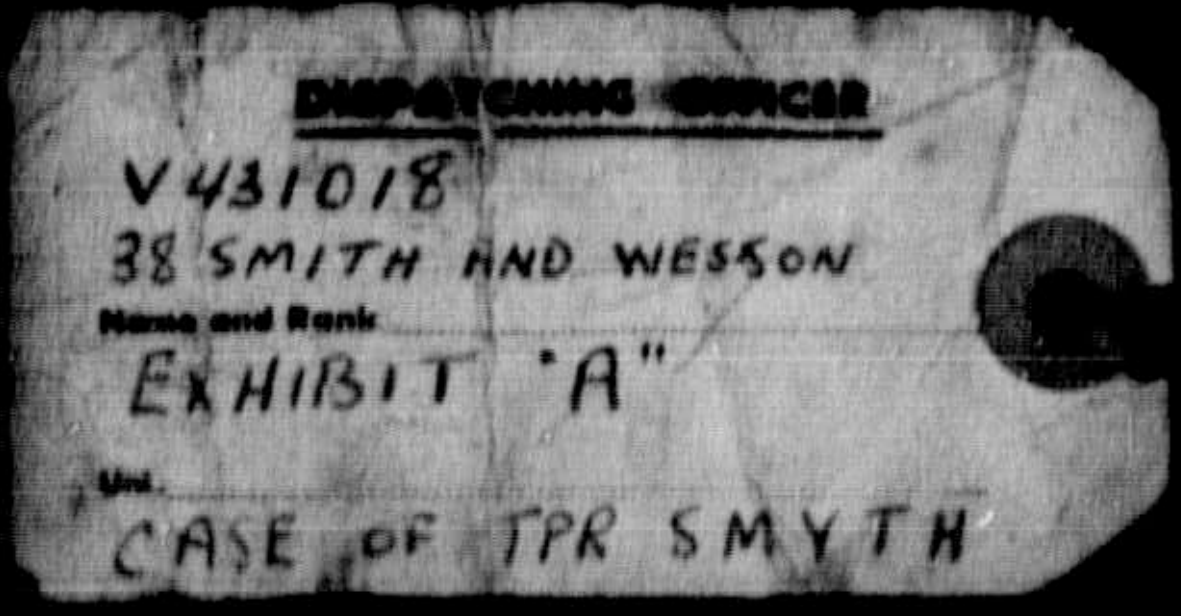
I, B.62274, Trooper Gilbert Joseph SMYTH, request that my Commanding Officer appoint Lt. P. La Fleche to defend me at my forthcoming trial by Field General Court Martial.

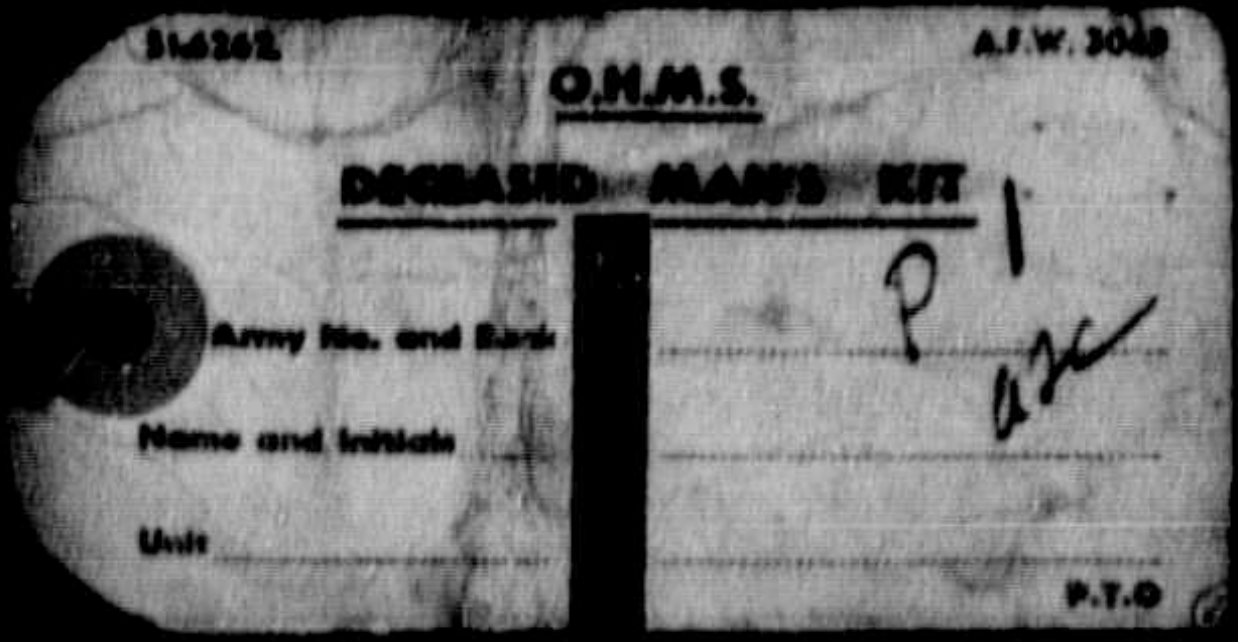
DATE 29 Mar 45. G.J. Smyth
(G.J.Smyth).

ACCUSED'S RECEIPT FOR HIS COPY OF SUMMARY OF EVIDENCE AND CHARGE SHEET.

I, B.62274 Trooper Gilbert Joseph SMYTH, acknowledge receipt of a copy of Summary of Evidence and Charge Sheet in connection with my forthcoming trial by Field General Court Martial.

DATE 29 Mar 45. G.J. Smyth
(G.J.Smyth)


DISPATCHING OFFICER
V431018
38 SMITH AND WESSON
Name and Rank
EXHIBIT "A"
Unit
CASE OF TPR SMYTH


S16262
A.F.W. 3049
O.H.M.S.
DECEASED MAN'S KIT
P 1
Army No. and Rank
Name and Initials
Unit
P.T.O

ALL SERVICES

List of Stores, Plant, Tools, Instruments, &c.

Issued to / Requisitioned by } G.M. Store

From A.D.J.A. Date 5/Aug/45

Index (or Cat.) No.	Designation	Quantity
V 21018.		
38 Smith & Wesson revolver with 7 in. F.S.C.M. & Lanyard.		1.
	G.M. Store	

Signature

Rank 6/24/45 Date

LIST OF EXHIBITS

In the case of B.62274 Trooper Gilbert Joseph SMYTH, No. 2 Canadian Non Effective Transit Depot, 1 Canadian Base Reinforcement Group, a soldier of the Canadian Army Overseas.

---

1. Exhibit "A" -- .38 Smith and Wesson Pistol # V 431018.

" I certify that I have received a copy of this "List of Exhibits" in connection with my forthcoming trial by FOCM.

G.J. Smyth

G.J. Smyth

LIST OF WITNESSES

In the case of B.62274 Trooper Gilbert Joseph SMYTH, No. 2 Canadian Non Effective Transit Depot, 1 Canadian Base Reinforcement Group, a soldier of the Canadian Army Overseas.

FOR THE PROSECUTION

1.	A.44021	Tpr	GRAVES,	H.K.	-- # 2 Cdn N.E.T.D.	Available
2.	M.63561	Tpr	MAY,	F.A.	-- 1 CBRGp	Available
3.	B.74507	Sgt	CAMERON,	J.A.	-- CAC	Non-Available
4.	A.42181	Tpr	BRAGG,	N.	-- CAC	Non-Available
5.	B.63268	Tpr	PERRON,	M.	-- # 2 Can N.E.T.D.	Available

FOR THE DEFENCE

1.	B.74379	Tpr	JOBIN,	A.J.	-- CAC	Non-Available
2.	B.74385	Tpr	NELSON,	W.L.	-- CAC	Non-Available

" I certify that I have received a copy of this "List of Witnesses" in connection with my forthcoming trial by FGCM

G.J.Smyth
G.J.Smyth

OB-18 (AFRICA)
TPR SMYTH G.J.

Correspondence to be PINNED here.

A97

00-18

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this EIGHTEENTH day of AUGUST, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 1 Cdn Army Tank Bde, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~(and that it is not practicable to delay the trial for reference to a superior qualified officer.)~~

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*~~I am unable to appoint - - -~~

*~~(1. - - Three Officers to form the Court.)~~

*~~(2. - - A Field Officer as President).~~

~~for the following reasons, namely - - -.~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

*Omit if not applicable.

Copy of Warrant to Court

Gen Henderson to Court

President.

Rank.	Name.	Regiment.
MAJOR	J.R. MAHON	12 CDN ARMY TK REGT

Members.

Rank.	Name.	Regiment.
CAPTAIN	D.F. RANEN	14 CDN ARMY TK REGT
CAPTAIN	~~T. Brook~~	~~2 Cdn Lt Fd Amb~~
JUDGE ADVOCATE	LIEUT-COL. [illegible]	[illegible]

Court shall keep Judge advocate

Nota.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named. In the latter event, the ranks, names, &c., of the members of the Court, as constituted, will be recorded on the proceedings.

*Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.

*Signed

Commanding 1 Cdn Army Tk Bde *Convening Officer.*

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
B.62274, Pte Gilbert Joseph SMYTH, 11 Cdn Army Tk Regt.	FIRST CHARGE Sec 15 A.A.	Guilty	Guilty	
	For particulars see attached Charge Sheet			
	SECOND CHARGE Sec 10 (2) A.A.	not Guilty	not Guilty	
	For particulars see attached Charge Sheet.			
	THIRD CHARGE Sec 22 A.A.	not Guilty	Guilty	finding confirmed. To be promulgated before as strong a parade as possible. Sentence and sentenced to suffer Field Punishment No. 1 for 90 days and to forfeit Pay for a period of 90 days.
	For particulars see attached Charge Sheet.			
	FOURTH CHARGE Sec 6(3)(6) A.A.	not Guilty	Guilty with the exception that was not cashiered	
	For particulars see attached Charge Sheet.			

3 Aug 43

*Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)) :—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary) :— NO

(Signed) (R. Wyman) Brigadier (Signed) (J.R. Walker) Major
Commanding 1 Cdn Army Tk Bde — 12 Cdn Army Tk Regt
Convening Officer (e)

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.
Unless unavoidable, not more than three names are to be entered on one form and in serious cases one.
(c) Recommendation to mercy, if any, to be inserted in this column.
(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.
(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the twenty-first day of August 1943, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—

1. The members of the Court
2. The witnesses
*(3. The Interpreter)
*(4. ~~The officers under instruction~~)

were duly sworn.

*Omit if not applicable.

The Judge Advocate was present throughout the proceedings.

Signed this 21st day of August 1943

J.H. Campbell Major Judge Advocate

(J.R. Walker) Major
12 Cdn Army Tk Regt
President of the Court Martial.

C. Certificate in case of death sentences.

*See footnote (b) on page 782 M.M.L., 1929.

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day of 19

President of the Court Martial.

D. Confirmation.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule, and, subject to what I have there stated, I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded, the Confirming Officer either has no authority to commit to prison or detention barrack, or, having such authority, recommends suspension.

*(I direct that the soldier named in the margin be not committed to prison or detention barrack until further orders.)

Signed this 27th day of August 1943

(R. R. Wyman) Brigadier,
Comd, 1 Cdn Army Tk Bde
Confirming Officer.

Promulgated and extracts taken in the case of B-62274, Tpr Gilbert Joseph SMYTH, 11 Cdn Army Tk Regt

(a) (Dated) 30 Aug 43 (Signed) W.F. Smith Lt Col

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the officer need only sign once.

RECEIVED 15 SEP 1943 Canadian Section G.H.Q. 2nd Echn.

A.A.F.W.,Ltd. Gp.698

B 2.

CHARGE SHEET

The accused, No. B-62274, Trooper Gilbert Joseph SMYTH, 11th Cdn. Army Tank Regt. (Ont. R.) a soldier of the Cdn Army Overseas, is charged with:

~~1st CHARGE~~
Sec. 19 AA

When on active service, Drunkenness; in that he:

In the field on 28 Jul 43, at about 1900 hrs., was drunk.

~~2nd CHARGE~~
Sec. 10(2)AA

When on active service, striking a person in whose custody he was placed; in that he:

In the field, on 28 Jul 43 at about 2045 hrs., when placed in custody of L/Cpl. Faeth, A.N., Regimental Provost 11 C.T.R., struck with his waist belt, on the head, the said Regtl Provost.

~~3rd CHARGE~~
Sec. 22 AA

When on active service, When in lawful custody attempting to escape; in that he:

In the field, on 28 Jul 43, at about 2045 hours, when proceeding to "A" Ech lines, 11 C.T.R., broke away from his escort, and was later apprehended by unit sentries.

(M.P. Johnston) Lt.- Col.
Cdg. 11th Cdn. Army Tank Regiment

Field, Sicily,
30 Jul 43.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(H. A. Wyman) Brigadier,
Comd, 1 Cdn Army Tk Bde.

In the Field
10 Aug 43.

J. F. Campbell Major
Judge Advocate

RECEIVED
16 SEP 1943
Canadian Section
G.H.Q. 2nd Echn

CHARGE SHEET

B2

The accused, No.B62274, Trooper Gilbert Joseph SMYTH, 11th Cdn Army Tank Regiment (Ont. R.), a soldier of the Cdn Army Overseas, is charged with:-

4TH CHARGE
Sec. 6(3)(d)
A.A.

When on Active Service, committing an offence against the person of an inhabitant of the country in which he is serving, that is to say:

In the Field, on the 28th day of July 1943, assaulted with a pistol Brigatiere Mele Angelo, an inhabitant of SCORDIA, SICILY, by forcing him into a room at the point of a loaded pistol and locking him in said room.

(M.P. Johnston) Lt. Col.,
Cmdg 11 Cdn Army Tank Regiment.

FIELD, SICILY
13 Aug 43.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL

(R. A. Wyman) Brigadier,
Comd, 1 Cdn Army Tk Bde.

In the Field
[illegible]43

J.K. Campbell Major
Judge Advocate

RECEIVED
16 SEP 1943
Canadian Section
G.H.Q. Med Eqm.

11th Cdn Army Tank Regt (Ont.R)

Field, Sicily
21 Aug 43.

Certified that I have this date medically examined B62274 Tpr Smythe G.J., 11 C.T.R., and find him fit to undergo trial by Court Martial.

J.C. Campbell Capt
Judge advocate

.....Capt RCAMC
M.O., 11 Cdn Army Tk Regt.

Lieut Major

A Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for General and District Courts-Martial.

Proceedings of a Field General Court-Martial held at Field on the 21st day of August 19 43 by order of Brigadier R. A. Wyman, Commanding 1st Cdn Army Tank Brigade dated the 15th day of Aug 19 43

President.

Major
12 Cdn Tank Regt

Members.

Capt
2 Cdn Lt Tk Regt
14 Cdn Tank Regt

Major J. C. A. Campbell R.C.A. HQ 1 Cdn Div, Judge Advocate.

Trial of* 62374 Tpr Gilbert Joseph Armyth 11 Cdn Army Tank Regt

The order convening the Court, the charge-sheet and the summary (or abstract) of evidence are laid before the Court.

~~The Court satisfy themselves that ~~ is not available [illegible] owing to [illegible]~~

~~, waiting member takes his place as a member of the Court &c.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Capt A. B. Whitelaw, 11 CTR.

Counsel‡ or defending officer† Capt E.A.C. Amy 11 C.T.R.

At 1430 o'clock the Trial commences.

The order convening the Court is read, and is marked A, signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.* NO.

(N.B.—If objection is made it should be recorded, together with [illegible] of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment [illegible] and
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q4274. Wt. W1633/78. 25,000 pds. 8/43. E. & S. H., Ltd. G667/11. Forms A 9/35.

RECEIVED 16 SEP 1985 Canadian Section G.H.Q. 2nd Echn.

B

The President, members and judge-advocate are duly sworn.
Question 1, do you object to Sam Gabrielle acting as interpreter
A. No sir.
The interpreter is duly sworn.
The following officers under instruction are duly sworn.

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read ? *Question to the accused.*

yes Sir *Answer.*

Are you guilty or not guilty of the second charge against you, which you have heard read ? *Question.*

Not Guilty Sir. *Answer.*

Are you guilty or not guilty of the third charge against you, which you have heard read ? *Question.*

Not Guilty. Sir. *Answer.*

Are you guilty or not guilty of the fourth charge against you, which you have heard read ? *Question.*

Not Guilty. Sir. *Answer.*

The accused having pleaded Guilty to First charge, the provisions of Rule of Procedure 35 (B) are here complied with.

Instruction. If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

C

*Instruction. (See R. P. 39 (A))

Proceedings on Plea of Not Guilty.

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. No.

The prosecutor makes an opening address. [hands in a written address which is read, marked , signed by the President, and attached to the proceedings.]

The prosecutor proceeds to call witnesses.

First witness for prosecution. Brigadiere Mele Angelo

being duly sworn, is examined by the prosecutor.

Q. What is your job?
A. I am Vice-Brigadier of Italian Army Police
Q. What have you to relate with regard to the afternoon of July 28/43
A. In the Police Station in Piedimonte Etneo, I was proceeding down the stairs and I requested to put an English officer, but found a Canadian soldier who took a pistol in his hand, pointed it at me and at the same time remained on the floor, then ordered me to go upstairs and with a rope where Italian army police were acting he then took me and another carabiniere and a police lieutenant and locked us in a room, at the same time another Carabiniere, Gambera Angelo, who was in the dining room, went out to call the military police. The military police came and released ~~Carabiniere soldier against the door of~~ the room in which I was locked
Q. Do you recognize the man who locked you in the room in this Court
A. Yes the accused is the man
Q Can you point out the man who unlocked the door to let you out.
A. The accused unlocked the door.
Q. What was the condition of the accused at the time
A He was drunk
Q Did you hear any disparaging remarks
proceedings
A. No.

(2)

RECEIVED
16 SEP 1943
Canadian Section
G.H.Q. 2nd Echn.

Q. Did you hear a shot fired
A. I heard one shot fired
Q Where was it fired?
A Into the Room
Q Into what room was the shot fired?
A. Into the corridor
Cross. Examined by defence
Q Did anyone see the accused point a pistol at you
A. I do not know.
Q. Did you try to get the pistol from the soldier?
A. No.
Q When the soldier went upstairs, did he enter the room which was locked
A. No, he stayed out.
RAP 83(b) complied with.

2nd Witness for Prosecution
Sient. Agatino Cristofaro.

Q. What is your name
A Sient Agatino Cristofaro
Q What is your job
A I am the chief of police in Lercara
Q What happened at Police Headquarters on 28th July 43
A I was in my office and heard some. I saw the Canadian soldier pointing a pistol at the Vice-Brigadier
Q. Is the accused in the court?
A I am not sure that the accused is the same soldier for he had a moustache on July 28th
Q Did you recognize the accused in the court
A. Yes
Q What happened further in the police station?
A The Canadian soldier ordered the Brigadier to go into the dining room and sit down. He asked for some wine. He also ordered me into the dining room. After one minute he went ordered the brigadier and the lieutenant and a mechanic into another room and locked the door
Q In what condition was the accused
A. He was drunk
Q. What happened in the room?
A I heard a shot fired in the hall
Q How did you get out of the room
A. The military police released me and took the accused into custody

Cross. Examination by the defence
Q. Where did he hear the shot
A. I was in the office at the time. I heard it only.
Q. How far was the office door from the Canadian soldier in question.
A 3-4 metres
Q Did you approach the soldier
A. No. He took me by the arm and ordered me into the room.

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Canadian Section
G.H.Q. 2nd Echn.

C3

Q: How many shots did you hear.
A One.
Questions by the Court
Q Where was the revolver the Canadian soldier had at the time he ordered you into the room
A In his hand.
Q Did he, the Canadian soldier, at any time, point the pistol at anybody
A No.

R.P. 83(b) complied with

3rd Witness for Prosecution.
Carabinieri Lambera Angelo
Q What is your name
A Carabinieri Lambera Angelo.
Q What is your job
A I am a policeman in Scordia
Q What did you see happen at police HQ in Scordia on 28 July 43?
A I was in the dining room in the police station and saw the Canadian soldier with a pistol in his hand. He was in the dining room and ordered me to sit down
Q Do you recognize the soldier in this room
A I recognize the accused
Q Did the soldier enter the room alone, or what were the circumstances of his entry
A He entered the room alone, pointed a pistol at me and ordered me to close a pocket knife with which I was eating
Q. What else happened?
A. I saw the soldier lock the three men into the room and I went out to call the military police
Q: What condition was the soldier in?
A: He was drunk.
Q: Did anything else happen
A: I heard a shot and could not find the military police

/sc

No Cross Examination by the Defence
Question by the Court
Q: ~~When~~ Did the Chief of Police and the Brigatier and the Canadian soldier enter the dining hall together?
A: Yes. the Chief, then the Brigatier, followed by the Canadian soldier with a pistol in his hand, which he waved at all in the room.
Cross Examination by the Defence — by permission of the Court
Q: How many shots had you been fired
A: One.
A.P. 53(b) complied with
4th Witness for the Prosecution.
Q: What is your no., name, and duties
A: 5435058, Sgt. Unrack D. Corps of Military Police
Q: What happened on July 28/43
A: On the evening of July 28/43 at 1855 hours I was proceeding to Iconia and was asked by a civilian to accompany him to the Carabinieri. On entering the Carabinieri I found a soldier with revolver in hand and asked him what he was doing there at the time. I pointed out the accused as the soldier in question. He did not reply. I went into the Carabinieri office where I found the Lieutenant and asked him what had really happened. With the aid of an interpreter I found that the accused had fired two shots. They were .38 calibre. ~~I~~ My driver took the revolver from the accused hands. We escorted him to the police vehicle and proceeded to 6 Echelon 14th Tank Regt. Various particulars were taken and handed over the soldier to the 14th Tank Regt. for safe custody.

Q. What was the condition of the accused
A He was drunk, but properly dressed.
Cross Examination by the defence
Q. Did the accused threaten you with the pistol
A. No
Q. Did he know what he was doing at the time
A. No.
Q. Did you confiscate the pistol
A Yes.
Q Did you turn it over to the 14th Tank Regt
A I had given it back to the accused to pacify him.
Q Did he do anything further with it
A. Not to my knowledge.
Q When you arrived in the station, were the three men locked in the room
A The door was closed, not locked. The three men appeared worried about the accused's threats.
Q. What time did you turn the accused in to the 14th Regt.
A About 1925 hours
Re-Examination by Prosecution
Q When you confiscated the accused's pistol, did you find any live rounds.
A No. There were 2 empty cases.
Question by the Court
Q. What make was the pistol
A I do not know. It was a .38.
Q. Are you able to state whether it had been fired recently
A It definitely had been fired recently

RP 83 (b) confined with

JCK

C6 P)

4th Witness for the Prosecution
Tpr. A. N. Faith

Q. What is your name and number
A. My name is Tpr. A.N. Faith. A 55822.
Q. What were you doing on July 28
A. I was a Lance Corporal on the Regimental Provost Staff
Q.
A. At 2130 hrs. July 28/43. 2 or 3 regimental provosts of the 14th Tank Regt came to "B" Echelon lines and informed us that they had one of our men in custody. I was detailed to go to the 14th lines and pick up said person. Upon my arrival at the 14th lines the Regimental provost turned Tpr. Smythe into my custody. I recognize him as the accused. At the same time I was given a revolver and Tpr. Smythe's Pay-Book by the Regimental Provost. I took Smythe back to "B" Echelon lines where Sgt. Mayo Purdy detailed me to escort Tpr. Smythe to "A" Echelon lines. He detailed a truck for this purpose. About 1000 yards from "A" Echelon lines the truck ran into a ditch. I took Smythe and escorted him toward "A" Echelon. When we were about 50 yards from "B" Squadron lines Smythe became boisterous. I told him to be quiet and come along. It was very dark. Smythe dropped back 2-3 feet and I let me wit what I presume was a bet and ran toward "B" squadron lines. The sentries challenged me to halt. I halted and informed SSM Fox that Smythe had escaped. Accompanied by SSM Fox I proceeded to "B" squadron and turned Smythe's pistol and Pay-book over to Sgt. Woods, Provost Sergt. At the same time giving him particulars of Smythe's escape.

Approximately 15-20 minutes later Smythe was brought in to H.Q. lines by 2 sentries. I don't know their names but I can identify one of them. then Sgt. Woods, SSM. Fox, and myself escorted Smythe to "C" squadron lines where we turned him over to Sgt Maj. Haynes

Q. Did you notice type and number of pistol

A. It was a .38 Smith-Wesson revolver.

Q. Did you see him strike you?

A. I did not see accused strike the blow, but sensed he was no longer ~~beside~~ at my side. When I half-turned, ~~I was~~ to my right. I received a blow behind my right ear. There was a lump and a slight cut behind my right ear.

Q. When the blow was struck, were you two alone.

A. Yes.

Q. Did the accused carry a weapon

A. I could not see. It was too dark

Cross Examination by the Defence

Q. At what time did accused escape?

A. I do not know. I haven't a watch

Q. Did the accused have his hat off when being escorted in by the sentries

A. I don't know.

Q. Did you take any added precautions after the accused became boisterous?

A. It happened very quickly. I sensed he was not at my side, I half turned and was struck.

Q. Was it 2 minutes or 2 seconds that you were struck after you warned him to be quiet and come along

A. I don't know.

Question by the Court

Q. At the time the accused was handed into

custody, was he wearing a belt
A. I am not sure. He wore a bush shirt and may have had a belt under it
Q. In what condition was Smythe in when he was handed over to you
A. He had been drinking.
AP 83(b) complied with.

6th Witness for the Prosecution.
Tpr. Mercer A.H. B 87817

Q: What is your name, rank, and number
Q. B 87817, Tpr Mercer A4
Q: On 28 July, What ~~happened~~ ~~did you receive from SSM FA~~
Q: On July 28th at approximately 2215 - 2230 hours, I proceeded to the truck to demobilize it and while there heard a rustling in the camouflage net which was hanging down the truck. I looked down and saw someone there. He said "I'm the man you're looking for". From information I had received I knew Tpr Smythe had been custody. I called the RSM and between us we escorted the accused to the RSM's ~~car~~ tent.
Q. Is the accused the man you picked up that night
A. Yes
Q. Did Smythe wear a belt
A. No. He did not even have a bush shirt on.

Cross-Examination by Defense.
Q: In what condition was the accused
A: He wasn't exactly sober yet spoke all right
Q: Did he offer any resistance
A: No
Q: Do you remember at what time you found the accused
A: 2215 hrs

Q. You particularly noted he wore no belt.
A. That's right.

A.P. 83(b) complied with.

7th Witness for the Prosecution.

B60506 Sgt. Wood B.

Q. What is your name, rank & no.
A. B60506 Sgt Wood B.
Reg Provost Sgt.
Q. What happened on July 25th
A. At appox. 2100 hrs, I was awakened by L/Cpl Finch who is in my provost staff and he told me the prisoner he was bringing for B" Echelon had escaped. He told me it was Tpr Smyth. I organised and showed me a cut behind his ear. I aroused my provost staff to look for the accused. About 2115 hrs - 2130 hrs the accused was turned over to me by the RSM. I am certain it was 2100 hrs when I was awakened.

A.P. 83(b) complied with.

9th Witness Recalled by Prosecution with Court's Consent.

B60506 Sgt Wood B.

Q. At what time were you awakened to be notified
A. Tpr Smyth's escape
Q. I was confused in my former evidence. It was definitely 2200 hours.

Cross-Examination by the Defence

Q. Are you sure it was 2200 hrs.
A. Yes, sir.

Q. A.P. 83(b) Complied with.

D

The prosecution is closed. J.A.C

Accused advised by J.A.J his rights under R.P 40 & 41 (2).

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. Yes

Question. Do you intend to call any other witness in your defence?

Answer. no

Question. Is he a witness as to character only? *Answer.*

no

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(*Where any evidence is given for the defence.*)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

J.A.C

(*Where the accused does not give evidence upon oath.*)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says†

[hands in a written address which is read, marked signed by the President and attached to the proceedings.]

The Accused, duly Sworn states.

Q. Tell the Court what happened the night of July 25/43.

B.L.2274 Tpr Smyth G.J. Having been duly sworn, is examined by the defending officer

J.A.C

Instruction.

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court above.)

D 2

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

Q: What happened the night 7 July 28/43

A: I can't tell of anything that happened the night 7 July 28/43 as I had been drinking very heavily I do not remember being in those places or doing anything that I have been accused of. The first I remember I was when I was told ~~when~~ I woke up the next morning in my unit lines.

Q: Was there an order that you could carry a pistol into town

Q: Yes sir. An order ~~stated~~ pistols were to be worn in town.

Q: When you went to town did you intend to have a quite time or get drunk

Q: When I left town, I did not intend to go to town.

Cross-Examination by the Court

Q: Were you wearing a revolver when you left camp

A: Yes

Q: Was it yours

A: No.

Q: Where did you start drinking

A: In Camp.

Q: How many rounds were in the revolver.

Q: I do not know.

Q: How many drinks did you have before you left camp

A: I had drank a pint bottle of wine and a bottle of cognac.

Q: At what time was this

A: approximately 1500 hours.

Q: Did you drink after you left camp

A: I don't remember.

Q: How did you get into town

A: I don't know, sir

Q: How did you get home

A: I don't know.

A.P. 73(6) Complied with.

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G.H.P. 2nd Estb.

[redacted]

Prosecutor Sums Up:

Maj Gen Simmons has pointed out 2 counts
2 offences against civilians. This is a case of
disorder. He threatened the lieutenant and
the Brigadier. Drunkenness is proven and he
has pleaded guilty on this charge. He escaped
custody - this fact has been established, also
the fact that the provost lance corporal was
struck on the head. I do not intend to review
the evidence in detail as I am sure the
court has all facts firmly in their mind. I
submit the charges as laid have been proven.

The Defence Counsel Sums Up.

The accused has pleaded guilty to drunkenness.
He was permitted to keep a pistol to pacify him
yet he was able to draw it & throw it away.
He was not well enough guarded when being
escorted by Lance Corporal Faith who permitted
him to walk behind him. Only Corporal Faith
has stated that he was hit - he admits it
was very dark and yet states there was no
one in vicinity. On such evidence, the charge
2 striking the provost is inconclusive.
On Charge 1b. opinions differ and only
the Brigadier states that a pistol was
pointed at him. I think Tpr Smythe was very
drunk and was merely pointing with his
pistol rather than holding & was threatening
a man with it. He had no attention 2
assaulting anyone, and unintentionally
assaulted the Lieutenant. I do not think
he knew what he was doing.

JAC

for J.A's summing up see D3A.

D 4.

Mitigation of Sentence Statement by Defence.

① He was drunk and I don't believe he had any intentions when he went into town.
② The protection to himself was inadequate when he was taken into custody.

This is his first offence of drunkenness. The provost were lax in keeping the accused from harming himself. Breaking arrest and striking the provost were both preventable by the provost. There was no intention to do either for he was very drunk.

Passed Sentence by D.S.E.

JGC

Summing up by J.A.

(1) J.A. points out his duty to summarise evidence to the court and to advise upon the law relating to the case prior to court deliberating on its findings.
(2) Court performs function of judge + jury.
(3) Court should be guided on questions of law by J.A. Court not bound by any opinion expressed by J.A.
(4) To obtain conviction charge must be proved or there must be an acquittal.
(5) J.A. explains burden of proof.
(6) J.A. reviews facts for prosecution + defence defines assault, and advises on the law when drunkenness is set up as a defence to the charge.
(7) J.A. points out to court principle of English justice: Accused presumed innocent until proven guilty, and that burden of proof rests upon the prosecution. Guilt of the accused must be established beyond reasonable doubt or else acquittal follows. Reasonable doubt explained to the court.

JCH

CC

Proceedings on Plea of Guilty.

* To be struck out in case no plea of "Not Guilty" has been proceeded with.

*[The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused B62274 Tpr Gilbert Joseph Smyth is found guilty of the first charge

JAC †The summary (~~or abstract~~) of evidence is read, marked X signed by the President, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment? Yes Sir

Answer. The accused in mitigation of punishment says :—

[~~or~~ hands in a written statement, ~~which~~ is read, marked , signed by the President, and attached to the proceedings.]

See P.D.4.

Instruction.

† If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not Guilty," and proceed with the trial accordingly.

JAC

Do you wish to give evidence yourself or to call any witnesses as to character?

Question to the accused.

No

Answer.

Evidence as to character.

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused Tpr. Gilbert Joseph Smyth, 11 Coln Army T.R. Regt guilty of the Third & fourth charges & not guilty of the Second charge.

The finding of not guilty is announced in Open Court.

Proceedings on Conviction before Sentence.

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

Capt A.B. Whitelaw 11. C.T.R. is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.* yes I produce Certified Copy of M.F.M. 6 & M.F.B. 355

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked "C" & "D", signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.* yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? *Answer.* yes

[Instruction.—If by reason of the nature of the service of the accused or a departmental custom or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court, the prosecutor must call the attention of the Court to the fact, and the Court must enquire into the nature and amount of that additional punishment.]

Cross-examined by the accused. N. A.

Question to the accused.

Do you wish to address the Court? *Answer.* yes see P.D 4

The Court is closed for the consideration of the sentence.

JAC

F

Sentence.

The Court sentence the accused

Sentence.

See Schedule. P.L.A.F.A.3

J.C. Campbell Major
Judge Advocate
Field 21 Aug 43

M.F.M. 6
(A.F.B. 177)

No B62274 Name SMYTH G.J. Sqn., Battery, or Company — Corps C.A.C. — Date of enlistment 27-10-41 — I.C. Badges — Service or Proficiency Pay N/A

Date of last entry in Company Conduct Sheet N/A — No. and date of last drunk N/A — Period not reckoning towards freedom from extra fine N/A — Sheet No. 1 — Signature O.C. Company, etc. — Initials

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Dettington Bks.	26-5-42	Tpr.		Sec.40AA: Conduct to the prejudice, etc.(delayed in obeying an order)	Sgt.SmilyOB Cpl. Doxey	72 hrs. det.	27-5-42	Lt.Col. Locke	
Dettington Bks.	27-6-42	Tpr.		Sec.40AA: Conduct to the prejudice etc.(On parade unshaven,improperly dressed and failed to pay compliment to a senior officer.)	R.S.M. Slater	3 Days C.B.	2-7-42	Capt.H.J.R. Thornton	
Dettington Bks.	24-9-42	Tpr.		Sec.15(1)AA: W.O.A.S. AWL from 1800 hrs. to 1900 hrs. 24 Sep.42	L/Cpl.Allen W.	4 Days C.B.	25-9-42	Capt. H.J.R. Thornton	
Field	20-10-42	Tpr.		Sec.40AA: Conduct to the prejudics,etc.(Improperly dressed and making an improper remark to an N.C.O. of the Military Police.	Documentary Evidence	3 Days C.B.	2-11-42	Lt. E.K. Kennedy	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	7-6-43	Tpr.		Sec.40AA: Conduct to the prejudice,etc.(At 1330 hrs. did use insubordinate language to his superior officer,said:"What right has an officer to tell me to get a haircut".	Lt.Campbell Sgt.Gladman	168 hrs. Det.	7-6-43	Lt.Col. MP Johnston	

Certified correct. [illegible]

M.F.M. 6

No. B62274 Name SMYTH G.J. | Sqn., Battery, or Company | Corps C.A.C. | Date of enlistment 27-10-41 | G.C. Badges | Service or Proficiency Pay N/A

Date of last entry in Company Conduct Sheet N/A | No. and date of last drunk N/A | Period not reckoning towards freedom from extra fine N/A | Sheet No. 1 | Signature G.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order directing trial	By whom awarded	Remarks
Dettington Bks.	26-5-42	Tpr.		Sec.40AA: Conduct to the prejudice, etc.(delayed in obeying an order)	Sgt.SmilyOB Cpl. Doxey	72 hrs. det.	27-5-42	Lt.Col. Locke	
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Field	20-10-42	Tpr.		Sec.40AA: Conduct to the prejudice,etc.(Improperly dressed and making an improper remark to an N.C.O. of the Military Police.	Documentary Evidence	3 Days C.B.	2-11-42	Lt.E.K. Kennedy	

(P.T.O.)

M.F.B. 355
H.Q. 1772-39-620
10M-8-40 (M19)

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B-62274	Trooper	SMYTH, G.J.	11 Cdn Army Tank Regt

1. The following is a fair and true summary of the entries in the [redacted] Regimental and Squadron, Battery Conduct sheets [redacted] of the accused, exclusive of convictions by a Court-Martial or a Civil Court, [redacted] of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months	Since enlistment
For A.W.L. Sec.15 A.A.	1 times	1 times
For Sec.40 A.A.	2 times	4 times
For	times	times
For	times	times

Number of instances of gallantry or distinguished conduct Nil

or,

There are no entries in the conduct sheets of the accused. N/A

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted N/A

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Air Force Act A.F.A. 73 Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

The accused at the present time is under sentence for N/A beginning on the day of

4. The accused has been in confinement awaiting trial on the present charges, for nil days in civil custody, and 3 days in military custody, making a total of 3 days in custody, of which nil days were spent in hospital.

5. The present age of the accused according to his record of service is [redacted] 24 yrs.

6. The date of his [redacted] attestation specified in his record of service is [redacted] 27 Oct 41

7. The service which the accused is allowed to reckon towards discharge is

8. The accused is entitled to reckon service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no air force military decoration, or air force military reward [redacted] State any air force military decoration or reward.

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

N/A dated, and in his regiment (or corps), the rank of

dated

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

N/A Date of promotion.

In the rank of Nil years.

In the rank of years.

In the rank of years.

NOTE:—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Act, and of cases in which trial has been dispensed with of accused, Number B62274 Rank Army Tpr

Name Smyth G.J. of 11th Cdn Army Tank Regiment

NOTE:—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
NIL				

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 31st day of July 1943 R.C.A.S.C. Capt Adj

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

In accordance with R.P. 76, take notice that the prosecution intends to call the following witness whose evidence was not taken down in the summary.

B87817 Tpr MERCER, G.H.

Tpr Mercer will testify that he discovered the accused near his truck on the night of 20 Jul 43 and turned him over to Unit Provost.

(A.B. Whitelaw) Capt.,
PROSECUTING OFFICER,

Received by me at 1/0 hrs on this 31st day of Aug., 1943

B82[illegible]47
(G.J. Smyth) Tpr.,
ACCUSED.

SUMMARY OF EVIDENCE

X

in the case of

B62274, Trooper G.J. Smyth
11th Cdn Army Tank Regt.

J.R. Campbell Maj
Judge Advocate

At the direction of the Commanding Officer the evidence is taken on oath.

1st WITNESS FOR THE PROSECUTION: Lieut Agatino Distefano, Royal Carabinieri Police, Scordia, having been duly sworn, states:

"At Scordia on 28 Jul 43 at about 1845 hrs I was standing outside the Carabinieri HQ when I heard a shot fired inside. I went in to investigate and found the accused with his pistol drawn. He was drunk and boisterous, and made threatening motions with the pistol. A few minutes later a C.M.P. Sgt came in and took the accused into his custody."

The witness is cross-examined by the accused as follows:

Ques 1 "How many shots were fired?"

Ans. 1 "I only heard one shot fired."

Ques 2 "Did you see me fire the shot?"

Ans. 2 "No."

Ques 3 "Did I seem to know what I was doing?"

Ans. 3 "No, you were in a drunk condition."

A. Distefano Lieut

(A. Distefano) Lieut
Royal Carabinieri Police

2nd WITNESS FOR THE PROSECUTION: 5435058 Sgt Uniack D., C.M.P., having been duly sworn, states:

"At Scordia on 28 Jul 43 at about 1855 hrs I was passing the Carabinieri HQ when I was stopped by a civilian who informed me there was trouble there. On arriving at the top of the stairs accompanied by L/Cpl Stapleford, C.M.P., I saw the accused place his pistol back in his holster. With the aid of an interpreter I found out that the accused had fired two shots which had gone through the window of the Carabinieri HQ and that he had held up the occupants with his pistol. I confiscated his pistol and took two empty .380 cases from the chamber. I took the accused into custody and on proceeding to the C.M.P. vehicle he was very violent and wanted to fight. On approaching "B" Echelon 14 C.T.R. I found that the accused had thrown his pistol away about 100 yds back. He was then handed over to the 14 C.T.R. The accused was definitely drunk."

The accused declines to cross-examine this witness.

The witness is questioned by the Officer taking the summary:

Ques 1 "Was the accused so drunk that he did not know what he was doing?"

Ans. 1 "Yes, he was."

D Uniack Sgt

5435058 (D. Uniack Sgt., CMP

Trooper Smyth

3rd WITNESS FOR THE PROSECUTION: A55822 L/Cpl Faeth A.N. , 11th Cdn Army Tk Regt., having been duly sworn, states:

"At "B" Ech 11 C.T.R. on 28 Jul 43 about 2000 hrs a D.R. of the 14 C.T.R. informed me that they had one of our men in their custody. I proceeded there and found the accused, and escorted him to our own lines. SSM Purdy detailed a vehicle and ordered me to escort the accused to our "A" Echelon lines. Approximately 800 yds from "A" Ech the truck ran into a ditch. The driver stayed with the truck and I proceeded with the accused to "A" Ech lines. When we were approximately 50 yds from "A" Ech lines the accused became boisterous, and I told him to keep quiet and come along. About 2 minutes after, he struck me on the back of the head with a belt and ran toward "B" Sqn lines. I ran after him for 20 - 25 yds when I was challenged by a sentry, and halted. SSM Fox was with the sentry, and told me to report to HQ that the accused had escaped, which I did. About 15 minutes later the accused was brought in by two sentries, who had apprehended him a few minutes previously. I reported to Provost Sgt Wood and turned over to him a pistol which had been handed me by the 14 C.T.R. at the time I took the accused into my custody. Accompanied by Sgt Wood and SSM Fox, we then took the accused to "C" Sqn lines and turned him over to SSM Haynes, 11 C.T.R."

The accused declines to cross-examine this witness.

The witness is questioned by the officer taking the summary:

Ques 1 "In what condition was the accused when you took him into custody?"

Ans. 1 "He had been drinking intoxicating beverages."

Ques 2 "Would you say that he was drunk?"

Ans. 2 "No, I could not say."

A. N. Faeth

A55822 (A.N. Faeth) L/Cpl
11th Cdn Army Tank Regt.

4th WITNESS FOR THE PROSECUTION: B60506 Sgt Wood B., 11th Cdn Army Tank Regt., having been duly sworn, states:

"At "A" Ech Lines, 11 C.T.R., on 28 Jul 43 about 2100 hrs, I was lying in bed when L/Cpl Faeth reported to me that the accused had escaped from his custody after striking with a belt. There was a large lump and blood behind L/Cpl Faeth's right ear, apparently caused by the blow. The accused was later handed over to me, in custody of two sentries."

Bert Wood

B60506 (B. Wood) Sgt.
11 Cdn Army Tk Regt.

The witness is cross-examined by the accused, as follows:

Ques.1 "What condition was I in when handed over to you?"

Ans. 1 "You had been drinking but were not drunk at the time."

JCSC

The accused, having been cautioned in accordance with Rules of Procedure, elects to give evidence on oath:

B62274 Tpr Smyth G.J., 11th Cdn Army Tank Regt., having been duly sworn, states:

"The charges having been read to me, I plead guily to being drunk, but do not remember doing anything that I have been charged with on 28 Jul 43. I had drank a bottle of cognac and a part bottle of wine. After drinking this I don't remember anything until the next morning. I don't know where I was or what I had done until I woke up on the following morning in the unit lines."

G J Smyth

B62274 (G.J. Smyth) Tpr
11th Cdn Army Tank Regt

The accused does not call any witnesses for his defence.

I certify that the foregoing Summary of Evidence, consisting of three pages, was taken down by me in the presence of the accused, and that Rules of Procedure 4 (c) (d) (e) & (f) have been complied with.

J T F Orr

(J.T.F. Orr) Major,
11th Cdn Army Tank Regt.

In the field, Sicily
30th July, 1943.

LIST OF WITNESSES

FOR THE PROSECUTION:

Lieut Agatino Distefano, Royal Carabinieri Police
5435058 Sgt Uniack D., C.M. Police
A55822 L/Cpl Faeth A.N. 11th Cdn Army Tank Regt.
B60506 Sgt Wood B., 11th Cdn Army Tank Regt.

FOR THE DEFENCE: Nil

LIST OF EXHIBITS

"A" - One Pistol Smith & Wesson .380 No.430423

CERTIFICATE RE DEFENCE

I hereby request that .....Capt. E.A.C. Army.....
be assigned to act as Defending Officer for my pending trial by Court Martial, if available.

G.J. Smyth

B62274 (G.J. Smyth) Tpr (accused)
11th Cdn Army Tank Regt

Field,
31 Jul 43

ADDITIONAL SUMMARY OF EVIDENCE

IN THE CASE OF

B62274 TROOPER G.J. SMYTH
11 Cdn Army Tank Regt.

J.C. Campbell Major
Judge Advocate.

At the direction of the Commanding Officer the evidence is taken on oath.

1ST WITNESS FOR THE PROSECUTION: Brigatiere Mele Angelo, Carabinieri Reali, SCORDIA, having been duly sworn states:-

"On 28 Jul 43, I was in the window of my office. I saw a woman calling me to come down. I went down. When I got down the accused pointed his pistol at me, motioning me to go back inside. I recognize the accused here as the soldier in question. He came upstairs then, there was a lieutenant of the Carabinieri. He pushed us into the next room and locked us up. One of the Carabinieri was out of the room and went away to call the Military Police. The saw the Carabinieri going and shot at him."

The witness is cross-examined by the accused as follows:-

Ques. 1 "Did anyone see me shoot at him."
Ans. 1 "No, we just heard the shot."

Ques. 2 "Do you think I was so drunk I didn't know what I was doing."
Ans. 2 "Yes."

Mele Angelo Brig.

Brigatiere Mele Angelo,
Carabinieri Reali,
SCORDIA.

2ND WITNESS FOR THE PROSECUTION: Carabinieri Gambera Angelo, having been duly sworn states:-

"On 28 Jul 43, I was in Headquarters room of the Carabinieri having lunch. I saw the Brigatieri coming upstairs with an English soldier behind him, who was pointing a gun at him. I recognize the accused as the soldier in question. I saw that the soldier was very drunk. With his gun in his hand he was saying "Wine, I want wine". He pushed the Carabinieri and the Brigatieri into a room. I ran outside to call the English M.Ps. While I was running downstairs I heard a shot fired in the hall. I remained outside."

The witness is cross-examined by the accused as follows

Ques.1 "How many shots did you hear fired."
Ans. 1 "One."

Ques.2 "Did I shoot at you."
Ans. 2 "No, just to frighten me."

RECEIVED
16 SEP 1943
Canadian Section
G.H.Q. 2nd Echn.

JCC

Gambera Angelo C. of.

Carabinieri Gambera Angelo,
Carabinieri Reali,
SCORDIA.

ADDITIONAL SUMMARY OF EVIDENCE

The accused having been cautioned in accordance with Rules of Procedure does not elect to give evidence

The accused does not call any witnesses for his defence.

I certify that the foregoing Additional Summary of Evidence of two pages was taken down by me in the presence of the accused, and that the Rules of Procedure 4 (c) (d) (e) & (f) have been complied with.

Dunstan McNichol Lt.

(D. McNichol) Lt.,
11 Cdn Army Tk Regt.

FIELD, SICILY
13 Aug 43

LIST OF WITNESSES

FOR THE PROSECUTION:

Brigatiere Mele Angelo - Carabinieri Reali, SCORDIA

Carabinieri Gamberta Angelo - Carabinieri Reali, SCORDIA

FOR THE DEFENCE:

NIL.

50-107.

Tyr. Smyth. S.J.

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused : B 62274 Tpr Gilbert Joseph SMYTH

	Charge. (Insert "alternative" where applicable.)	Plea. (See Instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st	AA Sec 40	NOT GUILTY	GUILTY	
2nd	AA Sec 40	NOT GUILTY	GUILTY	
3rd	AA Sec 41	NOT GUILTY	GUILTY	
4th				
5th				
6th				

(Note : As to findings for lesser offences see AA 56, RP 44 ; findings on alternative charges see MML p 483 fn 4 para 2, RP 44 ; special findings see RP 44 and MML p 753, and in loss of kit see RP 44 fn 6.)

~~At present under sentence~~ for ..... beginning on (date) ..... (1)

(1. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial—a total of 28 days, of which NIL days were spent in hospital.(1)

(1. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court :

To undergo Detention for a period of Sixty (60) Days.

(Sgd) ..... Judge-Advocate, if any. 19 JUN 45 Date awarded. (Sgd) [signature] President. (RP 45, 50.)

(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(5), RP 120(F), MML p 760.)

Date ..... (Sgd) ..... Commanding .....

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6.46(A), 51-56, 120, MML pp 739-761, KR Can 567-577. Acquittals require no confirmation and cannot be revised : AA 54(3). Sending back finding or sentence for revision by Court : AA 54(2), RP 120(C). If not confirmed, accused may be tried again : AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation : RP 53, MML p 65. Quashing after promulgation : KR Can 573. Duties and powers of reviewing offrs : AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 172 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is :

I confirm the finding and ~~mitigate the~~ sentence to read "To undergo detention for a period of thirty 30 days and confirm the ~~sentence as so mitigated~~ as I direct that the accused be ~~not committed to prison or detention barracks until further orders~~. (1. AA 57A. Delete if not used.)

(Sgd) [signature]

Date 20 June 45 Commanding Lt Col A.A.G. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 52, KR Can 576, 577.)

Accused.	Date.	Signature of Offr
B-62274 Tpr G J Smyth	26 Jun 45	(W R Riddle) Capt & Adjt

Promulgated and extracts taken DO #141 No. 2 C.A.C.R.U.
d/26 Jun 45

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED.

RECORDED AT CMHQ IN AB 160. 52-107

RECEIVED JUL 1945 AAG BRANCH E.M.H.Q.

CFA96 (In lieu of AF A42, 40/P & B/1696 10/44)
4/388

FIELD GENERAL COURT-MARTIAL

Convened by Brigadier T.J. RUTHERFORD Comd "E" GP H.Q. CRU dated 14 MAY 45

ACCUSED.

(As to the trial of two or more charged jointly see RP 16, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.)

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B 62274	Tpr	N/A	Gilbert Joseph	SMYTH	2 CACRU

PROCEEDINGS REVIEWED [signature] Capt. REVIEWING OFFICER, AAG BRANCH E.M.H.Q.

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) ENGLAND on (date(s)) 19 JUN 45

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, ~~waiting Member, JA, if any, and Offrs~~ under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED, IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(s) attached thereto.(1) The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3)

(1. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 105-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1030 hours trial commences.

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO.~~(2)

(1. KR Can 557. 2. AA 46(B), RP 60 fn 1. For effect see KR Can 563(c). Delete, if not applicable.)

A5. President to accused : Do you object to ..... as interpreter ? Ans .....

~~The Interpreter is sworn.~~(1) Do you object to CPL/67 Sgt CROSSLEY as shorthand writer ? Ans NO
The shorthand writer is sworn.(1)

(1. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused : Do you object to be tried by me as President or by any of the Members of the Court ?

Ans NO SIR (2)

(1. RP 110. 2. If no objection, waiting member retires. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 18, MML p 742.)

A7. The President, Members, ~~JA, if any, and Offrs under instr, if any~~, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc :

President	LT.COL	D.L. REDMAN	HQ CRU
Member	CAPT	R.B. CRANSTON	4 CDN RECT DEP
Member	LIEUT	E.B. KELLY	1 CDN RECT DEP
~~Judge-Advocate~~			
Prosecutor	CAPT	S. WOLFE	2 C ACR U
Defending Offr	LIEUT	C.L. HUGHES	2 C ACRU

Questions by President : Is the Prosecutor a lawyer ? Ans NO Is the Defending Offr a lawyer ? Ans NO (2)

(1. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
(2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 3.)

A8. The accused ..... before arraignment make(s) (no) (a) plea .....(1)

(1. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or in bar of trial (RP 36), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 16, 71), such plea, the addresses made in support or against, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RoP cited. Insert in A8 rank and name of the accused making the plea.)

A9. The accused is (are) arraigned (severally) on all charges in the charge sheet.(1) The accused does (do) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule.

(1. RP 32, 112. See para 1 of Instrs p 2. When more than one Charge Sheet see RP 62 ; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court (is sworn and) considers the Instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP* 37(*A*).) *As to withdrawal of alternative charges by Prosecutor see RP* 35(*C*). *No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP* 44(*H*).) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP* 38.) *As to refusing to plead or not pleading intelligibly see RP* 35(*A*). *As to plea when sentence may be death see RP* 35(*D*).

2. *The proceedings on each charge sheet* (*RP* 62) *after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) *Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below.* (*RP* 37(*A*).)

(b) *Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP* 37 (*A*) *and fn* 2 *as to discretion of Court,* (i) *to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or,* (ii) *to record the pleas as the findings of Court. After deciding between* (i) *and* (ii), *Court will proceed under foregoing instrs as may be appropriate to result of its decision. See MML p* 744 *Instrs* (2).

3. *As to responsibility of President to accused see RP* 59, 60(*C*); *powers and duties of JA see RP* 103; *duty of Prosecutor see RP* 60(*A*) (*B*); *duty and privileges of accused and Defending Offr see RP* 60(*C*), 87(*C*), 91, 92; *swearing and withdrawal of witnesses from Court see RP* 81, 82; *questioning of accused see RP* 80, 87(*C*), 92(*B*), *and of witnesses see RP* 83-85; *calling or re-calling of witnesses by Court, etc, see RP* 75-79, 86, 116; *use of Summary of Evidence at Trial see RP* 17(*E*) *fn* 6; *and responsibility of JA or Pres to record proceedings see RP* 94, 96.

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s)(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP* 35 *fn* 3. 2. *MML p* 54 *para* 47.)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your pleas to Not Guilty. In making a statement you will not be sworn or subject to cross-examination, and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement ? Ans .....(5)
(1. *RP* 37(*B*). 2. *RP* 37(*D*) *fn* 6. 3. *RP* 35(*B*) *fn* 5 *para* 3, *MML p* 54 *para* 47. 4. *See para* E3 *of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. The Court considers the accused's statement.(1) The Court decides (not) to advise accused to change his (their) plea(s) of Guilty to Not Guilty on ..... charge(s). The accused is (are) so informed, and he (they) change(s) his (their) plea(s) on ..... charge(s). Part I of the Schedule is amended accordingly.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is (are) not changed the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP* 35(*B*). *If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex ....., initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP* 37(*B*). *If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras* D1 *to* D8 *inclusive of Record Form D on p* 3. *RP* 37(*D*).)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charges on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP* 37(*A*) (*E*).)

C2. The charges on which accused pleaded GUILTY are read to him (them) again, and the trial is continued by using paras B1 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras* D1 *to* D8 *inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence ? Ans. NO - SIR .....(1)
(1. *If "yes", see RP* 39(*A*) *for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. The Prosecutor makes (~~an~~) (no) opening address.(1)
(1. *RP* 39(*B*), 60(*A*) (*B*), 90, 92(*C*) (*D*). *Record address per Notes, subject to RP* 95(*C*).)

D3. The evidence for the Prosecution is taken.(1) NOTE - ATT
(1. *RP* 39(*C*), *114, KR Can* 555. *Record evidence per Notes. As to Prosecutor giving evidence himself see RP* 39(*D*) (*E*).)

D4. The Prosecution is closed.(1) The Defending Offr submits that the evidence for the Prosecution does not ~~establish a prima facie case~~ against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court is re-opened, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), and that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on ~~the latter charge(s)~~.(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP* 40 *fn* 1. *See MML p* 72 *paras* 12-14 *and p* 81 *para* 42. 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para* D8.)
NB: If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP* 60(*C*), *114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence yourself on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither ? Ans TO MAKE A STATEMENT. Do you intend to call witnesses on your behalf ? Ans YES SIR. Are they witnesses as to character only ? Ans NO - SIR.
(1. *RP* 115. 2. *RP* 40(*A*), *see* 80(*D*). 3. *RP* 40 *fn* 10. 4. *RP* 40 *fns* 2, 9.)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1) NOTE ATT
(1. *RP* 114, 115, 116. *For procedure see Notes on back of Convening Order. CF* A95. *Evidence for accused as to his character should, if in his interest, be given before the finding. See RP* 46(*A*) *fn* 1, 86(*C*). *Note the further opportunity in para* E1 *of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP* 42, 103(*e*).)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court is (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP* 43, 117(*A*). *See Notes in Part I of Schedule.* 2. *RP* 44(*A*).)

D8. ~~The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the ..... charge(s), being subject to confirmation, will be promulgated later.~~(1)
~~Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.~~(2)
(1. *AA* 54(3) (*f*), *RP* 45, 120(*A*). 2. *AA* 54(7), *RP* 45, 117. *This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character ?(1)
Ans NO - SIR
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP* 37(*C*) *fn* 4, 46 *fn* 1. *Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy (copies) of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(1) (g) (h), and (ii) they purport to refer to (a) soldier(s) having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C respectively.(3)
(1. *MFB* 355 *or MFB* 296. 2. *MFM* 4. 3. *RP* 46, *KR Can* 558. *If above documents not produced, see RP* 46 *fn* 1 *para* 1.)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment ?(1) Ans NO THANK YOU (NOTE ATT)(2)
(1. *RP* 37(*C*), 46(*D*). 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP* 37(*F*) *fn* 7.)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA* 54(8), *RP* 120(*A*).)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him ~~and the JA, if any~~.(2)
(1. *When several accused tried separately see RP* 71 (*D*). *One sentence only, comprised of the punishment or punishments laid down in AA* 41, 44 *and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP* 48. *As to sentences see AA* 44, 138, 182, *RP* 46-50, 69, 118, 119(*A*), *KR Can* 308, 330, 563-564, *Overseas RO* 109/ 2323, *MML p* 60, 757-759. *As to sentences assigned for civil offences by the law of England see AA* 41(5), *MML p* 130. *When accused already under sentence of imprisonment or detention see AA* 44(10), 68(1), *KR Can* 564. 2. *RP* 50. *As to release from arrest by Confirming Offr see KR Can* 567. *As to assembly and disposal of record after trial see Instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

NO 2 CANADIAN ARMOURED CORPS REINFORCEMENT UNIT
CANADIAN ARMY ENGLAND

CHARGE SHEET

in the case of

B-62274 Trooper Gilbert Joseph SMYTH, of No 2 Canadian Armoured Corps Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:-

FIRST CHARGE
Sec 40
Army Act

WHILE ON ACTIVE SERVICE, AN ACT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

at about 2055 hrs 15 May 45 in Godalming, Surrey did, by urinating in the yard of "The Square", Godalming, publicly expose himself.

SECOND CHARGE
Sec 40
Army Act

WHILE ON ACTIVE SERVICE, CONDUCT TO THE PREJUDICE OF GOOD ORDER AND MILITARY DISCIPLINE

in that he

at about 2055 hrs 15 May 45 in Godalming, Surrey, did use profane, abusive and obscene language in saying to Mr C Counsell, Godalming, Surrey, "You Bloody, Fucking English Bastard" and in saying to the said Mr C Counsell and to others in hearing, at the same time holding his penis, "Come and take a suck at this if you want to, or anyone else who needs one" or words to that effect.

THIRD CHARGE
Sec 41
Army Act

WHILE ON ACTIVE SERVICE, COMMITTING A CIVIL OFFENCE, THAT IS TO SAY, COMMON ASSAULT

in that he

at Godalming, Surrey at about 2055 hrs 15 May 45 on being asked to cease urinating in the yard of "The Square", Godalming did assault Mr C Counsell, by seizing him.

(R.J. Colwell) Colonel
Officer Commanding
No. 2 C.A.C.R.U.

Laurentide Camp
Witley, Surrey
31 May 45

To be tried by Field General Court Martial

In the Field
14 Jun 45

(T.F. RUTHERFORD) Brit
Comd
"E" Op CRU

FIELD GENERAL COURT-MARTIAL

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. AA 49, 50, RP 104-107, 114. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns. KR Can 308, 328, 330.)

ACCUSED.

Number.	(a) Prmnt R.	(b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B62274	Tpr	N/A	Gilbert Joseph	SMYTH	2 CAOSU

CONVENING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above as the accused, being subject to military law, has ~~have~~ committed the offence(s) set forth in the Charge Sheet(s) attached and on the ~~(date)~~ 14 Jun 45 endorsed by me, ~~(or by an offr of my staff for me)~~, "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr.)~~
(Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s), and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~
(AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge-Advocate thereat the Offr mentioned hereunder.~~
(RP 106(E). Delete, if none appointed.)

PRESIDENT.

(Rank.)	(Must be named. RP 106.)	(Unit.)
Lt Col	D L Redman, VD	HQ CBU

MEMBERS.

(Rank.)	(Named or detailed. RP 106.)	(Unit.)
Capt	To be detailed by OC 4 Cdn Repat Depot	4 Cdn Repat Depot
Lt	To be detailed by OC 1 Cdn Repat Depot	1 Cdn Repat Depot

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 14 Jun 45

(Signed personally. RP 105 fn 2.)
(T J RUTHERFORD)
Brig (Rank.)
Commanding "E" Gp, CBU
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

4/38A (See overleaf for oaths and notes for use on trial.)

Medical Officers' Certificate
K.R. (Can) Para 557.

I certify that I have this morning examined B62274 (No) T.P.R. (Name)

SMYTH G.B.J. (Name) of #2.C.A.C.R.U. (Unit)

and in my opinion he is fit to undergo trial by Court Martial.

Station. FIELD

Date. 19 JUNE 1945

Sgd. [signature] Capt. (Medical Officer)

TRIAL OF

B-62274 TROOPER SMYTH GJ 2 C A C R U

PROSECUTION

FIRST WITNESS

Mr. C. COUNSELL, 1 "THE SQUARE", Godalming, England, sworn, states:-

Q. What happened on the night of 15 May near your home?
A. I had been out in town and on my way back home coming up the yard near High Street, I observed two soldiers standing in a corner urinating. I went to them and said, "Excuse me, but there is a lavatory across the way. This is a private yard". Whereupon the accused whom I recognize in this Court (pointing to the accused), started to abuse me. The other soldier went away. The accused said, "Never mind about me about having a piss, and you can have a good suck of it if you want to". Then, he caught me with his hand over my collar and tie, with a strangling manner and in a threatening position. He was holding me with his left hand and he had his right hand withdrawn and clenched. He then said, "You bloody, fucking English bastard". Mr Foster was lookingout of an upstair window and he came down. He told the accused to let me go. The accused kept using the expression"fucking bastard". In the end the soldier let me go and I went to get the police. The accused was still in the street. He was apprehended by the Canadian Provost.

THE PRESIDENT ASKED THE WITNESS AND THE PROSECUTOR AND THE DEFENCE TO PREPARE A ROUGH SKETCH OF THE SCENE OF THE URINATING, WHICH THEY DID, AGREEING ON SAME.

(SKETCH MARKED AND FILED EX 1)

The witness continued:-

On Ex 1, the scene of the offence is shown by a cross surrounded by a circle. It was an alley-way running off from Hight Street. The windows of the houses of Mr Foster and Mr Gore overlooked the scene. I was coming from High Street through the yard. I would have closed the gate which shut off the alley-way except that I saw the two soldiers there. The accused had been drinking to a certain extent. but there was nothing to show that he was drunk. This happened around 9 o'clock in the evening.

Q. What happened after you met the military police?
A. They came up in the street and I pointed the accused to them. He denied that he had been in the yard and said, "Which one of you fuckers I tried to hit?", referring to Mr Foster and myself. The military police then said, "You admit that you were up there?". Some soldiers who were there told him to say nothing. Whereupon, I went indoor; that was the end of my part in it.

Q. Was there any attempt on your part to get hold of the accused while you were talking to the military police?
A. No, it was just a verbal argument.

Q. When you went up and got the police, did you have to look for the accused to find him?
A. No, he was just walking along a wall and I pointed the accused to the police.

CROSS-EXAMINED

Q. Where was your wife and children when you first came to the gate?
A. The children were in bed and the wife was coming down to the yard.

Q. Did you see your wife before you saw the accused?
A. No.

Q. Have you had trouble before at that spot?
A. Yes, but upon being spoken to they turned around. There is a lavatory across the road in the car park which was specially made for the use of soldiers because there had been so much of this going on.

Q. Did you actually see the accused's private exposed?
A. Yes, Sir.

Q. After the police came, did you first try to have another trooper arrested by mistake?
A. No, Sir.

Q. When you first approached the accused were you endeavouring to get rid of them because of your wife?
A. Yes, I was because of the presence of ladies in the yard all around. They could have come out at any moment.

Q. If you were standing with the accused under the archway could Mr. or Mrs Foster have seen you from their living-room window?
A. No, but we were not under the archway. Their house extends over the alley-way but we weren't there.

Q. Do you deny being in a temper when you approached them?
A. I absolutely deny that I was in a bad temper.

Q. Did you ever wave your hand in front of the accused?
A. When he had me by the throat, I pulled him away with my hand.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83(B)

SECOND WITNESS

MR. R.C. FOSTER, THE SQUARE, 108A High Street, Godalming, England, sworn, states:-

Q. Will you tell us what happened on the night of 15 May near your home?
A. I was upstairs on the third floor of my home when I heard a commotion in the yard. I looked out of the window and saw two Canadain soldiers urinating against the wall. The accused, whom I recognize in this Court is one of the two soldiers. I can't recognize the other one in this room. Just at the moment, Mr Counsell entered the yard and asked the two soldiers to leave, the windows were opened and I heard him say that. One of them immediately left, it was not the accused. The accused started an argument, using foul language. I don't remember his first remarks but I know it was foul language. Mr Counsell asked him again to leave. The accused turned around and said, "Take a suck at this you fucker". When he said that, his back was turned to me and he appeared to have his hand near his private. Then, he grabbed Mr Counsell by the collar and tie with his right hand. He had his other handas if to hit him. But he didn't do so. As soon as I saw him grab Mr Counsell, I ran out downstairs to his aid. As I approached he let go of Mr Counsell and I told him to leave, which he did.

Q. Did he say anything to you?
A. No, not a word.

Q. Did younotice if his trousers were done or not?
A. No.

Q. What happened after that?
A. Mr Counsell then went to find the Provost which he did and brought them back to the scene. The accused was then in High Street near there. The Provost then took evidence from Mr Counsell in the presence of the accused and took evidence from the accused. He said to me, "Are you the little fucker I tried to hit in the alley-way?" In the yard at the time the accused was holding Mr Counsell's neck, Mrs Gore looking out of the window said she would throw a bowl of water over the accused if he didn't go away. I had said, "No", to his question. My wife came and took me away.

Q. Where was Mrs Counsell?
A. She was standing at the door of her house and [illegible] the urinating but she might have seen the accused when he turned around and made the remark to Mr Counsell before he grabbed him by the collar.

Q. Where were Mr Counsell's children?
A. The two children were running back and forth to the upstairs' window and Mrs Counsell was disappearing to go upstairs to keep them in bed. My wife didn't appear until everything was over, that is just as the accused was going away.

Q. Was there anyone else around?
A. No, Sir, not as far as I know.

Q. Did you go with Mr Counsell to get the police?
A. No.

Q. Were you with him when he brought the police over?
A. I was standing at the entry to the yard when Mr Counsell brought the police down.

Q. There is no evidence of a fight between Mr Counsell and the accused while the provost were on the scene?
A. No.

Q. No one used threatening language towards eachother?
A. To be quite honest, I probably would not notice, I was feeling quite hectic.

Q. Will you look at Ex 1, is it accurate?
A. Yes, Sir, it is quite reasonably accurate.

CROSS-EXAMINED

Q. From your first position upstairs where were you when you first looked out?
A. In the centre of the room, which extends over the archway.

Q. Could you from that position see Mr Counsell in High Street?
A. No, I couldn't have seen Mr Counsell's action or gesture as he was approaching the accused under the archway but I did see him when he came from under the archway towards the accused.

Q. What made you look out of the window?
A. The language and Mr Counsell's challenge.

Q. The scene was already under way, Mr Counsell had approached when you looked out of the window?
A. Yes, he was 6 to 7 feet from the accused when I first saw him.

Q. Did Mr Counsell appear in a rage?
A. No.

Q. Did he use any threatening language or make a threatening gesture?
A. No, he had just a "Just go on" attitude.
The second time he waved his arms a little more.

Q. At the time the accused refused to go, did he attempt to seize Mr Counsell?
A. No, he didn't.

Q. On the first occasion, the accused made no attempt to assault Mr Counsell?
A. No.

Q. Nor the second time?
A. No. Mr Counsell was more forceful in respect to his second request.

Q. When the accused used those words about taking a suck at this, that could have been a gesture?
A. If you like to put it that way but to me it was totally different.

Q. From your position upstairs could you definitely identify the accused?
A. No.

Q. You didn't identify him until you went downstairs?
A. Yes. Mrs Foster couldn't identify the soldier from upstairs.

Q. If you couldn't identify the exposure, she couldn't?
A. That's right.

Q. When the Provost arrived did Mr Counsell turn to some one else and endeavour to have the provost arrest him and then turned to the accused and said, "This is theman"?
A. I have no recollection.

Q. Have other troopers used the alley-way as a urinal?
A. Hundreds of them, Sir.

Q. Did Mr Counsell ever say hewas annoyed about it?
A. Yes, and this one was unlucky. It is a universal complaint in our neighbourhood.

IN THE OPINIONOF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83 (B)

THIRD WITNESS

K-66747 L/CPL KENNEDY, DH, No 9 CDN PROV COY, sworn, states:-

Q. Would you tell the Court what happend on the night of 15 May 45?
A. At approx 2055, I was approached by a civilian who introduced himself to me as a Mr Counsell. As a result of what he said to me, we followed him and he pointed to me the accused whom I recognize in this Court; Mr Counsell told me in the presence of the accused that he saw the accused urinating against the side of his house. He gave me further particulars. The accused denied the charge to me and said that he was not there at all and that he didn't know where the place was.

Q. Did you hear him say anything to anybody else?
A. I couldn't remember that; he was denying all the time and said it was not him. Mr Counsell kept saying it was him. The accused also told me that he had witnesses to swear on his behalf.

Q. Did you form any opinion as to whether the accused had been drinking?
A. Yes, he had been drinking; it is hard to say whether he was drunk or not; he might have been.

Q. What sort of language did the accused use after you met him?
A. Well, Sir the accused didn't say very much to me in my presence. There were so many around there. There were a few swear words, Sir but I was so busy with Mr Counsell that I couldn't see who was doing all the swearing and what it was all about.

Q. Did Mr Counsell threaten the accused in your presence?
A. No, Sir.

CROSS-EXAMINED

Q. Where were you standing when you made the actual arrest?
A. About10 yds from Mr Counsell's house on the main road.

Q. Did the accused make any threatening gesture?
A. No, Sir, not that I know.

Q. You couldn't accuse him of using indecent or foul language?
A. No, Sir, I couldn't.

Q. When you were with Mr Counsell to make the arrest, did Mr Counsell ask you to arrest someone else and then said, "This is theman", pointing to the accused?
A. No, he pointed out the accused to me right away.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83 (B).

FOURTH WITNESS

Mrs. C. COUNSELL, 1 "THE SQUARE", Godalming, England, sworn, states:-

Q. Do you remember the evening of 15 May 45?
A. Yes.

Q. Did your husband have something to do with some Canadian Soldier that night?
A. Yes.

Q. Where did the trouble take place?
A. Outside Mr Foster's house, it is in a yard running off High Street. I saw two soldiers.

Q. Will you look around this room and tell us if the soldier your husband had trouble with is here?
A. This is the one on the right (pointing to the one on the right and who happens to be the Orderly Sergeant)(The witness then said) I beg your pardon, this is the one (pointing towards the accused; to the best of my knowledge he is the one. I noticed that he was short and a little shorter than my husband.

Q. Did you personally see any impropriety of any nature?
A. No.

CROSS-EXAMINED

Q. Were you out on the street when the soldier was arrested on 15 May?
A. No, I was attending to my two children.

IN THE OPINION OF THE COURT IT IS UNNECESSARY TO COMPLY WITH RP 83 (B).

FIFTH WITNESS

MRS R.C. FOSTER, 108A HIGH STREET, Godalming, sworn, states:-

Q. Do you remember the night of 15 May?
A. Yes.

Q. Was there some disturbance that night?
A. Yes.

Q. Who were the persons involved in the disturbance?
A. Mr Counsell and a soldier, a Cdn soldier.

Q. Would you look around this room and see if that soldier is in here?
A. Yes, this is the one (pointing to the accused).

Q. Did you see his face that night?
A. Yes, but had I seen him in a crowd I verymuch doubt that I would have recognized him.

Q. Did you personally see any impropriety?
A. No.

CROSS-EXAMINED

Q. Did you see Mr Counsell make any threatening gesture?
A. No.

Q. What made you look out of the window?
A. I heard a general disturbance.

Q. Did you see Mr Counsell approach the accused?
A. No.

THE PROSECUTION IS CLOSED

FIRST WITNESS - DEFENCE -

THE ACCUSED ELECTED TO MAKE A STATEMENT NOT ON OATH:-

To the best of my knowledge on 15 May 45, I left camp with three or four fellows to go "pub crawling". We drank in quite a few pubs in Godalming and I drank quite a bit; I had spirits as well as beer. The last pub I remember being in was the Sun. After I left the Sun, I don't exactly remember where I have gone or where I had been. The Provost stopped me and had a civilian with him. The civilian was making charges against me which charges I then denied. I no memory of the event of which the civilian was talking about. I had just arrived from Italy on 8 May and our first pay-day was on the 15. I had been 22 months in Italy with the Ontario Regt. When I came here to 2 CACRU from Reception Depot, I met a lot of fellows that had come back before me and we went out to celebrate. After hearing the evidence to-day, the things which they said may be true but I have absolutely no memory of them.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83 (B).

SECOND WITNESS

B-41049, Tpr RICHMOND, DG, sworn, states:-

Q. Will you tell the Court what you remember regarding your drunk on 15 May 45?
A. On the night of 15 May, we came out of a pub, I think it was the Sun, the accused was with me and there were someothers. We were walking down the street and I noticed a civilian coming to the accused and grabbed him. The accused pushed him and walked down the street. There were no Provost around. We walked a few yards and the civilian and the Provost came up.

Q. How much did you and the accused have to drink that night?
A. I have no idea.

Q. Were you feeling fairly happy?
A. Yes, when we came out of The Sun Pub.

Q. Did the accused have more than you had?
A. He had about the same as I had.

Q. Did you leave High Street at all?
A. No.

Q. Was it pay-day?
A. Yes.

Q. Did you see Mr Counsell accost the accused?
A. Yes, he did.

Q. When the Provost arrived did the accused behave himself and were things under control?
A. Yes but there were naturally words and the civilian asked the Provost to put the accused on charge. The accused wanted to know why he was to be put on charge; he was well behaved otherwise.

CROSS-EXAMINED

Q. You are quite certain that you didn't leave High Street?
A. Yes.

Q. Is your knowledge a little be hazy?
A. Yes, it could be.

Q. Do you remember what the civilian said to the accused?
A. I don't remember.

IN THE OPINION OF THE COURT IT IS NOT NECESSARY TO COMPLY WITH RP 83 (B)

STATEMENT BY THE PROSECUTOR ON THE FINDINGS

On the first charge we have the evidence of Mr Counsell and Mr Foster. The accused did go up in the yard; he did urinate; he did expose himself. We are not certain that he exposed himself in front of Foster. On the second charge, we have the evidence of both Mr Foster and Counsell which are almost identical as to the language which the accused used towards Mr Counsell. We also have the evidence on the manner in which these words were spoken. On the third charge, we have the evidence of Mr Foster and Counsell; and while it was not brought by Mrs Counsell, we have the evidence of Counsell and Foster that the accused grabbed hold Mr Counsell - thus assaulting him.

STATEMENT BY THE DEFENCE ON THE FINDINGS

On the first charge, publicly exposing himself, the accused denies having been there to his knowledge and urinating in the alley-way. As to the public exposing of himself, no one but Mr Counsell appears to have seen such an act, if it was made at all; it could have been a gesture. As regards the language used, the accused had just returned from a theatre of war; the language in such places is far more severe than it is here on account of the excitement and due to his drinking he may have used more forceful language than he realized. On the third charge, no one saw Mr Counsell's first entrance into the yard. On Mr Foster's evidence, Mr Counsell told the accused first to move away; there was no attempt to assault him at that time; on the second time when he told the accused to move, Mr Counsell was more angry and may have used a threatening gesture which caused the accused to go on the defensive. The accused is a trained soldier of "X" Echelon. He has been trained in the art of warfare. A soldier is taught on defence that the best defence is an offensive. Mr

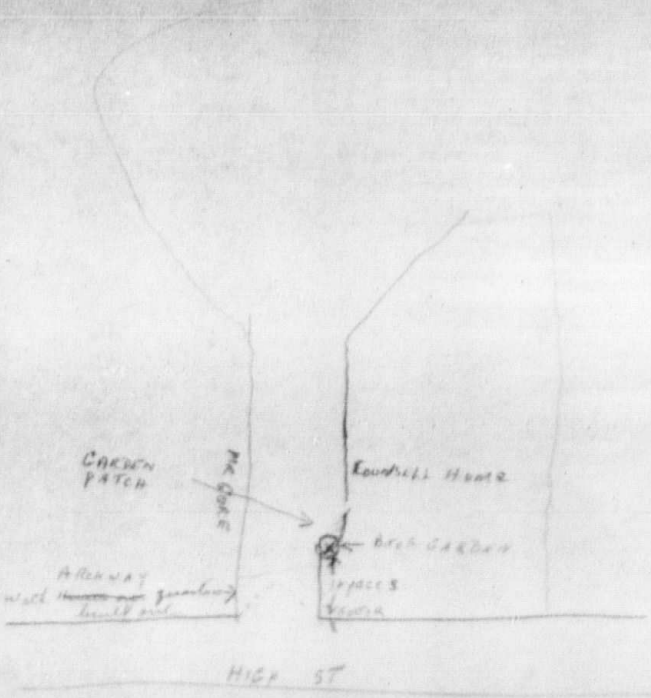
Counsell's attitude appeared violent to him, he would immediately hold him off. The accused has no recollection of this. There appears to be no one who actually can say that this was done and the accused, when he was arrested by the Provost, at the sight of the Provost certainly came to because his manners then were such that they had no complaint about him whatsoever. The accused admits that he has no recollection whatsoever of the incident in question.

THE COURT CLOSES

THE COURT RE-OPENS

PLEA IN MITIGATION OF PUNISHMENT

The accused was drunk when these offences were committed and drunkenness is always regarded as a strong mitigant. There was no element of premeditation or intent involved. The accused has also been under 28 days' close arrest. He is married and his wife is in Canada. The accused had just returned from 22 monthsin Italy and had hardly acquainted himself to the conditions here as existent while living amongst troops in the field. He is A "F" Echelon man, serving inthe line with the actually fighting forces. He re-joined many of his comrades here leading up to the spree and possibly excess of drinking. The accused didn't actually hit anybody that night. He simply reacted to provocation. His conduct before the provost was completely satisfactory to the Provost.



EX 1

M.F.B. 155
30M—11-41 (2275)
H.Q. 1772-39-620
A.F.B. 296

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
B-622274	Trooper	SMYTH, Gilbert Joseph	2 CACRU

1. The following is a fair and true summary of the entries in the Regimental Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For A.A. Sec 40	times	A.A. Sec 40	3	times
For A.A. Sec 15(1)	times	A.A. Sec 15(1)	1	times
For	times			times
For	times			times

or,

Note.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2.

or,

Previous convictions of the accused by a court-martial or a civil court, of summary awards under Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

4. The accused has been in confinement awaiting trial on the present charges, for 28 days in military custody, making a total of 28 days in custody.

5. The present age of the accused according to his attestation paper is 26 yrs 4 mos.

6. The date of his attestation specified in his attestation paper is 27 Oct 41

7.

8.

9. The accused is in possession of or entitled to military decoration, military possession of or entitled to). State any military decoration CVSM & Clasp

10.

EXB

[illegible] The [illegible] Royal Canadian Air Force the rank of [illegible]

[illegible] dated [illegible], [illegible] the rank of [illegible]

dated [illegible].

[illegible] Date of promotion.

[illegible] years.

[illegible] years.

[illegible] years.

[illegible] be struck off the Regimental establishment, the [illegible]

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Air Force Army Act, and of cases in which trial has been dispensed with of accused, Number R-82274 Rank Trooper Unit

Name Gilbert Joseph SMYTH of No 2 Cdn Armd Corps Rft [illegible]

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
P.G.C.M.	Field 21 Aug 43	Sec 19 AA Drunkeness Sec 22 AA When in lawful custody attempting to escape. Sec 6 (3) AA Assaulting with a pistol an inhabitant of the country in which he was serving.	90 days F.P. and to forfeit all ordinary pay for a period of 90 days	

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this Thirty-First day of June 1945

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

(R. J. Colwell) Colonel
Officer Commanding
No. 2 C.A.C.R.U.

No E-62274 Name SMYTH G J | Sqn, Battery, or Company | Corps | Date of enlistment 27-10-41 | GC Badges | Service or Proficiency Pay | MFM 6 (AFB 122) 40/PAS/125 (3428)

Date of last entry in Company Conduct Sheet: N/A | No and date of last drunk: N/a | Period not reckoning towards freedom from extra fine: n-a | Sheet No 1 | Signature OC Company, etc: G W Creamen Capt | Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with (if in)	By whom awarded	Remarks
Dettingen Bks	26-5-42	Tpr		Sec 40 AA Conduct to the prejudice etc (delayed in obeying an order	Sgt Smily CB Cpl Daxey	72 hrs Det	27-5-42	Lt Col Locke	
Dettingen Bks	27-6-42	Tpr		Sec 40 AA Conduct to the prejudice etc (on parade unshaven improperly dressed and failed to pay compliments to a senior officer)	RSM Slater	3 C B	2 -7-42	Capt H R Thornton	
Dettingen Bks	24-9-42	Tpr		Sec 15(1) WOAS: AWL from 1800 hrs to 1900 hrs on 24 Sep 42	L/Cpl Allen W	4 C B	25-9-42	Capt H J B Thornton	
Field	30-10-42	Tpr		Sec 40 AA Conduct to the prejudice etc(1) Improperly dressed and (2) making an improper remark to an NCO of the Military Police.	Documentar	3 C B	2-11-42	Lt E K Kennedy	

(PTO)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	7-6-43	Tpr		Sec 40 AA Conduct to the prejudice etc. at 1330 hrs did use insubordinate language to his superior officer, said, "What right has an officer to tel me to get a haircut."	Lt Campbell Sgt Gladman	168 hrs Detention	7-6-43	Lt-Col M J Muster	
Field	28 Jul 43	Tpr		(1) Sec 14 AA Drunkeness (2) Sec 22 AA When in lawful custody attempting to escape (3) Sec 6(3)d AA Assaulting with a pistol an inhabitant of the country in which he was serving.	Documentary	90 day F.P. and to forfeit all ordinary pay for a period of 90 days.	21 Aug 43	FGCM	

Certified True Copy

for Lt. [illegible]

(W. R. Little) Capt & Adjutant
No. 2 C.A.C.R.U.

NO. 2 CANADIAN ARMOURED CORPS REINFORCEMENT UNIT

SUMMARY OF EVIDENCE

In the case

of

B-62274 Tpr SMYTH, Gilbert Joseph, No 2 Canadian Armoured Corps Reinforcement Unit, a soldier of the Canadian Army Overseas.

The Comd Offr directs that all evidence be taken on oath.

FIRST WITNESS For the Prosecution

Mr. R C Foster, the Square, Godalming having been duly sworn, states:-

"We were upon the top floor above this address when we heard a rumpus outside. On glancing out the window I saw two Canadian soldiers urinating against the wall of my garden. At that moment a Mr Counsell, who resides in the square arrived home. He immediately challenged them and asked them to go. One immediately left, but the accused started using obscene language saying, "Take a suck of this you fucker" and then laid hands on him. At this I decided to interfere. I went downstairs and asked him to let go which he did. He then caused further trouble by refusing to go and using obscene ~~language~~, similar to above remarks in the presence of three women in the vicinity who were looking out of their first story windows. He then proceeded into the high street. I kept my eye on him while Mr Counsell went to fetch the police or provost. The provost were first on the scene. During the argument with the Provost he, the accused said, "Are you the li le fucker I tried to hit?" I then came away.

QUESTIONED BY THE ACCUSED

Q.1 Were there any other soldiers who came to the scene in the yard?

A.1 Definitely No.

The evidence was read back to the witness who desires to make the following alteration:-

"The addres of "the Square" is an error and sho ld be 108A High Street, which backs on to the "Square" to which I have full rights of way to the rear of my building."

R. C. Foster

(R C Foster)

The witness withdraws

SECOND WITNESS For the Prosecution

Mr C Counsell of 1 "the Square" High Street Godalming having been duly sworn, states:-

"At approximately 8.45 in the evening I was coming up the yard, when I came through the gates this soldier and another were both using the yard as a lavatory in the corner. I told them "This is no place for a lavatory. There's one over the road." The other soldier there upon went out. This man stayed with his private hanging out. He took hold of it and said "here have a fucking good suck if you like or anyone else who needs one." There were ladies present up above, up on the roof and my wife was coming down the garden with the two children. I then told the soldier to "clear on out" and he then caught me hold by the tie in a strangle hold calling me a "Bloody fucking English Bastard."

Several people gathered at the bottom, one of them came up and told the soldier to let go of me. Mr Foster then came down and tried to part us. When I was parted I told him I'd fetch the police, and he answered, "You can go and get the fucking police.". I went over into the High Street and brought two military police back. The soldier then denied being here to the military police. He then said, "Which was the fucker I tried to hit." After some arguing and wrangling I left him to the military police.

QUESTIONED BY OFFICER TAKING SUMMARY OF EVIDENCE

Q.1 Was there any other soldier present when he first spoke to you with his penis out?

A.1 No, the other soldier had turned his back and walked out.

Q.2 Was Mr Foster present when he had hold of his penis and said, "Take a suck of this."

A.2 Mr Foster was on the roof overlooking the yard.

Q.3 Could you identify the other soldier if you saw him?

A.3 No, I couldn't.

Q.4 Did you at any time other than when he had hold of your tie have any physical contact with the soldier?

A.4 No.

Q.5 Who was present when the soldier said, "Are you the little fucker I tried to hit?

A.5 The military police, Mr Foster and a crowd of others unknown to me.

Q.6 Had the soldier properly adjusted his clothing before he grabbed hold of you?

A.6 No, Sir.

Q.7 Was it light out?

A.7 Yes, it was approximately 8.45.

QUESTIONED BY THE ACCUSED

Q.1 Did you see Mr Foster on the roof?

A.1 No, I saw him come out the yard door from that direction.

C. Counsell

(C Counsell)

The witness withdraws

THIRD WITNESS for the Prosecution

B-66747 L/Cpl Kennedy, D H having been duly sworn, states:-

"At approximately 2.55 hrs Mr C Counsell approached me on High Street, Godalming and asked me to investigate a soldier, whom he wished me to put under arrest. I checked the soldier and found it to be B-62274 Pte Smyth G J. Mr Counsell laid his complaint and Pte Smyth denied the charge.

QUESTIONED BY THE OFFICER TAKING THE SUMMARY OF EVIDENCE

Q.1 Did the civilian attempt to seize or strike Tpr Smyth in your presence?

A.1 No, sir.

Q.2 Did the civilian make any threatening gesture?

A.2 No, sir.

Q.3 Did Smyth call the civilian any names in your presence?

A.3 No, sir.

Q.4 In the course of the conversation did Smyth make any reference to having been in the yard of the civilian?

A.4 I can't remember, sir.

The accused declined to cross examine the witness.

D H Kennedy
(D H Kennedy)
K-66747 L/Cpl

The witness withdraws

FIRST WITNESS For the Defence

B-61624 Tpr Richmond, D G, having been duly sworn, states:-

"I, Tpr Richmond, was with Tpr Smyth the whole of the evening of the 15 May 45. I did not see Tpr Smyth commit any indecent act. We were walking along the street when a civilian whom I had not see before grabbed Tpr Smyth and tried to hit him. Tpr Smyth defended himself by holding the civilian away from him. The Provost came on the scene and the civilian asked the Provost to place Tpr Smyth on charge. There was no abusive language used.

The accused declines to cross-examine this witness.

D G Richmond
(D G Richmond)
B-61624

The witness withdraws

B-61624 Tpr Richmond, D G having been recalled and duly sworn was questioned by the officer taking the summary.

Q.1 Did Tpr Smyth leave you at any time during the evening?

A.1 No, sir.

Q.2 Did you leave Tpr Smyth at any time during the evening?

A.2 No, sir, except that about 7 o'clock I went into the British Legion Headquarters to get a membership card and about 20 minutes later Smyth joined me there.

Q.3 Did you go up the narrow alleyway, or laneway leading up to the Square at any time that evening?

A.3 No, sir.

Q.4 Did you go up any narrow laneway, alleyway or road way off High street.

A.4 Yes, we went up a narrow street which leads to the angel.

Q.5 Did you leave the high street at any time to urinate?

A.5 No, sir.

Q.6 Did you see Tpr Smyth urinate anywhere other than in a proper lavatory?

A.6 No, sir.

Q.7 Who beside yourself and Smyth were around when the civilian tried to hit Smyth?

A.7 I couldn't say sir, I don't know how many were around.

Q.8 During the conversation between yourselves, the civilian and the provost did the civilian try to hit Smyth?

A.8 I don't know if he tried to hit him but he was waving his hand in front of Smyth's face.

Q.9 Did the civilian make a threatening gesture towards Smyth.

A.9 I don't know, sir.

Q.10 While the provost were on the scene did the civilian do anything to cause Smyth to step back in self-defence?

A.10 I don't know, sir.

Q.11 Were Smyth and the civilian engaged in fighting or wrangling when the Provost came on the scene?

A.11 The civilians came on the scene with the provost.

Q.12 When did you first see the shorter of the two civilians?

A.12 When he tried to hit Smyth.

Q.13 Were the Provost present when he tried to hit Smyth?

A.13 No, sir.

Q.14 What happened after the civilian came up and tried to hit Smyth?

A.14 Smyth, grabbed him and held him away from him, then shoved him away and we turned and started walking down the street. We had gone a few yards when the civilian and the Provost stopped us.

The accused declines to cross-examine the witness further.

(D. G Richmond)
B-61624

The witness withdraws

SECOND WITNESS For the Defence

B-145765 Tpr Walsh, K F having been duly sworn, states:-

"We left camp and went to Godalming. We were in two pubs. Coming out of the last one, the Sun, we were going to have one more drink and then go home. We were walking up the street and suddenly noticed Smyth was missing. Then Smyth and a civilian came up the street and the civilian stopped a Provost and the civilian laid a charge against Smyth.

QUESTIONED BY THE OFFICER TAKING THE SUMMARY

Q.1 Did Smyth say anything to the civilian in your hearing?

A.1 No, sir.

Q.2 Did Smyth say anything in the way of excusing himself when you were walking up the street after leaving the "Sun" ?

A.2 He must have left us before we left the Sun.

Q.3 In your statement you mention neither the date nor the time. Can you give me them?

A.3 It was 15 May and approximately nine o'clock.

QUESTIONED BY THE ACCUSED

Q.1 Do you know when I left you?

A.1 I'm not sure.

K F Walsh
(K F Walsh)
B-145765

The witness withdraws

Tpr Walsh was re-called for further questioning by the officer taking the Summary

QUESTIONED BY THE OFFICER TAKING THE SUMMARY

Q.4 During the conversation between the civilian, the provost and Tpr Smyth did the civilian make any attempts to seize Smyth?

A.4 Yes, he did sir. I was across the street at the time and I saw the civilian try to grab Smyth.

Q.5 Was the civilian alone?

A.5 No sir, there was the man who made the accusation and another.

Q.6 Did Smyth express himself in any way when the civilian made a grab for him?

A.6 I didn't hear him.

Q.7 Who did you leave the pub with to go up the street?

A.7 Tpr Pyper, sir.

Q.8 How many were in your party?

A.8 Approximately half a dozen.

CROSS-EXAMINED BY THE ACCUSED

Q.2 Was there any obscene language used in your hearing?

A.2 No.

K.F. Walsh
(K F Walsh)
B-145765

The witness withdrews

THIRD WITNESS For the Defence

B-61020 Tpr Pyper, R, having been duly sworn, states:-

"On the night of 15 May 45 I was in the company of Tpr Smyth, Tpr Walsh and Tpr Richmond. We arrived in Godalming about 7.30 or eight o'clock. We had a few drinks together and then decided to go to the Angel Hotel. Tpr Smyth may or may not have left the pub before me. Tpr Walsh and myself were walking slowly up the street when we heard a commotion just behind us. On looking around Tpr Smyth was talking to two Provost and two civilians. We immediately went up to them to see what the trouble was. The Provost asked us all for our pay-books. After taking down the names and numbers we asked him what if any were the charges. He merely mentioned off handedly something about "Improper language". We could get no further information, but at that moment a Provost station wagon drove up and the corporal who seemed to be in charge of the detachment got out and said we'd hear about it later.

QUESTIONED BY THE OFFICER TAKING THE SUMMARY OF EVIDENCE

Q.1 Did Tpr Smyth address any remarks to either of the civilians in your hearing?

A.1 No, sir.

Q.2 Do you know the name of the first pub of which you spoke?

A.2 I'm not quite sure sir, I think it's the Sun.

Q.3 Did Tpr Smyth say anything to you before you left the pub to go to the Angel in the way of excusing himself?

A.3 No, sir.

Q.4 When you turned about at the sound of the commotion were the two civilians there?

A.4 Yes, sir.

Q.5 About how much beer would you say you each had before you left to go to the Angel?

A.5 I couldn't say, sir. We were drinking in two rooms and not all together.

Q.6 Did you see either of the civilians seize or attempt to seize Tpr Smyth?

A.6 The shorter of the two civilians was standing to the right of the Provost who had his right arm extended keeping him back. The civilian reached over the provost's arm and shook his clenched fist in Tpr Smyth's face.

Q.7 Did Smyth attempt to defend himself?

A.7 No, sir, he just stepped back a little against the wall and raised his arm to protect himself.

CROSS-EXAMINED BY THE ACCUSED

Q.1 Did you miss Tpr Richmond at the same time as you missed me?

A.1 Yes, I did, Walsh and I left the pub alone.

R. Pyper
(R. Pyper)
B-61020

The witness withdraws

QUESTION TO THE ACCUSED BY THE OFFICER TAKING DOWN THE SUMMARY OF EVIDENCE

Q.1 Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

ANSWER BY THE ACCUSED

A.1 I do not wish to make any statement at this time.

G J Smyth

B-62274 Tpr Smyth, G J
No. 2 C.A.C.R.U.

I certify that the foregoing Summary of Evidence consisting of seven pages was taken down by me in the presence of the accused and that Rules of Procedure 4(c)(d)(e)(f) have been complied with.

(E Wolfe) Lt
No 2 C.A.C.R.U.

NO. 2 CANADIAN ARMOURED CORPS REINFORCEMENT UNIT

ADDITIONAL SUMMARY OF EVIDENCE

In the case

of

B-62274 Tpr SMYTH, Gilbert Joseph, No 2 Canadian Armoured Corps Reinforcement Unit, a soldier of the Canadian Army Overseas.

The Comd Offr directs that all evidence be taken on oath.

FOURTH WITNESS For the Prosecution

Mrs C Counsell of No 1, The Square having been duly sworn, states:

"I had just come in from down the yard and I saw two soldiers standing in the corner. I came straight in and then my husband came up the yard and I heard sounds of an argument. I looked out and saw one of the soldiers holding him by the collar and tie. I came straight in again to the children. Mr Foster came outside at practically the same time. The argument continued and I stayed indoors.

QUESTIONED BY THE OFFICER TAKING THE SUMMARY OF EVIDENCE

Q.1 Could you identify the man who was holding your husband by the collar and tie?

A.1 Yes, but I can't identify the other soldier because his back was turned.

Q.2 When you came inside did you continue to watch the argument through the window?

A.2 Well I was standing at this window and I couldn't see much, only the soldier holding my husband.

Q.3 When Mr Foster came on the scene did the soldier release your husband?

A.3 I can't say, I was indoors, I didn't notice that.

Q.4 Did you see the soldier expose himself in any way?

A.4 No.

The accused declines to cross examine the witness.

C. Counsell
(C Counsell)

The witness withdraws

FIFTH WITNESS For the Prosecution

Mrs R C Foster of 108A High Street, Godalming, Surrey having been duly sworn, states:-

"I was on the floor above this one, quite high up. I saw two soldiers there and then I heard angry voices. I can't say what the words were. I looked down just in time to see this soldier holding Mr Counsell. The other soldier had gone. I saw him go.

QUESTIONED BY THE OFFICER TAKING THE SUMMARY OF EVIDENCE

Q.1 Did you see the soldier release Mr Counsell?

A.1 No, my husband went down and I followed. We were two flights up and by the time I got down they were up in the high street.

Q.2 Did you see the soldier expose himself in any way?

A.2 No, I saw the back of him first. I saw his face when he turned around.

The accused declines to cross examine the witness.

W. M. Foster.

(W M Foster)

The witness withdraws

QUESTION TO THE ACCUSED BY THE OFFICER TAKING DOWN THE SUMMARY OF EVIDENCE

Q.1 Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or to give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.

ANSWER BY THE ACCUSED

A.1 I do not wish to make any statement at this time.

R J. Smyth

B-62274 Tpr Smyth, R J
No. 2 C.A.C.R.U.

I certify that the foregoing Summary of Evidence consisting of two pages was taken down by me in the presence of the accused and that Rules of Procedure 4(c)(d)(e) and (f) have been complied with.

(L. W. Wolfe) Lt
No. 2 C.A.C.R.U.

LIST OF WITNESSES FOR THE PROSECUTION

(2) Mr. R C Foster	The Square. 108A High Street Godalming.
(6) Mr. C Counsell	1 "The Square" Godalming
(5) K-66747 L/Cpl Kennedy, D H	No 9 Cdn Provost Company Cdn Army Overseas
(4) Mrs C Counsell	1 "The Square" Godalming
(3) Mrs R C Foster	108A High Street Godalming

STATEMENT IN ACCORDANCE WITH RULE OF PROCEDURE 14(B)

I, B-62274 Tpr SMYTH, Gilbert Joseph, No 2 CACRU desire to have an officer assigned to represent me at my trial by Court Martial.

If he is available, I desire the services of

G J Smyth

(B-62274 Tpr Smyth, G J)
No 2 C.A.C.R.U.

Witley, Surrey
31 May 45

WW-135
PTE SMYTH J.

L. M. Rhodenizer Major A
WW-135

Correspondence to be PINNED here.

Army Form A.3.

Form for Assembly and Proceedings of Field General Court Martial on Active Service.

PROCEEDINGS.

A.

Order convening the Court.

On Active Service, this tenth day of November, 1943.

Whereas it appears to me, the undersigned, an officer in Command of 3 Cdn Inf Div, on active service, that the persons named in the annexed Schedule, being subject to Military Law, have committed the offences in the said Schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court Martial; *~~[and that it is not practicable to delay the trial for reference to a superior qualified officer.]~~

*Omit where Convening Officer is a Commanding Officer or is of Field Rank.

I hereby convene a Field General Court Martial to try the said persons, and to consist of the Officers appointed or detailed hereunder.

*Omit if not applicable.

*~~[I am unable to appoint—~~

*~~(1. Three Officers to form the Court.)~~

*~~(2. A Field Officer as President.)~~

~~for the following reasons, namely:—]~~

Proceedings Reviewed

[illegible] Lieut-Col
Reviewing Officer (J.A.G.) C.M.H.Q.

Note.—The President must be named. The members and waiting members (if any) may be mentioned by name, or the number and rank and the unit to which they belong may alone be named. In the latter event, the name, rank, etc., of the members of the Court, as constituted, will be recorded on the proceedings.

President.

Rank.	Name.	Regiment.
Major	L M Rhodenizer	N N S Highrs

Members.

Rank.	Name.	Regiment.
Capt	S B Praleigh	7 FDS RCAMC
Lieut	K G Evans	18 Fd Coy, RCE

*Must be signed personally by the Officer actually in command at the time, and all alterations to the composition of the Court to be initialled by him.

*Signed [illegible] Major-Gen
A/Commanding 3 Cdn Inf Div
Convening Officer.

SCHEDULE

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	*Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
C/21141 Pte John SMYTH 3 Cdn Div Sp Bn (C H	of O) Army Act Sec 18(4) (See charge sheet att)	NOT GUILTY	GUILTY To undergo detention for sixty five days L.M. Rhodenizer Major M.N.S.H. Nov. 12, 1943	I do NOT confirm - I do NOT consider that the evidence produced, proves that the offence was committed by the accused accused to be released forthwith R.F.L. KELLER, Maj. Gen., G.O.C. 3rd Cdn. Div. 12 Nov 43.

* Question to be asked of accused, if he pleads not guilty (R. of P. 39 (A)):—
"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"
Answer (to be recorded on separate sheet if necessary):—

(Signed) [illegible] Brig (Signed) L. M. Rhodenizer Major
A/Commanding 3 Cdn Inf Div (L M Rhodenizer) Major
Convening Officer (c) M N S Highrs
President.

(a) Appointment acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same Officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

Evidence and Charge Sheets (if necessary) to be PINNED here.

B. Certificate of President as to proceedings.

I certify that the above Court assembled on the 12 day of November, and duly tried the persons named in the Schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that Schedule.

I also certify that :—
1. The members of the Court
2. The witnesses
*(3. The Interpreter) [illegible]
*(4. The officers under instruction)
were duly sworn.

*Omit if not applicable.

Signed this 12 day of November 1943

L. M. Rhodenizer Major
President of the Court Martial.

C. Certificate in case of death sentences.

~~(See footnote (b) on page 1005 M.M.L. 1929.~~

I certify that the terms of *A.C.I. 570 of 1918 have been complied with.

Signed this day 19 .

President of the Court Martial.

D.

I have dealt with the findings and sentences in the manner stated in the last column of the Schedule and subject to what I have [illegible] I hereby confirm the above findings and sentences.

*To be omitted unless penal servitude, imprisonment or detention having been awarded. The Confirming Officer either has no authority to commit to prison or detention barracks, or, having such authority, recommends suspension.

*I direct that the soldier named in the margin be committed to prison or detention barracks until further orders.

Signed this 22nd day of November 1943.

NOT Confirmed

R.F.L. KELLER, Maj. Gen.,
G.O.C. 3rd Cdn. Div.

Promulgated and extracts taken in the case of C 21141 Pte John Smyth

(a) (Dated) 24 Nov 1943 (Signed) A C Brooks, Lt. A.C.

Promulgated and extracts taken in the case of

(Dated) (Signed)

Promulgated and extracts taken in the case of

(Dated) (Signed)

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

L.M. Rhodenizer major B 2

CHARGE SHEET

The accused, C 21141 PTE. JOHN SMYTH, Cdn Inf Corps, a soldier on the strength of 8 Cdn Inf Bde Sp Gp (C H of O) an active unit of the Canadian Army Overseas, is charged with:

FIRST CHARGE

A.A. Sec 18 (4)

"WHEN ON ACTIVE SERVICE stealing property belonging to a person subject to military law,

in that he

in the field, on or about the night of 26 Oct 43 did steal three one pound notes serial Nos Z 11 D 781132, Z 11 D 781133 and Z 11 D 781134, the property of G 32184 Cpl. MacCallum, A.M., 8 Cdn Inf Bde Sp Gp (C H of O) a person subject to Military law.

In the Field
6 Nov 43

for (F.C. Klaehn) ~~Lt.-Col.~~
Commanding Officer
3 Cdn Inf Div Sp Battalion
Cameron Highr's of Ottawa.

To be tried by Field General Court Martial.

In the field
11 Nov 1943

~~(W.H.S. Keller)~~
~~Major-General~~
A/GOC 3 Cdn Div

Approved on behalf of the JAG Cdn Army Overseas in accordance with Overseas R O 2223 and 3093 and K R (Can) 540.

In the field
11 Nov 1943

(A C Hall) Capt
ADJA 3 Cdn Div

L. 9.M.86

C-21141 Pte. Smyth. J.

12 Nov. 43

Eric A Williams Lieut.
N.N.S.H.3

A Field Army Form A 9.

**All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

**Form of Proceedings for ~~General and District~~ Courts-Martial.

Proceedings of a ~~Field General~~ Court-Martial held ~~at~~ In the Field on the 12 day of November 1943 by order of

Commanding 3 Cdn Inf Div.

dated the 10 day of November 1943

President.

L. M. Rhodenizer Major
N. N. S. Highlanders

Members.

H. B. Fraleigh, Captain
7 Fd. Amb. R.C.A.M.C.

H. Cy. Evans Lieutenant
18 Fd Coy
R.C.E.

Trial of* C/21141 Pte John Smyth, ~~Judge Advocate~~ R.
3 Cdn Div SP Bn. (C.H. of B.)

The order convening the Court, the charge-sheet and the summary ~~(or abstract)~~ of evidence are laid before the Court.

~~The Court satisfy themselves that ____ is not available to serve owing to ____, waiting member takes his place as a member of the Court.~~

The Court satisfy themselves as provided by Rules of Procedure 22 & 23.

The accused is brought before the Court.

Prosecutor,† Capt J. P. Bakman, C.H. of B.

~~Counsel or~~ defending officer† Major E.C. Hill C.H. of B.

At 1400 o'clock the Trial commences.

The order convening the Court is read, and is marked A signed by the President, and attached to the proceedings.

The names of the President and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Question by the President to the accused.

Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? *Answer.*

No sir.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

*Here insert No., Rank, full Name, Regiment, and Appointment (if any).
† Here state Rank and Name, and Regiment (if any).
‡ Qualification to be stated.

Q4274. W5/3/1943/78. 25,000 pds. 6/43. E. & H., Ltd. G662/1/1. Forms A 9/22.

B

The President, members and ~~judge advocate~~ L.M.R are duly sworn.

The following officers under instruction are duly sworn.

Captain J. P. C. MacPherson 9 Cdn. Inf. Bde. (Offg.)
Lieut Peter B. Wells " " " "
Lieut Fr. M. Roberts " " " "
Lieut J. J. Klein " " " "
Lieut J. J. Urie " " " "
Lieut W. E. Webster 7 M.G.S. 6 C.M.G.
Lieut S. E. Kemmis 12 Ind. Coy C.G.C.
Lieut J. C. Grieve R.A.M.C.
Captain G. C. Fraser R.A.M.C. 95
Lieut L. J. Wetherald "

Charge-Sheet.

Instruction. If the accused has elected to be tried under Army Act, sec. 46 (8) the fact should be here recorded.

The charge-sheet is signed by the President, marked B 2 and annexed to the proceedings.

The accused is arraigned upon each charge in the above-mentioned charge-sheet.

Are you guilty or not guilty of the [first] charge against you, which you have heard read? NOT GUILTY

Question to the accused.

Answer.

~~Are you guilty or not guilty of the second charge against you, which you have heard read?~~ L.M.R

Question.

Answer.

~~Are you guilty or not guilty of the third charge against you, which you have heard read?~~ L.M.R

Question.

Answer.

~~Are you guilty or not guilty of the fourth charge against you, which you have heard read?~~ L.M.R

Question.

Answer.

~~The accused having pleaded Guilty to charge, the provisions of Rule of Procedure 35 (B) are here complied with.~~ L.M.R L.M.R

Instruction.

If the trial proceeds upon any charge to which there is a plea of "Not Guilty," the Court will not proceed upon the record of a plea of "Guilty," until after the finding on that other charge.

C

*Instruction. (See R. P. 39 (A))

Proceedings on Plea of Not Guilty.

Question. *Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

Answer. NO SIR

~~The prosecutor makes an opening address (hands in a written address which is read, marked~~ , ~~signed by the President, and attached to the proceedings)~~ C. A. F.

The prosecutor proceeds to call witnesses.

First witness for prosecution. G-32124 Cpl. MacCullum, A.E.

being duly sworn, is examined by the prosecutor.

Q. What are your duties in your unit?
A. Sig. Cpl. Machine Gun Coy.
Q. Where were you quartered immediately after Exercise Pirate?
A. But 111 in Hursley Camp.
Q. Who else was in the same room?
A. Coy HQ of the MG Coy and Pte Smythe.
Q. By that do you mean the accused?
A. Yes.
Q. Do you recognize him?
A. Yes.
Q. On 21 Oct there was a pay parade. What was the order of the parade?
A. We were payed alphabetically. I was not there when they called the roll. I fell in behind Pte. Mills and Milne.
Q. Which one were you behind?
A. Either one or the other.
Q. How much money did you draw?
A. 5, 1 pound notes.
Q. Did you see Pte. Smythe on that parade?
A. No sir.
Q. Tell what you did with the money.
A. After I came out, I paid L/Cpl. McNeely 10s, remainder I put in my pocket book.
Q. What day of the ~~week~~ week was that?
A. Thursday.
Q. What did you do with your money on the succeeding days?
A. I left it in my pocket book sir.
Q. Are you sure you didn't spend any?
A. None of the notes sir.
Q. Did you take part in any gambling games or any financial transactions at all?
A. No sir.
Q. Tell the last time you saw the money.
A. Monday night the 25th.
Q. What were the circumstances?
A. I had purchased some stamps (2) I was placing the stamps in my pocket book when I last saw the money.

R. M. P.

C 2

Q. When next did you look for the money?
A. Wed night between 5 and 5.15.
Q. What was the occassion?
A. Pte McPherson wished to borrow a pound.
Q. What happened?
A. When I drew my pocket book out the money was not there. I searched my personal kit, to make sure I had not misplaced it, then reported it to Capt. Perry.
Q. Did you make note of the numbers?
A. No sir.
Q. Were they new currency?
A. Yes.
Q. Do you remember if the serial numbers were consecutive?
A. I didn't look at serial numbers. I couldn't say.

Cross examined by Defending Officer

Q. Who was behind you in pay parade?
A. Pte. Moore, Sir.
Q. Do you know anything about a crap game?
A. For several days there were crap games.
Q. Did you take part?
A. No sir. I watched a few, that is all.
Q. Did you ever change any money for anybody at these crap games?
A. No sir.
Q. Lend any?
A. No sir.
Q. Did you see the accused playing these games?
A. Yes.
Q. Was he winning or losing?
A. Winning.
Q. Any idea how much?
A. No sir.
Q. Did these crap games take place in the hut you lived in?
A. No sir.
Q. What hut?
A. I couldn't give the numbers.
Q. Who lived in them?
A. I couldn't be sure. I think it was 20 or 21 PA of MD Coy.
Q. What were you doing in these huts while the games were going on?
A. Watching.
Q. Do you ever take part in crap games?
A. Yes.
Q. Why didn't you on these occassions?
A. I was going on leave next week.
Q. Not so much as a little flyer?
A. No sir.
Q. Was your pocketbook always in your possession from night of 25 Oct until you missed this money?
A. No sir.
Q. Where was it?
A. Sometimes in my tunic pocket on my bed, sometimes under the pillow.
Q. When would that be?
A. Usually under my pillow. I couldn't be sure about those 2 nights.
Q. It is your practice to always put under pillow?
A. Not always. Usually.
Q. Always when there is money in it?
A. Not necessarily.
Q. Do you carry your pocketbook in the daytime?
A. Yes.
Q. When not under your ~~xxii~~ pillow where is it at night?
A. In my tunic pocket.
Q. Where is your tunic?
A. Under my bed or hanging beside it.
Q. Where were you when the money was discovered lost?
A. New Bks in Boscombe.

Q. Was Pte Smythe on Pay Pde on the 21st?
A. I didn't see him.
Q. Was that a regular parade or special?
A. Special. We were paid late.
Q. If anyone tried to get at your wallet under your pillow at night do you think you would hear him?
A. No sir.
Q. Why not.
A. I am a very sound sleeper.
Q. You can't say for sure that you wouldn't hear him?
A. No sir.

Second witness for prosecution) B-152135 Pte. Mills, J.H.

being duly sworn is examined by prosecutor.

Q. What is your job in the unit?
A. I am in the transport office as a clerk.
Q. Tell us about pay parade at Hursley Camp 21 Oct.
A. Pay Pde was called and we marched to the mess hall.
Q. In what order?
A. Alphabetical.
Q. Who was immediately in front of or behind you?
A. When they called the roll my name was called after Pte Milne. When the roll was called a second time more men came up, and my name was called ahead of Pte Milne.
Q. When you actually went in to get paid what order were you in?
A. I was ahead of Pte Milne.
Q. Who else did you notice at that time on the parade. Did you notice Cpl McCullum?
A. No sir.
Q. Did you notice the accused Pte Smythe?
A. No sir.
Q. Tell us what money you drew. What denominations?
A. Six one-pound notes.
Q. Can you tell us the serial numbers of those notes?
A. Z11D781115, 6, 7, 8, 9 and 20.
Q. Are you positive of those numbers?
A. Yes. I still have 5 of the notes.

Cross-examined by defending officer.

Q. Pte Mills. How did you keep this money so long after pay day?
A. I just didn't spend it sir.
Q. Did you take part in any of these crap games that were going on around camp?
A. No sir.

R. 9876.
3

Third witness)
for prosecution) C-21058 Pte Milne, G.H.H.

being duly sworn is examined by prosecutor.

Q. What work are you doing in the unit at the present time?
A. Clerk in ordely room.
Q. Tell us about pay parade Hursley Camp 21 Oct.
A. I was on parade. The names were called twice. As far as I know the names were called alphabetically. I came in behind Pte Mills. I was paid eleven pounds in one pound notes.
Q. Do you know the serial numbers of those notes?
A. I have them here.
Q. Tell the court the numbers.
A. I have Z11D781121,22,23,24,25,26,27, (28 missing) 29, 30 and balance missing. Just one note missing.
Q. What happened to those 2 notes.
A. I spent them.
Q. Are you positive there were eleven pounds?
A. Yes.
Q. And that those are the ones?
A. Yes.
Q. Did you see Cpl McCullum on this Pde?
A. Yes.
Q. Where was he?
A. He was behind me sir.
Q. Was he the next to be paid?
A. I couldn't say definitely.
Q. He was very close behind?
A. Yes.
Q. Immediately behind?
A. No sir, I couldn't say.
Q. Did you see Pte Smythe at that time?
A. No I did not.
Q. Do you recognize Pte Smythe?
A. Yes.

Cross examined by Defending Officer.

Q. How do you account for the break in the sequence of the numbers of the notes?
A. The centre note I managed to spend the day I went to Winchester.
Q. So you have spent 3 pounds in all?
A. Yes.
Q. Did you take part in any of these crap games Milne?
A. No sir.
Q. Did you take part in any immediately after this payday on the 20th?
A. No sir.
Q. Where do you spend this money, the NAAFI, or what other place?
A. I'm not just sure.
Q. Did you owe any of the boys money and return it to them?
A. No sir.
Q. Did you have any other money when you were paid?
A. Yes.
Q. How much.
A. Close to 5 or 6 pounds.
Q. Did you have all that money in your pocketbook?
A. Yes sir.
Q. How can you say definietly that the eleven, one pound notes which you have given the ~~xx~~ numbers of were actually the ones received by you on pay parade?
A. They were folded, put in the billfold and left in that position.
Q. Were the other notes in there too?
A. Yes
Q. Were they new notes?
A. Yes

Q. Can you say definitely that the 3 pounds you spent came from money you got on pay parade or money you already had in your wallet?
A. I think I could swear that it was the money I got on pay parade.
Q. Why? Do you know definitely what part of the folder you took this money from?
A. Yes, the first part.
Q. Are you quite sure then that you took 3 pounds from the front part of your wallet and spent it?
A. No. I don't want to say definietly that I did.
Q. Did you sleep in the same hut as Cpl McCullum and Pte Smythe?
A. No.
Q. Did you ever intend to state that you only spent £3 since you drew this money?
A. I remember distinctly spending £1 in Winchester and the other pound was changed by Pte. Mills.
[illegible]
Q. When did Pte Mills change the pound?
A. After pay parade, before I went to Winchester.
Q. Do you know if Pte Mills changed your note out of moneys which he received on pay parade?
A. I know for certain that he did not because his notes were pound notes.
Q. Did you look at the numbers of these notes before you were told to?
A. No sir, I did not.

After the evidence was read, the qccused requested the following correction in the evidence.

"Instead of saying £3 were spent, £2 were spent.

Fourth witness)
for prosecution) Capt G B WILSON, RCAPC
Paymaster HQ 8 CIB details.

being duly sworn is examined by the prosecutor.

Q. Is it among your duties to pay 8 CIB Spt Gp?
A. Yes.
Q. Do you recall a pay pde held in this camp on 21 Oct?
A. Yes.
Q. Can you tell us in what order the pde went through?
A. Generally speaking the leave parade went first, then the remainder as nearly as possible in alphabetical order.
Q. Can you tell us anything about the currency?
A. They were new notes issued to me by the Fd cashier. According to his records they were notes Z1AD781001 to 2000 inclusive.
Q. I hand you a document. Could you examine it? Can you tell us how much money was paid to Pte Smythe on that date?
A. On 21 Oct he was paid £1 by me.
Q. From the paybook of the accused will you tell the court what amounts the accused has drawn since pay book was opened and when pay book was opened?
A. Pay Book was opened 1 Aug 43 and shows that Smythe has been paid 2 payments of £1 each since that date.
Q. Will you tell the court present balance of his pay book?
A. Present balance is debit balance of $40.70

Q. What assignments of pay appear in the book?
A. He has an assignment of $23.00 per month to his wife and had up to 1 Nov an assignment of $8.40 for Victory Loan.
Q. Are there any credits for deferred pay?
A. Yes there is a balance of deferred pay of $200.00
Q. This Victory Loan bond is now paid for is it now?
A. Yes.
Q. Could that be credited to pay account?
A. It would depend on how the bond was purchased. If the bond were purchased in his own name and was being held for his account it could be arranged to have it sold and credited to his pay, but if it was purchased in the name of some other party the bond would be delivered to them depending on his instructions.
Q. Have you any idea what the serial numbers of notes you paid out to 8 CIB Spt Cp on Oct 21 were.
A. Yes. They were notes numbered Z1ID781001 to Z1ID782000.
Q. Did you pay out all those notes to this unit?
A. I don't remember.
Q. Had you made any payments out of that block of notes prior to paying this unit?
A. I can't remember.
Q. Is it possible for the serial numbers of these notes to be broken on a pay parade between 1 man and another man?
A. Yes.
Q. How can that happen?
A. I could happen by a man presenting a cheque he wished to cash.
Q. By making change possibly?
A. Yes. But it happens very seldom.
Q. Do you remember cashing any cheques on this parade?
A. I can't remember cashing any cheques.
Q. Do your acquittance rolls or any other records show the sequence in which men are paid?
A. Not necessarily. The acquittance rolls are made out in alphabetical order.
Q. Do you refuse to pay men who are not in proper alphabetical order?
A. No sir.

Fifth witness) Capt L V Perry - Cond 7 Machine Gun Coy
for prosecution) 8 CIB Spt Cp.

Being duly sworn is examined by prosecutor.

Q. Do you recognize Pte Smythe?
A. Yes.
Q. Is he in your Coy?
A. Yes.
Q. Could you tell us what happened on the afternoon of 22 Oct?
A. At about 1700 hrs 27 Oct 44 acting upon information received from Cpl McCallum and shortly afterwards on information received from Pte Milne, I proceeded to search all the members of my Coy HQ and those who had been quartered with them on the previous night. I was in search of three 1 pound notes with serial numbers in the close vicinity of Z1ID7811 and the last 2 numbers to be anywhere within succession of 10 from 27 onwards. I searched all except 2 of the members of Coy HQ who were absent on duty and asked if anyone else had been sleeping with Coy HQ at the time. I was informed that Pte Smythe had been quartered with Coy HQ until that night. I visited Pte Smythe in his quarters at approx 2215 hrs that night and told him that I was looking for money

which had been stolen. I asked him if he objected to being searched and he replied that he had no objection. Before proceeding with the search I asked Pte Smythe if he had any £ notes. He replied "Yes, seven" and produced them for me.

Q. Can you identify these notes.

A. Yes. I identify these notes as being the three £1 notes which I found ~~xxxxxx~~ in Pte Smythe's possession on the night of 27 Oct and for which I gave him a receipt with serial numbers included.

Q. Will you read the serial numbers of these notes?

A. The serial numbers are Z11D781132, 3 and 4. I thereupon explained to Pte Smythe that these 3 notes which I had selected appeared to me to be the notes which Cpl McCullum had lost, and that in view of this evidence I was placing him on charge.

R. M. C.

D

The prosecution is closed.

Defence.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer. yes

Question. Do you intend to call any other witness in your defence?

Answer.

Question. Is he a witness as to character only? *Answer.*

INSTRUCTIONS TO THE COURT.

(i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.

(ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

(Where any evidence is given for the defence.)

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page (*see overleaf*).

(Where the accused does not give evidence upon oath.)

Question to the accused. Have you anything to say in your defence?

Answer. The accused in his defence says†

[hands in a written address which is read, marked ~~signed by the President and attached to the proceedings.~~]

Instruction. † In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, *see* Instructions to the Court above.)

K.9.12.

D 2

The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.

First witness)
for defence) C-21141 Pte Smythe, J.

Beingduly sworn is examined by defending officer.

Q. There has been some suggestion by witnesses that you took part in a crap game subsequent to pay day. Is that so?
A. Yes.
Q. Did you win any money on this occassion?
A. Yes sir.
Q. How much?
A. In between £3 and £3.10.0
Q. Is this the only game you played in?
A. No. That game was held the day after payday, Fri 22. There was a further game next day Sat 23 where I won approx £2.10.0.
Q. Were these winnings in notes or silver or both?
A. Both.
Q. Did you get any of the silver changed to notes?
A. No. There was only about 10s in silver and I kept it.
Q. Who took part in these games?
A. I couldn't tell the names of all those who took part.
Q. Were there many?
A. At one time in the game on Fri there were at least 10 men with men dropping out and coming in at different intervals but I believe all men that took part in game were from 8 CIB.
Q. Were there many men watching the game?
A. There were 2 or three. There were other men in the hut. Whether they were there because they lived there I couldn't say.
Q. Were there any other games after 23 Nov in which you took part?
A. No sir.
Q. Did you leave camp that week-end?
A. Yes.
Q. Where did you go?
A. To Eastleigh.
Q. Did you spend any money over the week-end?
A. When I went into Eastleigh I had something to eat at the Forces canteen, then came home. That was the only money I spent beside bus fare.
Q. Did you have any other money apart from what you won at these crap games?
A. Yes.
Q. How much?
A. About £3.10.0.
Q. Where did that come from?
A. I drew £1 on the pay day of the 21st. I was paid £1 by men who owed me money, and I had had a pound from my wife.
Q. Have you any other sources of income apart from your army pay?
A. If I wish them, yes.
Q. What are these sources?
A. My father in Canada or my wife here in England.
Q. Do you sometimes call on them for funds if you require them?
A. Yes.
Q. Were you on the same pay parade as Cpl McCullum, Pte Milne and Pte Mills?
A. I was paid with mengoing on leave before Coy was paid.
Q. Did you see any of the soldiers I have named on the same pay parade?
A. No sir.
Q. Did any of these 3 men take part in any of the crap games you were in?
A. Cpl McCullum was present at the game which took place on 22 Oct. Whether he took part in the game or not I can't swear to that.

Question by Lieut Evans, member of the court.

Q. In this crap game did you see Cpl McCullum handle the dice himself?
A. No sir. I can't swear that Cpl McCullum actually handled the dice because the only reason I noticed him was that he spoke to me asking me for a light.
Q. Were there any side bets?
A. Yes there were.

The prosecutor declines to cross-examine the witness.

Second witness for defence - C-20824 Pte Papineau, C.
Being duly sworn is examined by defending officer.

Q. Do you belong to machine gun Coy 8 CIB Spt Gp?
A. Yes.
Q. Did you take part in any crap games on or about 21 Oct?
A. Yes, I did sir.
Q. Who else were playing in these games?
A. Pte Smythe, Pte. Yendall, myself, Pte Couvrette, Cpl McCullum.
Q. Was Cpl McCullum actually playing?
A. I am not sure sir. He was in the circle.
Q. Did you see Cpl McCullum handle any money?
A. Yes. He changed a 10s note for Pte Yendall.
Q. How was Pte Smythe making out in this game?
A. Pte Smythe was winning at the time I was there.

Cross examined by Prosecutor.

Q. Will you make it clear what you mean when you say Cpl McCullum changed a 10s note? Do you mean that Yendall gave Cpl McCullum ~~xxix~~ 10s and McCullum gave him some silver?
A. Yes.

L. M. R.

Major C. C. Hill 2 Ed Dn Sth. Bn (C. R. of O.)

DEFENDING OFFICER'S ADDRESS

To convict the accused on this charge it is necessary for the prosecution to prove that the notes referred to in the charge were in fact stolen from Cpl MacCullum. It is submitted that the evidence does not show that these notes were stolen or that they ever actually belonged to Cpl MacCullum.

The evidence adduced by the prosecution attempts to prove through a sequence of serial numbers of notes issued to various personnel on a pay parade that the notes stated in the charge were those issued by the paymaster to Cpl MacCullum and that as they were subsequently found in the possession of the accused that he stole them. It is submitted that there is not sufficient evidence to conclusively prove that these three notes ~~XXXX~~ ever belonged to Cpl MacCullum and that the accused stole them.

The evidence adduced is entirely circumstantial and for such evidence to be accepted it must be so clear and free from reasonable doubt that the court could not possibly draw any other conclusion than that of the guilt of the accused. It is submitted that the evidence in this case is not free from reasonable doubt and as such doubt does exist the court should find him not guilty.

Captain John R Palmer 3 Edn 10th Bn (C. R. of O)
L. M. R.

ARGUMENT OF PROSECUTION

Two conclusions must be reached by the court

(a) That money ever was in possession of Cpl MacCullum
(b) That it came into possession of the accused in manner indicated in the charge.

Regarding the first contention it submitted that the evidence is as clear as could be hoped for after the elapsed time has occurred. Milne and Mills both state Mills was paid, then Milne. Milne says Cpl MacCullum was close behind. Cpl MacCullum swears he followed the last of the two.

The serial numbers of the notes establish a clear rising sequence, broken only by money which was quite understandably spent.

The conclusion that Cpl MacCullum drew the succeeding notes is almost unavoidable.

There is no sworn evidence that Cpl MacCullum did take part in any game of chance or any financial transactions, apart from giving 10s in silver for one ten shilling note which does not effect the situation. No means whereby the money could be lawfully or properly come into Smythe's possession has been suggested. The "Doctrine of Recent Possession" demands that a reasonable explanation be given.

I refer to MML p 124 para 66
- 37 in second para on page
- 123 near top.

There is no suggestion that Cpl MacCullum had any ill feeling towards Smythe or any suspicions of him. The sequence of notes has established at Capt Perry's investigations before there was any shadow of suspicion of the accused.

The reasonable doubt referred to as being given in favour of the accused is only to be given in his favour after the facts and the evidence both for the accused and the prosecution have been weighed with the same mind in the same manner. It does not refer to such a doubt as would enable the court to shirk their responsibility. There will always be some doubt. The court should view the evidence in the same manner as a business man views a business proposition, and decide the case in the same way, but in cases where evidence is equally liable to either construction, decide in favour of the accused.

R. A. M. B.

Evidence as to character of accused

I am Major C C Hill 2 i/c 9 Bde Dpt Gp. I have known the accused for the past 2 years and a half and at one time I was his platoon commander and later his company commander. I have always found him to be quite reliable, quite intelligent and a good worker, and I would say honest and trustworthy. He has not been under my ~~command~~ immediate command, nor have I seen much of him for the past ~~six~~ six months.

L. M. & Co

E

Finding.*

*To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused C 21141 Pte John Smyth, 3 Coy Div. Sup. Bn (C. H. of O) is guilty of the charge

Proceedings on Conviction before Sentence.

*When the Court is already open this sentence will be struck out.

*The Court being re-opened, the accused is again brought before it.

Evidence of character, &c.

Captain P. Palmer 3 Coy Div. Sup. Bn (C. H. of O) is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused? *Answer by the Witness.*

Yes AFB 355 & N F M B

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked Y & Z, signed by the President, and annexed to the proceedings.

Question by the President.

Is the accused the person named in the statement which you have heard read? *Answer by the Witness.*

Yes

Question.

Have you compared the contents of the above statement with the regimental books? *Answer.* Yes

Question.

Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

Answer. Yes

Cross-examined by the accused.

The defending officer declines to cross-examine.

[Instruction.—If by reason of the nature of the service of the accused in a departmental corps or otherwise the finding of the Court renders him liable to any additional punishment in addition to that to be awarded by the Court he previously must hear the allocution of the Court on the fact, and the Court must enquire into the nature and amount of the additional punishment.]

Question to the accused.

Do you wish to address the Court? *Answer.*

The Court is closed for the consideration of the sentence.

R.A.M.C.
F

Sentence.

The Court sentence the accused C/21141 Pte John Smyth Sentence.
3 Cdn Div. Sig. RM/(C.H.Q.) to undergo
detention for sixty five days

L. M. Rhodenizer, Major
R.A.M.C.
Nov. 12, 1943.

L. M. Rhodenizer Major

No. C21141 Name SMYTH, J. Sqn., Battery, or Company — Corps Cdn Inf Corps Date of enlistment 18.9.39 G.C. Badges — Service or Proficiency Pay $1.50 M.F.M. 6 A.F. B.122 4077 & /8136 (2965)

Date of last entry in Company Conduct Sheet — No. and date of last drunk — Period not reckoning towards freedom from extra fine — Sheet No. 1 Signature O.C. Company, etc. — Character

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Borden	11.6.40	Pte		AA Sec 40 Conduct, etc., that he talked while on parade	Sgt McManus	2 days C.B.		Capt A.S. Pettapiece	
Hollafjordur	7.8.40	Pte		AA Sec 15(2) Failing to appear at a place of paraded appointed by his commanding officer	Sgt. Henderson	7 days C.B.	8.8.40	Capt. A.S. Pettapiece	
Field.	24.5.41	Pte.		AA Sec 40 Conduct, etc, was found in bed one hour and ten minutes after reveille	L/Sgt. King.	4 days C.B.	26.5.41	Capt. A.S. Pettapiece	
Field	10.6.41	Pte		AA Sec 15(1) AWL from 2215 hrs 10.6.41 to 0600 hrs 11.6.41. (7 hrs 45 mins)	Sgt. Lacroix L.			(CAPT A.S. Pettapiece)	
Field.	11.6.41	Pte.		AA Sec 11 neglecting to obey camp stand orders did not report to guardhouse on entering camp area	Sgt. McManus	forf. 1. days pay 7 days C.B.	11.6.41	Capt. A.S. Pettapiece	

(P.T.O.)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field.	17.7.41	Pte.		Sec 15 AA AWL from 2359 hrs 17.7.41 to 0225 hrs 18.7.41 2 hrs. 26 mins.	Sgt. Doyle	5 days C.B.	18.7.41	Capt. C.O. Pattepiece	
Field.	29.7.41	Pte.		AA Sec 40 Conduct etc, removed respirator before permission had been given to do so.	Sgt. McManus	7 days C.B.	1.8.41	Capt C.O. Pattpiece	
Field.	27.9.41	Pte.		AA Sec 15(1) AWL from 2215 hrs on 27 Sep 41 to 0100 hrs 28 Sep 41 Absent 2 hrs. 45 mins.	Sgt. King Sgt. Beaudry	7 days C.B.	29.9.41	Capt. C.O. Cook	
Field	12.12.41	Pte.		AA Sec 15(1) AWL from 2300 hrs 12.12.41 to 0020 hrs 13.12.41. (b) AA10(4) Broke out of barracks	Cpl. Lascelles Pte. Cumpsell	4 days pay 14 days C.B.	15.12.41	Capt. C.O. Cook.	
Field.	17.1.42	Pte		AA Sec 15(1) AWL from 2359 hrs 17.1.42 to 2030 hrs 18.1.42 (20 hrs 31 mins.)	Sgt. Blair	7 days C.B.	19.1.42	Capt. C.O. COOK.	Forf 1 days pay RAI 149 1(a)
Field.									

A.F.M. 6
(A.F. B.122)
40 P & /8136 (2965)

No. 21141 Name Smyth J Sqn., Battery, or Company — Corps Con Inf Corps — Date of enlistment 12 Sept 39 — G.C. Badges N/A — Service or Proficiency Pay — Character

Date of last entry in Company Conduct Sheet N/A — No. and date of last drunk N/A — Period not reckoning towards freedom from extra fine N/A — Sheet No. 2 — Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
								Capt.	
Field	5.2.42	Pte.		Sec. 40A.A. Failing to rise at reveille	T/Sgt King L/Cpl Waugh	5 days C.B.	13.2.42	G.H. Cook	
Field	4.5.42	Pte.		Sec.15 A.A. A.W.L. from 0800 hrs 4.5.42 to 0915 hrs 4.5.42 (1hr 15 mins)	Sgt McManus Cpl. Doyle	7 days C.B.	5.5.42	Lieut C.C. Hill	
Field	18.5.42	Pte.		Sec15 AA AWL 0800hrs 18.5.42 to 1020hrs 18.5.42 (2hrs 20mins)	Sgt McManus	7 Days C.B.	1915.42	Capt C.C. Hill	
Field	3.8.42	Pte.		AWL 0600hrs to 1230hrs 3.8.42 Sec 40 AA	L/Cpl Leveane	1 Days pay	12.8.42.	MAJOR HARPER	FORF 1 DAYS PAY FR+I 149 (2)(a)
Field	3.8.42.	Pte.		A.W.L. 1325hrs 3.8.42. to 1000 hrs 10.8.42 A.A. Sec 15 (1)		9 Days C.B.	12.8.42.	Lieut. McClymont	FORF 2 DAYS PAY FR+I 149(2)(a)
Field	18.10.42	Pte.		Sec 15 A.A. A.W.L. 2350hrs 18.10.42 to 0400hrs 19.10.42 Absent 5 hrs 10 min	Sgt. Nolan	5 days C.B.	21.10.42	Capt. J.F. Palmer	Forfs 1 days pay FR&I 149 (P.T.O.) 1(a)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
					Documentery				
Field 21.1.43.		Pte.		Sec15 AA AWL from 2359 hrs 24.1.43 to 0855 hrs 25.1.43(8hrs 56min)	Sgt. Beaudry	2 days pay	26.1.43	Maj A.S. Pettapiece.	
Field 25.4.43		Pte.		Neglecting to obey Camp standing Orders in that he failed to put out the lights at 2300hrs. Disobeying a lawful command given by his sup Offr. in that he did not put out the lights when ordered to do so. (Sec 15 AA)	L/Cpl. Picard	5 days C.B.	27.4.43	Lt.-Col P.C. Klaehn	
Field 15.5.43.				Sec 15 AA AWL from 1130 hrs 15.5.43 to 1345 hrs 17.5.43. 2 days 2 hrs 15 min)	Sgt. Burchat	6 days Pay	17.5.43	Lt.-Col. P.C. Klaehn	

A.F.M. 6
A.F. B.122)
40M & &/8136 (2965)

No. C.21141 Name SMYTH, J. | Sqn., Battery, or Company | Corps CDN. INF CORPS | Date of enlistment 18 Sep [illegible] | Service or Proficiency Pay | Badges | Character

Date of last entry in Company Conduct Sheet | No. and date of last drunk | Period not reckoning towards freedom from extra fine | Sheet No 3 | Signature O.C. Company, etc.

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Name of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks
Field	26.5.43	Rte.	—	AA Sec 40 "failing to turn in his kit to QM Stores when duly ordered to do so.	Sgt. Brown.	5 days C.B.	28.6.43	Lt. C. O'Handley	
Field.	13.6.43	Rte.	—	Sec 15(1) AA AWL from 2230 hrs 12.6.43 to 2100 hrs 13.6.43. (absent 22 hrs 30 mins)	C.S.M. Henderson	21 days F.P.	14.Jun43	LtCol PC Klaehn	
Field.	28.7.43	Rte.	—	AA Sec 40 "WOAS conduct, etc, as cld use unbecoming language to his superior officer.	Sgt. Lumprelle	7 days C.B.	27.7.43	WS McKenzie Major	
Field.	18.8.43	Rte.	—	AA Sec 15(1) "WOAS AWL from 0900 hrs 18.8.43 to 1200 hrs 23.8.43. Absent 5 days 3 hrs.	Documentary	28 days F.P.	23 Aug43	Lt.ColPC Klaehn	Forf 6 days pay r&I 1491(a)
Field	25.9.43	Rte	—	Sec 15(1) AA "WOAS AWL in that he was absent from 2230 25.9.43 to 0050 hrs 27.9.43 absent 1 day 2 hrs 20 mins	Sgt. Campbell L/Cpl. Biernaskie	21 days F.P.	29.9.43	Major JM Carson	Forf 2 days pay r&I 1491(a) (FTC)

Place	Date of offence	Rank	Cases of drunkenness	OFFENCE	Names of Witnesses	Punishment awarded	Date of award or of order dispensing with trial	By whom awarded	Remarks

CERTIFIED TRUE COPY 30 OCT 42.

A C Brooke, Lt & AO

Lt-Col R Rhodenizer Major

M.F.B. 333
751—8-40 (6400-1)
H.Q. 1772-39-629
A.F.B. 295

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number	Rank	Name	Regiment (or unit)
..21141	PRIVATE	SMYTH. JOHN	8 Cdn Inf Bde Sp Cp (CH of C)

1. The following is a fair and true summary of the entries in the A.C.B. ~~service record~~ ~~regimental conduct sheet~~ field Conduct sheets or Company Conduct sheets of the accused, exclusive of convictions by a Court-Martial or a Civil Court, ~~the Forces~~ A.C.B. of summary awards under Section 47 of the Army Act and of cases in which trial has been dispensed with.

	Within last 12 months		Since enlistment or appointment	
For A.A. Sec 15(1)	6	times	A.A. Sec 15(1) 14	times
For A.A. Sec 40	3	times	A.A. Sec 40 8	times
For		times	A.A. Sec 11 2	times
For		times		times

~~Number of instances of military misdemeanours recorded~~ A.C.B.

or

~~There are no entries in the conduct sheets of the accused.~~ A.C.B.

NOTE.—If the charge is for drunkenness, the entries for drunkenness must be stated separately.

2. The accused has not been previously convicted

or,

~~The following convictions of the accused by a court-martial or a civil court of ordinary jurisdiction under the Air Force Act~~ A.F.A. 73

Section 47 of the Army Act and dispensations with trial under A.A. 73 are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time.

or,

~~The accused at the present time is undergoing imprisonment or detention awarding by the~~ A.C.B.

~~day of~~

4. The accused has been in confinement awaiting trial on the present charges, for ~~Nil~~ nil days in ~~Air Force~~ A.C.B. civil custody, and 16 days in military custody, making a total of 16 days in custody, of which Nil days were spent in hospital.

5. The present age of the accused according to his record of service is 25 years, 2 months ~~according to the best evidence available~~ A.C.B.

6. The date of his ~~enrolment~~ attestation specified in his record of service is 18 Sep 39 ~~according to the best evidence available~~ A.C.B.

7. The service which the accused is allowed to reckon towards discharge is 4 years, 1 month, 13 days

8. The accused is entitled to reckon full service for the purpose of determining his pension, etc.

9. The accused is in possession of or entitled to no military air force decoration, or air force reward (or is military in possession of or entitled to). State any air force decoration or reward.

military N/A

10. (If the accused is a warrant officer.) The accused before he was made a warrant officer last held Air Force the regimental rank of N/A

11. (In the case of an officer.) The accused holds in the Royal Canadian Air Force the rank of Permanent Force unit

N/A dated , and in his regiment (or corps), the rank of

dated

12. The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of N/A years.

In the rank of years.

In the rank of years.

NOTE.—If any matter in any of the above paragraphs cannot be stated from the Regimental books, the paragraph must be struck through.

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under Section 47 of the Army Air Force Act, and of cases in which trial has been dispensed with of accused, Number Rank

Name of Unit Regiment

NOTE.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.

Description of Court by which tried	Date and Place of Trial	Charge upon which convicted	Sentence of the Court	Punishment Remitted
		NIL		

I hereby certify that the foregoing schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this 30th day of October, 1943.

checked 12 Nov 43 J.B. Thomas Capt.

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked signed by the president, and annexed to the proceedings.

SUMMARY OF EVIDENCE IN CASE OF C-21141 PTE SMYTH J.

On order of Officer Commanding evidence will be taken on oath.

SUMMARY OF EVIDENCE

First witness - G-32124 Cpl MacCullum A.M. having been duly sworn states, I am G-32124 Cpl MacCullum, A.M. of Coy H.Q. "F" Coy, 8 Cdn Inf Bde Sp Gp (C.H. of O.)

At 1710 hrs 27 Oct 43 Pte. MacPherson asked me to loan him a pound. I went to my tunic which was hanging on the wall in my room I took my pocketbook out of my right hand pocket. On opening the pocketbook I discovered that three one pound notes were missing. Nothing else in the pocketbook had been disturbed. I checked over my pockets and kit to make sure that I had not misplaced the money. I then reported the loss to Capt. Perry. I last saw the money in my pocketbook at approx 2000 hrs Mon 25 Oct 43, when I took some postage stamps out of my pocketbook. I received three one pound notes and one 10 shilling note from the paymaster on 26 Oct 43. I did not record the serial numberof the notes I received, but I know that the two men who were paid directly before me on the Parade were Pte. Mills and Pte. Milne, of Gp H.Q. of 8 Cdn Inf Bde Sp Gp.

Question by the accused.

Q 1 Where do you carry your pocketbook and where do you leave it at nights.

A 1 - During the day I carry my pocket book in my tunic pocket. At night I usually put it under my blanket at the head of my bed. I cannot state definately whether or not I placed it there on Mon or Tue Night.

A.M. MacCullum.....
Cpl MacCullum A.M.

Second witness - Capt L.V. Perry, having been duly sworn states, I am Capt L.V. Perry Officer Commanding "F" Coy 8 Cdn Inf Bde Sp Gp (C.H. of O.). At approx 1700 hrs on 27 Oct, 43, Cpl MacCullum a member of my Coy H.Q. reported to me that he had had three one pound notes stolen from his pocket book. I felt that the case necessitated immediate action and warned all members of Coy H.Q. to remain in billets after the evening meal.

Having assembled them I explainedthat a theft had been committed and as they had all been sleeping in the same hut suspicion naturally rested with them. I asked if they would all voluntarily submit to a search of there possessions to which they agreed. I carried out the search but found no trace of the money. I then asked if any other person had been sleeping in there quarters and I was told that Pte Smyth who had recently rejoined the Coy had been sleeping with them until that day. I visited Pte Smyths quarters at approx 2000 hrs but he was absent from his quarters. I again visited his quarters at approx 2215 hrs and explained the situation to him as I had already done to members of Coy H.Q. I first of all asked Pte Smyth if he had any money and he volunteered the information that he had seven pounds which he showed to me. Earlier in the evening I had been informed by Cpl MacCullum that he had received the money, which was lost, on Pay Parade held 21 Oct,43. I asked him who had been paid before him and he told me that it was Pte Milne or Pte Mills of Gp H.Q. I contacted Pte Milne who had in his possession, one poundsnotes of the following serial numbers, Z1ld781121 to Z1ld781127, inclusive. Pte Milne told me that he had drawn eleven pounds and had disposed of I beleive four pounds. He stated that two of these had been given to Cpl Scott. I felt that I had here sufficient grounds for beleiving that if I could find the one pound notes of the serial number which followed consecutively after those shown to me by Pte Milne I would have a chance of establishing who took the money.

K. M. Rhodenizer Major
B 3

I examined the seven one pund notes produce by Pte Smyth and amongst them I found three which bore the consecutive serial numbers, they were, Z11d781132, Z11d781133, Z11d781134. I asked Pte Smyth how he come in possession of these notes and he said that he had won them in a game. I placed Pte Smyth under close arrest and informed him that I would have to charge him.

The accused declines to Cross- examine the witness.

Third witness - B-158135 Pte Mills J.Hhaving been duly sworn states; I am Pte Mills J.H. of Gp H.Q. 8 Cdn Inf Bde Sp Gp (C.H. of C.). On Pay Parade on 21 Oct,43 I drew six one pound notes from the Paymaster. The serial numbers of these notes are, Z11d781115 , 1116, 1117, 1118, 1119, 1120. I drew my pay immediately prior to Pte Milne, but cann o t state where Cpl MacCullum was in the Pay Parade.

The accused declines to Cross-examine the witness. Pte Mills

Fourth witness - C-81058 Pte Milne C.H. having been duly sworn states; I am C-81058 Pte Milne C.H. of Gp H.Q. 8 Cdn Inf Bde Sp Gp (C.H. of C.). On Pay Parade on 21 Oct,43, I received my pay immediately after Pte Mills. I drew eleven o ne pound notes, the numbers which I now ha ve are, Z11d781121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1130. The re-maining two pounds I have spent. Cpl MacCullum was behind me in the line but I cannot state whether or not his name was called after mine.

The accused declines to Cross-examine the witness. Pte Milne

Fifth witness - H-77339 Pte Scanlon M. having been duly sworn states - I am H-77339 Pte Scanl on M. of "Y" Coy 8 Cdn Inf Bde Sp Gp (C.H , of C.) On (Friday) 22 Oct,43, I took part in a " Crap Game " in which Pte Smyth was also playing, at that time Pte Smyth won some money, I think about two pounds. On Saturday 23 Oct,43 I took part in a further game along with Pte Smyth and some other men, at this time Pte Smyth won further money, I beleive about two pounds ten shillings.

The accused declines to cross-examine the witness. M Scanlon

Sixth witness - Capt G.H. Wilson having been duly sworn states; I am Capt G.H. Wilson, Brigade Paymaster fro 8 Cdn Inf Bde H.Q.

The field Cashier issued me with the following notes, serials, Z11d781001 to 2000 inclusive. These notes were used on Pay Parade for 8 Cdn Inf Bde Sp Gp (C.H. of C.) on 21 Oct,43. To the best of my knowledge they were paid out in numerical sequence on the Pa y Parade.

Q.1. If I came in with some 10 shilling notes to be exchanged for one pound notes would you do so?

A.1. Yes I would.

Q.2. Then i n that way it would be possible that there could be some notes of the sequence passed out between the paying of two consecutive men on Pay P arade.

A.2. That could be possible.

The accused having been duly warned in accordance with Rules of Procedure 4(e) declines to make a statement or to give evidence.

I hereby certify that this summary of evidence has been taken in the field on 28 Oct, 43, in the presence and in the hearing of the accused and that the rules of procedure 4 (c)(d)(e) & (f) have been complied with.

.....Capt.
CAPT A.H. SMEDMOR.

TT·152
PTE SMYTHE G.

TF-152

4

SCHEDULE.

PART I. PLEA(S), FINDING(S) AND SENTENCE.

Accused: B-64789 Pte SMYTHE, Gerald - R.H.L.I. - 4 C.I.R.U.

Charge. (Insert "alternative" where applicable.)	Plea. (See instrs p 2.)	Finding. (See note below.)	(Space for use as required for further charges, accused charged jointly, special findings, etc.)
1st AA Sec.8(1)	Not guilty	Guilty	
2nd AA Sec.8(2)	Not guilty	Guilty	
3rd AA Sec.10(2)	Not guilty	Not guilty	
4th AA Sec.22	Guilty	Guilty.	
5th			
6th			

(Note: As to findings for lesser offences see AA 56, RP 44; findings on alternative charges see MML p 483 fn 4 para 2, RP 44; special findings see RP 44 and MML p 153, and in lieu of kit see RP 44 fn 6.)

At present under sentence for 28 days F.P. beginning on (date) 13 Oct 43. (1)
(I. Insert sentence being served, or delete, if not applicable. See RP 46(A). Information should be found on MF B355 or AF B296.)

Time in confinement awaiting present trial a total of 5 days, of which Nil days were spent in hospital.(1)
(I. See RP 46(A) fn 2. Information should be found on MF B355 or AF B296 admitted in evidence under E2.)

Sentence Awarded by the Court:

To undergo detention for 180 days.

(Sgd) _____ Judge-Advocate, if any. 21 Oct 43. Date awarded. (Sgd) F. D. Lucas Lt Col. President. (RP 45, 56.)
(See back of Convening Order as to assembly and disposal of record after trial.)

PART II. MINUTE WHERE CONFIRMATION RESERVED. (AA 54(3), RP 120(F), MML p 760.)

Date _____ (Sgd) _____ Commanding

PART III. DECISION OF CONFIRMING OFFR ON FINDING(S) AND SENTENCE.

(For duties and powers see AA 54, 57, RP 37(D) fn 6,46(A), 51-56, 120, MML pp 759-761, KR Con 562-577. Acquittals require no confirmation and cannot be revised: AA 54(7). Sending back finding or sentence for revision by Court: AA 54(2), RP 120(G). If not confirmed, accused may be tried again: AA 157, MML p 64. Minute of confirmation or non-confirmation may be altered before promulgation: RP 53, MML p 65. Quashing after promulgation: KR Con 573. Duties and powers of reviewing offrs: AA 57, 57A, RP 53A, 54. The Confirming Offr must sign here personally. AA 171 fn 1.)

My decision on the finding(s) and sentence set forth in Part I is:

Confirmed.

~~I direct that the accused be not committed to prison or detention barracks until further orders.~~ N.A.
(I. AA 57A. Delete if not used.)

Date 28 Oct 43 (Sgd) J. A. McIntosh Lt Col. a/Commanding 2 Group R.M.P. Confirming Officer.

PART IV. PROMULGATED AND EXTRACTS TAKEN. (RP 53, KR Con 574, 577.)

Accused.	Date.	Signature of Offr
64789 PTE GERALD SMYTHE	29 OCTOBER 43	W. Keenan, Capt and Adjt.

ALL DELETIONS AND ALTERATIONS WILL BE INITIALLED

FIELD GENERAL COURT-MARTIAL

CPA86 (In lieu of AFA21) 60/P.A.C.R./1608 (2004)

Convened by Order of Colonel J.A. McIntosh Comd "D" Gp, C.R.U. dated 26 Oct 43.

ACCUSED.

(As to the trial of two or more charged jointly see RP 14, 71, 109. As to reasons for showing (a) permanent or confirmed rank, and (b) appmts, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Con 308, 328, 330.)

Number.	(a) Prsnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-64789	Pte	Gerald	SMYTHE	4 C.I.R.U. R.H.L.I.

R. Deanbilla Capt. 17 Nov 43

PROCEEDINGS OF TRIAL.

Held in the Fd in (country) England on (date(s)) 27 Oct 43.

RECORD FORM A—OPENING PROCEEDINGS AND ARRAIGNMENT.

A1. The President, Members, waiting Member, JA, if any, and Offrs under instr, if any, assemble, and the Court is closed.

(PRINTED MATTER, NOT IN ITALICS FOR GUIDANCE, WILL BE DELETED IF NOT USED OR APPLICABLE, AND INITIALLED BY PRES OR JA. The Schedule referred to throughout is on p 4. Citations do NOT include all relevant fmn ROs. For guidance on procedure when a variation in this form arises, see form for GCM in MML pp 741 to 759. A brief record of such variation will be made and given a number having reference to appropriate or preceding para number herein. See back of Convening Order, CF A95, for oaths and instrs on how to record addresses, evidence, etc, which instrs are hereafter called "Notes". As to general provisions for conducting the trial see AA 53, RP 56, 63-70, 73, 74, 94, 103, 119, 132.)

A2. The President initials and lays before the Court the Convening Order and Charge Sheet(1) attached thereto (2)/. The Court is satisfied that it is properly convened and constituted(2), accused is (are) amenable to military law, and each charge discloses an offence.(3) FDL

(I. As to use of Summary of Evidence see RP 17 fn 6. 2. AA 49, 50, RP 103-107. 3. RP 11-13, 23, 24.)

A3. The Court is opened. The accused is (are) brought before the Court. At 1015 hours trial commences. FDL

A4. The Prosecutor produces a Medical Certificate that accused is (are) fit to undergo trial by court-martial.(1) ~~The Prosecutor informs the Court that accused elected to be tried by court-martial instead of being dealt with summarily by the CO (2).~~ FDL

(I. KR Con 557. 2. AA 46(B), RP 60 (n 1. For effect see KR Con 563(c). Delete, if not applicable.)

A5. President to accused: Do you object to _____ as interpreter? Ans _____
The Interpreter is sworn.(1) Do you object to _____ as shorthand writer? Ans _____
~~The shorthand writer is sworn.(1)~~ FDL
(I. RP 72. Delete, if none employed.)

A6. The Convening Order and names of the President and Members of the Court are read to the accused.(1) President to accused: Do you object to be tried by me as President or by any of the Members of the Court? Ans No. (2)
(I. RP 110. 2. If no objection, waiting member returns. RP 68(B). If objection, see procedure AA 51, RP 25, 71, 98, MML p 742.)

A7. The President, Members, JA, if any, and Offrs under instr, if any, are sworn.(1) The following are the ranks, names and units of the offrs comprising the Court, etc:

President	Lt Col.	F D Lucas (Can Inf)	H.Q. C.R.U.
Member	Capt.	J A Shepherd	3 C.I.R.U.
Member	Lt.	J L Magee	7 C.I.R.U.
Judge-Advocate			
Prosecutor	Lt.	D W Foley	4 C.I.R.U.
Defending Offr	"	W F Lees	4 C.I.R.U.

Questions by President: Is the Prosecutor a lawyer? Ans No. Is the Defending Offr a lawyer? Ans Yes. (2)
(I. RP 26, 27, 109, 111. List of offrs under instr will be returned separately with proceedings for information of Conv Offr.)
2. If Pros a lawyer and Def Offr not, accused is entitled to an adjournment when RP 89 (B) and fn 2 were not followed. See DI p 83.

A8. The accused See Note 'A' before arraignment makes(s) (no) objection. FDL (1)
(I. If a special plea is made for separate trial on one or more charges (RP 62(E), 108), or as to the jurisdiction of the Court (RP 34, 35(A), 113), or as bar of trial (RP 34), or as to accused's mental fitness to stand trial (AA 130, RP 57), or by one of several accused charged jointly to be tried separately (RP 14, 71), such plea, the addresses made in support or opposed, the evidence, if any, and finding are recorded per Notes. For forms of record see references in fns to RP cited. Insert in A8 more and name of the accused making the plea.)

A9. The accused is (are) arraigned (separately) on all charges in the charge sheet.(1) The accused does (who does) not object to any charge.(2) There is no amendment to be made to the Charge Sheet.(3) The President records the pleas in Part I of the Schedule. FDL

(I. RP 31, 112. See para 1 of instrs p 2. When more than one Charge Sheet see RP 62; when several accused to be tried separately see RP 71(C), and use separate copies of CF A96 to record proceedings. 2. RP 32, RP 33. If otherwise, delete and make appropriate record per Notes.)

A10. The Court is cleared and considers the instrs on Procedure after Arraignment at top of p 2. The proceedings are continued on Record Form D & C.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

INSTRUCTIONS ON PROCEDURE AFTER ARRAIGNMENT.

1. *The accused may not plead or be found Guilty on more than one of two or more charges laid in the alternative.* (*RP 37(A).*) *As to withdrawal of alternative charges by Prosecutor see RP 35(C). No other charge can be withdrawn for any reason without authy from Convening Offr. If Convening Offr concurs, Court may accept plea of Guilty to lesser, etc, offence.* (*RP 44(H).*) *Accused may change a plea of Not Guilty to Guilty during trial.* (*RP 38.*) *As to refusing to plead or not pleading intelligibly see RP 35(A). As to plea when sentence may be death see RP 35(D).*

2. *The proceedings on each charge sheet (RP 62) after arraignment will be conducted as follows in the respective circumstances stated:*

I. If pleas to all charges are GUILTY, use Record Form B below.

II. If pleas to all charges are NOT GUILTY, use Record Form D on p ■ 3.

III. If pleas to some charges are GUILTY and to other charges are NOT GUILTY and,

(a) Such mixed pleas occur when there are no alternative charges in the Charge Sheet, use Record Form C below. (*RP 37(A).*)

(b) Such mixed pleas occur in a set of two or more charges laid in the alternative, see RP 37 (A) and fn 2 as to discretion of Court, (i) to try the accused on all such alternative charges as if he had pleaded Not Guilty thereto, or, (ii) to record the pleas as the findings of Court. After deciding between (i) and (ii), Court will proceed under foregoing instrs as may be appropriate to result of its decision. See M M L p 744 Instrs (2).

3. *As to responsibility of President to accused see RP 59, 60(C); powers and duties of JA see RP 103; duty of Prosecutor see RP 60(A) (B); duty and privileges of accused and Defending Offr see RP 60(C), 87(C), 91, 92; securing and withdrawal of witnesses from Court see RP 81, 82; questioning of accused see RP 80, 87(C), 92(B), and of witnesses see RP 83-85; calling or re-calling of witnesses by Court etc see RP 75-79, 86, 116; use of Summary of Evidence at Trial see RP 17(E) fn 6; and responsibility of JA or Pres to record proceedings see RP 94, 96.*

RECORD FORM B—PROCEEDINGS ON PLEAS OF GUILTY TO ALL CHARGES.

B1. The President or JA, if any, complies with RP 35(B) by explaining to the accused the nature and meaning of the charge(s).(1), and that on his plea of Guilty there will be no regular trial but merely a consideration of the sentence to be awarded after he has been given an opportunity to make a statement in reference to the charge(s), call witnesses as to character and make an address in mitigation of punishment.(2)
(1. *RP 35 fn 3.* 2. *MML p 54 para 47.*)

B2. President to accused: The Court will now receive any statement you desire to make in reference to the charge(s).(1) If it appears from your statement that there are circumstances which indicate that you do not understand the effect of the plea of Guilty(2), or which show provocation or extenuation in respect of which in your interest the witnesses for the Prosecution should be examined(3), we shall advise you to change your plea to Not Guilty. In making a statement you will not be sworn or subject to cross-examination; and anything you say will not be used in evidence against you after you change your plea. If, however, it appears to the Court that your statement affects only the amount of punishment to which you are liable, you will not be advised to change your plea and you will be given an opportunity later to prove your statement by sworn testimony, if you so desire.(4)

President to accused: Do you wish to make a statement? Ans. No. (5)
(1. *RP 37(B).* 2. *RP 37(D) fn 6.* 3. *RP 35(B) fn 5 para 3, MML p 54 para 47.* 4. *See para E3 of Record Form E.* 5. *Statement, if any, recorded per Notes.*)

B3. ~~The Court considers the accused's statement (1). The Court decides (not) to advise accused to change his~~ (their) plea(s) of Guilty to Not Guilty on ~~charge(s).~~ The accused is (are) so informed, and he (they) ~~change(s) his (their) plea(s) on charge(s).~~ Part I of the Schedule is amended ~~accordingly~~.
(1. *Court may be closed to consider the statement. Delete whole or part not used.*)

B4. On the charge(s) to which the plea(s) of Guilty is ~~(are)~~ now charged the President records finding(s) of Guilty in Part I of the Schedule.(1)
(1. *RP 25(B). If any plea(s) is (are) changed, use Record Form C or D as appropriate.*)

B5. The Summary of Evidence is marked Ex A, initialled and read aloud by the President.(1)
(1. *If there is no Summary, or if it is inadequate, comply with RP 37(B). If there is any evidence inconsistent with any plea standing as Guilty, Court will advise accused to change such plea and, if changed to Not Guilty, try such charge(s) by use of paras D1 to D8 inclusive of Record Form D on p 3. RP 37(D).*)

B6. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

RECORD FORM C—PROCEEDINGS ON MIXED PLEAS OF GUILTY AND NOT GUILTY.

C1. As to the charge(s) on which accused pleaded NOT GUILTY the trial is continued by using paras D1 to D8 inclusive of Record Form D on p 3 before proceeding with C 2.(1)
(1. *RP 37(A) (E).*)

C2. The charges on which accused pleaded GUILTY are read to him ~~(them)~~ again, and the trial is continued by using paras B4 to B5 of Record Form B above.(1)
(1. *Under B5 such parts only of the Summary of Evidence are read as relate to the charges dealt with under C2. If any plea is changed to Not Guilty, trial thereon proceeds by complying with paras D1 to D8 inclusive in Record Form D on p 3 and making an appropriate record thereof on a separate sheet.*)

C3. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E on p 3.

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

RECORD FORM D—PROCEEDINGS ON PLEAS OF NOT GUILTY TO ALL CHARGES.

D1. President to accused: Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity to prepare your defence? Ans. No. (1)
(1. *If "yes", see RP 39(A) for procedure. Statement or evidence, if any, is recorded per Notes.*)

D2. ~~The Prosecutor makes (an) (no) opening address.(1)~~ The Prosecutor makes and opening address.
(1. *RP 39(B), 60(A) (B), 90, 92(C) (D). Record address per Notes, subject to RP 95(C).*)

D3. The evidence for the Prosecution is taken.(1) See Note D-1 etc.
(1. *RP 39(C), 114, KR Con 555. Record evidence per Notes. As to Prosecutor giving evidence himself see RP 39(D) (E).*)

D4. The Prosecution is closed.(1) ~~The Defending Offr submits that the evidence for the Prosecution does not~~ establish a prima facie case against the accused on the ..... charge(s).(2) The Court is closed, and considers the submission.(3) The Court ~~is re-opened~~, and the President announces that the submission is disallowed on the ..... charge(s), and allowed on the ..... charge(s), ~~and~~ that, accordingly, the trial will proceed on the former, but the accused is (are) found Not Guilty on ~~the latter charge(s).~~(4)
(1. *Delete remainder of this para, if submission not made.* 2. *Arguments on submission, answer and reply are recorded per Notes.* 3. *RP 40 fn 1. See MML p 72 paras 12-14 and p 81 para 42.* 4. *Delete part not used. If accused acquitted on all charges, use second alternative in para D8.*)
NB. If trial proceeds, accused must be allowed great latitude in making his defence, and the Court should not stop his defence solely on ground of irrelevance. (*RP 60(C), 114, 115.*)

D5. President to accused: You will now proceed with your defence.(1) You may, if you wish, give evidence ~~himself~~ on oath as to the facts or your character or both, in which case you will be subject to cross-examination.(2) You may, however, make a statement without being sworn, and you will not be subject to cross-examination.(3) But a statement which could have been made on oath will not carry with the Court the same weight as sworn testimony.(4) You may call witnesses in your defence and as to character, whether you give evidence or make a statement or do neither.

President to accused: Do you wish to give evidence yourself as a witness, make a statement, or do neither? Ans. Sworn Evidence under oath. Do you intend to call witnesses on your behalf? Ans. Yes. Are they witnesses as to character only? Ans. No.
(1. *RP 155.* 2. *RP 40(A), see 60(D).* 3. *RP 40 fn 10.* 4. *RP 40 fns 2, 9.*)

D6. Consequent on the answers recorded in para D5 the appropriate procedure for the defence is followed.(1)
(1. *RP 114, 115, 116. For procedure see Notes on back of Convening Order, CF A95. Evidence for accused as to his character should, if in his interest, be given before the finding. See RP 46(A) fn 1, 86(C). Note the further opportunity in para E1 of Record Form E. Record per Notes addresses, statement, evidence and any summing up by the JA under RP 41, 103(e).*)

D7. The Court is closed to consider the finding(s).(1) The finding(s) of the Court ~~is~~ (are) recorded in Part I of the Schedule.(2) The Court is re-opened.
(1. *RP 43, 117(A). See Notes in Part I of Schedule.* 2. *RP 44(A).*)

D8. The President announces the finding(s), if any, of Not Guilty, and states to the accused that the finding(s) of the Court on the first and second charge(s), being subject to confirmation, will be promulgated later.(1)
Or, The President announces that the accused is found Not Guilty on all charges and is to be released forthwith, and that the proceedings are accordingly terminated. Part I of the Schedule is dated and signed.(2)
(1. *AA 54(3) (6), RP 45, 120(A).* 2. *AA 54(3), RP 45, 117. This alternative announcement is not applicable when there are pleas of Guilty outstanding and dealt with under Record Form B or C.*)

D9. The accused having been found Guilty on one or more of the charges, the proceedings are concluded by using Record Form E below.

RECORD FORM E—PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

E1. President to accused: Do you wish to give evidence yourself or to call any witnesses as to your character?(1)
Ans. No.
(1. *If evidence has already been given by accused or his witnesses as to his character, delete this para. RP 37(C) fn 4, 46 fn 1. Accused and witnesses are sworn. Evidence recorded per Notes.*)

E2. The Prosecutor produces Statement(s) as to Character and Particulars of Service(1), and certified true copy ~~(copies)~~ of Conduct Sheet(s)(2), purporting to refer to the accused, which he submits to the Defending Offr for examination, and then to the Court for admission in evidence. The Court is satisfied that these documents refer to the accused, because (i) they purport to be signed in the manner required by AA 163(l) (g) (h), and (ii) they purport to refer to (a) soldier having the same number, rank, name and corps as the accused. Admitted in evidence and marked Ex B and Ex C, respectively.(3)
(1. *AFB 355 or AFB 296.* 2. *MFM 6.* 3. *RP 46, KR Con 558. If above documents not produced, see RP 46 fn 1 para 1.*)

E3. President to accused: Do you wish to address the Court on the Statement(s) and Conduct Sheet(s), and in mitigation of punishment?(1) Ans. Yes. See Note E-1 (2)
(1. *RP 37(C), 46(D).* 2. *Address, if any, recorded per Notes. Court should permit accused or his witnesses to prove on oath anything here or previously stated which would affect the amount of punishment. RP 37(F) fn 7.*)

E4. The President states that the Court is closed to consider the sentence, and that the sentence to be awarded by the Court, being subject to confirmation, will not be announced, but will be promulgated later, and the proceedings in open court are accordingly terminated.(1)
(1. *AA 54(6), RP 120(A).*)

E5. The Court considers the sentence.(1) The President records the sentence in Part I of the Schedule, which is dated and signed by him and the JA, if any.(2)
(1. *When several accused tried separately see RP 7(D). One sentence only, comprised of the punishment or punishments laid down in AA 41, 44 and its proviso, is to be awarded to cover all charges in all charge sheets on which accused found guilty. RP 48. As to sentences see AA 44, 138, 182, RP 46-50, 69, 118, 119(A), KR Con 308, 330, 563-566. Overseas RO 309, 1323, MML p 86, 737-739. As to sentences assigned for civil offences by the law of England see AA 41(5), MML p 130. When accused already under sentence of imprisonment or detention see AA 44(1)(b), 60(7), KR Con 564.* 2. *RP 50. As to release from arrest by Convening Offr see KR Con 567. As to assembly and disposal of record after trial see instrs on back of Convening Order.*)

PRESIDENT OR JA WILL INITIAL ALL DELETIONS AND ALTERATIONS.

CHARGE SHEET

The accused No. B 64789, Pte. GERALD SMYTHE, of the Royal Hamilton Light Infantry, on the strength of No. 4 Canadian Infantry Reinforcement Unit, a soldier of the Canadian Army Overseas, is charged with:

1st Charge
A.A. Sec. 8 (1)

WHILE ON ACTIVE SERVICE, Striking his superior officer, being in the execution of his office,

in that he at Aldershot, Hants., at 1650 hours, 20 October, 1943, struck with his fist in the face, Corporal Price, E., Reg. Police, No. 4 Canadian Infantry Reinforcement Unit, who was at the time in command of the Field Punishment defaulters meal parade.

2nd Charge
A.A. Sec. 8 (1)

WHILE ON ACTIVE SERVICE, Using insubordinate language to his superior officer,

in that he at Aldershot, Hants., at 1650 hours, 20 October, 1943, did use insubordinate language to his superior officer when checked by the N.C.O. i/c of defaulters meal parade, saying "Oh go and fuck yourself."

3rd Charge
A.A. Sec. 8 (1) (a)

WHILE ON ACTIVE SERVICE, Striking a person in whose custody he was placed,

in that he at Aldershot, Hants., at 1650 hours, 20 October, 1943, struck L/Cpl. McConville, W.J. Regt'l Police, 4 C.I.R.U. while in the performance of his duties and in whose custody he was placed.

4th Charge
A.A. Sec. 24

WHILE ON ACTIVE SERVICE, While in lawful custody attempting to escape,

in that he at approximately 1130 hours, 21 October, 1943, when being paraded from C.O.s Orders, broke away from his escort and attempted to escape.

(J.H. Christie) Col.
Officer Commanding
4 Cdn Inf Rft Unit, C.A.O.

IN THE FIELD
22 OCTOBER 1943.

TO BE TRIED BY FIELD GENERAL COURT MARTIAL.

IN THE FIELD
26 OCT 1943.

J.A. McIntosh/ Colonel.
A/Commander,
"D" Group, Cdn Rft Units.

J.A.P.
27.10.43

Medical Officer's Certificate. 40/25
K.R. (Can.), para 557.

I certify that I have this morning examined No. B64789
PTE. SMYTHE. G. of #4 C.I.R.U.
and in my opinion, he is fit to undergo trial by Court Martial.
Station. FIELD
Date. 27-10-43 (Sgd.) [illegible] Capt.
(Medical Officer)
(Canadian Reinforcement Units Routine Order No. 3, para 27, d/6 Jan 42)

F. D. [illegible]
27 OCT 43

FIELD GENERAL COURT-MARTIAL

CFA95 (In lieu of AFA8)
40/FA8N/1697 (2868)

(Whether the accused to be tried is under his comd or not, a FGCM may on application to him be convened by any offr of Cdn Army Overseas, or of any other force if authorized in law, in immediate comd of troops on active service, subject to RP 105(C) and restrictions imposed by appropriate authy. As to the duties and privileges of the Convening Offr in dealing with the application see MML Chap V paras 20 and 23, AA 49, 50, RP 104-107, 114. As to reasons for showing (a) permanent or confirmed rank, and (b) appmt, A/rank or A/appmt, if any, see AA 182, 183, fns, KR Can 308, 328, 330.) RP 87(B).

There should be a separate Convening Order for each person to be tried separately by the same Court. RP 71(C), 109. As to separate charge sheets see RP 62, and as to separate trial on charges in the same charge sheet see RP 108. As to two or more accused charged jointly see RP 16, 109.

ACCUSED.

Number.	(a) Prmnt R. (b) Appmt, A/R or A/Appmt.	Full Christian Names.	Surname.	Unit.
B-64789	Pte	Gerald	SMYTHE	4 C.I.R.U. R.H.L.I.

CONVENTING ORDER.

1. Whereas complaint has been made to me, the undersigned, that the person(s) named above ~~is~~ the accused, being subject to military law, has (~~have~~) committed the offence(s) set forth in the Charge Sheet(s) attached and on (date) 26 Oct 43, endorsed by me, ~~(or by an offr of my staff for me)~~ "To be tried by Field General Court-Martial".

2. And whereas I am of opinion that it is not practicable that such offence(s) should be tried by an ordinary General Court-Martial; ~~(and that it is not practicable to delay the trial for reference to a superior qualified offr)~~ (Delete part in brackets when not required for compliance with RP 105(C).)

3. I hereby convene a Field General Court-Martial to try the said person(s) and to consist of the Offrs appointed or detailed hereunder.

4. ~~I am unable to appoint (a) three Offrs to form the Court, (b) a Fd Offr as President, for the reasons I have attached hereto.~~ (AA 49, RP 106(B), 107(A). Delete the whole or part, if not applicable.)

5. ~~I also appoint as Judge Advocate thereat the Offr mentioned hereunder.~~ (RP 106(E). Delete, if none appointed.)

PRESIDENT.

Lt-col. (Rank.)	F. D. Tweedie (Must be named. RP 106.)	Carlt & York R. (Unit.)

MEMBERS.

A Captain (Rank.)	to be detailed by C.O. (Named or detailed. RP 106.)	3 C.I.R.U. (Unit.)
A Lieutenant (Rank.)	to be detailed by C.O. (Named or detailed. RP 106.)	7 C.I.R.U. (Unit.)

WAITING MEMBER.

(Rank.)	(Named or detailed, if any. RP 106.)	(Unit.)

JUDGE-ADVOCATE.

(Rank.)	(Must be named, if any. RP 106.)	(Unit.)

On Active Service in the Fd

in England (Country.)

Date 26 OCT 1943.

J. A. M. Christ Colonel. (Rank.)
(Signed personally. RP 105 fn 2.)

a/Commanding "D" Group, Cdn Mft Units.
Convening Officer.

CONVENING OFFR WILL INITIAL ALL DELETIONS AND ALTERATIONS

(See overleaf for notes and notes for use on trial.)

F.D.T. 27.10.43

Note 'A'

It is noted by the President that the particulars of the second charge are probably improper in that the N.C.O. is 'superior officer' to whom it is alleged the words were addressed is referred to as "the N.C.O. i/c the defaulters must parade" and not by name.

The defending officer states that he has no objection to the charge as there is actually no doubt as to whom is meant.

The president directs that the trial may proceed on the trial as it stands.

Note D. 1.

First Witness for the Prosecution.

B-37215 Cpl. Price. E. 4 C.I.R.U. sworn states:

On Oct 20.43. I was Cpl in charge of Field Punishment. I recognize the accused. At 1630 hours 20 Oct 43, I called the F.P. boys down for supper. I called them to attention. They all came to attention except the accused. Upon which I said "I have called you all to attention, and the accused said "Ah Go fuck yourself". I then saw Pte Sanders of the R.P. standing in the guard room door. I ordered him to bring two men out to put Pte Smythe under close arrest. Pte Smythe then stepped out of the ranks, dropped his mess tin & took a couple of smacks at me. Then the two men came out to take him in custody. He had me around the neck then. L/Cpl McConville came out and took him away. He struggled with L/Cpl McConville and made a couple of strikes at him. He got away and stood up against the wall and defied anyone to take him in. Sgt. Harvey. the Provost Sgt. ~~take~~ then took him into the guard house.

Cross Exam:

I gave the order - Squad - Attention. ~~[redacted]~~ obeyed except the accused. I ~~[redacted]~~ heard "Ah Go fuck yourself" I was standing practically in front of him. Pte Sanders said on summary that he heard me say. "Who said that?

but I do not remember that. We were all out of sorts that day and I picked him up quick. The accused had irritated me that day and on previous days. He struck me with his closed fist in the face. The Lt & Cpl McConville at least one glancing blow. I had checked the accused two or three times that afternoon on the route march about taking his hands out of his pockets.

The evidence is read over to the witness.

Second Witness for Prosecution:

B-88003 Pte Sanders, M.C. 4 CIRU, sworn states:

I was employed as an R.P. on 20 Oct 43. I recognize the accused. On Oct 20 43 on coming out of the guard room around supper time, I saw the F.P. men forming up. Cpl Price was there. What drew my attention to this was when Cpl. Price ~~was~~ asked someone in the ranks to repeat what he had said. I did not hear an answer. The Cpl. told me to get two escorts. I reported to the Sgt. ~~When I came back~~ I heard a scuffle in the dorm & someone whom I now recognize as the accused step out and hit Cpl. Price. This was when I was on my way to get the escort. I got the Sgt. of the R. Ps. to get the escort. When I next saw the accused he was in a fighting position with his back to

the wall across the road from the guard room. I was about 25 or 30 feet from Cpl Price when I heard him say "Repeat that".

Cross Exam:
In court Cpl Price said "repeat that" or words to that effect. I did not hear him say anything before that. If he had called them to attention I could have heard it, but I was not paying any attention. When I came out first the leading part of the line was straight and at the rear they were still falling in. Some were standing at attention and some were not. They were all one group.
The evidence of this witness for the prosecution:

Third witness for the prosecution:

B-36902 L/Cpl McConville, W.J. 4 CIRU.
On Oct 30. 43. I was employed as a R.P. at 4 CIRU. At about 1700 hours Oct 30. 43. Pte Sanders knocked on the guard room door & had a conversation with Sgt Harvey. Sgt Harvey sent me to Cpl Price. I went to the door & saw the accused and Cpl. Price. The accused was hitting Cpl. Price with his fists in the face. He accused had his hands on Cpl. Price with his hands I grabbed the accused by the neck. We struggled, fell over the steps. The accused swung at me and grazed my face. I got up and the accused started towards the road and dared anyone to come and get him. Cpl Russell

s Sgt Harvey came out & had a conversation with the accused and the accused walked into the guard room & we locked him up in a cell.

Cross Exam:

I took the accused from the front. We stumbled & he swung his hand around & he hit or grazed my face. I do not know that he intentionally hit me in the face with his fist. His evidence in chief was true & the witness would withdraw for the prosecution.

C-66610 Sgt Harvey E.B. 4 C.I.R.U. sworn states:

On Oct 20, 43 I was Provost Sgt 4 C.I.R.U. I recognize the accused as the bugler. I was in the Guard Room at about 1700 hours 20 Oct 43. Pte Sanders came in & as a result of a conversation with him I ordered the R.R. outside & I went to the door. At that time I saw Lt Cpl McConville was struggling with the accused. The accused made a pass with his fist & struck Lt Cpl McConville on the side of the face. The accused broke away & backed up against the wall of a building opposite the entrance to the guard room. He took up a fighting pose & defied anyone to take him in to the guard room. Three or four minutes later he walked into the guard room on his own. Presently he was in a high tension. It looked like a blow and not an

COUNTER NUMBER 588354

HOUR 1925

OPERATOR'S INITIALS

RELIEVING OPERATOR

Affidavit

PROVINCE OF ONTARIO
COUNTY OF CARLETON
TO WIT:

I, Hilda M. Barclay of the City of Ottawa, in the County of Carleton, an employee of the Department of National Defence, make oath and say:

1. THAT I am presently employed as a camera operator making microphotographic copies of Departmental documents for the purpose of providing a permanent record of same.

2. THAT on the date indicated therein I did make microphotographic copies of files listed in Appendix "A" hereto and of all documents contained thereon.

3. THAT the said microphotographic copies may be identified from the indexing data and the job and reel numbers contained in Appendix "A".

SWORN before me at the City of Ottawa, in the County of Carleton, this day of A.D. 19

CAMERA OPERATOR

A NOTARY PUBLIC

Dated DEC. 4 1950

APPENDIX "A" TO THE AFFIDAVIT

CAMERA OPERATOR'S REPORT

	JOB NO. 44	REEL NO. 93
	BOOK NO. 8-5	
PRODUCTION DATA		INDEXING DATA 44-93 A / 44-93 B
	DATE / HOUR	
STARTED		BEGINS WITH SMITH E.J. / SMITH J.R.
FINISHED		1. SMITH G. / SMITH H.
TOTAL NO. OF HOURS	6	2. SMITH H.P. / SMITH R.J.
TOTAL NO. OF IMAGES	5256	3. SMITH H.L.T. / SMITH W.P.
		ENDS WITH SMITH V. L. / SMITH J. H.N.D.

END

SECOND

SIDE


REEL
NO
44 • 93